

# *Lexicon*

Ambiguous and debatable terms  
regarding family life and ethical questions





PONTIFICAL COUNCIL FOR THE FAMILY

# *Lexicon*

Ambiguous and debatable terms  
regarding family life and ethical questions

Human Life International

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# Preface

Alfonso Cardinal López Trujillo

The *Lexicon* reviews a range of possibilities as its full title suggests.

By setting forth the content and the truth which must guide correct applications, our authors seek to enlighten people on some ambiguous or confusing terms and jargon difficult to assess. In this area, there is a cultural inclination that makes it difficult to give a correct interpretation.

To deal with this, one has to track the invention, development and spread of the terms. Cases often arise in which one notices that terms are coined that do not completely hide an intention in an effort to tone down expressions to avoid causing shock and an instinctive rejection. This is the case with the clever phrases: “voluntary interruption of pregnancy” or “pro-choice”.

Many expressions are used in parliaments and world forums with concealment of their true content and meaning, even for the politicians and members of parliament who use them, due to their weak background in philosophy, theology, law, anthropology, etc. This represents the greatest obstacle for a correct understanding of certain terms. The purpose of the *Lexicon* is to assist in such cases and to awaken interest in order to promote serious and objective information, and stimulate the desire for a deeper formation in this field where several sciences and critical disciplines converge.

Juridical positivism worsens the problem since a law’s quality is no longer determined by the human person as a whole, but by the accepted procedure by which a law is formulated in accord with the will of the majority. This leads to a concept of “political truth” and of democracy that will not escape from the concept of law as what is imposed by the strongest.

There are many obscure concepts which are hard to understand because their content requires calm and patient investigation. This is of course complicated by those who refuse to accept natural law and to give law an ethical foundation. Obviously, we cannot marginalize the riches of faith that confirm and deepen what reason understands.

The teaching of the *Catechism of the Catholic Church* is timely: “‘The intimate community of life and love which constitutes the married state has been established by the Creator and endowed by him with its own proper laws.... God himself is the author of marriage’ (*Gaudium et spes*, n. 48). The vocation to marriage is written in the very nature of man and woman as they came from the hand of the Creator.

Marriage is not a purely human institution despite the changes it has undergone through the centuries in different cultures, social structures and spiritual attitudes. These differences should not cause us to forget its common and permanent features. Although the dignity of this institution does not appear everywhere with the same clarity, a certain sense of the greatness of the matrimonial union exists in all cultures because ‘The well-being of the individual person and of both human and Christian society is closely bound up with the healthy state of conjugal and family life’ (*Gaudium et spes*, n. 47)” (n. 1603).

It is not the intention of this project to combat or oppose institutions or persons or even less to impose upon them. Rather we want to propose, to persuade lovingly, directing people towards the truth with respect, in the hope of beginning and reinforcing a fruitful dialogue. We cannot escape the truth to which human beings have a right in order to live with genuine freedom.

Certain expressions exploit the uninformed people who use them and, since they are deceived by their ambiguity, they are not aware of the deception. In this way, one tries to manipulate public opinion by concealing the unpleasant or shocking aspects of reality and of the truth. Since the terms that have been made up are not really innocent, their authors seek to promote their methods as a way to reach their goals by changing the meaning of the terms. They do this to avoid rejection, which they see as a possible risk.

The cunning use of ambiguous terms has reached worrisome levels. People are beginning to speak of an Orwellian language. In his book “1984”, the famous writer George Orwell criticized the totalitarian usage in which, for the sake of propaganda, certain words, repeated to create conditioned reflexes, eluded the ability of the intelligence to grasp their meaning and ended by having exactly the opposite meaning: for example, “slavery” means “freedom”, “evil” is identified with “good”, and “falsehood” with “truth”.

One must note that one of the most disturbing symptoms of a weakening of morality is the confusion of terms which lead to degrading levels when they are used with cold calculation to obtain a semantic change, changing the meaning of words in a deliberately perverted way.

This incredible ability for semantic change that demonstrates the emptiness of an anthropology, appears in the concepts of “rights”, that has become selective and capricious.

The universality of rights is not always consistently recognized, indeed, “exceptions” are made which deny the quality and comprehensiveness of rights, especially with regard to what is stated in Article 3 of the *Universal Declaration of Human Rights*: “Everyone has the right to life, liberty and the security of person”. The

striking spread of the massacre of abortion shows how some make relative a right that should be universal. John Paul II wrote: "All human rights are in fact closely connected, being the expression of different dimensions of a single subject, the human person.... Defence of the universality and indivisibility of human rights is essential for the construction of a peaceful society and for the overall development of individuals, peoples and nations" (*Message for World Day of Peace*, 1 January 1999, n. 3; *ORE*, 23 December 1998, p. 10).

With the escalation of ambiguity, *new* rights have even been proposed, not as victories for previously unrecognized issues that deserve serious consideration, but as new forms of manipulation. Allow me to quote a valid reflection. Fr Lobato wrote explaining the term "new rights": "Taken individually these concepts seem fascinating; however it is not a question of *newness* but more precisely of a true *difference* of language, that aims at removing certain *human rights* from every ethical norm, to relegate them to the realm of *privacy* by means of ambivalent language which advances ideas and practices that contradict their immediate meaning. A term is manipulated and camouflaged in order to penetrate all sectors through the powerful means of communication. An ever greater separation exists between thought, reality, and the word that expresses it, which is the subject of manipulation. In the end, the three concepts that the words seemed to convey are denied: *newness*, *rights*, and the '*humanum*'. In order not to offend the ear, alternative words or phrases are used to replace them, for example: *the voluntary interruption of pregnancy* for abortion, *euthanasia* for induced death, *the morning-after pill* for an abortifacient".

The Church is often presented as an obstacle to freedom, discouraging and intolerant. Hegel's affirmations are quite fitting: "But that man should be free in himself and for himself, by virtue of his very substance, that he should be born free as man was unknown to Plato, Aristotle, Cicero or to the Roman jurists, although the source of human rights lies in this concept alone. Only in the Christian principle does the individual personal spirit essentially assume an infinite, absolute value; God wants us to give help to all human beings. In the Christian religion, the doctrine that all men are equal before God because Christ has called them to Christian freedom has made headway". He says further: "These assertions ensured that freedom became independent of birth, social class, education, etc.... The purport of this principle, has acted like leaven down the centuries and millenniums, producing the most gigantic revolutions" (cf. G.W.F. Hegel, *Lessons on the History of Philosophy I*, Italian edition, 1998, p. 61).

Certain commonplace terms give rise to special difficulty. This is the case with the concept "*discrimination*".

Ambiguity is particularly dangerous since at first it arouses a sympathetic reaction: who is not opposed to all forms of discrimination? This seems to derive from respect for human rights. However, the first concrete favourable reaction changes once the concrete content is more closely examined. In parliaments, in the name of non-discrimination, bills are introduced for *de facto* unions and for those between homosexuals and lesbians even with the possibility of adopting children.

A recent case that can illustrate this problem (and which is a case in point) is that of the CEDAW. These letters stand for “*Convention on the Elimination of Discrimination Against Women*”. This turns out to be evidently hostile to the family which is presented as a place of modern slavery. Consequently, it is claimed that being a wife and mother is equivalent to being discriminated against by those who uphold the moral principles that are anchored in true human rights. Although the “right” to abortion is not mentioned directly, in a subtle way this option is not excluded. Discretely, without making a fuss, the possibility will be taken up in other ways, either through the interpretation of the definitely ambiguous meaning of the phrase “reproductive health”, or with recourse to the instruments of abortion, or with the introduction of a new definition of abortion, confined to the later stages of pregnancy and not from the moment of conception to the implantation of the embryo. We are faced with a conceptual storm.

In some cases the equivocations are actually crude and broader. In the name of women’s rights and as one of them, not only is abortion presented as if the embryo were the mother’s property and indeed an appendage, but people have even come to the point of fighting pregnancy as though it were some kind of disease, and the “unborn” child an unjust assailant. For some time there has been talk of an “anti-baby vaccine”. We are in the eye of the storm that began with secularization and ethical relativism.

Heidegger’s thoughts on the ambiguity and truth of language are well known. Equivocation does not help authenticity (for Heidegger, in his complex language and his original thought man is “the shepherd of being”; the truth is not the conformity of judgement with being, but a way in which reality reveals itself [it is the *a-lethe-ia*] which is not concealed and has in language “the home of being”. Truth is an unveiling. Gossip, curiosity and equivocation attack the authenticity of this unveiling [cf. Martin Heidegger, *Being and Time*]).

The Holy Father has described “*a society which is sick*” from many points of view, since “our society has broken away from the full truth about man, from the truth about what man and woman really are as persons” (Letter to Families *Gratissimam sane*, n. 20). He then refers to the falsification produced by certain modern instruments of the mass media that “are tempted to manipulate the message,



*thereby falsifying the truth about man*" (*ibid.*). Public opinion is under systematic pressure: "At times it appears that concerted efforts are being made to present as 'normal' and attractive, and even to glamourize, situations which are in fact 'irregular'" (*ibid.*, n. 5).

A typical example is the case of "*free love*". Suggestive words that imply a universe of freedom when in fact, instead of freedom, a true and proper slavery prevails. John Paul II says, without mincing his words: "*Opposed to the civilization of love* is certainly the phenomenon of so-called '*free love*'.... To follow in every instance a 'real' emotional impulse by invoking a love 'liberated' from all conditionings, means nothing more than to make the individual a slave to those human instincts which St Thomas calls 'passions of the soul'. 'Free love' exploits human weaknesses; it gives them a certain 'veneer' of respectability with the help of seduction and the blessing of public opinion. In this way there is an attempt to 'soothe' consciences by creating a 'moral alibi'.... *A freedom without responsibilities* is the opposite of love" (*ibid.*, n. 14).

The Holy Father has also denounced such widely used expressions as "pro-choice", which is camouflaged as the real exercise of freedom: "In the context of a civilization of pleasure, woman can become an object for man, children a hindrance to parents, the family an institution obstructing the freedom of its members. To be convinced that this is the case, one need only look at *certain sexual education programmes* introduced into the schools, often notwithstanding the disagreement and even the protests of many parents; or *pro-abortion tendencies* which vainly try to hide behind the so-called 'right to choose' ('*pro-choice*') on the part of both spouses, and in particular on the part of the woman. These are only two examples; many more could be mentioned" (*ibid.*, n. 13).

In the United States, a semantic battle is being fought: to react to "*pro-choice*", pro-lifers say that the best "*pro-choice*" is "*pro-life*".

In *Evangelium vitae* (Gospel of Life), the Pope, with prophetic vigour, has denounced the systematic malice of changing the word "*delitto*" (crime) into the word "*diritto*" (right). "We shall concentrate particular attention on *another category of attacks*, affecting life in its earliest and in its final stages, attacks which present *new characteristics with respect to the past and which raise questions of extraordinary seriousness*. It is not only that in generalized opinion these attacks tend no longer to be considered as "crimes"; paradoxically they assume the nature of "rights", to the point that the *State* is called upon to give them *legal recognition and to make them available through the free services of health-care personnel*. Such attacks strike human life at the time of its greatest frailty, when it lacks any means of self-defence. Even more serious is the fact that, most often, those attacks are carried out in the very

heart of and with the complicity of the family — the family which by its nature is called to be the “sanctuary of life” (*Evangelium vitae*, n. 11).

The Pope recently expressed his concern in an address to a group of Bishops from Brazil: “A pastoral proposal for the family in crisis presupposes, as a preliminary requirement, doctrinal clarity, effectively taught in moral theology about sexuality and the respect for life.... At the root of the crisis one can perceive the rupture between anthropology and ethics, marked by a moral relativism according to which the human act is not evaluated with reference to the permanent, objective principles proper to nature created by God, but in conformity with a merely subjective reflection on what is the greatest benefit for the individual’s life project. Thus a semantic evolution is produced in which homicide is called *induced death*, infanticide, *therapeutic abortion*, and adultery becomes a mere *extra-marital adventure*. No longer possessing absolute certainty in moral matters, the divine law becomes an option among the latest variety of opinions in vogue” (*Address to the Brazilian Bishops from the East II Region on their ad limina visit*, 16 November 2002, n. 6; *ORE*, 27 November 2002, p. 3).

Curiously, a great many *ambiguous expressions* originate in the idea that changes are called for by “modernity”, itself a term that needs to be explained. This is how Thomas Mann describes “modernity”: “One of the features of our time is the way a problem is made of everything, even of eternal things, sacrosanct, indispensable and primordial which, today, have become apparently impossible, apparently obsolete, and irreversibly so.... Freedom, individualism, a stronger sense of the personality ... and the idea of the ‘right to happiness’, stir up discontent and the desire for liberation” (Thomas Mann, *Letter on Matrimony*).

For some years now, the Pontifical Council for the Family has been observing the escalation of this process that gives rise to confusion. In France recourse to the term “interruption of pregnancy” has already become a current euphemism for “abortion”.

A few years ago, during the celebration of the International Year of the Family, the coordinating agency of the United Nations began to apply the word “families” only in its plural form, and with reluctance used the word “family” in the singular in order to impose a painful veto on the model of family as desired by God in his project of Creation: the family based on marriage, the patrimony of humanity. Thus, under the umbrella of the term “*families*”, all kinds of unions could safely shelter, like the family “clubs” to which Louis Roussel referred in his book *La famille incertaine* (cf. Ed. Odile Jacob, 1 March 1989), where the natural institution of the family was rejected and reduced to mere agreements or elastic pacts in a perspective of “privatization”. He was an active ideologist of the International Year

of the Family. The *logo* for that occasion, as people will remember, showed a roof beneath which two hearts were joined with an arrow shooting towards the infinite. In this way the uncertain future of the family was depicted and its disappearance in the future, often foretold, although it is no more founded in reality than it is in the predictions. Even anti-family ideologies have had to admit this fact.

It was obvious, precisely regarding the International Year of the Family, that there was a deliberate intention to circulate ambiguous slogans and expressions to exploit the many who were poorly informed and frequently also badly formed, at least in the area of an integral humanism, as Paul VI pointed out in his Encyclical *Populorum progressio* on social doctrine, and, particularly, in an anthropology that has ethical substance: "What must be aimed at is complete humanism. And what is that if not the fully-rounded development of the whole man and of all men? A humanism closed in on itself, and not open to the values of the spirit and to God who is their source, could achieve apparent success. True, man can organize the world apart from God, but 'without God he can organize it in the end only against man. An exclusive humanism is an inhuman humanism'. There is no true humanism but that which is open to the Absolute and is conscious of a vocation which gives human life its true meaning. Far from being the ultimate measure of all things, man can only realize himself by reaching beyond himself. As Pascal has said so well: 'Man infinitely surpasses man'" (*Populorum progressio*, n. 42).

At the International Conference on Population and Development, held in Cairo in 1994, an attempt was made to exploit a concentrated, ideological functionally organized cargo which, in addition to setting in motion mechanisms that would turn out to be inconsistent myths such as that of "a revolution or population explosion", aimed at sounding the alarm concerning population growth, resorting to such expressions as "sexual rights" and "reproductive rights" (just as, previously, the phrase "Family Planning" had served to encourage contraception and to make people reject the natural methods as ineffectual).

By these expressions, however, indeed there was a strategy to remove adolescents and young people from their family and from the education and upbringing of their parents by saturating them with information on "free" choices in order to avoid pregnancy and sexually transmitted diseases, and by disseminating, without other further "pressures", every type of contraceptive. Naturally, at the Cairo Conference, no one excluded recourse to abortion as a right. The Messages the Holy Father sent to Heads of State and to Mrs Nafis Sadik were necessary, to call attention to the "life style" that was to be imposed upon young people, and remind governments of their responsibility for youth (cf. *Message to Heads of State*, 19 March 1994; *ORE*, 20 April 1994, p. 1; cf. *Message to Mrs Nafis Sadik, Executive*

*Director of the United Nations Population Fund and Secretary General of the 1994 International Conference on Population and Development*, 18 March 1994; ORE, 23 March 1994, p. 1).

Later on, an interesting case with regard to the term “gender” was the preparation and the actual event of the Beijing Conference on Women. The Pontifical Council for the Family drew attention to the ambiguous and ideologized use of it that was being introduced, despite the fact that the Holy See Delegation had been assured of the intention to use this term with its “traditional” meaning. It did not take long for people to realize the serious implications of this issue and the great need for clarification. The family and life are inseparable poles of the same reality, the same truth that is a Good News, a Gospel: “Christians also have the mission of *proclaiming with joy and conviction the Good News about the family*, for the family absolutely needs to hear ever anew and to understand ever more deeply the authentic words that reveal its identity, its inner resources and the importance of its mission in the City of God and in that of man” (*Familiaris consortio*, n. 86). The family and life are being literally bombarded by a deceptive language that does not encourage but complicates dialogue between individuals and peoples. Without the pursuit of the truth, the universe of freedom is contaminated and in serious danger. There is no freedom without truth.

Thus we have listed 78 terms. The majority were addressed by qualified authorities which can be seen at first glance, and by other experts, who are less famous but know well the topic entrusted to them.

When on the occasion of the Extraordinary Consistory celebrated in May 2001, I told the Cardinals present about the *Lexicon* project, they welcomed the idea enthusiastically, and so later on did the journalists. Since we received offers from publishing houses of different languages and nations, it is our intention to publish the volume in various languages. We decided to begin with the Italian version, and entrusted it to the Dehonian Publishing House, with which we have had the positive experience of the promotion of our *Enchiridion*, that very soon went to a second edition.

The approval of the Congregation for the Doctrine of the Faith which has fully supported our ideas gave us great pleasure. The text, edited by competent professionals, gathers the contributions into a single volume, published in accord with technical and lexicographical criteria, such as the alphabetical order of the terms, a brief introduction to the content of each article (set off from the text by a different typeface) and a brief biographical note on each author.

We hope that the *Lexicon* will be a useful tool for the noble and urgent cause of the family and life. We are conscious that the creation of ambiguities is great and

that a later edition might need to be updated with new entries. In this attempt to shed light on the ambiguities through a prolonged pursuit of the truth, guided by reason and illumined by faith and in total obedience to the Magisterium, we hope that the reader will discover the genuine content and objectives which are part of the Gospel proclamation “sine glossa”.

✠ Cardinal Alfonso López Trujillo

President of the Pontifical Council for the Family



# Endorsement

George Cardinal Pell

## *An Endorsement of the new “Lexicon: Ambiguous and Debatable Terms Regarding Family Life and Ethical Questions.”*

We are all called to seek and embrace the truth. In ethical matters, this demands a willingness to understand the natural law and the moral code that is derived from it. When Jesus said “I am the truth” he was affirming the fact that this truth is of vital importance to each one of us. If we are seriously to come to grips with truth, then we need to find a way of dialoguing with one another which is devoid of any ambiguity. That is why words and the meaning of words matter.

Today, many traditionally accepted understandings of terms such as *family*, *sexuality*, *maleness*, *femaleness* and *parenthood* have been proposed as ‘dominant discourses’ that have imposed injustice and intolerance. Many people today argue that it is community consensus which should be used as the arbiter of meaning in language. In such societies, however, the language that is used to communicate with one another becomes highly malleable and manipulable.

So we are told that *marriage* may mean relationships which involve two men, or two women, or in the case of so-called polyamorous relationships, a variety of other possibilities. We allow such re-definitions to go unchallenged at our peril. Marriage is the union of a man and a woman to the exclusion of all others, voluntarily entered into for life with an openness to the gift of children. The radical social experimentation of the ‘sex-on-demand’, ‘divorce-on-demand’ and ‘children-on-demand’ revolutions of the past few decades has employed a variety of ‘language linguistics’ to undermine our understanding of marriage and family. Terms such as *pro-choice*, *homophobia*, *gender preference* and *safe sex* have caused great uncertainty about the true nature of many of the issues under discussion.

It is not ‘homophobic’ to affirm the true meaning of marriage. It is not *anti-choice* to name the darkness of abortion for what it truly is. The beauty of the complementarity of male and female is a manifestation of the Creator’s design and of his plan for humanity; it is not simply the current dominant social construct of gender preference. In sharp contrast to secular ‘safe sex’ messages, the Church

offers much more, not less. By advocating abstinence prior to monogamous and lifelong marriage, the Church proposes a model for sexual intimacy which respects both the gift of human sexuality and the dignity of the human person. The bitter fruits of the deliberate obfuscation of the truth and beauty of marriage and family are now evident in an increasingly brutalized form of sexual promiscuity, violence, depression, and the disease, and the social isolation which it brings.

It is of vital importance for the New Evangelisation called for by Pope John Paul II that we seek to re-claim our culture. This can only be achieved if we embark on a path of ensuring that all those who are open to the Church's voice understand what is being proclaimed. The Church needs to express clearly what She means, particularly in the language and terms that are used in reference to life, marriage and family.

As a loving Mother and guide, the Church has the obligation to educate both the faithful and the wider community. Political leaders and legislators along with those who work in the field of the social sciences, are entitled to an authentic presentation of the depth of the Church's moral wisdom of the past two millennia. The Church cannot shirk her responsibility to assist in properly forming the consciences of all those involved in crucial public debates. In this way, she fulfills the role entrusted to her, calling all people to embrace the truth of Christ and his Church through the exercise of true freedom: "If you continue in my word, you are truly my disciples; and you will know the truth and the truth will make you free." (In 8: 31-32).

This long awaited English translation of the Lexicon will be an invaluable resource to all those who genuinely seek to understand the profound truth, goodness and beauty of marriage and family. It is a gift to the faithful and to the broader community from the Church. In response, each of us is called to reflect on how we can best use it to proclaim the authenticity of Christ's message, especially in the areas of marriage and family in the third millennium. It will greatly assist all those of good will who seriously wish to learn the truth about marriage and family and to embark on the New Evangelisation.

✠ George Cardinal Pell  
Archbishop Of Sydney



# Endorsement

Cormac Cardinal Murphy-O'Connor

Those of us who live in contemporary western societies are all too familiar with what has become known as the “culture of spin”. Language has always been the tool of propaganda, but it is also, these days, the object of ordinary - sometimes even well-meaning - manipulation. There is now almost no area of public affairs which is unaffected by the sophistication of public relations and advertising.

Nowhere is this more apparent than in the realm of bioethics, sexuality, and the family. Rapid technological progress is pushing constantly at the boundaries of legislation while well-organised lobbies seek social or parliamentary legitimisation for particular groups and lifestyles. Words are chosen to conceal, not reveal, hard truths, or to attempt to divert people away from an unpleasant aspect of a thing onto another thing that seems virtuous or cosy. “Public awareness” campaigns are launched to which politicians are pressured to respond. This is the ordinary currency of contemporary western democracy, to which the Church must adapt if it is to defend the values of the Gospel.

This *Lexicon* is a powerful instrument for that defence which will do much to help prevent the privatisation of truth. It takes words and concepts that are often chosen by campaign groups and lobbies in order to persuade public opinion and shows, through the light of reason and from the tradition of Catholic insights through the ages, how such words have often become detached from their true meaning.

In Britain we are very familiar with the obfuscations of terms such as “interrupting a pregnancy” or “dying with dignity”; the reality of abortion and euthanasia, both of which entail the deliberate death of human beings, is glossed over in such language. Campaigners who would like to see fewer poor babies being born promote “reproductive rights” in the developing world; those who believe that homosexual couples can be considered a form of marriage promote “civil partnerships”. There are countless examples of this deliberate obfuscation: sometimes the expressions are so self-evidently euphemistic that they make us smile; sometimes, however, they simply deaden language, leaving us bored or confused and utterly unaware of the realities to which they point.

The problem with this kind of language is not just that it used to promote causes often at odds with the Catholic moral understanding. It also inhibits proper public debate. When great ethical issues are discussed in the media or in Parlia-

ment, the objective should be to come to grips with the truths involved, and to enable societies to discern what is in the common good. The misuse of language conceals truth, and so deprives public opinion of its proper democratic role.

When language is reunited with the truth, it is like a cold shower. That is the effect of the *Lexicon*: each of these terms or phrases has been in some way hijacked; the *Lexicon* secures their release and restores them to the moral universe in which they should properly be situated. In its pages, the riches of Catholic moral insight have been thoroughly mined; magisterial insights are deftly summarised; the definitions are informed by reason and faith in equal measure. In the darkening thickets of language detached from moral realities, the *Lexicon* shines as a clear and penetrating light. I hope that opinion formers, politicians, and all those engaged in public affairs will keep it close by them, as a guide for their consciences and a gift to the societies in which they live.

✠ Cormac Cardinal Murphy-O'Connor  
Archbishop of Westminster

# *Endorsement*

William Cardinal Keeler

The Pontifical Council for the Family has given the Church a practical and inspiring text in this volume. It is practical because it helps us to strip away misleading notions about basic concepts. It is inspiring because it lifts up ideals rooted in faith, illuminating the truth about the human person.

The Declaration of Independence, a founding document for the United States, affirms that a human being enters the world endowed by our Creator with «certain inalienable rights,” including «life, liberty and the pursuit of happiness.» This Lexicon spells out various ways in which the right to life, the first and most fundamental of our rights, can be subverted by the improper use of language.

To the extent that the lessons of the Lexicon are learned and taught, the true Culture of Life will flourish among us. May the Lord bless each user of this volume with a deepened reverence for God’s marvelous gift of life.

✠ William Cardinal Keeler  
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*AN IDEOLOGY OF GENDER: DANGERS AND SCOPE*

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*LEGAL STATUS OF THE HUMAN EMBRYO*

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GENDER

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EXTENDED FAMILY

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*EUTHANASIA*

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*VOLUNTARY INTERRUPTION OF PREGNANCY*

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*REPRODUCTIVE HEALTH*

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*CATHOLICS FOR A FREE CHOICE*

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*GENOME AND THE FAMILY*

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*EQUAL RIGHTS FOR MEN AND WOMEN*

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*FAMILY AND THE RIGHTS OF MINORS*

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*THE FAMILY AND SUSTAINABLE DEVELOPMENT*

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*INDISSOLUBLE MARRIAGE?*

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*CONTRAGESTION*

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*DEMOGRAPHY, DEMOGRAPHIC TRANSITION AND POLICIES*  
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*DISCRIMINATION AGAINST WOMEN AND CEDAW*

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*PRINCIPLE AND ARGUMENT OF THE LESSER EVIL*

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*SAFE MOTHERHOOD*

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*DE FACTO UNIONS*

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*CONJUGAL LOVE?*

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*RIGHT TO ABORTION*

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*FERTILITY AND CONTINENCE*

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*CHILDREN'S RIGHTS AND SEXUAL VIOLENCE*

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*RECOMPOSED FAMILY*

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*WHAT IS BIOETHICS?*

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(Paris II) and in Econometrics (Paris I). Has been a lecturer (1984) and professor at the Universities of Nancy II and Paris XII-*Val de Marne*. Administrator of the French Higher Institute of Labor, member of the European Demographic Committee of the Council of Europe, and member of the French Academy of Education and Social Studies. Collaborator of various French and international organizations. Author of many publications.

*DOMESTIC ECONOMY*

LÉ MÉNE, JEAN-MARIE

Doctor of Medicine. President of the *Jérôme Lejeune* Foundation. Counselor of the *Cour des comptes* in Paris.

*MEDICAL INTERRUPTION OF PREGNANCY*

LOBATO CASADO, ABELARDO, OP

Theologian, professor of Theology, Doctor of Philosophy. Studied at Almagro, Salamanca, Rome, Granada and Madrid. Past Professor in Granada, Salamanca, Rome and Lugano (Switzerland). Holy See delegate for Human Rights in Strasbourg for twelve years. Currently president of the International Thomas Aquinas Society (SITA) and President of the Pontifical Academy of St. Thomas Aquinas. His many publications include: *El pensamiento de Santo Tomás de Aquino para el hombre de hoy* and *Dignidad y aventura humana*.

*PARENTHOOD*

*PERSONALIZATION*

*INTEGRAL PROCREATION AND THE PERSON*

*NEW HUMAN RIGHTS*

LÓPEZ-ILLANA, FRANCISCO

Specialized in Theology, Law and other subjects. Admitted to the Bar of the Apostolic Court of the Roman Rota. Consultor of the Congregation for the Clergy. Has held different posts in the Roman Curia was a Professor of Canon and Civil Ecclesiastical Law (Lateran University). Member of the Academic Council of the Pontifical Roman Theological Academy. His publications include: *Ecclesia Unum et Plura. Riflessione teologico-canonica sull'autonomia delle Chiese locali* (1991), *Aspetti giuridici del Mercato comune europeo* (1965), *El sacramento de la penitencia* (1960), *Metodología jurídica en Kelsen* (1954).

*MARRIAGE, SEPARATION, DIVORCE AND THE CONSCIENCE*

### LÓPEZ TRUJILLO, ALFONSO

President of the Pontifical Council for the Family. Doctor of Philosophy (Angelicum). Studied at the Major Seminary in Bogotá and in Rome at the Angelicum and at the Theresianum. Doctor *honoris causa* from various universities. Professor of Philosophy at the Major Seminary in Bogotá, of Social Doctrine and Marxist thought at the National University of Colombia, at the Institute of Social Development of Bogotá and at the Pedagogical University of Bogotá. Past member and coordinator of the Theological-Pastoral team of the Latin American Bishop's Conference (CELAM). Auxiliary bishop of Bogotá, then coadjutor bishop and archbishop of Medellín. Former Head of the Doctrinal Commission of the Colombian Bishops' Conference and first secretary of CELAM (during which he coordinated the Puebla Conference), then president of CELAM. Cardinal of the Holy Roman Church in 1983. Presently a member of the Congregations for the Doctrine of the Faith, for Bishops, for the Evangelization of Peoples, for the Causes of Saints and of the Pontifical Commission for Latin America. His publications include: *Liberación marxista y liberación cristiana* (1974), *De Medellín a Puebla* (1980), *Familia, vida y nueva evangelización* (1997).

*FAMILY AND PRIVATIZATION*

### MATHIEU, VITTORIO

Professor of the History of Philosophy at the Universities of Trieste and Turin. National member of the *Accademia dei Lincei* in Rome and the Academy of Sciences of Turin. Vice-president of the awards committee of the International Balzan Foundation and member of the Italian National Committee for Bioethics. Past member and president of the UNESCO Executive Council and of the 08 Committee of the Italian National Council for Research. From 1976 to 1980 served on Italian delegations at UNESCO as delegate or expert. Italian representative (1994-1997) on the Council of Europe's Commission Against Racism and Xenophobia. His bibliography is over 400 publications long, including: *Filosofia del denaro* (1985); *Kants Opus postumum* (1989); *Le radici classiche dell'Europa* (2002).

*PATRIARCHY AND MATRIARCHY*

### MATLARY, JANNE HAALAND

Doctor of Philosophy (University of Oslo). Professor of International Politics at the University of Oslo. Foreign Minister of Norway (1997-2000) and frequent Norwegian representative to various international bodies. Member of the Pon-

tifical Council for Justice and Peace, consultant of the Pontifical Council for the Family, member of the Holy See delegation to various international conferences. Dame of the Sovereign Military Order of Malta. Author of many publications and editorial writer in the Norwegian press. Her book *Blutezeit. Wandel der Feminismus* (1999) was translated into the main modern languages.

*MOTHERHOOD AND FEMINISM*

MAY, WILLIAM E.

Michael J. McGivney Professor of Moral Theology at the Pontifical John Paul II Institute (Washington DC). Doctorate (Marquette University 1968), former Professor of Moral Theology at the Catholic University of America until 1991. Member of the International Theological Commission (1986-1997), has received various awards, such as the *Pro Ecclesia et Pontifice* medal, the Cardinal Wright and Thomas Linacre prizes, and the medal of St. Dominic from the Dominican House of Studies (Washington DC), among others. Author of a dozen books, including: *An Introduction to Moral Theology* (1994) and *Catholic Sexual Ethics* (1998), and more than 200 articles and publications.

*FREE CHOICE*

MEANEY, JOSEPH & MICHAEL

Joseph Meaney: Director of International Coordination for Human Life International. Studied at the Catholic University of Dallas and at the Institute of Latin-American studies at the University of Texas. Served as Vice Director of the HLI Rome Office (1998-2002). Participates in many international meetings; carried out a fact-finding mission during the Kosovo Crisis (1999). Has written articles on pro life topics, demography and the family.

Dr. Michael T. Meaney: Professor of Philosophy and member of the board of directors of the College of Our Lady of Corpus Christi, Texas. Former Professor of Philosophy and Theology at the University of Notre Dame, Villanova University and College of New Rochelle. Author of numerous articles and a forthcoming theological book on the Christian message.

*PRO-CHOICE*

MEVES, CHRISTA

She studied German Studies, Geography and Philosophy at the Universities of Breslau and Kiel, and Psychology at the University of Hamburg. She completed her studies at the Institutes of Psychotherapy of Hannover and Göttingen.

She has worked as a psychotherapist for children and adolescents. Expert in familial and youth problems, she is a frequent collaborator of the *Rheinischer Merkur* newspaper. Her many awards include: the Wilhelm Bösche medal (1974), the Konrad Adenauer prize (1979), the medal of merit (1984), *Aktion Sorgenkind* (1982), the *Bundesverdienst* Cross First Class (1995). Author of more than 100 publications translated into thirteen languages. Her books in the German language, on family psychology and the education of youth have sold over five million copies.

*SINGLE-PARENT FAMILY*

MEYER, JEAN-MARIE

Master of Philosophy from the Sorbonne in Paris. Professor at the same university. Professor of Philosophy at the Lycée Stanislas and of Ethics at the Faculty of Comparative Philosophy in Paris. Member of the Pontifical Council for the Family. Author of various publications on philosophical topics.

*FAMILY, NATURE AND THE PERSON*

MORENO, VALENCIA FERNANDO

Doctor of Political and Social Sciences (University of Louvain). Dean of the Faculty of Social sciences at Gabriela Mistral University; Professor at the Pontifical Catholic University of Chile; lecturer at the University of Chile. Member of the Chilean Academy for Political Social and Moral Sciences. Ordinary member of the Pontifical Academy of St. Thomas Aquinas in Rome. Author of *Libertad y desarrollo del hombre* (1990), *Iglesia, política y sociedad* (1988), *Actualidad de Jacques Maritain* (1987) and other publications.

*FAMILY AND PERSONALISM*

NEVILLE, WARWICK

Doctor in Theology (Angelicum). Also studied at the University of Sydney and the Dominican House of Studies in Washington. Professor at the Pontifical John Paul II Institute in Melbourne; research fellow of the Australian Bishops' Conference.

*MANIPULATION OF LANGUAGE*

PACCINI, RENZO

Medicine and Surgery degrees in 1995 (Cayetano Heredia University, Peru). Has practiced medicine among the needy of the Lima slums. Lecturer for a

specialization course in medicine for developing countries, at the Center for International Cooperation, in Rome. Collaborator of the Pontifical Council for Health Pastoral Care. Participated in many international congresses and meetings on health issues.

*NEW PARADIGM OF HEALTH  
QUALITY OF LIFE*

PATI, LUIGI

Professor in the Department of Pedagogy of the Catholic University of the Sacred Heart, Milan, where he served as university president. Director of the Center for Pedagogical Studies on Marriage and Family Life, vice-president of the Faculty of Scientific Formation of this university, and director of the journal *La Famiglia* (ed. La Scuola, Brescia). Former president of the Scientific Commission of the Italian National Confederation of Christian Family Counselors. Author of many publications, including: *La funzione educativa del padre* (1984) and *Pedagogia familiare e denatalità* (1998).

*FAMILY COUNSELING CENTERS*

PERIS CANCIO, JOSÉ ALFREDO

Doctor of Law, with degrees in Philosophy and Education. Professor of Philosophy of Law at the Cardenal Herrera-CEU University of Valencia, and professor-academic director of the Pontifical John Paul II Institute of Valencia and the Institute *Redemptoris Hominis* of Cordova; President of the Edetania Foundation. Author of various books and articles, including: *Familia. Doctrina social* (1998); *Diez temas sobre los derechos de la familia* (2002).

*SEXUAL AND REPRODUCTIVE RIGHTS*

RAGA, JOSÉ-TOMÁS

Doctor of law (University of Valencia) with a degree in Economic (University of Barcelona). Professor of Applied Economics, at the Universities of Salamanca, Murcia, Autónoma in Madrid, Complutense in Madrid, and San Pablo-CEU in Madrid, of which he has been the rector. Member of associations including: the Royal Economic Society, American Economic Association, Mont Pelerin Society, Joseph A. Schumpeter International Society and International Institute of Public Finances. Member and Secretary General of the Spanish Council for University Coordination. Great Cross of Alfonso X the Wise, medal of honor (gold) of the Complutense University of Madrid and Great Knight's Cross

of the Equestrian Order of St. Gregory the Great. Member of the Pontifical Academy of Social Sciences and of the Pontifical Council for Justice and Peace. Author of more than 100 books and publications on economic topics.

*A NEW MODEL FOR THE "WELFARE STATE"*

RAMSAY, HAYDEN

Studied at the Universities of Edinburgh, Stirling, Melbourne and La Trobe. His research is on Moral Philosophy and Philosophical Psychology. Professor at the Pontifical John Paul II Institute and senior lecturer of Philosophy at the Catholic Theological College, both in Melbourne. Collaborator of the archbishop of Melbourne and of the governmental authorities regulating the technologies of artificial reproduction in the State of Victoria (Australia). Author of *The Revival of Natural Law Theory* (1994); *Beyond Virtue: Integrity and Morality* (1997); *Analytic Thomism* (1999).

*FAMILY AND PHILOSOPHY*

REIG PLA, JUAN ANTONIO

Bishop of Segorbe-Castellón (Spain). Doctor of Moral Theology (Alfonsian Academy, Rome). Studied in Valencia, Salamanca and Rome. Past professor at the St. Vicente Ferrer Faculty of Theology, the Diocesan Institute for Religious Sciences and at the Pontifical John Paul II Institute in Valencia; Currently vice-president-dean of the latter institution. Holds various posts with the Spanish Bishops' Conference, where he is President of the Committee for the Family. Author of books and articles, including: *La familia cristiana, comunidad de creyentes* (1992).

*HARDNESS OF HEART: A FUTURE POSSIBILITY?*

REIS, HANS

After studying Law and Political Science, has worked in Public Administration in Berlin; Former Judge of the Administrative Law Court of this city and of the Administrative Court of Appeals of Baden-Württemberg; also member of the German Patent Office. From 1958 to 1965 Assistant of the Constitutional Court of the German Federal Republic. From 1970 to 1991, substitute in charge of maintaining relations between the State and the Catholic bishops of Lower Saxony. Author of various publications on Constitutional and Church Law, including: *Das Lebensrecht des Ungeborenen Kindes als Verfassungsproblem* (1984) and *Um der Klarheit des Zeugnisses willen* (2001).

*COUNSELING OF PREGNANT WOMEN IN GERMANY*

RODRÍGUEZ LUÑO, ÁNGEL

Professor of Fundamental Moral Theology at the Pontifical University of the Holy Cross (Rome). Advisor of the Congregation for the Doctrine of the Faith. Author of many publications, including: *La scelta etica* (1988) and *Ética general* (1991).

*IMPERFECT AND UNJUST LAWS*

RUPPI, COSMO FRANCESCO

Archbishop of Lecce. Past Professor and Director of the Pastoral Institute of Puglia (Italy). Regular collaborator of various periodical publications. Former bishop of Termoli and Larino (Italy).

*MARRIAGE WITH DISPARITY OF CULT*

*MIXED MARRIAGE AND DISCRIMINATION*

SCHEFFCZYCK, LEO

Studied Philosophy and Theology at Breslau, Freising and Munich. Was Professor of Philosophy and Theology at Königstein and Professor of Dogmatic Theology at the University of Tübingen. From 1965 to 1985, was the Michael Schmaus Chair Professor at the University of Munich. Member and collaborator of the Institute for Interdisciplinary Research of the Görres Society, of the Bavarian Academy of Sciences and of the Pontifical Marian and Theological Academies in Rome. Cardinal of the Holy Roman Church in 2001. Author of many publications, including: *Der Mensch als Bild Gottes* (1969); *Die Theologie und die Wissenschaften* (1979); *Einführung in die Schöpfungslehre* (1987); *Katholische Dogmatik, 1: Grundlagen der Dogmatik – Einleitung in die Dogmatik* (1997); *II: Der Gott der Offenbarung – Gotteslehre* (1996); *III. Schöpfung als Heileröffnung* (1997); *IV: Die Heilsverwirklichung in der Gnade* (1998).

*DIGNITY OF THE CHILD*

SCHOOYANS, MICHEL

Professor emeritus of the University of Louvain. Professor in São Paulo and other South-American universities. His research touches on Political Philosophy, Modern Ideologies and Demographic Policies. He is a member, among other institutes, of the *Institut Royal des Relations Internationales* (Brussels), of the Population Research Institute (Washington DC), of the Institute for Political Demography (Paris) and of the Mexican Academy of Bioethics. Member of the Pontifical Academy of Social Sciences and consultant of the Pontifical

Council for the Family. Author of many publications, including: *L'Eglise face au désordre mondial* (1999) and *Le crash démographique* (2000).

*BIRTH CONTROL AND DEMOGRAPHIC CRASH*

SCOLA, ANGELO

Patriarch of Venice. Doctor of Philosophy (Catholic University of Milan) and Theology (University of Fribourg). Member of the Congregation for the Clergy, the Episcopal Commission for Catholic Education of the Italian Bishops' Conference and consultant of the Pontifical Council for the Family. Former rector of the Pontifical Lateran University, and professor of Theological Anthropology, then dean of the Pontifical John Paul II Institute in Rome, consultant then member of the Pontifical Council for Health Pastoral. Past consultant of the Congregation for the Doctrine of the Faith. His writings include: *Avvenimento e tradizione. Questioni di ecclesiologia* (1987); *Hans Urs von Balthasar: uno stile teologico* (1991); *La persona umana. Manuale di antropologia teologica* (2002).

*SEXUAL IDENTITY AND DIFFERENCE*

SERRA, ANGELO SJ

Doctor in Biology with degree in Philosophy and Theology. Former professor of Human Genetics at the Faculty of Medicine and Surgery at the Catholic University of the Sacred Heart and director of the Service of Clinical Cytogenetics (A. Gemelli, Rome) and organized the latter's Institute of Human Genetics. Member of the Pontifical Academy of Life; of the New York Academy of Sciences; of the Genetics Society of America; the Society for the Progress of Science; and of the British Society for Cellular Biology, as well as many other scientific societies and academies. Author of many articles and publications, including: *L'uomo-embrione il grande misconosciuto* (2002), *Nuova genetica ed embriopoiesi umana* (1990). Collaborates with *La Civiltà Cattolica*.

*DIGNITY OF THE HUMAN EMBRYO*

*EMBRYONIC SELECTION AND REDUCTION*

SGRECCIA, ELIO

President of the Pontifical Academy for Life, member of the Presidential Committee of the Pontifical Council for the Family, member of the Pontifical Council for Health Pastoral Care and member of the Italian National Committee of Bioethics. Doctor of Literature and Philosophy (University of



Bologna). Has been professor and rector of the Pontifical Regional Seminary in the Marche Region (Italy), Professor of Bioethics and director of the Centre for Bioethics at the Catholic University of Milan. He was made Secretary of the Pontifical Council for the Family by Pope John Paul II who ordained him titular bishop of Zama Minore in 1993. Member or collaborator of various commissions and committees of bioethics, both Italian and international. Editor, vice-director and then co-director of the review *Medicina e morale*. His *Manuale di bioetica* has been translated into six languages. He has published various books and many articles and publications.

*BIOTECHNOLOGY: THE STATE AND FUNDAMENTALISM.*

*BIOETHICS COMMITTEES*

#### SUAUDEAU, JACQUES

Doctor of Medicine with a specialization in Surgery (University of Lyon); degree in Philosophy (University of Lyon); degree in Moral Theology (Gregorian University, Rome) and *maîtrise* in History (University of Lyon). Former research fellow and research associate at the National Institutes of Health, Bethesda and Harvard Medical School, at the General Hospital of Massachusetts, in Boston (United States). Studied Theology at the Catholic Institute of Paris and in various Roman academic centers. Former official of the Pontifical Council for the Family. Author of various scientific publications and publications on ethics. Currently an official of the Pontifical Academy of Life.

*PARTIAL BIRTH ABORTION,*

*SAFE SEX*

#### VALENZONA, ROSA LINDA G.

Economist specializing in poverty reduction and children's issues. Undersecretary of Internal Affairs at the Department of Welfare and Development in the Philippines; entrusted with various government assignments. Has been senior lecturer at the School of Economics of the University of the Philippines. Author of various publications.

*CHILD LABOR*

#### VOLLMER DE COLE, BEATRIZ

Doctor of Philosophy (Gregorian University, Rome). Specialized in studies on philosophical questions relating to gender. She has spoken at numerous congresses and conferences. Has been assistant professor of Philosophy at the

Gregorian University in Rome, and professor first, later director of the Department of Philosophy of the Archdiocesan Seminary of Caracas.

*NEW DEFINITIONS OF GENDER*

WILKS, JOHN

Studied at the University of Sydney. Specialized in Pharmacological sciences and Pharmaceutical practice. Member of the Australian Association of Consultant Pharmacists and of the New York Academy of Sciences. Collaborator and expert consultant for various institutions; president of Foundation Genesis; author of various books, articles and publications in Australia, New Zealand and the Philippines, including: *A Consumer's Guide to the Pill and Other Drugs* (2000).

*PRE-IMPLANTATION AND EMERGENCY CONTRACEPTION*

# *Lexicon*

Ambiguous and debatable terms  
regarding family life and ethical questions



# Assisted Procreation and IVF-ET

Jean-Louis Bruguès



*From the perspective of 22 years of the use of different techniques referred to as “medically assisted procreation” (artificial insemination, in vitro fertilization, GIFT-Gamete intrafallopian transfer-, ICSI- Intracytoplasmic sperm injection- in particular) we understand better today why the Church has firmly condemned these practices. In reality, the very term “assisted procreation” is completely misleading because we are mainly not dealing with “assistance” (which the Church is the first to approve of), but with a substitution. The marital bed is replaced by the laboratory. The husband is replaced by the doctor manipulating the gametes, and the union of bodies is replaced by a purely technological act. Medically assisted procreation introduces, with full knowledge, a breach in the most private area, the most personal and perhaps most rich part of the human person. Even if one day improvements in the techniques made it possible to avoid the massive destruction of human embryos currently tied to the practice of in vitro fertilization (IVF) (96% of the embryos are thus “created” only to be discarded) which make it unacceptable, one would nevertheless still have to continue to condemn the procedure which, in the end, is dehumanizing. (↗ Neutral Genetic Counseling; Dignity of the Human Embryo; Genome and the Family; Embryonic Selection and Reduction; Legal Status of the Human Embryo)*

Louise Brown was born on July 25<sup>th</sup> 1978 in Great Britain. She was to be called the first “test-tube baby”. The little girl had been conceived thanks to an *in vitro* fertilization accompanied by a transfer of embryos. This technique was going to be recognized worldwide as IVF-ET (*in vitro* fertilization and embryo transfer). It has developed in the past 20 years, notably in the context of GIFT (Gamete intrafallopian transfer), but the principle is the same: obtaining the sperm through masturbation, tak-

ing the oocytes found using coelioscopy or a sonogram, their production having been stimulated (six to ten are obtained, instead of only one per cycle), fertilization of all the oocytes, implantation of several of the embryos obtained in this way –usually three– in the uterus of a woman who may belong to the initial couple (homologous fertilization) or of a different woman (heterologous fertilization) and freezing of supernumerary embryos in liquid nitrogen at 196°C below zero. Pregnancy takes place nor-

mally, except that in the case of a heterosexual IVF-ET, the child is taken away from the “bearing” mother right from his birth to be given to the social mother.

IVF-ET is indicated essentially in the case of female tubular sterility, when the destruction or blockage of the Fallopian Tubes render impossible, despite normal ovarian production, the encounter of the oocytes and of the sperm in the uterine milieu. It is also proposed in other cases of female sterility: absence of cervical mucus, endometriosis, idiopathic sterility...

Looking at the different stages involved in IVF-ET shows that recourse to this technique raises considerable moral objections. These are grouped into four categories: the questions tied to the dissociation of the acts, those tied to the dissociation of kinship, the status of the human embryo, and finally, the questions which arise from the new perspectives opened up by this technique and its generalization. Let us analyze them one after the other.

## **MORAL QUESTIONS TIED TO THE DISSOCIATION OF THE ACTS**

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There exists a double dissociation: the one rendered necessary to obtain the sperm and the substitution of the sexual act by a technical act.

a) The medical community speaks of procuring a sperm sample. In reality, the sperm is obtained by masturbation.

Certainly, this act does not present the same moral malice as that habitually attributed to it by Catholic morality. It is neither an act of intemperance, through lack of self-mastery nor the seeking of a solitary pleasure, nor a refusal of procreation, since it has become in a sense its *sine qua non* condition, nor refusal of sexual relations, since the embrace of their bodies otherwise unites the spouses – in each of these cases envisaged by classical theology, masturbation is qualified as a “gravely and intrinsically disordered act” -, this action however “remains deprived of its unitive meaning” (*Donum Vitae*, II, 6).

b) The second *dissociation between the sexual act and the act of procreation* is even more difficult to analyze. Reduced to its simplest expression, the question posed is the following: does the desire for a child, which is otherwise legitimate, permit the substitution of a technical act for the sexual act? According to Catholic doctrine, there exists an “inseparable connection, established by God, which man on his own initiative may not break, between the unitive significance and the procreative significance which are both inherent to the marriage act” (*Humanae Vitae*, 12). A first objection is then raised by Catholic morality in the face of IVF-ET, even if homologous: this technique injures the integrity of the act of procreation in its most profound meaning. The Magisterium has not followed the path of the so-called principle of totality, indicat-

ed by some theologians for whom the dissociation became acceptable in the measure in which the technical act of procreation (fertilization of the oocytes) inserted itself into an ensemble of sexual acts through which the spouses continued to manifest their love and to give themselves to each other.

A second objection consists in recognizing that in substituting a technical act to the embrace of the bodies, the relation to the child is perverted. The child is no longer a gift, but a right so that the childless couple would have the right to demand that society place at their disposal the necessary technique to satisfy such a desire, and then the right to demand that technicians “produce” a perfect child. From the moment the technique is applied to human procreation, it causes, as it does anywhere else, the dream of perfection. The child is no longer just “ordered” in a general way but is to be customized down to the last detail. The slightest imperfection is looked for. IVF-ET is thus accompanied by what is called “ordinary” eugenics. The desire for a perfect child assigned to the technique defies any unwished for or programmed difference. The child is wounded in its otherness. Only the sexual act of the encounter between the two bodies respects this otherness.

## **SEPARATIONS IN KINSHIP**

What has just been said is valid for the principle of IVF-ET. The questions examined in this second part are about

recourse to a third person, separate from the couple. In the case of dissociation of kinship, we speak of heterologous IVF-ET.

a) IVF-ET becomes heterologous, in a broad sense, when it calls for another much older assisted procreation technique, *artificial insemination with intervention of a third donor* of sperm. Catholic reflection on this has led to the formulation of a hitherto undefined right. The Magisterium evoked it on several occasions, without yet defining it in a categorical way. The *Donum Vitae* instruction speaks of the “child’s right to be conceived and brought into the world in marriage and from marriage.” It concludes: “Heterologous artificial fertilization violates the rights of the child; it deprives him of his filial relationship with his parental origins, and can hinder the maturing of his personal identity” (*Donum Vitae*, II, 2). In several countries in fact, where “sperm banks” have been created, a couple in which the man suffers from infertility may have recourse to an anonymous donor. This anonymity constitutes an injury for the child who will never know his biological father, nor the family he is coming from; in depriving him of the knowledge of a part of his origins, it keeps him from reaching a full knowledge of himself. Legislation in several countries is currently coming nearer to recognizing this point and no longer is hesitant to evoke a right of the child to the knowledge of his origins.

b) IVF-ET is said to be heterologous, in a strict sense, when it calls for a woman other than that of the couple, either as donor of her oocytes, which are fertilized by the sperm of the husband, or to lend her womb and to carry the embryo until delivery, or to perform both operations, the gift of oocytes and lending her uterus. The practice of using “surrogate mothers” was controversial from its origins. It currently is even less favorably viewed, although it has not completely ceased to exist. Heterologous IVF-ET inflicts on the child a wound of a different nature than the last. According to the terms of the “rental” contract, often agreed to at high expense, the child is taken away from the surrogate mother right after birth. The long established relationship with this woman during the baby’s intra-uterine existence, which is known to be critical for personality formation, is brutally interrupted. These stories of the selling or buying of children are as old as humanity. IVF-ET gives them a modern twist. As to the carrying mother, she is “instrumentalized”: part of her body was bought, but she is forbidden to give herself to the child. How could she love the child she is supposed to abandon? In so doing, she abdicates her dignity: does not the responsibility to conceive and to bear a child inevitably lead to the responsibility of educating it? The couple is destabilized in the end. Certainly, recourse to a substitutional mother – or to a sperm donor – does

not mean adultery, in the strict sense of the term, but it betrays the marriage vows, such as they are conceived by the Catholic tradition, which gives each spouse an exclusive right to the body of the other. The man and the woman find themselves no longer equal before the child who is the biological fruit of one, but not of the other.

Medically assisted procreations (MAP) thus destroys kinship relations. In an extreme situation, a child could have a biological father and social father who bestows his name, a biological mother (the oocyte donor), a surrogate mother, who lends her uterus, and a social mother. Who could maintain that this fragmentation is of little importance and that it does not disturb the construction of the personality of the child? We then see that these procreations bring to the fore the sole fulfillment of the desire of the adults, while relegating to the background the good of the child himself; they even do injury to some of his rights. From the point of view of human morality, does not the decision to give life to a child imply and include the desire to give him the best, of guaranteeing him the best conditions of development? Anxious above all to protect the innocent child, Catholic morality brings forth a more radical proposition: every child has the right to be born of a legitimately married couple; “Heterologous artificial fertilization is contrary to the unity of marriage, to the dignity of the spouses, to the vocation proper to parents, and



to the child's right to be conceived and brought into the world in marriage and from marriage" (*Donum Vitae*, II,2).

## THE LEGAL STATUS OF THE EMBRYO

The moral objections just mentioned are important. However, those relating to the status of the human embryo are even more crucial. In theory, it would be enough to fertilize only one oocyte; but the chances of success of implantation of this one embryo are too slight, and technicians prefer, as mentioned before, to stimulate the production of oocytes, to fertilize all of them, then to implant a few and to keep the rest in reserve.

a) *Two concrete situations* lead then to posing anew the question of the status of the human embryo.

- The technicians only implant a small number of embryos, usually three. They hope only one will reach maturity. If two or even three embryos implant and develop normally, they may decide, with the agreement of the woman or the couple, to take out one or two in order to avoid multiple births. This operation supposes selecting the embryos, therefore a choice; this relates to the "ordinary" eugenics, already mentioned and which has become so common in the MAP milieus. It is euphemistically called "embryonic reduction"; in reality it consists in voluntarily provoking one or more abortions.

- What happens to the surplus frozen

embryos? Several solutions may now be envisaged. These embryos may be implanted in the future in the same couple, either because the first one failed, or because the couple wishes a new child several years later. They may also be given to another couple undergoing similar fertility problems; the operation may be performed free of charge – the embryos are donated – or at a cost – the embryos are sold. In the case of lack of interest on the part the initial couple, or of their death, the embryos may be abandoned for scientific research, used for commercial ends, for example in manufacturing cosmetics, or simply destroyed.

These frozen embryos, donated, sold, abandoned, used or destroyed, what are they in reality?

b) IVF-ET thus brings up again *the philosophical question* of the status (we would prefer to speak of the nature) of the human embryo at the heart of the technical predicament. Let us begin by recognizing that this practice was only established and generalized in countries having permitted abortion by depenalization or legalization.

In legislation inspired by Roman law, there exist only two categories: persons and property. Is the embryo a person or a thing? We know that two prevailing currents of thought clash on this decisive question. The first has become a clear majority opinion in the Western countries and especially among MAP technicians, who are often tempted by utilitarianism. It is essentially comes

back to the following proposition: it is the act of recognition, often called the “parental project”, coming from the woman, the couple, the practitioners, even from society, which is the basis of humanity. Before this recognition, the embryo can be treated with the greatest liberty, according to the needs of the couple or society because it would tend to be only an object. After recognition, it would be a developing human person with dignity and rights. The moment of this recognition varies depending on the desires of the persons and national laws.

Without pronouncing decisively on the moment of ensoulment – immediate (as in Gregory of Nyssa) or progressive (as in Thomas Aquinas) – the Catholic tradition has always held that the embryo, that is the being resulting from the fusion of the gametes emanating from a man and a woman, was entirely human and had to be treated “as if it were a person,” enjoying the dignity and rights attached to this concept. “The human being is to be respected and treated as a person from the moment of conception; and therefore from that same moment his rights as a person must be recognized, among which in the first place is the inviolable right of every innocent human being to life” (*Donum vitae*, I, 1). In consequence, it is absolutely unacceptable to voluntarily provoke an abortion. The first prevailing opinion is voluntaristic. The Catholic tradition sees itself as “realist”; it chooses an ap-

parent biological criterion: present scientific knowledge, in fact, certifies that the being resulting from the fusion of the gametes is already unique and has a complete genetic patrimony. It does not become human: from the fusion of the gametes until puberty, it is the same human being developing autonomously, without knowing any significant discontinuities.

c) This position leads to the *following practical consequences*:

— every voluntary destruction of an embryo is an abortion. Therefore it may not be admitted by the Catholic conscience.

— The Roman instruction *Donum vitae* determined that the freezing of embryos was not in conformity with human ethics: “...those embryos which are not transferred into the body of the mother and are called “spare” are exposed to an absurd fate, with no possibility of their being offered safe means of survival which can be licitly pursued” (*Donum vitae*, I,5).

— Since the abolition of slavery, it is forbidden to give or to sell a human person. It is therefore contrary to their dignity to dispose of human embryos by sale or free of charge.

— It is absolutely contrary to the dignity of the embryo to be used for commercial ends.

— Like all human beings, the embryo can be the object of observation by practitioners, provided it does not expose the embryo to any risk. Similarly,

we may recognize as licit, and sometimes even necessary, experimentation on the embryo, when the research is oriented towards the good of the embryo, for example the treatment of a disease or for its survival.

d) One particular question will take on greater importance in the years to come: are *research and experimentation* on the human embryo legitimate?

If this research and experimentation aim at insuring the good of the embryo (if for example they try to heal it), they are morally acceptable. The embryo is then considered as a human person, apt to receive care, even if they incur the risk inherent to all medical experimentation. On the other hand, it is not in conformity with the dignity of the human embryo to be used in scientific research or experimentation for the needs of society (*Donum vitae* I, 4). This question is of great importance currently. One must understand in fact, that at the origins of IVF-ET, oocytes were fertilized because we did not yet know how to freeze them, and the embryos were frozen. Scientific articles published in the course of the past few months have just confirmed the successful freezing of oocytes. It has therefore become unnecessary to produce spare embryos in order to freeze them. Yet in Western countries, pressure from drug companies and even public opinion has become particularly strong: we expect from the experiments on embryos significant advances in improving drugs and treatments of certain

diseases. Will the legislator resist the alliance of utilitarian mentalities and financial interests? Probably not. Here again, we will have recourse to linguistic sleight-of-hand: while we will continue to strongly affirm that one may not “manufacture” human embryos for research and experimentation, we already speak of “totipotent” stem-cells created for the express purpose of research and experimentation to which we deny the name of embryos. IVF-ET has then opened the door to the massive production of human embryos which, destined to serve the needs of society, are set aside and then destroyed.

## OPEN PERSPECTIVES FOR IVF-ET

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In its beginnings, IVF-ET was presented as a technique to fight infertility. In reality, it does not treat infertility itself, since after the coming of the child, the woman will still have the same difficulties; she contents herself to go around it.

However we did perceive well that this technique opened the perspective of a real abyss for the future of man, such as ectogenesis, the gestation of human embryos by animal species, cloning, embryonic biopsy, the substitution of the embryonic nucleus by a nucleus sampled from an adult human being, not to mention so called preventative medicine...

Faced with such perspectives, the human spirit may oscillate between *two*

*attitudes.* The first would be that of awe and enthusiasm: has not man become able to penetrate into the arcane mysteries of nature and take for himself some of her secrets? Catholic morality chooses another attitude. Certainly, technical progress is worthy of the greatest encouragement. But it ought not to be done at any price. It is not itself an ethical imperative. IVF-ET confers on humans, or for the whole of society, a right to life and death over its most weak members: embryos. God alone possesses this right. The danger that increasingly manifests itself consists exactly in allowing one to believe that man has already become a demiurge and that he occupies the place left vacant by the driving away of all transcendence by secularization.

The desire for a child is one of the most admirable there is, but it has a strong narcissistic component. A dark future may be feared when it allies with scientific techniques and requires of them this perfection expected of old from a divine miracle. Human freedom has everything to fear from such an alliance.

# What is Bioethics?

Marc Lalonde

B

*There are different definitions of bioethics. Some see in bioethics nothing new: it is part of the perennial moral reflection about any intervention that man makes on man. Others see a true novelty in this reflection. Between these two positions there is another more balanced position, the personalist position, that considers not only life as an absolute value, but also looks at the whole person in his totality. The term "bioethics" seems to have been used for the first time by the oncologist V.R Potter in 1971 with the intention of bridging the gap between the world of science and that of moral-humanistic studies in order to arrive at a correct management of knowledge in the scientific-biological field. Centers of bioethics began to appear in the sixties, the most famous being the Hastings Center and Georgetown, and at the same time there appeared new ethics committees overseeing this new modality of research; they were especially vigilant in the field of hospital medicine in the United States. However, the turbulent cultural environment of the sixties and seventies broke the continuity of ethical reflection that had begun in previous years. Bioethics presented itself from that time onwards as a new universal ethics free from metaphysical and theological reflection that was judged to have too many ties to physicism and natural science. A new type of law, biolaw, arose that pretended establishing norms for the application of modern biotechnology, after defying the anthropology based on the classical theory of the natural rights. Such accelerated progress did not permit a studied reflection of the traditional ethical discourse, and as a result scientific, biomedical pragmatism, which drove legislators and parliamentarians to impose criteria without reflection and without ethical foundation, entered the scene. This vacuum of absolute obligations such as the imperatives of conscience based on objective and universally bidding values began to displace the supreme value of life with the ethics of the "quality of life" or that of individual wellbeing. Social consensus by way of democracy became the foundation of the legitimacy of ethical decisions. The result was a minimalistic common morality. However, in answer to this situation, there arose a new endeavor, a personalistic principle, which is a moral response seeking to instill a heart into a type of ethics which tends to emphasize primarily the biological dimension. The object of personalistic bioethics is man in his totality and radicality included in his ethical dimension and which refers to the absolute and supreme value. It also refers to objective, universal and immutable values founded on the human person. It is not detached from moral philosophy, the latter being reinforced by moral theology regarding Christian inspired behavior. This however requires an ontology of the human person. As such, bioethics is put at the service of life and respects the*

*dignity of man and woman.* (↗ Biotechnology: the State and Forms of Fundamentalism; Bioethics Committees; Family and Personalism; Family, Nature and the Person; Verbal Engineering; Manipulation of Language; The Principle and Argument of the Lesser Evil;

## INTRODUCTION

Even if the word “bioethics,” which comes from the words *bios* (life) and *ethica* (morality), is a contemporary reality, its roots stretch out to a distant past. In fact, the word “ethics” is the translation of the word *éthikà*, whose root is *ethos* which evolved from an expression meaning “house” or “dwelling” or a place where human beings live and also in a poetic sense, the place where animals are born and live; in practice, a farm, a field, a cove or a pasture. Eventually it took on the significance of an *exterior place* where one lives such as the fatherland, the country or the region. This geographic *ethos* included also the people that inhabited it. Soon it also took on the meaning of the *interior place* which man carries within himself as an *interior disposition* and which permits him to enter into relation with himself and with the world around him.

With further transformations of meaning, *ethos* took on the sense of *habitus*; a permanent attitude towards men and towards one’s own destiny. It also had the sense of “character.” What is meant here is *a particular way of being*, that is, moral personality. It is this particularity of conduct that becomes engraved in each person with each passing day of life. Understood as such, *ethos* as

character is the term which is confused with that which is regularly called *habit*, *custom*, *virtue*, and *vice*. These are the different manners of conduct with oneself and with others in society. We speak here of an *individual ethos* which incorporates all positive and negative aspects of conduct of an individual or a social group, a form of being, a way of life that is acquired by repetition of concrete acts that generate *habits* of stable forms of conduct (virtues or vices) which become “second nature.”

*Ethos-character* is a stable quality and principle of acts of the same specie. *Ethos*, thus understood, points to the central idea of ethics as a scientific understanding of human acts. In such a way, one passes from the geographic and external idea of *ethos* to the *ethos* as an internal principle of human behavior. When one refers to human ethics, one is speaking of *ethos* in the sense of the faculty to evaluate and judge human behavior.

Likewise, the term *morality* is the translation of the Latin *mos* or “custom.” With this, one can make a good comparison between *ethos*, *éthikà*, *mos* and “morality.” Under the influence of the Christian tradition the term “morality” came to designate Christian moral theology, and the term “ethics” referred to the study of human actions from the

scientific-philosophical point of view prior to theological reflection. The actual sense of the word “ethics” referred specifically to the rational study of the philosophical presuppositions of these same traditions, cultures and practical norms of conduct.

At this point it is necessary to affirm that there are many different definitions of bioethics. One of the reasons is that bioethics was born from a variety of factors which flow together and which we will discuss in detail below; however, it is possible to classify into three categories the reactions to this new discipline. For some, bioethics is not entirely a new discipline. In fact, it is said that from time immemorial there has always been a reflection on the morality of man’s intervention on man, perhaps less concerned about the application of professional techniques, but probably more aware of the nature of man in his illness, and more in contact with the effects of disease or pain.

Some, on the other hand, see in bioethics something entirely new and at the point of supplanting the normal mental associations included in the terms “ethics” and “morality”, in order to neutralize the classical concept of ethics which is apparently unable to deal with the new challenges issued by modern biomedical techniques and the development of the science of genetics. The search for the sensational is concerned only about the “hot” bioethical issues of the day which are then picked

up by the mass media and propagated with the idea that the critical questions of life and death are of the exclusive competence of biologists, geneticists, and other scientific researchers. All of this has almost overshadowed the certitudes of modern thought regarding not only the same questions, but also the newness brought about by these unique moral problems and questions of human suffering.

Finally, others with a more balanced vision see that bioethics brings something new to ethical thought.

The intent of this work is to present first of all the origin and development of bioethics in order to better understand the critical importance that this theme occupies in today’s society. Secondly, it will attempt to come to terms with this *newness* in order to explain of what it consists of and in what way it demands vigilance and a critical spirit in order to evaluate its presuppositions. Finally, what is proposed here is a more refined vision of bioethics and a more respectful view of its object, which is the human person.

First, then let us see the different stages of the birth and development of bioethics.

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## ORIGIN

### **Ethical aspect: medical ethics**

From the very first moments of the origins of medicine as an organic structure at the time of the Greeks, there was felt the necessity of creating a rule for de-

limiting the art of healing people. From the fifth to the fourth centuries B.C. the Hippocratic Oath, a work not of a single thinker but of a whole tradition, was the foundation of a morality based on the good of the patient (*the principle of beneficence and non maleficence* - “do no harm”) in which the physician is seen as a sacrosanct guardian who is above the law. With the evolution of ethical-philosophical thought, even in the Hellenistic epoch, there is an attempt to base morality on an objective truth which flows out of the understanding of the good in itself, out of the respect we owe to the human person, beyond any subjective concerns.

In the modern age the principle of autonomy, ethical liberalism, and the idea of justice, do not cancel the principle of beneficence.

It is only right to emphasize also the contribution of Christianity to the concept of the *human person*, a concept which overcomes the classical concept of *dualism*. Christianity also knew how to take charge of the public health. In more recent times, through technology, it has always proclaimed the sacredness and inviolability of life of every human being and has always condemned abortion, infanticide, euthanasia and mutilations. Since the Pontificate of Pius XII the Magisterium, in service of the Truth, has spoken out on the different themes of bioethics and continues to exercise a distinct discernment over such difficult moral themes. Other churches have also

contributed to bioethics, for example, through the World Council of Churches in Geneva.

### **Scientific aspect: the rise of bioethics**

The most important factor in the development of bioethics has been the creation and application of new technologies. From the time of the Second World War onwards, there have been many different discoveries in the biomedical field: antibiotics, the first contraceptives, artificial resuscitation, artificial insemination, *in vitro* fertilization with the birth in England of *Louise Brown*, organ transplants and genetic engineering. Science, it seems, wishes to control the entire human reality with the discovery of the genetic code and the *Human Genome Project*.

The first time that the word *bioethics* appears is in an article by an oncologist V.R. Potter in 1971 entitled “The Science of Survival,” and in the following year in the book “Bioethics: Bridge to the Future”. Potter suggests that *bioethics* can act as a *bridge* between two types of wisdom or culture: scientific (*biological facts*) and humanistic-moral (*ethical values*) in order to construct a *science of survival* with the scope of teaching the correct use of human understanding in the scientific-biological arena.

At the core of Potter’s intervention is an attempt to urge science to examine its own moral relevance on life because the direct application of scientific knowledge without discernment



can have unforeseen consequences for humanity, including the concentration of unfettered biotechnical power in the hands of a few. In addition, this reflection proposes to extend itself not only to the human person but also to the question of the environment, thereby expanding the traditional medical-ethical concept to such a point that this new science could find its norms and foundations within the laws of the biosphere as a whole.

Parallel and somewhat preliminary to this is the rise of some Centers of bioethics whose intent is to debate the normative criteria for research in the realm of experimentation and of biomedical inquiry; already from the beginning of the sixties there arose a scandal concerning the use of man as a guinea pig.<sup>1</sup> The first and the most famous was the Hastings Center of New York, in 1969. At the beginning of the seventies, D. Callahan and W. Gaylin,<sup>2</sup> from the same Center, set the foundation for bioethics, denouncing the abuses and provoking an outcry in the field of experimentation on human beings: bioethics proposes itself to be the guardian

of the future of humanity.

Then in 1979 the Kennedy Institute of Ethics is established around the Center for Bioethics of Georgetown University (USA). Already in 1971 the obstetrician A.E. Hellegers gave an academic structure to the new discipline for Georgetown and also gave bioethics its practical significance. Noteworthy among the university's publications was the *Encyclopedia of Bioethics* in 1978 edited by W.T. Reich with the collaboration of scholars from different nations. By this time other centers of bioethics have arisen around the world.

Contemporaneously, ethics boards are created first in the U.S. and then in the rest of the world, above all in the different faculties of medicine and in endowed university chairs of bioethics which contribute greatly to this discipline. Also in hospital research centers, Bioethics Committees watch over modes of scientific research.

### **Socio-cultural aspect**

To understand the extraordinary growth of bioethics it is important to understand the socio-cultural context in which it has developed, especially in the U.S. Bioethics is part of traditional Anglo-American medical ethics of health with its own particular social, religious and moral perceptions. At the end of the 19<sup>th</sup> and the beginning of the 20<sup>th</sup> centuries the physician is seen as a point of convergence in the care of the patient: all care passes through him to get to the patient who entrusts himself

1 We refer here to the injection of elderly patients with live tumor cells without their consent, in 1963, at the Jewish Chronic Disease Hospital in Brooklyn. Cf. E. SGRECCIA, *Manuale di Bioetica*, 1: *Fondamenti ed etica biomedica*, Vita e Pensiero, Milano 21994, 31.

2 SGRECCIA, *Manuale di Bioetica*, 1: *Fondamenti ed etica biomedica*, 32.

totally to the physician. The many public health programs simply augment the prestige of the doctor. However, a new way of understanding life becomes associated with the technological development of the sixties thanks to an extraordinary rise in the standard of living in the developed countries, urban growth, rapid social communications and in particular the increasingly invasive promotion of medicine by the *mass media*, cultural pluralism and social mobility. These transformations have repercussions: the unequal distribution of populations becomes an obstacle for access to the public health system. Medical insurance and health care costs rise provoking a rupture in access to medical care. On the other hand, in parallel way and as a reaction to all this, there is greater emphasis on consumer, patient and women's rights and of recourse to contraception and abortion. These factors generate new ethical conflicts in the field of medicine which become even more exacerbated with the further development of medical technology.

Again, the new biomedical technologies and the new status of medicine provoke a paradoxical effect in the gradual alienation in the physician's personal rapport with the patient. Healthcare becomes rather impersonal and fragmentary: the patient now deals not with a person who has the complete care of him but rather with a multidisciplinary team of specialists, each one being interested in his own specialization. Instead

of taking care of an actual person and entering into rapport with him, medicine now limits itself to the purely scientific dimension.

For this reason there arises in the sixties a cultural change which signals a break in the continuity between the ethical reflections of the fifties and that of the seventies. In addition, public opinion grows in sympathy towards biomedical practices, but no one really appreciates the classical ethical reserve that exists toward practices performed in recognized clinics. From the point of view of *experts and moralists*, there is a parallel transformation taking place. From the end of the Second World War until the Second Vatican Council medical ethics is treated by Catholic moral theologians and is tied to classical ethics. During the pre-conciliar period, above all in the U.S., a new current of thought arises which accuses the classical authors of having a static conception of life detached from historical reality with the propensity to fall into physicalism and biologism. As a result, bioethics is presented as an authentic and new universal ethics, liberated once and for all from metaphysical reflection and from theological research.

### **Legislative aspect: juridical-philosophical foundations (biolaw)**

As a consequence of the War, we see the development of a juridical-philosophical process in reaction first of all to the atrocities that occurred in the conflicts: crimes inflicted not only on

prisoners of war, but also against life itself (euthanasia, sterilization, human experimentation, etc.) and in collaboration with researchers and doctors. The need was felt to establish impassable limits of ethics and behaviors applicable to everyone: men and women, free or prisoner, in every case (whether in time of war or peace), also in the extreme cases (whether of detention or war).

For this reason the *Universal Declaration of Human Rights* of the United Nations is promulgated in 1948 and other conventions, declarations, recommendations, codes of law and documents which require respect for human life beginning from the moment of conception. Among others, the recommendations of the Council of Europe express the necessity of a philosophical and ethical reflection as the primary way to provide a rational justification [for these rights] based upon the foundation of the rights of man without which one would fall into the trap of the consensus of the majority. Here one is faced with the necessity of a philosophy of the right to life.

In another context, from the beginning of the nineties, bioethics enters into the legal field. Because of the rapid development of biomedical technology and because of the complexities of ethical problems that arose, legislators contented themselves in establishing legal limits to contain the *invasion* of bioethics; thus arises “biolaw” as the logical correlative to bioethics. All live

matter is thus subject to indiscriminate treatment in laboratories. For bioethics all is a question of democratic consensus and the conditioning of public opinion to obtain the legal recognition of the artificiality of the spectacular publicized events of the “experts” of biomedical research and of the application of their new technologies, with the justification of progressively bettering the quality of life. They even tend towards the affirmation that there is no substantial difference between animal, plant and mineral, only a difference in degree.

“Biolaw” pretends to be concerned equally about justice in relation to man and justice in relation to the totality of the biosphere, fixing the legal concerns that follow by applying them on an international scale. This normative law has the same universal character of the so-called “rights of man” while at the same time challenging the traditional anthropology based upon the classical theory of natural law. Thus, bioethics distinguishes itself from classical medical ethics which traditionally encompasses the social sciences, scientific technology and law. Instead of classical ethics which gave to law its foundational principles and legitimacy, bioethics now imposes its own law and justice.

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## THE DEVELOPMENT OF BIOETHICS: SOMETHING NEW?

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One now notices a backing away from the original vision of Potter for

whom, in 1971, ethics remained the indisputable point of reference for the planning, control and adequate use of science and technology at the service of man. Gradually, however, bioethics loses this original significance as the discipline destined to morally guide the correct use of the biological sciences. In 1976 Sissela Bok presents bioethics as a *new ethics*, responsible at once for biomedical intervention in theory and in practice. The idea is recognized and consolidated in the *Encyclopedia of Bioethics* in 1978 by W. T. Reich<sup>3</sup> who delineates four characteristics of bioethics: namely, that 1) it deals with all questions regarding values in the field of health; 2) it embraces every type of biomedical and behavioral investigation of an even minimally therapeutic character; 3) it touches upon social problems regarding population and international health just as moral problems arise from scientifically controlled programs of birth regulation, and finally, 4) it is concerned equally with human, animal and plant life as well as the environment.

### **Stunning developments**

In the meantime, in the eighties, bioethics becomes an academic discipline universally accepted and imposes itself for two reasons: accelerated progress in the field of biology and medicine, and pluralism in ethics. What was seen

as craziness up to 1978, such as artificial human reproduction in laboratories, becomes routine but without any guarantee of correct results.

According to a consensus of experts<sup>4</sup> four decisive factors have contributed to the stunning growth of the biological sciences and of cutting edge biomedical technology.

The *first* is that ethics and moral theology try to follow the dizzying pace of technology which does not leave a whole lot of time for the serene reflection that is required by traditional ethical discourse. A certain scientific biomedical pragmatism has entered in which one can see a distinct collusion between science and ethics. This jettisons the internal coherence between ethical principles and normative criteria. Meanwhile, politicians protect the Centers of bioethics, and impressive quantities of money are spent on the development of mega-projects (such as the *Human Genome Project*).<sup>5</sup> This unfettered acceleration [of such projects] means that often moralists will be confronted with situations which are *fait accompli*.<sup>6</sup> The

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3 N. BLASQUEZ, *Bioetica fundamental*.  
Collaborazione di L.M. PASTOR GARCIA,  
BAC, Madrid, 1996, 150.

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4 BLASQUEZ, *Bioetica fundamental*, 122-123.

5 This theme is one of the central problems of bioethics which cannot be examined in depth in this work; namely that of where and when does human life begins and what actually defines human life.

6 The classic example is that of the recent cloning of human embryos where experimentation on human embryos is just an accepted fact nowadays. There are always some moralists who, in their attempts to

role of legislators then seems to be simply that of recognizing “the facts”, and according to the workload involved, fill the ethical void with juridical norms; jurisprudence, professional regulations and lawmaking institutions impose their criteria too quickly and without an ethical foundation, exposing themselves to arbitrary legalism. On the contrary, regulatory laws should be evaluated by tribunals that are guided by ethical standards that are objectively critical and free of all arbitrary consensus.

Laws ought not to legitimate all that is technically feasible with pretexts and social arguments. Not only but political applications, by monopolizing the effective power of science and health, expose themselves as a new form of totalitarianism founded upon *the myth of experimental science* which this century has already encountered. What is even more striking in this new arena is the absence of absolute obligations such as imperatives of conscience founded upon objective and universally binding values. The new ethics does not rest on objective values but falls victim to moral relativism in its reaction to mutable circumstances regarding the *quality of life* and the ethics of *personal wellbeing*.<sup>7</sup>

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legitimize such practices, use suspect methods of diplomacy in the application of ethics and moral theology.

<sup>7</sup> Euthanasia and abortion appear in this context not only practically reasonable but also just and even charitable options. What was once abhorrent ceases to be an incidental

Discarding a scale of absolute values as a point of reference, the new ethics is not then the fruit of reason but rather of the creative imagination of man according to the priorities of the *quality of life*. What we have here would be the specific, and so-called *novelty* of bioethics: the radical absence of any type of previous binding value that is in any way absolute. Not even human life itself escapes this radical overthrowing of all classical ethics.

The *second* factor is the way in which the competence of classical ethics or moral philosophy has been cast into doubt, as well as traditional medical ethics along the lines of the Hippocratic Oath and the Judeo-Christian tradition. Paradoxically, bioethics necessarily encompasses questions which have a religious or metaphysical dimension because they have to do with life and death, human dignity and suffering; and this generates great confusion.

With that, there also appears a type of rhetoric which obscures the objective reality of things and which simplistically affirms the right of bioethics to free itself from strictures and “taboos.” [This contradictory rhetoric attempts] to demystify and desacralize *the natural order* of things in order to liberate science from bonds, yet at the same time not wanting to depart from a physical and

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category and becomes supplanted by what is in fact feasible. In principle, nothing is considered wrong if it is technically feasible.

naturalistic normative order. It seeks to get away from a morality of the person but at the same time does not want to fall into a personalism which is individualistic and privatistic. It is essentially a secular bioethics, *à la carte*, which refuses to take into account religious or theological considerations of any type. Believers must then put in check their own religious beliefs in order to enter into a rational and human dialogue with scientists, doctors and all those who have anything to do with public health and the general welfare of society, especially all with anything regarding the future. In reality, they marginalize all juridical, deontological and religious considerations in favor of efficiency and ersatz technology.

The *third* factor refers to the interdisciplinary methodology which embraces all branches of human knowledge *beginning with* molecular biology and genetics to philosophy and theology and encompassing history, sociology, psychology and economics. This position reflects something real: the novelty of bioethics, something that is highly disconcerting, consists in the application of interdisciplinary criteria in the measure in which it has substituted classical ethics. As such, bioethics ought to be considered as a branch, or a very important part, of what was traditionally called *applied ethics*: that is, ethics applied to interventions of researchers, biologists, physicians on the human person, making use of advanced biomedical techniques

where empirical science is decisive.

What enters into this dynamic is the tendency of some to extend the material object also to environmental ethics including the animal and plant kingdom, and so man ought to be subjected to the same ethical rules imposed on other living beings in what is considered a *global ethics*.<sup>8</sup>

Bioethics *also* has the pretension of creating legitimacy for itself through its own decisions in the biomedical field according to the social consensus of the democratic process and in accord with scientific biomedical pragmatism. But, is all that what is practically feasible at the same time licit? This is the real question that arises from a reasonable and humanistic perspective in the face of this fact. Many do not even bother to ask this question. The attitude adopted is to stay behind the closed doors of bioethical clinics and laboratories, careful not to raise public opinion or to get into any conflicts with the law. Acts carried out are factually described in the work, but never with reference to any moral dimension.

### **Ethical pluralism**

The other factor that has contributed to the wide diffusion of bioethics comes from scholars in their manner of confronting human challenges in their field of reflection, considering automatically “good” that which is legally authorized by established democratic

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8 BLASQUEZ, *Bioetica fundamental*, 137.

law and “bad” that which is contrary to law. What is lacking is a study of objective and reasoned forms, a study of the morality, or not, of human interventions in the field of modern biology and medicine, and a recognition of the universally, objectively indisputable values in order to establish an objective and rationally acceptable dialogue to the point of evaluating determinate applications of new biomedical technologies at the service of human life. *Cultural sociology* of the type of Max Weber reduces ethics to predominant customs and *absolute pluralism* converts ethics into a mere strategy of votes and public opinion concentrated only on the *principle* of religion, of discourse and of ephemeral interdisciplinary dialogue. One is in fact standing in front of the *scientific myth* of progress converted now into a panacea which reduces all problems of modern man into a [game of] waiting for their [scientific] solution.

Ethical pluralism opts for a type of ethics that guarantees a certain social harmony or the minimalistic common morality of a pluralistic and secular society. It arrives at a *common morality* within the legitimate pluralism of ethical options. Its content is based upon moral agreements, as for example, the ethical declarations which different collective groups of people establish for themselves. Today, the core content of universal civil morality would be expressed in the *Universal Declaration of Human Rights*. The foundation stone of such a mora-

lity should be the absolute value of each human being, and freedom as the first attribute of the person. But, all this calls for the necessity of an ethics based upon the unique absolute value of the human person and not on freedom; therefore bioethics must be based upon reason instead of an *à la carte* ethics.

For this reason, bioethics must overcome this limitation and look to a normative ethics and not simply an ethic which is descriptive of accomplished facts that come from new biomedical technologies. It must go much further by basing itself on the objective reality of man, his life and specific human values, which introduce us in the field of metaphysical reflection as a guarantee of understanding and respect of the manner of promoting scientific progress at the service of man and for the betterment of the quality of his life. In summary, bioethics must not shun moral philosophy and ethics because it would thereby put into the balance man’s life on this earth and respect for his dignity.

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## THE DEFINITION OF BIOETHICS

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After this brief analysis of the present-day phenomenon of bioethics, we see how bioethics ought to be defined as being at the greater service of man. Every field of human knowledge has the problem of defining its object, methodology of investigation and its ends. The moral dimensions of things evolve, but bioethics ought to try to respond fun-

damentally to three questions:<sup>9</sup> First, what type of person ought one to be in order to live a moral life and make good ethical decisions? This question regards personal character (an ethics of virtue) that molds values and the objectives to reach in order to become a good person and to choose the good. Second, what are one's ethical duties and obligations toward others? And third, what ought one to do for the common good and for the public interest as a member of society? Here we treat of the responsibility of citizens towards society and the political community. The definition of E. Sgreccia responds to these criteria: [bioethics is] "a discipline with a rational epistemological framework, open to theology understood as a "super-rational" science and the last ethical instance, and as a 'horizon of sense experience.' Bioethics, beginning from the description of scientific, biological and medical data, rationally examines the legitimacy of interventions of man upon man."<sup>10</sup> With this, we can clarify the *object* (interventions upon man), the *method* (moral philosophy) and the ultimate *horizon* of understanding (theological anthropology).

### Object

The high points of the specific object of bioethical study are the origins of

human life, its development, its quality and its happy conclusion. These touch on various aspects of life: individual and social, touching also upon its psychological, juridical, economic, cultural, biological and medical dimensions. On these points almost all experts are in agreement. Differences of opinion emerge concerning the value and significance of life and the behaviors appropriate to specific cases and circumstances. Bioethics could be understood in the wider sense of meaning: namely, the part of ethics or moral philosophy that concerns itself with living beings in their origin and their qualitative development according to the applications of advanced biomedical technologies. But it ought not to be understood in such a *univocal* sense because of the fact that there is a substantial difference, not only in degree, between the different species of life, namely, plant, animal and human. Instead, in an *analogous* sense one could affirm that there is something in common between the distinct living species even though they are substantially different, and this difference can only be adequately appreciated through sapient reflection on life experience, something that some would rather see disappear from bioethics. Bioethics totally and radically involves man, which necessarily includes the ethical dimension, which then requires him to consider the supreme and ultimate value. Besides, it calls man back to his obligations if he wishes to respond to his own vocation.

9 D. CALLAHAN, "Bioethics," in the *Encyclopedia of Bioethics*, The Free Press, New York, 1995, I, 251.

10 D. TETTAMANZI, *Nuova bioetica cristiana*, Piemme, Casale Monferrato 2000, 23.



This presupposes *objective, universal and immutable values* founded upon the human person, and these go far beyond individual persons, places and times and cannot be conditioned by subjectivism and relativism.

### **Method**

If we accept the definition of bioethics as the part of ethics or moral philosophy which studies the legitimacy, or not, of interventions on the life of man, in particular, those interventions tied to the practice and development of the medical and biological sciences, then philosophical reflection provides a scientific study of human behavior in all its aspects and in the light of *reason*, in as much as it regards directly the decisions of every person about himself (body and mind) or about the lives of others when the most advanced biomedical technology is directly involved. The application of advanced biomedical technology ought to be the guideline for determining the specific field of action and competence of this new discipline.

On the other hand, when criteria of conduct from a Christian perspective come into play it is understood that moral philosophy is reinforced with that which is called *moral theology*, which presumes the universality of principles of moral philosophy. This provides an instrument of critical reflection, developed from reason and illumined by faith: science and faith are not opposed but are in harmony if one proceeds according to moral norms and in a truly scienti-

fic manner because, as the Second Vatican Council said, "Profane reality and the reality of faith have the same origin in God."<sup>11</sup> Besides, with metaphysical reflection, reason can discover its first foundation and its ultimate meaning in its rapport with the Absolute. This final step is indispensable for discovering an adequate ethical foundation for ethical values: *person-values* and *normative values*.

It is obvious that this method does not leave out interdisciplinary cooperation between different disciplines (medicine, psychology, sociology, ethnology, economics, etc.) regarding the subject of life. In fact, this convergence of various fields of scientific endeavor in working out a common moral reflection gives bioethics its uniqueness. It is not thus a new science because the moral problems of an almost exclusively normative nature have been confronted already by philosophical ethics and moral theology which of course depend upon understandings coming from the different empirical sciences. A dialogue is then established between bioethics and other disciplines in a constant questioning and listening to each other in order to arrive finally at reality itself, at the facts, and to the understanding that every action which refers to life is evaluated by a moral judgment.

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11 VATICAN COUNCIL II, Pastoral Constitution on the Church in the Modern World, *Gaudium et Spes*, 36.

**Horizon**

But, this rational legitimization of bioethics presupposes an ontology of the human person and absolute and unconditional respect for some principles or pillars of an objective humanism: namely, an absolute respect for the physical and mental life of persons, directly therapeutic good will and intentions of health professionals, and respect for the fundamental rights and duties of the human person.

Then, any scientific or medical intervention whatever, which aims to destroy, actually or deliberately, concrete human lives, is automatically de-legitimized by its very act. Reason, well-formed and free of ideological or cultural prejudices, understands with relative ease that physical, concrete life is the fundamental ethical value upon which all other values are based, as the cornerstone upon which the whole edifice is built and sustained. Denying or substantially destroying this value renders absurd the effort to successively legitimize bioethics as a science at the service of life. Medicine cannot then present itself as an exercise of man's power over man but as a service of respect for life and for the dignity of men and women afflicted by pain and illness. It is not for the physician to anticipate death in an insidious way simply because he has exhausted all his professional ability.

On this matter, it is necessary to set an ultimate foundation and point of reference to bioethics. This comes

through anthropology which gives a unique value to the human person, man being the ultimate measure and judge of the problems of bioethics. Nonetheless, today there exists the problem of anthropological pluralism of which we have spoken earlier. In the eighties and nineties some models of ethics were denounced as inadequate. Here follows a brief description of some of the most significant models.<sup>12</sup>

The *liberal* model, founded on the concept of absolute freedom, posits that the only criteria of the freedom of an act is that it be done *freely* without infringing on the freedom of others, and that it be recognized by public opinion and in regulations/laws established by democratic consensus. Outside of these criteria everything is allowed; it is enough that one simply wills it. The limitation of this model is obvious: the historical example of all despots makes it clear. The freedom of one conflicts with the freedom of another and the strongest wins until there is a collapse of society. Nevertheless, even if they are able to come to a common agreement on freedoms, this absolute sense of freedom lacks one basic *point*, namely, something which we call *responsibility*. When responsibility is separated from freedom, man becomes internally fragmented and one can no longer speak of ethics.

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12 TETTAMANZI, *Nuova bioetica cristiana*, 32-36.

The *sociological-utilitarian* model is presented a pragmatic calculation based upon a cost-benefit analysis with the intent of finding the maximum advantage at the least risk. Known also as *consequentialism*, it seeks a compromise between different components to satisfy the will of the majority. The normative value of the whole is also *relative and mutable*, and the social good supersedes the good of the individual. This model is imposed from the outside through the customs in act in a given country at a given time, the pressures of the *mass media*, the dominant economic power and the positive law. The risk of this model exists above all in a time of profound moral relativism, in an economically advanced society, in a culture imbued with materialism and hedonism where rational reflection gives way to an uncritical acceptance of the majority or of what is imposed by those who hold power (science, economic and political interests, etc.)

The *scientific-technological* model consists in the total manipulation of man by man. This is a true mission where the “good” is defined simply as what can be done according to the will of the doer: if it is feasible and if one wants to do so, it is therefore licit, and even obligatory to do it. This formulation of an autonomous and absolute power, with no other reference to anything superior or different from itself, is clearly insufficient and discriminatory from an ethical point of view, where what is technically

possible is considered ethical; this only results in chaos and in a deadly game of the survival of the fittest.

Finally, the *personalist* model is opposed to these other models in that it absolutely respects the whole human person. This model promotes the *entire truth* of man. Only life has absolute value and as a consequence, freedom and technology should place themselves at the service of man and not the other way around.

In fact, given that *life* is the greatest good of the human person, whoever takes it inflicts the greatest loss, although one's life may be offered up for a moral, spiritual or transcendent good. For this reason, physical life can be placed in danger for the motive of a moral good in the perspective of the totality of the person (for example, martyrdom) or for the salvation of other persons. The second good after life itself is the *integrity of life* that can be sacrificed only to safeguard one's physical life as a whole or for a superior moral good. In third place are the goods of relationships and emotional and social goods. With regards to these, no social reasons can justify self-mutilation, sterilization or abortion. Finally there is a harmony of values of the human person so that one value has repercussions on others and therefore the sacrifice of one value ought to have an objective justification by appeal to a greater good.<sup>13</sup>

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13 SGRECCIA, *Manual di bioetica*, 1: *Fondamenti ed etica biomedica*, 140-141.

Life therefore is the norm and no other norm should be imposed upon it. This model offers a horizon of sense experience by establishing an adequate content and method of bioethics and at the same time by founding it upon objective values and norms.

A fundamental characteristic of man as a person is that he is a *unified totality*,<sup>14</sup> that is, a *corporeal-psychic-spiritual being*, a substantial unity of body and soul without an anthropological dualism.<sup>15</sup> As a consequence of this, his corporality is the place of the actualization of his person; his bodily existence is not a blob of biological tissue, material to be experimented upon, but rather is the instrument, so to speak, of relationships with others (in his knowing, willing and loving, etc.), through the expression of his spirit and the revelation of his being to the extent that we can say that his person *is* his body.

The human person is therefore not only rational but relational and expresses himself or herself through the *spousal meaning*<sup>16</sup> of the human body in two ways: through *communion* (the person *with* others) and through *self-donation*

(the person *for* others). The essence of the person is such that man *alone* cannot find total fulfillment in himself. He fulfills himself only if he exists *with*, and above all, *for* someone.

While it is necessary to get at the roots of his personhood, social and psychological research are not enough to understand the truth of man; rather, a philosophical study needs to be done which touches upon the *original structure* of the human person.

All of this allows the personalist model, founded upon being, to offer an anthropology where physical-corporeal life, conjugal love, procreation, pain and illness, death and dying, and the relationship between freedom and responsibility, the individual and society are placed in their proper framework and ethically evaluated. Christian revelation, interpreted by the Magisterium, sheds light upon an integral vision of the human person who is always threatened with being dehumanized by ideological and biological *reductionisms*. Thus, this model can furnish a point of reference to bioethics as the fundamental value of life, a transcendental and integral conception of the human person and a uniting synthesis of physical, psychological and spiritual values. It can also illumine dynamics of the priority and the complementarity between the person and society and the personalistic and communal conceptions of conjugal love.<sup>17</sup>

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14 JOHN PAUL II, Apostolic exhortation *Familiaris Consortio*, 22 November 1981, 11.

15 TETTAMANZI, *Nuova bioetica cristiana*, 37-49.

16 JOHN PAUL II, *Uomo e donna lo creò. Catechesi sull'amore umano*, a cura dell'ISTITUTO GIOVANNI PAOLO II, Pont. Univ. Lateranense, Città Nuova, Roma, 1995.

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17 SGRECCIA, *Manuale di bioetica*, 1:

All that has been said has a profound impact on man's ability *to act*. More precisely, the personalist ethics permits us to enunciate certain principles and ethical guidelines for bioethics regarding interventions of man upon life in the biomedical field. *The principle of the defense of physical life* affirms that corporeal (physical) life, which represents the fundamental value of the human person, is the unique foundation, co-essential and the first incarnation of the person, in which and through which the person actualizes himself and enters into space and time, expresses and manifests himself, and finally, substitutes and expresses other values including that of freedom, social life and even his own future project. It is never therefore licit to suppress in a direct and deliberate way the life of anyone in order to favor the life, or for that matter, better socio-political conditions of others, because the human person is a totality of values and not just a part of society.<sup>18</sup>

Man also represents an ontologically superior and transcendent level of life from the other inferior living beings (plants and animals) that can and ought to be utilized by man.

*The right to health*, on the other hand, is promoted and defended for all human beings in proportion to their need. This is a fundamental considera-

tion with regards to the so-called *quality of life*, which today is overemphasized. One ought not to speak of a *right to health*, something that no health system can actually guarantee, but rather of a *right to basic resources and treatments* for the defense and promotion of health.<sup>19</sup> It is also necessary to educate people about accepting the inevitability of suffering and death all within the context of a personalistic and transcendent vision of man. Denial of this leads to problems in the entire personality.

A second principle is *the principle of freedom and responsibility* which places the burden of responsibility for one's own life and that of others on freedom because life is the pre-condition for the exercise of freedom. In the case of euthanasia, one cannot allow, in the name of "freedom of choice," the very suppression of life. In the case of mental illnesses or for religious motives, the patient has the moral obligation of collaboration with the ordinary and necessary therapeutic processes in order to safeguard his own life and health as well as that of others. *Informed consent* means that the doctor does not have greater rights than the patient himself in regards to his own health.<sup>20</sup>

In the third place, the *principle of totality (therapeutic)* affirms that, to save

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*Fondamenti ed etica biomedica*, 53-54.

18 SGRECCIA, *Manuale di bioetica*, 1: *Fondamenti ed etica biomedica*, 171-172.

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19 SGRECCIA, *Manuale di bioetica*, 1: *Fondamenti ed etica biomedica*, 173-174.

20 SGRECCIA, *Manuale di bioetica*, 1: *Fondamenti ed etica biomedica*, 174-176.

the life of a subject, it might be necessary to intervene through a mutilation of part of the organism, using the *voluntary and indirect* criterion, where it concerns not so much life but *physical integrity*.<sup>21</sup> This *totality* ought to be interpreted as encompassing the physical, spiritual and moral dimensions of the person. One must also take into consideration the standard of the *proportionality of treatments*, which requires a certain proportion between the risks and harms that a therapy brings and the benefits which it procures, in opposition to extraordinary therapeutic obstinacy.

Then there are the *principles of sociality and subsidiarity*. The *principle of sociality* binds every person to realize his true good by participation in the good of others. That is, his own life and that of others is a good that is not just a personal good but a social good that binds the community to promote the life and wellbeing of all; it is a matter of the common good when the good of each member is promoted. Under this rubric can be justified organ and tissue dona-

tion and volunteerism. Also, *social justice* demands that the community ought to guarantee all the means for members of society to have access to the necessary cures. The *principle of subsidiarity* permits the community, on the one hand, to help more where there is truly a grave necessity, without of course supplanting or substituting; and on the other hand, always guaranteeing the free initiative of individuals or groups.

Finally, the *principle of beneficence, autonomy and justice* departs from the Anglo-Saxon *principalism*. T.L. Beauchamp and J.F. Childress described in their book "Principles of Biomedical Ethics", as the practical-conceptual reference point from which to orient the healing of patients based upon their autonomy, beneficence, non-maleficence, and justice interpreted in utilitarian and deontological keys. Adding an ontological and anthropological foundation furnishes a system and a hierarchy which harmonizes and unifies meaning. Therefore such principles offer general rules of behavior because the priority is given to the fundamental value of the good of the human person and permits one to take into account the data of moral experience beyond just the intentions of the agent.

For example, there is the tendency of our modern world to propose as the first and absolute value the "quality of life" in functionalistic and extremely utilitarian terms, and as such, beauty and concerns for a purely physical lifestyle

21 Known also as the "principle of double effect" (positive-negative), the criteria of evaluation is whether the intention of the agent has in mind a positive end, whether the direct effect of the action is positive, whether the positive effect is proportionately greater or at least equal to the negative effect, and whether the complex and interconnected intervention might not have some other remedy that does not contain the negative effects. Cf. SGRECCIA, *Manuale di bioetica*, 1: *Fondamenti ed etica biomedica*, 177-179.

are separated from the rational, spiritual and religious dimensions of existence.<sup>22</sup> Therefore all lives that do not correspond to these criteria are suppressed. On the contrary, *quality and perfection* should always refer to the human being and to human life in the context of communion and of self-donation of every specific human person and in every condition of human existence.<sup>23</sup>

Personalism does not mean subjective individualism that puts emphasis only on the capacity for decision-making and choice; these are typical of the mentality of the Protestant and existentialistic world and of some currents of American theology.<sup>24</sup> Therefore, among the many anthropological models that one can discover in the field of bioethics, the personalist model, which the Church makes her own, is that which, to date, most reflects the human being in his uniqueness and un-repeatability as an individual. In such a way, human reason itself can seize the objective, universal and perennial moral criteria regarding ethical problems.

In conclusion, bioethics is a new discipline in many aspects, and it is also interdisciplinary though without exaggerating neither its newness nor the interdisciplinary nature of it. Bioe-

thics separated from moral philosophy (ethics), that is, from reason and from the fundamental value of life, abandoned to the whims of technology and the arbitrariness of law, does not merit any respect. Very many problems that are debated today in bioethics are old problems, but not its parameters that are conditioned by the development of biomedical technology.

## CLASSIFICATION

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### Distinctions

Bioethics is distinct from *environmental ethics* which examines the repercussions of scientific discoveries and of technology on the environment; it is distinct from *animal ethics* which concerns itself with the moral legitimacy of the use of animals in research; and it is distinct from *medical ethics*.<sup>25</sup> Medical ethics applies theories, principles and generally utilized axioms in the field of ethics. It is also concerned with professional responsibilities and about values in order to respond to questions of a social, political nature and to relationships with colleagues and patients.

*Clinical ethics* is concerned about the ethics of clinical practice and of ethical questions that emerge in the care of patients with the scope of bettering their quality of care through identification, analysis and attempts to resolve ethical problems that touch immediately the

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22 CEI, *Evangelizzazione e cultura della vita umana*, 6.

23 TETTAMANZI, *Nuova bioetica cristiana*, 41-49.

24 SGRECCIA, *Manuale di bioetica*, 1: *Fondamenti ed etica biomedica*, 89.

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25 SGRECCIA, *Manuale di bioetica*, 1: *Fondamenti ed etica biomedica*, 56.

sick and all the persons and institutions concerned, such as the medical personnel and the families themselves of the sick persons.<sup>26</sup>

As distinct from the art of medicine, *clinical ethics* elevates to the level of method the detailed analysis of concrete cases.<sup>27</sup> *Ethical counseling* seeks to help the patient, the family, the tutors and the medical personnel turning attention back to the subjects involved in clinical practice in order to adopt a solution in the ethical field.

### Divisions

Bioethics is divided into three categories: 1) *general bioethics (theoretical)* that treats of ethical foundations, values and the original principles of medical ethics and its sources (international law, deontology, legislation); 2) *special bioethics* that treats of large problems from a general point of view, in the medical and biological dimensions. Here we can think of the major debates of the day on abortion, euthanasia, clinical experimentation, genetic engineering; 3) *clinical bioethics or bioethics of decision-making* that examines the values in play in particular cases and seeks to find solutions to problems while remaining faithful to those values.

### Relationship with other disciplines

Distinct from bioethics, *legal medi-*

*cine* can only legislate on wrongs that risk being harmful to the common good; its tolerance is motivated by *the principle of the lesser evil*. However, it is not adequate in examining recent discoveries in science and as such it lacks a basis from which to make an authoritative judgment.

*Medical deontology* is a constitutive characteristic of medicine that, from the Hippocratic Oath through various other deontological codices, has always sought to bring together some ethical principles as expressions of the *ethos* of physicians. This is fundamental with regards to the doctor-patient relationship, and, up to some time ago it was synonymous with *medical ethics* or *medical morality*. Now classical medical ethics is substituted by Ethics Committees or Bioethics Committees that take different forms.

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## ROLE OF THE CHURCH

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From the many interventions of the Magisterium of the Catholic Church on the theme of bioethics, beginning above all from the Pontificate of Pius XII, what stand out, among the distinct interventions of the Holy See, are the apostolic exhortation *Familiaris consortio* (1981) of John Paul II, on conjugal morality; the declaration of the Congregation of the Doctrine of the Faith *Iura et Bona* (1980) on euthanasia; and in particular the instruction *Donum vitae* (1987) on the respect for human life in its beginnings and the dignity of procreation. The Church feels that the mission

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26 TETTAMANZI, *Nuova bioetica cristiana*, 28.

27 G.D. GRACIA, "Bioetica clinica", in S. LEONE—S. PRIVITERA (edd.), *Dizionario di bioetica*, Bologna 1994, 98-102.



of healing human persons in all their physical and spiritual dimensions, and likewise, the biotechnological world, require vigilance with regards to practices that are exercised clearly against the good of man. Therefore, the Church has the obligation to raise her voice against such abuses above all in defense of the most defenseless (the unborn, the elderly and the handicapped).

The Second Vatican Council has sustained, and with reason, the proper autonomy of science.<sup>28</sup> However, having said that, it is unthinkable to consider scientific research and its applications as morally neutral terrain, nor can it be allowed that the criteria of technical and utilitarian efficiency, at the mercy of powerful ideologies, be their sole point of reference. *Donum vitae* affirms that science and technology ought to remain at the service of the human person, of his inalienable rights and of his true and integral good, according to the design and will of God (n. 2).<sup>29</sup>

In the field of morals, the Magisterium has as its primary object *revealed truths* and as its secondary object *truths connected to revelation* among which are found *the natural law*, the norm of reason in man inasmuch as being man, that everyone, even unbelievers, finds in his heart by the light of reason.<sup>30</sup> This is

because Christian faith has an intrinsically moral dimension to it and because the moral norm of the person consists in both a *creaturely* (natural) component and a *revealed* (supernatural) component. It is this last point that concerns the pertinence of the Magisterium of the Church in questions of bioethics.

When one speaks of methodology, one ought to distinguish the objective value of an action from the subjective moment, that is, when the action is conceived of and decided upon in the inner life of the subject. There is also the moral obligation to harmonize the subjective judgment (the interior orientation) with the objective value of the action itself in order to guarantee the uniqueness of the morality of the act. Now, the expression of a judgment about the objective value of an act depends on the conscience, which for its part can have different grades of certainty and different modalities of understanding. This judgment can manifest itself as an immediate and pre-conscious mental reaction through *connaturality*,<sup>31</sup> it can also become a conscious and reflected understanding, or it can remain mired in doubt. Each case presupposes some confrontation with the norm or the law which clarifies the objectivity and the hierarchy of values. This law can be the *natural law* innate in the conscience, knowable through connaturality at the

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28 VATICAN COUNCIL II, *Gaudium et Spes*, 36

29 TETTAMANZI, *Nuova bioetica cristiana*, 81.

30 TETTAMANZI, *Nuova bioetica cristiana*, 89.

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31 J. MARITAIN, *Nove lezioni sulla legge naturale*, Milano 1985.

first level of awareness and subsequently explainable by reason. It is therefore a rational norm.

From the personalist point of view, *natural law* is not physical or biological law or individual spontaneity. Neither is it a complex of juridical-moral precepts which are also specifications of the *natural law*. Since the time of St. Thomas, and up to and including the personalists, the *natural law* becomes a principle that transcends single acts and situations; it is analogous to and at the same time is founded upon *the principle of non-contradiction*. The *natural law* can be formulated in the general prescription of *do good, and avoid evil*. Being reducible to the idea of creation it then goads man on to seeking, by force of reason, the suitable modalities to follow in individual circumstances, and the applications of these demands. This is done not purely with spontaneous emotional responses but also with reason, with the purpose of seeking in action that which constitutes man in his fullness of being, and to give evidence of that which diminishes man's humanity. The *natural law* answers a profound demand of the whole human being for the full realization of his own life in harmony with the lives of others, and for the full realization of the values which are often understood as heavy burdens. This requires, therefore, that the scientist join the truth of experimental science with the total truth about man, and that the physician and the biologist respect the

truth of man and of his personal life.<sup>32</sup>

## CONCLUSION

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The necessity of bioethics emerges from the fact that man, faced with the emergence of significant problems, too great for an individual, a society or the future of humanity and its survival, feels, despite all this, an interior disposition to assume his own moral responsibilities, helping humanity to travel towards the future.

This exposition has attempted to demonstrate that bioethics is the result not only of an accelerated development of the technological and biomedical sciences, but also that it has arisen in a particular socio-cultural context and imposes itself, in one way or another, upon all the dimensions of the life of man.

Even if some consider bioethics as an untested novelty that has supplanted classical ethics (classical moral philosophy), a more balanced vision, one that is shared by the Church, discovers in bioethics a novelty that completes moral philosophy in the field of advanced biomedical technology. This vision reclaims a bioethics that recognizes the existence of absolute values, and in first place, not the *quality of life* in absolute terms based on *functionality* and *efficiency*, but rather the dignity of the human person, as the very object of bioethics. It demands an

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<sup>32</sup> SGRECCIA, *Manuale di bioetica*, 1: *Fondamenti ed etica biomedica*, 159-171.

anthropology that respects man's dignity as a being created in the image of God, a *uni-totality* of spirit and body,<sup>33</sup> as a rational and relational being, called to communion *with* others and to self-donation *for* others.

The fact that ethics occupies a dimension within technology-science and that this intrinsic relationship helps to avoid corruption be it from the one or from the other, moralists and scientists ought to have within themselves a common anthropology and ought to remain obedient to their interiorized ethical imperatives in such a way that by following them, they remain obedient to their very selves, hopefully always with a correct perception of reality. Therefore, bioethics being the ethics of life, as a new discipline, can be legitimate only on the condition that it accepts its position of being located inside ethics and of allowing itself to be examined by the rational analysis of ethics on all that pertains to its field.

In this regard, the Church with its charism of authority in matters of faith and customs, and secondarily in the natural law, can make a significant contribution in pointing out the road

that leads to the resolution of difficult ethical problems, always respectful of the good of the person, of the common good, and of life itself.

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<sup>33</sup> We speak here of a substantial unity or of a unified totality, taking into account the integrity of man's corporal, psychic and spiritual reality. The opposite of this would be a *materialistic vision* of the human person which falls into a kind of somatic or organic reductionism, or a *dualistic vision* of man that gets lost in an illusory animism.



# Bioethics Committees

Elio Sgreccia

B

*Bioethics Committees (BCs) went from emergency bodies to having a support function and becoming a constant point of reference, so much so that by March 31<sup>st</sup> 1976 they were formally instituted by a sentence of the Supreme Court of New Jersey. There are four main reasons for which the support of such Committees may be justified: 1) to bring together disciplines, that are becoming ever more specialized and susceptible of considering cases sectorially and reductively to safeguard the good of the entire person in the different phases of research and assistance; 2) to find a common field of dialogue – among the various models and visions of man and over the ethical problems in healthcare – allowing for a confrontation of the various ethics, including the so-called secular ones; 3) to spare physicians from bureaucratic, political and economic restrictions, granting them a just deontological autonomy in their decisions; 4) finally, to safeguard the rights of the patient. Today UNESCO tends to become a reference point for institutional bioethics: it has an inter-ministerial committee composed of ministers or delegates of the member countries. Furthermore, within the European Union and various other nations, at national and local levels, there are many BCs. BCs have two critical characteristics: interdisciplinarity and pluralism. In the first instance respect for the autonomy of the various disciplines involved is sought, while these disciplines agree on their behalf to combine their findings for a judgment that might offer a better answer to the ethical requirement of being licit or not, and under what conditions. A major challenge in respecting the autonomy of the various disciplines, lies in the integration of their judgments – especially while evaluating them ethically and expressing them according to anthropologic values – with the deontological and juridical norms. In the second instance, pluralism, the challenge is quite complex, since what is at stake is to reconcile models that are completely different and at times even opposed, also in relation to different religions. Neither the application of minimal ethical standards nor the mere careful following of procedures (informed consent of the patient, majority ethics, etc.) nor the existing international reference points, such as the Helsinki Declaration, are always satisfactory solutions. The following contribution offers some models of methodology that may help in such complex cases. (↗ Biotechnology: the State and Fundamentalism; Informed Consent; Family Counseling Centers; A New Paradigm of Health; What Bioethics?; Quality of Life; Reproductive Health)*

## INTRODUCTION

It is known for being an institution or organism consisting of specialists of various disciplines, who are consulted with the aim of clarifying problems of a bioethical nature that may arise in biomedical research at the level of treatment or management.<sup>1</sup>

Bioethics has been defined as a systematical reflection on the problems posed by interdisciplinary and pluralistic bio-medicine, in the light of moral principles and norms:<sup>2</sup> therefore various sciences may be involved, experimental or non-experimental (biology, medicine, law, ethics etc.), and specific themes may be tackled starting from different moral visions and theories (utilitarianism, contractualism, personalism, liberal ethics etc.). The Bioethics Committees equally consist of many disciplines and specialists of various disciplines (inter-

disciplinarity); each of them may host persons that refer to different moral and philosophical visions (pluralism).

Pluralism may be superseded when such committees are bound to guidelines that refer to one specific vision; for instance: Catholic hospitals will refer to Catholic morals; but where public scientific or health institutions are concerned, pluralism and a knowledge of the various ethical theories or visions are required even from the specifically religious Bioethics Committees, so that the users and the public may consult them and ask for meetings and justification of the decisions that are being made.

How pluralism is managed within the Bioethics Committees is the most delicate item of their life and validity and, as we will specify later, it even represents one of the reasons for their existence.

For this reason we wish to briefly go over the historical beginnings of this organism, so that we may rediscover the reasons and motivations that are supporting the institution, and define the methodology and the problems it is interested in, their typology according to specific duties and institutional engagements, especially the criteria used for the elaboration of a judgment, and finally, the characteristics the Committees must have for them to function correctly.<sup>3</sup>

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1 In today's literature the prevalent use of the Genitive (Committees of ethics or bioethics as used in Italian) instead of the adjective form (Ethic Committees), intends to explicitly stress the subject-matter and not the quality of the persons or the institution involved. We will use the term Committees of bioethics (Comitati di bioetica (CdB)). The English term is *Bioethics Committee* (BC).

2 See the definition of bioethics in *Encyclopedia of Bioethics*, New York <sup>2</sup>1995, It states: "the systematic study of the moral dimensions—including moral vision, decisions, conduct, and policies—of the life sciences and health care, employing a variety of ethical methodologies in an interdisciplinary setting" (p. XXI).

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3 For an essential bibliographical information, we suggest: R. J. LEVINE, "Research Ethics Committees", in W. REICH

## HISTORICAL ORIGINS

BCs arose first of all because of some situations that were at the limit of the paradoxical and the dramatic (the case of Karen Ann Quinlan and similar situations); today they offer themselves as a sustaining organ for decisions to be taken about protocols for experimentation, or about situations that may offer some innovative character or an uncertain ethical value; i.e., its function has shifted from that of an emergency body to a support function and a consistent point of reference.

Although a 1976 ruling of the Supreme Court of the State of New Jersey (USA) is usually considered as the historical date for the erection of the first formal BC as an institution, one should recognize<sup>4</sup> that from 1971, in a *Medico-*

*Moral Guide* of the Canadian Catholic bishops, there was a proposal to create, in all Catholic hospitals, medical-moral commissions with some fundamental duties – including educational-formative duties – above all to apply in a single consistent way the *Ethical and Religious Directives for Catholic Health Care Facilities*, which the National Conference of the Catholic Bishops of the United States had published that year.

Undoubtedly, it was after the ruling of the Supreme Court of New Jersey issued on March 31, 1976 that one of the first BCs was formally instituted, and right from the start various problems arose connected with what function such committees should have.

Let us briefly remember how the decision of the American judges to create a BC developed from the Karen Ann Quinlan case. For a whole year this girl had been living in coma, caused by a very serious neurological trauma, and she had been refused admission by various hospitals and private clinics that considered her state to be irreversible. She was finally accepted in a clinic, the *Morris View Nursing Home*, and kept

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(ed.), *Encyclopedia of Bioethics*, New York 21995, IV, 2266-2270; C. J. DOUGHERTY, "Clinical Ethics", in REICH, *Encyclopedia of Bioethics*, I, 409-412; E. SGRECCIA, *Manuale di bioetica*, Vita e Pensiero, Milano 1999, 235-282; PONTIFICIO CONSIGLIO PER GLI OPERATORI SANITARI, *Carta degli operatori sanitari* (1995), 8; A. ANZANI, "Comitati di etica", in *Dizionario di bioetica*, EDB-ISB, Bologna 1994, 162-167.

4 These directives were successively reconsidered in 1975 and more recently in 1994 (Cf. NATIONAL CONFERENCE OF CATHOLIC BISHOPS, "Ethical and Religious Directives for Catholic Health Care Services", in *Origins* (1994) 24/27, 449-462. As far as BCs are concerned, Directive 37 foresees that "an ethics committee or some alternate form of ethical consultation should be available to assist by advising on particular ethical situations,

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by offering educational opportunities, and by reviewing and recommending policies. To these ends, there should be appropriate standards for medical ethical consultation within a particular diocese that will respect the diocesan bishop's pastoral responsibility as well as assist members of ethics committees to be familiar with Catholic medical ethics and, in particular, these Directives".

alive by sophisticated equipment, in a state of total unconsciousness. The question for public opinion in that far-away 1976, was whether keeping a person alive at all costs in such conditions was licit or whether it would be more just to let nature take its course. Instituting the committee, the Supreme Court put its components in charge of evaluating the reasonable possibilities for Karen Ann Quinlan to reemerge from that condition, with the precise aim to approve or disapprove the final decision: to definitively unplug the equipment keeping the girl alive. It was immediately noticed that the committee had not been asked to approve or disapprove of the decision to suspend care, but rather to deliver a truly clinical-prognostic judgment. Inside the clinic where the girl was hospitalized the committee requested by the Judges was created, consisting of two priests, the health director, a social worker, one physician and a legal counsel. However, doubts about the “competence” of this committee arose: in fact, if the duty assigned to it was to be strictly prognostic, why was there only one physician among its members, and, at that, not a specialist in neurology and not even directly involved in treating the patient?

Thus, as soon as these BCs began to exist in the United States, problems arose about their composition and their role.

Next to this contingent and dramatic motive that led to the institution of a BC, later on, as we already said, the use

of such committees was suggested also in ordinary situations, for instance, with reference to protocols for experimentation on the sick or in situations that may occur in the health care arena and through biomedical progress. From being emergency bodies, BCs now function as a support and point of reference in daily practice. Even from the Catholic ethical point of view, as we already said, the need is felt for health workers not to be left alone to face unbearable responsibilities in addressing clinical cases that are becoming ever more complex and problematic. This is why the *Charter for Health Care Workers* recently issued by the Pontifical Council for the Pastoral Assistance to Health Care Workers refers to the role of the BCs in facilitating the choices that weigh upon the health workers and to oversee them.

BCs expanded rapidly at various levels, both in the *Common Law* countries and in those countries where legislation governs healthcare: today there are BCs at a national level, as a consulting organ of parliament and the government, and there are local BCs for research institutes and hospitals, and little by little this institution is becoming a component of the dialogue, orientation and decision-making at a pre-judicial and social level.

## **REASONS FOR SUPPORT**

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The reasons for the BCs<sup>5</sup> vitality and their justification can be summarized in the following four points.

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5 SGRECCIA, *Manuale di bioetica*, 239-242.



a) The first one is epistemological and consists in the requirement to re-create an “anthropological unity” inside the medical sciences milieu that is becoming ever more specialized and susceptible of treating health problems and situations of disease more sectorially and reductively. The need is felt to look for the good of the whole human person, both in research and while treating the person when it comes to healthcare.

b) The second reason is philosophical-cultural: there is a felt need for dialogue and for finding a common ground of agreement about various models and visions of man and the different ethical problems that refer to medical care. It is well known that there are strong differences and tensions between the various philosophical-ethical lines of bioethical thought. There are liberal models, models of utilitarianism, of contractualism, of principlism, of sociobiology. In our line of thought, that is open to rational reflection and to the contributions given by revelation, we have tried to rediscover a personalism with an ontological foundation, to be ready for an open field debate with the so-called “secular ethics”. For the national, and today also for the international committees, this dialogue is the prevalent motivation and function of the committee. Frequent conflicts on the theoretical level, often (but not always) are lessened at the level of practical decisions, where concrete cases impose their elements of objective truth. Further on we will illustrate this

aspect of difficult conflicts.

c) The third reason is deontological and political: One wants to support the physician and the deontological autonomy of his decisions in the face of possible bureaucratic conditioning and the risks of politicization, especially in periods of limitations on financial resources.

d) The fourth reason identifies itself with the need to safeguard the patients’ rights in times of illness, and to resolve cases that are difficult to settle at the patient’s bedside or when an emergency arises. Patient research protocols, the decision to revive or not to revive a low birth weight child in a critical condition, the procedures for organ removal, all require a congruous protection of the patient while supporting the physician’s decisions. Sometimes clinical bioethics, though taught to doctors and researchers, does require facing a concrete case.

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## **TYPOLGY AND FUNCTIONS OF THE BCS**

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CBs came into existence and spread very fast, with very different missions. President Carter had already created a *President’s Commission* for the problems of genetic engineering. Reagan, his successor, confirmed the commission in 1983 while increasing its mandate; in France, since 1984 the *Comité d’éthique nationale consultatif* has been active, first nominated by Mitterand; in Italy, in 1990, by a decree of the President

of the Council of Ministers, a national bioethics committee was created. So today in most states one can find a bioethics commission or committee at the national level; these committees have even gathered several times in *summits* celebrated in various parts of the world, and lately their presidents are invited by UNESCO where an international committee has been active ever since the Universal Declaration on the Human Genome was issued in 1997.

UNESCO has now become a point of reference for institutional bioethics, and in its meeting of 22-23 October 2001 there appeared a clear will to establish a universal orientation and to spread bioethics in the entire world, thus encouraging a kind of globalization of bioethics. During this meeting the publication of a universal code of bioethics was proposed, which could present the risk of a “minimal” and pragmatic ethics that is a least common denominator of culture instead of animating it with dialogue towards a growth in civilization.

Within UNESCO there is also an inter-ministerial committee, which is concerned with bioethics and consists of ministers – or minister delegates – of scientific research belonging to the participating countries. Furthermore, the existence of a Bioethics Committee within the Council of Europe, which has had several denominations (CAHBI, CAHGE, CDBI) should not be forgotten together with the one created at the heart of the European Parliament

and concerning itself with genetic problems.

Besides this attempt at the “globalization” of bioethics and UNESCO’s coordinating the web of national committees, one should consider that each of these committees has produced documents and opinions that constitute an important source for research.<sup>6</sup> Furthermore, there exists a second level of committees, the “local” ones, which can also be operative at the level of research institutes or in hospitals; at times hospitals, for instance university hospitals, are also research institutes themselves. New committees arise at the hospital or research institute’s initiative, with a charter approved by management following traditional norms or by specific ministerial decrees.

Again, these local committees, and especially the hospital ones, can be oriented towards verifying protocols of pharmaceutical experimentation, according to codified norms (in Europe these norms are contained in directive n. 91/507/CEE of July 19, 1991, entitled *Good Clinical Practices*), or else they can include other finalities also, such as formulating opinions about borderline cases or cases that are difficult to resolve at the level of medical care for patients, and even taking the mission to educate personnel on ethical themes, and more generally, to look after the quality of

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<sup>6</sup> The Italian National Committee (CNB) has already issued 30 documents.

care being given.

The ends, procedures, the number and qualifications of members must be specified in the charter and, especially where clinical experimentation is concerned, they must be governed closely by the international documents on deontology (Helsinki Declaration, *Good Clinical Practices*) and by the national laws and/or decrees.<sup>7</sup>

## METHODOLOGY AND ELABORATED OPINIONS

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Considering their various typologies, for a profitable functioning of these committees two important characteristics have to be reconciled: interdisciplinarity and pluralism.

Interdisciplinarity, which is typical of bioethics, requires that the autonomy of each discipline that concurs in the examination of the specific cases and situations be respected; on the other hand it requires their respective contributions be integrated so that an ethical judgment may be reached: whether the decision is / licit or not / and what are the required conditions for it to be licit?

That the autonomy of each discipline should be respected is something already required by Vatican Council II,<sup>8</sup> and this autonomy is based on the

fact that each discipline has its specific arena, its own methodology of research, its criteria for judgment; biology, statistics, ethics, law and deontology, all have different standards of reflection, specific research methodologies and criteria for judgment that agree and are consistent within their own research milieu. In a BC that consists of a physician, a gynecologist, a pharmacist, a specialist in statistics, an ethicist, a deontologist and a jurist, whenever these members will have to make a judgment about experiments with a medicine that may affect the fetus of a pregnant woman, each of them will have to make their own judgment: what are the risks, whether such a risk is justified and proportional, how frequent its occurrence may be, what deontology, ethics and the law have to say about it; these data have to be integrated so as to reach a judgment about the protocol being acceptable or not and to make a decision.<sup>9</sup>

But again, integration can be understood in various ways, according to whether the data to be incorporated belong to the same area of knowledge pertaining to the experimental sciences or

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7 Cf. A. G. SPAGNOLO – A. A. BIGNAMINI – A. DE FRANCISCIS, “I Comitati di etica fra linee-guida dell’Unione europea e decreti ministeriali”, in *Medicina e morale* 6 (1997), 1059-1098.

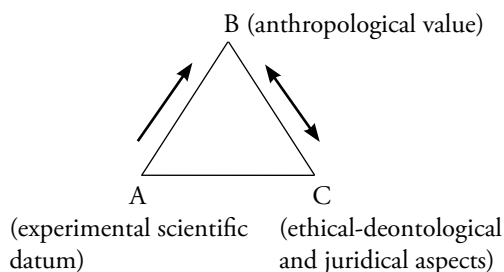
8 VATICAN COUNCIL II, *Gaudium et Spes*, 36.

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9 This notion of “integration” came to me after reading some suggestions made by philosopher-theologian Bernard J.F. Lonergan, whose works are now being published by Città Nuova, (a cura di P.N. Spaccapelo e S. Muratore): I have tried to apply this methodological opinion to our present discussion on a confrontation between experimental sciences and philosophical anthropology.

else an integration is called for between data belonging to the experimental sciences and those pertaining to values and norms. In the first case, for instance, data coming from biology, pharmacology, gynecology, statistics, belonging to the same experimental area it will be enough for the results to be added one next to the other as in a circle, to formulate a judgment about their factual reality.

When evaluating the data ethically and confront them with values, what is needed is a “triangular” figure, consisting in examining the scientific fact globally and objectively in its entirety (for instance, the data that are known about the taking of a specific drug by a pregnant woman in the light of biology, pharmacology, gynecology, embryology, statistics etc.), after which one has to consider what this implies as far as its anthropological value (the woman or the baby’s health) is concerned; and finally what possible side-effects and bioethical considerations may mean in the light of values and norms, and also what norms are already at hand at the deontological and juridical level. This brings us more or less to the following figure:<sup>10</sup>



It seems to us that only with this kind of methodology can one be respectful of the autonomy of the sciences and their epistemology, while guaranteeing an interdisciplinary debate that may lead to a bioethical judgment.

The answer is more complex in the pluralistic application. As we know, except for the case of scientific or hospital centers that are formally and from the start professing the same ethical vision (for instance Catholic hospitals and centers), BC components or members, be they professionals or not, may refer to ethical models that differ and are sometimes even opposed to each other; their orientation may be liberal, utilitarian, contractualistic etc.

It is not always possible to reach an agreement by simply confronting single cases and decisions. Pluralism is found also as far as various religions are concerned.

What should the procedures be, for a consensus decision or at least for some decision to be reached?

It would seem that, in relation with the patient or the citizen’s good, the path of “minimal ethics” cannot

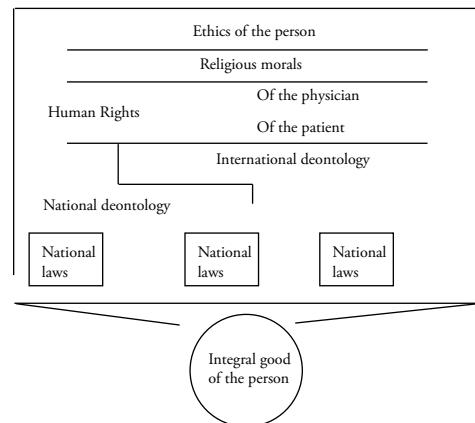
10 SGRECCIA, *Manuale di bioetica*, 242.

be embraced. Even if we admit that a lowest common denominator could be found between the various currents of thought, which at times can be strongly contrasting, very often what has to be faced is the whether or not to accept the maximum value or not, i.e. life or death: for example, to help a low birth weight newborn baby at risk to live or let it die, to allow assisted suicide or not, to allow “therapeutic” abortion or not.

Nor does a procedural theory seem acceptable, that would consider any decision valid as long as procedures are followed (informed consent of the patient, majority of patients, obeying the law, etc.), because procedural ethics is the ethics of the majority, and does not take into account the objective good nor the person who cannot express their own consent. In fact, some procedures are being used that are founded on criteria that already have a certain consensus: starting from the legislative datum (not always coinciding with ethics) one can examine the datum of the “rights of man” codified by conventions, declarations, recommendations, directives issued by institutions that are present in each continent; in Europe numerous series of norms have been issued by the Council of Europe, by the European Parliament and their BCs.<sup>11</sup> Each BC that is operating in the hospitals or in the research centers considers as a va-

lid reference point the documents of a deontological nature issued by the World Medical Association, particularly the Helsinki Declaration, that up to today has been updated various times, whenever new problems have been arising.<sup>12</sup> The deontological codes that are being published and updated by the doctor’s associations – in those countries where they exist—often allow for differences to be overcome, at least within a specific territory.

We—who make reference to the foundation of an ontological personalism—uphold that debate and dialogue should turn towards the global good of the person and should search for the common good through the realization of the good of the single person. The chart which we are reproducing here may help as an orientation for this methodology.



11 CONSEIL D'EUROPE, *La santé face aux droits de l'homme, à l'éthique et aux morales*, Strasbourg 1996.

12 Helsinki Declaration, 1962, modified at Helsinki in 1964, updated in Tokyo in 1975, Venice in 1983, Hong Kong in 1989 and Somerset-West (South Africa) in 1996.

But a few controversial items will remain, and require the formulation of the majority or the minority and even the signature of a single member.

This is not only possible but also a duty, because BCs have a consultative character and leave the responsibility on the professional (researcher or physician), who will have to decide, and the presence of different opinions will help him take the decision that remains the responsibility of the person invested with authority.

This does not decrease the importance or the merits of the said committees whose opinions are often required, if not absolutely binding in nature: the effort in searching for a dialogue, for a cultural elaboration and facing the data represent a real patrimony also as far as ethical and bioethical literature are concerned.<sup>13</sup>

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13 Having been a member of many committees, at the national level and in various hospital or research milieus, I have noted that only rarely does the necessity arise to verbalize a motivated minority opinion or a single dissent, on many opinions and documents in which I participated in the discussions, even if at times discussions may become lively and lengthy.

# Biotechnology: the State and Fundamentalism

Elio Sgreccia

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*The relationship between religious concerns and the civil law is a subject of debate, especially when considering the possible interventions of the law in the area of genetics and procreation. Dialogue between religious faiths and democratic regimes becomes all the more urgent so as to avoid not only forms of religious fundamentalism but also the stances of alleged moral neutrality of liberal democracies. The religious phenomenon of Catholic Christianity posits three fundamental requirements for a correct relationship between faith and law: Anthropology, epistemology, and the acceptance, in principle, of the democratic system which guarantees a universal right to liberty/responsibility in a climate of dialogue and persuasion. In relation to genetics and artificial procreation there are precise guidelines of a normative and juridical nature which derive from an outlook centred on the dignity of the human person: the protection of the human person, that is the defence of the right to life; the principle of non-discrimination; the prohibition of all non-therapeutic genetic engineering procedures; the prohibition of patenting the human genome; the promotion of research regarding genetic therapies; and the protection of persons who work in biotechnical laboratories or who perform experiments on DNA (↗ Bioethics Committees; Informed Consent; Family and the Principle of Subsidiarity; Imperfect and Unjust Laws; New Human Rights; New Paradigms of Health; What Bioethics?; Quality of Life; Reproductive Health).*

As is clear from the ever increasing literature on the subject, there is a widespread feeling in western society of an ever more urgent need for a renewed dialogue between religious faiths and democratic regimes.<sup>1</sup> This is demon-

strated, on the one hand, by the growing rejection of all forms of radicalism and fundamentalism, present especially in Islamic areas, and on the other by a cultural impoverishment deriving from secularism. It is also demonstrated

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1 "The various forms of fundamentalism will probably come to represent one of the most serious problems that will have to be faced at the close of this millennium, both in the east and in the west, in the north and in the south. An already copious literature grows from day

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to day." (S. BELARDINELLI, "Religious fundamentalism and juridical experience. A socio-political perspective," in F. D'Agostino, *Ius Divinum. Fondamentalismo religioso ed esperienza giuridica*, Giappichelli, Torino 1998, 41).

by the crisis facing basic concepts of post modernism such as the relativism of moral values and the denial of any relevance for theology -- concepts that underlie the idea of secularism as understood in many current democracies. These instances presently call for the re-discovery of a more positive relationship of dialogue between religious faith and secular reason.<sup>2</sup>

While the prevalent model of contemporary western democratic organization is that of a democracy which prescind from the contribution of religion, and is thereby defined as "secular" [but is in fact agnostic], faced with such a model, there arises the more threatening one of "religious" fundamentalism which denies liberty and pluralism.

The so-called "neutrality" of liberal democracies, in matters of moral values, paradoxically encourages the development of anti liberal and contradictory attitudes. John Paul II, in his encyclical *Evangelium Vitae*, denounces this paradoxical characteristic since many liberal democracies, while recognising the equality of all human beings, nevertheless legalise abortion and euthanasia.<sup>3</sup>

On the other hand, the impoverishment of law brought about because of the rejection of any form of theological input can well be described by quoting D'Agostino: "The science of law, because of its exclusion of all theological reflection, must pay a very high price. It consists in a surrender to rational calculation in formalization, and therefore in the systematic deformation of the basic juridical concepts. The law is reduced from experience to system; responsibility to imputation; authority to power; the administration of justice to executive procedure; marriage to a contract; and the person to a mere subject of the law. The most serious consequence of all is that justice is no longer regarded as a subject of interest for the jurist and is classed as a concept of interest only to ethics and politics."<sup>4</sup>

D'Agostino also contends that "only Christian teaching is capable of providing human rights with an authentic basis, considerably more stable than that afforded by any other outlook, by decidedly rejecting that such rights rest on a merely voluntaristic basis, derived from hypothetical and problematic theories of social contracts"<sup>5</sup> that are binding only on those capable of perfecting such contracts.

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2 D'AGOSTINO, *Ius Divinum*; L. PALAZZANI - M. MANZIN, *Cristianesimo, occidente e valori dimenticati*, CIDAS, Torino 2000; S. EISENSTADT, *Fondamentalismo e modernità*, Laterza, Bari-Roma 1994; CONCILIO VATICANO II, declaration *Dignitatis humanae*; ibid. pastoral constitution *Gaudium et spes*.

3 Cf. JOHN PAUL II, encyclical letter

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*Evangelium vitae* (25 March 1995), 4.

4 F. D'AGOSTINO, "Teologia del diritto alla prova del fondamentalismo", in D'AGOSTINO, F., *IUS DIVINUM*, 119.

5 F. D'AGOSTINO, *Diritto e giustizia*, San Paolo, Cinisello Balsamo (MI) 2000, 29.



On the other hand, the rise of post industrial, technological society makes an ever more urgent appeal that laws and values give meaning to civilisation itself, and stability to progress: progress, as is generally recognised, however, cannot be automatically assumed to be positive without recourse to the principles of ethics and responsibility.

N. Luhmann, as early as 1976, noted: "It may well prove that the future will be obliged to direct the energies of mankind towards stabilising factors and towards the natural data of our existence. It may be that the acceleration experienced to date is only the beginning of a passing force, after which a redistribution will have to be made of the respective quotas existing between duration and survival, transformation and change."<sup>6</sup>

Reflecting Luhmann's view, T Serra adds: "Substantially, with the rise of post industrial, technological civilisation, technocracy, the possibilities of manipulating not only external nature, but also human realities, are such that there emerges, with pressing urgency, a need to make reference to *veritas*, that is, to a legitimating value that once again establishes law for the existence of man himself."<sup>7</sup>

To my mind, it would be tragic for our society not to accept this call as a "sign of the times", urging us to rediscover the constitutive values of human society and juridical practice, in the wake of the destructive storm of philosophical relativism, ethical non-cognitivism and nihilism, and positivistic legal theory. This was basically the call to hope and the outlook for the future proposed by the Pope in his encyclical *Veritatis splendor*.<sup>8</sup> On the other hand, the very concept of pluralism at the heart of current democratic systems implies that some truths, such as the concept of the human person as a being capable of rational relationships, must be admitted and that the principle of coexistence and of human dignity must be accepted.

This difficult, but urgent, path may well avoid an eruption in current societies, not only in the East and Middle East, and not only by the use of Islam by more or less strong or weak forms of religious or (paradoxically) secular fundamentalism.<sup>9</sup>

An acceptable definition of fundamentalism that emerges from the vast literature on the subject is that of S. Amato, which derives from that proposed by E. Eisenstadt: "The belief of

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6 N. LUHMANN, "The Future Cannot Begin: Temporal Structures in Modern Society," *Social Research* (1976), 130-132.

7 T. SERRA, "Tradizione e legge fondamentale" in D'AGOSTINO, *IUS DIVINUM*, 225.

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8 JOHN PAUL II, encyclical letter *Veritatis splendor* (6 August 1993).

9 On secular forms of fundamentalism, cf. EISENSTADT, *Fondamentalismo e modernità*; BELARDINELLI, "Fondamentalismo religioso."

some organised group or institution that it has a special and exclusive means of accessing the truth", "a form of religious Jacobinism in which totalitarianism, universalism and Messianism are variously linked to a clear rejection of certain aspects of modern culture."<sup>10</sup>

When fundamentalism emerges within the so-called "religions of the Book" (Jews, Christians of varying confessions, and Islam), it represents a hermeneutic error because the written text has to be understood within a correct interpretation, referring both to its literary genres and to the entire *corpus* of reflection on the message being transmitted, and -- especially within the Catholic Church -- to the mediation of theological tradition.

More generally, however, any form of religious fundamentalism which is imposed as an automatic and radical solution to social problems commits an epistemological error since it denies any need for agreement among the sciences, each of which (especially the physical sciences, law and philosophy) has its own proper object, method and relative autonomy to establish with other sciences, taking into account the proper interests of each of these, so as to resolve the problems of society. Since it cannot

be resolved by a simplistic or immediate reference solely to a religious text, every contemporary problem that can arise concerning the social aspect of scientific research and the various applications of technology necessitates hearing the contribution of the various sciences.

## **RELIGIOUS FAITH AND JURIDICAL NORMS FACING THE PROBLEMS POSED BY PROGRESS IN GENETICS AND PROCREATION**

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The Catholic claim for an existent harmony between faith and reason was vigorously asserted in the encyclical letter *Fides et Ratio*.<sup>11</sup> In its introduction, the pontifical document symbolically describes faith and reason as "two wings" conducting the spirit to an encounter with truth. This important document also refers to the necessary relationship of respect and harmony that must obtain between faith and reason, and technology and ethics.

The claim of Christians--and especially Catholics--to a harmony between faith and reason is, in turn, founded on a further datum of a metaphysical nature (which can also be arrived at by the light of reason and revelation), namely the datum of creation. It is by virtue of creation that adoration and acceptance of God can be connected with man, the "image of God," who has been consti-

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10 S. AMATO, "Fede e fedeltà: fondamentalismo e principio di legalità," in D'AGOSTINO, *Ius Divinum*, 1-3; cf. Also J. STRANGAS, "I rapporti tra fondamentalismo religioso ed esperienza giuridica," in D'AGOSTINO, *Ius Divinum*, 299-330.

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11 JOHN PAUL II, encyclical letter *Fides et ratio* (14 September 1998).

tuted as His partner, and who, together with God, has responsibility for his own life, that of others, and for cosmic and environmental reality. Intrinsic to this idea is respect for man's freedom of conscience, which includes religious freedom, and also a rejection of coercion. To my mind, therefore, the very nature of the phenomenon of religion in general, and Catholic Christianity in particular, poses three fundamental and antecedent requirements for a correct relationship between faith and law.

Firstly, the anthropological requirement, consisting of a conception of man that requires respect for the dignity of every human person: and offences against the dignity of man, even if motivated by an erroneous religious reason, is an offence against God, while, on the other hand, honour due to God must find concrete expression in respect for man who is created in his image and likeness. Respect for man, however, should not be understood in a reductive sense, that is, it cannot be reduced simply to respect for his conscience. Rather, it has to be understood as respect for his life, from the first moment of man's existence, as the basis for all other human goods.

The second requirement belongs to the epistemological order: faith should not oppose rational scientific research. Rather, it should point to the very meaning of research itself in the context of the ends of man and the respect due to his dignity. Likewise, science should

respect the role proper to faith and the realization of human values inherent in man's transcendental dignity. To ignore values proper to the spiritual and moral dimension of the person would be contrary to the harmony of knowledge, and demonstrate a form of radicalism and intolerance rather than secularism. True secularism, indeed, respects and takes account of plurality and the harmony of the sciences and of values.

The principle of the acceptance of democracy: Every human being should be guaranteed a right to liberty/responsibility, in a context of dialogue and persuasion, as well as being assured of the possibility of dissent in matters touching on fundamental human values. Once again, it is necessary to specify that, in the State, it is the democratic method as such which requires the duty to defend the life of every man and to create those conditions necessary for the development of every person in justice and solidarity.

Respect for the democratic system also implies that the churches have the right not only to espouse values that they regard as important, but also that they have the right to work for their realization by lawful means, in accordance with the spirit and the letter of Article 8 of the *Universal Declaration of Human Rights*. It is not a danger for societies that religious values are proposed, even by minorities, when they are advanced within the framework of the democratic

process.<sup>12</sup> Rather, such is an enrichment of democracy and a stimulus for liberty and responsibility.

This objective is not easily achieved in present day societies that are often contradictory when compared with an actual true democracy; positions are sometimes legitimated that are injurious to man's fundamental rights, as happens in the case of permissive laws in relation to abortion and euthanasia. The believer, as citizen, is obliged to use every possible means of modifying such laws which are contrary to the dignity of man. He has to use the means of persuasion and reason since these are basic human values and not just religious values. Where such is not possible because believers are in a minority -- which we shall consider later -- the Christian can and should use not only conscientious objection available to professionals, but should strive to limit the damage being done to society also through the laws.<sup>13</sup>

Before entering into the specific details of a possible concurrence between religious values and the law in the context of the law governing the area of genetics and artificial procreation, we must first consider, or recall, the diverse functions of morality and of law

in the life of society. It is well known that the law cannot encompass the entire subjective moral order, nor indeed extend the law to cover every possible area of moral activity. It cannot, for example, encompass intentions or interior acts. The law must consider the common good as it emerges from interpersonal relationships. The common good is to be understood as the good of all persons pursued by effecting the good of every single person. The law of the state, therefore, must create the conditions so that the good of all is protected and pursued by encouraging the good of every person.<sup>14</sup>

*Donum Vitae*, the document of the Catholic Church's Magisterium which most explicitly examines the question of the defence of life and of the dignity of procreation, referring indeed to the rights of man, states the following:

The intervention of the public authority must be inspired by the rational principles which regulate the relationships between civil law and moral law. The task of the civil law is to ensure the common good of people through the recognition of and the defence of fundamental rights and through the promotion of peace and of public morality. In no sphere of life can the civil law take the place of conscience or dic-

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12 J.A. LEAÑEZ MARTIN, "Educar en convicciones atentas al Espíritu democrático?" in D'AGOSTINO *Ius Divinum*, 143-164.

13 Paragraphs 72-73 of the encyclical *Evangelium vitae*, as is evident from our synthesis, describes the presence of Christians in situations which deny fundamental values.

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14 J. MARITAIN, *I diritti dell'uomo e la legge naturale*, Vita e Pensiero, Milano 1977, 4-5.

tate norms concerning things which are outside its competence. It must sometimes tolerate, for the sake of public order, things which it cannot forbid without a greater evil resulting. However, the inalienable rights of the person must be recognized and respected by civil society and the political authority. These human rights depend neither on single individuals nor on parents; nor do they represent a concession made by society and the State: they pertain to human nature and are inherent in the person by virtue of the creative act from which the person took his or her origin.<sup>15</sup>

This passage brings us to the real focal point: the encounter between morality and law, between faith and law, can only be accomplished on the grounds of respect for nature and for the dignity proper to man as such.

This implies a concrete and total understanding of nature, and not just a reference to biological reality, nor mere subjectivity, but in a unitary sense: man is an individual human being in that he is intrinsically a unity of body and soul; man is a being whose body exists because of his spiritual soul which actualizes and structures it. The "I" that is each person implies such a unity, and implies it from the moment of concep-

tion until natural death. We would not be operating in the human order were we to consider man merely from a biological perspective,<sup>16</sup> or merely from the perspective of spiritual freedom: the biological is pervaded and structured by the spiritual, and the spirit is the structuring and animating principle of the corporeal.

The realism that sees body and soul in the unity of the person can be a locus of encounter for the varying ethical positions that exist: ethics cannot be done without anthropology, and one cannot start with an unrealistic anthropology incapable of grasping the "uni-totality" of the person.

In contrast with reductionist visions of anthropology which consider the corporeal merely in a materialist sense, or the spiritual in a merely subjective sense, we are called to grapple with a realistic, unitary and universal, anthropology which considers the totality of man, and all human beings, without discrimination. This is the anthropology at the basis of the universal declaration of human rights in which the Catholic Church recognises the essential points of its own theological and anthropological

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15 CONGREGATION FOR THE DOCTRINE OF THE FAITH, *Instruction Donum vitae* (1987), part III.

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16 S. VANNI ROVIGHI, *Elementi di filosofia* La Scuola, Brescia 1963; *ibid.*, *L'antropologia filosofica in S. Tommaso d'Aquino*, Milano 1965; E. SGRECCIA, *Manuale di bioetica*, 1: *Fondamenti ed etica biomedica*, Vita e Pensiero, Milano 1999, especially cf. c. "La persona e il suo corpo," 101-131.

tradition.<sup>17</sup> The danger currently facing the rights of man is that of understanding man merely subjectively and not in his totality.

Starting with this unitary and universal anthropology, we can now begin to consider some orientation guidelines for positive law in the area of genetics and procreation. These guidelines will allow us to establish a point of intersection between the claims of faith and those of law in the light of the crucial value of the dignity of the human person, a value that is central to religion - especially Catholicism -- and for the Western juridical tradition.

## **NORMATIVE JURIDICAL GUIDELINES ON GENETICS AND ARTIFICIAL PROCREATION**

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For a correct understanding of the juridical and ethical problems concerning genetics, it is necessary to begin with a consideration of what the genetic code means for the corporeity of a particular person. In the light of what has been revealed to us by experimental science, and confirmed in the past fifty years, especially after the mapping of the human DNA, the genetic code determines the structure of corporeal individuality, both in terms of assignment to the human species, and in terms of specific individual characteristics. The genetic code can only affect psychological de-

velopment indirectly, since such is tied to relational and cultural factors.

The genetic code, however, is not a constituent measure or determining factor of the dignity of the human person. The dignity of the human person depends on the spirit or spiritual soul of the person which informs and qualifies the corporeal reality of every individual human person. In other words, genes do not confer dignity on the human person. Rather, it is the spiritual component of the person that affords dignity to the person's corporeal component and to its specific genetic characteristics. Hence, personal human dignity remains intact in an individual who is genetically defective or ill.

Affirming such does not imply a diminution of the importance of genetics at a juridical-ethical level. On the contrary, it serves to highlight its importance: correcting a gene or a defective chromosome means producing a benefit, not only for the bodily component of a given individual, but for his entire person, and allowing the person to express its existence to a greater degree.<sup>18</sup>

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18 SGRECCIA, *Manuale di bioetica*, 293-383, with its extensive bibliography; R. COLOMBO, "The Human Genome Project: The Aim and the Limits of Research" in PONTIFICIA ACADEMIA PRO VITA, *Human Genome, Human Person and Society of the Future*, by J. VIAL CORREA, and E. SGRECCIA, Liberia Editrice Vaticana, Città del Vaticano 1999, 40-141.

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17 D'AGOSTINO, *Diritto e giustizia*, 20-30.

In establishing that which is morally licit and that which must be conceded by the law in the area of procedures that are technically possible in genetics, it is insufficient to refer only to the results of such procedures or to their biological utility. The results of attempts to eradicate genetic defects, for example, by sterilizing persons who are carriers of known genetic or chromosomal disease, while “technically” efficient, could not be regarded as consonant with human dignity and should not be permitted by the law (as happened under the Nazi regime), since they deprive the individual of his integrity. On the other hand, for example, a therapeutic procedure carried out on the haematopoietic cells of an adult to cure him of Mediterranean anaemia, if technically feasible, is possible because it restores him to health without impairing any other faculties of the person. Hence, the determinative criterion for licitness or legitimacy must always be the dignity of the human person considered in his totality. Bearing in mind the dichotomy between the notable diagnostic possibilities that genetics have arrived at today, and the concomitant lack of therapeutic possibilities, it is easy to understand the situation facing the law in its duty to protect the individual from types of genetic selection and discrimination that are advanced on the basis of diagnoses for genetic diseases which are still incurable.

In a system, therefore, that regards human dignity as the basis for action,

legislative principles ought to strive for the following objectives:

- a. The protection of every single human being, which is the defense of the right to life of every innocent human being, even those suffering from genetic defects. The right to life grounds the right to equality and to non-discrimination. In this context, the delicate problem of the legalization of abortion arises and in reference to which many laws have arrived at an increasingly lower common denominator of morality and legality. The right to life is the fundamental right of the person, because all other rights are based on it. Neither can the reason, often overlooked by science, be set forth for the ontological difference between human being and human person promoted by the so-called “gradualist theory”<sup>19</sup> of development: in reality, however, by killing the embryo an individual is extinguished and the human person is deprived of fundamental value.
- b. The principle of non-discrimination must also obtain in respect to the social rights of persons suffering

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19 PONTIFICIA ACADEMIA PRO VITA, *Identity and Status of the Human Embryo*, by J. VIAL CORREA, and E. SGRECCIA, Libreria Editrice Vaticana, Città del Vaticano 1997; G. HERRANZ, “Medical Ethical Problems in Prenatal and Preimplantation Genetic Diagnosis”, in PONTIFICIA ACADEMIA PRO VITA, *Human Genome*, 190-211.

from genetic handicaps, including the right to work, and the right to have access to health insurance in accordance with justice and equity.<sup>20</sup> Discrimination is the contrary of the principle of equality that is clearly affirmed by the rights of man and inherent in a personalist anthropology.

c. Prohibition of all non therapeutic manipulative procedures designed to create individuals with superior or interspecific characteristics, including also by this a prohibition of cloning,<sup>21</sup> both for reproductive and so-called "therapeutic" purposes. Every manipulative procedure is an abuse of power by one man over another and is injurious to the principle of the equality of persons.

d. A prohibition on patenting the human genome and on discoveries pertaining to diagnostic and therapeutic procedures. A patent that could be considered legitimate for inventions in biotechnology cannot be considered legitimate to establish property rights on discoveries con-

nected with the human genome or on diagnostic and therapeutic procedures that should be made available to medicine.<sup>22</sup>

e. Research in genetic therapy should, however, be encouraged so as to be able to arrive at the possibility of being able to replace defective or disease bearing genes with healthy genes. We know now that this is beginning to be possible in gene therapy on somatic cells, while genetic therapy cannot be practised on cells taken from stem cells, at least until pre-clinical trials (on animals) have demonstrated that new genes can be implanted without risk.<sup>23</sup> Moreover, studies and the best available knowledge on genetic mechanisms can also contribute indirectly to the treatment of cancer, and to curing hereditary diseases which is a decisively important source of hope for the future of humanity. Such hope has inspired the project of mapping

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20 A. FIORI, "Genetic Tests in Legal Medicine and Criminology" in PONTIFICIA ACADEMIA PRO VITA, *Human Genome*, 270-284.

21 PONTIFICIA ACADEMIA PRO VITA, *Reflections on Cloning*, Libreria Editrice Vaticana, Città del Vaticano 1997; J. VIAL CORREA, "Cloning between Science and Ethics," in PONTIFICIA ACADEMIA PRO VITA, *Human Genome*, 318-340.

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22 W. WALDSTEIN, "The Responsibility of the Law towards the Application of Biotechnologies of Man in PONTIFICIA ACADEMIA PRO VITA, *Human Genome*, 395-413; E. SGRECCIA, - V. MELE, *Ingegneria genetica e biotecnologie nel futuro dell'uomo*, Vita e Pensiero, Milano 1992; PONTIFICIA ACADEMIA PRO VITA, *Biotecnologie animali e vegetali*, Libreria Editrice Vaticana, Città del Vaticano 1999.

23 H. WATT, "Human Genetherapy: Ethical Aspects" in PONTIFICIA ACADEMIA PRO VITA, *Human Genome*, 255-270.



the entire human genome whose sequential phase has recently concluded.

f. The protection of individuals who are laboratory workers and who undertake experiments on human DNA and the monitoring of the effects of releasing genetically modified organisms into the environment, and on the effects of genetic modification on food stuffs. Current discussions about genetically modified organisms (GMO) are polemical and sometimes influenced by fear, insinuation, and ideologies. The elements to be considered in any ethical evaluation of this situation are: conservation of man's health and hence risk evaluation and control; the conservation of biodiversity; informing the public and interested parties; and the protection of the rights of populations in the face of monopolies. Clearly, the law must ensure a correct relationship between biotechnical research and the health-safety of alimentary or therapeutic products. It cannot, however, impose a fundamentalist type of ban on all types of applications deriving from various biotechnologies.<sup>24</sup>

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24 E. SGRECCIA, - V. MELE, "Bioetica. Biotecnologie animali e vegetali," in PONTIFICIA ACADEMIA PRO VITA, *Biotecnologie animali e vegetali*, 83-101; BUONUOMO, V., "Brevetti e brevettabilità delle biotecnologie: alcuni considerazioni

A new phase of reflection is opening up on all of the abovementioned fronts under the heading of "bio-rights", following the development of laws on the various applications of genetics. In 1996, UNESCO proposed a universal Declaration on the protection of the human genome. It takes up many of the points that I have raised, but some -- including myself, have pointed to a lack of clarity on the protection of the human genome at its prenatal phase.<sup>25</sup> In 1998, the European parliament published a directive on the patenting of DNA.<sup>26</sup>

Many orientational guidelines have been published, such as the Recommendations of the Council of Europe in 1982 and in 1989, the pronouncements of various national committees on bioethics as well as some important directives emanating from government organisations such as the US National Institutes of Health (NIH), especially on the subject of alterative genetic en-

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sugli aspetti giuridici" in PONTIFICIA ACADEMIA PRO VITA, *Biotecnologie animali e vegetali*, 101-148. Concerning the "culture of suspicion" in relation to biotechnology in general, cf. RIFKIN, E., *Il secolo Biotech: il commercio genetico l'inizio di una nuova era* (original title *Biotech Century*), Baldini and Castoldi, Milano 1998.

25 UNESCO, *Déclaration universelle sur la protection du génome humain*, Paris 1996.

26 Directive of the European Parliament and of the Council for the legal protection of biotechnological inventions, Brussels, 12 May 1998.

gineering.<sup>27</sup> Of note also are the positions adopted by many international organisations on cloning. Such documents, however, do not always extend the prohibition on cloning to include “therapeutic” cloning, that is, cloning for the production of cells and tissues for certain therapies of grave illnesses and for organ repair. If we confront such cases with the dignity of the human person, the prohibition on cloning ought also to apply since the human being—for such is the human embryo or the foetus—is either instrumentalized or destroyed.

Law, however, following the push from research and its results, is also facing the complex subject of procreation. It is another “delicate” area where it is difficult, but not impossible, for the application of the faith and the law to meet. This is possible if the measure one uses is the value of the dignity of the person.

As a preliminary remark, especially in relation to this area, and bearing in mind that ethics and law are not co-extensive, we must again recall the need for the law to recognise the fundamental values of the human person and, hence, the person’s fundamental rights. The instruction *Donum Vitae* issued by the Magisterium of the Catholic Church in 1987, to which we have already referred, reminds us that it is the duty

of society and of political authority to guarantee respect for and acknowledgment of “the inalienable rights of the human person” and adds: Among such fundamental rights one should mention in this regard:

a) every human being’s right to life and physical integrity from the moment of conception until death;

b) the rights of the family and of marriage as an institution and, in this area, the child’s right to be conceived, brought into the world and brought up by his parents.<sup>28</sup>

Reflecting the official position of the Catholic Church, the same document makes appeal to reason and comments on the first point, that of the protection of every human being from conception to death, by referring to arguments drawn from reason:

When the State does not place its power at the service of the rights of each citizen, and in particular of the more vulnerable, the very foundations of a State based on law are undermined. The political authority consequently cannot give approval to the calling of human beings into existence through procedures which would expose them to those very grave risks noted previously.<sup>29</sup>

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27 On this subject see SGRECCIA, *Manuale di bioetica*, 295-299.

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28 CONGREGATION FOR THE DOCTRINE OF THE FAITH, Instruction *Donum vitae*, part III.

29 CONGREGATION FOR THE DOCTRINE OF THE FAITH, Instruction *Donum vitae*, part III.

When Catholics insist on this in those states where the question arises of the protection of the human embryo in the context of applying techniques of artificial procreation, such is not motivated solely by religious considerations, but also, and more basically, by the fundamental ethico-juridical principle of the right to life, which ought to be respected from the moment every human being begins its development.<sup>30</sup> In order to avoid foundering on this rock and the concomitant ethical and juridical scandal of the planned destruction or freezing of human embryos, itself a consequence of relating techniques of artificial procreation with voluntary abortion, some national committees and currents of thought have advanced the notion of the "pre-embryo" and the parallel notion of "progressive humanisation." We know, however, that such notions cannot stand, either at the level of reason or in law, since the individual human being develops, like every other living thing that is conceived, in a continuous, coordinated and autonomous way from the moment of conception, in which biological individuality is constituted, and to the exclusion of any differentiations of substance or value.<sup>31</sup>

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30 Regarding states that already have legislation on artificial procreation, cf. DI PIETRO; M.L. SGRECCIA, E., *Procreazione assistita e fecondazione artificiale*, La Scuola, Brescia 1999.

31 On this point we recommend the previously cited study of the PONTIFICIA

Let us look again at the conclusion of this document of the Catholic Church which rests -- as we have said -- on reasons drawn from humanity and scientifically proved:

As a consequence of the respect and protection which must be ensured for the unborn child from the moment of his conception, the law must provide appropriate penal sanctions for every deliberate violation of the child's rights. The law cannot tolerate -- indeed it must expressly forbid -- that human beings, even at the embryonic stage, should be treated as objects of experimentation, or mutilated, or destroyed on the grounds that they are superfluous or incapable of developing normally.<sup>32</sup>

While the position espoused by the Catholic Church is certainly inspired by religious faith, it is also supported by science and philosophy.

With regard to the protection due to the family, the Catholic Church again appeals to jurisprudence and to the duty of the state to protect the unity of the family, and consequently the true parent-children relationship. The aforementioned document states the following on this subject:

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ACADEMIA PRO VITA, *Identity and Status of the Human Embryo*.

32 CONGREGATION FOR THE DOCTRINE OF THE FAITH, Instruction *Donum vitae*, part III; cf. JOHN PAUL II, encyclical letter *Evangelium vitae*, 71.

The political authority is bound to guarantee to the institution of the family, upon which society is based, the juridical protection to which it has a right. From the very fact that it is at the service of people, the political authority must also be at the service of the family. Civil law cannot grant approval to techniques of artificial procreation which, for the benefit of third parties (doctors, biologists, economic or governmental powers), take away what is a right inherent in the relationship between spouses; and therefore civil law cannot legalize the donation of gametes between persons who are not legitimately united in marriage.<sup>33</sup>

Artificial procreation, therefore, is condemned as immoral and as unworthy of legalization, especially when carried out on a couple with the cooperation of a third party donor (“heterologous” artificial fertilization).

From a strictly moral perspective, the same document condemns artificial insemination and homologous artificial fertilization, which is fertilization effected with gametes harvested from the spouses, whenever such technical procedures can be construed as having “substituted for the conjugal act.” The relevant passage reads as follows: “The moral value of the intimate link

between the goods of marriage and between the meanings of the conjugal act is based upon the unity of the human being, a unity involving body and spiritual soul. ... the conjugal union must take place with respect for its openness to procreation; and the procreation of a person must be the fruit and the result of married love.”

In relation to artificial fertilization *in vitro* involving the transfer of embryos (IVF), *Donum Vitae* notes the following:

But even in a situation in which every precaution were taken to avoid the death of human embryos, homologous IVF and ET dissociates from the conjugal act the actions which are directed to human fertilization. For this reason the very nature of homologous IVF and ET also must be taken into account, even abstracting from the link with procured abortion. Homologous IVF and ET are brought about outside the bodies of the couple through actions of third parties whose competence and technical activity determine the success of the procedure. Such fertilization entrusts the life and identity of the embryo into the power of doctors and biologists and establishes the domination of technology over the origin and destiny of the human person...The Church remains opposed from the moral point of view to homologous *in vitro* fertilization.<sup>34</sup>

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33 CONGREGATION FOR THE DOCTRINE OF THE FAITH, Instruction *Donum vitae*, part III.

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34 CONGREGATION FOR THE

On the subject of intra corporal homologous artificial insemination, *Donum Vitae* says the following: “Homologous artificial insemination within marriage cannot be admitted except for those cases in which technical means are not a substitute for the conjugal act but serve to facilitate and to help so that the act attains its natural purpose”<sup>35</sup>

(↗ Assisted Procreation and IVF).

Clearly, a distinction is drawn between that which is contrary to the dignity of procreation (which also concerns the technical procedures of homologous artificial fertilization, except those which are not substitutes for the conjugal act but simply means of facilitating the fertility of the conjugal act as naturally effected) and that which is contrary to the law and to the common good, and particularly to the unity of the family (which also concerns the technical procedures of heterologous fertilization, taking account also of the aforesaid predictable loss of embryos).

In the light of the foregoing, a juridical prohibition of heterologous fertilization is to be expected as well as other forms of such fertilization involving “surrogate mothers,” “cloning,” and post-mortem fertilization, whose effects on parental roles are already more than evident.<sup>36</sup>

This implies that opposition to forms of homologous artificial fertilization has to be seen as a moral issue for spouses, especially those who accept the unity of marriage and the full dignity of the procreative act, while the Church calls for a legal prohibition of heterologous fertilization, surrogate fertilization and post-mortem fertilization. This graduated and differentiated opposition is explained by the fact that the conjunction of the unitive meaning and procreative meaning is a necessity and a moral value, while the intervention of a donor external to the conjugal community also legally injures marriage and the rights of children. The question remains as to the course of action open to Christians in a pluralistic and secular civil society in which these demands of the common good and of juridical considerations which have been advanced not so much on the basis of religious faith as on the those of reason and the law, are not accepted either in whole or in part: What rationally and ethically sustainable position ought the Christian faithful assume in such a secular and pluralistic society?

I believe that it is also my duty to address this question.

From what has already been said in conclusion to part of this reflection, I believe that any conflict between the community of the faithful and civil so-

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DOCTRINE OF THE FAITH, Instruction  
*Donum vitae*, part II, 5.

35 CONGREGATION FOR THE  
DOCTRINE OF THE FAITH, Instruction  
*Donum vitae*, part II, 6.

36 CONGREGATION FOR THE

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DOCTRINE OF THE FAITH, Instruction  
*Donum vitae*, part II, 3.

ciety has to be expressed in the context of respect for democracy; moreover, it is perfectly legitimate to expect that believers have a right to defend their religious convictions by lawful means, especially in the public forum and without impediment. In this view, professionals can be understood to have a right to conscientious objection, and non-violent forms of passive resistance can also be permitted. Such activities, however, cannot and ought not to be regarded as fundamentalism. We know that these activities have had an important democratic value in the struggle to vindicate the equal rights of peoples and oppressed cultural minorities. Such activities do not prevent Christians from having loyalty to democracy as they work for the common good in every sector of society. Indeed, this democratic struggle is not only legitimate but also indicative of the quest for the good of all citizens.

A final suggestion is offered by the Catholic Church to legislators who, as representatives of the people and as believers, are confronted with the impossibility of abolishing with their votes those laws that are contrary to life, in areas such as abortion, but who are in a position partially to improve them by supporting imperfect laws or proposed laws that are an improvement on previous laws. Guidance on this matter is to be found in two crucially important passages in the encyclical *Evangelium Vitae*:

In the case of an intrinsically unjust law, such as a law permitting abortion

or euthanasia, it is therefore never licit to obey it, or to “take part in a propaganda campaign in favour of such a law, or vote for it.” ...” A particular problem of conscience can arise in cases where a legislative vote would be decisive for the passage of a more restrictive law, aimed at limiting the number of authorized abortions, in place of a more permissive law already passed or ready to be voted on. Such cases are not infrequent. It is a fact that while in some parts of the world there continue to be campaigns to introduce laws favouring abortion, often supported by powerful international organizations, in other nations -- particularly those which have already experienced the bitter fruits of such permissive legislation -- there are growing signs of a rethinking in this matter. In a case like the one just mentioned, when it is not possible to overturn or completely abrogate a pro-abortion law, an elected official, whose absolute personal opposition to procured abortion was well known, could licitly support proposals aimed at limiting the harm done by such a law and at lessening its negative consequences at the level of general opinion and public morality. This does not in fact represent an illicit cooperation with an unjust law, but rather a legitimate and proper attempt to limit its evil aspects.<sup>37</sup>

In the democratic and legitimate effort to humanize the law, the task re-

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37 JOHN PAUL II, encyclical letter *Evangelium vitae*, 73.

mains for the western world to take up the invitation made in the document just cited:

It is therefore urgently necessary, for the future of society and the development of a sound democracy, to rediscover those essential and innate human and moral values which flow from the very truth of the human being and express and safeguard the dignity of the person: Values which no individual, no majority and no State can ever create, modify or destroy, but must only acknowledge, respect and promote.<sup>38</sup>

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38 JOHN PAUL II, encyclical letter *Evangelium vitae*, 71.





# Birth Control and Demographic Implosion

Michel Schooyans

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*The need to control births has been advanced since antiquity. One name stands out among the others, Malthus, who, already at the end of the XVIII century, maintained that humanity was headed toward catastrophe because, according to him, population grows in geometric progression while food resources only grow in arithmetic progression. The reasons he invoked were first of all economic. Disciples of Malthus, however, took over the job of completing the argumentation of the famous Anglican pastor with geographical, political and eugenic considerations, as well as a morality of pleasure. All these motives sound today in the great international assemblies where the questions of population and development are treated. The motivations invented to justify population control do not hold up under scientific scrutiny. Everywhere populations are ageing and even some are diminishing. The proportion of elderly people grows constantly, and the tension between generations is growing. Social security systems are tottering. One cannot therefore avoid speaking of a well-founded population implosion which is where population control policies are leading us. Faced with this crash, we need to redefine policies that take into account indisputable scientific conclusions: no obvious correlation between population and development exists. The growth in population is mainly the result of longer life expectancies. The most important resource is human capital. So, far from being threatened by the announced "population explosion", humanity is faced with a predicted population implosion that can be avoided if humanity decides to build a culture of life, a culture whose construction must pass through the promotion of the family and has on its horizon a civilization of love. (↗ Demography, Demographic Transition and Demographic policies; Domestic Economy; Family and the Principle of Subsidiarity; Family and Sustainable Development; Fertility and Continence; Demographic Implosion in Europe?; Contraceptive Mentality; A New Model of a Welfare State; Responsible Parenthood*

## AN OLD IDEA

The idea of birth control was already present in antiquity. In *The Laws*, Plato affirms that the population of a city cannot surpass 5,040 heads of families and

family residences (cf. V 737 e;740, d). In *The Politics* (II, 6), population control is also recommended by Aristotle. This idea reappears much later, for example in Thomas More's *Utopia* (1516)

and the *City of the Sun* of Campanella (1623). Beginning in the modern era, this question was taken up more and more frequently, especially in England. With different emphases it is present in Francis Bacon, Hobbes, Adam Smith, and Swift. This last published in 1729 a sulphurous work entitled *A Modest Proposal for Preventing Children of Poor People from being a Burden to their Parents or the Country*.

In this context one author stands alone: Thomas Malthus (1766-1834). The popularity of his theses are first due to their apparent simplicity and the forceful way in which they are asserted. Already in 1798 the famous Anglican pastor proclaimed: food production grows by arithmetic progression while population increases geometrically. The poor must delay their ages of marriage. Poor relief disrupts the laws of nature which wants the *selection* of the fit and the elimination of the others. Already in 1803 Malthus adds that "at the banquet of nature no place is reserved for him; he is really an intruder on the earth. Nature bids him take himself off, and she will not be slow to put this order into execution herself".<sup>1</sup>

Many times criticized and proved wrong, the concepts of the pastor are nonetheless implacably presented again

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1 The complete text of the famous moral allegory *The Apologue of the Banquet* by Malthus can be found in our work *the Totalitarian Trends of Liberalism*, St. Louis, Central Bureau, 1997, p.102.

and again. We find them either in their original formulation or elaborated on a given subject or, on the contrary, hidden. We will briefly follow these changes up to the present.<sup>2</sup>

## **MALTHUSIANISM AND ITS RAMIFICATIONS**

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Malthusian ideas are reinforced by the addition of *Organicism* as notably popularized by Herbert Spencer (1820-1903): human society is a body whose members have different worth seen in utilitarian terms or as to their dignity. It is inadmissible that the less endowed should do harm to the whole species. Therefore, it is necessary to help the process of natural selection, the theory developed by Darwin (1809-1882). Galton (1822-1911) would add that this selection had to be *artificial*. Doctors would have a primary role to play in this program of *Eugenics*.<sup>3</sup>

*NeoMalthusianism* came later, and it is best illustrated by Margaret Sanger (1883-1966). This current of thought mixes the Malthusian ideas on population with an individualistic, hedonistic

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2 We have devoted two works to these ideas and their posterity: *The Totalitarian Trends of Liberalism* cited above and *The Gospel Confronting World Disorder*, with a preface by Cardinal Ratzinger, St. Louis, Central Bureau, 1999.

3 On the influence of these ideas in France, see Anne CARO, *Histoire de l'eugénisme en France. Les médecins et la procréation. XIXe-XXe siècle*, Paris Éd. Du Seuil, 1995.

and utilitarian moral doctrine. This morality of individual pleasure *disassociates* sexual behavior with procreation. In sexual intercourse pleasure is the good, and children are the risk or even the evil to be avoided. Other persons are interesting insofar as they procure me pleasure or profit. Therefore marriage is rejected, “free love” is extolled, Eugenics is advocated, etc.

According to Malthus the arable land area of the earth inexorably limits food production and this limit is the inexorable *determining factor* in the number of people the earth can support. This theme of the earth leads to the contemporary *Environmentalism* as well as to concepts such as “*living space*”, “*spheres of influence*”, and “*borders*”.

The *Malthusian* can be compared to the tree whose sap nourishes three other ideologies: *Organicism*, *NeoMalthusianism*, and *Environmentalism*. In total we have *four components* whose interconnections appear already in the XIXth century. We shall show what formulations from these four ideologies just mentioned are taken up and spread today.<sup>4</sup>

## Revival of Malthusiasm

Under what forms has the original *Malthusian* doctrine appeared in the

speeches of governmental organizations like the United Nations or non-governmental organizations like the International Planned Parenthood Federation?

The increase of population, we are assured, is “exponential”. The production of food is not keeping up, they say and the earth can’t feed everyone. The poor in the Third World have too many children and are therefore responsible for their own misery. Population growth causes poverty and unemployment; it is an obstacle to development. The concentration of the poor in cities is a cause of juvenile delinquency and criminality as well.<sup>5</sup>

If one accepts these affirmations, no development is possible without population control. From the time of the *Second International Conference on Population* (Belgrade, 1965) planning births was presented as a form of development aid. Soon the term “monitoring” was used, that is to say, control or limit population growth. The *Mexico City Conference* (1984) mentioned the necessity of a plan of action. The most elaborate formulation of this plan was the object of the *Cairo International Conference on Population and Development* (1994). Since this conference states are regularly asked to explain what they are doing to implement the “plan of action” created

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<sup>4</sup> We analyze these problems in *La face cachée de l'ONU*, Paris, Éd. Le Sarmant/Fayard, 2000; also see our communication titled *La ONU y la Globalización*.

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<sup>5</sup> There are more details on the conferences which we will be mentioning in our work *Le Crash Démographique* Éd. Le Sarmant/Fayard, 1999; cf. especially chapter V “L’Onu et ses conférences concernant les Populations”.

by “consensus” in the Egyptian capital. The *Rio Conference* (1992) had already announced that the “carrying capacity” of the earth had already been reached or surpassed. In its original definition “sustainable development”

required population control. If this control was not realized, the “P” (population) bomb would soon explode.

### **The Revival of Organicism**

In 1946 Julian Huxley was made head of UNESCO. He was known to be in favor of the sterilization of the mentally handicapped and “those society doesn’t know what to do with”. A variant of this Eugenics can be found in Frederick Osborne, who became in 1952 the first president of the influential New York-based Population Council. This private institution deserves mention here because of the role the Rockefeller family played up to the present, through this council, in the demographic programs of the United States, the UN and its agencies, as well as numerous NGOs, the most important of whom is the International Planned Parenthood Federation (IPPF).

One will recall that Galton preferred artificial selection to the natural selection of Malthus. He introduced a *Volontarist*, that is to say interventionist, element. The poor are those who fail; the rich those who succeed. The first fail and thereby prove their inferiority; the second group succeeds and thus prove their giftedness. For the good of huma-

nity one must prevent the poor from procreating and facilitate the procreation among the gifted. More precisely, one must avoid that the whole of human society’s genetic patrimony is debased by the pressure coming from an uncontrolled population of the poor. At the *Bucharest Conference* (1974) this *Voluntarist* and *Eugenicist* dimension appeared in the form of demographic control requiring systematic action, especially among the poor.

### **Reprise of Neo-Malthusianism**

The first Neomalthusians expanded upon Individualist, Libertarian and Feminist arguments. Neomalthusianism today also insists on the right to pleasure of individuals and on the emancipation of women. Nonetheless, especially since the UNFPA’s 1994 report the education and emancipation of women is viewed as a powerful *means* to lower the growth of population. This is why the education of women must include an important element regarding sexual education and “reproductive health”. This last is one of the “new rights” that they want to get accepted: the right to contraception in all its forms beginning at adolescence, to Abortion, to Sterilization, to Euthanasia. These “new rights” are supposed to answer “unfulfilled needs”. At the *Copenhagen Conference* (1995), under pressure from homosexual pressure groups, these “new rights” were to cover “unbehaviors”.

During the *Beijing Conference*

(1995) the family was presented as the prototypical site of class struggle; the wife is oppressed by the husband, who in imposing the “burden” of motherhood prevents her from developing her potential by contributing to production. Women’s liberation therefore involves the destruction of the family. A classic theme of Neomalthusianism, the destruction of the family, appears now as “new models of the family”: next to the traditional heterosexual and monogamous family appear the so-called single parent, homosexual, reconstituted, etc. “families”.

In the course of this same conference all these themes were grouped under the label “*gender*”: the different roles attributed to men and women in society have no natural foundation, they are the product of culture and, as such, can and should be abolished. Each person is free to choose their own sex or to change it. We are in a full-blown cultural revolution.

### **Reprise of Environmentalism**

Malthus feared the disparity between arable land and food resources on the one hand and the number of mouths to be fed. Despite the scientific studies that contradict this Malthusian position, this belief of the Anglican pastor is now *extrapolated* to cover the relationship of the Earth to men. There are several visible stages in the enlarging upon Malthus’ demographic growth (geometric that is “exponential”) and the increase

of food production (arithmetic).

We are aboard the *Raft of the Medusa*, the famous painting by Géricault, or on the *Titanic* as it sinks. The ship Earth has six billion passengers and would be on the verge of sinking. Unfortunately the lifeboats can only carry a third to a fourth of the passengers. We therefore need to cut off without pity those who want to climb into the lifeboats or else all will perish.

In full conformity with the Malthusian tradition, those to be principally targeted are the poor. Their demographic growth is the cause of the degradation of the environment: deforestation, waste of resources, global warming, the shrinking of the Ozone layer, etc. Man is the great “predator”. The Rio Conference (1992) was totally devoted to these themes. Maurice King even recommends the creation of “reservations” in “parks” guarded by “rangers”, a kind of demographic police. Their job would be to “contain” poor populations within the limits of quotas. It would be the same for men as it is for elephants: they are a menace to the environment; the “natural” balance must be protected at all costs. If it proved impossible to contain the population growth of the poor, they would have to be allowed to die: a sort of self-selection. So modern relief and development aid would be judged following Malthus’ view of the “poor laws”. The message of Malthus is always current: helping the poor is to violate *nature’s* morality; if Mother Nature is violent, society should be as well.

The exaltation of the environment

has led to a radicalization of the environmental movement. Already at the Bucharest Conference (1974) population growth was judged to affect the environment and had become an international problem. "Aid" with this end in mind must be reinforced.

This radicalization was reflected again at the *Istanbul Conference* (1996) which reaffirmed—in a more prudently fashion it is true—the link between urban and rural planning and family planning.

## **THE IDEOLOGY OF DEMOGRAPHIC SECURITY**

### **Convergences**

Malthusianism, Organicism, Neomalthusianism, Environmentalism: all these ideologies converge on a central theme of supporting population control. They are presented in different ways and with different emphases capable of being reactivated and absorbed. In different guises the Malthusian chant about the excessive number of people being the main cause of humanity's ills reappears. It is therefore necessary to "*increase the aid*" that is spent on birth control programs and *strengthen the power and resources of international organizations*, especially the UN, its agencies and some trustworthy NGOs, with this goal in mind.

Malthusian ideas intertwine and give birth to a scientific ideology characterized by *monocausality*. The demographic parameter is so exalted as to be

invoked both to shed light on the past and to legitimize programs of action which are more and more voluntarist, that is to say, *imposed* on individuals and States.

We have called this ideology *the ideology of demographic security* in an analogous way to the "National Security" doctrines which was invoked by most Latin American military regimes in the 1960s.<sup>6</sup> They considered, following the arguments of North American and European theoreticians, that the struggle of the time was between the liberal and democratic *West* and the totalitarian and communist *East*. It was necessary to *contain*, that is to say block, the expansion coming from the East. This antagonism translated into a total war "*justifying*" support for *unsavory regimes*. This fascinating ideology used *fear* to impose sacrifices and even repression and violence on populations that wanted development and freedom.

The four mentioned ideologies we analyzed form part of the demographic security ideology. This last reinterprets the dominant antagonism as being the *North-South* relations, rich vs. poor. According to this ideology, the greatest menace is threatening the aging and even shrinking North comes from the poor *but much more populous* South. This leads to the imperious necessity to

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<sup>6</sup> See our works cited above: *The Totalitarian Trends of Liberalism*, *passim*; and *The Gospel Confronting World Disorder*, *passim*.

*contain*, that is to say keep in check, the demographic growth of the South using all possible means. The most cynical formulation of this doctrine is found in the *Kissinger Report* (1974).<sup>7</sup>

### A bouquet of axioms

Most of the elements just raised are taken up in the UN produced texts on population policies. The emphasis will vary from one agency to the next and in the different international conferences, but all the main ideas are taken up. They are placed at the service of a bouquet of axioms: without birth control there can be no food security, no health for all, no sustained development, no international peace, and not enough resources.

This bouquet of axioms, however, is not supported by any scientific conclusion. They are at the service of the ideology of demographic security. This last considers that the dominant conflict is now between the South and the North. The developing South where the median age is under 30 is opposed to the North where the median age of 40 will become over 50 by 2050. René Dumont was a counselor to both Mitterand and Mao. He used a phrase of Margaret Sanger, affirming without blinking that the popu-

lations of rich countries must practice birth control in order that their example might be followed by the populations in poor countries.<sup>8</sup>

### The demographic crash

Demographers have brought to light the pattern of the *demographic transition*, that Gérard François Dumont explains in detail in this work (see pp. Of the present work). This expression designates the *passage* from a demographic situation characterized by both high mortality and high fertility to a demographic regime characterized by *both* low mortality and low fertility. This passage or this transition has taken place or is taking place much more quickly in the developing world. Very generally accepted by the scientific community, this pattern shows the natural and spontaneous mechanisms which regulate population. A discussion took place among demographers about the impact of this observation.<sup>9</sup> The most radical position considers that population control has only a small impact on fertility. Without having any doubts about the demographic transition pattern, no one any longer denies the efficiency of

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7 Cf. *The Life and Death of NSSM 200* ["Kissinger Report"], published by Stephen D. Mumford. The text of the report is found on pages 47-186. This book may be ordered from the Center for Research on Population and Security, P.O. Box 13067, Research Triangle Park, NC 27709, USA

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8 See René Dumont, *L'utopie ou la mort*, Paris, Éd. Du Seuil, 1973, pp. 47.

9 Cf. for example on this subject Ghazi M. FAROOQ and George B. SIMMONS (ed), *Fertility in Developing Countries*, London, Ed. Macmillan, reprinted. 1991; see especially the contribution by G.B. Simmons, "Theory of Fertility," pp.20-55.

population control campaigns. This is reflected in a series of frequently alarming empirical observations which we will enumerate.<sup>10</sup>

1. *Generalized aging* of populations. The number of persons over 60 years of age should triple between 2001 and 2050 going from 606 million to 2 billion. A question then arises: how many women will be in fertile ages and what will be the level of their fertility? According to the UN Population Division's projections for 2000-2005, for the 187 countries treated, 64 will have a fertility level of 2.1 less. But we are amazed to note that for the period 2040-2050 170 out of the 187 countries are equal to or lower than the replacement fertility rate of 2.1. Let us recall that the replacement of a population requires that each women have an average of at least 2.1 children in countries that have the best living conditions.

2. *Population decrease* is striking more and more countries. In 2050, according to the median projection, 39 countries will have decreasing populations. This is the case for 30 European countries and

also for Cuba, Guyana, Barbados. Germany, for example, would lose 14% of its population and Italy 25%.

3. *Increasing proportion of dependent elderly persons.* Today in the developed countries senior citizens over 60 years old represent 20% of the population; they could reach 33% in 2050. As this segment of the population lives longer and longer, they require more and more medical care. This care is increasingly expensive and so Euthanasia will be proposed, as it already is, to lessen the burden of the elderly on society.

4. *Social security systems* will face a crisis. Who will pay for pensions? Who will pay into the retirement funds? And touching the welfare state's "entitlements" has inevitable political consequences even if they are in part hard to predict.

5. *The educational infrastructure*, very large in modern societies, will see a drop in its numbers. Hundreds of classes will be eliminated each year. Education will be one of the first victims of the budgetary cuts dictated by the need to cater to the senior citizens, a more numerous and more politically interesting population than dependent children.

6. *Generational conflict* will increase as the working population refuses to bear increasing taxes and costs associated with maintaining the increasing inactive population over 60 years old.

7. The decline in fertility leads to *unemployment* because it is obvious that fewer consumers lead to decreased

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10 We will refer to *World Population Prospects. The 2000 Revision. Highlights*, New York, Population Division. Department of Economic and Social Affairs dated February 28 2001. This document is Draft ESA/P/WP.165. For *fertility*, see Table 3, pp. 31-34; for *life expectancy*, Table 4, pp. 35-38; for the rate of annual population growth, Table 7, pp. 47-50. For the 39 countries which, according to the projections, will have population declines between 2000 and 2050, see Table 15, p.58.



demand. This phenomenon should be compared to what is said above about the educational infrastructure. The most productive factories tend to be too large for the market's capacity to absorb goods. This tendency is accentuated by the increase of productivity.

8. Observation reveals violent *imbalances in age structures* when comparing countries and regions. If the slowing of growth is a general phenomenon, it does not follow the same calendar everywhere. This is why countries experiencing a demographic deficit are particularly exposed to *immigration pressures* which bring about complex problems and even serious tensions. Without immigration, however, the populations of developed countries will begin to decline already in 2003.

9. Even if the numbers of a country are not enough to insure its respectability on the international scene, it is nonetheless true that it does contribute to the clear sovereignty of a nation.

10. Development requires investments. One cannot invest by borrowing indefinitely. In order to be able to invest the economy must be generating surpluses. The aging of populations comes as a grave danger for mainly, but not exclusively, rich nations. An aging population tends to produce less, invest less and to be less creative. It tends to consume savings and even create debts whose costs are transferred to the following generations.

## **SOME DIAGNOSES TO REEXAMINE**

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It would be irresponsible to close ones eyes to the evil effects caused by the worldwide spread of practices aiming at population control. It is high time to thoroughly reexamine the supposed diagnoses and do some house-cleaning regarding the slogans "justifying" population control. Today, major scientific conclusions solidly establish the lack of foundations for these population control programs of action. Here below are some of these conclusions.

### **Taking scientific advances into consideration**

1. There has never been a scientific demonstration of the existence of a *correlation* between population and development. All scenarios exist. If there are poor countries which are sparsely populated (i.e. Liberia), there are similarly rich countries with low population density (i.e. Australia). If there are poor countries that are very populous (i.e. Bangladesh), there are also rich countries with high population density (i.e. The Netherlands). Neighboring countries with comparable population densities can display very different levels of development. This is the case with Honduras and Costa Rica. These contrasts highlight the importance of the choice of governments for countries.

2. The alarmist predictions of Malthus concerning *food supply* are stron-

gly contradicted. The discoveries of the agronomist Norman Borlaug, Nobel Peace Prize winner in 1970, and of a great number of his colleagues have completely changed the perception of the problem of hunger. Outside of natural catastrophes, the famines of today are always caused by the incompetence, corruption, even the malice of men.

3. *Natural resources* do not exist. This sounds paradoxical, but what transforms a thing into a resource is the genius of man. Sand is transformed into semiconductors, wind into energy, etc. As Julian Simon and others showed, man is the only real resource, and is the one that risks becoming scarce.<sup>11</sup>

4. This resource which is man is called *human capital*. Gary Becker, Nobel Economics Prize winner 1992) showed that this capital, which could begin to lack, is formed essentially in the family.<sup>12</sup>

5. The first main *cause of the growth of population* is not to be found in birth rates or in fertility rates which are on the decline everywhere. The cause is found in the *generalized increase in life-expectancy* at birth. In the beginning of the

XXth century, for example, Mexicans lived an average of 27 years. The Mexican of today has a life expectancy of 74 years. He therefore lives on the earth three times longer than his ancestors.

6. As remarked before, a *new cleavage* is visible. It is not between the rich and poor countries but between the countries with children and those where there are almost none left.

## **An audit for the UN**

It is time to take notice of the scientific advances in the analysis of the world society. A false diagnosis allows problems to get worse while one is busily misidentifying them. Rapid sterilization never brought any women out of poverty, and contraception campaigns never increased the literacy rate. Stressing the marriage bond never helped the education of children. The problems caused by an aging population are not resolved by acting on its consequences but on the causes, the first of which is low fertility.

The constancy with which certain UN agencies continue to beg for money to finance campaigns inspired by the ideology of demographic security must be radically called into question. Not only are they based on erroneous presuppositions, but they tend to consolidate obstacles to development. One must unplug the automatic responses which freeze the thinking of some technocrats who are disinclined to the salutary questioning of their actions, even

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11 Cf. Julian I. SIMON, *Population Matters. People, Resources, Environment and Immigration*, New York, transaction Publishers and Hudson Institute, 1990; ID., *Population and Development in Poor Countries*, Princeton University Press, 1992.

12 See Gary S. BECKER, *A Treatise on the Family*, Cambridge, Massachusetts, Harvard University Press, 1994.

when dictated by the facts themselves. The UN itself should be the first to call into question these ideas. This kind of self-audit would be all the more profitable since there exist within the UN different ideas according to the departments and agencies concerned.

### **Redefining goals and priorities**

Taking into consideration the new facts, we will sketch here a reflection on the *goals* that should replace those that are sought by the current population control programs. This reflection will have to extend to the *priorities* dictated by these same goals. Since the major current problem is the menace of a lack of human capital, we must defend man and promote him. This is the fundamental point whose facets we will examine.

### **Defending Man**

The 1948 Universal Declaration of Human Rights tends to be supplanted by numerous documents like the Earth Charter from UN agencies like the UNFPA.<sup>13</sup> Man is seen as the product of material evolution and should accept to submit to the great All, the imperatives of Mother Earth; he should worship Gaia. This would be the price of “sustainable development”. Inspired by the New Age, this vision denies man’s central place in the world that is in the

1948 declaration. It is nonetheless back to this anthropocentrism, inspired by the Roman, Jewish and Christian traditions, and brilliantly reaffirmed in the Renaissance, that we must return if we want to save and protect human capital.

Therefore a reversal must take place in the scale of values of the population control campaigns. The highest value is not the environment, it is man, whose physical and psychological integrity must be respected. Without men properly prepared to become responsible stewards of Nature, this same Nature can only degrade and man disappear.

More specifically, one has to challenge the classical vision of wealth as converge in the Liberal and Marxist traditions. For both these currents of thought wealth always has a material basis on which value is added. Implicitly or explicitly, all commercial, economic or industrial activity presupposes that wealth depends on matter dominated by man. Development would thus be quantifiable since it measures wealth. This perpetuates the ultra-liberal Malthusian vision of development. Some categories of men are useless to or even hinder development. They must be subjects of population control.

In this case Amartya Sen’s reflections can lead to the calling into question that we wish to see happen.<sup>14</sup> Once poverty

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13 See <http://www.earthcharter.org> On this subject see our book *La face cachée de l'ONU*, pp. 61-70.

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14 Amartya Sen received the Nobel Prize for Economics in 1998. See his works; *Un nouveau modèle économique. Développement*,

is no longer first seen as a lack of material goods, but rather as a privation of elementary human capacities, development appears as the increasing of real opportunities and choices to individuals. Here the freedom of individuals is not ordained in view of something else. In the Liberal and Marxist traditions liberty is in view of production and or consumption. Freedom is itself the goal of development. This can be evaluated according to the increase in the level of freedom that men can attain.

This complete change in the view of development is evidently something which check mates the “justifications” that are invoked today for birth control. From now on what is important is that men are the least subject to the so-called determinisms so dear to the two sister ideologies.

This new vision of development calls for a general rereading of population control policies. It also calls for a revision of policies relating to women and for families.

### **Women and the freedom to choose**

Birth control programs are frequently presented as “liberating” for women. They are part of the “new human rights”. In this context, the expression “reproductive health” often hides the

“right of women to abortion”. We will consider this example and ask ourselves if it constitutes for women an increase in their freedom of choice.

The experience of countries that legalized abortion should have the effect of causing reflection among all those who are attentive to the rights of the most vulnerable. One observes that the legality of abortion makes it an unbeatable weapon in the hands of those who refuse children: husbands, partners, employers, bosses, bureaucrats, etc. This weapon is almost invincible not only against the unborn child but also against the body and heart of women. “Abort and go away!...” “Abort or I will divorce you!...” “Abort or lose your job!...” “What is the problem? Abortion is legal. It is even reimbursed by the state!” But where is the *freedom* for women who are told these things? It is, however, in the name of women’s freedom that abortion was legalized in some countries.

One has to note that it was in the name of a *reductionist* idea of women’s freedom that abortion was legalized: the freedom to *produce* and to *consume*. Now if liberty itself is the goal of development, at a strict minimum, all the entities working for development should try to increase the level of freedom can achieve. Also, they should work to offer women real opportunities so that they can achieve their preferences. What choices? The choice to have a job, for example, certainly, but also the choice

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*justice, liberté*, Paris, Ed. Odile Jacob, 2000;  
*L’économie est une science sociale*, Paris, Ed. de la Découverte, 1999.

to consecrate themselves to motherhood or to reconcile the two options should be offered. This brings us to touch on the family question.

### Family and Freedom

The family is the privileged place where man is born into freedom. Here again, all public and private entities that are engaged in birth control need to call into question the essence of their work. Turning their backs on the 1948 declaration, which in articles 12, 16, 23, 25 recognizes and protects the family, too many agencies strive to obtain acceptance of so-called “new models of the family”. These are single parent families or homosexual families for example. All these proposals have the destruction of the family, which is heterosexual and monogamous, as their objective. Destroying the family is an efficient way to lower fertility.

In the light of trustworthy modern studies these anti-family programs are clearly scientifically untenable. They survive thanks to an ideology which goes back to Malthus himself. The famous pastor took no account of the family. Only individuals counted in his eyes. The devastating effects of individualism stemming from neoliberalism, and the violence that follows, are more and more proved and denounced. Studies showing renewed interest in the family tend to exalt it and show its greatness.

Gary Becker received the 1992 Nobel Prize for Economics for having

shown the capital importance of *the family* and of *education* in society.<sup>15</sup> It is from the beginning in the family that “human capital” is formed. This is the only kind of capital that matters in the long run and the only one that we are running the risk of losing. It is in the family that a child’s personality is formed. It is there that the child learns the meaning of initiative, of responsibility, of solidarity, etc.: all qualities highly appreciated by society.

In this formation, Becker adds, the role of *the mother* is essential. She is the one who awakens these qualities and who teaches the child to study, to keep tidy, to be frugal, etc. From this stems the special value of the mother’s activity which should be recognized in and by society. The child is not only a good for his parents; he is also a good for society as a whole. Mothering is not on a “private” good. It is of value to society. This leads to the necessity of offering women *a truly free choice* to women as mentioned above: either to be consecrated to the family or to have a profession or to reconcile both.

These conclusions are corroborated by a *negative example* in Claude Martin’s studies of “after divorce”. Divorce increase the risk of marginalization and even exclusion of the most vulnerable

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15 See Gary S. BECKER, *A Treatise on the Family*, Cambridge, Massachusetts, Harvard University Press, 2<sup>nd</sup> edition 1994.

spouse.<sup>16</sup> It creates favorable conditions for scholastic failure and juvenile delinquency.

The decisive role of the family finds complementarity in specialized educational institutions. In this regard, Amartya Sen extends our brief conclusions when he observes that without education men cannot criticize those who govern them. In other words, education is an apprenticeship for freedom. Generalized education is a precondition for democracy.

It is therefore time for public and private organizations to cease contributing to the appearance and multiplication of problems that they cannot solve. By flattering the individual one weakens the institution of the family which would be the first to remedy what is lacking in public structures at all levels. In conclusion, society has a direct interest in supporting the family and to help it educate the children born into it.

## CONCLUSIONS

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In dealing with the demographic crash one has to take into account some truths which were already proclaimed in the Universal Declaration of 1948 and which have been confirmed recently by first rate scientific studies. For example, Norman Borlaug's studies counter the

Malthusian fear of famine and Amartya Sen shows freedom to be the goal of development. Gary Becker shows the decisive role of the family in forming human capital.

Everything leads to the conviction that a new climate in favor of revising several decades old population control policies is arising. No institution can sink into an ideological slumber that would inhibit its capacity to call its priorities into question. In the preceding review we took into account recent scientific work with uncontested authority. In the light of these, it appeared to us that the reasons advanced to "justify" population control were largely without foundation. On the contrary, the examination of the facts shows that the threat we face is rather a *shortage of human capital*. These are born into and receive formation in the *family*. This does not mean that man should be viewed from a Utilitarian or Reductionist perspective. This would make him the most useful link in the chain of consumption. Neither the happiness of individuals, nor the development of societies can be defined in terms of the production of wealth. Man should be at the center of government's concern at all levels because he is born to be free and development should be conceived as a cluster of conditions offered so that men and societies can freely achieve their aspirations.

The interconnection between liberty, family, motherhood, fertility, edu-

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16 This is one of the main theses of Claude MARTIN in *L'après divorce. Lien familial et vulnérabilité*, Presses Universitaires de Rennes, 1997.

cation, political participation, creativity and hope have never been perceived so clearly. These choices converge towards what John Paul II has called the “culture of life” and need support from all the international community. It allows for the looking towards the future safe from the terrifying specters of the “culture of death”. The coming international meetings will allow for a test to see if the aspirations expressed here are confirmed by the new options defined by the international community.





# Catholics For A Free Choice

Brian Clowes



*This American organization, Catholics for a Free Choice CFFC (Católicas por el Derecho a Decidir, in Spanish), that was born in the seventies from a pro-abortion group, presents itself under the Catholic flag but takes positions clearly in contrast with it, especially in the moral field, and in particular in sexual morality. Moreover, every occasion becomes a reason for slandering the Church itself, blaming the Catholic position in the arena of sexual and reproductive morality for the spread of AIDS and the so-called population problem. Moreover, Catholics for a Free Choice even attacks the hierarchy and the dogma of the Church, promoting a “total reconstruction of God, Jesus Christ, human nature and society”. It carries out many projects and campaigns in collaboration with well-known international groups that promote and financially support abortion, homosexuality and divorce. The group receives monetary support from these same organizations. Many of their commitments are directed to young people, in order to promote the spread of abortifacient contraceptive methods. Through their false self-representation and rationalizations, they confuse the faithful who are led to behaviors incompatible with the Christian faith. (↗ Sexual and Reproductive Rights; The Right to Abortion; Discrimination Against Women and CEDAW; Family and the Rights of Minors; New Human Rights; Free Choice; Equal Rights for Men and Women; Pro Choice)*

## 1. INTRODUCTION

Catholics for a Free Choice (CFFC) is a Washington, D.C.-based organization whose objective is to convince lawmakers, the popular media and Catholics that there can be an authentic “Catholic pro-choice” philosophy.

CFFC was founded in 1970 by three members of a pro-abortion group called the National Organization for Women (NOW). Its first public act was to ridicule

the Catholic Church by crowning one of these women “Pope Joan I” on the steps of St. Patrick’s Cathedral in New York City.<sup>1</sup> CFFC’s first office was located in the New York suite of the Planned Parenthood Federation of America (PPFA), which owns the largest chain of abortion clinics in North America.

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1 Magaly Llaguno. “‘Catholics for a Free Choice:’ A Dossier.” *Vida Humana Internacional*, December 1994, page 2.

Soon after its founding, CFFC defined its identity as “a national educational organization that supports the right to legal reproductive health care, especially family planning and abortion.”<sup>2</sup>

The group has clearly stated its ultimate goal: “CFFC recommends a change in the policies held by the Holy See to support the use of condoms to prevent AIDS and other diseases; to approve the use of modern methods of contraception, including emergency contraception, to prevent unwanted pregnancy; and to support non-coercive, safe and legal abortion.”<sup>3</sup>

CFFC’s vision is not limited to the full acceptance of abortion and contraception. Its other stated objectives include;

- The formulation of Catholic morality and theology by popular vote;<sup>4</sup>

- The ordination of women and married men, followed by the eventual elimination of the priesthood and the hierarchy;<sup>5</sup>

- The elimination of the Sacrament of Penance;<sup>6</sup>

- Acceptance of premarital sex and divorce;<sup>7</sup>

- Acceptance of homosexual acts and homosexual marriage;<sup>8</sup> and

- Acceptance of all illicit reproductive technologies.<sup>9</sup>

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## 2. CFFC’S NAME

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History has shown that the Catholic Church is strengthened by an overt attack carried out by a visible enemy. However, all organizations, including the Church, are extremely vulnerable to a long-term and persistent program of infiltration and subversion, because the visible results of such an attack take place slowly and in increments small enough to escape attention. Since it is always easier to defend against an enemy that presents a *visible* threat, the infiltrators escape the determined and concentrated counterattack that would defeat an external assault.

The purpose of Catholics for a Free Choice is to advocate abortion and population control in all nations. By assuming the name “Catholic,” the organization can neutralize organized opposition to its

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2 *Conscience*, November 1989, page 13 [Washington, D.C.: Catholics for a Free Choice].

3 Statement submitted to the United Nations Commission on Population and Development. *Friday Fax*, April 5, 2002 [New York: Catholic Family & Human Rights Institute].

4 Rosemary Radford Ruether. “The Church and the Ordination of Women.” *Conscience*, September-December 1987, page 12.

5 Doreen Ercolano. “Hunt Speaks on 21st Century Catholic Church.” *Record* [Troy, New York], April 25, 1988; Tim O’Brien. “Catholics Protest Theologian’s Views.” *Times Union* [Albany, New York], April 25, 1988.

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6 Adelle-Marie Stan. “A Decade of Dissent.” *Conscience*, September-December 1987, pages 24 to 26.

7 Frances Kissling. “Editorial.” *Conscience*, November/December 1988, page 2.

8 Steve Askin. “Challenging the Right.” *Conscience*, Spring 1994, pages 65 and 66.

9 Mary E. Hunt. “Abortion in a Just Society.” *Conscience*, July/August 1988, pages 9 to 12.

initiatives, confuse less-informed Catholics, and give the media an “alternative” Catholic voice that supports contraception, sterilization and abortion.

Various bishops’ conferences have denounced CFFC. The United States Conference of Catholic Bishops (USCCB) has clearly stated that “Because of its opposition to the human rights of some of the most defenseless members of the human race, and because its purposes and activities deliberately contradict essential teachings of the Catholic faith. ... Catholics for a Free Choice merits no recognition or support as a Catholic organization.”<sup>10</sup>

On May 10, 2000, the USCCB used exceptionally strong language to condemn CFFC, identifying it as an “arm of the abortion lobby” and publicizing the fact that “It is funded by a number of powerful and wealthy private foundations, mostly American, to promote abortion as a method of population control.” The Bishops’ statement concluded by saying that “Catholics for a Free Choice merits no recognition or support as a Catholic organization.”

The Permanent Episcopal Conference of Uruguay has also stated that “We find ourselves obligated to strongly reiterate that the organization ‘Catholics for a Free Choice’ hasn’t any formal affiliation

with the Catholic Church and expressly contradicts the Church’s genuine teachings.”<sup>11</sup>

Despite its name, CFFC continually demonstrates that it is truly an *anti*-Catholic organization, in that it despises the Church and Her leaders. CFFC’s directors have referred to the Roman Catholic Church as “oppressive” and “evil.”<sup>12</sup> CFFC’s animus towards the Church is exceeded only by its hatred of the papacy and the episcopacy. Writers for CFFC have referred to the Holy Father and the bishops as “arrogant,” “blind,” “bullies,” “coercive,” “cruel,” “dumb,” “fanatical,” “hard-hearted,” “hypocritical,” “liars,” “mean,” “nasty,” “pathological,” “pig-headed,” “prattlers,” “ruthless,” “sanctimonious,” “self-righteous,” “tyrannical,” “unethical,” “unhinged,” “unjust,” “virulent,” and “vituperative,” and even “betrayers of Christ” and “the seed of Satan,” among many other epithets.<sup>13</sup>

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11 “Declaration of the Permanent Episcopal Conference of Uruguay,” March 24, 1995.

12 Frances Kissling, President of CFFC, quoted in Kathryn Jean Lopez. “Aborting the Church: Frances Kissling and Catholics for a Free Choice.” *Crisis Magazine*, April 2002, pages 20 to 26.

13 A partial list of names CFFC has called the Pope and bishops includes the following: “absolutist,” “angry,” “anti-woman,” “arrogant,” “betrayers of Christ,” “blind,” “bullies,” “callous,” “coercive,” “confused,” “cruel,” “dangerous,” “dogmatic,” “dumb,” “embarrassing,” “fanatical,” “hard-hearted,” “harsh,” “hypocritical,” “illogical,” “imperialistic,” “irresponsible,” “liars,” “loony,” “Luddites,” “manipulative,” “mean,”

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10 “Catholics for a Free Choice Not a Catholic Group.” November 4, 1993 Statement of the National Conference of Catholic Bishops (now the United States Conference of Catholic Bishops), Washington, D.C.

CFFC has repudiated most of the basic tenets of Catholicism in its drive to reconstruct the Church. CFFC Board member Rosemary Radford Ruether has said that “What is required is the *total reconstruction* of God, Christ, human nature, and society,”<sup>14</sup> and another CFFC writer has called for “... the reworking of central religious myths and doctrines and the reinterpretation of revealed truth.”<sup>15</sup> CFFC’s writers have denied that Christ redeemed mankind,<sup>16</sup> have disavowed the perpetual virginity of Our Lady<sup>17</sup>,

and have claimed that the doctrine of Papal infallibility is “a naïve dream.”<sup>18</sup>

Nor do members of the CFFC leadership participate in the Sacraments of the Church, according to one of its former Board members.<sup>19</sup> Instead, they embrace an assortment of New Age rituals and practices. Its members have practiced devotion to the feminist idol Sophia,<sup>20</sup> have extolled the bloody pagan god Ba’al,<sup>21</sup> and have even composed poems honoring Lucifer.<sup>22</sup>

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### 3. CFFC’S ACTIVITIES

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Since its inception, Catholics for a Free Choice has launched numerous public initiatives designed to advance its ultimate objective of forcing the Catholic Church to accept contraception and abortion.

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“misogynist,” “nasty,” “narrow-minded,” “obsessive,” “obstructive,” “pathological,” “pernicious,” “pig-headed,” “prattlers,” “ranting,” “reactionaries,” “rigid,” “ruthless,” “sanctimonious,” “seed of Satan,” “self-righteous,” “simplistic,” “slippery,” “terrible,” “totalitarian,” “tyrannical,” “unethical,” “unhinged,” “unjust,” “unkind,” “vehement,” “virulent” and “vituperative.” These epithets were gleaned primarily from CFFC’s newsletter *Conscience*. References for each can be found in Brian Clowes. *Catholics for a Free Choice Exposed* [Front Royal, Virginia: Human Life International, 2001], page 143.

14 Rosemary Radford Ruether (member of the CFFC Board of Directors). *Womanguides: Readings Toward a Feminist Theology* [Boston: Beacon Press, 1985].

15 Christine E. Gudorf. “Sexism Enshrined.” *Conscience*, Spring/Summer 1995, pages 11 to 17.

16 Rosemary Radford Ruether, quoted in C. Powell Sykes. “Rosemary Radford Ruether gives 1998 Sprunt Lectures; Says ‘Flesh became Word not Word became Flesh.’” *The Presbyterian Layman*, March/April 1998.

17 Maurice Hamington. “Like a Virgin ... The Sexual Paradox of Mary.” *Conscience*, Spring 1998, pages 15 to 19.

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18 Daniel C. Maguire. “The Splendor of Control: A Commentary on *Veritatis Splendor* and the Elephant in the Living Room.”

*Conscience*, Winter 1993/1994, pages 26 to 29.

19 Marjorie Reiley Maguire. “Not Catholic.” *National Catholic Reporter*, April 21, 1995, page 18.

20 *The Re-Imagining Conference: A Report*. American Family Association, April, 1994; Donna Steichen. *Ungodly Rage: The Hidden Face of Catholic Feminism* [San Francisco: Ignatius Press, 1991], page 162.

21 Rosemary Radford Ruether (member of the CFFC Board of Directors). *Womanguides: Readings Toward a Feminist Theology* [Boston: Beacon Press, 1985].

22 Thomas Marron. “Songs for the Angels. Three: Gabriel Considers His Horn.” *Conscience*, Spring 1994, page 20.

The most significant of these campaigns are described below.

**a. The “See Change” Campaign**

In March 1999, CFFC launched its “See Change” campaign, whose purported objective was to influence the United Nations to downgrade the status of the Holy See from permanent observer status to that of a non-governmental organization (NGO), like CFFC itself. The unstated intent of the See Change Campaign, which is ongoing, is purely tactical and political. Its purposes are to isolate and intimidate the Holy See’s delegates to the United Nations and to frighten away its allies.<sup>23</sup> Time and time again, the Holy See has stood with many developing countries at United Nations conferences, opposing population control programs that include abortion, contraception and sterilization and that are promoted through deceit, trickery, intimidation and manipulation of language. Through its See Change Campaign, CFFC aims to further increase the Holy See’s isolation at the United Nations and decrease its influence, thereby advancing CFFC’s agenda.

**b. The “Condoms 4 Life” Campaign.**

This CFFC initiative, launched in early 2002, states that “Catholic bishops preach sanctity of life. But their ban on condoms contributes to the tragedy of AIDS and death around the world.”<sup>24</sup>

23 Domenico Bettinelli, Jr. “No ‘See Change’” *Catholic World Report*, April 2000.

24 See the “Condoms 4 Life” Campaign Web site at <http://www.condoms4life.org>.

CFFC erected many roadside billboards and panels stating “Catholic People Care - Do The Bishops? Banning Condoms Kills” in prominent locations in more than a dozen nations, including Belgium, Bolivia, Chile, Mexico, Nicaragua, the Philippines, Kenya, South Africa, Zimbabwe, the United States and Canada. CFFC describes this “education effort” as the “first phase of a sustained mobilizing effort to change the Vatican’s policy against availability and access to condoms.”<sup>25</sup>

**c. The Justice Campaign.**

CFFC has supported the “Justice Campaign” since its beginnings in 1986.<sup>26</sup> The goal of the Justice Campaign is to mandate United States government funding of all abortions for poor women. CFFC said that it “... helped to lead the 1993 campaign against the Hyde Amendment, which bars federal Medicaid funding of abortions.” CFFC has also filed numerous *amicus curiae* briefs in federal cases in support of forced taxpayer funding of abortion.<sup>27</sup> CFFC has also vigorously

25 CFFC press release dated April 25, 2002.

26 Margaret Conway. “Public Funding: CFFC Makes Waves in Michigan Abortion Rights Battle.” *Conscience*, May/June 1988, pages 12-16; “Religious Involvement Heats Up in Michigan.” *Conscience*, July/August 1988, page 20.

27 “CFFC Notebook.” *Conscience*, Winter 1993/1994, pages 50 to 52; “CFFC in the News.” *Conscience*, May/June 1988, page 19. Also see CFFC *amicus* briefs in *Kendrick v. Heckler* and *Akron v. Akron Center for*

denounced the Mexico City Policy, which bans United States funding of groups that perform or promote abortions in developing nations.

**d. The MergerWatch Campaign.**

CFFC works closely with the MergerWatch Campaign, which monitors the mergers taking place between Catholic and secular hospitals. CFFC insists that, regarding all issues regarding sexual morality (primarily contraception, “emergency contraception,” sterilization, abortion and end-of-life issues), that Catholic doctrine must always yield to secular beliefs.<sup>28</sup> CFFC has been tracking these mergers since the early 1980s, and complains that “Reproductive health care is severely limited by Catholic hospitals and when Catholic hospitals merge with non-Catholic facilities.”<sup>29</sup>

**e. The “Guardian Angel” Campaign.**

Demonstrating that it would use any forum to advance its views, CFFC stated that it would distribute thousands of condoms to young people attending the World Youth Day gathering in Toronto in July 2002. Its operatives, dressed as angels, would dispense condoms with the inscription “Don’t leave it up to your guardian angel” imprinted

upon them. Bishop Reginald Cawcutt of Cape Town, spokesman for the Southern African Catholic Bishops’ Conference, commented on the futility of such activities when he said that “The Church disapproves of trying to combat the spread of AIDS by the wholesale doling out of condoms to teen-agers. This is as likely to promote promiscuity as anything else. It shows seriously muddled thinking. The Church strongly supports and promotes — as it has for 2,000 years — value-based education and prevention programs. They are the only things that ultimately work.”<sup>30</sup>

**f. The “We Are Church” Referendum.**

In 1996, CFFC strongly promoted the failed “We Are Church” Referendum, which called for ordination of women as priests and deacons; lay participation in the selection of bishops and pastors; making priestly celibacy optional and reinstating married priests to active ministry; promoting so-called “homosexual rights;” allowing divorced and remarried Catholics to return to all of the Sacraments; and placing “primacy of conscience” over the Magisterium of the Catholic Church regarding decision-making on issues of sexual morality.<sup>31</sup>

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*Reproductive Health*

28 MergerWatch Web site at <http://www.mergerwatch.org/>.

29 Frances Kissling, quoted in Patricia Miller. “Religion, Reproductive Health and Access to Services.” *Conscience*, Summer 2000, pages 2 to 8.

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30 Zenit weekly news analysis of March 10, 2002.

31 Magaly Llaguno. “Catholics for a Free Choice Unmasked.” Presentation at Human Life International’s 16th World conference in Minneapolis-St. Paul, Minnesota, April 1997.

### g. Support for Partial-Birth Abortions.

During the 1993 National Republican Party Convention in the United States, CFFC publicly attacked the American bishops for opposing partial-birth abortions. This inhumane procedure, committed in the second and third trimester of pregnancy, involves delivering all of the unborn child except its head, and then puncturing its skull with a sharp instrument and sucking out its brain.<sup>32</sup> CFFC's support of this ghastly form of killing demonstrates that no abortion is unacceptable to it.

### h. Latin American Activities.

CFFC spends a large percentage of its funds in heavily Roman Catholic Latin America. Its affiliate *Católicas por el Derecho a Decidir* [CDD, or "Catholics for the Right to Decide"] says that "Only a feminist perspective can begin to restore the relevance, particularly to the bodies of women, of the violent imposition of Catholic moral doctrine."<sup>33</sup> CDD was instrumental in establishing the coordinating committee for the promotion of abortion in Latin America and the Caribbean. It has also published several books, including *Mujeres e Iglesia: Sexualidad y Aborto en América Latina* [*Women and the Church: Sexu-*

*ality and Abortion in Latin America*].<sup>34</sup>

The authors of this anthology closely follow in the footsteps of American pro-abortionists, attacking the Catholic Church and promoting contraception, sterilization, abortion and lesbianism.

CFFC is also working to undermine the faith of Latin Americans in the United States. In August 1991, CFFC launched its "Hispanic Project," which is designed to reach Hispanic organizations in the United States and "educate" Hispanics on "reproductive health care." The following year, CFFC followed up with its "Latina Initiative" in order "to provide information on reproductive health care and public policy to Hispanic organizations in the U.S."

CFFC has also published a Spanish-language comic book and has distributed it in Latin America. It is entitled "*Y María fue Consultada para ser Madre de Dios*" ["Mary Was Asked if She Wanted to be God's Mother"]. It depicts a young mother asking the Virgin Mary what she can do about her unwanted pregnancy. The comic book claims that, since God gave *Mary* the choice to say 'yes' or 'no' to becoming the Mother of God, *every* woman should have the choice of aborting a preborn child.

32 "CFFC Notebook: Reproductive Health." *Conscience*, Autumn 1996, page 43.

33 "Catholics for the Right to Decide in Latin America." *Conscience*, Summer 2001, pages 24 to 27.

34 Ana María Portugal [Editor]. *Mujeres e Iglesia: Sexualidad y Aborto en América Latina* [*Women and the Church: Sexuality and Abortion in Latin America*]. México, D.F.: Distribuciones Fontamara, S.A., 1989, pages vii, 21, 23, 58, 59, 76, 77, 97 and 118,

Finally, CFFC has produced a video in Spanish entitled “*Católicas por el Derecho a Decidir*” [“Catholics for the Right to Decide”], in which it distorts the teaching of the Church on human sexuality, abortion and contraception.

#### **4. CFFC’S ALLIES**

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From its founding to the present time, CFFC has associated itself with the most extreme pro-abortion and anti-Catholic organizations in the world.

CFFC was founded by three members of the National Organization for Women, one of the most radical pro-abortion groups in the world. CFFC’s first office was located in the New York suite of the Planned Parenthood Federation of America (PPFA), which owns the largest chain of abortion clinics in North America, and which has been responsible for committing more than three million abortions in the United States since 1970.

It is a member of the Religious Coalition for Reproductive Choice (RCRC), an umbrella group that seeks to lend a religious veneer of respectability to abortion, and which undermines pro-life efforts in mainline Protestant denominations.

Catholics for a Free Choice has also cooperated closely with secular pro-abortion groups such as the International Women’s Health Coalition, the Women’s Global Network for Reproductive Rights, the Unitarian Universalist Association, the National Abor-

tion Federation and the National Abortion and Reproductive Rights Action League (NARRAL). It has also worked with other major groups that dissent from Catholic teaching and doctrine, including Catholics Speak Out, Chicago Catholic Women, the Institute of Women Today, the Loretto Women’s Network, the National Coalition of American Nuns (NCAN), the Women’s Alliance for Theology, Ethics and Ritual (WATER), European Network/Church on the Move, and the Women’s Ordination Conference.<sup>35</sup>

#### **5. CFFC’S FUNDING**

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CFFC derives more than 95 percent of its income from population control foundations, which have given it more than \$28 million since 1978. Lately, this support has grown to more than \$4 million annually, and much of this income is grants given to support CFFC’s activities in Latin America in support of “reproductive rights,” including the legalization of abortion and the widespread availability of sterilization and contraception.

These foundations obviously see Catholics for a Free Choice as a force that can introduce population control and family planning in pro-life Latin American countries under the guise of a Catholic organization.

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<sup>35</sup> *Declaración de Preocupación. Conciencia Latinoamericana*, April/May/June 1993, page 8; *Conscience*, Summer 1997, page 31.



Some of the foundations supporting CFFC's activities are listed below.

- **The Weeden Foundation**, which describes CFFC as “the leading Catholic-based critic of the Church’s contraception and abortion positions;”<sup>36</sup>

- **The Ford Foundation**, which has given more than \$6 million to CFFC for, among other purposes, “continued support for public education and dissemination of Catholic pro-choice values [in Mexico and Brazil]” and “promoting public discussion among Catholics in Mexico on sexual and reproductive health.”<sup>37</sup>

- **The General Service Foundation**, which gives money to CFFC in order “to raise awareness of Catholic support for reproductive health care and to counter the Catholic Church’s attempts to undermine reproductive freedom” and “for the organization’s work to counter efforts of the Roman Catholic Church to limit legal access to reproductive health care [in Latin America];”<sup>38</sup>

- **The Robert Sterling Clark Foundation**, which funds CFFC “for [a] program to educate American Catholics about [the] wide diversity of opinion that exists within [the] Church on [the] issue of reproductive freedom, and to provide Catholic citizens with a *ra-*

*tional* alternative to Church doctrine” and “for continued support of CFFC’s research on the Catholic Right, mergers of Catholic and non-Catholic hospitals, and a new initiative challenging the Vatican’s obstruction of the United Nation’s delivery of reproductive health care internationally;”<sup>39</sup>

- **The Turner Foundation**, established by Ted Turner, who has referred to Christianity as “a religion for losers,” and who has advocated a one-child policy for the entire world;<sup>40</sup>

- **The Sunnen Foundation** has given more than \$1 million to CFFC. The Sunnen Foundation funded the litigation that led to the Supreme Court of the United States legalizing abortion. It also helped fund a 1979 newspaper ad that blamed the Catholic Church’s teaching on birth control for world hunger. Sunnen’s director has called the Catholic Church “detrimental to the world,” and has demanded that the Church be *forced by law* to change Her teachings on abortion.<sup>41</sup>

36 Weeden Foundation Web site at <http://www.weedenfdn.org>.

37 Ford Foundation Web site at <http://www.fordfound.org>.

38 General Service Foundation Web site at <http://www.generalservice.org>.

39 Robert Sterling Clark Foundation Web site at <http://fdncenter.org/grantmaker/rsclark/>.

40 Ted Turner, quoted in Thomas Goetz, “Billionaire Boy’s Cause: Can Three of the World’s Richest Men Put Overpopulation Back on the Public Agenda?” *The Village Voice* October 1, 1997.

41 Richard Doerflinger, “Who are Catholics for a Free Choice?” *America*, November 16, 1985, pages 312 and 313; Sunnen Foundation, letter to Michael Schwartz of the Catholic League for Religious and Civil Rights.

## 6. CONCLUSION

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Catholics for a Free Choice has demonstrated by its history, philosophy and actions that it is Catholic in name only.

Since its founding, it has vigorously attacked and undermined the dogma, teachings and hierarchy of the Roman Catholic Church, seeking to legalize abortion and contraception throughout the world by confusing the faithful. It has caused incalculable damage to Catholics by leading them into sin with its rationalizations and misrepresentations.

The threat posed by CFFC cannot be overemphasized. Because it poses as a Catholic organization and is backed by millions of dollars of foundation money, its impact is greatly increased, especially in developing nations where the media is receptive to its message.

There are only two sure defenses against CFFC: (1) Exposing its radical agenda to the world, and (2) constant preaching and teaching on authentic Catholic doctrine regarding sexual ethics.

# Child Labor

Rosa Linda G. Valenzona



*Children's labor continues to be a disgrace in today's world. These children suffer a double injustice. On the one hand, these children are exploited as an inexpensive workforce in areas of production that avoid any regulation, without any protection, social nor medical, often working in unhealthy conditions. These children are objects producing profits for unscrupulous employers. On the other hand, and most of all, these children are the victims of an injustice that affects them not only in their activities, but even in their persons. They are deprived of their right to have access to the education that they could receive in their own families and in the educational institutions. With regard to the working child, the author arrives at the same conclusions as some of the most prestigious contemporary economists. It is in fact admitted that today, the development of human capital is a primordial duty of justice and an imperative necessity for happiness and peace. This formation of human capital requires the integration of a moral, intellectual and religious education of all children. (↗ Dignity of the Child; The Rights of the Child; Children's Rights and Sexual Violence; Family and the Rights of Minors; Parenthood; Person and Integral Procreation; Personalization)*

After more than 200 years of industrialization the world continues to grapple with the scourge of child labor. According to the International Labor Organization, approximately 250 million children between ages five to fourteen work and 120 million of them work full time.<sup>1</sup> The objective of this paper is to examine the multi-faceted problem of child labor and the ambiguities and misunderstandings surrounding it. To

this end it will attempt to describe the conditions and circumstances under which children work, the type of work they do to aim at arriving at a better understanding of the problem and identifying its underlying causes, and to establish the criteria to be considered for possible solutions.

## DEFINITIONS

Viewed from different angles the phenomenon of child labor reveals many opposing perspectives. It is therefore important to start with a definition of the problem that could embrace the-

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<sup>1</sup> *Child Labor: Targeting the Intolerable* (Geneva: International Labor Organization, 1996) 7.

se different perspectives to have a true appreciation of this problem.

A). Distinction between children at work and child labor.

Full appreciation of the nuances behind the term “child labor” can start with a distinction between the term work and labor. Work is any purposive activity and in this context one can say that the only proper subject of work is a person. Work is an activity that requires a rational nature capable of understanding the processes behind nature and applying this science into resolving the problems of day-to-day living. It is human reason that makes man capable of a more superior adjustment to his natural environment. Animals are limited to a blind adjustment to their environment and to eke out their survival by dint of instinct. It is the human spirit that makes man capable of creating wealth. The unending process of cultural integration enables every generation to pass on to the next a richer legacy of science and technology, rendering human work ever more productive and expanding the frontiers of human development.<sup>2</sup>

The family is the first school of

work that provides children the first experience of this very humanizing activity. Work is a learning experience that should be part of a child’s educational process. It is a venue for the child to learn values and skills that redound to his development as a person. Parents use the discipline of hard work to help accomplish in the child that difficult transition into the adult world, rendering him capable of social participation, and making a responsible contribution to the social product. In this context, work is a learning activity for children and depriving them of the opportunity to work will impact negatively on their development as persons.

The concept of child labor, on the other hand, is one that comes from the English language and the whole tradition of the industrial revolution. It is a negative term associated with sweatshops that enabled unscrupulous profiteering on cheap labor from women and children. Under the present industrial context child labor looks at children as participants of the labor market engaging in a routine activity, repeated over and over to produce an output that is counted and measured in economic terms and hinders his development. Many find this reduction of child labor into a commodity priced and sold in the labor market objectionable. There is still another even darker side to child labor when children are exploited to do the dirty, difficult and dangerous. It is no wonder that advocates against child la-

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2 Saint Josemaria Escriva, founder of Opus Dei, states: “Work, all work, bears witness to the dignity of man, to his dominion over creation. It is an opportunity to develop one’s personality. It is a bond of union with others, the way to support one’s family, the means of aiding the improvement of society in which we live and in the progress of humanity.” *Christ is Passing By* n. 48.

bor are determined to work for its abolition.

B). Lack of access to education

Child labor entails lack of access to education since it forces children to give it up in *lieu* of remunerative work. At this formative stage, the principal activity that children could and should be doing is going to school. An excellent analysis of the benefits that could be gained through having a child attend school rather than work is provided by a US study.<sup>3</sup>

Education is investment in children. It introduces the children to the cultural legacy of science and technology that will empower them to create wealth. Lack of education reduces the work that children can do to “brawn” work instead of “brain” work. This permanently enslaves children to poverty – eventually they grow up to be adults barely eking out a living through low paid work. What enables man to achieve a more superior adjustment to his material environment is his capacity to understand through science the processes underlying nature and the capacity to harness technology to effectively solve problems of everyday life. Respect for the human dignity innate in every child is to respect his right to this cultural legacy. This implies respect for the child’s right to rise above being a mere

survivor to being a creator of wealth.

C). Child labor is exploitative

The exploitation that can be associated with child labor can be defined in several levels. At the first level child labor is looked upon as an important competition to adult labor. Since child laborers can be paid lower wages and they can be made to work longer hours than adult laborers, they effectively reduce wage cost per unit of output. Child labor therefore reduces employment opportunities for adults – with all the negative consequences on their dependents.

The other level of exploitation has to do with the harsh, dangerous, difficult and dirty conditions that child labor entails. Many children work long hours, often in excess of ten hours per day. There is sufficient documentation of these situations at a global level. Children work in mines, crawling underground through small, unlit and unventilated passageways. Children, mostly girls, work long days as domestic servants and often suffer physical and emotional abuse. They are sold as carpet weavers to repay their parent’s debts. Children do hard work in rock quarries, breaking and carrying heavy stones. They toil in commercial plantations, often exposed to dangerous pesticides. Girls are sold into the nightmare of prostitution.<sup>4</sup> In

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3 “An Economic Consideration of Child Labor,” in *Sweat and Toil of Children Vol. VI*, US Department of Labor, Bureau of International Labor Affairs, 2000.

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4 Kaushik Basu, ‘Child Labor: Cause, Consequence and Cure, with Remarks on International Labor Standards,’ *Journal of Economic Literature* 37 (1999).

the Philippines, young children work as deep-sea divers in commercial fishing ventures, and are exposed to incredible dangers and are indentured to pay their parents debts.<sup>5</sup>

Finally, the worst aspect of this exploitation is that very often children working under these exploitative situations do so under the coercive influence of an adult – usually parents, or parents colluding with a business establishment. That the parents who are naturally entrusted with the duty to care for the children are precisely instrumental to their exploitation becomes a serious mitigating circumstance. In this context the child is reduced into an object of “commerce” for the benefit of his parents.

## **CIRCUMSTANCES OF WORK**

Using global data, several categories of child labor have been identified to permit description of work conditions and opportunities.<sup>6</sup> They help clarify the gray areas and facilitate understanding of underlying causes, the moral issues involved and identification of possible solutions this problem.

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5 The employment of children in deep-sea diving with muro-ami in South Philippines is celebrated and well documented.

6 International Save the Children Alliance Workshop Report (Sept 20-23, 1999, Bangkok, Thailand) *Children and Work in Southeast Asia*, International Save the Children Alliance Task Group on Child Labour.

A). Children working in their own family's enterprise

This is the situation of families coping with poverty through self-employment. They create family enterprises that enable them to transform the family's labor resources into income. Children work under the supervision of their parents as part of the family enterprise. The micro-enterprise, usually home based, engaged in light manufactures, produce items such as shoes, lanterns, processed food, etc. Work time is usually flexible and the child usually has no control over his earnings. The nature of work is usually low risk and safe and children are able to combine work with formal education.

B). Children working with an enterprise

This is the case of parents who engage the employment of their children with an enterprise, often large enough to be in the formal sector. Usually the children either continue living with their families or live in boarding houses. They work fixed long hours under the constant supervision of their employer. They earn stable and moderate wages on a weekly basis. It is often fairly safe, except when children use machines or when the work entails dangerous activities such as deep-sea diving. Activities are generally monotonous and boring. Their only access to education is mostly evening classes.

C). Children working as live-in workers

This is the situation of children who work as apprentice workers under constant supervision of employers. They work for very long hours, with little free time. They earn low wages that are often paid directly to their parents. These children very often have no freedom under the tight control of their employer as in the case of domestic workers, sales workers to small retail establishments, etc. The type of work is usually fairly safe but entails damage to the child's development in the long term due to lack of possibility for education.

D). Children who are self-employed

This is the case of children of the poor who are "self-employed" in the streets, markets, and garbage dumps. They continue to live with their parents and roam the streets selling lottery tickets, scavenging on garbage, shining shoes, washing cars or simply begging. They work with flexible hours with a high degree of freedom. Although they may continue living with their parents they control their pay which is likely irregular but with potential for high earnings. Working conditions can be risky but exciting since they enjoy the camaraderie of friends in similar situations. When highly motivated these children may occasionally go to evening classes.

E). Street Children

Under this variant are the many

street children still living with their parents and who work in the streets to earn some money for school expenses. However, there is a special breed of children who live alone and keep their own earnings. These are children who have been abandoned by parents, or who have run away from their dysfunctional families. They engage in all types of work in the street, the market and the garbage dump, with flexible hours, irregular daily earnings, and under high risks. The high degree of freedom they enjoy alienates them to normal family life. They are usually marginalized from educational opportunities.

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## **THE CASE OF THE PHILIPPINES**

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To have an appreciation of the magnitude of the problem at a country level a statistical analysis of the Philippines is presented. This case is especially interesting since the Philippines is a third world country, 80% of whose population is Catholic, where the culture is family centered and pro-life values are strong. The incidence of poverty is roughly 30% and likely to rise.

The Philippines' population roughly stands at 73 million. It is a relatively young population with 32 million under 18 years of age. In 1995 3.7 million children were economically active, nearly half of who were between 5-14 years and the other half between 15-17

years of age.<sup>7</sup> Roughly 2.2 million or 60% of working children are exposed to a hazardous environment.<sup>8</sup> A recent UN report reveals that 55% of the total number of working children in South-East Asia is to be found in the Philippines.<sup>9</sup> These statistics tell a sad tale.

## **ANALYSIS OF CAUSES**

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Analysis of the circumstances surrounding child labor points to the weakness of the family. Flowing from the dignity that is innate in man is his capacity for self-reliance. This innate economic dignity embraces man at vulnerable stages of his life through the family. It is possible to identify two underlying causes that can be associated with the family.

### **A). Poverty**

One major cause is poverty. Due to lack of access to education and marketable skills, many families are marginalized from opportunities for wage employment and reduced to low paid unskilled work. Many others are marginalized from employment and forced to generate self-employment by crea-

ting micro-enterprises that allow them to transform family labor into income. Still others are even marginalized from self-employment due to lack of working capital.

Many non-governmental organizations engaged in development work run livelihood programs with a micro-finance component to assist these poor families. Properly designed, these programs help the poor to create micro-enterprises that respond to market opportunities to ensure sustainability.

This solution in fact creates demand for child labor. Children work in family enterprises under the supervision of their parents in light and low risk activities. When these enterprises enjoy adequate linkages on the supply and demand sides, they can expand and provide basic family needs including education for the children.

### **B). Marginalization from culture**

There is a darker side to child labor—slavery, prostitution, and exposure of children to hazardous working conditions, abandonment that forces children to eke out a living in the streets under extremely hazardous conditions. One has to look for the cause of this darker side beyond poverty.

In every vital society culture is the affirmation of the instinctive purpose—preservation of life and the family is the seedbed of this culture. Nature itself has generously endowed the family to enable it to perform this primordial function of nurturing and protecting

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7 ILO-IPEC, *Children in Hazardous Work in the Philippines*, 1999, citing National Statistical Office, National Survey on Working Children, 1995.

8 ILO/Dept of Labor and Employment Child Labor, *Child Labor: Let us work against it*, 1996, citing 1995 survey of children.

9 "Clothes for the Rich from the Hands of the Poor, Child workers in Asia, October-December, 1993.



children. In this light, crimes committed against children are behavioral deviations whose roots can only be traced to the breakdown of families and the marginalization of many from the cultural mainstream that is pro-life and promotes values and attitudes that are pro-children.

Culture is the way of life lived in a particular social, historical and geographical context. Underlying every culture is a view of reality defined by one's religious outlook and the corresponding values and attitudes that define the cultural norms that govern behavior. A living culture draws its vitality from its ability to influence the entire society such that everyone guides and seeks to take as his own its values, attitudes and social norms. The task of accomplishing the acculturation of each person takes place in the family – the seedbed of culture. Cultural continuity is a fragile reality since it is dependent on the family – parents educate their children by transmitting their particular view of reality, their religious attitudes, values and social norms to their children.

Since the family is a natural institution, parenting is initially instinctive and only becomes purposeful when parents consciously embrace the primordial role of the family. Parenting skills are handed down from parents to children in everyday life. When children become grown-up adults they look back on the parenting models provided by their pa-

rents in the past. The family is also the natural training ground for acquiring parenting skills. This training process is so natural that when their turn comes to become parents grown up children draw from this wealth of experience.

Unfortunately contemporary culture is reducing family interaction – both parents work outside the home and children spend more than ten years of their growing up years in school. This reduced family interaction is further handicapped by the stress and strain of contemporary life styles. Contemporary family life does not provide the favorable environment to ensure effective parenting.

Equally unfortunate is the rise in the incidence of dysfunctional family through divorce and separation. Anything that estranges and alienates parents from one another places under risk their ability to perform their parenting function. One has to add to this the anti-life values promoted by the widespread practice of abortion and contraception. Denigration of the value of the life of the unborn baby – far more vulnerable than the child – can only have a negative impact on the value society gives to a child.

Marginalization from a pro-child culture is a phenomenon that affects all families and victimizes children regardless of socio-economic strata. Lacking positive esteem for children, parents come to look and treat their children as objects and fail to respect their innate

dignity as persons – manipulating and exploiting them for economic gain. The pressures of poverty only serve to exacerbate this exploitative situation.

## **MORAL ISSUES**

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The starting point of the evaluation of the moral issue related to the phenomenon of child labor necessarily starts with reviewing the value of the child. Childhood is that part of the continuum of life that is meant for physical, psychological and spiritual growth of the person at the end of which he/she is ready to take on a mature and responsible role as a member of society. During this vulnerable period of transition and transformation, while children are not in full possession of the faculties they can command as a full grown adult, they are under the protection of their parents. The latter are naturally tasked with the physical nourishment and the formation of children into mature adults and good citizens. Limiting the role of society and government to protection of marriage and family and ensuring a level playing field that guarantees the family a just income to fulfill its natural function is a practical application of the principle of subsidiarity.

Since the primordial task of ensuring survival belongs to the family, the latter has the right to put to work all its labor resources – including the involvement of children – into the family enterprise. Nevertheless, this is not an absolute right. The family must show

respect for the innate dignity of the child by seeing to it that the work tasks given to him are safe and proportionate to his abilities and strength. The family should likewise respect the child's right to human development by providing access to educational opportunities, and by allowing the child's participation in decisions that impact on his/her life.

The moral evaluation of the phenomenon of child labor cannot be limited exclusively to the reduction of child labor into a commodity that acquires a market value. When there is a higher common good – the survival of the family – parents have the right to involve their children in the family enterprise. This does not necessarily reduce the child into an object. Economic dignity, the capacity of every person to be self-reliant, is also part of the dignity of the child, albeit in an incipient form. The child also has a right to survive and a right to contribute his labor to ensure that survival. The important consideration is proportionality between the work activities and limitations of the child.

A similar case is that of the child who works in the streets to put his earnings in a common pool from which the family ekes out its survival. Poor families are often unable to have access to working capital required to set up a family enterprise. Everyone tries their best to look for opportunities to earn something. This is a situation where society and the State may have to step in. However, unless and until a solution

effectively addresses this poverty situation, one cannot talk about the abolition of child labor.

## **CONCLUSION**

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There is a full spectrum of issues surrounding child labor. It is not possible to reduce everything into black and white and support the total abolition of child labor. There are many gray areas.

Traditionally the solution to the problem of child labor has been legal. Labor laws have been enacted to discourage enterprises in the formal sector from hiring child labor. Effective implementation of these laws has all but eliminated child labor in the formal sector except in clandestine situations. However, the persistence of child labor and the appearance of new and even more exploitative situations point to the inadequacy of these legal solutions. It also underlines the importance of more effective poverty alleviation programs.

People are the ultimate resource of any society. Children represent its future.



# Children's Rights and Sexual Violence

Dorotas Kornas-Biela



*The media industry spreads the propaganda of the culture of death and reveals its countless aspects. The analysis of each of these aspects shows the constant connection between lies and violence. The children themselves, are swallowed up by the flood of secularization. One of the discourses purposely sketched out by powerful public and private organizations and spread by the means of communication, emphatically exalts children's rights. This discourse follows in the footsteps of the women's individual rights' rhetoric. It would be urgent - according to this discourse - to proclaim children's rights, and more specifically, those of adolescents to have access to sexual freedom without restrictions, to contraception and to abortion. Parents should not have the duty, nor even the right to exercise their responsibilities in the affective formation of their children. There are some who insinuate that parents are the virtual enemies of their own children. They believe that children should be abandoned to themselves and given to others. This is a problem, because, even admitting that the media discourse intends to protect children from sexual violence, the effect produced in reality is the opposite. By means of invoking a concept of child's rights that does not take into any account the immaturity of this age, the media discourse exposes children to all forms of sexual violence. This is how, in the name of "new rights" a minefield is created in which the merchants of violence and death move.* (↗ Children and Labor; Dignity of the Child; Children's Rights; Family and the Rights of Minors; Parenthood; The Person and Integral Procreation; Personaliza-

Changes in the XX century's civilization caused widespread degenerate forms of interpersonal relationships. One of them is sexual violence against children. It is a "crime against humanity," "a serious assault against the truth of the human person." The Catholic Church always and in various ways decidedly confronts all forms of abuse, especially towards children, who, because of their weakness, immaturity, and hel-

plessness need particular protection and respect of rights that belong to each individual person. In spite of this, the world acts in favor of the civilization of death, organized evil structures, with guaranteed financial backup, which in the area of human sexuality has become a lucrative source of profit and a vehicle of planned secularization. The media, pornography, narcotics, prostitution, contraception, abortion—are all organi-

zed as industries whose capital is at the service of an ideology, which is against human life, the family and the Catholic Church. The goal of these industries is the destruction of the family and secularization, for which tolerating various forms of demoralization and sexual violence towards children are their tools. These forces operate secretly, in the spirit of a postmodern era. Publicly, all these (the media, organizations, resolutions reached at various international and national conferences) declare an objection towards sexual violence against children, but it is no coincidence that this phenomenon, in its widespread occurrence and depraved forms, continues to increase. It is becoming all the more difficult to distinguish the differences between the position of the Holy See and the activities of the disguised structures of evil, which occur in relation to other problems, i.e.: abortion, family planning, artificial reproduction, homosexuality, and euthanasia. Differences in the positions of the Church and the civilization of death are serious, yet hidden and difficult to disclose. Disclosure is possible only in a thorough analysis of the contents and methods used for argumentation, as well as the language of the conference documents and media, an analysis of sexual education, child abuse prevention and therapy (or lack of it and its neglect) and supposed undertakings which, in effect, deprave children. Such an analysis allows for the exposure of many ideologies that are

dangers to the protection of children's rights. The areas in which these abuses against the good of children conceal themselves include:

## **THE DEFINITION OF THE CONCEPT OF *SEXUAL VIOLENCE***

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Sexual violence is a social phenomenon, the subject of interest for many fields of study. Literature on the subject points to various definitions and ways of understanding sexual violence as well as varying terminology, i.e.: harm, abuse, taking advantage of (molestation, victimizing, violence, rape, incest). The most widely accepted definition is given by the World Health Organization (1986), which states sexual abuse as "abusing a child for obtaining sexual pleasure by an older and adult person." Two types of sexual child abuse are distinguished:

- those which the child experiences in its closest environment: rape, indecent acts, lewd conduct, incest.
- those whose aim is commercial, meaning involving children in sexual services: prostitution, the production of pornographic material which uses children, or the handling of children for sexual purposes. The International Work Organization recognized these as drastic forms of abuse in 1992.

One of the most essential problems related with protecting children against sexual abuse is specifying the concept of child and setting the upper limit for the

age of childhood. At the Convention on the Rights of the Child (1989), it was accepted, that a child is every human being *under the age of 18*. However, as it turns out, every country sets its own laws with regard to the upper and lower age limits concerning the special protection of children and various children's rights. Despite the specifically set normative upper age limit for the concept of *child*, when it concerns the sexual sphere, such accepted norms are rejected. Ideological, political, and particularly financial interests take the lead over the right of children to be protected against abuse, and *most countries lower this age limit*, i.e. to 13 or 15 years of age. This allows for the easy use of children above this lowest age limit as models for pornographic material, as well as being legal recipients of pornography, as "workers" in public houses, clients of sex-shops and users of the accessories sold there. The Holy See clearly speaks *for the increase of the upper age limit of legal custody* to prevent harm of a sexual nature, executing the establishments of the Convention.

The Holy See also declares its stance for *a fixed defining of what sexual violence is and what it is not*, opposes the diminishing of its subject matter resulting in ambiguity, the use of varying criteria relating to its essence, making it unspecific and unclear. At the same time, the Holy See points to the *hypocrisy* – on the one hand many situations

expose the child to sexual experiences, on the other hand, children are warned against accepting expressions of fondness from close ones, making them fear natural caresses and external signs of family ties or warmth on the part of educators. Such behavior as cuddling, tickling, hugging, holding a child by the hands, can be interpreted as sexual misconduct, as potential or actual molestation, or as meeting an adult's sexual needs. However, such displays of affection are necessary for the natural development of children. Furthermore, certain sexual activities and early sexual experiences are acceptable behavior, but on the other hand real signs of love towards children on the part of adults are interpreted as molestation and sexual harassment.

The Holy See points out the forms of sexual violence which are not *explicitly* incorporated into the accepted definitions, those which are not forbidden by law and are socially tolerated. These forms are "nameless," unspoken, cunning, not having characteristics identifying them as a direct attack or meeting individual sexual pleasure. They linger in certain organized social structures and culture, imposing a system of values and symbols, manipulating the recipients' mentality, initiating fashion models and behavioral patterns. The utilitarian character of these social forms of sexual manifestation does not depend on clear (sexual pleasure), but in unclear goals. i.e. economic or ideological gain.

The Holy See clearly brings to light *not only the commercial forms of sexual abuse*, but also those, which *are not acknowledged as violating the dignity of the child and destroying its development*, i.e.: exposing the child to pornography, using sexual materials in school, carrying on “loose conversations” and telling “dirty jokes,” vulgar language, making comments as to the child’s sexuality, exposing the child to viewing adults’ nudity or sexual activity, common bathing, the presence of the child at a nudist beach. The Holy See warns against situations that present sexual experiences to the child, which exceed its emotional threshold, stripping the child of its feeling of respect towards its own and other’s intimacy.

The definitions of child sexual abuse or violence limit such acts to those that serve to meet sexual pleasures by a person older than the child. *These definitions do not recognize motives other than sexual motives*; the essence of sexual violence is violating the dignity of a child as a person. The motive of the molester is not necessarily sexual pleasure, and the molester is not necessarily an individual person, but can be the result of a functioning social structure.

## **THE EXTENT OF THE SOCIAL PHENOMENON**

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In Western countries *the sphere of the phenomenon of sexual violence is quickly increasing*, child victims and their molesters are constantly younger.

On account of this particular type of violence, detecting such crimes is difficult, punishment is even more rarely carried out, and therefore, stating the social scale of the problem is difficult. Estimates of the occurrence of this phenomenon in various countries are very diverse and usually bring up serious objections in regards to methodology. One thing is for certain: the victims and molesters do not come exclusively from the so-called depraved social class.

Literature on the subject, police statistics or citations at various conferences show a totally *inconsistent statement as to the frequency of this phenomenon*; i.e., the USA’s estimates for the number of cases vary 10 times over; the internet page dealing with sexual violence in 7 Western European countries, according to WHO in 1986, states that 10-40% of girls and 5-20% of boys are victims of this type of violence. The question is raised as to the validity of such statistics, for society cannot be indifferent whether it is every tenth or every second woman who experiences sexual abuse in childhood, whether one in twenty or one in five boys are molested in a sexual context. The fact that only 2% or 10% of sexual crimes are discovered cannot be ignored. Such data *vary on the level of statistical efficiency* (i.e. at 30%). These differences concern not only international data, which is understandable, but also data published within countries. One of the reasons for these differences is that *various understandings of*



***sexual abuse are accepted for research***

— some raise the question if molestation on a child pertains to physical penetration, others ask if there were witnesses to discussions on sexual issues that raised shame. Some of the statistics tell of coercing a child into sexual activity, others pertain to convincing a child to watch pornographic movies. Of course, all such acts are harmful to a child, but it is obvious, that the destructive force and frequency is different. Differences in statistics can also come about from ***various research questions, hypotheses raised, type of method used to collect data, ways of asking questions, conditions of conducted research, criteria in choosing the research group, its representative sampling, persons conducting research, and the goal put forward by the researcher.*** Apart from this, the data can be ***multiplied by various sources of information*** (i.e. the same case could have been brought to school, the police, court and hospital.) The most important cause of differences is the ***goal assumed by the researcher,*** since it decides on the above mentioned research strategy as well as the statistical analysis of the obtained data, their interpretation and the generalization of the outcomes. It is important to note that those who wish to alarm public opinion with these statistics which concern making public the forms of sexual child abuse, at the same time demand the passing of laws for sexual minorities, distribution of pornography, and lega-

lized prostitution.

The Holy See warns, that ***the commercial sexual abuse of children has reached the extension of a world “epidemic”***<sup>1</sup>, however, it makes clear that child abuse in a child's life environment by close family is really a ***marginal problem.*** The Holy See is against seeking signs of sexual abuse in every intimate gesture towards a child and an artificial spreading of the problem, multiplying false or unjustified accusations towards family, social, or religious authorities. Such manipulation of exploded statistics aims to disseminate authorities, weaken family ties, and increase the place of sexual education in school programs. Unfortunately, the propagation of information about this widespread problem can incline potential perpetrators to act without fear of punishment, because it appears to be normal, making it the fault of the victim, who “wants” to experience such pleasures and be dominated.

## **AN ANTHROPOLOGICAL- THEOLOGICAL PERSPECTIVE**

The phenomenon of child sexual abuse should be considered within the context of the truth about man. In the last century, ***a strong battle about the truth concerning the concept of man was waged,*** the rights pertaining to him,

<sup>1</sup> *Declaration of International Conference on Children's Sexual Abuse by Prostitution and Pornography*, Bangkok, 9-11.09.1992; organized by the Pontifical Council for the Family.

the sense and goal of life, the meaning of his sexuality, his relationships with others and God. Without a religious perspective of the purpose and meaning of life, and at the same time the spiritual and moral dimensions of human sexuality, man is quickly inclined to become a *slave* to values such as: money, entertainment, and particularly sex, making it easy to lose control of sexual stimulation, facilitating sexual violence, or becoming its victim. The expansion of the phenomenon of sexual abuse is an outcome of a severance of the human personality from a holistic concept of man (sex becomes autonomous) and sex reaches the highest value in life (sex becomes a god, sexual fetishism) as well as stripping sexuality of its religious and ethical value.

## **EVALUATING EVIL AND THE CONSEQUENCES OF SEXUAL VIOLENCE**

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The Holy See stresses that no society or proclaimed resolutions can give a child the right to protection against sexual abuse (they can only confirm it), since this right comes from *natural law*, which is *prior to set law*. In using arguments against sexual harassment, the Holy See refers to *violating the personal good of the child*,<sup>2</sup> and not only in perpetrating legal regulations –it is evil

because it violates human dignity and not just because it is prohibited. Legal regulations can be manipulated to lower the age of legal protection, so that pathological, so called sexual minorities, will not be punished.

In light of the full truth about man, sexual activity towards a child and exposing its psyche to erotic stimulation, even when it does not have the intention of a type of forced violence or does not produce psychopathological effects, are evil. Injuring the frail and delicate emotional –spiritual sphere of a child is an important, but not the only consequence, of an adult's intrusion of the child's sexual makeup. It is also and above all the fact that it is an *intrusion of the child's natural law for respect and approval of its personal dignity*. A child cannot be treated as a source of income due to the personal value of a child. A child cannot be a means to an end for meeting the needs of an adult, an object to be used by a person who has injured emotions and disordered sexuality as a source of income. The Holy See emphasizes that the first and most important motif against sexual abuse of children should be the fact that it is *injury of a moral character*. That is why it cannot be limited simply to pointing out the psychological injury and negative consequences for social and emotional child development. Sexual abuse first of all cries out *injury on a spiritual level, it violates the personal value and dignity of the child*,

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2 Children: springtime of the family and society. Conclusions of the Third International Theological – Pastoral Congress, Vatican, October 11 – 13, 2000.

*strips him of his own self acceptance, and destroys his view of the world and image of God.* Putting to death the spirit during childhood destroys the potential to trust in God, opening up to God and having a sense of security, which His presence provides. The outcomes of sexual violence are a crime because the child is immature and defenseless. It is an attack, a complete destruction on the psychic level, as well as the moral and spiritual life that is difficult to heal.

## **CULTURAL CONDITIONS OF SEXUAL ABUSE**

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The increase in the phenomenon of sexual child abuse as a social problem is a consequence of a liberal cultural, traditional, educational and legal action, becoming a tool for the culture of death. Liberalism aims to educate a “new man,” who in accord to postmodern ideologies is already “*sexually liberated*” during his childhood. *Postmodern theses (agnosticism, relativism, situationism, utilitarianism, and hedonism) carry implications for treating sexuality* in the media, in public opinion, culture and upbringing as:

1. In accord with the postmodern presumptions, the individual is *totally free* as to the forms of sexual activity (all methods of meeting sexual needs are permitted, forms which have been up to now considered pathological are now treated as normal, as different alternatives); sexuality is the *private and individual* matter of each person (everyone

has the right to meet their sexual needs in a way which please them); it cannot be *subject to evaluation or valuing* (since values are not an expression of general principles but are subjective preferences, and therefore cannot constitute categories of moral good or evil), demanding unlimited tolerance towards pluralistic forms of sexual expression.

The Holy See points out the number of threats stemming from such a vision of man and his sexuality, all which foster the sexual abuse of children. Such threats include: man dominated by a vision of freedom ceases to be aware of his tolerance towards sexual minorities, propositions “enriching” sexual contact with children, or sexual games for children and premature sexual initiation.

*If the only criteria for the moral evaluation of sexual activity is the mutual approval and voluntary consent of a sexual partner* (violence is considered to be inappropriate) as well as *age*, then when the child is not clearly forced into such activity, approval is implied and such an act by an adult is not treated as inappropriate. Unfortunately it is difficult to retrospectively prove the child’s consent, and even if it were present, then the adult is obligated to protect the child against violating its dignity. A victim’s birth records should not decide if the child ought to be considered protected against such an act, which bears signs of sexual abuse. This is all the more evident since public opinion, shaped by the media’s propaganda, cannot protest

against a legally reduced age, given to protect against sexual abuse. The Catholic Church points to the need to evaluate moral good and evil for every type of sexual activity, and age or consent of a partner can increase its moral seriousness. This means that if the given act is judged to be morally wrong, it is so due to its kind, and age and violence used can only increase evil.

The Holy See points to the danger of presenting the view, that *various forms of meeting sexual needs are equivalent to each other*. In reality this means the approval of masturbation. Unfortunately, testing of pedophiliacs illustrates the fact that masturbation performed by them is accompanied by fantasies of an erotic character stimulated by pornographic materials, and because of their difficulties with interpersonal contacts, particularly heterosexual, as well as their experienced states of depression and fear, their fantasies are directed towards persons who do not evoke fear, meaning children. Therefore, acceptance of masturbation in education breeds its undertaking by youth that are having problems in relationships with others, deepening their social isolation, escaping into contact with pornographic materials and into deviant sexual fantasies, which might be expressed in the sexual molestation of children.

Apart from this, education in a liberal spirit *makes pathologies normal*, and that is why it allows for more or less open *pedophilia as an alternative*

*lifestyle*. It not only gives permission but also encourages pedophile behaviors. At the same time, it unconsciously favors the child becoming a victim of sexual abuse. Among the growing number of persons manifesting *pedophile behavior*, and persons, particularly journalists, supporting political correctness, exists a strong tendency to present pedophilia as a harmless form of sexual preference, as a kind of inherent sexual preference, which is impossible to treat medically, and that is why it should be seen as any other kind of legalized sexual expression. Pedophiles, following the examples of homosexuals, begin to continually and more strongly, although secretly, fight for their rights, attempt to legalize their actions by moving to lower the so called AoC (Age of Consent), creating a philosophy (ideas of freedom and equal rights for children), referring to patterns of traditionally accepted sexual behaviors in antiquity or in primitive cultures, and searching for "proof" pointing to the harmless and even beneficial influence of sexual contact and games.

2. Postmodernism, continuing the liberal tradition of the Enlightenment, has given rise to a so-called *alternative education, antipedagogics*. According to this, a child is a human being, no different in essence from an adult, therefore it has sexual needs and the right to unrestricted choices (i.e. tradition, moral norms, adult demands) as to the methods of fulfilling its needs as well as

finding a sexual partner. Parents and educators influenced by fads and advice formulated by antipedagogists do not “force” the child to accomplish their demands, not “imposing” on the child a system of values and moral norms, but, in a naive trust in the child’s mature ability to take responsibility for its own life and the appropriate directing of its life, expose the child to a series of failures and injuries, among others in the sexual domain. Allowing children and youth to make individual decisions and an evaluation of a free choice for various sexual behaviors is contradictory with psychological knowledge concerning the developmental rules because at its age, it is impossible for a child to maturely undertake responsible decisions in which it can consider future outcomes and the perspective of other persons involved. The Church shows the painful fact that a child at that point becomes a victim of neglect on the part of those who are responsible for providing him with appropriate development. Similarly, a form of sexual abuse, which has a neglecting characteristic, is also the handing on of knowledge in the sexual domain deprived of any form of moral evaluation, since the child hasn’t the possibility of reflecting and making a moral evaluation as far as human sexuality is concerned, which causes harm to its psyche and makes the child vulnerable to sexual harassment or accepting pathological sexual behavior.

Antipedagogical advice is a great

threat, because it demands from adults not only a resignation from limiting the child’s behavior, but also intervenes when things go wrong (i.e. the child is sexually taken advantage of), when the child behaves inappropriately (i.e. comes into contact with a pedophile), when the child undertakes dangerous or self-destructive behavior (i.e. prostitution). Antipedagogy assumes that a child knows better what is best for itself. That is why if the child does not verbally, clearly, and directly ask for help, it is not acceptable for the parents or educators to give advice, because it is treated as a form of dominating the child by adults. Due to this view, an understanding the concept of sexual abuse is limited to situations in which a child clearly communicates its need for support from others. In most such situations the child remains almost entirely alone and defenseless because the child does not know where and how to seek help or is afraid to clear up the matter. Oppressors use the antipedagogical attitude in an unhindered way to fulfill their deviated needs.

3. The Convention on the Rights of the Child is one of the elements in the system of international legal norms protecting the rights of men, having particular need due to their immaturity.<sup>3</sup> The rights of a child formulated

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3 *Convention on the Rights of the Child*, 20 November 1989, United Nations: Article 19: “Countries shall take all appropriate legislative, administrative, social and educational measures

in the following *articles 12 – 16 of this Convention create, however, the danger of possible sexual abuse of children*, because they give a child the right to: freely forming and expressing opinions concerning all the following matters, i.e. the need for sexual contact (art. 12); the free seeking, obtaining and transmitting of all kinds of information or ideas, using all means of communication, i.e. using pornographic sites on the internet, obtaining erotic materials (art. 13); freedom in the area of feeling, consciousness and religious conviction, i.e. accepting masturbation with colleagues as permissible play (art. 14); free assembly, i.e. belonging to clubs or groups, which can promote sexual harassment (art. 15); for a private life and secret correspondence, i.e. maintaining

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to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation including sexual use, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child.”

Article 34: “State Parties undertake to protect the child from all forms of sexual exploitation and sexual abuse. For these purposes State Parties shall in particular take all appropriate national, bilateral and multilateral measures to prevent: (a) the inducement or coercion of a child to engage in any unlawful activity; (b) the exploitative use of children in prostitution or other unlawful sexual practices; (c) the exploitative use of children in pornographic performances and material.” Article 35: “State Parties shall take all appropriate national, bilateral and multilateral measures to prevent the abduction, the sale of or traffic of children for any purpose or in any form.”

a relationship with someone who takes advantage of the child, attending places, where the child is deprived, without the possibility of parents’ involvement, because it is stated as arbitrary and illegal (art. 16). The Holy See warns, that giving a child freedom and protection of its privacy should be synchronized with the responsibility of parents for child education, conducted under parental authority (see art. 18). The unfortunate realities of life show that in concrete situations and within the context of particular local legal regulations, protecting the private life of a child, in accordance with liberal trends, demands limiting the institution of parental authority instead of exposing the child’s integration, autonomy and rights. This Convention cannot contradict the institution of family law, where parental authority belongs. Parents, in order to protect their child against sexual abuse, must have the right to control the child’s behavior and its contacts with various persons or institutions, and parents must have the right to intervene when something threatening occurs, which could be a danger for the good and normal development of their child.

4. Promoting the appropriate *right of a child to its own body is understood in different ways*. The Catholic side understands it as the *right of the child to be protected against violating respect due to the dignity of its body*, whereas the liberal side treats it as the *right of the child to decide, without*

*the parents' or guardians' knowledge* and even against their will – *that, which concerns its corporeality*, how the child behaves towards his or her own body, and how the child uses it. A child, therefore, is granted the right to sexual activity (alone, with other children or with adults), to sexual games, to treating their bodies as means for achieving sexual pleasure. The right of a child to be protected against sexual violence has a different character in the area of both these positions – the liberal side treats it as the child's right to giving consent to or reject sexual activity, depending on its will, the Catholic side states that the child is not mature enough to make responsible decisions as to protecting the integrity of its own body when such situations as, i.e. health, and those pertaining to sexuality are concerned, therefore children must be protected by parents or a legal guardian. The right to be fully informed about their child is a right granted parents (i.e. not only what medication was administered to him or her at school due to a high fever but also on the matter of contraceptive material given to the child, proposed abortion, aids used in sexual education classes, and the way the child spends its time out of the house). Attempts to amend texts at international conferences (UN) concerning children and adolescents confirming the upholding of their rights incorporate a desire to legalize the use of any sexual liberties. These texts do not mention, on the other hand, that in this

way children and adolescents become an easier target for business, which in the sphere of sexuality makes a colossal income.

5. *Pansexualism* in contemporary western culture surrounds children with sexual knowledge and excites them with sexual stimuli, making them dependent on sexual experiences (sexoholism), destroys feelings of shame, decency, the need for intimacy and privacy as well as respect for the body – at the same time making the child susceptible to sexual seduction, while persons with pathological tendencies are provoked into committing debased acts.

6. Promoting *promiscuity and an early engagement in sexual activity* fosters a widespreading of the phenomenon of sexual abuse. Studies confirm that sexual offenders characteristically begin sexual activity as a child and it usually involves aggressive sexual behavior (i.e. coercion). The concurrence of these negative social phenomenon points to the seriousness of bringing up growing children in sexual purity and delaying the age of sexual initiation, since the earlier the age of sexual activity, the more likely the possibility of combining a first sexual experience with some form of brutality and aggression, and this kind of strong emotional experience on the basis of the mechanism of first contact has the tendency to persist as a deviated sexual form (pedophilia) or as a preference for expressing sexual violence.

7. XX century western culture apotheosized the body and sexuality and ***negated the principle of experiencing feelings of shame and guilt***, wiping out differences between shame, which stands in defense of personal dignity and a healthy feeling of guilt due to trespassing of norms, and a pathological shame and feeling of guilt – exaggerated, related to a deep fear, self degradation, with feelings of worthlessness. The Holy See strongly emphasizes, that treating each occurrence of feeling shame or guilt as unhealthy reactions makes it difficult to inculcate a system of moral norms, consciousness and character, fosters licentiousness and sexual looseness in children and adolescents, making them susceptible without restraints to adult propositions that can lead them to being sexually taken advantage of.

8. ***The method of expressing sexuality*** in the media, in the field of sexual education and in pornographic material shows a treatment of the subject as a ***poorly esteemed*** area of human life, since it is not guarded by any restrictions. Similarly, the human body is constantly displayed without any limitation on viewing or displaying its nakedness. ***The body and its sexual dimensions serve as a means to an end***, i.e. for relieving curiosity, entertainment, improving the sale of some product. It is therefore not treated as a body pertaining to a person, since in such a case, on account of its personal dignity, a person's body could not be used as a means to achieving

whatever goals. Trivializing sexuality by limiting it only to the physical aspect (corporeal) or selfish sensual pleasure impoverishes its value and at the same time the value of the other person as a sexual being, leads to a decrease in sensitivity towards the needs of others, particularly children, and increases the probability of violating their needs and rights. Such a cultural context also makes it difficult to inculcate in the child respect for its own and others' bodies and towards sexuality and at the same time makes them vulnerable to sexual stimuli and becoming unconscious victims of sexual abuse.

9. ***The battle against the family*** is the most severe ***form of battle against Christianity***, particularly Catholic. Ideologies hostile to the family present it as a place of degradation, exploitation and constraint of children (even though such situations objectively occur in a small percent of families) and produce pressure, so as to limit the family's authority over children. ***Separating children from the influence of parents***, antagonizing mutual relationships, and diminishing the authority of parents - favor a compensating emotional bond of children with adults outside of the family. In such relations, children become easier prey for satisfying pathological tendencies by adults. On the other hand promoting ***styles of partner or "pal" relationships between adults and children***, rejecting demands and discipline is conducive to treating the child as a partner for sexual



relations, making ties with the child as with an equivalent erotic partner.

## **DIRECT CAUSES OF SEXUAL ABUSE**

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The Holy See, making reference to research studies, searches for the direct causes of child sexual molestation due to *psychological pathologies* (mental deficiency, personality disorders, emotional immaturity), *social pathologies* (mainly alcoholism, unemployment, poverty) or *adult sexual pathologies*, adults who for the most part were themselves victims of sexual abuse in childhood and went from being victims to oppressors. Instead, the liberal side emphasizes that the majority of violence is experienced by children in the family and leads to media campaigns aiming to make society aware of threats that accompany family life. The family is therefore presented as a place of sexual oppression for children and parents are presented as toxic, sick, demoralized and irresponsible, in order to take away their competence and right to raising children. The popular statement "the most dangerous place in the world after dusk is the family home" expresses the attitude that seeks to diminish the family's authority and value. At the same time, studies carried out in a number of countries throughout the world clearly point out that among fathers – committing sexual offences against children, the great majority are those who should be treated due to addictions or psychological ill-

ness, who were themselves in childhood sexually taken advantage of or are men not biologically fathers, meaning step-fathers or concubines. In this way, it is not a normal, healthy family that is the place of sexual molestation, but a dysfunctional family, reconstructed and joined by a concubine relationship.

The liberal side is completely quiet about the fact that sexual abuse is conducive to *raising children in a so-called family, which is made up by a homosexual couple*. A son adopted by a homosexual pair or a daughter adopted by a lesbian couple becomes an easy victim of their sexual needs, directed towards a partner of the same sex. Apart from this, the simple fact that coming out of such a social group makes it impossible for the child to experience a normal family life, accompanied by bonding with a father or mother as well as the mutual bond between the parents. Liberal, feminist, and gay circles avoid this topic and yet the law for adoption by homosexual couples possesses a significantly greater risk for the sexual exploitation of children than in normal families. Instituting private organizations dealing with *foreign adoption* also presents a greater possibility for child adoption (particularly in poorer countries) by pedophiles, and in this way the child becomes the victim of sexual abuse.

*Legalization of abortion, approving laws for various methods of artificial reproduction and the trade of*

*fetus tissue* confirm society's conviction that *children are the parent's properties*, which *they have a right to possess*, hence many psychologically immature or psychopathic adults understand this as permission to use the child as an object for their own needs, i.e. sexual. The right to an abortion accepted by social demands in some parts of the world has lead to a more or less open practice of abortion for sex selection. If the safety of the youngest child in a family is not guarded and can be killed according to parents' wishes by abortion, then its safety is also not unconditionally protected when the child is outside the mother's womb. Violence breeds violence – consent is given for forms of inner-family violence, including sexual.

The postmodern mentality confirms a growing sexual pathology towards children above all as a *result of the negative representation of family influence*, and does not value the role of school education or consider the effects of the media. The Holy See warns that *sexual education programs at schools and pornography in the media* are forms of *abuse* in the sphere of sexuality towards the young generation. Sexual education programs and pornography in a particular way *break rights* guaranteed at international conventions, among others the child's right to not have its development disturbed and the fundamental parents' right to decide what educational influences their child will receive and to protect their child

against activities depriving its psyche; *it introduces the child into a world of liberal, anti-family, individualistic and utilitarian, and eudaemonistic values*. Such an attitude towards life and another person favors pathologizing the human psyche and at the same time increases the number of persons who are oppressors or victims of sexual abuse. *Most school sexual education programs* contain a curriculum that is achieved by means which are sexually abusive, i.e. showing photographs of a clearly sexual character, forcing students to listen to talks or conversations on sexual topics, indirectly promoting sexual activity, eroticizing a child's imagination. The child being in a situation of dependency towards the educator is unable to confront such an influential environment. Educational research studies prove the correlation between introducing sexual education into schools and dissemination of pornography in the media and, at the same time, an increase of the phenomenon of sexual abuse caused by an increased frequency of psychosexual deviations in development, pathological forms of sexual behavior, rape, susceptibility to becoming a victim of sexual abuse (i.e. seduction by pedophiles and homosexuals or pimps force children into prostitution or posing for pornographic photos). In addition, *the contents transmitted to children during such sexual education classes makes it more difficult to detect crimes*, since sex-ed courses teach chil-

dren not to trust adults, who are shown as unsympathetic, cowardly, aggressive, unhelpful, if they found out about some sexual experience in their child. A child is convinced to treat this sphere as being so intimate, that it should not entrust parents with sexual experiences, and at the same time, the child is convinced that it has the right to sexual games and activities in this area (by itself, with peers or with an adult). If the child is convinced about its right to be free in the realm of sexual experiences and not to trust parents, the child easily becomes a victim of sexual abuse, since it does not reveal this and at the same time does not break the pathology of this vicious circle.

***Pornography is the major element for propagating the phenomenon of sexual violence.<sup>4</sup> Every contact with it leaves a devastating effect on a child's psyche,*** providing models of pathological behavior, which imprint themselves and permanently deprive the child. Contact with pornography (including passive, when the child is its recipient, and active, when the child is a model for producing pornographic materials) is recognized in psychology as a ***form of sexual child abuse***, not depending on the child's consent or lack thereof, it is a ***form of sexual violence***. Pornography is also a ***camouflaged form of psycho-***

***logical violence*** of adults towards the child, since the child, who is psychologically immature, is unable to cope with the cognitive and emotional contents, and defend itself against contact with pornography, at the same time is unable to evaluate the depraving influence on itself. The widespread presence of pornography in various media and everyday life is a particular form of violence, since contact with pornography is imposed on a child independent of its or its parents' wishes. Most often, unfortunately, parents do not know how and are unable to protect their child from contact with pornography (i.e. some data show evidence that over 800 million internet pages are of a clearly sexual character, and some easily available "partnership corners" provided by pedophiles invite children to make contact). In addition, pornography shapes the debased sexual drives in adults, provokes fantasies, ***stimulating violence*** in that domain, provides ideas, i.e. for pedophiles, indirectly causing dissemination of sexual violence phenomenon against children. Numerous research findings indicate that a very large percentage of pedophiles and homosexuals coercing children, permanently use child pornography, exciting themselves with such material before committing such a crime and use them for the purpose of initiating children into sexual matters in order to decrease the child's resistance.

A particular hypocrisy is evident in the unspoken permission for sexually

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<sup>4</sup> *Pornography and violence in the communications media: a pastoral response.* Pontifical Council for Social Communications, Vatican City, May 7, 1989.

molesting children by specially **organized networks of tourist services** for persons of deviated sexual needs, i.e. pedophiles. Authorities of countries know about services offered by these "specialized agencies", but because foreign tourism is a source of great income, the authorities give the impression that this does not exist, or is impossible to identify, and apart from this, it belongs to one's private life. Treating the fulfilling of sexual needs as the private matter of a citizen leads to indifference of the state structure towards organized evil, since the state feels exempt from responsibility for that, which happens in a citizen's alcove. At the same time, the state does not secure the potential victims. Until the child becomes a victim of a crime, it is not protected by the state by eliminating structures serving sexual abuse.<sup>5</sup>

Similar to tourist services, the organized structure of evil that serves the sexual abuse of children includes **telephone agencies**, which specialize in erotic conversations. The telephone and number being easily accessibility to every child, such a large number of

agencies advertised daily in newspapers create a unique risk of deprivation.

The **activity of organizations and services functioning on behalf of pedophile needs** demands particular public protest, since they are organized structures specializing in the sexual abuse of children. Unfortunately, wrongly understood tolerance permits their legal functioning. **Pedophiles willingly undertake employment that enables them free and legal access to children**, that is why the following are particularly dangerous: court cases lasting for many years, the lack of therapy for sentenced pedophiles, the later elimination of court records and sentences for pedophilia, lack of legal regulations which would prevent a pedophile's future employment with children.

**Sex business and the sex-industry**, which employs children (according to the UN report in 1996, 1 million children in Asia, 0.5 million in Brazil, and 300, 000 in the USA), is publicly condemned but at the same time, oppressors go exceptionally unpunished, due to the lack of appropriate legal regulations or lack of enforcement (imperfect regulations and their weak execution). There is also a lack of appropriate means and goodwill (weak political will, the lack of appropriate understanding of the seriousness of the problem and underestimating the extent of the phenomenon with its social and personal consequences), lack of efficient prosecution of perpetrators, their rehabilitation

<sup>5</sup> First World Congress against the Commercial Sexual Exploitation of Children, 1996, Stockholm; Second World Congress against the Commercial Sexual Exploitation of Children, December 17-20, 2001, Yokohama. Smuggling and Trafficking in Humans a Human Rights issue. Pontifical Council for Pastoral care of Migrants and Itinerant People. People on the Move, No 86, September, 2001. Tourism and Society. Pontifical Council for the Pastoral care of Migrants and Itinerant Peoples. Vatican, June 29, 2001.

and the elimination and punishment of organized criminal groups. Groups of people active in the commercial abuse of children (hotel owners, owners of tourist agencies, public houses and so-called partnership agencies, taxi drivers, policemen, photographers) and local authorities know about the issue, but are indifferent or afraid of mafias handling live commerce, meaning persons. Among the greatest crime on a worldwide scale, the handling of children for sexual business is third after narcotics and laundering dirty money. The Holy See decidedly comes out against organized criminal gangs, of strong international circuits leading million dollar businesses. There is a decided need (i.e. zero tolerance) to counteract and use radical means against producers, consumers and cooperators in the field of political activities, legal regulations, court and prosecuting activity on a state and international level.

One of the problems connected with sexual abuse of children is the attempt *to normalize prostitution and treat it as a legal profession* as well as the lack of an organized form of help for persons who want to quit prostitution.

In summary, it can be stated that the Catholic side stresses particular attention to eliminating the structure of evil and its social and cultural conditions, while the liberal side expresses resentment due to the evil facts, but at the same time, under the umbrella of hu-

man rights, demands its upbuilding (i.e. laws for adoption by homosexual couples) and supports conditions that make the existence of evil easy (i.e. to belittle the effects of pornography and sexual education), creating a legal framework for the functioning of the structure of the civilization of death.

## **THE PROPHYLAXIS OF SEXUAL ABUSE**

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The liberal side presents *unclear and limited assumptions* for undertaking actions towards prophylaxis due to sexual abuse or child therapy for children affected by it, i.e. they limit it only to emotional injury in a child. The Catholic Church's stance that the child should be protected against the specified sexual act, not because the child is too young, but because the act in itself is debased.

In order to prevent sexual harassment, prophylaxis programs are undertaken, whose aims are first of all to train children *assertive behavior towards adults and making them sensitive to signs of sexual abuse*. Unfortunately, often because of such classes the child is convinced that all signs of intimacy from parents or educators are forms of fulfilling their sexual needs and interfere with their privacy. That is why the child becomes oversensitive in contact with close relatives, at the same time vulnerable to the loose behavior of a third party. But its own ability to assertively defend its own statement is

against the rational demands of adults, particularly parents.

***Prophylactic programs are primarily aimed at children instead of parents.*** The parents should first of all, through appropriate sexual education at home, secure their child against becoming a victim of sexual harassment and should be sensitive towards eventual signs of such abuse within the family. These programs should support parents in providing a child with normal psychosexual development in order to prevent him from experiencing sexual violence and not only concentrate on protecting the child from pathology. If this happens, the child becomes aware of the sexual domain mainly as a place of displaying and obtaining violence and not love. The very area of prophylaxis activities can harm the child, shaping a deviated vision of sexuality and creating a fearful attitude towards sexuality and towards adults.

The liberal side fights against sexual violence with posters, billboards, television programs, which show or vocalize children's tragedies – victims of violence, but unfortunately limiting themselves to those cases that occur in families. It seems, however, that vocalizing evil, advertising it does not diminish pathological behavior of persons who sexually molest but, in effect, diminishes a sense of security in children, reduces their trust in close persons, making it more difficult to form intergenerational bonding. Threatening children with their

own parents and adult authorities creates in them additional psychological harassment. ***Campaigns for making society aware*** of problems connected with the sexual abuse of children, unfortunately, are very often advertisement for sexual molestation of children and become detailed instructions for deviated behaviors. They do not lead to diminishing the problem, but just the opposite. Showing the anatomy of crime teaches pathological forms of fulfilling needs by persons having a tendency towards manipulating their behavior, but it is not possible to scare really deviant persons. Moreover, such campaigns do not psychologically treat them, but vice-versa, support their convictions that they are not alone, and they can expect that their behavior will be justified, understandable and go unpunished. The more often the media mentions deviations, the greater such phenomenon appears normal to social conscious; the more frequently these activities occur; the greater is the danger that pedophile behavior becomes recognized as an alternative way of expressing sexual needs, particularly if it narrows the concept of violence against the child, and the pedophile can prove that the child was not forced, did not suffer injury, on the contrary, that the child received pleasure and material gratification.

Pedophile behavior on the one hand brings horror and a strong feeling of social condemnation, and on the other hand, unfortunately, becomes an in-

teresting subject for the media, which concentrate on the sensational sphere, making public these activities, giving them free *advertisement and giving the recipients a ready instruction for deviant activities*. The media disseminates theories about inherent and somehow compulsory behavior of a pedophile, who would like to act in a different, but is unable to do so or justify their deviations due to a difficult childhood. However, the fact is, that disseminating the phenomenon of pedophilia favors, among others, widespread sexual freedom, easy access to pornography, creating public tolerance for perverted sexual deviations.

## **CORRECTIVE ACTIONS**

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The liberal side organizes *institutions, offices, and services concentrated on securing the rights of children* in order to prevent the phenomenon of sexual violence towards children. Unfortunately, they have the character of a "liberation front" for the repressed "minority", who are the children depressed by the "majority" who are their parents. Spokesmen for the rights of children stand above the family and select the fewer cases of sexual abuse of children in pathological family, usurping the right to educating children and controlling their parents.

Liberal societies seek to *track down parents as potential sexual oppressors* of their children, and that is why they favor situations in which a *child beco-*

*mes an unjust prosecutor of their parents*. Sometimes this happens because a child is forced or blackmailed by one of their parents who wants to get a divorce, or after divorce, he or she wants to limit the other parent's contact with the child. Other situations include revenge on the part of the maturing child against its parent, who did not fulfill all of the child's demands. Other motives of parent prosecution by a maturing child include leaving home, a change of lifestyle, the need for attention, which can be imitated from heard or seen stories on television.

One of the forms of correction is the currently popular *creation of centers for helping victims of sexual harassment*. Undoubtedly, they are needed. The growth of crisis centers for victims of sexual abuse is in many countries stimulated economically, since creating these types of centers is financed by grants from international institutions or organizations, and therapy provided by them is a source of good income. Unfortunately, often the method of diagnosing the problem of the child and therapy is in itself a form of sexual and psychological harassment. It should be said that the child might be victimized twice – first by the oppressor and then during diagnosis or therapy. In addition, oppressors often treat therapy as a way of escaping from prison or as a possibility for going on leave.

The Catholic Church clearly points to the fact that the cost of treating the

consequences of pathology are always greater than investing in prevention. That is why therapy should not be limited to immediate intervention, but many various undertakings should aim at *eliminating or minimizing the causes* of the phenomenon of sexual child abuse in order to provide optimal personality development for children.



# Conjugal Love

Francisco Gil Hellín



*Reflections on the nature of conjugal love in the last one hundred years have gone hand in hand with the evolution of society and culture. The Second Vatican Council was a very remarkable moment for the concept of married love, a natural reality that has been experienced since the origins of humanity. Previously the question was posed in terms of what was the principal aim of marriage, conjugal love (in contrast to the traditional Christian understanding of procreation) or procreation (which was interpreted as an “instrumentalization” of conjugal love). The Council went beyond this inadequate way of posing the problem and did not ask what is conjugal love good for? Instead the reflection was on what is the essence of marriage and asking, what is it? The unity and indissolubility of marriage find their soul and form in conjugal love and the institution of marriage. This, however, does not mean that love and marriage are the same thing. Conjugal love is a constitutive element of marriage, but not the only one, because the reality of marriage is that of an institution. Marriage then is the institution of conjugal love. Conjugal love and the institution of marriage each imply the other’s existence. Marriage presupposes love, but love should also be a fruit of marriage. This means that conjugal love is also a duty that must be achieved in the life of the spouses. The theological reflection shows us that conjugal love is oriented towards a certain fullness, a vivification through the action of grace, which elevates, perfects, heals and enriches conjugal charity. Conjugal love, which is expressed through mutual self-gift, and the orientation to procreation of marriage combine in married sexuality. This should manifest a genuine reciprocal gift of the married persons, reproducing the image of the institution of marriage and the conjugal love that protects it. (↗ Hardness of Heart: A Future Possibility?; Family and Privatization; Indissolubility of Marriage?; Marriage with Differences in Religion; Mixed Marriage and Discrimination; Marriage, Separation, Divorce and the Conscience; De Facto Unions)*

The Pastoral Constitution *Gaudium et spes* issued by the Second Vatican Council marked the progress in understanding the nature and proper place of conjugal love in marriage. Prior to Vati-

can Council II, conjugal love was considered an aim of marriage. There were in fact two tendencies: one placed conjugal love as a higher value than procreation; the other downplayed its importance to

a secondary aim so as not to obscure the primacy of procreation. Contrary to these previous viewpoints, conjugal love is not an aim of marriage, either primary or secondary. It is the very essence of marriage which tends towards these aims. Conjugal love is not a response to the question, *what is marriage for?* But rather to the question *what is marriage? What does it consist in?*

Making this statement does not establish a formal identification between marriage and conjugal love. Marriage is certainly conjugal love, but it is also the institution of marriage. Marriage is neither only an institution nor only love. Marriage is the institution of conjugal love.<sup>1</sup>

Now then, the term *love* being used in this document is *amor coniugal*, that is, it is not a mere sentiment, or a blind and irresistible impulse exposed to the instability of passion. It is that “eminently human” affection which, proceeding from the human will, assumes and ennobles all manifestations of natural tendencies. It comes from the noblest part of the person—the affection of the will—and directs itself to its end, until it embraces all the good of the beloved person (cf. *Gaudium et spes*, 49).

A specific and constitutive factor of conjugal love is the acceptance by the human will of an inclination for the

beloved as spouse. Thus, there is need for true *amor coniugal* and not simply an instinctive inclination. There is a decision by the human will by which a person directs his attention to a specific person from the opposite sex. All of this indicates that *amor coniugal* is an elective love. There is a connotation of a necessary determination of the human will for a personal affection. This is underlined by the word *dilectio* used as a synonym for *amor coniugal* in the council’s chapter (*Gaudium et spes*, 49).

The act by which the spouses commit themselves to each other for this conjugal love is a real and present reality. It is not simply a future project. What is born between them is an indelible institution before God and society. The institution is born by the loving act, and conjugal love serves and protects them from the changing illusions stemming from passion. True conjugal love is not restricted or impeded by the institution of marriage. Nor does the institution of marriage chain, limit, or imprison the dynamics of conjugal love. Both the institution of marriage and conjugal love require and complement each other as internal and external aspects of the same reality: either marriage or conjugal love. The *institutum* would not exist, were it not for *amor coniugal*, and the latter cannot be given without giving rise to the former.

This double aspect of reality, biblically referred to as *one flesh*, has the possibility of continuous enrichment

1 For a detailed study of the subject, cf. F. GIL-HELLÍN, *El matrimonio y la vida conyugal*, Valencia 1995, 129-162.

and progress according to the laws of its own dynamic. It is stamped with the personal and daily living together, meeting the demands of its initial mutual self-giving. It is wrong to consider the dynamism of conjugal life, the fruit of love, as opposed to the laws of unity and indissolubility, and the intrinsic finalities of marriage, which are proper demands of its institutional aspect. It is as if conjugal love were indifferent to these and other characteristics of marriage. This is a deformation of the mind, close to a certain Platonic idealism or a Gnostic dualism. This same *one flesh*, in its double aspect of conjugal love and the institution of marriage demands fidelity and an indissoluble union. Both aspects are oriented towards procreation and the education of children.

It is appropriate to distinguish between the act of love, which is the basis of marriage, and all those manifestations of love that are radically contained in it, and which are needed so that the love is mutual and committed self-giving. Independently of courtship love, spouses are now obligated to love each other by a special bond. Before marriage, they could decide to stop loving each other. Now there is a commitment of mutual self-giving that obligates them to make the mutual self-donation of their lives effective. That mutual self-donation by which the spouses became husband and wife must be real and present throughout their lives, in their daily affective trials and in their works of love.

The daily exercise of conjugal love, lived in self-giving and generosity, can also reflect the strength of an already existing love, making it grow and reach its fullness. If marriage presupposes love, conjugal love is the fruit of marriage, since love is a distinctive form of friendship that leads to sharing everything, with no selfish calculations. In this context, the specific and proper union of the spouses is located as a sign of love and a means of possible development. The intimate acts of the spouses, done together with full respect and dignity of their persons, express and facilitate mutual self-giving in an atmosphere of joyful trust (cf. *Gaudium et spes*, 49).

It can thus be affirmed that, even though the efficient cause of marriage is openly manifested mutual consent, specifically conjugal love, not its exercise or manifestations, is a constitutive element of the conjugal pact. The reason lays in the voluntary consent that establishes the *foeudus* versus the love that will now be owed, for which there is a commitment.

It does not follow that the *institutum* depends later on the contingent presence of the manifestations of that institutional love. But the original existence of a true marriage is definitely related to the presence of conjugal love in the *feri* of the marriage. The logical conclusion is that, where there is a marriage, there has been conjugal love or affection; and on the contrary, if it never existed, then neither did a true

marriage. Therefore placing conjugal love at the very root of marriage does not entail separate reasons given for the annulment of a marriage than absence or defect in the consent given.

To affirm that love is a constitutive element of marriage is to sustain that, had that irrevocable mutual self-giving not existed, there would not be a "*foedus coniungale*" between the spouses. The laws for unity and indissolubility are not extrinsic demands to marriage, but are born from its very essence. And so, the constitutive love must be conjugal love, exclusive and indissoluble. When spouses marry, "they express their decision to belong to each other for life and with that object to enter into an objective bond with laws and demands, far from being a form of slavery, are a guarantee and protection."<sup>2</sup>

Conjugal love and the institution of marriage are therefore two aspects of the *communitas coniungalis* that necessarily imply each other, because the love would not be conjugal without reference to the institution, and the institution would not exist without conjugal love. Each one is born mutually and essentially dependent on the other and they constantly need each other. The *love* needs the institution in order to be *conjugal*, and the institution of marriage always has a fundamental need to be vivified by this love.

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<sup>2</sup> Paul VI, "Il matrimonio: perfezione umana, sacramento cristiano," in *Insegnamenti al popolo di Dio*, Roma 1970.

Thus, conjugal love must be present among the different concrete aspects of marriage. This love must effectively inform the procreation and education of the children and the mutual spousal support of the spouses so that these ends will be truly human. In the same manner, the unity and indissolubility of marriage must be *animated* by conjugal love. The possible absence or weakening in practice of the manifestations of conjugal love does not destroy its properties and natural tendencies, although it can place barriers to them, but both must always be vivified by conjugal love.

If conjugal love must be present in the full reality of the marriage, it is because the institution and conjugal love are the two formal conditions that adequately define it; that is, marriage is the institution of conjugal love.

Let us go further. The Son of God, through the Incarnation, has made all human expressions His own. Since then, all that is human has become an appropriate vehicle for His communication with men. Through the human love, proper to the spouses, God has wanted to express His spousal love for all redeemed humanity. Thus the mutual commitment between husband and wife, and their commitment to their children, expresses and manifests, in human language, the loving relationship of Christ for the Church.

The full demands of a true spousal love can only be realized with the help of divine grace. Hence, Vatican Coun-

cil II states: "Authentic married love is caught up into divine love and is governed and enriched by Christ's redeeming power and the saving activity of the Church, so that this love may lead the spouses to God with powerful effect and may aid and strengthen them in the sublime office of being a father or a mother" (*Gaudium et spes*, 48). This transformation of conjugal and family life by Christ is the work of the Holy Spirit who acts through charity from the beginning.

Thus it is that "Conjugal love reaches that fullness to which it is interiorly ordained, conjugal charity, which is the proper and specific way in which the spouses participate in and are called to live the very charity of Christ who gave Himself on the Cross" (*Familiaris consortio*, 13).

With all the elements analyzed, let us now stop and examine the regulation of births and the moral criteria concerning contraceptives. The problem arises when these two specific aspects of marriage—the institution and conjugal love—are projected onto the act that is proper to marriage, that is, the conjugal act.

The laws inscribed in the conjugal institution—mutual self-giving in fidelity and intrinsic ordination to the procreation and education of children—indicate through their internal dynamic the structure of the conjugal act. At the same time, conjugal love leads the spouses towards a spontaneous and mutual self-giving. This is manifested

in marital affection and labors of love, which fill their lives and lead them to grow in love. One of these manifestations, proper and specific to marriage, is the conjugal act, which expresses and favors the mutual self-giving of the spouses.

Now here is where the problem arises for some marriages and which the Vatican Council II refers to in *Gaudium et spes* in the number dedicated to *De amore coniungali componendo cum observantia vitae humanae*. In fact, spouses can find themselves in such circumstances that, even while safeguarding and growing in conjugal love—which is naturally oriented towards procreation—they are morally obligated, at least for a certain time, not to increase their number of children. The Church does not ignore these real problems, but it does reject that the solution consists in the denial or the offending of one of the elements of this situation. To be ignorant of the real facts, logically leads to solutions that are not worthy of man, either denying the transcendent value of conceived life, or reducing sexual activity to an instinctive level without its corresponding human character.

The adequate response comes from the harmonization of the elements in apparent contradiction. If these are true laws that regulate the transmission of human life and laws that manifest the nature of authentic conjugal love, then they cannot truly be in contradiction to each other. Only an imperfect com-

prehension of one or both of these can lead to the impossibility of their conciliation. The reason here cannot be a real contradiction in the harmonization of these laws, is that the contradiction would have to be attributed to God, the creator of the laws. He is the one who commanded this mission of the transmission of human life, and that it be carried out in a manner proper to man's condition.

This is the concluding judgment of the council on the way to harmonize with moral rectitude apparent incompatibilities: "Moralis igitur indoles rationis agendi, ubi de componendo amore coniungali cum responsabili vitae transmissione agitur, non a sola sincera intentione et aestimatione motivorum pendet sed objectivis criteriis, ex personae eiusdemque actuum natura desumptis, determinari debet, quae integrum sesum mutuae donationis ac humanae procreationis in contextu veri amoris observant" (*Gaudium et spes*, 51).

Moral rectitude in acting to try to harmonize conjugal love with the responsible transmission of human life does not depend exclusively on subjective criteria, such as sincere intentions or the presence of important reasons. It depends on objective criteria stemming from the nature of the human person and of his actions that preserve the full meaning of mutual self-giving and of human procreation, all within the context of a true love.

It is interesting to analyze in detail

these objective criteria that surround the moral criterion for the exercise of conjugal life.

The possibility of mutual self-giving and the natural orientation of this self-giving towards procreation are essential requisites for the existence of a true marriage. The first element –mutual self-giving– must explicitly exist; the second –orientation towards procreation– is only implicitly required, that is to say, that there is no desire contrary to the natural orientation of procreation, which is intrinsic to the mutual conjugal self-donation of husband and wife. As Saint Augustine stated: even though they may not come together for procreation, they do not exclude it.

The nature of the conjugal act reflects, in its very structure as the specific act of marriage, this double law is needed in order for it to be licit: mutual self-giving and orientation towards procreation. The first element is explicitly required, that is to say, that the conjugal act must be a true manifestation of this mutual self-gift by these two persons united in marriage. It would not be a union of two persons, for example, if one was not conscious. The second element is sufficiently met when implicit in the natural orientation of sexual donation towards fertility and there is no will against this natural orientation: even though they may not come together for procreation, they do not positively exclude it.

Now then, since the conjugal act is

the specific marital act and must reflect the structure of the institution of marriage, it must also reflect the authentic nature of conjugal love that is protected. Hence, the morally correct conjugal act in its institutional structure, *integrum sensum mutuae donationis ac humanae procreationis*, must be entwined with true love *in contextu veri amoris*.

Therefore, they contravene the moral law when having marital relations that do not observe the demands of the institutional structure of the conjugal act by a union that does not manifest mutual self-giving, even if it were to remain open to fertility, as in the case of an adulterous conjugal act, or the desire for a conjugal union of mutual self-gift that is not open to fertility such as a conjugal act that is artificially made infertile. They also break the moral law if, while observing the correct position regarding the need to be open to the possibility of fertility, they perform an act which is lacking all love, such as in the case of one spouse unjustifiably imposing him/herself on the other spouse against their reasonable will.

The conjugal act is imperfect in the moral order when it lacks its essential structural elements, mutual self-donation and orientation towards fertility, or by a lack of conjugal love that should vivify the said structure.

The structure of marriage and family need conjugal love as their spirit and life, a spirit that can always be reborn, overcoming possible conjugal crises,

even if apparently asleep or lost. This love is the permanent answer, real and living, to this need for total self-gift which is the foundation of marriage.

Conjugal love animates and vivifies family life. Spousal and parental love in the Christian family is a vital principle that reinforces and revitalizes the fabric of spousal and family relations. It is a coherent dynamism that makes spouses joyfully live out their mutual self-giving and revitalizes all their family relationships with this joyful spirit of mutual donation. In the same manner, conjugal love gives paternal and maternal relations a spirit of mutual self-giving that extends itself out to all the other family members. The strength or the fragility of the expressed spousal self-giving, consciously or unconsciously, in daily life, signals the degree of consistency of the family as a social group.





# The Contraceptive Mentality

Grzegorz Kaszak



*Contraception is primarily the reflection of a fundamental way in which people face life. The “contraceptive mentality” is understood to include complete way of thinking, an orientation and way of acting, which tend towards depriving the practice of sexuality of its procreative consequences. This mentality increased with the mass-marketing of contraceptive products and the associated widespread advertisement and propaganda for them. To be more specific, the “contraceptive mentality” reflects an attitude of rejecting both the reciprocal total gift of self of the spouses (cf. Humane vitae, 11) and their objective of transmitting life. It is therefore closely connected with abortion. Contraception and abortion, as the Pope says in Evangelium vitae (# 13), are specifically different but like fruits of the same tree. They both reject human life in the first phases of its existence. The “abortion mentality” and the corresponding practice of abortion grows and consolidates itself where the “contraceptive mentality” is present. It is opportune to remember how the contraceptive mentality is able to distort even the use of natural methods for regulating fertility, when they are practiced with selfish ends in mind. It also must be said that many so-called contraceptive methods really also have abortifacient effects. Many chemical products, intra-uterine devices, and contraceptive vaccines, in their modes of operation are also abortifacient. (↗ Pre-implantation and Emergency Contraception; Sexual and Reproductive Rights; Fertility and Continence; Motherhood and Feminism; Responsible Parenthood; The Person and Integral Procreation; Reproductive Health)*

In the second half of the previous century, the commercialization of the Contraceptive Pill offered the opportunity for a new and efficient way to deprive human sexuality of its procreative potential. The wide distribution of the Pill had a large impact on changing people’s ways of thinking and behaving. We can say that the new contraceptive means undoubtedly helped create a new mindset, which is

called the contraceptive mentality.

The word “mentality” here means the combined thoughts, attitudes and actions of a group of people. In the case of the contraceptive mentality everything aims towards the freely chosen use of one’s sexuality divested of its procreative consequences.

This mentality has spread widely, not only geographically, but in the hearts of

people. Already in 1981, the Pope warned of the worrying danger from it for family life: "Signs are not lacking of a disturbing degradation of some fundamental values: [...] the appearance of a truly contraceptive mentality" (*Familiaris consortio*, 6). In 1995 this preoccupation continued not only with reference to healthy family life, but even for human life itself, especially for the unborn. Pope John Paul II dedicated number 13 of the encyclical *Evangelium vitae* to this problem.

The contraceptive mentality developed not only because the mass production of the new contraceptive devices, but also because of the propaganda which went along with the production of the Pill and other contraceptive products. Meanwhile, another very important fact arose and changed people's mindset about the transmission of human life: the use of misleading language.

All this created very dangerous ambiguities, which confused and still confuse not only non-believers, but also Catholics. Among such sources of confusion, we may enumerate: 1) accusing the Church of favoring abortion by its opposition to contraception; 2) that contraception is the most efficient means to prevent abortion; 3) "contraception" which is no longer contraception but rather abortion; 4) the recourse to natural methods with a contraceptive mentality.

The teaching of the Church on abortion has always remained the same.

The encyclical *Evangelium vitae* has clearly reaffirmed the absolute opposition to the killing of innocent (n. 57). The Church holds that any collaboration that can promote such a crime is illicit. It is absurd to accuse the Church of favoring abortion in any form. "The Catholic Church is then accused of actually promoting abortion, because she obstinately continues to teach the moral unlawfulness of contraception." (n. 13). August von Eiff formulated such a charge against the Church.<sup>1</sup> "When looked at carefully, this objection is clearly unfounded" (n. 13). Since the beginning, the Church has always been against anything that could sustain or promote the killing of innocent people. Any action freely made in favor of such an abominable crime, represents a moral evil. The Catechism of the Catholic Church affirms in n. 2272: "Formal cooperation in an abortion constitutes a grave offense". The Church would betray her mission and her own identity if she supported in any way the killing of unborn life. Unfortunately, public opinion is convinced that opposing contraception promotes the practice of abortion.

The basis of such an affirmation is the conviction that contraception is one of the most efficient means to fight abortion. Some laws even put forward the proposition that spreading

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1 Cf. A. VON EIFF, "Abtreibung und Empfängnisverhütung", in *Anzeiger für den Seelsorger* 9 (1992), 403-404.

knowledge of and the actual means and methods of family planning, above all contraceptives, are one of the best remedies available to society for the problem of abortion (see the current Polish legislation on family planning). The facts show that such a conviction is erroneous, that is to say that so-called safe and accessible contraception easily resolves the problem of abortion. For example, in the Scandinavian countries, where the contraceptive availability is guaranteed even to adolescents, the practice of abortion is very frequent. In Italy, the regions with the highest rates of contraceptive usage are also the ones with the higher abortion rates. A study, published by the Alan Guttmacher Institute in 1996, reported that among 10,000 women, who asked for the killing of their own babies, 57,5% were using contraception. According to K. Sidenius and N.K. Rasmussen, 60% of adolescents who underwent an abortion in Herlev Hospital in Copenhagen were using contraception.<sup>2</sup> The assertion of the Pope on the issue is very clear: "Indeed, the pro-abortion culture is especially strong precisely where the Church's teaching on contraception is rejected" (*Evangelium vitae*, 13). Even those who practice contraception in order to avoid an abortion in the future, fall into the trap of the contraceptive

mentality. This fact is explained by the close connection between abortion and contraception, even if from the moral perspective they are different evils: "Certainly, from the moral point of view contraception and abortion are specifically different evils: the former contradicts the full truth of the sexual act as the proper expression of conjugal love, while the latter destroys the life of a human being; the former is opposed to the virtue of chastity in marriage, the latter is opposed to the virtue of justice and directly violates the divine commandment 'You shall not kill'" (*Evangelium vitae*, 13). The voice of a part of public opinion which asks the Church to affirm that abortion is worse from a moral point of view than contraception, shows a lack of familiarity with the doctrine of the Church. What Pope John-Paul II wrote on contraception and abortion remains valid: "despite their differences of nature and moral gravity, contraception and abortion are often closely connected, as fruits of the same tree" (*Evangelium vitae*, 13). The explanation of this thought could also shed light on the statistical data reported above.

On the one side, the decision to kill the unborn baby is often prepared by the negative values that the contraceptive mentality carries within it and spreads. The Holy Father affirms: "But the negative values inherent in the 'contraceptive mentality'-which is very different from responsible parenthood, lived in respect for the full truth of the conjugal

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2 Cf. J. SUAUDEAU, "Contraception and abortion. Foes or Friends?", in *Linacre Quarterly*, May (2000), 68-69.

act—are such that they in fact strengthen this temptation when an unwanted life is conceived” (*Evangelium vitae*, 13). It is true that contraceptive mentality is not the only influence on the decision to deny life to the innocent: there are other reasons, like the mother being alone, economic difficulties, etc., but the contraceptive mentality plays an important role in the decision.

On the other hand, whoever acts according to the contraceptive mentality, by using contraception, does not accept the fact that from the sexual act a new human life can arise. It is an attempt, as Rhonheimer states, “to eliminate the procreative consequences of their sexual behavior and therefore their responsibility as well”.<sup>3</sup> The purpose of contraception is to prevent conception. When however, such a procedure fails, a human life could be brought to birth, which is the consequence of the act of sexual intercourse. The contraceptive mentality does not accept this consequence. The new human life then becomes unwanted and must be destroyed. These two realities have the fact of not wanting a child in common. If from the beginning, every action was made in view of refusing human life, it becomes difficult to change this mode of acting, even when faced with the real life of their own baby.

It is often said that the contraceptive act is made in the name of responsible procreation. Sometimes serious reasons

may exist, which induce the spouses to decide not to conceive a new human life. Nevertheless, such sexual behavior is wrong. The word “responsibility” has different meanings, but we may define it as the capacity of a person to assume duties that are owed to others with a claim on them and for which they can be called to give an account of how the duties were carried out. In the case of the transmission of human life, the duty comes from God himself: “Be fertile, and multiply” (Gen 1:28). The word “procreation” indicates that it belongs to a divine deed. The Creator has made man share this power in a certain way. The authority man must refer to in giving an account of the duty regarding procreation of a new human life is God himself. Additionally, the Creator gave laws indicating how the transmission of life must take place. Pope Paul VI said: “If they further reflect, they must also recognize that an act of mutual love which impairs the capacity to transmit life which God the Creator, through specific laws, has built into it, frustrates His design which constitutes the norm of marriage, and contradicts the will of the Author of life” (*Humanae vitae*, 13). To act according to the contraceptive mentality, really means being irresponsible in the area of procreation.

Responsibility is missing when the commandment “thou shalt not kill” is not observed. Direct killing of an innocent person is contrary to the will of God. Contraception and abortion have

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3 M. RHONHEIMER, *Etica della procreazione*, Roma 2000, 98.

in common a lack of responsibility before the Creator. Such a fact reinforces the connection between the two. All these connections constitute the tree which the Pope spoke about in the Encyclical *Evangelium vitae*. The tree is not a good one, for it produces bad fruits.

The Holy Father speaks about a temptation which grows. This means that the person who uses contraception is not yet a killer of new unborn human life but sooner or later will become one. Certainly the contraceptive mentality includes reducing the concept of a human person to a mere object, often an object of pleasure. Sexuality is cut off from the person, freedom is understood as an ultimate and absolute value. Hedonism, putting pleasure as the highest priority and seeking sex without children, influences the decisions people make. The baby could be considered, according to such a mentality, as an obstacle to everything it advocated. The child is not understood as a precious gift of God, created in His image and likeness, and also a blessing from God. The primacy of such values, which are actually negative values, totally changes the hierarchy of persons and things that are important in the life of the human person. To consider a new unborn human life above all as a burden certainly makes the decision to eliminate this obstacle to subjective happiness easier.

The reflections made above show that the contraceptive mentality and contraceptive usage in fact facilitate

abortion. To say differently is wrong from both the theoretical and practical (statistical data) perspectives.

The contraceptive mentality and its link to abortion is a question that remains a question which is often the subject of discussion. Some affirm that contraception reduces the number of abortions. On the contrary, others declare that the number of abortions increases where contraception is increasingly widespread. Both sides refer to statistical data, which is interpreted differently. This subject could be the object of a more in-depth investigation. For example, Poland in recent years has had greater propaganda for and distribution of contraceptives and the number of abortions declined by a notable amount. Considering only these two statistics, one could arrive at the conclusion that when contraceptives are more widely distributed the number of abortions declines, but in the case of Poland the situation regarding abortion changed because the new 1993 law on family planning and the protection of the human fetus was more restrictive than the previous law. When in 1996, an amendment allowing an extra condition for abortion was added, the number of killings of unborn babies increased. Later, when the previous law in favor of human life was brought back, the number of abortions decreased.<sup>4</sup>

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<sup>4</sup> Cf. see also the explanation of statistical data from the Czech Republic and Slovakia

It is noteworthy that John Paul II, in the encyclical *Evangelium vitae*, does not address this issue. Nonetheless, the Pope states the unquestionable fact that the abortion culture grows where the contraceptive culture exists. In my opinion, the debate as to whether abortion decreases where contraceptive usage increases forgets to take into account that each human life is a most precious gift from God and to kill it is a great offense against the Creator. We must do everything possible so that abortion disappears from face of the earth.

The connection between the contraceptive mentality and abortion is sown by the fact that some methods considered to be contraceptive, have abortifacient modes of operation. In this context, the Pope says: "The close connection which exists, in mentality, between the practice of contraception and that of abortion is becoming increasingly obvious. It is being demonstrated in an alarming way by the development of chemical products, intrauterine devices and vaccines which, distributed with the same ease as contraceptives, really act as abortifacients in the very early stages of the development of the life of the new human being" (*Evangelium vitae*, 13).

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in A. HRADOCKY and K. PASTOR, "Empfängnisverhütung: eine Alternative zur Abtreibung? Eine kritische Untersuchung", in AA. VV. *Empfängnisverhütung, Fakten, Hintergründe, Zusammenhänge*, Holzgerlingen 2000, 649-669.

The publications of the United Nations, for example, lists the intrauterine device among the contraceptive methods.<sup>5</sup> They make no allusion to the abortifacient consequences of the IUD, and use a very ambiguous vocabulary, that is to say they only state that this device is very effective for avoiding pregnancy. Additionally, modern contraceptive pills, like the minipill, for example, have abortifacient effects, as scientific studies demonstrated.<sup>6</sup> And what are the Morning After Pill or Emergency Contraception, if not new means of killing the innocent?

The main point of the contraceptive mentality is "sex without children". This mentality has also had an influence concerning natural methods. It is recognized that the methods for knowing the female organism regarding her fertility have been approved by the Catholic Church. The use of natural methods is licit when serious reasons exist: "If therefore there are well-grounded reasons for spacing births, arising from the physical or psychological condition of husband or wife, or from external circumstances, the Church teaches that married

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5 Cf. WHO, *Contraceptive Method Mix: Guidelines for Policy and Services Delivery*, Geneva 1994; DEPARTMENT OF ECONOMIC AND SOCIAL AFFAIRS, *Levels and Trends of Contraceptive Use as Assessed in 1998*, New York 2000.

6 Cf. R. EHMANN, "Die Abortive Kontrazeption", in *Empfängnisverhütung, Fakten, Hintergründe, Zusammenhänge*, 63-108.

people may then take advantage of the natural cycles immanent in the reproductive system and engage in marital intercourse only during those times that are infertile" (*Humanae vitae*, 16). The spouses have the mission to transmit and educate human life. The call from God to multiply (cf. Gen 1:28) should find a generous answer among spouses. "Thus, trusting in divine Providence and refining the spirit of sacrifice, married Christians glorify the Creator and strive toward fulfillment in Christ when with a generous human and Christian sense of responsibility they acquit themselves of the duty to procreate" (*Gaudium et Spes*, 50). Recourse to natural methods, when there is no serious reason to delay births, is morally wrong. In such circumstances, spouses do not commit the act of contraception, but they act according to the contraceptive mentality. The natural method is considered as a mere means for not having children.

From this mode of thinking it is very easy to take the next step of considering natural methods as natural contraception, there is a short step. Professor Walter L. Larimore writes: "Contraception is the process through which conception is prevented. We must distinguish between natural and artificial contraception [...] Methods of birth control which belong to "natural contraception" include abstinence, periodic continence and natural family planning

(different methods)".<sup>7</sup> This terminology is unacceptable because there is a basic difference between contraception and natural methods: "It is a difference which is much wider and deeper than is usually thought, one which involves in the final analysis two irreconcilable concepts of the human person and of human sexuality" (*Familiaris consortio*, 32; see also *Humanae vitae*, 16). The expression "natural contraception" is a deceptive use of language. The term places on the same moral plane natural methods and contraception, misleading public opinion: the means are different but the purpose of avoiding a child is the same. Professor Joseph Stanford affirms that such confusion is one of the reasons why the use of natural procedures is not so widespread. Some people reject natural methods because they believe they are contraceptive: "Less than one per cent of couples in the United States use modern natural family planning. Why not more? Among the reasons, we must enumerate the lack of knowledge, impossibility of access to them on different levels, the presence of a culture filled with contraception [...] Additionally, there is a minority which considers natural family planning to be "natural contraception" and rejects it as contraception".<sup>8</sup>

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7 W.L. LARIMORE, "El efecto abortivo de la píldora anticonceptiva y el principio del 'doble efecto'", in *Cuadernos de bioética*, 12 (2001) 45, 214.

8 J.B. STANFORD, in *Cuadernos de*

The Contraceptive mentality was able to expand so broadly because, in my opinion, it rested upon the wrong concept of freedom, (“do whatever you like”) hedonism and selfishness.



# Contragestion

Maria Luisa Di Pietro



*The term “contragestion” launched by professor Beaulieu while he was introducing the “abortifacient pill” RU486 -- or Mifepristone -- hasn’t had any impact on the usual language, because what he meant to designate as if it were a euphemism -- premature chemical abortion -- today hardly causes objections anymore. However this term keeps its own descriptive and explicative value, in particular for every person sensitive to the amazing banalization of abortion that contraceptives -- in the first rank of which is mifepristone associated with prostaglandins -- have introduced where they have already been in use. At the same time, however likely eliminated from the procedure that does not imply any hospitalization and seems to happen “softly,” the truth of abortion persists. The worst is that the woman who takes the mifepristone is left alone with her prescription, alone to be confronted with the drama that is produced in herself, alone also to suffer from the secondary effects and the complications of a drug which, the less that it can be said about is that it does not respect either body or life, either conscience or soul. (↗ Pre-implantation and Emergency Contraception; Dignity of the Human Embryo; Safe Motherhood; Embryo Selection and Reduction; Legal Status of the Human Embryo)*

The term “contragestion” indicates a series of abortifacient products that are used in the earliest stages of pregnancy and that, unlike interceptors, act also after the implantation of the embryo into the uterine endometrium.

Why, then, can’t they be defined as abortifacients? Because, replacing the term “abortion” with the term “contragestive,” what is sought is that the listener will not recall a dramatic fact -- that abortion is the killing of a person -- rendering it less brutal and unable to provoke anxiety, uneasiness, and above

all rejection. Life is simply consumed by taking one pill. this fact--it is said --implicates the person less from a psychological point of view than surgical abortion, and the woman almost does not perceive the gravity of the act that she is committing.

Therefore, once again it is necessary to specify the meaning of terms, “to call things by their proper name, without yielding to convenient compromises or to the temptation of self-deception”<sup>1</sup> in

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1 John Paul II, Encyclical letter *Evangelium*

order to re-establish the semantic truth and the scientific truth; in order to give back to the woman knowledge and responsibility in her choice.

## CONTRAGESTION AND CONTRAGESTIVES

The products used as contragestives are: Mifepristone or RU486; misoprostol; prostaglandins; the anti-hCG vaccine and the anti-TBA vaccine. Mifepristone, also known as RU486, is an anti-progestin that operates by stopping the progesterone receptors and counteracting the effects of this hormone at a level of targeted organs and tissues.<sup>2</sup>

It is known that progesterone is a hormone with a central role for the pregnancy's start and continuance: Secreted after ovulation, during the luteal phase and during the early phases of pregnancy (till about the 50th day from fecundation) by the luteal body, and

afterwards -- because of the so-called "luteo-placental shift" -- by the trophoblast, progesterone causes a decidualization of the endometrium, a reduced endometrium reaction to stimulant factors such as prostaglandin and oxytocin, and the closing of the cervix. In this way the implantation of the embryo into the endometrium and its development is guaranteed.

Many attempts have been made in the past to block progesterone's activity and prevent, therefore, the continuance of pregnancy. Three levels of intervention have been identified: 1) interruption of progesterone synthesis. This, however, is responsible for altered corticosteroid synthesis, fundamental hormones for the survival of the personal; 2) neutralization of circulating progesterone; and 3) progesterone receptors blockage in the targeted organs. This latter action is the mechanism of RU-486.

In fact, progesterone ties up to the receptors located on DNA, in particular at the level of the regions activating genes or in proximity to them.<sup>3</sup> RU-486 also penetrates through the membrane of the targeted cells and reaches the receptors themselves.<sup>4</sup> In this way RU-

*Vitae*, March 25<sup>th</sup> 1995

2 W.L. Shi, J.D. Wang, Y.Fu, and P.D. Zhu. "Estrogen and Progesterone Receptors in Human Decidua after RU486 Treatment." *Fertility and Sterility* (1993)60(1), 69-74; D.T. Baird. "Antigestogens." *British Medical Bulletin* (1993)49(1), 73-87; M.L. Swahn, M. Bygdeman, S. Cekan, *et.al.* "The Effect of RU486 Administred During the Early Luteal Phase on Bleeding Pattern. Hormonal Parameters and Ednometrium." *Human Reproduction* (1990)5, 402-408; A. Glasier, K.J. Thong, M. Dewar, *et.al.* "Mifepristone (RU486) Compared with High-Dose Estrogen and Progestogen for Emergency Postcoital Contraception." *New England Journal of Medicine* (1992)327, 1041-1044.

3 S. Green and P. Chambon. "Nuclear Receptors Enhance Our Understanding of Transcription Regulation." *Trends in Genetics* (1988)4, 309-314.

4 D. Philibert, R. Deraedt and C. Tournemine, *et.al.* "RU486 - an Antigluccorticoid with a New Mechanism of Antihormone Activity." *Journal of Steroid Biochemistry* (1982)17(3), Ixviii; E.E. Beaulieu. "The Albert Lasker

486 interrupts the progesterone's activity, which is always reversible once one stops taking the contragestive, unless the targeted cells' dynamic is completely changed: In this case the blocking effect becomes permanent.<sup>5</sup> The structures acted upon by the use of RU-486 are: The endometrium, cervix, uterus, and the myometrium.

The action on the endometrium is directed in particular to the capillary vessels that supply it with blood: The increased mobility of the smooth musculature of the endometrium reduces its vascularization. This leads to swelling and cellular necrosis followed by tissue sloughing off, bleeding and detachment of the already implanted embryo. The endometrium sloughing off is then responsible for the release of prostaglandins, and PGF2alfa in particular, that stimulate further myometrium contrac-

tions and cause cervical dilatation and relaxation, facilitating the embryo's expulsion. The embryo's detachment and death are, in their turn, responsible for the reduced production of hCG (human chorionic gonadotropin), which is a hormone that keeps the luteal body normally active during the first phases of pregnancy. The suspension of luteal body activity reduces further progesterone levels, reinforcing the antiprogestinal activity of RU-486.

The first study on the abortifacient activity of RU-486 was done in 1982 on 11 women. Between the sixth and eighth week of pregnancy they were given 200 mg of mifepristone for 4 days. Eight women aborted within 3 to 5 days after taking it, two women subsequently had the suction abortion procedure done, and one woman had to undergo a curettage of the inside of her uterus.<sup>6</sup>

Subsequent studies have used 600 mg of mifepristone in a single dose, followed, after 36-48 hours, by drugs which are analogous to prostaglandins, taking either Gemeprost (1 mg for vaginal administration) or Sulprostone (0,5 mg for intramuscular administration). In this case 96 abortions occurred, one pregnancy continued, two "incomplete" abortions were followed up by suction abortions, and one "incomplete" abortion was followed by a uterine cavity curettage procedure.<sup>7</sup>

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Medical Awards. RU486 as an Antiprogestosterone Steroid. From Receptor to Contragestion and Beyond." *Journal of the American Medical Association* (1989)262(13), 1808-1814.

5 On this argument: c.f. E.E. Beaulieu. "Contragestion by Antiprogestin: A New Approach to Human Fertility Control." *Abortion: Medical Progress and Social Implications*, (Ciba Foundation Symposium 1985), Pitman, London 1985, 192-210; ID., "Contragestion with RU 486: A New Approach to Postovulatory Fertility Control." *Acta Obstet Gynecol Scand Suppl* (1989)149, 5-8; R. Peyron, E. Aubeny, V. Targosz, *et.al.* "Early Termination of Pregnancy with Mifepristone (RU486) and the Orally Active Prostaglandin Misoprostol." *New England Journal of Medicine* (1993)328, 1509-1513.

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6 Reported by Baird, "Antigestogens," 73-87.

7 L. Silvestre, C. DuBois, M. Renault, *et.al.* "Voluntary Interruption of Pregnancy with

As a matter of fact, the current practice is to administer 600 mg of RU-486 in a single dose,<sup>8</sup> followed by the administration of prostaglandin 36-48 hours later in order to increase the abortifacient activity of mifepristone.<sup>9</sup> In fact, RU-486 causes abortions in 85 percent of cases, whereas by adding prostaglandin, the percentage increases to 96.9 percent. In the residual 3.1 percent of cases we can either have an abortifacient effect without the expulsion of the embryo (1.8 percent) or the absence of the abortifacient effect.<sup>10</sup> But, as the embryo exposed to RU-486 and to prostaglandins can present serious morphological anomalies that are incompatible with life, especially regarding the genital-urinary system, in these cases surgical abortion is always carried out and "strongly" suggested to the woman. In fact, the women receiving chemical abortions are asked to sign

a form to consent to an eventual and subsequent uterine cavity curettage. As with prostaglandins, RU-486 is taken in association with misoprostol,<sup>11</sup> which is also sometimes used by itself<sup>12</sup> or following methotrexate.<sup>13</sup>

The abortifacient effect of RU-486 happens more often during the first phases of pregnancy, when the progesterone levels are still low. After 49 days from conception, the placenta produces—as was already mentioned—a high quantity of progesterone that cannot be reduced by RU-486.

RU-486 cannot be taken at home by women without medical supervision, as its supporters have claimed, even though—as we will see—home administration is one of the goals for developing countries. RU-486 is administered,

Mifepristone (RU486) and a Prostaglandine Analogue." *New England Journal of Medicine* (1990)322(10), 645-648.

8 A. Ulman. "Uses of RU486 for Contraception: An Update." *Contraception* (1987)36, 27-31

9 M. Bygdemen and M.L. Swanh. "Progesterone Receptor Blockage. Effect on Uterine Contractility and Early Pregnancy." *Contraception* (1985)32, 45-51; D.T. Baird, M. Rodger I.T. Cameron, *et.al.* "Prostaglandins and the Interruption of the Early Pregnancy." *Journal of Reproduction and Fertility* (1988)36suppl., 173-179.

10 E. Aubeny. "RU486. Contraception, Contraception." *Rev Prat* (1995)45(19), 2445-2448.

11 C.R. Richardson. "Can Vaginal Misoprostol be Administered 1 to 3 Days After Mifepristone without Loss of Efficacy or an Increase in Adverse Events?" *Journal of Family Practice* (2001)50(1),9; L. Borghatta, M.S. Burnhill, J. Tyson, *et.al.* "Early Medical Abortion With Methotrexate and Misoprostol." *Obstetrics and Gynecology* (2001)97(1), 11-16.

12 A.Velazco, L. Varela, R. Tanda, *et.al.* "Misoprostol for Abortion up to 9 Weeks' Gestation in Adolescents." *European Journal of Contraception and Reproductive Health Care* (2000)5(4), 227-233; K. Coyaji, B. Elul, U. Krishna, *et.al.* "Mifepristone Abortion Outside the Urban Research Hospital Setting in India." *Lancet* (2001)357(9250), 120-122.

13 E.R. Wiebe. "Misoprostol Administration in Medical Abortion: A Comparison of Three Regimens." *Journal of Reproductive Medicine* (2001)46(2), 125-129.

therefore, under medical supervision and in a hospital because of possible complications, such as hemorrhage and violent abdominal pains.

The abortifacient action of RU-486 is exploited also during the early luteal phase, or immediately after fecundation and before implantation takes place. It's a question of using it as an emergency contraceptive or, to phrase it better, as an anti-implantation or interceptor drug. In this case RU-486 causes the inhibition and asynchrony of the endometrium's development with the consequent impossibility for the embryo to implant into the uterine wall.<sup>14</sup> This would take a single dose till the fifth day after sexual intercourse,<sup>15</sup> with a delay of at least three days in the appearance of the next menstruation.<sup>16</sup>

Moreover, RU-486 has been tested

as a contraceptive since it is able to stop ovulation if administered during the follicular phase in a single dose (200-600 mg) or repeated for several days.<sup>17</sup>

Prostaglandins are used as contraceptives until the 50<sup>th</sup> day from fertilization and no later,<sup>18</sup> even though—as is known—their abortifacient effect is exploited also in later phases of pregnancy.

It is not known exactly how prostaglandins cause their abortifacient effect. It is believed that this is due to the luteal body lysis with a consequent reduction of progesterone production, endometrium sloughing off and abortion of the already implanted embryo.<sup>19</sup> Epostane is also used in association with prostaglandins. It is an anti-progestinal that inhibits in a competitive fashion 3-beta-hydroxysteroid dehydrogenase, the enzyme that changes pregnenolone into progesterone.<sup>20</sup> The abortifacient vac-

14 M.L. Swahn, K. Gemzell, M. Bygdeman, *et.al.* "Contraception with Mifepristone." *Lancet* (1991)228, 942-943 (letter); P. Lahteenmaki, H. Alfthan, T. Rapeli, *et.al.* "Late Postcoital Treatment Against Pregnancy with Antiprogestosterone RU486." *Fertility and Sterility* (1988)50, 36-38; C. DuBois, A. Ulmann, and E.E. Beaulieu. "Contraception with Late Luteal Administration of RU486 (Mifepristone)." *Fertility and Sterility* (1988)50(4), 593-596.

15 Task Force on Postovulatory Methods of Fertility Regulation. "Comparison of 3 Single Doses of Mifepristone as Emergency Contraception: A Randomised Trial." *Lancet* (1999)553, 697-702.

16 P.C. Ho. "Emergency Contraception: Methods and Efficacy." *Current Opinions in Obstetrics and Gynecology* (2000)12(3), 175-179.

17 D. Shoupe, D.R. Mishell, M.A. Page, *et.al.* "Effects of the Antiprogestosterone RU486 in Normal Follicular Phase." *American Journal of Obstetrics and Gynecology* (1987)157, 1421-1426.

18 E.W. Horton and N.L. Poyser. "Uterine Luteolytic Hormone: A Physiological Role for Prostaglandine F2." *Physiol Rev* (1979)56, 913-919; M. Smmkari and G.M. Filshie. "Therapeutic Abortion Using Prostaglandin F2." *Lancet* (1970)1, 157-159.

19 S. Bergstrom, E. Diczfalussy, U. Borell, *et.al.* "Prostaglandins in Fertility Control." *Science* (1977)175, 1280-1287; K.M. Severyn. "Abortifacient Drugs and Devices: Medical and Moral Dilemmas." *Linacre Quarterly* (1990) August, 50-67.

20 N.S. Pattison, M.A. Webster, S.L. Phipps,

cines being tested today are anti-hCG vaccine and anti-TBA vaccines.<sup>21</sup>

The basic action principle of the anti-hCG vaccine (anti-human Chorionic Gonadotropin) is to prevent the continuance of pregnancy, inducing into the woman a state of immunity against chorionic gonadotropin, the hormone that signals the presence of the embryo to the maternal endocrine system.<sup>22</sup> HCG, secreted by the already-implanted blastocyst, stimulates the luteal body of the maternal ovary to produce progesterone in order to prevent the atrophy of the luteal body, to avoid menstrual loss and to consent to the embryo's development.

As a consequence, the hCG blockade and the fall of progesterone levels compromise the implantation and the development of the embryo: The luteal body regresses, the endometrium sloughs off and the embryo is eliminated.

The mechanism of the action of anti-hCG vaccine is, then, both inter-

ceptive and contragestive, even though, since neither alteration of the menstrual cycle nor alteration of the ovulatory cycle have been noticed, it is believed that abortion takes place during the first days after fertilization when the embryo, even if it has started to implant, hasn't completed the process yet.

As regards its structure, the anti-hCG vaccine has various formulas in order to avoid cross reactions with other peptides with similar structures (TSH, LH, FSH, etc.) and to avoid an increased antibody response.

In fact, at first a specific carboxylic sequence of hCG—the 37 amino acids of carboxylic terminal are different, for example, from the ones of LH -- have been used joined with an immunogenic *carrier* of bacterial origin, such as diphtherial toxoid or tetanus.<sup>23</sup> During the first phases of experimentation, a small antibody response was noticed without local side effects, but lack of satisfaction with the antibody response, small compared to what was expected, caused the short life of the above-mentioned vaccine. A system of biodegradable microspheres was perfected with a slow release capability, consenting in this way to a greater immunogenic response.

In other studies, instead, the entire beta subunity of hCG has been used as an immunogen: This is what happened

*et.al.* "Inhibition of 3 Beta-Hydroxysteroid Dehydrogenase (3 beta-HSD) Activity in First and Second-Trimester Human Pregnancy and the Luteal Phase Using Epostane." *Fertility and Sterility* (1984)42(6), 875-881.

21 W.R. Jones. "Contraceptive Vaccines." *Baillieres Clin Obstet Gynaecol* (1996)10(1), 69-86; S. Dirnhofer and P. Berger. "Vaccination for Birth Control." *International Archives of Allergy Immunology* (1995)108(4), 350-354.

22 R.J. Aitken, M. Paterson and P. Thillai Koothan. "Contraceptive Vaccines." *British Medical Bulletin* (1993)49(1),88-99.

23 W.R. Jones, J. Bradley, S.J. Judd, *et.al.* "Phase I Clinical Trial of a World Health Organisation Birth Control Vaccine." *Lancet* (1988)1, 1295-1298.

in India, where the abortive action of the vaccine has been evaluated together with the antibody response.<sup>24</sup> Also in this case the carrier is constituted by a tetanic toxoid, but a diversity of antibody response by the women to whom it had been administered has been noticed.

It has been tried then, to produce vaccines starting by hCG hybrids, obtained by combining the beta chain of human hCG with the alfa chain of ovine LH. The result was a greater antibody response, but at the same time a high percentage of crossed reactions between ovine LH and human LH. And more, to increase the antibody response, it has been thought to pre-immunize the woman administering first the carrier and then the complete vaccine.<sup>25</sup>

The anti-TBA vaccine (trophoblastic antigen vaccine) is another abortifacient-acting product perfected on demand of the World Health Organization.<sup>26</sup> The

woman is stimulated to produce antibodies against the trophoblast, which is the embryo in the first stages of its development.

## CONTRAGESTION IN DEVELOPING COUNTRIES

One of the principal targets in contraceptive distribution, moreover already used or tested in several industrial countries, are women of developing countries (DCs). The reason is the following: as pregnancy—it is said—is a social “disease,” (the growing number of births would be a cause, as certain persons state, of the world’s impoverishment) and physical (the mortality/morbidity connected to pregnancy is still high in DCs), so it should be avoided by all possible means, even with abortion.

Certainly it cannot be denied that the increase of the world’s population is something that happens in DCs and that 95% of infantile and maternal deaths always happens in DCs, but we know it is not due to the birth’s number, but to a bad health assistance and to the lack of education and basic structures for monitoring pregnancy and delivery, to the lack of the most fundamental systems of disposal of waste material and adequate water supplies, and to inad-

24 S.M. Shahani, P.P. Kulkarni, M. Salahuddi, *et.al.* “Clinical and Immunological Responses With Pr-beta-hCG-TT Vaccine.” *Contraception* (1982)25(4), 421-434; G.P. Talwar, V. Hingorani, S. Kumar, *et.al.* “Phase I Clinical Trials With Three Formulations of Anti-Human Chorionic Gonadotropin Vaccines.” *Contraception* (1990)41(3), 301-316.

25 S. Shah, R. Raghupathy, O. Singh, *et.al.* “Prior Immunity to a Carrier Enhances Antibody Responses to hCG in Receptients of an hCG-Carrier Conjugate Vaccine.” *Vaccine*(1999)17(23-24), 3116-3123.

26 C.S. Bambra. “Anti-Trophectoderm Vaccine: Rationale and Methods Used for Antigen Identification and Selection.” *Scandinavian*

*Journal of Immunology* (1992)36(suppl 11), 131-136; L.F. Roberge. “Abortifacient Vaccine Technology: Overview, Hazards and Christian Response.” *Linacre Quarterly* (1995) August, 67-75.

equate nutrition.<sup>27</sup> Granted that, even if pregnancy was really a “disease,” it is necessary to give very different solutions from contraception-sterilization-abortion, but it is not our intention to dwell upon this subject; we only restrict ourselves to pointing out how the poor hygienic-sanitary conditions are, considered instead, the cause of “unsafe” surgical abortions, due to these reasons we have the proposal to implement the recourse to chemical abortion, and in particular to abortion by using mifepristone and prostaglandin or mifepristone and misoprostol or misoprostol alone.<sup>28</sup> In fact, in order to increase the use of mifepristone, in particular associated with misoprostol, one side has started their production in DCs<sup>29</sup> themselves,

while on the other side the home delivery of the product will be supported. This protocol has already been the object of experimentation; the women have been given first mifepristone under medical control, then have been given pills of mifepristone to take at home, and a checkup has been performed after two weeks.<sup>30</sup>

### **ETHICAL PROBLEM: CONTRAGESTION AND CONSCIENTIOUS OBJECTION**

With regard to pharmacological abortion, this is what can be read in the encyclical letter *Evangelium Vitae*:

“In order to facilitate the spread of abortion, enormous sums of money have been invested and continue to be invested in the production of pharmaceutical products which make it possible to kill the fetus in the mother’s womb without recourse to medical assistance. On this point, scientific research itself seems to be almost exclusively preoccupied with developing products which are ever more simple and effective in suppressing life and which at the same time are capable of removing abortion from any kind of control or social responsibility” (n.13).

Such a statement would better adapt

27 D. Rushs. “Nutrition and Maternal Mortality in the Developing World.” *American Journal of Clinical Nutrition* (2000)72(suppl 1), 212s-240s.

28 K. Coyaji, B. Elul and U. Krishna, *et.al.*, “Mifepristone Abortion Outside the Urban Research Hospital Sitting in India.” *Lancet* (2001)357(9250), 120-122; A.E. Pollack and R.N. Pine. “Opening a Door to Safe Abortion: International Perspectives on Medical Abortifacient Use,” *Journal of the American Medical Womens Association* (2000)55 (suppl 3), 186-188; K. Blanchard, B. Winikoff and C. Ellertson. “Misoprostol Used Alone for the Termination of Early Pregnancy: A review of the Evidence.” *Contraception* (1999)59(4), 209-217.

29 G.W. Duncan. “Collaborative Research and Development on Mifepristone in China to Reduce Unwanted Pregnancies and Recourse to Abortion.” *International Journal of Gynaecology and Obstetrics* (1999)67 (suppl 2) (6), 69-79.

30 J.P. Guengant, J. Bangou, B. Elul and C. Ellertson. “Mifepristone-Misoprostol Medical Abortion: Home Administration of Misoprostol in Guadeloupe.” *Contraception* (1999)60(3), 167-172.



to interception, because it talks about products that can be taken by woman freely, and could be extended even to contragestives due to the tendency to their use at home.

Whether it is interception or contragestion or surgical abortion, the moral judgment doesn't change, however: "Among all the crimes which can be committed against life, procured abortion has characteristics making it particularly serious and deplorable. The Second Vatican Council defines abortion, together with infanticide, as an *unspeakable crime*."<sup>31</sup>

And still, more and more of these crimes assume the nature of rights, "to the point that the State is called upon to give them legal recognition and to make them available through the free services of health-care personnel."<sup>32</sup>

Health-care personnel, if they don't share this criminal practice, have to give a clear refusal, raising an objection of conscience. The diffusion of chemical abortion has extended, on the one hand, the number of professional categories that can be involved in abortifacient acts, and on the other hand the scope and chronological extension of the activities specifically and necessarily intended to cause these acts. In fact it is necessary to identify what an objecting health worker should avoid doing in the case that in the medical institution

where he works contragestives are used, that don't cause abortion immediately but that take several hours or even days to act. And then, the moment of the abortifacient intervention is to be limited to the few minutes requested for the expulsion of the fetus, or must it be extended to the whole period (hours or days) in which the action of the above-mentioned abortifacient is realized?

We believe that the whole period of administration and waiting for the abortifacient action to take place has to be included in the objection and that, therefore, the person that has objections of conscience cannot be asked to provide any services during that period of time since all these actions are directed towards causing abortion. Least of all, persons can't be asked to administer drug doses or other substances aimed to strengthen the action of the abortifacient. To give an example, a conscientious objector is not obliged to administer either prostaglandins or RU-486, nor further doses of prostaglandin or misoprostol, if this is requested in order to increase the effect of the first abortifacient administered.

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31 John Paul II, *Evangelium vitae*, 58.

32 John Paul II, *Evangelium vitae*, 11.



# The Counseling of Pregnant Women in Germany

Hans Reis



*A problem presented itself at the unification of West Germany (the Federal Republic of Germany) and East Germany (the German Democratic Republic), which took place in October 1990. East Germany, after a period of restricting abortion, allowed abortion in 1972 during the first twelve weeks of pregnancy with the condition that the procedure must be performed by a physician in a clinic (the “Fristenregelung” or regulation of terms). West Germany at that time allowed an abortion according to a statutory catalogue of four indications (the “Indikationenregelung” or regulation of indications). Between 1992 and 1994 a common regulation in both parts of the country was introduced. This provides a counseling system, consisting of counseling centers with different orientations. Its goal is to protect preborn life and to resolve conflict situations where pregnant women are involved. Those counseling centers also have to give out a certificate which would be henceforth the sole condition for a depenalized abortion. Inevitably the problem now arose that the Catholic Church, wanting to help the pregnant mothers, would have to give a certificate which could be used for obtaining an abortion. After many contacts with the Holy See and the Pope personally, the German bishops on November 22<sup>nd</sup>, 1999 decided definitively to leave this counseling system and to allow their own counseling centers to give advice only without handing out certificates. (↗ Family Counseling Services, Dignity of the Human Embryo, Medical Interruption of Pregnancy, Voluntary Interruption of Pregnancy, Imperfect and Iniquitous Laws; Safe Motherhood; Partial Birth Abortion; Legal Status of the Human Embryo; Pro Choice)*

Women who are considering an abortion are obliged by law to seek counseling in Germany. According to the current legal situation, this is the only prerequisite for the physician who performs an abortion to remain unpunished. In order to insure such counseling, a pluralistic range of counseling centers should be available. The State therefore

values very highly the participation of the two main churches in Germany, namely the Roman Catholic Church and the Protestant regional churches (*Landeskirchen*). The counseling center has to give the woman a certificate confirming that she has received counseling. This then allows her to see a physician after a minimum of three days to have

an abortion. This system is praised by all political parties in Germany, including those which call themselves "Christian." They hold that it would be the only possibility to effectively protect the life of unborn children. The Catholic Church, however, sees itself confronted with the question, whether it does not become complicit in the abortion, if the woman uses the certificate obtained at a Catholic counseling center in order to have an abortion. Those in favor of the Church's participation claim that the Church would thus be able to save the lives of at least some children. However, the Holy Father, Pope John Paul II, has emphasized insistently that for the sake of the clarity of its witness the Catholic Church may not be involved in this system of counseling.

## 1) THE DEVELOPMENT OF THE LEGISLATION CONCERNING ABORTION IN GERMANY

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When Germany again became one State in October 1990, after having been divided into two States with different political systems since 1949, two different regulations applied concerning abortion: In the eastern part of Germany -- the then German Democratic Republic (GDR) -- until 1972 an abortion was only allowed in strictly limited and exceptional cases for medical

reasons.<sup>1</sup> But inspired probably by W.I. Lenin,<sup>2</sup> a statute<sup>3</sup> was then enacted which permitted abortion for any reason during the first twelve weeks of pregnancy, provided that a physician would perform it in a clinic. This so-called *Fristenregelung* (regulation of terms) was opposed in the Western part of Germany where until 1975 abortion had only been permitted in cases of danger of death or of a severe health-risk for the woman,<sup>4</sup> by an *Indikationenregelung* (regulation which contains a statutory catalogue of indications), since the Federal Constitutional Court with its judgment of February 25<sup>th</sup>, 1975<sup>5</sup> had rejected as unconstitutional an already adopted regulation of terms<sup>6</sup> which, however, had not yet come into effect.

According to the regulation of indications,<sup>7</sup> an abortion was only exempt

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1 See § 11 of the Statute concerning the Protection of Mother and Child and the Rights of Women of September 27<sup>th</sup>, 1950 (DDR-GBl. p.1037).

2 See W.I. Lenin, *Working-Class and Neomalthusianism* (1913).

3 See the Statute Concerning the Interruption of Pregnancy of March 9<sup>th</sup>, 1972 (DDR-GBl. I, p.89), with the complementary regulation of March 9<sup>th</sup>, 1972 (DDR-GBl. II, p.149).

4 See the judgment of the former Supreme Court of the Reich (*Reichsgericht*) of March 11<sup>th</sup>, 1927 (61 RGSt 242 [254 sqq.])

5 See 39 BVerfGE 1; English translation in 9 JMarJPrac&Proc pp.605-684.

6 See § 218a StGB in the version of the Fifth Statute to Reform of Penal Law of June 18<sup>th</sup>, 1974 (BGBl. I, p.1297).

7 See § 218a StGB in the version of the Fifteenth Statute to Amend the Penal Law of May 18<sup>th</sup>, 1976 (BGBl. I, p.1213).

from punishment in the presence of one of four so-called indications, namely (1) to avert from the pregnant woman the danger for her life or the danger of a serious impairment of her bodily or psychic health; (2) when the child is likely to be born with damage to its condition of health which cannot be alleviated; (3) in the case of rape or any other kind of sexual abuse of the woman; and (4) to avert the danger of a calamity of the pregnant woman which -- as the statute puts it literally -- is so serious that the continuation of the pregnancy cannot be demanded from her.

Though this regulation offered the opportunity for much abuse too, at least it offered a certain protection for the unborn child, especially if one shares the opinion of the author of this text<sup>8</sup> that abortion was lawful only in the first case, but remained unlawful in the other three cases, although it was not punished. When the re-unification of Germany was negotiated in August 1990, it was agreed that the complete legal system of the old Federal Republic would also be introduced into the former GDR. The negotiators of the GDR threatened, however, to let the reunification fail on the whole, if the regulation of terms would not continue to be valid

in the territory of the GDR.<sup>9</sup> Therefore it was agreed in the Treaty of Re-Unification to make a compromise. This, however, amounted in reality to the disappearance of any kind of effective protection of unborn children: For the present, the same respective regulations were to remain applicable in the two parts of Germany, but only until December 31<sup>st</sup>, 1992 at the latest<sup>10</sup>. Then a new regulation would have to be introduced. This regulation was supposed to offer a better protection for unborn children and to address more effectively the conflicts pregnant women were experiencing, than it had been the case in both parts of Germany at the time before re-unification. To this purpose a country-wide network of counseling centers of different organisations should be established to insure diversity of orientations<sup>11</sup>.

A first draft for such a regulation was submitted by Rita Süßmuth,<sup>12</sup> the

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8 See Hans Reis, *Das Lebensrecht des Ungeborenen Kindes als Verfassungsproblem*, Tübingen 1984, p.176 sqq.; Id., *Die Mißbilligung des Schwangerschaftsabbruchs im Recht*, Bonn/Augsburg 1992, p.14 as well as p.21 sqq. and p. 25.

9 See Wolfgang Schäuble (then Federal Minister of the Interior and negotiator for the Federal Republic), *Der Vertrag: Wie ich über die deutsche Einheit verhandelte*, Stuttgart 1991, p.230 sqq.

10 See the excerpt from the respecting regulations of the Unification Treaty in: Hans Reis, *Das Recht auf Leben und die deutsche Einheit*, Augsburg/Bonn 1990, pp. 38-41.

11 See article 31, paragraph 4 of the Treaty between the German Democratic Republic and the Federal Republic of Germany concerning the Establishment of the Unity of Germany (Unification Treaty) of August 31<sup>st</sup>, 1990 (BGBl. II, p.889).

12 See Rita Süßmuth. *Schutz des Ungeborenen*

then President of the Federal Parliament (*Bundestag*), in March 1991. Though it was obviously based on the regulation of terms, she presented this draft as a supposedly new model for a so-called *Beratungsregelung* (regulation of counseling). When in 1992 a bill was passed<sup>13</sup> which was designed according to this draft, it led to a decade-long controversy between the Holy See and the German bishops. In this conflict the Central Committee of German Catholics was less than helpful. This Committee was founded in 1868 as a panel of lay people with the purpose of promoting Catholic and Church concerns in the political arena;<sup>14</sup> today, however, it is more the mouthpiece of the political parties in the ecclesiastic arena than anything

else, for sometimes it even tries to make the Church dependent on political interests and pursues goals extrinsic to the Church.

## 2) EVALUATION OF PREGNANCY COUNSELING FROM A CIVIL LAW AND CANON LAW PERSPECTIVE

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The counseling of pregnant women who were considering an abortion concerning the assistance available for them as well as for mothers and children had been mandatory already in the earlier regulation.<sup>15</sup> The Federal Constitutional Court had already demanded in its sentence of 1975<sup>16</sup> that this counseling, if it should have a protective effect in favor of the unborn child, would have to try to influence the expectant mother in view of a continuation of the pregnancy. Therefore, as the text continues,<sup>17</sup> it has to be the required constitutional goal of counseling to work for a continuation of the pregnancy. Despite various concerns which were expressed at that time,<sup>18</sup> it was under those circumstances

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*Lebens im Geeinten Deutschland – Ein Dritter Weg*, in: Susanne Heil (ed.), §218 – *Ein Grenzfall des Rechts*, Tutzingen Materialien No. 68 (1991), pp. 36-44 and pp. 117-122.

13 See the Statute concerning the Protection of Life before Birth, for the Promotion of a more Child-Friendly Society, for Help in Pregnancy Conflicts and Concerning the Regulation of the Termination of Pregnancy (*Schwangeren- und Familienhilfegesetz*) of July 27<sup>th</sup>, 1992 (BGBl. I, p.1398) in connection with the in pursuance of Article I of the statute to amend the afore-said statute of August 21<sup>st</sup>, 1995 (BGBl. I, p.1050) enacted Statute concerning the Prevention and Overcoming of Pregnancy Conflicts (*Schwangerschaftskonfliktgesetz* - SchKG).

14 See Karl Buchheim, *Ultramontanismus und Demokratie -- Der Weg der Deutschen Katholiken im 19. Jahrhundert*, Munich 1963, p.180 sqq. as well as Karl Eugen Schlieff, *HdbStKirchR*<sup>2</sup> (1994-1995), vol.1, p. 368 sqq.

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15 See § 218b paragraph 1 No. 1 StGB in the version of the statute of May 18<sup>th</sup>, 1976 (fn 7)

16 See 39 BVerfGE 1 [61 sqq.] = JMarJPrac&Proc p.657 sq.

17 See 39 BVerfGE 1 [63] = JMarJPrac&Proc p.659.

18 See the Statement of the German Bishops Conference concerning the Criticisms of the Activities of Catholic Counseling Centers for Pregnant Women in Situations of Calamity and Conflicts of February 17<sup>th</sup>, 1986, *Protokolle der Deutschen Bischofskonferenz* (Reports of the

acceptable also for the Catholic Church to be involved in this system of pregnancy counseling and to install its own counseling centers. These centers were run in part by the dioceses themselves, by the local Caritas-centers, and by the *Sozialdienst Katholischer Frauen* (Social Service of Catholic Women), the latter having been founded originally in order to counsel and help women in social affairs. A determining factor for the Church's decision was the consideration that the counseling and the counseling certificate were, according to the then-valid statute, not the decisive condition for a depenalized abortion. Rather, this was dependent on whether a physician who was not going to perform the abortion<sup>19</sup> had affirmed that one of the four above-mentioned indications is to be acknowledged.

However, this is different in the actual statute which was enacted in 1992 and which was insofar not rejected by the Federal Constitutional Court in its judgment of May 28<sup>th</sup>, 1993<sup>20</sup>: the only condition for an abortion performed by a physician to remain exempt from punishment<sup>21</sup> is now that the pregnant woman will have received counseling at an officially recognized counseling

center and that she can furnish a certificate with her name and the date.<sup>22</sup> It is no longer necessary to indicate any reason for the abortion, nor may the counseling try to influence the woman to continue her pregnancy. With the explicit approval of the Federal Constitutional Court in its sentence of 1993, the statute now prescribes in a brusque rejection of its earlier decision<sup>23</sup> that the counseling should be "non-directive" (*ergebnisoffen*).<sup>24</sup> Furthermore, all counseling centers, including those run by the Church or its institutions, now need state approval.<sup>25</sup> This means that the State is authorized to check whether the counseling was really non-directive, and, if this is not so, the State may revoke its authorization.<sup>26</sup>

This legal change should have made it clear to everyone that the Church could no longer be part of the state-approved system of pregnancy counseling. Nonetheless, the German bishops, with the exception of the late Bishop of Fulda, Archbishop Johannes Dyba,<sup>27</sup> wanted the Church to continue to be involved in the current counseling sys-

German Bishops Conference) 1986 I, p.14-16.

19 See § 219 StGB in the version of the statute of May 18<sup>th</sup>, 1976 (footnote 7).

20 See 88 BVerfGE 203 [264 sqq.].

21 See § 218a paragraph 1 StGB in the currently valid version of the statute of August 21<sup>st</sup>, 1995 (fn 13).

22 See § 7 paragraph 1 SchKG (footnote 13).

23 See 88 BVerfGE 203 [282, 306].

24 See § 5 paragraph 1 SchKG (footnote 13).

25 See § 8 SchKG (footnote 13).

26 See § 10 paragraph 3 in connection with §§ 9 und 5 SchKG (footnote 13).

27 See the Declaration of the Bishop of Fulda, Archbishop Johannes Dyba, concerning the Legislation on Abortion in Germany of September 29<sup>th</sup>, 1993, *Kirchliches Amtsblatt für die Diözese Fulda*, 1993, p. 77, No. 188.

tem. They merely added a sentence in their guidelines<sup>28</sup> that the woman needs to be made aware of the fact that the unborn child also has a right to life at every stage of its development, even vis-à-vis of her; that human life is from the beginning inviolable and that no one may dispose of the life of the unborn child from the perspective of the Christian faith.

All this, however, could not do away with the question of whether the counselors who were giving out counseling certificates with the approval of the Church were getting now through their action complicit in an abortion;<sup>29</sup> for they were participating in an act without which the abortion could not take place at least in most cases.<sup>30</sup>

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28 See § 1 of the Provisional Guidelines for the Catholic Counseling Centers of November 21<sup>st</sup>, 1995, *Protokolle der Deutschen Bischofskonferenz* 1995 II, pp. 110-117.

29 See Giovanni B. Sala SJ. *Kirchliche Beratungsstellen und Mitwirkung am Abtreibungsgesetz -- Eine Moralthologische Untersuchung. Schriftenreihe der Juristen-Vereinigung Lebensrecht e.V.*, Köln, No. 14 (1997), pp. 59-117, No. 15 (1998), pp. 51-85.

30 See Hans Reis. *Muß die Katholische Kirche aus dem Staatlichen Beratungssystem Aussteigen? Internationale Katholische Zeitschrift 'Communio'* 3, pp. 424-431; Id., *Die Beratungsbescheinigung und das Kanonische Recht. Deutsche Tagespost* No. 83 of July 10<sup>th</sup>, 1997, p. 3.

### 3) THE INTERVENTION OF THE HOLY FATHER, POPE JOHN PAUL II

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The Holy Father, Pope John Paul II, stated in his encyclical *Evangelium Vitae*<sup>31</sup> (No. 62)—by expressly referring to the regulations of Canon Law<sup>32</sup>—that the automatically incurred penalty of excommunication for a procured abortion affects all those who commit the crime with knowledge of the penalty attached, and this includes those accomplices without whose help the crime would not have been committed. However, in his letter to the German bishops of September 21<sup>st</sup>, 1995, written soon after the coming into effect of the amended statute concerning abortion, he did not expressly pursue the question of excommunication in relationship to the handing-out of counseling certificates. Rather, he pointed to the problematic nature of the changed legal status and its obvious ambiguity.<sup>33</sup> On April 5<sup>th</sup>, 1997, a delegation of the German Bishops Conference was invited into the Vatican for a report, and on May 27<sup>th</sup>, 1997 the Holy Father met with all the German diocesan bishops.

On January 11<sup>th</sup>, 1998, the Holy

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31 See AAS 87 (1995), pp. 401-522.

32 See cc. 1398, 1329 CIC and cc. 1450 § 2, 1417 CCEO.

33 See for the following explanations Hans Reis, *Um der Klarheit des Zeugnisses Willen—Der Konflikt um die Katholische Schwangerschaftskonfliktberatung in Deutschland*, Buttenwiesen, 2001.



Father addressed another letter to the German bishops in which he urgently asked them to find ways and means to ascertain that the certificates no longer would be handed out in their present form by Catholic Counseling Centers. The bishops decided thereupon to appoint a study group which was to examine how one could fulfill the wish of the Holy Father. After some deliberations, the study group suggested, among other things, to continue to give to pregnant women the counseling certificate which would possibly give them access to a depenalized abortion; at the same time, however, the counseling was supposed to be complemented by a counseling- and help-plan which would warrant some concrete help for the pregnant woman until her child would reach its third year; this was meant to facilitate for her the continuation of the pregnancy. In a third letter of June 3<sup>rd</sup>, 1999, the Pope agreed to this proposal under the condition that the following sentence would be added to the counseling certificate: "This counseling certificate cannot be used for the performance of penalty free abortions."

However, the instruction of the Holy Father to add this sentence to counseling certificates led to some misinterpretations. Therefore, after two further writings to the German bishops from the Cardinal Secretary of State and from the Prefect of the Congregation for the Doctrine of the Faith of September 18<sup>th</sup>, 1999, and from the Cardinal Secretary

of State of October 20<sup>th</sup>, 1999, the Pope ordered in a fourth letter of November 20<sup>th</sup>, 1999 to stop giving out counseling certificates. Thereupon the Permanent Counsel of the German Bishops Conference decided to withdraw from the state system of counseling pregnant women on November 22<sup>nd</sup>, 1999; in accordance with the statute<sup>34</sup> they decided to organize their own system of counseling centers that would give advice in all questions relating to pregnancy, but without handing out the certificates which would allow for a depenalized abortion. All German dioceses finally followed suit and the German Bishops Conference issued new guidelines<sup>35</sup> for Catholic pregnancy counseling centers on September 26<sup>th</sup>, 2000.

#### 4) THE FOUNDING OF THE ASSOCIATION "DONUM VITAE"

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The new Episcopal guidelines contain among other things the regulation<sup>36</sup> that no agency of a Catholic Counseling Center may at the same time run or support ideologically or financially other facilities that give out counseling certificates which allow for depenalized abortions. Similarly, it may not offer

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<sup>34</sup> See §§ 2-4 SchKG (footnote 13).

<sup>35</sup> See *Protokolle der Deutschen Bischofskonferenz* 2000 I, pp. 50-55; to be found also in *Hans Reis* (footnote 33), pp. 91-98.

<sup>36</sup> See § 12, paragraph 3 of the Episcopal Guidelines (footnote 35).

any of its staff to these facilities or grant them leave of absence so that they can work there. Catholic Counseling Centers may therefore<sup>37</sup> not give out any information to people seeking advice about those facilities that give out these counseling certificates, or about any physicians, clinics or institutions performing abortions.

Both regulations imply a rejection of the association "Donum Vitae" founded on September 24<sup>th</sup>, 1999 on the basis of the civil law but appealing to c. 215 CIC. This association gave itself this misleading title by alluding to the opening words of the Instruction of the Congregation for the Doctrine of the Faith "On Respect for Human Life in its Origin and on the Dignity of Procreation" of February 22<sup>nd</sup>, 1987.<sup>38</sup> In the meantime, this association has opened up its own counseling centers in numerous cities. These try to give the impression that they are acting in accordance with the Catholic Church, though they are still giving out the prohibited counseling certificates.

However, it has been clarified meanwhile that this association does not enjoy any ecclesiastical recognition. It therefore cannot invoke c. 215 CIC, which allows the Christian faithful to found and to govern associations for charitable and religious purposes or for the promotion of Christian vocations in

the world; for according to No.19 §4 of the Decree *Apostolicam Actuositatem* of the Second Vatican Council concerning the lay apostolate,<sup>39</sup> this right is ensured with the explicit proviso that the proper relationship with ecclesiastical authorities will be maintained.<sup>40</sup> Moreover, this association is attempting to encroach upon the financial subsidies which the different *Laender* of which Germany consists have granted Catholic counseling services.

## 5) THE FINANCIAL SUPPORT OF THE CATHOLIC COUNSELING CENTERS

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The question of whether Catholic Counseling Centers have a claim to financial support from the State even if they do not give out counseling certificates has been discussed controversially for some time and it has also been subject of several law-suits. Although the Hessian Administrative Court of Appeal had already decided in two judgments of November 18<sup>th</sup>, 1997<sup>41</sup> that, besides the counseling in pregnancy conflicts which includes the handing-out of counseling certificates,<sup>42</sup> the giving of general advice in questions relating to pregnancy<sup>43</sup> must also be supported by

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37 See § 4 of the Episcopal Guidelines (footnote 35).

38 See AAS 80 (1988), pp. 70-102.

39 See AAS 58 (1966), pp. 837-864.

40 See Luigi Chiappetta, *Il Codice di Diritto Canonico -- Commento Giuridico-Pastorale*, 2. ed., Rome 1996, vol. I, p. 311, note 1365.

41 See *Hans Reis* (footnote 33), p. 101-119.

42 §§ 5-7 SchKG (footnote 13).

43 See § 2 SchKG (footnote 13).

subsidies of the State, some *Laender* have stopped the financial support of Catholic Counseling Centers since they confined themselves to the latter kind of counseling. The Free State of Bavaria has even prescribed by a special statute<sup>44</sup> that counseling centers will be supported only if they are offering both kinds of counseling and handing out counseling certificates. On the other hand, the Administrative Court of Appeal for the Land North Rhine-Westphalia had decided in a judgment of October 2<sup>nd</sup>, 2003<sup>45</sup> that counseling centers which do not give out counseling certificates have a claim to financial support too, whilst the Administrative Court of Appeal for Lower Saxony in a judgment of October 30<sup>th</sup>, 2000<sup>46</sup> held the opposite position.

In the meantime, however, the Federal Administrative Court has decided in three judgments of July 15<sup>th</sup>, 2004<sup>47</sup> with binding authority for the entire country, including Bavaria, that the Catholic Counseling Centers must be supported also if they do not give out counseling certificates. To this end, they have to get an amount of at least 80 percent of the salaries and other necessary expenses, just like the other counseling centers, according to a for-

mer judgment of the Court of July 3<sup>rd</sup>, 2003.<sup>48</sup> In this connection the Court has also dealt with the question whether the association "Donum Vitae" does not offer already a Catholic-orientated counseling so that the counseling centers of the Church would not be necessary anymore. The Federal Administrative Court, however, has denied this categorically and declared that the counseling centers of the Church and those of the association "Donum Vitae" do not have the same ideological orientation. If, therefore, the women concerned would be referred to one of its counseling centers, it would not be in accordance with the law,<sup>49</sup> which ensures their right to be able to choose between counseling centers of different ideological orientations, because of a fundamental disparity of views exists between the Catholic Church and the association "Donum Vitae" with regard to the question how the protection of unborn children should be realized on the basis of the Catholic doctrine of faith and morals.

Finally, the Catholic counseling centers would be well advised also to turn towards new possibilities of counseling, such as, for example, the successful counseling services of the Dutch association *Vereniging ter Bescherming van het Ongeboren Kind* (VBOK).<sup>50</sup>

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44 See article 18 of the Bavarian Statute "Concerning Counseling of Pregnant Women" of August 9<sup>th</sup>, 1996 (BayGVBl. p.320)

45 See ZfL 2004, p. 11.

46 See ZfL 2004, p. 16.

47 See ZfL 2004, p. 18.

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48 See ZfL 2003, p. 134.

49 See § 3 SchKG (footnote 13).

50 See *Hans Reis* (footnote 33), p. 85 sqq.

Abbreviations:

- *AAS Acta Apostolicae Sedis*
- *BayGVBl. Bayerisches Gesetz- und Verordnungsblatt*
- *BGBL. Bundesgesetzblatt*
- *BVerfGE Entscheidungen des Bundesverfassungsgerichts*
- *CCEO Codex Canonum Ecclesiarum Orientalium*
- *CIC Codex Iuris Canonici*
- *DDR-GBL. Gesetzblatt der Deutschen Demokratischen Republik*
- *HdbStKirchR<sup>2</sup> Handbuch des Staatskirchenrechts der Bundesrepublik Deutschland*, edited by Joseph Listl, 2. ed., Berlin 1994-1995
- *JMarJPrac&Proc The John Marshall Journal of Practice & Procedure*
- *RGSt Entscheidungen des Reichsgerichts in Strafsachen*
- *SchKG Schwangerschaftskonfliktgesetz*
- *StGB Strafgesetzbuch (Penal Code)*
- *ZfL Zeitschrift für Lebensrecht*

# De Facto Unions

Héctor Franceschi

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*The legal recognition and the consequent registration of “de facto unions” in a growing number of countries under the form of “contracts” between interested parties that bestow on such unions a status and social benefits similar to or even alternative to those reserved for marriage, has provoked a reaction, sometimes an indignant one, on the part of the populations who had this imposed on them without their consent, and without there being a real preliminary public debate. It has also led to, as a reaction, a new and salutary reflection on what constitutes marriage such that no “pact”, whether “civil” or “of solidarity” (for example the French PACS), can pretend to substitute for this natural institution in which a man and a woman give themselves to each other for life in a permanent and exclusive union that is open to procreation. (↗ Conjugal Love?; Family and Privatization; Indissolubility of Marriage?; Marriage, Separation, Divorce and the Conscience; Homosexual “Marriage”)*

## FOREWORD

De facto unions, a phenomenon which in the last few years has spread in society, especially in Western society, confront the consciences of all persons who believe in the family founded on marriage as a good for the person and human society. The Church, in a more intense way in recent times, has made an effort to recall the confidence that is due to the human person and to his freedom, dignity and values, as well the hope that comes from the salvific action of God in the world which helps the person to overcome every weakness. At the same time, the Church has manifested her serious concern about the different

attacks against the human person and his dignity, rendering evident some of the ideological presuppositions of the “post-modern” culture that make it difficult to understand and live the values demanded by the truth of the human person. “It is no longer a matter of limited and occasional dissent, but of an overall and systematic calling into question of traditional moral doctrine, on the basis of certain anthropological and ethical presuppositions. At the root of these presuppositions is the more or less obvious influence of currents of thought which end by detaching human freedom from its essential and constitutive relationship to truth.”<sup>1</sup>

<sup>1</sup> JOHN PAUL II, encyclical letter *Veritatis splendor*, 4.

When you produce this unlinking between freedom and truth “any reference to common values and to a truth absolutely binding on everyone is lost, and social life ventures on to the shifting sands of complete relativism. At that point, everything is negotiable, everything is open to bargaining: even the first of the fundamental rights, the right to life.”<sup>2</sup> Certainly this is an alert with reference to the reality of marriage and the family, the only source and way of realizing one’s own sexual tendency through the establishment of a relationship as man and woman that is fully human. This relationship requires an adequate understanding of human freedom against that frequent, “corruption of the idea and the experience of freedom, conceived not as a capacity for realizing the truth of God’s plan for marriage and the family, but as an autonomous power of self-affirmation, often against others, for one’s own selfish well-being.”<sup>3</sup>

Within the context of a society which is frequently distant from the values of the truth of the human person, we will try now to underline the content of “The matrimonial covenant, by which a man and woman establish between themselves a partnership of the whole life, is by its nature ordered toward the good of the spouses and the procreation and

education of offspring,”<sup>4</sup> as it was instituted by God “from the beginning.”<sup>5</sup> It is useful now to explain the intimate being of marriage as an inherent reality of the human person and its sexual modality, and even the anthropological presuppositions on which marriage is based. Only in this way can we understand the radical and not only formal or cultural difference between the family based on marriage and so called “de facto unions”, whether these are heterosexual or homosexual.<sup>6</sup>

From its foundation the Church has taught on the moral aspects of human sexuality, and as a consequence it has affirmed the objective immorality of sexual acts performed outside the marital union, and the immorality of the different unions or forms of sexual cohabitation outside the marital bond.<sup>7</sup> Nevertheless contemporary culture places us in front of a new challenge: indeed, the contemporary mentality has led some to consider these de facto unions socially and legally equal, or at least equivalent to, the true marital union.

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2 JOHN PAUL II, encyclical letter *Evangelium vitae*, 20; cf. 19.

3 JOHN PAUL II, apostolic exhortation *Familiaris consortio*, 6; cf. Id., *Letter to Families*, 13.

4 CC L, 1055, § 1; *Catechism of the Catholic Church*, 1601.

5 Cf. VATICAN COUNCIL II constitution *Gaudium et spes*, 48-49.

6 It is clear that the more grave anthropological disorder and, as a consequence, moral disorder of the unions between homosexuals, in which any integration of one’s own sexuality in a relationship with the other is radically impossible, and the difference and complementarity which are proper and specific to sexual donation are lacking.

7 Cf. *Catechism of the Catholic Church*, 2390, *Familiaris consortio*, 81.

Confronted with these claims, it is right to remember the nature of the family founded on marriage, the super-historical traits that it has, above changes over time, of place and of culture, not to speak of the dimension of justice which came out of the being itself of the family and of the relations that constitute the family.<sup>8</sup>

### **DE FACTO UNIONS AND THEIR SOCIAL DISFUNCTION**

In the light of the truth of marriage as the only path which is worthy of the human person to establish a relationship that would imply the gift of the sexual condition, and therefore of the proper identity of the family founded upon marriage, we will analyse the phenomenon of de facto unions, describing the elements that characterize them, whether they are homosexual or heterosexual. In this way, through a rational evaluation, that is neither confessional nor ideological, it would be possible to see the enormous differences which distinguish both realities (marriage and de facto unions), and as consequence the injustice of making them equal before the law, and also the social ills, for the entire human community, that would arise from the public recognition of those non marital unions. I will start from the analysis of marriage as the expression of the multi-secular legal expe-

rience of the Church, and later see how this reality has suffered a gradual impoverishment in the last few centuries, and finally how the phenomenon of de facto unions and the different attempts to obtain recognition of them have been confronted by the most recent magisterium of the Church.

### **THE NEED FOR AN ADEQUATE UNDERSTANDING OF THE CANONICAL EXPRESSION OF MARRIAGE**

Before entering into the analysis of the complex reality of de facto unions, it is necessary to briefly explain the canonical meaning of marriage, or in other words, the way in which the natural reality of marriage is contemplated in the current law of the Church. The law describes in its substance, the natural being of marriage, both at the level of the conjugal covenant, *in fieri*, and at the level of a permanent reality, which is called in the tradition the marriage in its being, *in facto esse*. In this permanent reality we find not only the conjugal relationship but also other relations which belong to the family. In this sense, the jurisdiction that the Church has on marriage is decisive in these moments to protect and safeguard values that are intrinsically marital and familial.

Nevertheless, certain pastoral practices and certain judicial decisions, fail to adequately understand the essential and central traits of marriage, at least in these two areas of conjugal love and of

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8 Cf. PONTIFICAL COUNCIL FOR THE FAMILY, *Family, marriage and "de facto unions"*, Vatican City 2000, 19-22.

the sacramentality of Christian marriage. Love is frequently referred to as the basis for marriage as a community of life and love. Frequently the meaning of these expressions is not understood properly, leaving out the due connection with conjugality, an intrinsic element of marriage. The dimension of justice is also often left out of the definition of conjugal love. When these elements of marriage are left aside, we lose important arguments against de facto unions. These incomplete definitions of marriage might even serve to provide de facto unions an “alibi” to affirm their “identity”. Even those who defend de facto unions can say that their union is based upon love, or that it constitutes a community of life and love. The problem instead is, that it cannot be a true union if it is not really and intrinsically “conjugal”, that is a union based on the individual condition of men and women, which is due in justice, and by its very nature is faithful, indissoluble and open to life.

With regards to sacramentality the question is more complex, because the pastors of the Church cannot put aside the immense riches that well up from the being of the sacrament between baptized persons. God has willed that the marriage covenant “from the beginning,” the marriage of creation, would be a permanent sign of the union of Christ with His Church, and would be a true sacrament of the New Alliance. The problem resides in understanding

adequately that sacramentality is not something added or something that is extrinsic to the natural being of marriage. The same marriage willed by the Creator is elevated to the dignity of a sacrament through the redemptive action of Christ, without leading to a denaturing of the natural reality. Due to a lack of understanding of the meaning of sacramentality and of the peculiarity of this sacrament in relation to the other sacraments of the New Alliance, imprecisions appear, even in terminology, which, in the end, obscure the essence of marriage and consequentially the essence of its own sacramentality. This has special importance in marriage preparation; the praiseworthy efforts to form engaged couples for the celebration of the sacrament, can leave in the dark a clear understanding of what the marriage they are going to contract is. As a consequence, they will not be aware that they present themselves to the Church not primarily to celebrate the sacrament through certain rites, but to contract a marriage which is a sacrament by virtue of its insertion in the New Alliance of Christ and the Church. The sacrament is activated through the baptism of those who through the conjugal covenant become spouses.<sup>9</sup>

A view of sacramentality which is ex-

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9 Cf. *Familiaris consortio* 68; cf. also JOHN PAUL II, “Address to the Roman Rota of February 1, 2001,” in AAS 93 (2001), 395-365, and “Address to the Roman Rota of January 30, 2003,” n 8, in AAS 95 (2003), 393-397.



trinsic and linked to certain sacred rites, can often lead the couple that does not have faith to celebrate a civil marriage or even to constitute a de facto union, which is perceived as an alternative way of uniting themselves. The only essential difference with Christian marriage they see is not observing certain formalities. That is why it is very important to recover a single and intrinsic vision of the sacramentality of the marriage contracted between baptized persons.<sup>10</sup>

### **THE GRADUAL IMPOVERISHMENT OF THE INSTITUTION OF MARRIAGE IN CIVIL REGULATIONS**

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This canonical expression of marriage, which was the common patrimony of western culture, has suffered great changes in modern legal systems. To understand why, before analyzing the evolution of the different national legal systems that regulate marriage, it is useful to consider the cultural understanding of the right to marriage which is at the root of the great transformations of laws relating to marriage.

The right to contract marriage cannot be interpreted as a simple freedom,

without taking into account the truth of marriage and the family. It is not a right of freedom in the exercise of sexuality, but the right to contract marriage as the only way that is *human* and *humanizing* in the use of sexuality. This is not a bodily instinct, but a tendency which has its foundation in the sexual nature of the person. Consequently, the complementarity which exists between the person-man and the person-woman, involves the whole person in their different elements: body, affections and spiritual aspect.

The conception of the right to marriage as a fruit of culture, which can be superseded, has led to an erroneous understanding of this right. More than a right to fulfil the vocation to love in marriage, it has been understood as absolute freedom to choose to exercise sexuality without any connection to the truth of man.

This way of presenting things is in accordance with the current view of liberty, understood as the absolute absence of determination or of finality rather than the capacity to choose the good, and the right to self-determination towards the good. It has led to grave consequences. All the successes of the defenders of free love, of divorce, of homosexual unions, were presented as victories of freedom over the impositions of the culture of a given historical period, which was superseded. Starting from a view of marriage which sees it as the fruit of a given culture, in which na-

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10 Cf. T. RINCÓN, *El matrimonio cristiano. Sacramento de la creación y de la redención. Claves de un debate teológico-canónico*, Pamplona 1997; ID., "Admisión a la celebración sacramental del matrimonio de los bautizados imperfectamente dispuestos, según la Exh. Apostólica *"Familiaris consortio"*," in *Sacramentalidad de la Iglesia y sacramentos*, Pamplona 1983, 717-741.

ture plays a small or nonexistent part, we frequently find today that the classical culture and morality of the West defined marriage as the permanent union between a man and a woman, open to procreation. Contemporary culture has dismantled one by one the foundations of that conception of marriage.

The first element which suffered this assault was indissolubility: why only *for ever*? We should have the right to a temporary union, not only “until death do us apart,” but while love lasts, this love being understood as a feeling. The consequence of this view was the introduction of divorce. In the great majority of the legal systems this attitude has led not only to a change in marriage law, establishing that persons can contract a marriage that can be dissolved, but has also led to the denial of an authentic right to marriage of many persons. The State does not recognize the right to contract a marriage as it should be understood, a covenant that is indissoluble and open to life.<sup>11</sup>

A later stage of this impoverishment of marriage, what some consider an achievement, has been the contraceptive mentality, which has led to the separation of sexuality and fertility. It is no longer a union between a man and a woman open to fertility, but a union with any type of finality, seeking only to satisfy the desire for pleasure and

self-realization: one more step towards understanding the *ius connubi* as a simple right of freedom in the exercise of sexuality. The situation is more serious in countries where the State forces the spouses to regulate births or enforces or promotes campaigns of sterilization or, even more gravely, abortion as a means of birth control. The same could be said of the possibility of separating filiation from its conjugal dimension, through the use of methods of artificial fertilization which do not take into account the inseparability of conjugality and procreation. Abortion also makes society lose the basic idea of the child as a gift and of the family as the natural framework where life is conceived, as a fruit of conjugality, and should be the most protected.

The last step that we have witnessed is the resolution of the European Parliament on the right to “marriage” of homosexuals,<sup>12</sup> which denied the requirement of heterosexuality: why only a man with a woman? They affirm that to reject the right to marriage of two men or two women, would be to deny them the right to marriage. This is the last step in the process of emptying out the *ius connubii*, which would no longer be a right whose contents are determined by the nature of man or of marriage, but a simple right of liberty, understood as

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11 Cf. J.M. MARTÍ, “*Ius connubii*” y regulación del matrimonio,” in *Humana Iura* 5 (1995), 149-176.

12 Resolution of the European Parliament of February 8, 1994, on *Equal rights for homosexuals and lesbians in the European Community*.

the absolute right of freedom to choose. More than a right to contract marriage, we should speak of the right of contracting what? No one knows.

Against this view of the right to marriage, we should return to a view that it is in agreement with the *truth* about man and about marriage. It takes into account the nature of human sexuality as essentially different from that of animals on all levels. The *ius connubii* has a content that is specified, more than limited, by human nature itself. What the matrimonial legal system of the Church did through the centuries, something embraced by the culture and the legal systems of the West, was to delineate this right, while respecting its natural content. The Church took into account the Christian condition of the parties, when a marriage was contracted between Christians.

In this way we can affirm that the right to marriage, from the view point of its essential content, determined by its nature, will imply the following realities: a) the right to contract a marriage that is, indissoluble and open to fertility, and the recognition, defense and promotion of this right by the ecclesiastical and civil communities; b) the right to found a family. The right to marriage and its recognition would be the first manifestation of this reality: the sovereignty of the family as a reality in itself;<sup>13</sup> c) the right to structure the family in accordance with the

convictions of the contracting parties. The right to marriage is different from other individual rights, but it has a close relationship with other rights like: the right to religious freedom, freedom of conscience, freedom of thought, freedom of education, etc.; d) the right of the family to be recognized as a part of the common good and as a subject of social dialogue.

In the light of these principles, we can analyze the transformations of the understanding of marriage and of the family in the civil legal systems.

At the beginning of the so called process of secularization of the institution of marriage, the first and practically the only thing that was secularized were the weddings or the way of celebrating marriage, at least in the western countries with Catholic roots. The centuries old legal requirements were maintained for a while, upholding the basic principles of marriage, including the principle of the indissolubility of the bond.

The generalized introduction into these legal systems of what Vatican Council II calls “the plague of divorce” gave rise to a progressive distancing from what over centuries had become a great achievement of humanity, thanks to the efforts of the primitive Church. It did not sacralize or Christianize the Roman notion of marriage, but returned marriage to its origins in creation, to the “truth from the beginning.” It is true that in the consciousness of the primitive Church there was a clear belief that

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13 CF. JOHN PAUL II, *Letter to Families*, 16.

the natural being of marriage had been thought out by God the Creator to be the sign of His love for His people, and in the fullness of time, of the love of Christ for His Church. But the first thing that the Church does, guided by the Gospel and the explicit teachings of Christ, was to bring back marriage to its own principles. This is done with the full consciousness that "God Himself is the author of matrimony, endowed as it is with various benefits and purposes. All of these have a very decisive bearing on the continuation of the human race, on the personal development and eternal destiny of the individual members of a family, and on the dignity, stability, peace and prosperity of the family itself and of human society as a whole."<sup>14</sup>

As time went by, the principle of consent lost power as the effective cause of a juridical bond, until it became a mere formality, surrounded by certain rites which give to the wedding, to the fact of getting married, a certain solemnity and public recognition. This process culminates with an inscription in a civil register. With the gradual disappearance of important impediments, the civil juridical systems move constantly away from the natural being of marriage, getting closer instead to what would be a mere de facto union. According to this way of understanding marriage, the essential difference between marriage and de facto unions is that the first would be celebrated in accordance with the re-

quired forms and solemnity of the law in force and inscribed in the official register, receiving therefore the "name" of marriage, while the de facto unions are not linked to any pre-established norm, other than the extrinsic formal rules required to obtain a kind of recognition. In any case, in practical terms, the distinctions would remain very vague, especially as the equivalency between the two grew stronger. On the one hand, in de facto unions which have been recognized there is a degree of formalization. On the other hand, a difference in *nomen iuris* is maintained, which has no small importance with relation to the will of the parties involved. Also, we should keep in mind that in recognized de facto unions there is the tendency to establish some type of "divorce" procedure, otherwise the legal chaos would be unsustainable. We find a certain degree of recognized "stability".

The proliferation of certain de facto unions, leaving aside the anthropological and ideological arguments, finds fertile ground in the progressive decline of the different civil marriage laws with regards to the substance of marriage and the family. This does not mean that those who marry following the formalities established by the law of the State cannot or do not wish to contract a true marriage. The tendency towards the establishment of a conjugal union is inherent to all sexually differentiated persons, and it is in their sovereign decision, and not in the laws of the State, that we find

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14 *Gaudium et spes*, 48.

the juridical foundation of the conjugal covenant and the birth of a true conjugal bond. To marry in this way, that is with the required solemnities and with the obligation to be inscribed in a public register, confers on the conjugal covenant the public and social dimensions inherent in its nature. This does not happen with the so called “de facto unions”. Here I find the main reason for the need to distinguish between marriage and the family based on marriage, with the juridical and social effects that their public recognition implies, and de facto unions, which by their own nature deliberately intend to remain outside of the legal system. Whatever may be the moral or ethical evaluation of this fact, it is certain that in a society like ours it is difficult to think it possible to restrict the freedom to cohabit, including *more uxorio*, of persons who desire to do so. It is a very different thing to call these types of unions marriage, or to give them a recognized legal status similar to, or at least analogous to, marriage and the family arising from marriage.

### **DE FACTO UNIONS IN THE RECENT MAGISTERIUM OF THE CHURCH**

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Taking into account all that I have said about the importance of the defense of the family based on marriage for the protection of the common good of society, I will make reference to the way in which the Church’s Magisterium has confronted the question of de facto

unions in recent years. This is not a perspective based on the “eyes of faith” but rather a necessity that touches the good of all persons, in such a way that these interventions of the Magisterium are not directed only to Christians. They are an effort to clarify the truth about the human person and his sexual dimension, above and beyond all creeds and cultures. They are based on the nature of the human person itself, as John Paul II expressed so well in his speech to the Roman Rota of the year 2001: “But this personal self-giving needs a principle to specify it and a permanent foundation. The natural consideration of marriage shows us that husband and wife are joined precisely as sexually different persons with all the wealth, including spiritual wealth, that this difference has at the human level. Husband and wife are united as man-person and a woman-person. The reference to the natural dimension of their masculinity and femininity is crucial for understanding the essence of marriage. The personal bond of marriage is established precisely at the natural level of the male or female mode of being a human person.”<sup>15</sup> In the light of this “nature of marriage”, we will see the different interventions of the Magisterium with regards to de facto unions.

In the Constitution of the Church in the Modern World, Vatican Council II has shown how; “The well-being of the individual person and of hu-

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<sup>15</sup> JOHN PAUL II, “Address to the Roman Rota of 1 February 2001,” 5.

man and Christian society is intimately linked with the healthy condition of that community produced by marriage and family.” Immediately it warns that the dignity of “this institution is not everywhere reflected with equal brilliance, since polygamy, the plague of divorce, so-called free love and other disfigurements have an obscuring effect.”<sup>16</sup>

The Council fathers were fully conscious of the fact that so called “free love” was a corrosive element and destructive of marriage, because it lacks the constitutive element of conjugal love based on the personal and irrevocable consent of the spouses to their mutual self-giving. This creates a juridical bond and unity that is sealed by a public dimension of justice.

The phenomenon of free love, as opposed to true conjugal love, was and is, the seed that in great measure has germinated into de facto unions. Later rapid contemporary cultural changes led public authorities to attempt to make de facto unions equivalent to the family based on marriage, at least at certain levels of legal and public recognition.

The recent Pontifical Magisterium explains with great clarity this process of assimilation. In 1981 when John Paul II was writing the apostolic exhortation *Familiaris consortio*, unions without a publicly institutionally recognized bond, civil or religious, were becoming a more frequent phenomenon attracting the pastoral attention of the Church. To

provide an adequate response to all these individual situations, the pope invites us to distinguish the different elements and factors which are at the root of these de facto unions. Indeed, the unions, to which some are led due to difficult economic, cultural or religious situations, are different from those willed in themselves by “people who scorn, rebel against or reject society, the institution of the family and the social and political order, or who are solely seeking pleasure.”<sup>17</sup> The Pope adds a third type of de facto unions: those in which people find themselves through “extreme ignorance or poverty, sometimes by a conditioning due to situations of real injustice or by a certain psychological immaturity that makes them uncertain or afraid to enter into a stable and definitive union.”<sup>18</sup> The way of confronting this phenomenon should necessarily take into account the multiplicity of situations that fall under the category of “de facto unions”.<sup>19</sup>

Whatever might be the causes of these unions without a valid juridical bond due to the lack of an adequate formalized manifestation of consent, the pope recognizes that the irregularity of these situations “presents the Church with arduous pastoral problems, by reason of the serious consequences deriving from them, both religious and

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17 *Familiaris consortio*, 81.

18 *Familiaris consortio*, 81.

19 Cf. PONTIFICAL COUNCIL FOR THE FAMILY, *Family, marriage and “de facto unions,”* 4-6.

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16 *Gaudium et spes*, 46.

moral (the loss of the religious sense of marriage seen in the light of the Covenant of God with his people; deprivation of the grace of the sacrament; grave scandal) and also social consequences (the destruction of the concept of the family; the weakening of the sense of fidelity, also toward society; possible psychological damage to the children; the strengthening of selfishness).<sup>20</sup>

These words reflect the serious concern of the holy father regarding these unions which not only are not recognized, but that in many cases represent from the beginning of the relationship a refusal of the idea of a permanent commitment. At the time of the drafting of *Familiaris consortio* there was no intuition yet of the serious problem that would later present itself due to the pretension of public authorities to establish some kind of equivalency between these de facto unions and the family based on marriage.

Instead, in a speech made in 1998, the pope shows more clearly his preoccupation with this matter: "Even more worrying however, is the direct attack on the institution of the family which is developing at the cultural level and in political, legislative and administrative spheres. [...] there is a clear tendency to equate other and quite different forms of coexistence with the family."<sup>21</sup>

More recently in his speech to the tribunal of the Roman Rota of January 21, 1999, the roman pontiff confronted this problem directly, describing it with clarity and underlining "how serious and indispensable are certain principles that are fundamental for human society and even more so for safeguarding the human dignity of every person." The reasons invoked by the pope are not theological or sacramental, and he does not recall these basic principles, "only to those who belong to the Church of Christ the Lord, but to every one concerned with true human progress," because it is the being itself of marriage as a natural and human reality which is in question, and it is the good of all the society that is being placed in jeopardy. "As everyone knows," the pope affirms, "not only are the properties and ends of marriage called into question today, but even the value and the very usefulness of the institution. While avoiding undue generalizations, we cannot ignore, in this regard, the growing phenomenon of mere de facto unions (cf. *Familiaris consortio*, no. 81, *AAS*, 74 [1982], 181f.), and the unrelenting public opinion campaigns to gain the dignity of marriage even for unions between persons of the same sex."<sup>22</sup>

In that way, it is not the objective of the pope, within the context of that speech, to be adamant about "deploring

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20 JOHN PAUL II, *Familiaris consortio*, n. 81.

21 JOHN PAUL II, "Address to the 'Forum of Catholic Family Associations,'" 27 June 1998, 2.

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22 JOHN PAUL II, "Address to the Tribunal of the Roman Rota of 21 January 1999," 2.

and condemning” but to indicate in a positive way the paths along which reflection on what marriage is in its natural being should be conducted. In this sense, “the central core and foundation of these principles is *the authentic concept of conjugal love* between two persons of equal dignity, but different and complementary in their sexuality.”<sup>23</sup> This a central principle that the pope will continue to develop and to which we have already referred, which is that love, to be considered true conjugal love, has to be transformed into a love that is due in justice, through the free act of marital consent.

“In the light of these principles,” the pope concludes, “we can identify and understand the essential difference between a mere de facto union—even though it claims to be based on love—and marriage, in which love is expressed as a commitment that is not only moral but rigorously juridical. The bond reciprocally assumed has a strengthening effect, in turn, on the love from which it arises, fostering its permanence to the advantage of the partners, the children and society itself.”<sup>24</sup>

“In the light of the above-mentioned principles,” the pope adds, “we can also see how incongruous is the

demand to accord “marital” status to unions between persons of the same sex. It is opposed, first of all, by the objective impossibility of making the partnership fruitful through the transmission of life according to the plan inscribed by God in the very structure of the human being. Another obstacle is the absence of the conditions for that interpersonal complementarity between male and female willed by the Creator at both the physical-biological and the eminently psychological levels.”<sup>25</sup>

In his speech to the Roman Rota of February 1, 2001, he reiterates how this pretension of an equivalency between marriage and de facto unions, including those between homosexuals, have their origin in a vision of marriage as a merely cultural reality, without a solid basis in nature: “This opposition between culture and nature deprives culture of any objective foundation, leaving it at the mercy of will and power. This can be seen very clearly in the current attempts to present *de facto* unions, including those of homosexuals, as comparable to marriage, whose natural character is precisely denied.”<sup>26</sup>

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23 JOHN PAUL II, “Address to the Tribunal of the Roman Rota of 21 January 1999,” 3.

24 JOHN PAUL II, “Address to the Tribunal of the Roman Rota of 21 January 1999,” 5.

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25 JOHN PAUL II, “Address to the Tribunal of the Roman Rota of 21 January 1999,” 5.

26 JOHN PAUL II, “Address to the Tribunal of the Roman Rota of 1 February 2001,” 3.



## THE PROBLEM OF THE RECOGNITION OF DE FACTO UNIONS

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### *De facto unions and the unsuitability of their legal and public recognition*

After we have studied the phenomenon of de facto unions and the way in which the Church's Magisterium has dealt with this question, I should center the analysis on the problem of these unions in our times and the unsuitability of their recognition as a reality in public law and in the legal systems of states.

a) What is the contemporary understanding of "de facto unions" to which some civil legal systems wish to provide a legal-public status, similar, in many cases in their effects, to matrimonial unions?

It is not easy to elaborate a single notion which would be able to take into account the multiple and heterogeneous phenomena involved in the expression de facto unions. The common element they have is their characteristic as non-marital unions. They are founded on the refusal of the marital commitment. As a consequence, all that can be stated in favor of marriage for the good of persons and for all of society, should lead us to have a negative view of de facto unions.

In marriage there is a public assumption through the conjugal covenant of all the responsibilities which emerge from the bond established, which is a

good for the spouses and for their own perfection; for their children's emotional development and formation; for the other members of the extended family based on the conjugal covenant and the blood ties; and for all of society whose whole fabric depends most on values that emerge from the different family relationships.<sup>27</sup> The phrase according to which the health of humanity passes through the health of the family continues to be true: "The future of humanity passes through the family."<sup>28</sup> In this way de facto unions constitute an illness that will attack the whole social body if, instead of taking measures to cure it, their propagation is stimulated and if they receive publicly the name and the status of marriage and family, even in an analogous way.

Contemporary society leads man to believe that he can wish or opt for a use of his sexuality which is different from what is provided by nature itself or for ends which are different than what nature envisages. Privately he can live as a couple in a stable or transitory way, in heterosexual or in homosexual relationships. From a moral point of view it is clear that these attitudes do not respect the dynamics of conjugal love which are proper to the condition of the male-person and of the female-person and therefore are not in accord with the dig-

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27 Cf. PONTIFICAL COUNCIL FOR THE FAMILY, *Family, marriage and "de facto unions,"* 25-28.

28 *Familiaris Consortio*, 86.

nity of the human person. This can be seen in a more radical way in the case of homosexuals unions, which denature the root of human sexuality and make it impossible to understand their structure and finality. But the question now is not to insist on the moral condemnation of those actions, but to warn of the unsuitability of elevating these private interests to the category of the public interest, sanctioned and recognized by the law by the same standards or in an analogous way to marital or family relationships, as if in their essence they would be a good that should be protected or even promoted. Following the previous analogy, it is one thing to put up with sickness because of the fact that many freely choose that state, thinking that they are in a perfect state of health, but absolutely different to give a public seal of good health to attitudes which in relation to the institution of marriage could cause serious damage to this natural institution and to all of society, that finds in marriage its basic foundation.

b) But not all the so called “de facto unions” have the same social impact nor the same motivations. Beyond being non-marital unions, the traits that characterize them can be described in the following way: 1) The purely “de facto” character of the relationship, because they are unions that lack their own intrinsic juridical character: persons that cohabit together have no right in justice to mutually demand of each other a specific type of conduct, nor the

right to ask from the other explanations of the decisions they take. At the same time that does not mean that legal consequences of a private nature could not be derived from those relationships; 2) A cohabitation that has a certain sexual content; 3) A certain characteristic of stability that distinguishes them from sporadic or occasional unions: but it is not a stability based on a juridical bond, because the main trait of these unions is the rejection of any bond; 4) Being always open to the possibility of interrupting the cohabitation; 5) In de facto relationships there is even a certain element of mutual exclusivity, in the sense that normally these types of unions are not polygamous, even though they do not include any duty of fidelity per se. 6) In general terms these relationships do not have an intrinsic relation with the conjugal debt and with children, but children might be accepted in occasional circumstances.<sup>29</sup>

Although I have indicated all these traits which are common to de facto unions, I should state that their typology is quite varied according to the circumstances and the motives leading to the establishment of these types of relationships. There are de facto unions which are willed as alternatives to marriage, but there are others that are not willed as such, but are only tolerated or endured.

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29 Cf. PONTIFICAL COUNCIL FOR THE FAMILY, *Family, marriage and “de facto unions,”* 4.

At the source of the first type, we find many different kinds of motivations. Among them: 1) ideological motives, rejection of marriage, which is considered to be an inadmissible way of doing violence to personal wellbeing, so as later to opt for other alternatives or ways of leaving sexuality; 2) economic or legal motives; 3) The consideration of a de facto union as a kind of "trial" marriage in which the couple would have the project of contracting marriage in the future, but the parties do not yet have a true will to marry, because it is in any case conditional on the success of the union "without a bond."<sup>30</sup>

Among the others, we can also distinguish different situations. In some countries, the largest number of de facto unions is due to an estrangement from marriage not based on ideological motives, but on the lack of proper formation, as a consequence of situations of poverty, marginalization or the lack of evangelization. In other cases, a good part of these de facto unions can be explained by the culture where the persons that cohabit are immersed. In some societies more than a century of divorce legislation has made marriage lose almost all its meaning and content. Finally, we can also find situations where people are conditioned by their family, economic and social environments, leading to situations of real injustice that impede

or make very difficult the celebration of the wedding. In these cases it is possible to find de facto unions that contain, even from their beginning an authentic conjugal will and the cohabitants believe that they have a bond as husband and wife. They make an effort to fulfill their marital and familial duties. In these situations pastoral action will very often seek to "regularize" these unions, through the celebration of marriage, or a convalidation or sanation, according to the different cases.<sup>31</sup>

Other situations of de facto cohabitation correspond to "assistential" motivations. As an example I can mention the case of old persons who establish de facto relations because they are afraid that marriage might cause them fiscal damages or the loss of a pension. Perhaps in cases like these the will to form a marriage is not lacking. We could also have the case of persons who have a true will to get married, but they are unjustly impeded from celebrating the wedding to which they have a right in virtue of the *ius connubii* proper to every human person. An example is the case of an unjust prohibition to get married due to eugenic reasons.<sup>32</sup> In similar cases, if there are no other motives which would

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30 Cf. PONTIFICAL COUNCIL FOR THE FAMILY, *Family, marriage and "de facto unions,"* 5.

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31 Cf. PONTIFICAL COUNCIL FOR THE FAMILY, *Family, marriage and "de facto unions,"* 6.

32 Cf. PIUS XI, encyclical. *Casti connubii*, 24; PIUS XII, "Address to the Participants of the International Conference of Medical Genetics, September 7, 1953," AAS 45 (1953), 605-607.

oppose the wedding, I think that we could presume the existence of a matrimonial will.

As is obvious, in the last two types of situations that I have described, in the first case the point of departure should be the pastoral care of the families, in the second case it would be necessary to try to remove the unjust obstacles to the effective exercise of the *ius connubii*. For this reason these types of situations do not represent the main problem which I discussed when I talked of the pretension to public recognition and of the institutionalization of de facto unions as such by legislators, taking into account that these types of unions tend towards true marriage, to the extent that they have a true matrimonial will, and can be led to a marital union.

c) Even, taking into account these different situations, the public law's mode of dealing with the status of the persons cannot, nor should it be identical. The moral and ethical judgments and the pastoral means can never be the same. It is appropriate, nevertheless, to highlight the substantial difference between marriage and de facto unions, or in a wider vision, between the family founded on marriage and the affective community which emerges from a de facto union.

"The authentically differential and substantial fact is that the juridical bonds of the family communities have a structure that is a point of reference from their origin: the family founded

on marriage, whose juridicity comes from itself and is not a creation of the legislative, executive or judicial power of the State. The affective communities, on the other hand, are those which lack a specific and intrinsic juridical value that finds its source in conjugality or in consanguinity. This is the case of those couples who share in common the "fact" of their mutual affection, but at the same time expressly reject that this fact should become a juridical bond between them on which a bond of consanguinity would be articulated, which they also exclude. Family juridicity is also lacking in affective cohabitations between couples of the same sex, which obviously can have affective links, but they absolutely lack the sovereign power to create either conjugality, which is based in the male-female duality, or the transmission of life in accordance with consanguinity, which also is based on the same sexual duality."<sup>33</sup>

This radical difference between marriage, which has an intrinsic dimension of justice to it that demands to be recognized, protected and promoted by the State, and de facto unions that acquire a legal status that obtains its strength only and exclusively from the power of

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33 P. J. VILADRICH, "Documento sobre la familia de 40 Organizaciones No Gubernamentales –ONG's– presentado en Madrid el 29 de noviembre de 1994, en conmemoración del Año Internacional de la Familia," in *Documentos del Instituto de Ciencias para la familia*, University of Navarre, Madrid 1998.

the State, makes the attempt to establish these unions as equivalent to the family founded on marriage a grave injustice and an abuse by the public authorities.

As a consequence, “an objective perspective, serenely distant from an arbitrary and demagogical position, invites one to reflect on the important differences in their real contributions to the common good of society as a whole, from the family based on marriage and the family communities with it [...], and those which are offered by mere affective cohabitations. It is a clear fact that if we compare the family communities, in their fundamental functions of transmitting human life, of nurturing and educating life in a community of loving and affective ties, and of providing the passing on from generation to generation of values and fundamental goods [...] all these functions cannot be realized in a massive, stable and permanent way by the merely affective cohabitations.”<sup>34</sup>

d) These substantial differences between marriage and de facto unions constitute the principal argument to consider erroneous the attempts by public authorities to create an equivalency between or to measure with the same criteria realities that are so different from each other and that contribute in such dissimilar ways to the common good. A pluralist society should not be confused with a uniform society. Equal-

ity before the law should be presided over by the principle of justice, which means treating as equal that which is equal and what is different as different; which is to say, giving to each their due justice. This basic principle of human society would be broken if de facto unions would receive public legal treatment which is identical or equivalent to that which belongs to the family based on marriage. If the matrimonial family and de facto unions cannot be compared in their duties, functions and the service rendered to society, then they cannot be treated equally in their name or in their legal status. In other words, the attempt to avoid discrimination against de facto unions, would comprise discrimination against the matrimonial family. For this reason, “a sign of ideological dictatorship or social agnostic weak thought is the fact that public authorities promote, under the pretext of democratic pluralism, an undifferentiated political and legal handling that discriminates against the family communities in relation to de facto unions, without taking into account their contribution to social wellbeing and to the general common good.”<sup>35</sup>

We should not forget, at the same level of principles, the distinction between public and private interests. In the first case, society and the public authorities which represent it, should develop actions to protect and promote

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34 P. J. VILADRICH, “Documento sobre la familia de 40 Organizaciones.”

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35 P. J. VILADRICH, “Documento sobre la familia de 40 Organizaciones.”

them. In the second case, the State should only guarantee freedom. Where we find public interest, the public law intervenes. Private interests, instead, should be regulated by private law. In accordance with article 16 of the Universal Declaration of Human Rights, the family is held to be a public interest: "The family is the natural and fundamental group unit of society and is entitled to protection by society and the State." Two or more persons can decide to live together, with a sexual dimension or without it, but that living together or cohabitation does not possess a public interest. The State can tolerate this private phenomenon of free choice, but cannot make it publicly equivalent to marriage, much less recognize these private interests as if they were public. Furthermore, in marriage responsibilities are assumed before society in a public and formal way, that can be demanded at a legal level, which does not happen in de facto cohabitations.

A legal-public equivalency of de facto unions with marriage, either directly or analogously, constitutes not only unjust and unreasonable treatment, but would be the fruit of a profound juridical confusion and hypocrisy: a) on the one hand, there is the pretension of regulating a situation which expressly rejects any regulation of its contents; b) furthermore, a public legal statute is established containing only rights: the parties that cohabit refuse in principle to bind themselves with duties; c) with re-

gards to de facto unions established due to the impossibility of contracting marriage because of the existence of a legal impediment, it is difficult for the same legal system not to open for them a different way of enjoying the same rights which marriage forbids them; d) neither would it be possible to understand why only de facto unions whose content is determined by a sexual relationship should be regulated, making it a substantial element, and leaving out other licit forms of cooperation and mutual cohabitation – an old man living with his grandchild, or two aged brothers who mutually depend on and sustain each other, etc. – for the sole reason that there is no sexual content to the relationship of those living together; e) finally, if we attribute to de facto unions certain legal effects due the simple fact of observing the requirement to enter them into a public register, the other de facto unions who would refuse to observe this requirement could demand with the same basis to receive the attributes of the registered unions, or accuse the State of unjust discrimination, because the real facts of the cohabitation would be the same in both cases.<sup>36</sup>

The specific regulation of de facto unions and of the legal effects that they bring about also seems inadequate, not only with regard to the children that

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36 Cf. J. I. BAÑARES, "Derecho antropológico y libertad en las uniones de hecho," in *Ius Canonicum*, 39 (1999) 77, 187-204.

might eventually be born from these relationships, but also for the relationships between the cohabitants themselves, when these relationships last a substantial amount of time. Cohabitations without a bond have so many possible variations and different situations that it becomes difficult and problematic to try to regulate them all within a single legal system. Furthermore, the social and legal basis of such a regime would be too weak, taking into account the unstable reality, both juridically and sociologically, of these non-marital unions. On the other hand, it would be difficult to avoid giving the impression to most citizens, that a specific regulation of that type would be a strategic way of avoiding a direct equivalence, establishing kind of "substitute" for marriage, in which you would find almost all the rights connected with marriage, but not the duties, creating an instrument for cheating the demands of marriage, but at the same time obtaining its advantages. Recognition by the State of de facto unions could be understood as an attempt by the public authorities to establish social control over a reality that by its very nature is a simple fact, the fruit of a free social behavior that wishes to remain free. The State would obtain this control by giving in exchange certain transmissible benefits.

All these reasons serve to demonstrate the problematic side of creating a public status for de facto unions. But beyond these motives, there is a funda-

mental reason that should not be forgotten: marriage and the family based on it are the only way to develop the sexual dimension of the person which is in accord with his dignity and human nature. De facto unions, either heterosexual or homosexual, do not respond to the intrinsic demands of human nature, not understood as a reality which is static and extrinsic to freedom, but which is "worthy of the human person." Moreover, in the case of unions between homosexuals, there is an absolute lack of the presuppositions for any integration of sexuality, which by its own nature is grounded in the difference and complementarity between masculinity and femininity as dimensions which are intrinsic to the human person.

In conclusion, marriage is the only union between a man and a woman as such, in their masculine and feminine conditions, which permits the establishment of a relationship which has within it the potential for leading to the good and the realization of the person in the total gift of their sexual dimension, and the good of the person of the other spouse and the children born of their union.

### **RECOURSE TO THE RULES OF LAW FOR THE SOLUTION OF SOME PATRIMONIAL QUESTIONS**

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In the measure in which it is a mere question of fact, it seems that what the State should do is to determine the pri-

vate relationships of patrimonial justice which can appear in each single case, with regards to the children borne, with relation to the time that the cohabitation lasted and, in certain cases, with regards to the possible disadvantages to professional development the woman might have suffered due to her dedication to life in common or for the income she might have lost in that period of life or would have had if she had not lived in a dependent relationship. Indeed, nothing prevents, in terms of equity and general principles of the law that in a certain case the existence of a true implicit pact might be recognized in this dedication, which consequently requires reparation from the party that has obtained a personal benefit.

It is for this very reason that it does not seem appropriate to elaborate general rules for the beginning of a relationship which is voluntarily alien to a commitment to justice, because it lacks in itself a dimension of intrinsic justice which demands legal protection from society. Instead, it seems to me, if there is a legal action based on these types of relationships, it could be sufficient to resolve the concrete and private demands of justice that might appear as a consequence of a cohabitation *more uxorio*, as if it were a marriage, not because of commitments taken as such, but because of the factual reality of an implicit

agreement that generates natural obligations as time passes.<sup>37</sup>

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37 Cf. J. I. BAÑARES, "Derecho antropología y libertad en las uniones de hecho."



# A Demographic Implosion In Europe?

Gérard-François Dumont

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*The unit of time used in demography is thirty years, the period of one generation. Demographic phenomena unfold slowly over time and therefore there is a time lag for public opinion to perceive and understand them. The expression “demographic implosion” must therefore be handled with care because, while it is true that in Europe there is a decrease in the proportion of youth, this decline will produce its effects very slowly: Population ageing and a decrease in natural growth. The analysis of the implosion allows one to distinguish between two phenomena that often mistaken for each other. On the one side, the proportion of elderly persons grows because life expectancy at birth has increased and mortality has declined. This growth of the elderly is therefore the result of better living conditions, particularly medical advances. On the other side, the fall of fertility implies ageing from the base which reflects the lack of population replacement. One must therefore be careful to distinguish between two kinds of ageing: From the top, which reflects the many benefits of progress for men and women, and ageing from the base, which reflects estrangement regarding life. The seriousness of the demographic situation in Europe is obvious. The population pyramid is inversed. This is the manifestation of the demographic implosion, of a “demographic winter” that threatens the very existence of society. This fact is beginning to be seen by public opinion and in a special way by young persons. (↗ Birth Control and Demographic Implosion; Demography, Demographic Transition and Demographic Policies; Domestic Economy: Family and the Principle of Subsidiarity; Family and Sustainable Development; New Models of the Welfare State)*

Ending with a question mark, the title “A Demographic Implosion in Europe” seems provocative and inappropriate. Implosion is defined as the “brutal eruption of a fluid inside an enclosure with a lower pressure.”<sup>1</sup> To ask oneself about a demographic implosion in Eu-

rope means to ask whether this continent is experiencing the brutal eruption of a new phenomenon inside of a system whose pressure is weak. Effectively, Europe seems to be undergoing a process similar to that of implosion: the demographic equivalent to the above-described fluid is the continuous ageing of the European population; the low pressure cor-

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<sup>1</sup> According to the French dictionary *Le Robert*.

responds to a declining birth rate which remains inferior to replacement levels.

## AN APPROPRIATE EXPRESSION

In other words, the percentage of old people increases in Europe whether we consider national populations as a whole or populations at an active age. Yet this ageing is a new phenomenon. In 1928, Alfred Sauvy had the idea to use the term "ageing" to designate this new phenomenon. He confirmed the results of his analysis after rewording and deepening it at different points in time: "the percentage of old people has not fluctuated considerably throughout the centuries"<sup>2</sup> for two reasons: first, before the 18<sup>th</sup> Century populations had a low life expectancy at birth and a high mortality rate due to the lack of effective medicine. Except in periods of a fall in the birthrate due to declines of civilization, the percentage of old people under these circumstances could only be low, i.e., around 8 %.

Furthermore, populations went periodically through good periods (times of peace which encouraged economic development, or good harvests, or years with propitious weather conditions) or bad periods (famine, malnutrition, bad harvests, wars, epidemics). However, these different events, whether good or bad, did not substantially modify the age pyramid, because they had similar

effects on all age groups: in good years, the whole population was well nourished and in consequence everybody was better equipped to resist factors influencing mortality. During the bad years, all age classes were affected and thus suffering from greater mortality. Thus, in the 14<sup>th</sup> Century the Black Plague, which provoked a substantial demographic decline in Europe, did not really modify the age pyramid because it killed people at all ages.

Except in periods of decline, ancient populations<sup>3</sup> did not age demographically. Therefore ageing, i.e., the proportionate decrease of the young and respectively the increase of old people, is a new phenomenon: it arose for the first time in France in the 19<sup>th</sup> Century, then started in Sweden at the end of the 19<sup>th</sup> Century as well as in other countries such as Great Britain and Germany. During most of the 20<sup>th</sup> Century, this was primarily due to the decline of the birthrate. Alfred Sauvy denounced an error which is still widespread: "It was believed for a long time, and many still do, that the ageing of a population is the result of growing longevity. But this means confusing the general ageing of a population with its members' longevity."<sup>4</sup> This great demographer of the 20<sup>th</sup> Century does not exclude that

2 A. Sauvy. *Théorie Générale de la population*, Paris, PUF, <sup>3</sup>1966, II, 50.

3 We are referring with the term "the ancient populations" to those populations who lived before the general implementation of civil registration, which means in Europe before the 18<sup>th</sup> Century.

4 Sauvy, *Théorie Générale de la population*, 54.

the new longevity of elderly people is a secondary reason for this phenomenon; but he refers to it as something fortunate for it consists “in the discovery of cures for cancer and other diseases”<sup>5</sup> and allows for greater “life expectancy without disability.”

Secondly, the younger cohorts decline and this shrinks the age pyramid. So there is in fact an implosive phenomenon taking place in Europe.

### **A SUDDEN CHANGE?**

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Nevertheless, this statement could be questioned by pointing out that an implosion would be “sudden” in character; but we are dealing here with the science of demography. In this discipline the basic period of analysis is particularly long because it corresponds to the period between two generations, which amounts to about 30 years. In the financial world changes can occur in a single day (for instance, a stock market crash, the sudden increase in value of a title about which one has learned unexpected results, or of a strategically important acquisition). In climatology the replacing of one season by another takes a trimester (three months). In politics, the replacement of a left-wing politician by a conservative one depends on the period of the electoral mandate, generally a certain number of years. In demography it takes 30 years to renew the younger generations or the active population. So a demographic

change only has a significant effect if it occurs within a period of 30 years. For example, after the First World War the European countries recorded an increase in the birthrate, a sort of a partial “catching-up.”<sup>6</sup> But this lasted only two years and thus did not have any significant demographic effect. However, after World War II the birthrate increased during the next 30 years in different European countries. This had a real effect upon the age pyramid and this demographic renewal had numerous consequences.

Thus, 30 years is the unit of measure in demography. The decrease of the European birthrate below replacement is coming close to that time span in a growing number of European countries and demographic projections reveal the following consequences: a possible contraction of the European population which is already taking place in some countries despite immigration – hence we have demographic implosion. For instance, from 2000 to 2025 the Italian population will decrease from 57.8 million to 52.4 million inhabitants,<sup>7</sup> in Spain from 39.5 million to 36.7 million, in Portugal from 10.0 to 9.3 million. If this process continues after 2025 the demographic contraction will be even more clear-cut:

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6 In fact, we cannot speak in demography about a “catching-up,” because the births in the year  $n+3$  do not have the same effect on the age pyramid as those that would have happened in the year  $n$ .

7 All these numbers come from the *World Population Data Sheet 2000*, Washington.

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5 Sauvy, *Théorie Générale de la population*, 55.

Italy would lose 27% of its population from 2000 to 2050, Spain 23%, Portugal 20%. The statistics released by the U.N.<sup>8</sup> give percentages and project a demographic decrease in all European countries until 2050. The most important losses in decreasing order would be taking place in the Russian Federation with -25.9 million inhabitants, in Italy -16.1 million, Ukraine -11 million, Spain -9.4 million, Germany -8.9 million less inhabitants than in 2000.

Such an evolution follows from the current data because the inertia of the demographic phenomena causes the actions of a given period to have long-term effects. The data observed since the 1980s are marked by a European birth-rate lower than the minimum replacement level, which is 210 children for every 100 women in countries with good medical conditions.

Before analyzing how all the European countries converged towards low fertility, let us briefly recall the history of the 20<sup>th</sup> Century, since demographic issues have to be considered over a long period of time. Thirdly, it will be interesting to look at the fertility rates in Europe from a geographical perspective, for the differences will reveal variations in the rhythm of actual and future evolutions. Among other things, the decrease of the natural

birth rate leads one to distinguish a part of Europe where deaths already outnumber births and another where natural increase is still positive. Finally, it will be necessary to consider the causes of this demographic winter, causes that are similar to the behavior of Kronos who ate his own children so as not to have heirs.

## **THE FIRST TWO PHASES OF THE 20TH CENTURY**

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The demographic rank of Europe changed profoundly in the 20<sup>th</sup> Century. In 1900 nobody anticipated that Europe's percentage of the world's population would decrease; no one could have imagined that Europe would be the only continent with a naturally negative growth rate at the end of the 20<sup>th</sup> Century. In order to illustrate this conviction about the lasting demographic superiority of Europe, let me mention the example of New Caledonia as representative of the European point of view about colonial populations. In 1864, a colonizer discovered the importance of Caledonian nickel, estimated to be a fifth of the world's reserves. After that, the French administration did not stop bringing in immigrant workers from the New Hebrides, Vietnam, Indonesia or Europe. However, there was an unemployed population of about 30,000 indigenous (Kanak people from Polynesia) who lived dispersed among more than 30 tribes in the Caledonian Archipelago (19,058 km<sup>2</sup>). But everybody was convinced that the indigenous Melanesian

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8 Numbers come from the *World Population Data Sheet 2000*, quoted in *BIB-Mitteilungen*, periodical of the Federal Institute for Demographic Research, Wiesbaden, 8 March 2000.

population would soon disappear since it was not resistant to diseases.<sup>9</sup>

Contrary to the belief at the beginning of the 20<sup>th</sup> Century that Europe would remain the demographically dominant continent, it was going to lose its demographic rank while the demographic transition would occur in the countries of the South, especially in the second half of the 20<sup>th</sup> Century, thus allowing a significant growth in their populations.

Before this, during the first 15 years of the 20<sup>th</sup> Century, Europe still dominated the world by its demographic dynamism. On the one hand, the European populations had a greater longevity which was increasing because of medical and economic progress. On the other hand, Europe exported its populations to new countries, to the point that the USA was worried about their numbers; therefore they started to enact their first restrictive immigration laws in 1917 and 1921.<sup>10</sup> France, which was the first country whose fertility decreased at the end of the 18<sup>th</sup> Century, was the only one among European countries to borrow people from its neighbors.

The second demographic period corresponds more or less to the inter-war period. Since 1880, after a delay of a hundred years, Malthusianism or "the French Evil" has seeped into the other colonial powers, especially in Central

Europe. The Germany of 1933 that voted Hitler into power was an ageing country and its birth rate was three times lower than at the beginning of the century (1.6 children to 1 woman in contrast to 5 children in 1900).<sup>11</sup> Vienna and Berlin took the lead: while a net reproduction of 1 child per person is necessary for maintaining the replacement of generations,<sup>12</sup> these cities had respectively 0.25 and 0.37 children per woman throughout the 1930s. Nonetheless, France retained the lowest ranking among European countries in terms of fertility. Since its birth rate had started falling a long time before that and furthermore considering the effects of the war of 1914-1918, its natural growth rate was the lowest in Europe and even became negative from 1935 onward.

While fertility decreased in Europe, the first phase of the demographic transition began in what Alfred Sauvy later called the Third World.<sup>13</sup> The deployment of colonial troops and the arrival of colonizers were accompanied by an increasing number of doctors. In consequences, the basic principles of hygiene were spread widely, thus leading to a decrease in infant and maternal mortality. The demographic growth of populations in the Third World which would become evident in the 1960s began.

9 G.-F. DUMONT, *La population de la France*, Paris, Ellipses, 2000.

10 G.-F. Dumont. *Les migrations internationales*, Editions Sedes, Paris 1995, 91.

11 H. Michel. *L'Allemagne en mutation*, Presses de Sciences Po., Paris 1995.

12 G.-F. Dumont. *Démographie*, Dunod, Paris 1992.

13 A. Sauvy. *L'Observateur*, 14 August 1952.

## DEMOGRAPHIC REVIVAL

The third phase in the history of European demography in the 20<sup>th</sup> Century corresponds to the period after World War II: Europe renewed itself from within while the old colonies experienced the demographic transition intensely before obtaining political independence. The demographic Spring of Europe after the war was sustained by the expansion of pro-family policies. The birthrate returned to an average of 2.5 to 3.5 children per woman. This increase contributed all the more to a European renewal since at the same time the progress made in medicine and hygiene continued to reduce the minimum needed for the replacement of generations which went from 2.3 children to 2.2 children per woman, then to 2.1 children per woman, approaching the obviously absolute floor of two children. Europe regained a natural demographic growth which stimulated and accompanied the economic and social renewal which Jean Fourastié called "the glorious 30 years." Actually, there were only "20 glorious years" regarding the birthrate in Europe, but they translated into 30 glorious years due to the momentum acquired by the increasing birthrate. At the same time, mortality went down, particularly in the countries of the Third World, and thus the population growth in the South became particularly high, reaching its height at the end of the 1960s.<sup>14</sup>

14 G.-F. Dumont. *Le Monde et les Hommes*,

During these different phases, Europe experienced numerous demographic upheavals, both in its natural movements and in its migratory movements, in particular due to the two European civil wars.<sup>15</sup>

## EUROPE'S DEMOGRAPHIC WINTER

Beginning with the 1960s the progressive decline of the European birthrate led to a rate that was below replacement; thus in the 1970s the 4<sup>th</sup> demographic phase of the 20<sup>th</sup> Century begun, namely demographic winter. A quarter century later, at the turn of the millennium, the ancient home of populations which is Europe is now characterized by two fundamental demographic processes: the first is a demographic concentration in larger urban areas to the detriment of middle-sized towns and rural areas which are often being depopulated; the second process consists in a low birthrate, thus increasing the ageing of the population. In 2000 all European countries had a fertility rate which was below replacement, and Europe is the only continent to register a process of natural negative growth.<sup>16</sup>

*les Grandes Evolutions Démographiques*, Editions Litec, Paris 1994.

15 J.-D. LeCaillon. "La Population de l'Europe au XX<sup>e</sup> Siècle," *Population et Avenir* (2000), 646.

16 Thus there is an annual decline of -0.1%, according to *World Population Data Sheet 2000*.

The greater number of deaths over births which can be observed in Europe as a whole can also be measured in 16 out of 42 countries and in a few dozen regions. It is the result of the convergence of a declining birthrate which came about in several phases from the 1960s until the 1990s. The main consequence of this is a continuous and increasing ageing of the population. Thus, the question of how to finance pensions is a continuous issue in all countries because the number of working people per retired person is decreasing everywhere.<sup>17</sup> This fundamental convergence thus has led to reports, proposed laws, changes in regulations, lawsuits,<sup>18</sup> demonstrations and debates; but the solution which is a demographic renewal is generally not mentioned. "Old Europe"<sup>19</sup> is becoming a continent of old people, and all those who are dreaming of miracles which would solve without effort the growing demographic imbalance between generations will be seri-

ously disappointed.

However, despite parallel demographic developments within Europe, there are also some differences, as if the Iron Curtain which fell in 1989 were still exercising some influence demographically speaking. Indeed, the countries which had been under Soviet influence for the longest time also have the lowest birth rates, thus sharing the same status quo with the least fertile countries which were Spain and Italy. Among other things, these countries have the highest mortality rates.

## THE GEOGRAPHY OF FALLING FERTILITY

Since the 1960s the populations of Europe have all converged towards a low birthrate; the effect of this is the annual negative growth which was noted since the mid-1990s. This is the result of a low birthrate (10 children per 1000 women), which is also dependent on low fertility. Thus Europe presents itself as the continent unable to replace itself.<sup>20</sup> For all European countries without any exception,<sup>21</sup> though at a different rhythm and with different time-tables, have con-

17 For France, see G.-F. Dumont. "Lumière et Ombres du Rapport Charpin," *Population et Avenir*, (1999) 642.

18 Cf. in France the civil case of the C.G.T. and of the "Familles de France" against Agirc which led in November 1999 to the decision of the Supreme Court of Appeals condemning the "Association Générale des Institutions de Retraites de Cadres" (Agirc) for having retroactively implemented a decision of its board of directors.

19 This expression has often been used: Cf. for instance, the presentation of C. Moindrot entitled "La Vieille Europe," in *Les Populations Européennes*, Ellipses, Paris 1985.

20 Let us recall that this is the fertility rate (2.1 children for 1 woman in countries with a good health system) allowing one hundred women to be replaced with the same number of women in the next generation that follows 30 years later.

21 Some doubt remains regarding Albania's fertility rate being below or above the replacement rate depending on the sources consulted.

verged in this fertility decline resulting in what I have called a demographic winter. Let us now examine how this convergence came about.

During the general demographic revival in Europe after World War II, the European countries experienced divergent birthrates which did not correspond to the recently imposed political divisions. The lowest fertility rate was detected in a large central corridor from Sweden to Italy, containing Western countries (West Germany, Austria, Switzerland and Greece) and countries from the Soviet Bloc (the Baltic countries, East Germany, Bulgaria and Ukraine). The other European countries made up for this deficiency in this European central corridor until the middle of the 1960s. Afterwards, the decline in fertility followed a general pattern, with geographical differences, until it covered all of Europe following a calendar with four stages.

The first phase takes place in the 1960s. Each year one or more countries record a decline in births from the previous year: Belgium in 1960, the Netherlands, Spain and Italy in 1965, Denmark and Sweden in 1967, Norway in 1970, then France in 1975. The birthrate starts to decline especially in Northern Europe: Finland, Sweden and Denmark have less than 2.1 children per woman after 1969,<sup>22</sup> but the average birthrate in Eu-

rope remains firmly above the minimum replacement level.

With the beginning of the 1970s the second stage of the fertility decline in Europe starts, with more countries having a fertility rate below 2.1: Luxembourg in 1970, Austria and Belgium 1972, the United Kingdom in 1973. Furthermore, Western Europe's<sup>23</sup> birth rate slides below replacement in 1974, the same year in which France passes below the mark. In this period, the European countries with the highest birthrates are - excepting Ireland with 3.63 children per woman - in Southern Europe: Spain (2.89), Portugal (2.68), Greece (2.38) and Italy (2.33). Few imagined that these countries would follow the general trend; but they did so with an even faster pace.

Italy began the third stage of fertility decline in Europe between 1977 and 1982, a period in which Southern Europe reached below-replacement levels: Spain and Greece in 1981, Portugal in 1982. Ireland was the only Western country whose birth rate was 2.95 children per woman in 1982 and it went below 2.10 children per woman in 1991.

## THE PECULIAR EVOLUTION OF SOVIET EUROPE

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During the three stages of the fertility decline in Western Europe mentioned

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l'Europe, *Evolution Démographique Récente en Europe*, 1999.

22 These numbers are drawn from: *Eurostat. Statistiques Démographiques, 3 : Populations et Conditions Sociales*, 1999 ou de Conseil de

23 According to the political meaning of the expression used before the implosion of the Soviet Union.



above, the situation of countries under Soviet influence remained unique. These societies were closed to migratory movements (excepting some workers from allied countries), tourism and Western information outlets. The majority of the population could not obtain modern contraceptive devices. The authorities decided to offer abortion as an instrument of birth control: the number of abortions often overtook births. Sometimes there were 3 to 4 abortions for every birth. The marriage patterns remained similar to those of the 1950s and the fertility calendar continued to allow for early child-bearing.

Nevertheless, the evolution appears chaotic because authoritarian policies fluctuated and often brutally changed demographic conditions. In this way, abortion, which had been progressively legalized starting in 1955, was restricted at different points without other means of birth control being put into place. The most spectacular decision was made in October 1966 in Romania where abortion was made illegal without any warning; this brought about a doubling of births in 1967. Access to abortion was also restricted in Bulgaria in 1968 and in Hungary in 1973, because these countries were becoming worried about the decline in births.

In countries such as East Germany where fertility was lowest and whose population was following the behavior of West Germany since 1945, the governments put into place policies to encour-

age an increase in the birthrate (1976 and following years).

Held in check by the Soviet regime, the fertility rate generally resisted decline in the Eastern countries. Then, with the implosion of the Communist regimes, it fell with record speed between 1989 and 1992, in the fourth stage of the convergence of European fertility.

## **EUROPEAN DIFFERENCES**

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After this four stage calendar of declining fertility in Europe, the birthrate is now, at the turn of the new millennium, below replacement in all of Europe. However, the low fertility rates reached at the end of the 20<sup>th</sup> Century are not the same in all countries. In some former Eastern-Bloc countries the decline has exceeded the lowest level recorded in other European regions. In 1986 Italy replaced Germany as the most infertile country in the world with 1.32 children per woman and continued to go down to 1.18 children in 1996. At the end of the 1990s, however, Italy was in "competition" for last place with various countries of the former Soviet Union: the birthrate in Estonia, the Czech Republic, Russia and Slovenia is 1.2 children per woman, and in Latvia and Bulgaria it is 1.1.

The European geography of fertility is divided into 3 levels, all below replacement: Eastern and Southern Europe with 1.3 children per woman, Western Europe with 1.5 and Northern Europe with 1.7. In all of these countries the differences between rural and urban zones

which had previously been significant are largely gone.

The yearly birthrates recorded in Europe reflect this lowered fertility: they were often 18 per 1000 in 1950, and at the end of the 20<sup>th</sup> Century they were around 10 per 1000, with variations due to fertility and the degree of population ageing in each country. The geography of birthrates<sup>24</sup> corresponds more or less to that of fertility. The rate is lower than 10 per 1000 in Estonia, Latvia, Lithuania, Sweden (Northern Europe), Belarus, Bulgaria, the Czech Republic, Hungary, Poland, Russia, Ukraine (Eastern Europe), Italy, Slovenia and Spain (Southern Europe). Around fifteen European countries have a birthrate of between 10 and 12 per 1000. Finally, the birthrate which is the least low, namely 13 or more per 1000, is recorded in Iceland, Ireland, Norway, Liechtenstein, Albania and Macedonia.

The number of births has generally decreased less than fertility because it records for a whole year the fertility of every age group compared to the number of women in fertile ages. A decrease in fertility rates can be compensated for, at a given time, by an increase in the number of fertile women. Thus, in France the number of births increased until 1973 while fertility had been declining for 10 years. This is the effect of inertia which is common (and fundamental) to demography.

## **THE STAGES OF THE DECLINE IN NATURAL GROWTH**

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The combination of the mortality rate and the birthrate gives us the natural growth rate which evolved in Europe following three stages. During the first phase (1972-1992) the Germanic peoples were an exception: Already in 1972 Germany registered more deaths than births, exceeding in some years 100,000, especially because of variations in the birthrate. Austria registered a surplus of deaths over births from 1975 to 1980 and then again in 1983, 1985, and 1986. Denmark was slightly negative from 1981 to 1988. These low numbers of births diminished the base of the age pyramid and led to a decrease in the German population, despite the addition of immigrants -- mainly Turks. Then the Soviet implosion generated a strong migration of ethnic Germans from Poland, the Baltic States, Belarus and Russia, which compensated for the negative natural growth rate.

During the second stage, Germany was joined by Italy in 1993 in having more deaths than births. This second phase allows one to envisage a similar development in Southern Europe in general, because the surplus of births over deaths decreased in a regular and almost linear fashion in Greece, Spain and to a lesser extent in Portugal. Spain had its first year of more deaths than births in 1997, as did Sweden.

Simultaneously, another stage was

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24 Numbers from *PRB* 2000.

crossed, because several countries from the ex-Soviet Empire, due to their low fertility and higher relative mortality, started having a negative natural growth rate.

After these three stages, the geography of natural growth rates in Europe at the end of the 20<sup>th</sup> Century shows that 16 of 42 countries have negative natural growth; 7 of 10 countries in Eastern Europe (Belarus, Bulgaria, the Czech Republic, Hungary, Romania, Russia, and Ukraine), 4 of 10 countries in Northern Europe (Estonia, Latvia, Lithuania, and Sweden), 4 of 13 countries in Southern Europe (Croatia, Greece, Italy and Slovenia), and Germany in Western Europe. Twenty other countries had a natural growth between 0 and 5 per 1000. Finally, some countries had annual natural growths equal to or higher than 6 per 1000 (Ireland, Iceland, Liechtenstein, Albania, Andorra, and Macedonia). All European countries nevertheless find themselves following a general trend of decreasing natural growth.

## **THE DEMOGRAPHIC MECHANISM**

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How can one explain this convergence towards a low fertility rate in countries having such different demographic histories and characteristics? In fact, if we exclude the socio-cultural factors, this evolution is due to a demographic revolution and more precisely a fertility revolution touching different countries and, more specifically, different regions -- for

example cities before rural areas -- as it spreads.

This revolution is due to the introduction of modern and highly effective contraceptives which completely modified fertility regimes.

Before the 1960s births were characterized by their unpredictability: to the wanted babies were added those who were born because of the absence of contraception or because of traditional contraceptive methods with only limited effectiveness (abstinence, *coitus interruptus*, the Ogino method, and condoms). As Alfred Sauvy said, all the children received a similar education without the possibility of telling the difference.

New medical contraceptives (the Pill, intrauterine device, sterilization) which have become increasingly and more widely used since the 1960s, allowed the control of fertility and the fertility calendar and the separation of sexuality from procreation. In the case of an incorrect use of modern contraceptives, recourse to medical abortion became possible, both in countries where abortion is legal as well as in most others where it is illegal, but generally available.

Thus, in a general context which is unfavorable to the family, the number of children born corresponds to those whose arrival is planned following short-term reasoning to the exclusion of children, who according to studies, would be desired ideally speaking or who would be necessary to stem the demographic imbalance between generations.

## THE OTHER IMPLOSIVE FACTORS

Running parallel to this contraceptive revolution and irrespective of the opinions about the ideal size of families, other objective factors led to a declining birthrate. In all of Europe the time taken for schooling and studies has increased, especially women's education. The proportion of women studying for higher degrees has increased. Logically therefore—*ceteris paribus*—the average age for marriage and motherhood has been pushed back: The timing of births is delayed, and at the same time the potential number of children who can be born declines because biological factors making women more infertile with age and limiting the fertile period have remained fairly constant.

Another factor is the economic activity of women. This has always existed to a much greater extent than generally assumed, but in a rural and agrarian society women practiced their familial and professional activities in the same places; sometimes even their industrial activities. In modern society, professional activity occurs mostly out of the home, and many professions often require frequent business travel. Reconciling the legitimate desires for career-advancement and for the founding of a family has raised many complex issues, all the more so since society places its demands concerning the first at the same time when biology demands the second.

These and other factors modify to a large measure the conditions for marriage and this contributes to a brake on fertility. Certainly, the birthrate declined everywhere before marriage rates did; thus the first cause for the non-replacement of generations is not attitudes toward marriage. On the other hand, in a secondary phase, the decrease in marriages encourages the continuation of low fertility and even further decreases.

This last observation is analyzed in different ways depending on the specific cultural characteristics unique to each population.<sup>25</sup> In some countries marriage remains a central institution and the birth of children out of wedlock is rare. The decline in the number of marriages leads automatically to a low birthrate, because the percentage of births in wedlock remains very high (Spain 89%, Italy 92%, Greece 97%).

In contrast, in Northern countries such as Sweden or Denmark, marriage is less important; children born out of wedlock have become very common, which is also reflected in the laws: 54% of the total number of births in Sweden and 46% in Denmark were out of wedlock.<sup>26</sup> In other countries such as France or England, the percentage of births out of wedlock has increased significantly; however, there are not enough births out

25 G.-F. Dumont, *et.al.* . *Les Racines de l'identité Européenne*, Economica, Paris 1999.

26 Cf., especially "Les singularités de l'eurodémographie," in *Population et Avenir* (1999) 643.

of wedlock to make up for the declining number of legitimate births.

In consequence, in spite of these different attitudes regarding marriage in Europe, declining marriage rates always have a negative effect on fertility.

## **THE FUTURE OF THE IMPLOSIVE PROCESS**

The analysis of the European demographic processes is particularly interesting because this continent is like a laboratory of the post-transitional period. The demographic transition ended in effect after the first third of the 20<sup>th</sup> Century. The signs of ageing in the interwar period were replaced by a demographic revival after the war. Then the demographic revolution of fertility happened in a context unfavorable to the creation or the increase of the family while its ideal size has remained constant. Thus, the birthrate has become weak and this has provoked the progressive ageing of the population from the base of the age pyramid. At the same time, the increase in life expectancy has led to a progressive ageing from the top of the age pyramid.

The most noticeable aspects of ageing are the decline in numbers of students, the growing need for public services and organizations addressing a larger population of elderly persons, and the problems faced by retirement plans since the dependency ratio of the retired to working members of society continues to grow. The already implemented or projected pension plan financing reforms

in Europe are necessitated because of this ageing problem. They accentuate how demographic changes have basic consequences on the life of societies.

How far will the implosive process marked by ageing and the decline of natural growth go? For instance, if Europe follows the "Italian model" which is already partially the case at the turn of the millennium, the old continent will see its demographic imbalance worsen in the 21<sup>st</sup> Century and a demographic depression will follow with obviously important geopolitical, political, economic and social consequences.

What is at stake for the future is if "old Europe" will be dominated by the demographic weight of elderly people or, on the contrary, whether it will be able to check the implosive process thanks to more progressive dynamics such as those observed at the end of the 20<sup>th</sup> Century. The question is if Europe will be capable of replacing its generations and therefore to prevent the feast of Kronos from happening,<sup>27</sup> that mythological character

27 G.-F. Dumont. *Le Festin de Kronos. Essai sur la Réalité et les enjeux des Evolutions Socio-Démographiques en Europe*. Editions Fleurus-Essais, Paris 1991, 203; (Italian edition: *Il Festino di Crono. Presento e Futuro della Popolazione in Europa*. Edizioni Arès, Milano 1994, 180; Spanish edition: *El Festin de Cronos. El Futuro de la Poblacion en Europa*. Ediciones Rialp, Madrid 1995, 190; Slovakian edition: *Kronova Hostina. Socialno-Demograficky Vyvoj Europa*. Edition Vydal Charis, Bratislava 1995, 133; German edition: *Europa Stirbt vor sich hin... Wege aus der Krise*. MM Verlag, Aachen 1997).

who rejected the future by devouring his own children.

## THE DIALOGUE OF ZEUS WITH EUROPE

Indeed, according to mythology, the son of Kronos was saved thanks to his mother, Rhea. She was desolate and overwhelmed by her grief. Was she fated to see all her children disappear? She went to Crete and, there in a deep cave, under the thick forests of the Aegean Mountain, she brought into the world her son. Gaia took her newly born grandchild and had two nymphs look after him. In the meantime Rhea swathed a big stone in linen and presented it to Kronos who swallowed it without suspecting anything.<sup>28</sup> Thus, Rhea allowed the succession of generations to take place.

Recently Zeus, remembering his old love for Europe, addressed to me the following letter:

For the occasion of the year 2000 and of the jubilee, I wanted to climb down from Mt. Olympus and to leave my celestial balconies and my palace. I, who am according to mythology,<sup>29</sup> the supreme god, the lord of sky, the god of rain, the one who gathers the clouds and wields frightful lightning at will; I, whose power eclipses that of all the other gods together; I, to whom Agamem-

non in the *Iliad* addressed himself in the following words: 'Zeus, you are the most glorious, the greatest god of the thundering sky, you who are living in heaven.'

With the turn of the new millennium, could I not have another encounter with Europe who shines like the goddess of love? Could I not give her again three new children who would contribute to the reign of justice which the 21<sup>st</sup> Century so needs? In order to approach Europe as I did before, I became a bull. But it was not a common bull which one sees in a stable or browsing in a field, but a beautiful white bull whose forehead was marked with a silver disc crowned with a horn shaped like the crescent moon on top. I was hoping to see again beautiful Europe, lost in a strange dream she had during the night, to come innocently to me to caress my mane and then to mount me. I was ready to carry her off on the sea to Crete or Boetia and to give her again three sons.

Then the disaster of the European demographic implosion descended upon me. Europe was no longer that young maiden whom I saw bathing in the sea and who made me fall in love. She had become a woman whose wrinkles symbolize the most aged continent on the earth. Europe explained to me that 15 European countries and dozens of regions had more deaths than births; and that

28 F. Guirand. *Mythologie Générale*, Larousse, Paris 1935.

29 E. Hamilton. *La Mythologie*, Marabout, Bruxelles 1986.

the official numbers of the UN anticipated an important demographic contraction in the 21<sup>st</sup> Century with a substantial ageing of the population.

She said, furthermore, that it was better that she was no longer desirable. For effectively she would no longer have been capable of having three children from Zeus. Europe limited her fertility to 140 children per 100 women; one would therefore have had to deprive of life at least one of our three children, Minos, Rhadamanthys, or Sarpedon and such a choice was unbearable.

I answered Europe, observing that the supreme god who I had become thanks to mythology, was neither omnipotent nor omniscient; and sometimes, destiny, this mysterious power, revealed itself to be more powerful than he.

Europe added that destiny was not the reason, but that the Christian God, proclaimed through His son Jesus, had given liberty to each human being, so that he may choose freely and according to his conscience the responsible path to follow; thus people were free to do evil and free to do good, free to be Malthusians and to reject life and free to love and give life. She concluded by saying that one should hope that the Europeans who were participating in Kronos' feast could find hope again, if they knew how to abandon the perverted

values of evil-bearing ideologies such as selfish individualism, economism or neo-relativism."

### **THE MESSAGE OF THIS LETTER FROM ZEUS IS CLEAR**

Yes, there is no doubt that, in spite of her refusal to acknowledge this, Europe is at the beginning of the 21<sup>st</sup> Century in the process of imploding demographically, a demographic contraction that affects mainly the younger generations. Yet, population is like a forest: Without enough young shoots it shrinks.

No, this change is not unavoidable. It would be enough to reject the spirit of Malthusianism and to prioritize the acceptance of life and solidarity between the generations to alter it.





# Demography, Demographic Transition, Demographic Policies

Gérard-François Dumont

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*The specter of “population explosion” is often invoked today and even to be convinced that it is possible to find in population growth the cause of poverty in many countries. In fact, abusive appeals to demography are often made to confer a kind of scientific justification on programs of action which have heavily ideological connotations. It is therefore necessary to keep in mind the findings of the science of population in order to understand the notably different situations, and to grasp the mechanisms which explain why and in what way demographic changes vary in time and space. These same findings call for an in-depth analysis of development policies. The science of population may be defined as a human and social science and cannot be restricted to just numbers and data. It is the fruit of historical observation and experience. But it criticizes false diagnoses which form the basis on which plans of action are built that are all the more unacceptable for their proposal of more or less openly coercive methods. Therefore, once kept free from any ideological manipulation, the science of population is called to clarify the processes of political decision-making whose first beneficiaries will be families and nations. (↗ Birth Control and Demographic Implosion; Domestic Economy; Family and the Principle of Subsidiarity; Family and Sustainable Development; Demographic Implosion in Europe?; Imperfect and Iniquitous Laws; A New Model of a Welfare State; Responsible Parenthood)*

Demography, Demographic Transition and Demographic Policies are concepts which have precise and objective meanings. It is therefore good to reject the erroneous or ideological connotations that are too frequently given to them. These three terms are in general usage it seems since they are regularly used in the media. The meanings justifying their use, however, are frequently far from their scientific meaning. The

term “Demography” which objectively means the science of population, for instance, is often used to include other contents that notably can accept subjective meanings that go against the objective sense of the word. Sometimes it is suggested by the term “Demography” that it bears responsibility for the ills of humanity and poverty in certain countries and regions. Demography is in such cases relegated to use as a scapegoat: the

causes of the world's suffering have been found, "Demography". In other cases Demography is equated with an opaque mass of scientific information that is too obscure and indigestible to usefully contribute to our knowledge. Both the implicit meanings mentioned above reject the true meaning of demography.

### **"DEMOGRAPHY" AS A SCAPEGOAT**

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This rejection of the true meaning of Demography is used when one studies the failures in development in certain countries and the extent of world poverty. "Demography" is then tried and condemned as the ideal scapegoat. The low level of knowledge concerning demographic realities among the general public prevents most persons from denouncing abuses of the science of population.

For over a third of a century a truly ideological concept has been spread far and wide making Demography responsible for the world's ills. Two books which are most representative of this militant ideology each sold millions of copies in dozens of translations. The first book, *The Population Bomb*, was published in New York in 1971 and signed Paul Ehrlich. It capitalized on the fears of nuclear attack by one of the great military powers of the Cold War (USSR or USA) to invent a menace that he deemed extremely serious: population.

The prologue<sup>1</sup> of the book brutally introduced the question of a demographic danger by saying: "hundreds of millions of human beings will die of hunger in the years 1970-1980" and "nothing can now prevent an important increase in world mortality rates." This thesis was snatched up by the media around the world and continues to be largely shared by public opinion in developed countries even though events have continued on multiple occasions to disprove it.

Thus, contrary to the second affirmation from the prologue, since the 1970s the world's mortality rates have declined. In the years 1950-1955 the rate was 19.7 deaths per thousand inhabitants. In 1977 it fell to 11 per thousand; in 2000 we are at 9 per thousand. This decline in mortality took place despite the aging of the populations of the European and Far Eastern countries, the spread of new and unpredicted events such as the HIV/AIDS pandemic and the greater mortality from civil and military conflicts caused by the fall of the Soviet Empire in Eastern Europe and the former USSR. In other words, mortality rates have fallen systematically except in countries shaken by wars, politics (Russia, Romania), the new HIV/AIDS pandemic or, in industrialized countries that are ageing because of a decline in fertility.

As for mortality due to malnutrition or under nutrition corresponding to the

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1 P. EHRLICH, *la Bombe P*, Paris, Fayard, 1972, XVII.

first affirmation in the prologue, one must deplore it in certain regions of the planet during certain periods. The most intense mortality rates, however, are in no way due to the number of people, to “Demography” but to political situations. Thus, two of the greatest periods of increased mortality recorded since the 1970s are explained by catastrophic management on the part of the state. The most deadly took place in China during the “black years” 1968-1971 where increased mortality rates rose to the same level as the countries on the front lines of the First World War.<sup>2</sup> The increased collectivization of agriculture in the context of the program called “The Great Leap Forward” and the priority given to military investments provoked a food production crisis that the government tried to hide for a long time from world public opinion and then tried to blame on “agricultural calamities” when the world learned of the catastrophe.

A second case of intense mortality took place in North Korea where 3 million persons died of malnutrition between 1995 and 2000 out of a population estimated at 23 million inhabitants. The totalitarian politics of the country transformed it into an immense armed camp.<sup>3</sup> Autarchic collectivism prevented trade, disastrous economic choices and fierce repression completely

bankrupted the country.

As these two examples demonstrate, the great famines come notably from grave policy errors in the overseeing of food production. Other high death rates observed are caused by power struggles (as in the Iran-Iraq war, the civil war in Sudan, or the internal fights in Angola or Afghanistan) and not by “Demography”. Elsewhere, the art of deception using accepted terms is used to get media attention concerning famines organized by those in power in order to obtain aid money. This activity spread after the “success” achieved by the Ethiopian leaders who were able in this way to finance their war against Eritrea.<sup>4</sup>

Ehrlich views the “population bomb” as bad, not only for the third world, but also for the developed countries. He does not hesitate to compare demographic growth to a “cancer” which is worrisome for the entire planet, including the United States. He wrote: “We have to do population control at home (the United States).” These preceding affirmations, however, have no foundation whatsoever. One only has to recall the low population density of the United States and the considerable potential of its vast territory.

The second successful book that made “Demography” a scapegoat for the sufferings of humanity was the famous 1972 “Limits to Growth” Club of Rome report. This circulated the expression “Demographic Explosion” which is of-

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2 G.-F. DUMONT, *Les populations du monde*, Armand Colin, Paris 2004.

3 *Géopolitique de la faim*, Paris, PUF, Paris 2000

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4 Ibid.

ten seen as a synonym of Demography. Considering that demographic growth is “diabolical”, the report created and spread widely fears that continue, even today, to mask the true demographic situation.

The completely ideological approach of these two books and the many others they influenced enclose “demography” within descriptions of alarming numbers, explosive statistics and fear-inducing formulas. In the same vein of mythical demography one can call to mind the definitive judgement of one of the most famous men of the 20<sup>th</sup> century. In November of 1991 Commander Cousteau declared to the *Courrier de l'Unesco*: “World population must stabilize and this entails the need to eliminate 350,000 persons a day.” This incredible phrase is equivalent to a call for genocide. Its author did not specify, by the way, if he counted on being one of those “eliminated”. The quote also shows that Cousteau was totally ignorant of demographic mechanisms, the logic of demographic transition and the effects of inertia that belong to the science of population.

## **POLITICAL BURDENS**

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To present “Demography” as mathematically corresponding to poverty is a profound error. In reality the too many pockets of poverty existing in the world are not due to excess population but more commonly due to political causes. Let's take some examples: in Eu-

rope Russia has a Gross National Product (GNP) per capita that is less than one tenth that of Western Europe or the United States. It therefore must be classified as a developing country despite the considerable riches of its land and sub-soil and not because of its population which is moreover declining. Here is another example. Africa remains a continent with considerable economic possibilities: Primary goods, minerals, good soil quality in many regions... but this continent suffers from bad policies. Guinea is periodically ranked last in the yearly *World Human Development Report*. Is this caused by “Demography”? The report published in 1995 answered by posing the question: “Why is this country, which has such abundant natural resources, finding itself in this position?”<sup>5</sup> Knowing how much past political mistakes weakened the structure of the economy, the French daily *Le Monde* added: “Guinea has not finished paying for the 25 years of Sékou Touré's dictatorship. General Lansana Conté, Touré's successor, always refused to break with his predecessor while also taking great liberties with the rules of democracy.”<sup>6</sup>

Let us turn to Asia now. Among the poorest countries ranked by the United Nations Development Programme (UNDP) is Burma, which is now known

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5 PNUD (UNDP), *Rapport mondial sur le développement humain*, Economica, Paris, 1995, 128.

6 *Le Monde*, 4-5 février 1996, 3.

as Myanmar. Did its poverty come from “Demography”, from a too large population compared to its resources? Absolutely not. Burma, like the land of many poor peoples in the world, has much potential. There are vast water resources, a fertile countryside, immense uncultivated areas, a great diversity of forests with noteworthy species, maritime access to huge fishing zones, a wide range of mineral resources (coal, iron, lead, copper, tin, tungsten, gold, silver, marble...) particularly rich mines of precious and semi-precious gems (rubies, sapphires, spinel, jade), oil and natural gas... The development failure of Burma, as in many other countries, is political and therefore has nothing to do with “Demography”.

In other words, as these examples show, the burden of many areas is not “Demography” but rather public policies which block development.

Contrary to the false logic of those who make “Demography” responsible for the ills of humanity, reality is quite different, whether one observes world population or the diverse populations of the world. On the one hand, the unique demographic growth of the last two centuries is not the product of Faustian magic: it is the result of considerable human progress which has managed to push down mortality to an extraordinary degree. In many countries infant mortality, maternal mortality and child/adolescent mortality have fallen by more than 95%. Consequently, life expectan-

cy at birth has more than doubled, and even tripled in some populations, reaching heights that our ancestors in the 18<sup>th</sup> century would have judged utopian and thus unattainable.

In any event, it is not very meaningful to speak about world population in its entirety. Continents, subcontinents, countries and even regions have major differences in population, birth rates, mortality rates, marriage rates, migration, etc. Any demographic calculation bearing exclusively on the adding together of different peoples having different and changing behaviors is of limited usefulness.

The human development that everyone hopes for in the 21<sup>st</sup> century partly depends on the political responses to demographic challenges. In the countries of the south, who should benefit from greater human resources, the essential point is the capacity of leaders to decide on and put into place policies that allow individuals to become agents of development. They must reject collectivist and misguided policies which recent history has shown to be failures, even when a country enjoys important natural resources.

## **A TRUE SOCIAL SCIENCE**

Even when the term “Demography” is not made responsible for humanities’ ills, it is threatened with another form of rejection. Demography is dismissed as being a discipline that only consists of an avalanche of unworkable numbers,

obscure quantitative figures lacking significance. Unfortunately this objection is partially justified by the way some demographers work. They limit the discipline to having a purely esoteric and statistical function.

The most common use of the word "Demography" in the ideological sense is in the often-used mistaken expression "Demographic Explosion" or as an ensemble of difficult to understand accounting figures. These two uses have nothing to do with the reality of *Demography, the science of population taking as its object the study of human collectivities*. Since its birth in 1662 and the publication of the major work by the Englishman John Graunt, *Natural and Political Observations, Demography*<sup>7</sup> is considered a social science. This first scientific work of Demography studied mortality in London "in relation to the government, religion, commerce, the air, ... and the changes in the said city", as stated in the sub-title of the book. From the first, therefore, Demography was not simply statistics about humanity on the earth. If that were the case, it would be according to Alfred Sauvy a mere "enumeration of men" and not a scientific discipline.<sup>8</sup> Studying demographic events (principally births, marriages,

deaths and migrations) Demography takes as its objective among the sciences to extract from its area of research interpretive schemes, or even laws, which will improve our knowledge. With this goal it gathers quantitative data, but comprehending their evolution and interactions with political, economic or cultural realities is only realized if the quantitative data is studied with qualitative approaches. An example would be the demographic analysis of the differences in female and male life expectancy according to societies. This leads to knowledge concerning cultural differences in the equal or unequal treatment regarding the dignity and status of women.<sup>9</sup>

In reality, the science of population is at the heart of the base of life and the actions of men. By studying migration it considers the reasons which push men to leave their land of origin or to return there. In the study of birth rates the conditions surrounding the creation of new human beings are included. In examining marriage rates Demography asks questions about human love. Analysis of mortality rates includes the study of the context in which the mystery of death takes place. Securing quantitative data is a necessary condition for the study of Demography because the information thus obtained can be used by other fields of knowledge and allows

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7 1662 is the year of the science of population's birth, but the neologism "Demography" was only coined in 1855 by the Frenchman Achille Guillard.

8 A. SAUVY, *Leçon inaugurale au Collège de France*, 1959.

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9 For instance, female life expectancy is particularly improved in Afghanistan since the fall of the Taliban regime.

us to know and understand the great adventure of human societies.

## **THE FRAMEWORK OF THE DEMOGRAPHIC TRANSITION**

The definition of the Demographic Transition sheds light on what was stated above. In fact for an objective scientist the Demographic Transition<sup>10</sup> is a framework that allows for a greater understanding and interpretation of the dynamics specific to different populations. It is absolutely not a theory since its formulation comes only from the description of historical events and is the result of experience. The Demographic Transition is a framework that presents the mechanisms of the period during which contemporary populations, notably thanks to progress in medicine, pass from demographic regimes characterized by high mortality rates and high birth rates to regimes with low mortality rates consequently followed by lower birth rates. The universal character of the passage of contemporary populations through the Demographic Transition cannot be contested since it is observed on all continents, including those where some had denied the possibility of conformity to the framework such as Latin America, Asia, North Africa and Sub-Saharan Africa.

Nevertheless, this Demographic Transition framework has two frequent-

ly omitted specificities and one ambiguity which may be linked to its title. The first specificity is its calendar which varies considerably from country to country. Frequently people do not understand why Western Europe has long since finished its transition and why the Indian subcontinent has not yet completed its own. One forgets that Western Europe began its transition at the end of the XVIII century and the Indian subcontinent started in the 1920s. To compare the demographic evolution of India with that of Germany in 2001 makes little sense. The true comparison would look at India in 2001 and Germany at the end of the XIX century. To compare the growth of China and Great Britain in the XX century is to juxtapose two different demographic periods. One should rather compare these two countries during the most intense period of their transition. This would put China in the XX century next to Great Britain in the XIX century. In this case the analysis shows that the English transition was more intense than the Chinese one since the population of Great Britain grew four times larger in the XIX century and China's only tripled in size during the XX century. One should therefore know how to contextualize the historical demographic evolution of each country.

The second specificity of each Demographic Transition relates to its intensity, that is to say the relationship between the number of inhabitants in

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<sup>10</sup> G.-F. DUMONT, *Le Monde et les hommes, Les grandes évolutions démographiques*, Litec, Paris, 1995.

a territory at the end of the transition and just as it began. In general, the relationship is greater when the transition is shorter. A population that rapidly passes through the transition in less than a half century, like Taiwan, South Korea, or Tunisia, increases more during this period than a population which took a century or more to go through this same transition period. Since the countries of the South benefited rapidly from the medical progress developed in the North, their lowered mortality rates came very quickly and thus their transition was more intense.

### **FROM THE MYTH OF AUTOMATIC DEMOGRAPHIC STABILITY...**

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Even though the scientific definition of the "Demographic Transition" is very clear, what the expression means is sometimes unclear because of the frequent connotation it is given. Instead of looking at it as it is, a period of time separating different demographic regimes, some consider it to be the passage from a stationary demographic regime to a stable demographic regime. This prevailing idea is that before the transition a high mortality rate balanced a high birth rate and therefore the populations of the world evolved in stability. The history of populations demonstrates this is not true. Before the considerable progress in life expectancy due to the extraordinary advances in economics and medicine in the last two centuries, the

world saw the most diverse demographic changes, notably as a function of the individual political contexts of the regions in each period.<sup>11</sup> The transition therefore does not put an end to a self-balancing demographic system because this never existed.

Just as the idea of past stability is hard to put to rest, it is often thought, even though this is absent from the analysis of those who developed the framework of the transition, that the end of the transition establishes a demographic regime where mortality rates and birth rates balance each other bringing long-lasting demographic stability.<sup>12</sup> This idea of a final equilibrium is at the heart of what are called "Demographic Policies" in international reports. Since there is an ideal of stability to be attained, we might as well try to arrive there as fast as possible. To accelerate the timetable by coercive means is therefore desirable and leads to the justification of Demographic Policies advocated by the heads of some international organizations.

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11 G.-F. Dumont, *Les populations du monde*.

12 Strangely, this false reasoning is still present in the United Nations, *World Population Prospects 2000*, New York 2001. This publication maintains as its medium variant hypothesis, the one deemed most likely to occur, fertility rates of 2.1 children per woman when many countries are below this rate and have been so for decades in the case of some European or Asiatic countries.



### ...TO COERCIVE DEMOGRAPHIC POLICIES

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One often understands Demographic Policies in a restrictive sense designating policies aiming to decrease fertility which, without any deep study, is considered *a priori* to be too high. Following this logic, in agreement with the writings of Ehrlich and the Club of Rome, Mrs. Gandhi, the Prime Minister of India, decided in 1976 to enlarge a very coercive Demographic Policy in India. In a great blunder, the authorities in India thought, already in 1952, that to establish an authoritarian Demographic Policy and western family planning structures in a country with an inadequate health care network was a good idea. The population could not understand why it was necessary to limit fertility to two children when infant, adolescent and maternal mortality rates were still so high. In 1976 the increasingly coercive character of the Indian Demographic Policy, which was applied differently according to castes, only served to highlight social inequalities. At the moment where the birthrate had started to decline, in compliance with the Demographic Transition framework, the coercive Demographic Policy caused something of a boomerang effect. For example, sterilization, which became almost mandatory for a certain time, was done under such poor health conditions that there were at times fatal complications. As a consequence, the

government of the Punjab was forced to decide to pay an indemnity to the surviving spouse. The increased population control done after the declaration of the state of emergency provoked violent reactions and the defeat of the Congress Party in the March 1977 elections. The most perspicacious specialists consider that it would have been more wise to avoid this "policy of blind voluntarism."

Similar mistakes were made in other countries. Nevertheless, experience shows that a balanced change in the age pyramids is always desirable. To brutalize it, for example, as the Chinese governments have done<sup>13</sup> brings no additional advantage and leads on the contrary to upheavals that may do damage.

### A REALITY THAT IS RARELY CLARIFIED

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In fact, in its scientific definition the expression "Demographic Policy" is not only about a policy trying to reduce fertility by the most efficient means, including abortion. *Demographic Policy is defined as the decisions and actions taken as a whole by the public and parapublic authorities that have demographic effects.* A health policy which increases life spans has demographic consequences. A policy which favors the welcoming of new life has an influence on the age pyramid. A land zoning policy can have an

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<sup>13</sup> G.-F. DUMONT, *Les populations du monde*.

effect on the geography of settlement. To the contrary, policies favoring military spending rather than health policy or technological progress, those that fiscally penalize couples with children or allow euthanasia, equally have demographic consequences.

Demographic Policy must be analyzed in the same way as Economic Policy or Foreign Policy. It does, however, have one unique quality with regard to other public policies: most policies in democratic countries are explicitly stated. Demographic Policy is frequently more implicit than explicit. A government does not explicitly state that it is periodically lowering subsidies for children in order to reduce the relative income of families and finally lowering the birthrate. A government does not declare that it is legalizing abortion in order to reduce births, nevertheless we can mathematically calculate the reduction in the birthrate caused by pregnancies ending before term in abortion. A government does not say that its Malthusian housing policy tends to harm expansion and turnover in the housing market, which makes access to housing more difficult for those wishing to found families. A government that decides to create a contract with social and fiscal advantages for homosexual couples will not admit that these billions going to these persons are the same amount of money taken away from the policy for the family. A government does not say that very restrictive city zoning rules in-

volving long and costly procedures are a material and financial obstacle to the construction of housing for new families. Maintaining or increasing taxes on the sale or purchase of homes financially penalizes families which would need to buy larger homes as they grow, but governments do not admit this to be the case.

Furthermore, the public authorities of the State are not the only ones to implicitly or explicitly carry out Demographic Policies: it is also true of international bodies, regional entities and the different institutions that influence demographic events by their decisions, their rhetoric, and the spreading of ideas or beliefs.

The terms Demography, Demographic Transition and Demographic Policy are concepts with a definite and objective content; it is therefore needed to put aside the ideological and erroneous meanings which too often are ascribed to them.

# The Dignity of the Child

Leo Scheffczyk

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*The old ideas characteristic of 19<sup>th</sup> century materialistic evolutionism have come back into fashion. They return in debates about the origin of life, and more precisely, about the beginning of human life. Humanization would be a biological and evolutionary process. Some do not hesitate to doubt the humanity of the individual conceived through the union of a man and a woman. These ideas are raised by some legislators and jurists eager to be able to choose between the different definitions of the human being. Biology today has no trouble in pointing out what is a human being. Nonetheless, even though biology is clear about the reality of the human being, one must give precedence to philosophy and theology when it comes to deepening the reflection on the ontological status of the human being, his origin, destiny and dignity. Philosophy allows one, in fact, to discover that, as a person, man participates in the existence of the divine being. Revelation and theology go even further because they reveal that man was created in the image and likeness of God. Being made in the image of God, the basis of all his dignity, is not specific to the child. By the peculiar original form of the child's relationship to human beings, by the proximity to the origins, by the bringing forth of creatures before God, the child has a prototypical importance regarding human beings during their whole lives before God. The child learns through the unselfish love of the mother and the unconditional protection of the father personal and trusting love in an inchoate way. This is why this is the original paradigm for the elevation we receive as children of God in Baptism. (↗ Child Labor; Children's Rights; Children's Rights and Sexual Violence; Family and the Rights of Minors; Parenthood; Person and Integral Procreation; Personalization)*

The increase of humanitarian declarations after the collapse of totalitarianism has also made "the child" or "children" a favorite theme of public interest. "Child care," "child protection," and "children's rights" have become familiar catchwords in a society which has made human rights its motto. The three-day

children's summit at the United Nations in New York, scheduled for September 19<sup>th</sup>, 2001, intended to give these well-meaning efforts new impetus; for one cannot deny that despite idealistic initiatives, the actual situation of children has not become more promising worldwide, thanks to the

negative effects of civilizing progress.

The Swedish pedagogue Ellen Key has called the 20<sup>th</sup> century the “century of the child.” Yet it has brought little benefit to children: according to the estimates of the UN between 1986 and 1997 two million adolescents were killed in wars, six million boys and girls were crippled due to war, thirteen million children and adolescents lost their parents due to AIDS, 149 million are undernourished in developing countries, and 250 million have not received any schooling. There are numerous ways of quantitatively illustrating the suffering of children worldwide.

These statistics take on a different kind of quality when one takes into account the situation of unborn children who are at the mercy of a power-hungry, profit-oriented society. This manifests itself ominously in the increasing number of abortions as well as in the decrease of the birthrate among the European people. One no longer thinks of children as a blessing. Instead, the birth of an unwanted child can now legally be considered an “injury.” Such a judgment makes clear how little impact the insistence on humanitarianism and children’s rights have on decision-making and how devastating it is to lack a steadfast, spiritual attitude of respect for human dignity—the dignity of the child.

1) Anthropological presuppositions:

In the face of this critical situation, theology and the Church must defend or re-establish the spiritual bases for the

inalienable value of the child’s being. Ultimately, this cannot happen without presupposing the strict identity of being-a-child and being-a-human-being; to this must be added an understanding of the unique importance of what it means to be a child. This of course is not to imply that theology and the Church are defending a particular kind of morality, which they attempt to impose through indoctrination on other groups with a different kind of world-view. As the defender of the natural law, the Church is able to start with anthropological facts which are also in principle accessible to the non-believer. Though they pertain to childhood in general, these data are the measure for and find their exemplary application to the unborn child (the *nasciturus*).

First of all one needs to counter the prejudice that the process of becoming a human being is preceded by an unordered blob of cells or an unspecific tissue formation, from which the human *bion* develops slowly through a series of stages. According to this idea, the child (and therefore also the human being) would be the product of a development from pre-human stages. Thus the initial stage in the womb would not yet be specifically determined as human (which would have to lead to far-reaching consequences concerning the right to protection of the *nasciturus*).

This idea, which was much favored by the “basic law of biogenetics” of E. Haeckel, has been refuted by more re-

cent human embryological research (E. Blechschmidt). The latter has shown that Haeckel's supposition that the human embryo goes through animal-stages during phylogenesis does not coincide with reality. On the contrary, as human geneticists widely have recognized, phylogenesis is characterized by the fact that the entity growing in the mother's womb is from the beginning individually and specifically marked and therefore humanly determined. This individually specific determination does not change in later development, which coincides with the generally accepted law in biology of the maintenance of individuality.

From this, two fundamental conclusions can be drawn which are the basic principles of the anthropology of the child: the first principle is that a pre-human *bion* does not develop into a human being, but that only the already present human being can develop and grow. This coincides with the relevant insight of the Polish pedagogue Janusz Korczak: "Children do not first become human beings, they already are human beings."

From this follows the second principle, namely, that the "incarnation" of the child already happens during conception with the union of an egg-cell and a sperm-cell; during this event everything that belongs to human individuality is already present. During this event the genetic identity of the newly created human being is clearly fixed; for in the zygote all dispositions and powers

are contained which make a human being in his or her wholeness. The embryo protection law from December 13<sup>th</sup>, 1990 which is still valid in Germany, presupposes this determination.

Since the individual cannot be understood as the sum of parts which at some point are externally added, one also has to include in this understanding that the human being as a whole consists of the union of soul and body. This insight is fully confirmed by the instruction of the Congregation for the Doctrine of the Faith, *Donum vitae* (1987), as it makes reference to the *Declaration concerning procured abortion* (1974): "From the time that the ovum is fertilized, a new life is begun which is neither that of the father nor of the mother: it is rather the life of a new human being with its own growth... To this perpetual evidence... modern genetic science brings valuable confirmation."

The obviousness of this state-of-affairs, which is fundamental to the dignity of the child, is also vouched for by the Western history of law with its fundamental principles concerning the legal status of the child in the uterus. Contrary to the often-made declaration that it was only the Church Fathers who brought about the *prise de conscience* of the autonomy of the child as a legal subject, one needs to emphasize "that unborn children were already recognized as autonomously existing persons in almost the whole region of the [Roman] *ius civile*" (W. Waldstein). Already then

the child was not seen as merely part of the mother's womb, and this had far reaching consequences on the laws of the European people. In the Declaration of the Rights of the Child through the general assembly of the United Nations from 1959, one can find the following sentence that: "The child shall enjoy... special care and protection...including adequate pre-natal and post-natal care." However, these fundamental principles have practically been ignored in the legislation of many countries; a practice that has been referred to by critics as "a perversion of justice." Thus questions arise as to how these principles could be so weakened and what led to the restriction of the human rights of the child. The answer points to a legal positivism which acknowledges only positive law. It explicitly rejects natural law, turning to the opinion of the majority and of the reigning class as its source.

## 2) The metaphysical argument:

Behind legal positivism can be found a certain kind of Anglo-Saxon philosophy (Glover, Tooley, Hare, etc.) which emphasizes the radical difference in the degree of consciousness between mother and child. Thereupon humanity is derived "actualistically," i.e., from the actual moment of perception and willing; thus one denies the *nasciturus* the will to live. Such negative attempts to deny the child the right to life in the womb show that we should draw upon philosophy as we deliberate on the status of the unborn. Already the mainly biologi-

cal determination of the embryo as an individually specific and singular being cannot be made without philosophical implications. Without philosophy the dignity of the child cannot be successfully enunciated.

Still, it does not suffice to define the unborn child merely as an individual and as that of a concrete, autonomous living being that possesses a certain inner form as well as an organic dimension. Rather, one has to add that this inner form is of a non-material kind, and is the substantial spiritual soul which as the "form of the body" constitutes the corporal-spiritual human being, turns him into a human being and bestows on him the particular *logos* of the human species. The material foundation of being-human is informed by a non-material cause of life, which alone elevates man to the height of a corporal-spiritual being. This is true regardless of whether ensoulment is simultaneous or successive (as Thomas Aquinas supports), since even there the principle of life is geared towards the realization of a human being. Even the fact that twinning is possible, does not undermine the idea that the zygote exists actually undivided.

With the spiritual soul the human being that grows in the womb acquires an ontological status which is essentially different from that of an animal. Therefore, man cannot be defined either as "thinking matter" (Lenin) nor as the "still un-established animal" (Nietzsche, Gehlen). Because of his spiritual

and intellectual nature, man is a being that is conscious both of himself and of the existence of exterior things (*anima quodammodo omnia*); he is directed towards reality as a whole and towards the absolute, and he can "externalize" himself in language. The embodiment of all these advantages is the person, in whom autonomy and incommunicability have attained the highest creaturely perfection. Contrary to all vitalistic (Nietzsche), idealistic (Hegel) or actualistic (Hume) determinations of the person which deny the child its personhood, the following needs to be stated: since the spirit, which is the specific principle of the human person, is not measurable in time and space, is incommensurable with and transcends them, it cannot be made dependent on external action and on actual function. Therefore the child is also from the first moment of its existence a human person. The person possesses value in and of himself and is an end in himself.

The dignity of the child also finds its final justification in the highest value of the personal which an actualistic or a functional thinking is ultimately not able to give. Thus the Federal Constitutional Court stated in its second judgment concerning the abortion laws in Germany: "Where there is human life, it possesses human dignity; it is not decisive whether the bearer is aware of this dignity and knows how to protect it". But the voices which interpret dignity as a "cultural-social attribution" (H.

Markl), and therefore understand it as an external convention of society are becoming more numerous. The comprehensive, temporally unlimited protection of the life of the child therefore becomes more difficult. Where human dignity is no longer defined as having its source in the inner, transcendent character and in the freedom of the person, but is understood as an external designation, it loses the character of inner dignity. The inviolability, invulnerability, the absolute respect and the sanctity of the child's life are derived from the wealth of its personal value (*Evangelium vitae*, 66). The dignity of the child possesses something absolute as does human life in general.

Nonetheless, despite its absoluteness, respect and dignity, the human being cannot be considered as something autonomous and cannot be completely derived from itself. A finite and mortal being cannot account for this absoluteness by its own immanence, but only from the transcendent to which the spirit is directed. Immanuel Kant tried to avoid this by claiming total autonomy for moral obligations, so that the moral dignity of man would result from himself as the uppermost principle of morality. But eventually the philosopher had to suppose the existence of a moral creator of the universe, in order to have a basis for the universal validity of the moral law and for human dignity; otherwise man has the possibility to opt for nothingness and to be "pushed back

in the abyss of the purposeless chaos of matter.” Human dignity can only be absolute because of its connection with an absolute God. Thus the argumentation leads logically to the field of theology.

3) The religious-theological perspective on being:

The above anthropological and metaphysical reflections already made us ponder the unique dignity of the child, which in its greatness and depth is really a natural mystery. More light is shed on this mystery, however, by looking at it in light of the theological truth of creation. Everything that is said about the genesis, particularity and dignity of the life of the child on a natural level, shows an ultimate openness and inexplicability, which makes the human mind ask for an ultimate justification. This is due to the very idea of creation which as such is not completely accessible to the natural sciences nor to philosophy, but neither can it be refuted by them. For the coming into existence of a new being, of a new body-soul constitution, of a new human individuality and personality with the claim to absolute dignity cannot be explained by something lesser; the greater cannot be derived from the lesser. Everywhere where a new being arises, the Creator Himself must be seen as the donator of this new act of being. However much parents cooperate through the provision of the material, sensible and psychic elements of the new human being, they cannot communicate to that new human being his

or her being and personhood. Therefore the idea that the active self-transcendence and the “self over-flowing” love of the parents towards that new human being explains its coming-into-existence, through the power of God which is inherent in the parental action, does not make any sense. Apart from the fact that creation is thus put on a par with evolution, this idea fails to perceive that the creator’s power is not communicable. Thus only the Church’s position of the creation of the individual soul by God is acceptable (DS 1007; 3220), which Thomas Aquinas expresses in the following way: “Since it [the soul] is an immaterial substance it cannot be caused through generation, but only through creation by God” (S.Th. I.Q.118.a.2).

Since the creation of a human being is due to a particular act of God, it follows that there must be a highly singular and personal relationship of the child to God. This leads to the acknowledgement of the truth that each child is a personal thought of God and the fulfillment of a very particular idea of God. From a personalistic perspective, this means that the child can be understood as a particular call of God through whose word a new human being has been called into existence and has been put into a personal relationship with God to whom it should respond. Because of this particular creation the new human being should be essentially understood as God’s child that recognizes in God truly his Father, who is close to it as a father,



giver of life, preserver and fulfiller. The parents and all others, however, may see the new child as an extraordinary gift in which the creator gives the human community a unique gift for its preservation and its progress on its way to perfection. Everybody who is unprejudiced will be touched and amazed at the birth of a new citizen of the world. It is an event of cosmic importance which is far superior to the order of material cosmology. Birth is the beginning of something un-derived and absolutely new of inestimable value. Because of its significance the child also represents for the parents a particular responsibility and a questioning of the future orientation of humanity.

The highest theological expression of the God-given humanity of the child is its likeness to God through which it is put into direct relationship to God and is formed as the finite image of the spirit and life of God. This God-likeness puts the new person in a relationship of accountability to God and to the Word of the Father.

All these statements are made necessarily about the child as a human being, since its dignity is anchored therein. But they do not yet express that specific station in life in its particular quality. Therefore the contemplation of the child as a human being must be complemented by looking at it through the opposite perspective, namely through the contemplation of man as a child. Thereby the state of being-a-child attains a lasting, paradigmatic significance for the human

being as a whole, independently of its temporal limitation as a phase of development. The essential identity of being a child and a human being does not mean that there are no differences between the two. The differences result not only from the external developmental states and ages of life, but also from the specific, original form of the child's humanity which lasts through life in its entirety as the original state. Just as there belongs to each stage of life a specific value-structure (Guardini: "value-figure"), so there is also a specific value content belonging to childhood.

This specific form of value can be explained from the particular proximity of the child to the origin, thereby to the essence of creatureliness and also to the divine Creator. Because of its creaturely accordance with the primordial source, the child attains a prototypical significance for the human being before God in all of its phases. It embodies in its existence, to which it has not contributed anything of its own accord, the pure gift-character of human existence which points to a creator as its causality, since nothing immanent to the world can explain its being. At the same time the life of the child from the womb onward possesses the character of a beginning. Being-a-child means to be an incipient being, joined with an apparent external insignificance and at the same time possessing the inner richness of incalculable possibilities. What is so attractive and impressive about the child for the adult

is its openness towards immeasurable possibilities and its potentiality regarding the future. The child is therefore the bearer of still-unfulfilled promises which have been decided in the mystery of Divine Providence and guidance.

Nevertheless, it carries this richness in the fragile vessel of its not-yet-fulfilled corporality and of its not-yet-fully-actualized spirituality. The connatural state of deficiency from which the child suffers is redressed by the natural order of creation through its embeddedness in social cohesion, through parental care and paradigmatically through the security of the mother's womb. Despite its initial weakness the child is therefore at the same time an example for its shelteredness through others, ultimately through the paternal Creator and His dedicated love. The child, of course, cannot yet give a personal value response to that love. But this affectionate love of the child for its mother, its trusting abandonment to its parents and its assent to the world, which is as yet untroubled by any bad experiences, are objective pre-forms of personal love which have to remain the permanent and specific possessions of the human being. The love with which the parents react towards the preciousness of the child that has been given to them finds its objective response in the total devotion of the child towards its parents, and in its still unmitigated openness and confidence towards the world and people.

From this disposition the child ac-

crues its rightly-ascribed, childlike disposition. It is the epitome of the mental-spiritual fundamental structure of the child's being in which simplicity, confidence, pure receptivity, compliance, insouciance and openness come together. At the same time these are permeated by the boundless dynamism of progressing perception and growth which in a few years leads to astonishing spiritual accomplishments. All these fundamental attitudes are not just pre-formations of the future life of the child as a grownup, but they are fundamental conditions of human existence as such which can be grasped at its source in its unadulterated singularity. Thereby "being-a-child" appears "as the causal origin as well as the essential distinction of human existence as such" (G. Siewerth).

At this point, however, the significance of being-a-child becomes apparent also from the supernatural perspective of grace and salvation, again by taking into account the truth about creation. Because of its closeness to its divine origin, natural childhood is also the original paradigm for divine childhood which elevates (through baptism) the father-child-relationship between God and man to the highest dimension of supernatural life and which lets human childhood become divine. This necessarily presupposes the natural, basic conditions of the child's existence, but then transcends them and enters the supernatural dimension. Thus childlike receptivity becomes the image of faith's

willingness to hear; docile compliance becomes the paradigm for humility; the dynamism of the natural development of the child becomes the *typos* for growth in grace. Therefore the few statements of Christ on being-a-child acquire a highly theological significance. In what the Johannine Christ says about "being born through water and the Spirit" (Jn 3:3-7) the earthly-natural being-born becomes unawares the analogue for the birth from God. The similarity between both events in their un-derivability from earthly immanence, in their origin from above and in their gift-character becomes the paradigm of the belonging together of nature and grace in the divinely instituted world order. Both "births" are divine acts of the Creator. Although they are as different as are earthly and divine life, they come together in the hand of the creator and the redeemer.

The mutual referral of both "births", i.e., the analogy of being-a-child and divine childhood, takes on a character of demand in Christ's words "unless you change and become like little children" (Mt 18:3; Mk 10:15). The lowliness of the child becomes the *typos* of supernatural humility which is the condition for conversion and for the entry into paradise. Natural childhood receives thereby the character of a disposition towards divine childhood and thus becomes an essential characteristic of being a child of God. It finds its fulfillment in the supernatural state of being a child of God.

The affiliation of a childlike spirit and divine childhood is confirmed anew through a counter-example which is given in the warning of Jesus not to seduce children. Seduction destroys the exemplarity of childhood for the supernatural state of divine childhood. This exemplarity receives the highest confirmation in the partial identification of Jesus with being a child, since he declares that whoever receives a child for His sake receives Himself (Mt 18:5). Therefore an encounter with Christ happens in the reception of a child.

However, this theologically justified, ideal image of childhood should not make us close our eyes towards the reality of imperfection and evil that manifest themselves already in the early stages of life. Especially here the consequences of original sin become palpable. But the child is not yet morally responsible for the emerging impulses of egoism and the instinct-like expressions of disorder. They therefore do not refute the child's innocence, for the child is not yet able to actualize his freedom and decide between good and evil. Therefore, it is also the promise of a future state of complete freedom towards the good.

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# The Dignity of the Human Embryo

Angelo Serra

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*When can one call the fruit of conception son? Some claim that each of the terms we use is nothing more than a purely subjective concept, a philosophical or sociological term about which we might be able to reach some kind of agreement by way of a simple consensus. At any rate, this seems to be the logic fundamental to the decisions of Congressmen allowing experimentation on human embryos, or the use of embryos to obtain embryonic stem cells: they call human embryos “collection(s) of cells” and deny that they are human individuals. In reality, a rigorous scientific analysis of the first stage of the development of the human embryo, that follows conception and lasts for about fourteen days, offers a precise and objective answer which contradicts the above perspective. That analysis shows that this biological process is characterized by the continuous emergence of a form from previous stages without discontinuity (epigenesis). Three properties are verified across the stages of the zygote, blastocyst and embryonic disc with implantation in the uterus: 1) co-ordination, with a consequent interaction and co-ordination of cellular and molecular activities under the control of a new genome, modulated by an uninterrupted cascade of signals transmitted from one cell to another; 2) uninterrupted continuity in the process of development of the progressive differentiation of the individual and realization of its proper identity; 3) gradual development towards a growing complexity of the whole. The individual cells of this embryo cannot be considered separately from each other, for they are tightly integrated within a single dynamic process constituting a unity of being. From the fusion of the two gametes onwards, one is always dealing with the same identical human individual with his own identity who is constructing himself in an autonomous way. Thus from the moment of conception, a real human individual begins his or her own existence or “vital cycle” during which, given all the necessary and sufficient conditions, all of the individual’s inherent potentialities will develop in an autonomous way. Consequently the human embryo, beginning with the fusion of the gametes, has the value and title of son, with a fundamental right to life, to the love of his parents and care-givers. (↗ Pre-implantation and Emergency Contraception; Contraception; The Right to Abortion; Legal Status of the Human Embryo; Medical Interruption of Pregnancy; Voluntary Interruption of Pregnancy; Safe Motherhood; Partial Birth Abortion; Assisted Procreation & IVF; Pro-Choice).*

In 1986, a false supposition or pretext of irresponsible science deprived the “recently conceived” human being of its title and value of “son.” The new, “recently conceived” life arising from the fusion of the maternal and paternal gametes is just beginning a marvelous dialog with his or her parents—above all the mother—but is seen on a biological, psychological, mental and spiritual level as not having the name “son” or “daughter” until the fourteenth day after conception. Before that day one “should” consider him or her as “bunch of cells”, and not as a “human being,” the gift and living expression of the love of a father and mother. The law also followed this supposition and pretext: before that fourteenth day, the law negates the “right” to be a son, reducing him to a mere “disposable object,” to the point of conceding his ownership—something which we never before could have imagined!

In his encyclical *Evangelium vitae*, Pope John Paul II condemned this inhuman situation: “Some people try to justify abortion by claiming that the result of conception, at least up to a certain number of days, cannot yet be considered a personal human life” (n. 60). But he firmly continues “But in fact, ‘from the time that the ovum is fertilized, a life is begun which is neither that of the father nor of the mother; it is rather the life of a new human being with its own growth. It would never be made human if it were not human already’” (n. 60).

And he insists “This has always been clear, and ...modern genetic science offers clear confirmation.” (n. 60 quoting the Congregation for the Doctrine of the Faith’s, *Donum vitae*, 22 Feb. 1987, I, No. 1: AAS 80 (1988), 78-79)

In the small space available to us, let us try to formulate in a very schematic way the last affirmation that we have just cited from *Evangelium vitae*. In fact, a rigorous scientific analysis of the first stage of development following conception and lasting about fourteen days leads to one unique conclusion, i.e., that *after the fusion of the maternal and paternal gametes begins the vital cycle of a “new human subject”* to whom rightly belongs the sweet name of “son,” in whom there is a dignity equal to that of the father and mother. We will now insist on the four essential points of this analysis.

1) The first point is related to the *zygote*. When the process of fertilization is concluded, a few seconds after the fusion of a sperm and an egg, one can observe how a wave called “calcium wave,” provoked by a passing rise in the intracellular concentration of calcium ions and by the action of PCL-zeta, a recently discovered paternal protein, rapidly extends across the fertilized egg. It is the signal for the activation or beginning of embryonic development.

This new cell is the *zygote*, the *one-cell* embryo; a *new cell* that begins working as a *new system*, i.e., as a *unity*, an *ontologically one* living being, like any

other cell in a mitotic phase, but with some particular properties. Among the many activities coordinated by this new cell over a period of 20 to 25 hours, the most important are: 1) the organization of a *new genome*, which is a kind of main information center coordinating the development of the new human being and all its subsequent activities; 2) the initiation of the first mitotic process, which induces the embryo to divide itself into two cells.

Concerning this *new cell*, one must underline two principal aspects: first, the zygote has its own precise and proper *identity*; that is, it is *not an anonymous being*; secondly, it is intrinsically oriented towards a well defined development, i.e., to form a human subject with a precise bodily form; both aspects, *identity* and *orientation*, are essentially dependant on the *genome*, in which is inscribed the *genetic information* in very determinate molecular sequences. This substantially unvaried information establishes your *belonging to the human species*, defines your *individual biological identity* and carries a *codified program* endowing it with enormous *morphogenetic potentialities*, i.e., intrinsic capacities which are realized in a gradual and autonomous way throughout the whole rigorously oriented epigenetic process. A quick glance at the successive stages of development will enable us to establish definitively that the *zygote is the exact point in space and time in which the human individual initiates his or her own proper living cycle*.

2) The second essential point in our analysis grows out of the first stage, which goes *from the zygote to the blastocyst*. During a period of about five days, a rapid cellular multiplication occurs under the control of a great number of genes implicated in the many events of the mitotic cycle and in the production of the proteins necessary for the structure and functioning of the growing number of cells. One observation merits special attention. Today we know for certain that the new genome constituted in the zygote assumes control of the entire epigenetic process from the very first stages of development. All this has also been demonstrated in human embryogenesis. Through the studies of P. Braude, V. Bolton and S. Moore, who collectively proved that, at least in the passage from 4 to 8 cells, the new genome shows itself to be active in controlling the production of new proteins. It has been demonstrated recently that other genes - at least one hundred until now - are active from the zygotic stage to the implantation.

These facts, whose number is continually rising thanks to progress in technologies and analysis of the genome, give us a totally convincing demonstration that the *new genome formed in the moment of fertilization* is the foundation constantly sustaining the *structural and functional unity* of the embryo, which develops along a trajectory having a constant direction. The well-known embryologist L. Wolpert has rightly sta-

ted that “the true key for understanding this development lies in cellular biology, in the process of transduction of signals and in the control of the expression of the genes that carry into effect the modifications of state, movement and growth of the cell.”

All this is exactly what occurs from the *zygote* to the *blastocyst* stages. In fact, from the stage of 2 to 8 cells, these remain united to each other by means of microvilli and intercellular cytoplasmatic bridges that permit the transmission of signals between cells, something supremely important for ordered development. This contact is highly evident in the *morula* 8-32 cell stage, when these adhere to each other more tightly, maximizing their areas of contact and forming particularly complex bonds that facilitate the rapid intercellular passage of ions and molecules. This signal favors the process of normal development which, on the other hand, can see itself changed by the absence of only one of the uniting or connecting family of proteins. Under the action of these sign-bearing molecules that precipitate the entry into action of other genes, between the third and fourth cellular cycle, a net differentiation occurs between two types of cells which give rise, respectively, to two cellular lines, the *trophoblastic* and the *embryoblastic*. This morphological and functional heterogeneity becomes even more evident during the 6th and 7th cycle, when the blastocyst is already formed of between

64 and 128 cells. Hence one can distinguish three types of cells, histologically different, with different destinies. This gives rise, respectively, to the *mural and polar trophoblast* derived from the differentiation in the trophoblastic cell line, and the *endoderm and primitive ectoderm* derived from the differentiation of the embryoblast or internal cellular mass (ICM).

3) Now comes the second stage, from the *blastocyst* to the *embryonic disc* that constitutes the third essential point in our analysis. One observes the *expansion* of the blastocyst, which frees itself from the pellucid zone through which it had protected itself until this moment; its implantation in the uterus - still defined today as “a paradox of cellular biology” difficult to explain with current knowledge - during which mother and embryo do everything possible to establish a marvelous harmony despite a difficult situation; and the continuation in an uninterrupted way of *differentiation, organization and growth*. At about the 8th day from fecundation appears the *amniotic cavity*, which becomes the environment in which through differentiation the *embryonic disk* is formed, a structure with two plates or sheets derived from the differentiation of the primitive ectoderm and endoderm. Around the 10<sup>th</sup> day, the *amnios* is differentiated, and the polar trophoblast with the extraembryonic mesoderm give place to the *corion*, which converts itself into the fetal part of the placenta.



Between the 11th and 13th day after fertilization, the *embryonic disc* arrives at a diameter of some two tenths of a millimeter, and, approximately at the 14th day, one can observe in the caudal region a densely compact group of cells called *the primitive line*, which indicates the formation of a third layer of cells, the *mesoderm*, and marks the initiation of *morphogenesis*.

4) Thus we arrive at the fourth point of our analysis. In this structural foundation marvelously organized in 15 days, all development would cease if the embryonic disc were separated from the annexed structures with which it forms a *unique whole*, defines the *general plan of the body*, produces the *definition* of the different organs and tissues, out of which follow *organogenesis* and *histogenesis*. At about the 5th week of gestation, when the embryo is a centimeter long, one encounters an already well formed primitive brain, heart, lungs, gastrointestinal apparatus and genitourinary part. During the 6<sup>th</sup> week the buds of the extremities are already clearly visible, and towards the end of the 7<sup>th</sup> week, *the bodily form is already complete*.

At this point, a spontaneous question arises. If the essential lines of development of the human zygote noted from the first 15 day stage to the embryonic disc stage with its 4 to 8 million cells, is an objective description of what really occurs—and nobody who is sufficiently informed can deny it—can one then honestly affirm that in each one of the sta-

ges of embryonic development *from the zygote to the embryonic disc*, human embryos are no more than “groups of a few cells,” or “a mass of genetically human cells,” or “a cluster of more or less homogeneous cells,” or “a mass of pre-programmed, weakly organized cells?” Or, as has recently appeared in major newspapers, and was attributed to a Nobel prizewinner, “the embryo in this stage is nothing more than a bunch of cells?” In order to more easily understand the gravity of these affirmations, which falsify the objective reality of what a human embryo is in its first 15 days of life, let us use the following analogy: nobody could define, (except in a clearly contemptuous way) a structurally and functionally well designed brick house as a “pile of bricks.” On the other hand, “a bunch” would correctly describe the collection of bricks, piled up without order or harmony, with which the house was built. The accurate image of the embryo is obviously the first one described and not the latter one.

At this moment we have to return anew to the question: “When does the life cycle of a human individual begin?” When can a father and mother really call their recently conceived one a “son” or “daughter”, something that the mother already feels while he/she is taking the 5 day trip down the Fallopian Tube? Basing ourselves on what we have said until now, the answer appears evident. However, a new reflection leads us to the definitive answer. That reflection

is not merely descriptive, but spontaneously grows out of the logical growth in profundity of the biological process itself - defined by the great embryologist C. H. Waddington as "the continuous emerging of a form from the preceding stages" or *epigenesis*. In fact, this line of growing profundity makes three characteristic properties evident.

The first property is *coordination*. From everything that we have said, it is totally evident that embryonic development from the fusion of the gametes to the formation of the embryonic disc, about 14 days from fertilization, is a process which manifests a *coordinated sequence* and an *interaction* of molecular and cellular activities under the control of the new genome, which in turn is molded by an uninterrupted cascade of signals transmitted from one cell to another, from the internal and external environment to each of the cells, and within these, from the cytoplasm to the nucleus. Precisely, this undeniable property, which makes itself each time into something more complex and rigid during its morphogenesis, *implies*, even *demand*s the rigorous *unity* of being that is self-developing. As the investigation advances, this unity is presented by the new genome in which an extremely elevated number of genes regularly assures the exact time, the precise place and the specificity of the morphogenetic events. All this leads to the conclusion that the human embryo—like any other embryo—even in its very first stages is not "a

bunch of cells" but a *complete embryo* in each stage, and that in its first 14 days, it is a *real individual* in that all the individual cells are *integrated in a unique dynamic process* through which the embryo autonomously realizes, step by step, its own *genetic space*, its own proper *space as an organism*.

The second property is *continuity*. One cannot deny, on the basis of the facts presented, that with the fusion of the gametes a new life cycle is initiated. The zygote is the "point of departure" of a new organism truly encountered in the beginning of its own life cycle. If we consider the dynamic profile of this cycle in time, we can clearly see that it proceeds without any interruption. This is something that the same Warnock Committee clearly recognized in the following terms: "Once the process starts, no part of this process of development is more important than another; these are parts of a continuous process, and if each stage is not normally produced at its right moment and with its correct cadence, the development stops." In fact, following a logical induction of facts, there is no existence of a *first cycle* of 14 days of a *genetically* human but *anonymous living being* that *terminates* in the embryonic disc stage, followed by a *second cycle* of a *real* human being - which goes from the embryonic disc forward. Quite to the contrary, what exists is an uninterrupted and progressive differentiation of a *determinate human individual*, which begins at the zygote stage

and continues in conformity with a unique and rigorously defined plan. The property of *continuity* therefore implies and establishes the *unity or singularity* of the new human subject: from the fusion of the gametes forward, one always deals with the *same and identical human individual* with his *proper identity* in autonomous self-construction, while passing through different stages that are each time qualitatively more complex.

The third and most important of the properties, although it is generally passed over, is *graduality*. The *final form* is arrived at *gradually*. This is an *ontogenetic law*, a *constant* in the process of gametic reproduction, according to which the human individual *must* begin its own life cycle as an individual cell. Such a constant implies and demands a regulation which must be intrinsic to each and all of the embryos, which from the zygotic stage maintains the development permanently oriented towards the final form. Precisely because of this *intrinsic epigenetic law* inscribed in the genome and which begins to act from the fusion of the gametes, every embryo—and hence also the human embryo—permanently maintains its *proper identity, individuality and unity*: it is permanently and uninterruptedly the same and identical individual during the entire process of development from fertilization forward despite the *growing complexity of his totality*.

It is precisely these characteristics that distinguish the “individual.”

Hence logical induction from facts provided by the experimental sciences - whose number and quality continually grow, rigorously confirming the present conclusion - lead to the only possible affirmation, laying aside eventual contradictory evidence, that in the moment of the fusion of the gametes, a *real human individual begins his own existence* or life cycle during which, given all the necessary and sufficient conditions, all the potentialities with which he/she is intrinsically endowed will be realized. Hence, the *living embryo*, which began *from the fusion of the gametes*, is a *real human individual*, not a mere “bunch of cells.”

From that moment, he is “son:” a barely budding flower that merits all love and attention! He has the same *dignity* as those that gave him life as well as the same fundamental *rights*.

This is the “human individual,” rightly called “son,” which has the right to his life. The concept “person”—that does not fall under the competence of science - takes nothing away from the first. It only completes it, giving reasons for its particular dignity, which nobody can avoid recognizing after some self-reflection.

Obviously, this conclusion, which retains its validity and force against all objections, has its consequences at the scientific, technological, medical, social, legal and political levels. The biotechnological culture that is slowly taking over society and poisoning it will not give

way to the truth: loaded with prejudices and full of private interests, it will continue to deceive and delude. It will not yield even to the evident truth that if what is done today with millions of human embryos had been done with the “bunches of cells” which began the lives of the scientists whom we admire today, we would have to affirm coherently that they would have had *their own* hardly begun *lives* taken away, with perhaps non-negligible repercussions for society.

Unfortunately, in this culture “children” have become a “product” that must be controlled. Pope John Paul II in *Evangelium vitae* has shown us our urgent task: “What is urgently called for is a general mobilization of consciences and a united ethical effort [...] All together, we must build a new culture of life” (n. 95).

# Discrimination Against Women and CEDAW

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*On the 10<sup>th</sup> of December 1948 the General Assembly of the United Nations, in its Universal Declaration of Human Rights, proposed that “recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world.” It also specified “the equal rights of men and women” (Preamble). On the 18<sup>th</sup> of December 1979 the States Parties in the Convention on the Elimination of All Forms of Discrimination Against Women: CEDAW formulated a statute oriented towards the protection of women, who, despite the Universal Declaration of Human Rights, “discrimination against women continues to exist...,” that “violates the principles of equality of rights...” The large number of countries that signed the “Convention” shows the seriousness, even today, of the problem of the dignity of women. Article 17 of the Convention calls for a Committee of twenty-three “experts of high moral standing” to oversee the results of the Convention. Nonetheless, the Committee, reinforced in 1999 with an “Optional Protocol,” has taken positions which not only raise questions of conformity with the intentions of the States that signed CEDAW, but seems to place at risk the dignity of women seen from a perspective that does not identify easily with the phrase “the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world” (Universal Declaration, Preamble). The ambiguity, after examining these attitudes, emerges from the fact that the Committee’s hostile position against marriage and the mission of women as mothers and spouses constitutes a true form of discrimination. (↗ Sexual and Reproductive Rights; Gender; Sexual Identity and Difference; An Ideology of Gender: Dangers and Scope; Motherhood and Feminism; New Definitions of Gender; Homosexuality and Homophobia; Patriarchy and Matriarchy; Equal Rights for Men and Women)*

On December 18, 1979, the General Assembly of the United Nations adopted the *Convention on the Elimination of All Forms of Discrimination Against Women*, known as CEDAW<sup>1</sup>

which subsequently opened in New York on March 1, 1980 for approval and ratification by States whose official number, as of August 1, 2001, is now

1 Resolution n. 34/180 of 18 December

1979 of the General Assembly of the United Nations.

168.<sup>2</sup> In the first article of the Convention we read: “For the purposes of the present Convention, the term ‘discrimination against women’ shall mean any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.” The nations, which have subscribed to this international document, maintain that they will undertake “by all appropriate means and without delay a policy of eliminating discrimination against women” (article 2) and have committed themselves to adopt a series of measures detailed in the Convention. Further on in the document, it states that “For the purpose of considering the progress made in the implementation of the present Convention,” there shall be established a “Committee on the Elimination of Discrimination against Women” (article 17).<sup>3</sup>

On October 6, 1999, the General Assembly adopted another resolution<sup>4</sup>

in which it approved an Optional Protocol to the Convention (known as the Optional Protocol to CEDAW), which authorizes the Committee to take into account reports of either individuals or groups (articles 2-7) which allege violations of the Convention in States parties and which further authorizes the Committee to undertake investigations of systematic or grave violations. This Optional Protocol came into force on December 22, 2000<sup>5</sup> and as of August 21, 2002 had been ratified by 42 nations.<sup>6</sup>

CEDAW, as the first and principal international legal body concerning human rights, and dedicated exclusively to the rights of women, brings together internationally accepted principles concerning the subject of women’s rights, which in itself was a step of great importance in the recovery of the rights of women, who have suffered—and continue to suffer—serious discrimination which requires international action. The Convention constitutes a real contribution insofar as it awakens the conscience of world public opinion, calling attention to the dignity of women and of their equal rights as human beings, as well as the necessary road we must all take to advance the respect for and

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2 Report from the Secretary General of the 56<sup>th</sup> General Assembly, 31 August 2001, II, 2.

3 Until August 1, 2001 the Committee had considered 239 reports submitted by States parties of the Convention concerning the application of the same. Report from the Secretary General of the 56<sup>th</sup> General Assembly, IV, 14.

4 Resolution n. 54/4, of 6 October 1999.

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5 Report of the Secretary General of the 56<sup>th</sup> General Assembly, III, 7.

6 OFFICE OF THE UNITED NATIONS HIGH COMMISSIONER FOR HUMAN RIGHTS, *Status of Ratifications of the Principal International Human Rights Treaties*, New York, 21 August 2002.

dignity of women.

Nevertheless, the application of CEDAW contains problems, which would require a closer examination of the many positions of its Committee. Isn't there a possible risk that this is somehow inspired by a one-sided view of women? In this sense, it is quite significant that there is no appreciation of the role of motherhood in all its dimensions and, in addition, insufficient attention is given to the relationship of women to the family. In view of the fact that "the Committee shall adopt its own rules of procedure" (according to article 19.1 of the Convention), doesn't there exist the risk that it will go beyond the initial idea of CEDAW, possibly opening itself up to certain ideologies which are incompatible with the full dignity of women?

### **THE ACTIONS OF THE CEDAW COMMITTEE AND THE OPTIONAL PROTOCOL**

The Optional Protocol was introduced as an additional instrument, to make the application of the Convention more efficient. It has as its final goal the introduction of elements not contemplated in the original document. It is optional or voluntary because participating nations are not obliged to ratify it, even if they ratified the Convention. In order to establish its neces-

sity, several arguments were presented.<sup>7</sup> From among them I list the following: 1) The mechanisms for the implementation of CEDAW are inadequate and insufficient; 2) The Protocol would promote a more effective implementation of CEDAW by means of a broadening of the interpretation of the practical application of the Convention; 3) The Protocol could create a greater public awareness of the international guarantees for the human rights of women; 4) Additionally, it would contribute to the integration of the human rights of women into the human rights programs of the United Nations, while creating a definition concerning the same; 5) With relation to the CEDAW Committee, it would have greater power, giving it a new responsibility, as we shall see in the following.

According to article 2 of the Convention, the States which have subscribed are committed "to take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women." These limits and ambiguities open the door for international organizations and their institutions, such as the Committee instituted by the same Convention, to bring pressure to bear for the introduction of laws, which will create a legal framework for the aforementioned concepts.

<sup>7</sup> INTER-AMERICAN INSTITUTE OF HUMAN RIGHTS, *Optional Protocol*, Costa Rica, May of 2000, 10 ff.

To accept these pressures is to accept the pretensions of a true colonialism, which would not respect, especially in the area of values, the sovereignty of the peoples affected.

Just as has been true for other human rights treaties, the Convention establishes a supervisory Committee “for the purpose of considering the progress made in the implementation of the present Convention” (article 17). It is made up of twenty-three women, experts in the area of women’s rights, all of whom come from different countries. In order to be able to fulfill their functions they rely practically on a structure of “supervision and the presentation of reports.” The underlying intention of the reporting procedures is to see that States parties remain attentive to the fulfillment of their international obligations in relation to the non-discrimination against women, for which they have to give an account to the community of nations; to make public any violations of human rights; and to pressure governments and all other responsible parties guilty of violations to change unacceptable practices.

There are two principal tools, which the Optional Protocol places in the hands of the Committee to oversee the overcoming of discrimination against women. The first consists of the assurance to persons and groups belonging to the States parties of this Protocol, that after having exhausted the legal resources of their respective countries,

there will be the possibility of having recourse to the Committee if they have been the object of discrimination by the State in terms of any of the rights enunciated by the Convention. Every States party recognizes the right and power of the Committee to receive and consider said communications. The Committee acts as a moral authority, with ample faculties to investigate and resolve those reported cases of violence.

The second tool refers to the content of the Convention. Those who promoted the approval of the Protocol clearly expressed the necessity of making the implementation of CEDAW more effective by means of broadening the interpretation and the practical application of the Convention. Moreover, they hoped that the Protocol would lend itself to the “creation of a doctrine” concerning the human rights of women.<sup>8</sup> A study of the Inter-American Institute of Human Rights, which we quote, explains article 2 of the Protocol in the following words: “Article 2 makes reference to the violations of ‘any of the rights stated in the Convention.’ This phrase indicates that the process for bringing forth accusations of violations is applicable under all substantive dispositions of the Convention (arts. 2-16). Nevertheless, a right which is not explicitly stated in the Convention may still fall within the parameters of the

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8 INTER-AMERICAN INSTITUTE OF HUMAN RIGHTS, *Optional Protocol*, 10, n. 3; 11, n. 6.



Facultative Protocol if it can be shown that: (i) it can be derived from one or more of the rights which are explicitly recognized; (ii) it can be interpreted as a precondition for the exercise of a recognized right; or (iii) it can be defined as a specific aspect of a stated right in the most general terms.”<sup>9</sup>

### **THE RECOMMENDATIONS OF THE COMMITTEE REGARDING FAMILY AND THE RIGHT TO LIFE**

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What has thus far been presented reveals that the Optional Protocol to CEDAW brings within itself multiple, different and unforeseen consequences. These become more clearly seen if we examine the recommendations which thus far the Committee has made, since the interpretation of the clauses of a convention becomes crystal clear according to the manner in which they are applied. For this reason, by examining the said recommendations we can know for certain in which way or sense the Committee understands the articles of the Convention, and we can also come to understand in which manner or sense it understands its own powers to interpret the rights of women; especially those stated in ambiguous terms in CEDAW and in earlier accords. By this means we shall be able to investigate if the framework of values by which the Committee

interprets the Convention corresponds or not to those of the States that signed the document.

*The Family.* Article 5 of the Convention establishes that “States Parties shall take all appropriate measures to modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women.” With this in view, the Committee seeks the introduction of appropriate measures which will modify the socio-cultural patterns of conduct and to change the traditional structure of the family. This is seen in the report referring to Chile in 1999 in which the Committee expressed concern over the persistence of stereotypical concepts and traditional attitudes relating to the roles of women and men in society.<sup>10</sup> Based on this concern, it was recommended that the government promote the “changes in attitudes and perceptions both of women and of men, with regard to their respective roles in the home, the family, the workplace and society as a whole”<sup>11</sup> and “support vigorously leg-

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10 Report of the Committee for the Elimination of All Forms of Discrimination Against Women, New York, 1999, 220. <http://www.un.org/womenwatch/daw/cedaw/reports/21report.pdf>.

11 Report of the Committee for the Elimination of All Forms of Discrimination Against Women, 225.

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9 INTER-AMERICAN INSTITUTE OF HUMAN RIGHTS, Optional Protocol, 44.

isolation which permits divorce.”<sup>12</sup> This constitutes a clear imposition on culture and legislation, without any pedagogical tact, of concepts concerning marriage and the family (so different from culture to culture), which no one has proven as legitimate and with a completely insufficient knowledge of their roots and cultural evolution. Those who affirm that there is no worse discrimination than cultural oppression and dictatorship are correct.

*Abortion as a right.* Neither the Committee nor the Protocol explicitly advocate the legalization of abortion. In fact, the issue was excluded from the conclusions. Articles 12 and 14 of the Convention explicitly seek to “ensure... access to health care services, including those related to family planning.” But experience has borne out with increasing regularity that the concepts of “reproductive health”<sup>13</sup> and “family planning” is meant to also include access to safe abortion services, without legal penalization. The Committee goes even further than mere exemption from legal penalty by firmly establishing that “it is discriminatory for a State party to refuse to provide legally for the performance of certain reproductive health services for

women.”<sup>14</sup> The report on Chile issued in 1999 is instructive in understanding the concepts which guide the Committee. They are “concerned at the inadequate recognition and protection of the reproductive rights of women...,” in particular, with the laws which prohibit and penalize any form of abortion. “The Committee considers these provisions to violate the human rights of all women”<sup>15</sup> and recommends that legislation related to abortion be amended, “in particular to provide safe abortion and to permit termination of pregnancy for therapeutic reasons... including the mental health, of the woman. [...] It also requests the Government to strengthen its actions and efforts aimed at the prevention of unwanted pregnancies, including by making all kinds of contraceptives more widely available and without any restriction.” [...] and “granting women the right to undergo sterilization without requiring their husband’s – or anyone else’s – prior consent.”<sup>16</sup>

These affirmations are not sustainable in a society committed to the rights of all human beings, which includes not only an appreciation of the individual

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12 Report of the Committee for the Elimination of All Forms of Discrimination Against Women, 222.

13 Report of the Committee for the Elimination of All Forms of Discrimination Against Women, 186. The recommendation of the Committee to Ireland already makes use of the concept of “Reproductive Rights.”

14 Report of the Committee for the Elimination of All Forms of Discrimination Against Women, 11.

15 Report of the Committee for the Elimination of All Forms of Discrimination Against Women, 228.

16 Report of the Committee for the Elimination of All Forms of Discrimination Against Women, 229.

but also of their social vocation and responsibilities. The rights of each individual also include the right and the duty to look after the life of others. Can it be possible to build social harmony where the human rights of women—or of men—are allowed to supersede those of their spouses or of the unborn child? Certainly this radically questions the anthropological concept which emerges from the Committee's proposals. We can't understand men or women merely as individuals without considering their radical and gratifying vocation to reciprocity.<sup>17</sup> They are social beings and their happiness depends on interaction with others: those with whom they live, in whom they live and for whom they live.

*Motherhood.* The Committee urged Armenia "to combat the traditional stereotype of women in their role as mother." It insisted that Belarus abolish "Mother's Day" observances which only encourage women to perpetuate traditional roles. It doesn't even respect the Constitution of a country such as Ireland, the expression of a culture

which holds in high esteem the role of the mother in the family. The Committee expressed to this nation its concern about "the continuing existence, in article 41.2 of the Irish Constitution of concepts that reflect a stereotypical view of the role of women in the home and as mothers."<sup>18</sup> The Constitution of Ireland states in this article that "The State, therefore, guarantees to protect the Family in its constitution and authority, as the necessary basis of social order and as indispensable for the welfare of the Nation and the State. In particular, the State recognizes that by her life within the home, women gives to the State a support without which the common good cannot be achieved. The State shall, therefore, endeavor to ensure that mothers shall not be obliged by economic necessity to engage in labor to the neglect of their duties in the home."

*Prostitution.* Article 6 of the Convention affirms: "States Parties shall take all appropriate measures, including legislation, to suppress all forms of traffic in women and exploitation of prostitution of women" and article 11 of the Convention sustains that there exists the right to freely choose a profession or employment. The CEDAW Committee has included "voluntary prostitution" in this concept, as is revealed in the recommendation made by the Committee

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17 JOHN PAUL II, *Letter to Women* (1995) 8, in which he points out "woman and man are marked neither by a static and undifferentiated equality nor by an irreconcilable and inexorably conflictual difference. Their most natural relationship, which corresponds to the plan of God, is the "*unity of the two*," a relational "uni-duality," which enables each to experience their interpersonal and reciprocal relationship as a gift which enriches and which confers responsibility."

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18 Report of the Committee for the Elimination of All Forms of Discrimination Against Women, 193.

to the Principality of Liechtenstein, in which it asks that they proceed to revise the law relating to prostitution so that prostitutes are not punished<sup>19</sup> or that the People's Republic of China decriminalize prostitution.<sup>20</sup> Clearly, the Committee does not consider the following questions: Can there be "professions" which in and of themselves are a discrimination against women? Is the fact that they are practiced "voluntarily" grounds to judge them as non-discriminatory?

## **DISCRIMINATION AGAINST WOMEN AND CEDAW**

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Fighting discrimination against women should be resolutely undertaken. Respect for the dignity of women, together with the opening up of avenues by which women may offer their own participation or contributions to our culture, which is excessively masculinized, is a necessity of the first order. With good reason, Pope John Paul II wrote about the dimensions of this struggle: "This journey must go on! But I am convinced that the secret of making speedy progress in achieving full respect for women and their identity involves more than simply the condemnation of discrimination and injustices, necessary

though this may be. Such respect must first and foremost be won through an effective and intelligent campaign for the promotion of women, concentrating on all areas of women's life and beginning with a universal recognition of the dignity of women."<sup>21</sup>

This struggle, in a globalized society such as ours, is accompanied by other cultural currents which can harm its progress. We can include in this consideration an unbridled individualistic tendency, a concern for self-realization at the cost of the rights of others; a view of sexuality which separates it from the marital union, from faithfulness and from procreative responsibility; an alarming instability concerning the identity of the family and of its value in the formation of persons and society; a tendency towards the imposition of models, lacking in respect for the uniqueness of cultural roots, and lacking as well in an evolutionary, differentiated and pedagogical reflection.

The same phenomenon of globalization, above all in its cultural implications, merits special attention. It could facilitate the mutual enrichment of both cultures and peoples. It could also, however, promote a cultural leveling or destruction, with the irreparable loss of the richness of a multicultural world. Even worse, it could be a vehicle of cultural enslavement on the part of presumptuous groups desirous of imposing their own values and convictions

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19 Report of the Committee for the Elimination of All Forms of Discrimination Against Women, 168.

20 Report of the Committee for the Elimination of All Forms of Discrimination Against Women, 289.

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21 JOHN PAUL II, *Letter to Women* (1995), 6.

or of promoting the destruction of other cultural systems which they neither understand nor tolerate. Some cultural parameters like those described would imply that great care and consideration be undertaken before resorting to a mechanism of external control.

It is certain that the eventual ratification of the Optional Protocol does not imply a termination of the legal powers of the Committee created by the Convention, when, in fact, it confers an undisputed competence over the institutional courts of nations. Furthermore, no one can assure that this will not be the first step towards the creation of an international Tribunal with judicial powers.<sup>22</sup> At least it can be said that the approved process is not far from that. Neither can it be assured that the States in non-compliance with the Committee's recommendations will not be sanctioned by other means, such as, the denying of economic aid for important projects.

The application and ratification of the Protocol, as we have seen, presents grave problems beyond its legal reper-

cussions. In effect, it creates a legal precedent that is unacceptable and unheard of, which is to introduce through a convention, by means of its self-interpretation and application of its clauses, contents which were expressly excluded from the convention by a great number of the nations which approved it. Such is the case, for example, of abortion.

In addition to this, it places into the hands of a Committee, whose value parameters are not defined, and indirectly into the hands of groups (NGOs) who will gain greater influence if they can get their members to enter the Committee, the creation of a doctrine and the formation of international public opinion, in a matter of great importance for the law, cultures and the life of peoples. This manifests a distrust of the State in its own institutions and in its cultural and political development. To ratify the Protocol, in fact, would mean freely exposing oneself to the recommendations of a Committee and to the internal and external pressures opposing life and the family.

The damage is done, and on the surface it would appear that only a world conference sponsored by the United Nations could repair it. The lack of definition of some concepts which have been much debated in past conferences has created a climate of insecurity around the implementation of CEDAW. A Committee which not only oversees the implementation of approved and unequivocal clauses but is also empowered

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<sup>22</sup> Based on the accords of the World Conference on Human Rights held in Vienna in 1993, which considered for the first time the violations against women in public and private life as violations against the Human Rights of Women, the "Women's Caucus for Gender Justice" took the lead in the creation of an International Criminal Court, whose statute was signed in Rome in 1998, during the United Nations Conference on Diplomatic Treaties.

to interpret and broaden them without having the States parties determine their values parameters, only increases this insecurity. To support this process by ratifying the Optional Protocol is not the road to overcome discrimination, nor is it the adequate means for considering the just plurality of nations and peoples. The decisions of the Committee, in matters of great importance, will only worsen discrimination, reducing the mission of women in the family and society and discriminating against children, spouses and the families of which they are part.

Families should be capable of giving respect and being respected, of enriching and developing their own culture and their own road towards human progress, and of responding to the most profound concerns of women and of all citizens, promoting legislation which respects the human rights of all, and a manner of living together which will display solidarity, fraternity and justice, in the context of their own country.

# Domestic Economy

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*The domestic economy is expressed in different ways: production, wealth, value, domestic activity (or labor) etc. The definition of production is being refined over the centuries: from agricultural production to handicraft activities, from capital to labor, from industry to commerce, from utility to the satisfaction of needs. The concept of Gross Domestic Product (GDP) is an essential reference point for politicians, the mass media, the business world and the general public when analyzing wealth or policy performance over time. This concept excludes all purely natural processes and all goods and services produced with no commercial value. This makes it difficult to define the limits of production, particularly with regards to services rendered, and most specifically domestic services. Given that GDP does not reflect well-being or take into account the production of domestic services, one turns to another concept: the parallel economy. This includes a vast array of activities from the black market to illegal activities all the way to volunteer work and domestic work. In the latter case, the difficulty of placing a value on it comes from trying to determine its nature, the method of evaluation and economic analysis. Even its inclusion under wider income does not adequately resolve the problem since the value placed on time is not univocal. (↗ Birth Control and Demographic Implosion; Family and the Principle of Subsidiarity; Demographic Implosion in Europe?; A New Model of a Welfare State)*

The notion of production is important because it is a major point of reference each time the situation of a country or the results of a policy are evaluated. It appears simple. History, however, shows a great diversity of approaches to it such that it can be the source of real confusion. This applies to measuring the level of or creation of wealth, dealing with development, evaluating a material situation or a payment, or more generally, organizing a society.

It is therefore appropriate to focus on its content in order to show that certain habitually privileged choices in particular, not taking into account family activities, can lead to exclusions, injustices and also a loss of efficiency.

## **PRODUCTION IN HISTORY**

It is instructive to consider how things have evolved over time. This is an opportunity to see that one should be very prudent. We can ask ourselves

what wealth is, in what cases does production take place—only in agriculture or should it be enlarged to include not only industry but also commerce, administration, etc.? In order to see clearly on this subject one can simply look up the different entries in the *Dictionnaire des sciences économiques* (Dictionary of Economic Sciences, PUF, April 2001), especially *Production (History of the concept)* [pp. 755-58], *Produit Interieur Brut (PIB) (Gross Domestic Product (GDP))* [pp. 761-62] or *Souterraine (Economie) (Underground (Economy))* [pp. 869-72]. We will refer to certain passages here below that may bring clarifications.

The author of the first entry calls attention to the changes in meaning but also in scope and role of production. It seems that *production* was very early on considered to be the source of wealth (in Chinese antiquity). Wealth was first seen as arising from agricultural production, and then rapidly the influence of work on the production of goods was recognized. This allowed for the promotion of artisanship and a fairly complete appreciation of production since the use and combination of a certain number of means are cited as well as organization and research. In Greek thought we find again the view that production is related to wealth. Social wealth is seen principally as land rendered productive by human labor. It then also depends on capital, the term used to designate the instruments used.

A normative dimension is explicitly introduced in the thought of Islam,

with the exclusion immoral activities. In the Middle Ages wealth was constituted by material goods and came essentially from the natural arts, working the land, industry and administration. The growth and deepening of the concept that would arise in the 17<sup>th</sup> century was already beginning. Wealth is where one finds industry. True wealth is comprised of those things that are necessary to the life of the individual. It comes from labor applied to land, industry and commerce. The production of goods is agricultural and industrial.

In the middle of the 18<sup>th</sup> century, Quesnay, the top thinker of the Physiocrat school, considers that production produces wealth, material goods useful to individuals and is obtained through exchange. An important distinction was introduced. Work is productive when it results in a material good and increases the quantity and value of the nation's wealth. On the other hand, work is not productive if no material object is produced. (Price is the measure of wealth). Even more remarkably, agriculture is the primitive base of true wealth. Industry is not productive.

The analysis then makes more precisions and expands. Capital, the sum of added values, along with land and work make up the factors of production. While capital is the part of wealth used for production, work is said to be productive as far as it adds to the value of the object to which it is applied.

One has to wait until the beginning



of the 19<sup>th</sup> century for the value of things to be founded upon their possible uses to serve human needs. (Admittedly, this opens new perspectives which have to be taken into account.) Producing wealth is related to producing goods that are useful. Production means producing useful items and not just material things. It is precisely during the 1820-1870 period that the formation of wealth is called “production” and the means used “instruments of production.” Production is a transformation of the shape, the matter and the place.

Finally, it is at the start of the 1870s that a new notion was proposed: goods are things that serve to satisfy needs. These can be objects, actions or services that either bring pleasure or reduce pain. Production is thus understood as comprising an increase in wealth or utilities.

The notion of Gross Domestic Product (GDP) is strictly tied to the notion of production. GDP is an essential point of reference since it is used by analysts, politicians, the press, the business world and the public to make comparisons in economic activity (the level of wealth or the performance of policies is evaluated from the GDP) either in space or through time.

We might specify in light of what we have just seen, that a natural process, like the increase in numbers of fish in international waters for example, is not production in the economic sense. Also, all the goods and services produced must be capable of sale in the Market, or

at least be provided by one entity to another free of charge or not. Concretely, it signifies that such elementary and common activities satisfying basic human needs such as eating, drinking, sleeping, etc. are not productive in the economic sense. It is impossible for a person to have someone else do them for him. We thus see some of the limits of this interpretation appearing.

By admitting these restrictions, a major difficulty arises in the specific model when one has to define the boundaries of production. The question is the following: how should activities be categorized if they produce goods and services that could have been furnished to others in the Market but are in fact kept by their producers for their own use?

The usual response is to distinguish between goods and services. All the former are usually placed within the confines of production, but the only two family services that are usually considered are lodging by the owners (functional rent) and those which lead to paid domestic staff. Concretely this means services rendered within the couple or family by members of the family are not part of production and are not counted as part of GDP.

GDP thus includes (taken from the enumeration proposed by the author of this entry):

- Production of all the goods and services, individual and collective, that are furnished or destined to be furnished to other

entities than their producers, or all the products destined for the Market but also all the goods and services furnished free of charge to individual families or collectively to the community by public and private groups;

- Production for oneself of all the goods that are held by their producers for their own final consumption or the formation of capital;
- Production of lodging by the owner-residents and the services produced by employing paid domestic personnel.

It should be clear that GDP is not a measure of well-being and that this global indicator of production completely neglects a complete class of domestic services. This exclusion can be the source of real confusion and the origin of biases in decision-making.

The notion of an **underground economy** is another way to illustrate the inadequacies of the currently accepted definitions. This notion is very broad since it includes the following:

- Activities taking place on the margins or outside of fiscal obligations that can represent 5 to 10% of national revenue;
- Illegal or criminal activities (drug trafficking, prostitution, theft, insurance fraud, etc.) representing 1 to 2% of national revenue;
- Non-marketed activities, strictly

volunteer work, domestic work and the free exchange of goods and services between relatives and friends which as a whole could represent 50% of the national revenue.

It thus appears that important omissions are accepted, among which domestic production is the largest element. This analysis thus helps us to place production in perspective. Having seen in the beginning of this presentation how far from settled is the notion of production, trying to explore it further is a worthwhile enterprise.

## DOMESTIC PRODUCTION

By evoking the theoretical and empirical stakes of the domestic economy, we can verify that many things depend on widely different conventions and arbitrations (See Adair, Ph., “Une mise en perspective macroéconomique de l'économie domestique”, *Cahiers du G.R.A.T.I.C.E.*, numéro 18, premier semestre 2000, pp. 15-43).

We just mentioned that the domestic activity of families was for a long time analyzed as part of the economy of consumption. Its productive dimension was completely ignored. A practical consequence of this idea was to consider that the family belonged only to the group of non-market institutions, ignoring that the family can be a generator of wealth. Nonetheless, since the start of the 1960s, openings have appeared possible so that there is less and less reason to accept the

impasse which many modern studies seem to consider inevitable.

During the 1960s and 1970s domestic activity was reexamined in the light of the growth of professional activity. This led to the social valuing of non-remunerated work, evaluating its contribution to well-being, taking into consideration the equity of the division of labor between men and women, apprehending the division of time (between remunerated and non-remunerated work and free time) and revising GDP and labor force statistics.

We must admit that this re-evaluation did not fulfill all the hopes it raised and that the topic was less researched in the 1980s; however, this does not mean that all the questions were resolved. We will deal with three areas of concern here:

- Defining the status of domestic activities and of their actors (households, families);
- Presenting new methods of evaluation;
- Giving a glimpse of the contributions of an economic analysis of the topic.

In dealing with **the nature of the domestic economy** we try to establish a nomenclature for the activities and to identify the actors.

The many notions usually employed in analyzing domestic activities, although similar, emphasize stakes and actors which are not necessarily identical. Household economics recalls a

formula by Gershuny [1979], while Gronau [1980] uses home production. Becker [1981] uses the expression “family economics,” probably studying more behaviors, but fewer actors.

Domesticity (*domus*) designates the household, an economic term more in use than family which should not be confused with it. If a family (nuclear or single parent) is a household, the reciprocal is not true since a household can be constituted by several non-related persons, even a couple without children. Placing the accent on the family then leads to a question about the presence of children and the division of labor in a category of households that is the most widespread and most fundamental of them but not equal to it.

As we have seen, the domestic economy covers productive activities of non-market goods and services by the households and destined for their own final use. As non-remunerated work they lead to no monetary transactions. As a consequence, the main resource used (besides the market goods needed and appropriately designated as domestic appliances or products) is the time dedicated by the households to these activities. The spatial definition of these activities—maintaining the lodgings, washing, ironing, cooking, shopping, care and education of children, etc.—depends on whether a more or less narrow definition of these activities is used.

It is also easily understood that the required capacities vary greatly accord-

ing to the jobs undertaken. Finally, the volume of activity, measured by the time dedicated to it, and the division of tasks belong essentially to a division of labor based on gender. Assembly and maintenance tasks and to a lesser extent, gardening, are typically masculine activities. Maintaining the home and the education of children are principally feminine areas.

Trying to furnish a measure of domestic activity, to indicate at least the principal **modes of evaluation** should allow us to go beyond the arbitrariness of accepted conventions and give it content. The rigidity of the definition of GDP made its bias appear. This is illustrated by a well known remark attributed to the Anglo-Saxon economist Arthur Cecil Pigou in the 1930s. "When a gentleman marries his cook, GDP declines!" One sees that the integration of domestic work in the accounting framework was truly "greater consumption": domestic work was viewed in the national accounts as not traded or productive, its value was reputed to be nil.

Far from being useless, however, it is an indispensable activity that answers the needs of people and that takes as much time, if not more, as the independent or salaried professional activities of family members. This is particularly true of women. It is therefore legitimate to contest the idea of ignoring domestic activity. In any case, this is a source of grave confusion. In fact the problem is that domestic work produces an intrinsic

value (use value) with no extrinsic value (exchange value). In order to overcome this dichotomy, one has to place a monetary value on domestic activities and attribute to them fictitious prices. This is done for non-market public goods.

With this goal we can first proceed to estimate the volume of domestic activities using household time-use studies. This procedure is based on the easy but flawed hypothesis that time is fluid and homogeneous; it can be added together by fractions. This ignores combined activities (i.e. ironing and listening to music at the same time). Starting from there, and keeping in mind the cost and complexity of the studies, the estimate is not particularly difficult.

This is not true of measuring the value of these types of activities. This evaluation can be obtained by adopting two conventions: the first concerns the value of the input representing the time spent on domestic activity, the second concerns the value of the output that represents the market value of the produced domestic goods and services.

The first convention—the value of the input—itself covers two modalities:

- The substitute labor cost or replacement cost. This consists in measuring the value of domestic work by the current remuneration of a domestic employee who would do that work. This replacement cost for a multi-tasked servant gives a very low estimation. On the contrary, the

replacement cost of a specialist leads to a very high estimation.

- The potential gain or opportunity cost of domestic work which depends on the net level of hourly remuneration the person could obtain on the labor market. The opportunity cost of a block of time corresponding to a potential gain (or loss) from an hour of remunerated work leads to highly variable estimations.

The second convention, the value of outputs (minus inputs) rests on the hypothesis that the goods and services created by domestic work can be alternatively furnished by the market economy and evaluated at market prices. Thus the market substitute of home cooked meals is the cost of a caterer or a restaurant. This method seems preferable to measure well-being.

The **economic analysis of domestic activities** proceeds from the extension of the notion of consumption defended by Lancaster and Becker. It allows for conceiving the domestic economy as an alternative to the market economy: the arbitration between autarchy and market resulting from an economic calculation.

The new theory of consumption proposed by Lancaster considers that household consumption aims not at a final consumption of durable goods and services. Rather it represents an intermediary consumption of durable goods and services whose use is destined to the

production of other goods and services.

According to this author, the preferences of consumers consider the characteristics of the goods and not the goods themselves. Goods are not bought for their intrinsic usefulness but instead for the services they provide. The accounting distinction between production and consumption is then erased. The “greater consumption” of households allows for the incorporation of domestic production.

Becker renews the traditional explanation of consumer behavior in developing a theory of time allocation:

- Economic calculations, supposedly applicable to all activities, rest on the criteria of scarcity. Time is seen as one of the scarcest resources and serves to measure all other resources. The rational choice of the consumer (producer) is dictated in this case by the use of the time at his disposal in view of the opportunity cost. This last is a single and fluid measure that abolishes the frontiers of human activity.
- The economic theory of the allocation of time [Becker, 1965] that is added to by the economic theory of the family [Becker, 1981], extends economic calculation to the non-market sphere and thus opens the way to the evaluation of domestic activities understood in terms of market substitutes to remunerated activities. The family, like a “small

business,” using the expression of Becker [1976], constitutes a unit of production (domestic) whose usefulness does not only depend on market goods but on the final goods produced by the household that mobilizes the whole of the resources at its disposal.

This analysis encounters empirical limitations like the substitutability of time. Conceptual limitations that should be mentioned are the fragmentation, value and measurement of time.

Relating to the first item, there are technical constraints weighing on the self-production of households. Despite the progress achieved in domestic appliances, for example, all depends on the relative price of the domestic equipment and the amount of time savings—their marginal productivity. It seems reasonable to hypothesize that the marginal productivity of domestic work decreases because of fatigue caused by the increase of this work. Limits to substitutability then appear between domestic production and market goods (or services) that would then be more complementary than substitutable.

One has to observe that if there is no distinction in the domestic framework between production and consumption activities, all that remains in this case are the different modes of activity, marketable or not, united together under the single criterion of time. Becker thus neglects to distinguish between leisure time and a physical constraint, since all non-

activity (professional and/or domestic) is presumed to be leisure time.

Following the analysis of Gronau [1977], it is possible to correct this point by distinguishing between different uses of time in an arbitration model between the activities of men and women. Besides distinguishing between time constraints and leisure time, we must more generally question the hypothesis of time plasticity. Despite greater flexibility (part-time, flexible time...), salaried work hours are limited as much by legislation and the organization of businesses as by biological imperatives. The same is true for domestic work. Tasks are performed following an order that is not seamless (“dead time”) nor reversible.

Finally, time is multidimensional and does not have univocal value. This stems from the variableness of opportunity costs depending on salary level: the elasticity of substituting domestic work/professional work presumed to be strong, is not necessarily constant and should decrease in function of revenue. The value of time is also a function of the social status of the person, their socio-professional category, of the size of the family, of their place in the cycle of life, etc.

## **INCOME “EXTENDED” TO DOMESTIC PRODUCTION**

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Domestic work remains a theoretical and practical challenge whether one treats the question of well-being or the division of revenue in households. Thus,

the inclusion of domestic work in the extended income of households, which includes after-tax income, and to which is added domestic production, tends to reduce the inequality of income in the household. This observation was established for several countries in the 1980s. Inversely, to consider the move of women's activities out of the home as always creating wealth, since the GDP increases, is a totally erroneous solution to a very important question today. One can evaluate what is gained, but what is sacrificed is simply ignored. Deepening the analysis, it would not be hard to show many domestic activities, the education of children in particular, that are a real investment. This activity certainly entails initial costs but is mostly a factor in future development. Ignoring this reality is a source of waste and lost efficiency.

Taking advantage of the fact that the area of domestic economy analysis was developed and diversified in the 1980s: the theory expanded, even if its predictions are still treated with caution, and that the measurables have improved: the empirical data's volume is greater, even if their disparate character render comparisons difficult, it is to be hoped that matters will not remain at this point.

We finish this presentation by placing these points in perspective. Among the favorable factors for an increase in volume of domestic work include the increase of the older inactive population (the choice falls on the triptych physi-

ological/domestic/leisure time) and the increase of single person households (choices fall between all time constraints and leisure time) Among the unfavorable developments are the increase in female work (choices fall between all time constraints and leisure time) and the decrease in the birth rate, as well as the reduction in household size which correlates with the work activity of women.

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# Embryonic Selection and Reduction

Angelo Serra

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*“Embryonic selection”, in the framework of “preimplantation diagnosis”, and “embryonic reduction”, that is to say the destruction, immoral in itself, of implanted embryos in the case of a multiple pregnancy, are the consequences of the legal acceptance of the practice of in vitro fertilization (IVF). The Pontifical Council for the Family denounced them in its Declaration of July 12, 2000 (L’Osservatore Romano, 14/7/2000, p. 6). If these techniques, today, cause us problems, even a serious moral problem, it is because the basic issue of IVF techniques has not been solved: we have omitted to act, or we have been content with a very indulgent law that only punished the worst deviations. Professor Serra, traces the perspectives that the techniques of preimplantation diagnosis open up: besides the possibility to eliminate malformed embryos or pathologic gene carriers, what we can see is the eugenic desire for the “perfect baby”, with all the attendant abuses, injustices and discriminations that we can expect. It is here where one of the “perverse fruits” of the research on the human genome could develop, if we do not interrupt it swiftly. Embryonic reduction has been practiced for several years without arousing great emotion. The principle on which it is based, of a «blind choice» between embryos who are in full development, destroying the many in order to safeguard the one, makes us shudder. No one would dare to affirm that this process is morally acceptable, but there are many people who practice it. In fact, if we decided to oppose it, IVF itself would have to be contested, in order to be totally coherent. (↗ Neutral Genetic Counseling; Preimplantation and Emergency Contraception; Contragestion: Dignity of Human Embryo; Genome and the Family; Assisted Procreation and IVF; The Legal Status of the Human Embryo).*

*Embryonic selection and embryonic reduction* are two expressions introduced in the practice of “technically assisted reproduction” to indicate: first, *the killing of a human embryo* produced in a test tube before the transfer *in utero*, after observations and tests indicating *that it will not develop into a normal subject*; se-

cond, *the killing of one or more human embryos in utero* when, after the transfer of several embryos, more than one develops.

From reading the article in this volume on “Assisted Procreation and IVF,” the reader surely acquired all the knowledge relating to the new techno-

logy that brought us to the birth of the first test-tube baby conceived on July 25, 1978.<sup>1</sup> It opened the way to a "revolution" in procreation, now extended everywhere, but for which even today, it is difficult to predict the evolution.<sup>2</sup>

In reality, the *in vitro* conception of human subjects has become a fact. Already in 1983 there were about 200 clinics that, only in the United States, used the new technologies; and it is calculated that so far, from all over the world, there are more than 1.5 million children born through *in vitro* fertilization. Nevertheless *Science*, the biggest scientific review of the United States, on July 1998 published an article by a *working group* of 12 researchers from the *Institute for Science Law and Technology* (ISLAT) in Chicago, who did not hesitate to qualify all this new medical activity as an "*Assisted Reproductive Technology (ART) industry*."<sup>3</sup> We are faced with a *medical service* that, with pressure from the mass media, is becoming a *social demand* until it becomes transformed into an offering of the market supply, really a luxury good in the market. This service and demand are fully legalized, wi-

thin wide limits in some nations<sup>4</sup>; it was left, in other nations, such as in Italy, where only now the law is carrying out with difficulty and discussions its parliamentary journey, to uncontrolled and uncontrollable personal initiatives. Praxis and a demand that are being established in a situation of cognitive and ethical confusion, fomented very often by people who are authorities in their specific fields, but are impervious to any serious consideration of *human ethics*. Praxis and requirements which they do not want to commit themselves to an examination of the many ethical aspects involved dealing with highly disappointing results, despite the enormous efforts of science and technology.

All of this is well known and recognized by those who work in this field. R.M.L. Winston and A.H. Handyside, who have worked in it since the very first years, in 1993 started an article on the new challenges in the field of *in vitro* fertilization, referring to the statistics of 1992, with this affirmation: "*In vitro* human fertilization is *surprisingly a failure*. In the United States the rate of total births per treatment cycle is 14 % [...]. In Great Britain, the rate of persons born alive per each started cycle is 12.5%."<sup>5</sup> A slight improvement seems

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1 Cf. P.C. STEPTOE - R.G. EDWARDS, "Birth after Reimplantation of a Human Embryo," in *Lancet* (1978), 336.

2 Cf. A. SERRA, "Riflessioni sulle 'Tecnologie di riproduzione assistita' a 21 anni dalla nascita della prima bambina concepita in vitro," in *Medicina e morale* 5(1999), 861-883.

3 Cf. ISLAT WORKING GROUP, "ART into Science: Regulation of Fertility Techniques," in *Science* (1998)281, 651-652.

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4 Cf. COMITATO NAZIONALE PER LA BIOETICA, *La legislazione straniera sulla procreazione assistita*, Istituto Poligrafico dello Stato, Roma 1992.

5 R.M.L. WINSTON - A.H. HANDYSIDE, "New Challenges in Human Vitro Fertilization," in *Science* (1993)260, 932-936, in particular 932.

noticeable from the latest statistics published in the United States relating to 1996 on 65,863 cycles: *the average incidence of pregnancies* per cycle had increased to 27.3%; the *average occurrence of births* per cycle was 22.3% that represents the *incidence of women* “with a babe in arms.”<sup>6</sup>

The “babe in arms” is then, still today, the privilege of *one sterile couple out of five or six* that desire a child! Science and technology, in 20 years, have not economized either on research or means to overcome difficulties; but, so far, the results can only be disappointing for most of the couples that face this long, hard and expensive path. The reasons for a notable amount of these failures are clearly indicated by numerous data offered by scientific research.

The main reason is the *low efficiency* of all the technologies so far introduced into the field of “technically assisted reproduction”, due to unfavorable conditions - provoked by the same techniques used - that interfere with the highly delicate mechanisms that quickly follow

one another during the first days of development. It was possible, in fact, to establish that about 37% of zygotes (the cells deriving from the fusion of two gametes at the moment of conception) and the 21% of preimplanted embryos have serious *chromosomal abnormalities*; and that 40-50% of oocytes obtained by the processes of superovulation have an altered karyotype:<sup>7</sup> conditions which can only give rise to embryos and fetuses afflicted with serious pathologies, and therefore incapable of progressing through their regular development; this is what is actually observed. The same happens when *single genes* or *families of genes* involved in the control of development *are altered*.<sup>8</sup> Finally, various factors connected with the same technical treatments - among which are slight changes in temperature, defects in the culture medium and necessary micromanipula-

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6 Cf. CENTER FOR DISEASE CONTROL AND PREVENTION, AMERICAN SOCIETY FOR REPRODUCTIVE MEDICINE, SOCIETY FOR ASSISTED REPRODUCTIVE TECHNOLOGY, 1966, *Assisted Reproductive Technology Success Rates*, 1998,1; ANONYMOUS, “Assisted Reproductive Technology in the United States: 1996 Results Generated from the American Society for Reproductive Medicine/Society for Assisted Reproductive Technology Registry,” in *Fertility and Sterility* (1999) 71, 798-807.

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7 Cf. R.R. ANGELL - R.J. AITKEN - P.F.A. VAN LOOK - M.A. LUMSDEN - A.A. TEPLETON, “Chromosome Abnormalities in Human Embryos after in Vitro Fertilization,” in *Nature* (1983) 303, 36-338; M. PLACHOT - J. DE GROUCHY - A.M. JUNCA ET AL., “From Oocyte to Embryo; A Model, Deduced from in Vitro Fertilization for Natural Selection against Chromosomal Abnormalities,” in *Annales de génétique humaine* (1987) 30, 22-32; H. WRAMBSY, “Chromosome Analysis of Preovulatory Human Oocytes failing to Cleave Following Insemination in Vitro,” in *Annals of the New York Academy of Sciences* (1988) 541, 228-236.

8 Cf. G.M. KIDDER, “The Genetic Program for Preimplantation Development,” in *Developmental Genetics* (1992) 13, 319-325.

tions – can be further causes of serious abnormalities that lead to very precocious cessation of development, either through a spontaneous abortion or followed by serious malformations.<sup>9</sup>

These *serious embryonic pathologies and twin pregnancies* are the main reasons for failures or difficulties and complications of pregnancies that began and were confirmed by observations. An important amount of information, in fact, indicates that among clinically ascertained pregnancies, 22% end in *spontaneous abortions* and 5% in *ectopic pregnancies*; about 27% are *multiple pregnancies* with all the complications that follow; 29,3% end in premature births and 36% in *low birth weight* children.<sup>10</sup>

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9 Cf. P.R. BRAUDE - V.N. BOLTON - S. MOORE, "Mechanisms of Early Embryo Loss in Vivo and in Vitro," in M. CHAPMAN - G. GRUNDZINSKAS - T. CHARD (eds.), *The Embryo. Normal and Abnormal Development and Growth*, Springer-Verlag, London 1991, 1-10.

10 Cf. J. COHEN - M.L. MAYAUX - M.L. GUIHARD-MOSCATO, "Pregnancy Outcomes after in Vitro Fertilization," in *Annals of the New York Academy of Sciences* (1988) 541, 1-6; D.M. SAUNDERS - M. MATHEWS - P.A.L. LANCASTER, "The Australian IVF Register: Current Research and Future Role", in *Annals of the New York Academy of Sciences* (1988) 541, 7-21; J.G. SCHENKER - Y. EZRA, "Complications of Assisted Reproductive Techniques", in *Fertility and Sterility* (1994) 61, 411-422; FRENCH IN VITRO NATIONAL (FIVNAT), "Pregnancies and Births Resulting from in Vitro Fertilization: French National Registry Analysis of Data 1986 to 1990," in *Fertility and Sterility* (1995) 64, 746-756; M. ALSALILI - A.A. YUPZE - I.S.

It was these failures and problems that led to two urgent decisions. The first one, to orient *experimentation on the human embryo*<sup>11</sup> - proposed in 1984 by a committee appointed by the English Government<sup>12</sup> and then definitively recognized by law in November 1990, with the aim of developing preimplantation diagnosis technologies that would allow an *embryonic selection*, in order to *prevent the transfer in utero* of embryos which would be expected to develop abnormally. The second one was to make use of *embryonic reduction* in the case of multiple pregnancies.

1. *Embryonic selection*, already proposed by A. McLaren in 1985,<sup>13</sup> should

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TUMMON, "Confounding Variables Affecting in Vitro Fertilization Success: A Decade of Experience," in *Journal of Assisted Reproduction and Genetics* (1995) 12, 85-92; R.S. RAI - L. REGAN - H. COHEN, "Complications of Pregnancy after Infertility Treatment; Awareness and Prevention," in *British Journal of Obstetrics and Gynecology* (1996) 103, 191-192; A.VAN STEIRTEGHEM, "Outcome of Assisted Reproductive Technology," in *New England Journal of Medicine* (1998) 338, 194-195; A. STRANDELL - J. THORBURN - L. HAMBERGER, "Risk Factors for Ectopic Pregnancy in Assisted Reproduction," in *Fertility and Sterility* (1999) 71, 282-286.

11 Cf. A. SERRA, "La sperimentazione sull'embrione umano. Un dibattito tra scienza ed etica," in *La Civiltà Cattolica* (1998) 2, 435-449.

12 Cf. DEPARTMENT OF HEALTH AND SOCIAL SECURITY, *Report of the Committee of Inquiry into Human Fertilization and Embryology*, Her Majesty's Stationary Office, London 1984.

13 A. McLAREN, "Prenatal Diagnosis before

have allowed the transfer *in utero* of only genetically healthy embryos, and thus avoiding “the need to abort for genetic reasons, offering couples at risk the knowledge of starting a pregnancy with a healthy embryo.”<sup>14</sup> Perfecting the techniques required long, difficult and as yet unfinished experimentation both on laboratory animals and on human embryos.

The problem of *embryo biopsy* was largely resolved. The safest way to do it would seem to be to take one or two blastomeres (name given to the cells constituting the embryo during the first days of development) from morulae of 6-12 cells through drilling in the pellucid zone<sup>15</sup> or a tridimensional dissection of it.<sup>16</sup> But still some doubts remain on the total safety of the procedure for the embryo who remains available for transfer: with the first method the frequency of implantation is 14.7% and with the second one 17.6%.<sup>17</sup>

Some methods have been perfected to *identify*, in the one or two cells taken, through chromosomal analysis or the molecular study of DNA, the presence or lack of risk of a *genetic situation*, that is to say of a given chromosomal abnormality or of a mutated gene from which can come the manifestation of a disease: methods that had to allow a diagnosis in a very short time, in order to be able to transfer *in utero* the normal embryos, within a few hours of taking the sample, without having to freeze them. But they are still working to resolve some potential sources of mistakes, among which are the *post-zygotic chromosome mosaic* and the so called *allele dropout* (ADO).<sup>18</sup> The first one has been pointed out by cytogenetic studies on blastomeres *taken*, through biopsy, from a given embryo and on the *remaining* blastomeres themselves. It emerged that, when the technique succeeds, the percentage of

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Implantation: Opportunities and Problems,” in *Prenatal Diagnosis* (1985) 5, 85-90.

14 A. McLAREN, “Research on the Human Conceptus and its Regulation in Britain Today,” in *Journal of the Royal Society of Medicine* (1990) 83, 209-213.

15 Cf. V.N. BOLTON, “Embryo Biopsy”, in CHAPMAN - GRUNDZINSKAS - CHARD, *The Embryo*, 63-79.

16 Cf. J. CIESLAK - V.IVAKHNENKO - G. WOLF - S. SHELEG - Y. VERLINSKY, “Three Dimensional Partial Zona Dissection for Preimplantation Genetic Diagnosis and Assisted Hatching,” in *Fertility and Sterility* (1999) 71, 308-313.

17 Ibidem.

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18 Cf. A.H. HANDYSIDE - J.D.A. DELHANTY, “Preimplantation Genetic Diagnosis: Strategies and Surprises,” in *Trends in Genetics* (1997) 13, 270-275; W. LISSENS - K. SERMON, “Preimplantation Genetic Diagnosis: Current Status and New Developments,” in *Humane Reproduction* (1997) 12, 1756-1761; J.C. HARPER - J.D. DELHANTY, “Preimplantation Genetic Diagnosis,” in *Current Opinion in Obstetrics and Gynecology* (2000) 12, 67-72. In the first case, the trouble is caused by the presence of cells with altered karyotypes together with normal karyotype cells; in the second one, the manifestation of only the normal gene and not the defective one could lead to a serious diagnostic mistake.

error in the diagnosis is about 10%:<sup>19</sup> that is to say, in 10% of cases, what is observed in biopsy does not correspond to the real conditions of the embryo from which it derives. The second one emerged, in an obvious way, when the technique of analyzing the first polar globule, and then, also the second one was introduced. Through the analysis of only the first polar globule, actually present genetic errors are not detected in about 10% of cases (*dropout*); the risk would be reduced to 4% if the second polar globule also is analyzed.<sup>20</sup>

It is clear that all the efforts directed towards the discovery of chromosomal and genetic alterations, even with the uncertainties and expected errors resolved with a later prenatal diagnosis between the tenth and the sixteenth weeks of pregnancy, have *embryonic selection* as their purpose. They serve to suppress the embryo who does not have the desired qualities. In England,<sup>21</sup> they

are already providing, at the level of the health authorities, for the distribution and administration of preimplantation diagnosis services. In Germany, even though the laws are very restrictive regarding the treatment of human embryos, the existing law on the interruption of pregnancy, associated to ethical guidelines specifically for preimplantation diagnosis could lead to the legalization of this new technology of preimplantation diagnosis.<sup>22</sup> In the United States, the Ethics Committee of the American Society for Reproductive Medicine, in a recent pronouncement on *Sex selection and preimplantation genetic diagnosis*, in order to prevent the expansion of these new technologies to other non-pathological situations, concluded that preimplantation genetic diagnosis used for sex selection for non-medical reasons should be discouraged because it has the risk of an undesirable imbalance between the sexes, doing social damage and diverting medical resources from genuine medical needs. But objections to this position have already been raised, insisting that sex selection should be available at least in the private health sector.<sup>23</sup>

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19 Y. SASABE - K.P. KATAYAMA - T. NISHIMUTA ET AL., "Preimplantation Diagnosis by Fluorescence in Situ Hybridization Using 13-, 16-, 18-, 21-, 22-, X and Y-Chromosome Probes," in *Journal of Assisted Reproduction and Genetics* (1999) 16, 92-96.

20 Cf. S. RECHITSKY - C. STROM - O. VERLINSKY ET AL., "Accuracy of Preimplantation Diagnosis of Single-gene Disorders by Polar Body Analysis of Oocytes," in *Journal of Assisted Reproduction and Genetics* (1999) 16, 192-198.

21 Cf. S.A. LAVERY - R. AURELL - C. TURNER ET AL., "An Analysis of the Demand for and Cost of Preimplantation Genetic Diagnosis in the United Kingdom," in *Prenatal*

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*Diagnosis* (1999) 19, 1205-1208.

22 Cf. M. LUDWIG - D. PERMANENT - E. SCHWINGER - K. DIEDRICH, "The Situation of Preimplantation Genetic Diagnosis in Germany: Legal and Ethical Problems," in *Prenatal Diagnosis* (2000) 20, 567-570.

23 Cf. J. SAVULESCU - E. DAHL, "Sex Selection and Preimplantation Diagnosis: A Response to the Ethics Committee of the

2. *Embryonic reduction* is the path proposed for couples to decide in cases of twins. Among the numerous works regarding the result of multiple pregnancies after technically assisted reproduction, a recent retrospective study of 127 triplets pregnancies<sup>24</sup> of women who started cycles of technically assisted reproduction from August 1995 to July 1997, brings to light its essential aspects. Three women chose *reduction to one*; 43 women *reduction to two*; 81 women chose to wait. Of the 138 fetuses of the 46 women who had preferred the reduction, 51 (36.9%) were aborted. Of the 81 women who chose to wait, 11 (13.6%) had a reduction to two fetuses by a *spontaneous interruption of pregnancy of one*; in the other 70 women, all three fetuses continued their development. 40 women (87%) of the first group and 72 women (90%) of the second brought their babies home. The average weight of the babies of the first group was 2,226 grams  $\pm$  79, the weight of the babies of the second group was 1,296 grams  $\pm$  22.

Even facing the admirable heroism of the 63.8% of the women who chose to wait, and of the understandably anguished decision of the other 36.2%, it

is impossible not to be struck: 1) by the inhuman intervention of suppressing the fetuses through an intracardiac injection of potassium chloride (KCl) - or, even worse, through the suction of parts of the seven weeks old fetus<sup>25</sup> - after the conditions of their development have been explained willingly and with clear knowledge; 2) by the insistent insinuation of the necessity of such interventions in order to favor the growth of the survivors - a fact that is easily understandable - after the situation was intentionally and consciously created. The following expressions, among many others, are significant: "Our results indicate that reduction of triplets to twins is efficient in improving pre-term birth and fetal growth;"<sup>26</sup> "Reduction of triplets to twins significantly reduces the risk for prematurity and low birth weight and may also be associated with a reduction in overall pregnancy loss. This suggests that multifetal pregnancy reduction of triplets to twins is a medically justifiable procedure not only from an actuarial viewpoint but also from the ethical perspective of supporting the pa-

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American Society of Reproductive Medicine," in *Human Reproduction* (2000) 15, 1879-1880.

24 Cf. M.P. LEONDIRES - S.D. ERNST - B.T. MILLER - R.T. SCOTT Jr., "Triplets: Outcome of Expectant Management versus Multifetal Reduction for 127 Pregnancies," in *American Journal of Obstetrics and Gynecology* (2000) 183, 454-459.

25 Cf. R.T. MANSOUR - M.A. ABOULGHAR - G.I. SEROUR ET AL., "Multifetal Pregnancy Reduction: Modification of the Technique and Analysis of the Outcome," in *Fertility and Sterility* (1999) 71, 380-384.

26 P. BOULOT - J. VIGNAL - G. VERGNES ET AL., "Multifetal Reduction of Triplets to Twins: A Prospective Comparison of Pregnancy Outcome," in *Human Reproduction* (2000) 15, 1619-1623, in particular 1619.

tients' autonomy;"<sup>27</sup> "Fetal reduction to twins must be proposed for each multifetal pregnancy, considering the very serious high mortality rate."<sup>28</sup>

The *ethical judgement* on such a praxis, now widespread, is self-evident and does not need particular reasoning. *Embryonic selection* and *embryonic reduction* are the clearly willed suppression—both by the pregnant woman and the operators—of well determined human individuals in their first stage of embryo or fetal development. A well-informed person knows that in both techniques a *homicide* is committed, often more than one, no matter what euphemism is employed.<sup>29</sup>

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27 Y. YARON - P.K. BRYANT-GREENWOOD - N. DAVE, "Multifetal Pregnancy Reductions of Triplets to Twins: Comparison with Nonreduced Triplets and Twins," in *American Journal of Obstetrics and Gynecology* (1999) 180, 1268-1271, in particular 1268.

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# Enlarged Family

Giorgio Campanini

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*The concept of the “enlarged family” traditionally refers to a way of living together, in a community, adopted by family groups, generally linked by ties of blood and by the unity of their life style. For human groups, this way of uniting themselves together in order to share responsibilities and resources, while maintaining a certain autonomy (unlike the “patriarchal” model), has always existed, in the course of history. In the agricultural world it offers obvious advantages for self-defense, the organization of work and the allocation of tasks and jobs. It tends to disappear with the development of urbanization and industrialization. Today, the enlarged family no longer exists in developed countries with some few exceptions, while it still persists in countries with tiny developing economies based mainly on agriculture. Nevertheless, a new type of enlarged family has developed, in recent decades in the rich countries. A first secular model was proposed during the 70s’ social conflict, but it did not last long. Another model, of religious inspiration, also born from the 70s’ conflict, in California, took shape in the so-called Christian “new communities” inspired by the gospel model of the Acts of the Apostles. This last proposal seems to respond to a real expectation in modern society, which falls prey to the uneasiness of “anomie” [lawlessness], of depersonalization and of unbridled individualism. (↗ Single Parent Family; Family, Nature and the Person; Recomposed Family; Traditional Family; New Family Models)*

The “joint family”, the “extended family,” and finally the “family communes,” can all be linked to the concept of the “enlarged family.” In spite of the considerable differences that exist among these forms of family, they have in common the fact that they cannot be labeled as part of the *traditional family*, which, at least in Western culture, is the “nuclear” one, made up of the conjugal couple and its children, and only exceptionally integrating the presence of

other persons.

Neither the “joint family,” nor the “extended family,” nor the “family communes” can be compared with the patriarchal family even if, in relation to the exercise of authority (in general with a strong male predominance), some analogies may be found: in fact, the patriarchal family, has as a typical characterization a strongly hierarchical power structure and is rigidly centralized, as is not necessarily found in forms of the

enlarged family.

Therefore we could define the enlarged family *as a cohabitation of several family groups not necessarily linked by ties of blood or bonds of affection*. What makes of this particular human group a “family,” and not a simple and temporary cohabitation of different individuals, is on the one hand the unity (or at least the proximity) of residence, and on the other at least the relative unity of direction and the consequent placing in common, partially or totally, of resources, even if a relative amount of autonomy remains guaranteed to the several families that form the enlarged family.

## **THE “ENLARGED FAMILY” IN HISTORY**

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The history of the family, for the last 10,000 years, and anthropology, in the very long phase that preceded it, have for a long time tried to explore the particulars that led to the constitution of this specific human group. More than acquiring certainties - which is almost impossible due to the absence of documentation - working hypotheses have been formulated and some theories have matured progressively, some almost generally accepted and others the subject of debate among historians, sociologists and anthropologists. Among the data that can be considered well established, there are especially two, from a historical point of view.

The first one is that the enlarged family has *always* existed in human history, in all latitudes. Not even the modern industrial societies - which have exalted to the utmost the nuclear family - record the complete absence of this model.

The second is that the enlarged family is characterized by *a very differentiated diffusion*, in relation to the economic and productive organization of each social group, and it is therefore almost always present in predominantly agricultural societies. It is relatively absent in the advanced industrial societies, to the point that it appears as little more than a “residual” phenomenon in the areas, especially Western Europe and North America, more deeply transformed by the industrial revolution, where the enlarged families represent a very small percentage of the existing families.

Among the points that are still objects of debate are the origin, the significance and the value of this type of family.

About its *origin* there are those who, accepting the evolutionist perspective, consider the enlarged family as the first and elementary form of family (leaving out of consideration a hypothetical transitory early phase of “sexual promiscuity”). They think at the origins of mankind, the necessity to win the struggle against hunger and against external dangers, and so to guarantee the survival of the group, would have imposed the aggregation of several families

under a unique authority. At the end of this long “emergency” phase, gradually the nuclear form of family would have prevailed. Therefore the enlarged family would belong to a relatively early stage of society and it would be progressively destined to be substituted by other family forms. From another perspective, at the beginning there would have been the circumscribed nuclear family, which proved durably dominant. Only later, and not everywhere, new necessities in the modes of production and living would have determined - not necessarily and not everywhere - the passage to the enlarged family. In the first perspective, therefore, the enlarged family would have been the starting point, in the second one the point of arrival of a series of evolutionary processes.

As regards the *significance* and the value of the enlarged family, there are those who still today see in it – going beyond the reasons determining its historical development - a possible antidote for the limits and risks of the accentuated process of privatization, and tendencies towards *anomie*, that characterize the last phase of development of advanced industrial societies. There are others who, on the contrary, point out its covertly or openly authoritarian components and consider the structure of the enlarged family an obstacle to the full development of new generations and something that injures women’s and children’s rights.

## THE ENLARGED FAMILY IN TODAY’S WORLD

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A large-scale analysis of the enlarged family in the contemporary world reveals that it is now marginal in the economically developed areas, even where, like in Southern Europe or in Japan, it had ancient roots. Moreover, the “prophecies” regarding a complete disappearance of this family form, have not been fulfilled: even in the most developed areas the enlarged family still exists, even though it is a minority. It even seems to be experiencing in some countries a certain revitalization due both to the phenomena of economic crisis that characterize some of the developed Western areas, and to the critique - ideological and also religious- of the dominant model of family, the nuclear one, considered too intimate and privatized. From this conflict was born the aspiration to experiment with forms of “alternative family”, such as the “family communes” or the “family communities” (quite particular is the case of Israeli *kibbutzes*, essentially motivated by reasons stemming from the need to safeguard and defend Jewish settlements, even if also at the beginning linked to the aspiration for a society with strong communitarian connotations).

The future of the enlarged family in the economically developed zones will depend both on the overall evolution of the economic and social dynamics, and on the cultures (and ideologies), that is

to say the life styles, that predominate. Nevertheless, it does not seem that we can exclude the possibility of a revival of the enlarged family, in view of the phenomena of urban decay, of ecological disturbances, of social *anomie* that are motivating pressure in the opposite direction in order to go beyond the strict privacy of the nuclear family. The hypothetical case of a long lasting economic crisis could contribute to the revival of forms of the enlarged family through the need to take precautions against the risk of poverty and the observation of economies of scale that could derive from larger communities.

In the economically less-developed zones, the persistence of the enlarged family - which in many countries still represents a vast reality - appears strictly connected to the general dynamics of the economy and to the dynamics of the growth of cities. The enlarged family will continue to have an important role for a long time where models of a society with a tribal dominance remain (like in Sub-Saharan Africa) and where the problem of survival in the face of hunger and poverty is still severe. In some countries only marginally touched by the industrial revolution, there could be "returns" to a model of family that in some areas was too hurriedly abandoned, due to a rapid but superficial penetration of models imported from the West but extraneous to the culture and to local traditions. Nevertheless it is reasonable to foresee that, even out-

side the West, the enlarged family will experience in the near future a notable diminution, perhaps to the point of a position of substantial marginalization.

## **POSSIBILITIES AND LIMITATIONS OF THE ENLARGED FAMILY**

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The enlarged family presents a series of possibilities, but also of limitations that can sometimes make it preferred over other models of family, and sometimes determine its abandonment with the consequent passage to other family forms.

The *advantages* of the enlarged family are essentially summed up in the optimization of the use of resources and the community accomplishment of traditional tasks like upbringing, education, care, and assistance which are proper to the family. The presence of several families in one residential structure, or at least in one housing complex, allows appreciable economies of scale, a better division of social work, a more efficient and flexible utilization of group potentialities regarding different needs in agricultural work as well as in times of emergencies, crises, and natural disasters. It is not without significance that the enlarged family is normally seen as an agricultural reality in which the connection among the families in different forms of solidarity is spontaneous and natural.

As for the problem of child care, the enlarged family overcomes many incon-

veniences of the nuclear family: within this type of family neither single persons nor the aged are abandoned; widowhood is managed better; a potential crisis in a marriage does not mean the abandonment of the children; weaker members (physically or mentally handicapped, etc.) are more easily integrated within a group where everybody knows each other. Even social control is greater and less serious are the risks of *anomie* and deviance (the enlarged family generally defends itself from this by expelling members who do not comply with the group's rules).

Nevertheless the enlarged family presents *evident limits* too. There are strong ties placed on individual freedoms, both in the organization of work and in the use of its fruits. This is also true in the area of affective and educational relations. There are coercive and sometimes suffocating forms of social control and a reduced capacity to adapt to new situations, including a substantial loss of mobility which roots the enlarged family in an area from which it can hardly leave. Young couples suffer from the close proximity to others while the role of the woman tends to be marginal because of a strongly masculine exercise of authority. The capacity for innovation and adaptation to new situations is significantly limited. It is not coincidental that the enlarged family almost always exists in an agricultural world characterized by low levels of development. Nevertheless, lower levels of

consumption do not necessarily mean an inferior "quality of life" of the family, and the difficult situation of families in many urban realities would seem to bear out the opposite view.

On the other hand, from a sort of natural tendency for self-defense, the enlarged family runs the risk of becoming excessively self-referential, and so can be closed to the outside world. This gives rise to forms of "amoral familism," that is to say to behaviors that only refer to the group of origin and to its interests, putting on a secondary level the general needs and requests of society.

If the community's needs and those of the group prevail over those of individuals, the enlarged family persists; if the libertarian requests and the aspirations of single individuals prevail, the enlarged family enters into crisis, as the history of the industrialized West attests in the transition from the medieval family to the modern family and in the passage from the country to the city. The prevailing attitudes to support and sustain the community often leads to revolt in favor of the objectives of individuals and makes the pendulum swing from the side of the enlarged family to the side of the nuclear family.

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### **A PARTICULAR CASE: FAMILY "COMMUNES"**

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The re-emergence of the communitarian spirit—even in relation to its theorization through the recurring communitarian tendencies already present into

the culture of the 30s (E. Mounier, J. Maritain, G. Gurvitch) – re-proposes in new terms in the West the theme of the enlarged family, just in the moment in which it seemed to be destined to abandon the scene definitively under the attack of industrialization and as an effect of the affirmation of an increasingly individualistic mentality. The evolutionary course of the nuclear family (in particular because of its privatizing forces accentuated by the pervasive intervention of the mass media) has caused non-marginal social groups, particularly socially and religiously conscious ones, to react in a communitarian way. This has created wide-ranging experiments of alternatives to the nuclear family such as “family communes” (or “family communities”) that have re-proposed, even if in other forms, the enlarged family.

Compared with the “traditional” enlarged family, these new communitarian forms are characterized by a prevalence of “ideals” in living together as compared to the “practical” reasons prevalent in the past (connected to the agricultural world, and orientated towards the maximization of resources and to the defense of the group). The motivations of the past are abandoned in order to seek more intense relationships that are able to oppose the currents of *anomie* present in a society in which significant numbers of families feel alienated.

Religious motivations assume a particular importance in these choices.

They revive the Christian communitarian spirit that never really disappeared through the ages, that is, the communitarian life style proposed, even if with some utopian connotations, by the Acts of the Apostles. This communitarian spirit was for a long time present in non-marginal components of Protestantism like the Quakers and Puritans. At the same time it is not absent in the Catholic world (among the most recent cases one can recall in Italy the experience of Nomadelfia, and in the world, the different experiences of the Focolare movement, etc.). These neo-communitarian movements have seen during the last three decades of the twentieth century a significant revival strictly connected to the evolutionary process that has often characterized the nuclear family.

Even if probably destined to remain a minority from a numerical point of view, these experiences of “community families” with a religious basis, in a broad sense connected to the old model of the enlarged family, nevertheless have a strong symbolic value and have considerable charm for non-marginal components of new generations of believers; while it does seem that the long wave of “secular communitarianism” that characterized the 1968 conflicts has subsided. The future will say if and in which measure these new forms of the enlarged family will be able to represent an alternative to the nuclear family.

## CONCLUSION

The Christian message proposes a "theological model" and not a "sociological model" of family: what is essential in fact is the uniqueness, the exclusivity, the permanence of a couple's relation founded on love and oriented to the service of life. Within this (theological) "model," different (sociological) "models" of family can coexist, and in fact they have coexisted and continue to coexist in the different ages and cultures, and among them is also the enlarged family. It will be to the mature Christian conscience of different generations to evaluate - except for the main theological positions - which form of family is concretely better in harmony, in every period and in each specific contest, with the complete realization of man and with the accomplishment of his humanizing mission in the world.

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# Euthanasia

Ignacio Carrasco de Paula

# E

*In contemporary usage, the term euthanasia does not simply mean the quest of palliative medicine to relieve pain, but the act of deliberately killing someone in order to end suffering for “merciful reasons”. Appeal is made to the superior interest of the State for ulterior “justification” of such acts, since, it is claimed, that the State has sovereign power over the bodies of those of its members who have become useless to society. Assisted suicide is a specific form of euthanasia which is spreading in contemporary society. Pope John Paul II devotes three articles of the encyclical *Evangelium Vitae* (nn. 65-67) to the subject. A mentality closed to the possibility of the transcendent easily succumbs to the illusion of painless death. Only in the transcendent, i.e. in openness to God the Creator, can existence find its full meaning. It is only in Christ that all phases of life, and all forms of suffering and death, accepted in trusting obedience, acquire a value beyond the capacities of creatures. (↗ Bioethics Committees; Informed Consent; A New Paradigm of Health Care; Quality of Life; Sexual and Reproductive Health)*

## FORWARD

In its etymology, the term euthanasia (from the Greek *eu*, good; *thanatos*, death) means a serene natural death which happens without particular suffering or anxiety, bitterness or regret, and at peace with oneself, God and one's neighbor. In the modern era, F. Bacon speaks of euthanasia in terms of “the relief of suffering, even when such assists in procuring a peaceful and tranquil death” (*Novum Organum*). F. Nietzsche sings the praises of “a liberated death coming to me because *I* have willed it” (*Thus Spake Zarathustra*).

The main problem with the current debate on euthanasia is found in the general, and almost obstinate, ambiguity in the use of this term. Indeed, the word “euthanasia” is currently and indiscriminately employed to designate both the decision to anticipate the end of the life of someone rendered apparently incurable by illness or old age, and palliative medicine in its struggle against pain; as well as the legitimate voluntary decision to decline unnecessary disproportionate treatments or those which pose higher than acceptable risk (refusal of burdensome medical treatment).

## DEFINITION OF EUTHANASIA

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Euthanasia must be properly understood as *the deliberate act of killing an incurable patient so as to end his suffering, motivated by pity*. Posed in these terms, all the ambiguity of this concept becomes evident. On the one hand, we have a technical formulation - deliberate or direct killing (it is irrelevant whether provoked by a positive act or by an omission- which excludes any equation with the various forms of involuntary homicide (unintentional, culpable etc.). On the other hand, there is a concern to justify such homicide by the introduction of the sentiment of pity, which, nevertheless, remains a strange pity from the moment it leads to the killing of a suffering person, with or without that person's prior consent (voluntary or involuntary euthanasia).

## EUTHANASIA IN THE CONTEXT OF CONTEMPORARY CULTURE

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Death has a dual and opposite meaning in any culture which refuses to address questions about the meaning of life and systematically excludes any consciousness of mortality: death becomes an unacceptable *paradox*, especially when it unexpectedly truncates an existence with a very promising future; or else death is seen as a *liberation* from a meaningless existence, sometimes irreversibly submerged in anguish and suf-

fering. Having lost sight of the meaning of suffering, only desperation remains, giving rise to the temptation to end the pain of living as painlessly as possible.

While a mentality closed to the transcendent can succumb to the illusion of an easy death, at the same time, contemporary culture does not lack defense mechanisms, deeply rooted in common sense, which operate effectively against the temptation of euthanasia. Let us examine those concrete mechanisms:

1. *A revulsion at the idea that a doctor could have an active and deliberate role in the death of any patient*. This inherited attitude derives from the Hippocratic tradition. A doctor is someone to whom we entrust ourselves precisely when illness and suffering threaten our spiritual and physical powers and endanger life. A doctor is not asked to judge or determine who should live and who should die; the trust the patient gives is based on the presupposition of professionalism and the unchanging *pro vita* attitude of the doctor. If both these elements were to be found generally lacking, the damage to the doctor-patient relationship would be incalculable. Clearly, this is a very serious issue, and hence, in recent years, the International Medical Association has twice issued statements categorically opposed to all forms of euthanasia, including that adopted in Holland<sup>1</sup>.

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1 Declaration of Madrid (October 1987) and of Marbella (October 1992).

2. *Fear of abuses* or the slippery slope with no possible escape. Everyone experiences dismay and compassion when confronted with the desire to die expressed by someone like us. Indeed, we can even go so far as to understand the reasons motivating such a decision. But indulgence cannot cause us to overlook serious considerations such as the fear of having misunderstood someone's wishes, or the possibility that one was dealing with a mentally sick person, or the risk of causing irreparable damage etc. Such considerations are too realistic to allow us to think that we are authorized to satisfy a person's desire to die. It must also be stated that abuses are not as remote a possibility as some might think. One only has to think of the program devised by Professors K. Binding and A. Hoche for the annihilation of those lives deemed unworthy of living<sup>2</sup> and applied without limits by the Nazi regime, or the proposals made a number of years ago by Dr. Brody for assisted suicide<sup>3</sup>, or even the not infrequent cases that appear from time to time in the mass media.

3. *Religious convictions.* The ideas derived from religious convictions with regard to man's origin and destiny cause anxiety among believers not only with

regard to the abuses that can arise in relation to painless death. The entry into and departure from this world of the sons of Adam are far too decisive and mysterious events to admit of the intrusion of any human authority. Nobody chooses to be born and nobody can escape death. The religious believer accepts with a sense of security and consolation the belief that only the God of life has dominion over death.

## **DEATH BY CHOICE?**

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In recent years, the controversy surrounding euthanasia arose from the traditional scenario of an incident of dramatic unbearable suffering followed by a gesture of unlikely compassion. Today it is presented as a choice (*death by choice*) which has to be recognized, or as an expression of pluralism, or as a solution demanded by changes in health care, or as something which is required out of respect for a patient's autonomous wish to die rather than to live. Let us examine each of these arguments.

1. *The socio-legal factor.* While legislation in favor of euthanasia may still seem far off, it must be recognized that it is no longer an impossibility - - as is clear from the legislative developments in several western countries, and from a number of opinion polls conducted among the general public and in the medical profession. This situation tends to make debate on the subject of euthanasia more concrete and encourages both sides to concentrate on arguments easily

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2 *Die Freigabe der Vernichtung lebensunwerten* (cf. R.J. LIFTON, *The Nazi Doctors*, Basic Books, New York 1986).

3 H. BRODY, "Assisted Death. A Compassionate Response to Medical Failure," in *New England Journal of Medicine* (1992) 327, 1384-1388.

accessible to the general public while overlooking more fundamental issues of the principles of natural anthropology and doctrine. The argument from pluralism is fallacious because, while society does and ought to admit a plurality of convictions and beliefs, it cannot admit a plurality of laws. There can be only one legal order which is the same for all. Legalizing euthanasia would imply not only removing penal sanctions, but above all would also predispose the structures and procedures of the health care system to make it more easily *accessible and safe* to all. As in the case of abortion, a tolerant law would offer a permissive solution, which in turn would create incentives for an inhuman practice at the expense of other more ethically acceptable and just solutions.

2. *The socio-medical factor.* As has already been noted, in society, the medical doctor automatically discharges a service to life. This is the spirit of the Hippocratic Oath and this continues to be the code of medical ethics sanctioned by Geneva. At the same time, however, certain currents are to be found that seek to modify the professional status of the medical doctor so that he would become a decisive instrument in containing budgetary spending on health care, and in instituting a policy of selection based on the quality of life concept. The crisis of the *welfare state*, shrinking resources with the consequent need to reduce health care spending, according to some, should convince doctors to ex-

clude certain categories of persons—primarily the old—from the most expensive treatments. Thus, certain procedures, that have many points in common with euthanasia, enter into hospital practice by the back door. Similarly, others advance the idea that since modern medicine is responsible for the survival of a growing number of handicapped persons or of persons with a low quality of life (the aged, chronically ill etc.), it should assume responsibility for a burden that is becoming increasingly unbearable for society by deploying adequate measures—such as suspension of treatment, artificial feeding and hydration, and involuntary euthanasia etc.

3. *With regard to the question of individual freedom*, note must be taken of the well known weight that the so-called *pro choice* argument has had in the legalization of abortion, especially in the United States. Applied to euthanasia, this argument, however, is less effective, since it is relatively easy to support a woman's choice to reject a tiny embryo bereft of all possibility of defending its own rights, and not at all clear why a patient's will to die ought to prevail over the professional competence of a medical doctor who can apply effective palliative treatment. For this reason, proponents of euthanasia are aware of the necessity of changing the role of the medical doctor in such a way that the lethal proposal comes not from him, but from the patient. Hence, we arrive at the notion of suicide. And thus, the

traditional but ambiguous notion of *mercy killing* begins to cede ground to the more rational and insidious one of "assisted suicide".

## **ASSISTED SUICIDE**

As a concept, *assisted suicide* is a half-way house between suicide and voluntary euthanasia both of which presuppose a clear will to die on the part of a particular subject. Assisted suicide shares with simple suicide the fact that the person ends their own life; while in voluntary euthanasia, death comes about in the context of a painful or incurable illness (or in conditions held to be analogous such as old age) and by the intervention of a medical doctor. Assisted suicide is characterized by the following particular traits: a) death appears as a choice of the patient who, having been informed of his irreversible pathological condition, prefers not only to decline therapy that is no longer effective but also to accelerate the arrival of an inevitable death; b) the medical doctor's role should be limited to supplying the means by which the patient kills himself (together with the necessary instructions) and to ensuring that death is brought about safely and painlessly; c) the motivation that renders the medical doctor's intervention legitimate and a duty is no longer a passing feeling, such as pity, but a strict obligation to respect the patient's will and autonomy.

Assisted suicide has a triple advantage over traditional euthanasia as far

as modern sensibilities are concerned. They are: a) the lethal action appears as the patient's free choice; b) the presence of a medical doctor guarantees professional assistance; but c) above all else, ending life is moved to a less demanding ethical plane, similar to refusing useless treatment.

The problem of the incompetent patient, who cannot express their wishes and is even less capable of killing himself, remains unresolved. A procedure of euthanasia that would exclude such patients is not even considered today. Promoters of euthanasia look to *living wills* as the best means of circumventing this obstacle. This is a document in which the subject leaves precise instructions about how he wishes to be treated should he become critically or terminally ill.

The concept of assisted suicide leaves many unanswered questions. It is not credible, as in the case of abortion, that any eventual legalization of euthanasia will only be used by those who freely wish to avail of it. All citizens would be exposed to the risk of being "killed by suicide." How and who can distinguish between a genuinely free decision and one made in depression, pain, dejection etc.? Who can determine the true wishes of an incompetent patient? How can we ensure that assisted suicide does not become a cover for a cunning form of involuntary euthanasia designed to eliminate the handicapped? How is a medical doctor to act when a patient

is no longer able to administer a lethal substance to himself or when a patient bungles its administration? Again, were euthanasia to become an alternative “therapy” for terminally ill patients, why should not a medical doctor consider himself authorized to use it in extreme cases without reference to the patient’s will?

## THE CATHOLIC POSITION ON EUTHANASIA

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The principle official document of the Catholic Church on euthanasia is the declaration *Iura et Bona*, published by the Congregation for the Doctrine of the Faith in 1980. It is a short compendium of Catholic moral principles dealing with illness and death. In reply to particular questions raised by medical doctors, Pius XII condemned the Nazi practice of euthanasia. The 1980 declaration not only repeated previous teaching but also demonstrated an awareness of the evolving situation with regard to euthanasia and new life-saving therapies<sup>4</sup>. To this document must be added the particularly solemn words of condemnation of euthanasia contained in the encyclical letter *Evangelium vitae*. John Paul II declares: “in harmony with

the Magisterium of my Predecessors and in communion with the Bishops of the Catholic Church, I confirm that euthanasia is a grave violation of the law of God, since it is the deliberate and morally unacceptable killing of a human person.”<sup>5</sup>

As a decisive ethical argument, the declaration *Iura et Bona*, confirming the unanimous previous teaching of the Church, points to the *principle of the inviolability of human life*, thereby contesting in the most definitive manner the two anthropological postulates underlying both voluntary euthanasia and assisted suicide: on the one hand the postulate that, in some circumstances, death would be a good and life an evil; and on the other, the postulate that man has a right arbitrarily to procure his own death or to cause the death of others. The document denies that pain is an absolute evil to be avoided at all costs: while it is an obligation in charity to do everything possible to alleviate the suffering of the sick, one cannot overlook the positive significance of suffering freely accepted and sustained by faith in Christ.

Pity and beneficence can be expressed in myriad ways, as for example in the parable of the Good Samaritan. Killing a terribly suffering brother, however, has no place among them.

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4 Part IV is important and deals with the proportionate use of the increasingly sophisticated therapeutic procedures made available by modern research: that is, it deals with the legitimate choices to be made by patients and doctors on the questions of applying or refusing treatments.

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5 JOHN PAUL II, encyclical letter *Evangelium vitae*, 65. The encyclical devotes three extensive numbers to the subject (nn. 65-67).

Catholic teaching proclaims that life is a marvelous gift and a task entrusted to man by God. Precisely because it is a gift and a mission received from the Lord, life must be administered and lived to the full, always trusting in the designs of God's divine love, especially in times of trouble. The Christian vision of life and death reaches its climax and true significance in striving for the fulfillment of the promise of new life in the risen Christ. Catholic morality, therefore, regards euthanasia and assisted suicide as evils which are contrary not only to abstract dogmatic principles, but also to the good which is man's proper end, because they contradict his most intimate nature and his vocation to happiness. Christians believe that as well as receiving life from their parents, the Lord has given them Life which, in St. John's Gospel, means the life which the Father, in Christ, gives to those who believe. That Life will be completely revealed at the end of time. Personal conviction of the immorality of euthanasia is not sufficient. As John Paul II says, in the context of contemporary society and culture: "the duty of the Christian community is wider than simply condemning euthanasia, or of obstructing its diffusion and legalization. The more basic question is above all that of succeeding in helping the people of our times to come to a realization of the inhumanity of certain aspects of the dominant [contemporary] culture and to rediscover the more important values which it obfuscates."<sup>6</sup>

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6 JOHN PAUL II, discourse to the

When one becomes ill, trusting in divine providence, neither removes the personal obligation to treat oneself or have oneself treated, nor imposes the obligation to seek every available remedy. *Iura et Bona* states that "it will be possible to make a correct judgment as to the means by studying the type of treatment to be used, its degree of complexity or risk, its cost and the possibilities of using it, and comparing these elements with the result that can be expected, taking into account the state of the sick person and his or her physical and moral resources."<sup>7</sup>

To facilitate a prudential application of these general principles, the declaration adds the following clarifications:

1. In the absence of other remedies, with the patient's permission, it is licit to have recourse to therapies developed by the most recent medical research even when such are still at an experimental stage and not exempt from some degree of risk;

2. It is also licit to interrupt the application of such therapies should their results not prove as successful as had been hoped;

3. It is always licit to be satisfied with normal therapies available to medical practice;

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participants of the LIV refresher course of the Catholic University of the Sacred Heart, 9 September 1984.

7 CONGREGATION FOR THE DOCTRINE OF THE FAITH, declaration *Iura et Bona*, part IV.

4. In the case of imminent and inevitable death, it is licit in conscience to decline treatments that can only painfully and precariously prolong life, without however withdrawing normal care due to the sick in similar cases.<sup>8</sup>

Christianity, in its opposition to the pro-euthanasia culture, exposes the contradictions and the weakness of an ideology that is incapable of appreciating the drama experienced by a patient, sometimes totally isolated from everyone else, who can no longer bear to live. The desire to die is not infrequently the result of inhuman and unjust situations, or of pathological conditions often overlooked or even ignored. It cannot be denied that prolonged and unbearable suffering, and other psychological conditions, can obscure the patient's mind, even to the point of believing that one may legitimately, and in good faith, ask to die or procure death for others. The resultant suicide or homicide can be unimputable because of an impaired or erroneous judgment of conscience. Killing an unfortunate patient, however, is inadmissible. The Church is insistent on this point when she recalls that "the pleas of gravely ill people who sometimes ask for death are not to be understood as implying a true desire for euthanasia; in fact, it is almost always a case of an anguished plea for help and

love. What a sick person needs, besides medical care, is love, the human and supernatural warmth with which the sick person can and ought to be surrounded by all those close to him or her, parents and children, doctors and nurses."<sup>9</sup>

It is with difficulty, moreover, that a request for euthanasia can be regarded as deriving from a truly free choice. The patient in such circumstances only experiences despair and solitude and has no experience of death. Death can only be imagined: it cannot be measured or described. It is the only human event that excludes all possibility of turning back. Paradoxically, there is no other moment in life in which it is more fundamental to revive hope as when one is near death: death is the moment in which all of life comes to full meaning, but only if it remains open to the possibility of a future.

As *Evangelium vitae* explains, "the certainty of future immortality and hope in the promised resurrection cast new light on the mystery of suffering and death, and fill the believer with an extraordinary capacity to trust fully in the plan of God. The Apostle Paul expressed this newness in terms of belonging completely to the Lord who embraces every human condition: "None of us lives to himself, and none of us dies to himself. If we live, we live to the Lord, and if we die, we die to the Lord;

<sup>8</sup> In practice, the application of these principles requires respect for certain particular conditions which are carefully outlined in the pontifical document.

<sup>9</sup> CONGREGATION FOR THE DOCTRINE OF THE FAITH, declaration *Iura et Bona*, part II.



so then, whether we live or whether we die, we are the Lord's" (Rom 14:7-8). Dying to the Lord means experiencing one's death as the supreme act of obedience to the Father (cf. Phil 2:8), being ready to meet death at the "hour" willed and chosen by him (cf. Jn 13:1), which can only mean when one's earthly pilgrimage is completed. Living to the Lord also means recognizing that suffering, while still an evil and a trial in itself, can always become a source of good. It becomes such if it is experienced for love and with love through sharing, by God's gracious gift and one's own personal and free choice, in the suffering of Christ Crucified. In this way, the person who lives his suffering in the Lord grows more fully conformed to him (cf. Phil 3:10; 1 Pet 2:21) and more closely associated with his redemptive work on behalf of the Church and humanity."<sup>10</sup>

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<sup>10</sup> JOHN PAUL II, encyclical letter  
*Evangelium vitae*, 67



# Equal Rights for Men and Women

Georges Cottier

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*The genital differentiation between men and women has often been invoked in attempts to highlight the inequality of men and women. Women would be inferior to men, not only physically but also in terms of dignity. They should therefore accept to be subjected to men and give up being in competition with them. It is understandable that the feminist movements have risen up against this aberrant form of discrimination. In Reality, such discrimination is based in on a widespread confusion between equality and identity. It is not required that all human beings be identical in order to be equal. Equality implies the idea of difference, singularity, originality. Individuals exist following closely the modality of the person. All the persons participate in a unique way in the existence of God the Creator and derive their dignity from this participation in the divine existence. The fact that by the will of the Creator human beings were created according to a dual modality, male and female, is precisely what confers on sexually different persons the same dignity, underlined by the personality of each one, man or woman. (↗ Sexual and Reproductive Rights; Discrimination Against Women and CEDAW; Gender; Identity and sexual difference; An Ideology of Gender: dangers and Scope; Motherhood and Feminism; New Definitions of Gender; Patriarchy and Matriarchy).*

1. The Encyclical of John XXIII *Pacem in terris* (1963) took as a main sign of our times the admission of women into public life, their demand to be recognized and treated in domestic and social life-like persons and not like “instruments.” (cf. n. 41; cf. also n. 15).

The Magisterial teachings that followed, and in particular those of John Paul II, take up this theme many times. The full respect for the dignity of women is the object of a deep aspiration,

whose expressions are found, at different levels, all over the world. It is important to catch the first inspiration, which has to be linked to the demands of the Gospel that tend to permeate always more vitally the strands of human history.

The aggressive ways in which this aspiration sometimes manifests itself should not be taken as a pretext to underestimate its authenticity. These outbursts are explained without any doubt by the age-long weight of suf-

ferings, frustrations and humiliations which women have been and still continue to be too often the victims. In fact, the awareness of the desire to obtain the recognition of their own dignity has caused, in some feminist currents, violent claims. Two intellectual and ideological factors have contributed to this exasperation.

The assertion of woman's rights, in fact, has drawn from the Marxist concept of class struggle its conceptual tool and its language. The difference between women and men was consequently presented as an antagonism and rivalry; as a consequence, the cause of women was equated to the struggle of the oppressed for their liberation. Man dominated and to his domination it was necessary to oppose a female counterforce. In this fashion a dialectic was opened to bring about a reversal of roles. If we propose to pose male-female relations in terms of domination, superiority-inferiority, we are condemned to ignore the riches specific to femininity. Concerning this the positions of Simone de Beauvoir are relevant. According to her, "femininity is neither an essence nor a nature" but a cultural and historical fact subject to radical transformations. She adds, nevertheless, that such a "situation" has been "created beginning from some physiological data." We can ask whether the woman's very intense struggle against male domination does not mask rejection and the hatred of her own femininity and a sort of unconscious dualism

and denial of her own body.

The Marxist inspired concept of conflict is often combined with another ideological fact, the liberal-individualistic view. Women claim their "sexual and reproductive rights" considered as right of the individual jealous of their own autonomy.

On these questions the Holy Scriptures can give us precious insights. It is fitting then to examine them first.

1. Natural reason is already capable of perceiving the sense of women's dignity. This is supported by the Word of God, which reveals its complete fullness and implications.

We can quote some main passages. There are the two stories of the creation (Gen 1,27; 2,21-24). "So God created man in His own image, in the image of God He created him; male and female He created them." When God saw His work He said: "And behold, it was very good" (Gen 1,31).

"In the image of God» means that man is a person, as the Council comments, "the only creature on earth which God willed for itself" (*Gaudium et spes*, 24). All men and all women are persons: in this dignity they are equal. This principle enlightens the whole problem. The text adds a specification of primary importance: from the beginning God «male and female He created them». The difference between the sexes is a positive factor, "it was very good." The second passage makes this last note clear: when the man sees the woman ri-

sing in front of him he gives a cry of admiration. He recognizes himself in the woman, their union represents the first form of communion: "Therefore a man [...] cleaves to his wife, and they become one flesh" (Gen 2,24).

The Council comments on these two essential texts: "But God did not create man as a solitary [...]. For by his innermost nature man is a social being" (*Gaudium et spes*, 12). And also: "Who cannot fully find himself except through a sincere gift of himself" (*Gaudium et spes*, 24).

According to God's plan of creation then, man and woman are persons; based on this title, they have equal dignity. The distinction between the sexes, that is to say their differences, are in conformity with this plan and are good. The difference is intentional in function of communion, of the reciprocal gift of self. The meaning is one of complementarity.

Equality and difference in complementarity: these are the original constitutive elements of human sexuality.

2. The Bible further enlightens us on another dimension of the problem: the historical dimension. With sin, man has introduced a deep disorder, whose consequences will fall upon him heavily. These consequences are a punishment. For woman, they will be the pains of the childbirth and her heavy submission to the man: "Yet your desire shall be for your husband, and he shall rule over you" (Gen 3,16b). In any case,

the punishment is accompanied with the promise of salvation. At this point one understands the difficulty peculiar to this problem. With sin, man deviates from his nature and from the finalities willed by God. Here, the language is not of the communion of persons, but of domination, indicating a relationship of inequality in which the rights of the oppressed person are not respected.

Therefore, since that moment are the differences found in history and in social customs expressions of complementarity or expressions of relations of domination as a consequence of sin? Because of the weight of bias, interpreting this is not always easy.

Here, two texts from the New Testament in particular, open some liberating perspectives. The first one recalls the teaching of Jesus on marriage and divorce (Mt 19,1-12; cf. Mk 10,1-12).

The Pharisees' question on divorce gives us this opportunity. Jesus reminds his interlocutors of the accounts of Creation. «What therefore God has joined together, let no man put asunder» (Mt 19,6). They present to him as an objection the law of Moses that permits divorce. "He said to them, 'For your hardness of heart Moses allowed you to divorce your wives, but from the beginning it was not so'" (Mt 19,8). The hardness of heart refers to the historical condition of man as a sinner, which explains the tolerance of the old Law. But under the regime of the new Law, man is capable to find again the original plan

(from the beginning) and to live according to the demands of his genuine nature.

The law of the Gospel puts an end to the tolerances of the old Law. When it will be necessary to judge social and cultural situations, it will be necessary to state the question: is this situation in conformity with the original Law or does it come from "hardness of heart"?

The second reference is to the words of Paul on the economy of the new Law, that we can read in The Letter to the Galatians (3,26-28): "For in Christ Jesus you are all sons of God, through faith. For as many of you as were baptized into Christ have put on Christ. There is neither Jew nor Greek, there is neither slave nor free, there is neither male nor female; for you are all one in Christ Jesus." Paul starts from historical differences, lived as factors of separation and opposition, in order to highlight the new life in Christ; this introduces a unity in relation to which such differences become less important. Paul takes note of these differences without intending to analyze them. They are in fact of a very different nature. The terms Jew and Greek recall an essential distinction in the economy of the old Law; the difference slave/free belongs to what we call today a structure of sin; as for the distinction male/female, it is considered according to the social status of the period. We therefore have here a strong affirmation of equality.

3. From what precedes, we can highlight some firm points. The first one is that every human being, man or woman, has an inalienable dignity as a person and that this dignity is a source of imprescriptible rights. It is foundational for the equality of men and women. This is the first point. The second point is that the difference between the sexes is enriching for humanity. It has to be understood as complementarity and as a vocation to communion and to the gift of self. The third brings us to human history, marked by the Original Fall and by the Redemption. With the strength of grace, man has the capability to rediscover the way of the original plan of God for the human couple.

Equality in diversity: how can we articulate these two essential aspects? Certainly the answer is not to fall into mimesis or into the masculinization of woman. Femininity represents for the woman the authentic expression of the "image and likeness"; it is the likeness of God.

John Paul II, in commenting on Gen 1,27 remarkably writes, "It seems that to the sacred author what matters is to affirm, that in the end, woman has in herself the image of God not less than man, and that she has been created in God's image in what it is specific to her persona as a woman and not only in what she has in common with man. It is an equality in diversity, equality and difference that have to be recognized in civil society and in the Church" (General Audience June 22, 1994).

4. Respect for her dignity and the acknowledgment of the equal rights of women, corresponds to the equality of her rights regarding her participation in cultural, economic, social and political life. But this achievement of equality in the right to participate has to go together with the acknowledgment of her particular female vocation; it cannot do her harm or penalize motherhood or family as happens too often.

It is a task of Christians, in particular, to denounce the offenses against women's dignity and to work unsparingly to promote the recognition of this dignity.

The Christian message is in conflict with a mentality that considers the human being not as a person, but as a thing, an object for sale, at the service of selfish interests or of pleasure; women are the first victims of such a mentality; they suffer from scorn, oppression and violence; pornography is a profanation of the image of God; prostitution, which finds much complicity in large sectors of society, is a particularly hateful form of slavery that exploits the misery of the Third World, even using minors. We have to think also about discriminations against young ladies in the field of education.

Industrialized societies are not without discrimination regarding work and compensation, or regarding some categories such as women who are alone. It is necessary to fight with strength to change a mentality that feeds the in-

equalities and refuses to recognize in women their dignity as persons and relations of equal rights.

Denunciation is not enough. It is also of primary importance to promote, on the political and juridical level and also in mentalities, full respect for women's rights.

In this field Christians should be pioneers.

Regarding the structure of a woman's work day, we can advocate the full acknowledgment of domestic work, while lamenting that women were too often considered inferior to work outside the home; we can think of equality between the spouses in family law, the respect and the support of motherhood and of family; in short, the improvement of the conditions of work that would allow women to exercise their specific vocation within the framework of the equality of rights.

5. In fact, where women are not recognized as persons with equal rights, violence inevitably enters in human relations. Women are the first victims of such situations, which are also degrading for men. Dialogue and communion become impossible, and thus the humanity of men and women is wounded.

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24; JOHN PAUL II, Apostolic Letter *Mulieris dignitatem*; JOHN PAUL II, General Audience on 22<sup>nd</sup>.6.1994; JOHN PAUL II, *La donna educatrice della pace* (8<sup>th</sup>.12.1994) for the World Day for Peace 1995; JOHN PAUL II, *Letters to Women* (29<sup>th</sup>.6.1995); PELLETIER A. - M. *Le christianisme et les femmes. Vingt siècles d'histoire*, Le Cerf, Paris 2001.



# Family and Personalism

Fernando Moreno Valencia

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*The notion of “person”, inherited from the ancient Greeks (and especially from Aristotle), evolved with the practice of law and Stoic philosophy (Cicero, Marcus Aurelius) of ancient Rome, and fully developed in Christian thought (Boethius, Saint Thomas Aquinas). Here, the Aristotelian notion of man as a “rational animal” and the biblical reference that reveals the creation of man in “God’s image” (Gn 1, 26-27) converge. It is from this concept of person as an incarnated being that the nature of man as a “social animal” is understood since the person finds the proper conditions necessary for life and development within society. A risk exists in this personalist perspective, and some have fallen into the trap under the influence of Marxism, psychoanalytic theories or radical feminism. Nevertheless, the millennial wisdom of the most significant thinkers, from Aristotle to Confucius, has always emphasized that political society (polis or empire) has existed only as an outgrowth of the family, because the family preceded society and is more necessary (Nicomachean Ethics, VIII, 12 [7]). It is precisely because the family is the place of truth and benevolent love, that it allows the human person to open themselves through authentic acts to “become more” (Karol Wojtyła). On the other hand, just as the person does not develop by himself, but by relating to others, the family, in turn, does not develop by itself, but by relating to other families and by establishing dialogue and communication with its “first cause”, which is God. If this bond between family and the Creator weakens, the family becomes fragile and loses its own capacity to form the individual. (↗ The Enlarged Family, Single-parent Family; Family, Nature and the Person; Reconstructed Family; Traditional Family; Family and Philosophy; Family and the Principle of Subsidiarity; New Models of the Family).*

Personalism implies an anthropological “dimension” and an ethical “dimension”. In other words, the anthropological root of personalism (the human being) projects itself with ethical demands, and in relation to them, that “root” is the principle, source, end and norm.

The term and the notion of the person is of Roman origin<sup>1</sup> and reaches its

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<sup>1</sup> Boethius (480-524) points out that the person (hypostasis, in Greek) designates, firstly, the mask used in the comedies and tragedies (cf. BOETHIUS, *De duabus naturis*, LXIV, 1343). Therefore, since “famous men where represented in comedies and tragedies, the

complete doctrinal development within the Christian sphere<sup>2</sup> without discarding the profound discoveries and teachings provided by Ancient Greece,<sup>3</sup> especially the philosophy of Aristotle. Hence, it can be stated that from here, the notion of person—defined by Boethius as an “individual substance of a rational nature”<sup>4</sup> supposes the “convergence” of the Aristotelian definition of man as a rational animal<sup>5</sup> and the biblical datum revealing that man was created in God’s image and likeness.<sup>6</sup> This “convergence” makes it possible to understand the magisterial judgment, of John Paul II, who

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ones who had a certain dignity were given the name “person”, in the assemblies.” (THOMAS AQUINAS, *STh*, I, q. 29, a. 3, quoted by M. D. Philippe, “Personne et interpersonnalité” in *L’antropologie de Saint Thomas*, by N.A. LUYTEN, Éd. Universitaires, Fribourg 1974, 124-160, especially 127 and 147.

2 Since the first centuries of the Christian Era until the XII Century, when Thomas Aquinas (especially from the Revelation, Aristotle, Saint Augustine and Boethius), contributed theologically and philosophically— all the fundamental “elements” for the definition of being and the notion of the person.

3 Also in Ancient Rome, especially in Cicero and the Latin Stoics. Cf. for example, MARCUS AURELIUS, *Meditations*, in general.

4 Cf. Note 1. The human person corresponds to the third metaphysical level (and of dignity) of the personality. Firstly, there is the divine person, and secondly the person of the angel. Cf. THOMAS AQUINAS, *De substantiis separatis*, XVIII-XX.

5 Cf. ARISTOTLE, *De anima*, II, 1.

6 Gen 1, 26-27.

says that man is a person because he was created in God’s image.<sup>7</sup>

Now, the human person (subject and agent) exists in a rational nature, which, as seen by Aristotle,<sup>8</sup> constitutes the norm of his acts and of his life.<sup>9</sup> From here, man has to be acknowledged as a “nucleus” of freedom (Gilson), coming from his own rational nature. “The whole root of freedom is in the reason,” said Saint Thomas Aquinas.<sup>10</sup> Thus, “the world of freedom supposes the world of nature (of nature understood metaphysically).”<sup>11</sup> Being free is, in the first place, and in some way, being the cause of oneself (*causa sui*)<sup>12</sup>; “being owner of one’s judgment,” the free arbiter of one’s own determination (*liberi arbitrii*).<sup>13</sup>

Nevertheless, the nucleus of freedom which man is, and which has its roots in the spirit (Saint Thomas) does not develop<sup>14</sup> independently of the “organic body”, in the expression of Aristotle.<sup>15</sup> “Since the rational soul—says Saint Thomas—is a part of human nature, it

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7 JOHN PAUL II, *Laborem exercens*, 6

8 ARISTOTLE, *De anima*, I, 1.

9 ARISTOTLE, *De anima*, II, 4.

10 THOMAS AQUINAS, *De veritate*, IV, a. 2.

11 J. MARITAIN, *Du régime temporel et de la liberté*, Desclée De Brouwer, Paris 1933, 5.

12 ARISTOTLE, *Nicomachean Ethics*, III, 22 (4). “Each of our free acts exceeds us, and creates us again” (G. THIBON, *Destin de l’homme*, Desclée De Brouwer, Paris s. d., 15).

13 MARITAIN, *Du régime temporel*, 11.

14 Exultation freedom, in the expression of MARITAIN, *Du régime temporel*, 40.

15 ARISTOTLE, *De Anima*, II, 1.

would not realize its natural perfection, if it were not united to the body. Consequently, the human soul, must exist in a body, for being separated from it goes beyond its natural being.” Furthermore, Aquinas comes to affirm that “the soul, united to the body, resembles God more than if it were separated from it; since by being attached to it—the soul possesses its own nature in a more perfect way.”<sup>16</sup> Thus, “if man is a person, it is not only because of the soul, but because of his soul and body, since he subsists because of them both.”<sup>17</sup>

Man is an incarnated spirit, and as such, he must then be considered, naturally a “social animal”.<sup>18</sup> Man operates his sociability complementarily by indigence and superabundance. “For what reason –Jacques Maritain asked– does the person have the natural instinct to live in society? Firstly, as a person, that is to say, according to his own perfections, and in virtue of this tendency to share knowledge and love [...], that demands

the establishment of relations with other people. Considered in the light of his radical generosity, the human person tends to have a superabundance of social communications; the law of superabundance is inscribed in the deepest part of the being, of life, intelligence and love. Secondly—the Christian philosopher continues, the human person demands life in society in virtue of his *needs*, that is to say, in virtue of the requirements, which derive from his material individuality. Considered under the aspect of these necessities, the person tends to join a body of social communication, without which it is impossible to reach the plenitude of his life and to meet his needs. Thus, society appears as giving the person the conditions of existence and development he needs. He cannot reach his plenitude by his own means; he finds in society goods that are essential for him.”<sup>19</sup>

16 THOMAS AQUINAS, *De potentia*, IV, a. 2 y V, a. 10, respectively. Also Cf. K. WOJTYLA, *Love and responsibility* (Sal Terrae, Santander<sup>6</sup> 1978. Ed. espaniola.

17 THOMAS AQUINAS, *Comments to the III Book of the Sentences of Pedro Lombardo*, V, 3.

18 Social and/or political. Cf. ARISTOTLE, *Politics* I, 1; cf. THOMAS AQUINAS, *Ethicorum*, IX, 10 (1891); ID., *Politicorum*, I, 6. In the *De potentia*, Aquinas proves that “man is concerned naturally not only with himself but also with the conditions of the community in which he lives, such as the family, the political society and even all the world” (V, a. 6).

19 J. MARITAIN, *La persona y el bien común*, Desclée De Brouwer, Buenos Aires 1948, 53-54 (also p. 81). Maritain, in this fundamental text, emphasizes, the controversial distinction (but correct in our understanding) between the person and the individual that the French Thomistic philosopher accepted from the previous work of fathers Schwalm and Garrigou-Lagrange. Cf. about it MARITAIN, *La persona y el bien común*, Chap. 3 (pp. 33-49); ID., *Trois Réformateurs, Luther, Descartes, Rousseau*, Plon, Paris 1925, 26-39. As mentioned by MARITAIN “the full meaning of the term personalist supposes the Thomist distinction between the formal aspect of the individual and the formal aspect of the person” (MARITAIN, *Du régime temporel*, 55).

The family is –the first and fundamental social field –where the person encounters these goods. Let us be precise. In the sixth and fifth century before the beginning of the Christian era, the Chinese philosopher and moralist Confucius (551-479), took up the thousands of years of experience, teachings and even of wisdom, and gave testimony to the natural importance of the family in relation to its double character: social (and political) and educational. “To govern deliberately a kingdom-says Confucius - it is necessary first to dedicate oneself to the establishment of the family in the order proper to it.”<sup>20</sup> That said, “a family that responds to the demands of human nature and practices love, will be enough to engender the same virtues in the nation.”<sup>21</sup> In the same spirit, Mencius later affirms (IV and III centuries B.C.), that the “basis of the empire is in the kingdom; that of the kingdom is in the family; and that of the family is in the person.”<sup>22</sup>

The teachings of Confucius and Mencius receive a kind of ratification (independently)<sup>23</sup> in Greece, by the

anthropological and moral philosophies of Aristotle (384-322). The great Greek philosopher,<sup>24</sup> opposing Plato, his “teacher”,<sup>25</sup> conceives of the family mainly from (and in...) the marital bond of a man (male) and a woman. It is in this *natural*<sup>26</sup> bond that the children are engendered and with them, society itself, in “structure” as well as “dynamics”. In this sense, the family is, already for the great pagan philosopher, the cell of society, as well as its “seed”, its seminal principle, or its “nursery”, as will be seen later by Saint Augustine (354-430).<sup>27</sup>

In any case, Aristotle shows us that the *Polis*, the largest society, the most complex one, and to some extent, the most perfect, does not exist except (genetically) *from* the family, and always *in* the family.<sup>28</sup> *A fortiori*, and logically, agreeing with the philosopher from Stagira, it must be said that, if society is altered, the family is also altered; even

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Cf. R. GARRIGOU-LAGRANGE, *Le sens commun: la philosophie de l'être et les formules dogmatiques*, Paris 1936, Chap. 2.

20 CONFUCIUS, *The Great Study*, IX, 1 and 5. (French edition, E. Fasquelle, Bibliothèque Charpentier, Paris, s. d.).

21 CONFUCIUS, IX, 3.

22 MENG-TZU, “*Fourth Classical Book*” (Title of the French edition referred to) II, 1 a. 5.

23 Until then, there was no communication between the Chinese and Greek cultures.

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24 Or simply, the philosopher, as Saint Thomas Aquinas, will refer to him later (XIII Century), in many parts of his extensive literature in theology and philosophy.

25 Not his “master”, as Socrates, was to a great extent for Plato.

26 Normative for Aristotle (and *naturally*), regarding any family worthy to be considered as such.

27 S. Agustin, *De civitate Dei*. XV, 16. “The political society is composed of families,” as remained by Saint Thomas Aquinas, when commenting Aristotle. THOMAS AQUINAS, *Politicorum*, I, 2 (1) and I, 10 (8).

28 ARISTOTLE, *The politics*, I, 1.

more basically, if the family is altered, society is altered; and if the family is destroyed, then society itself is destroyed.<sup>29</sup>

However, there is more. Since man is, by nature, a social animal,<sup>30</sup> and since the family is the most fundamental concrete expression of this social nature,<sup>31</sup> man's social nature and his life itself are both affected if the existence of the family is altered or corrupted. However, if "man is naturally a political animal, he is even more in his nature a conjugal animal."<sup>32</sup> Because of this, "man is naturally more inclined to live as a couple (male and female) than in a political society; even more so since the family antedates society and is more necessary than it."<sup>33</sup>

29 As an excuse for adapting it to modern times, by accepting diversity ("families" in plural ...) which in relativizing its own being and its way of living, at least as a fact, destroys it. Cf. ARISTOTLE, *The Politics*, I, 1.

30 Aristotle said *Zoon Politikon*, (*The Politics*, I, 1). Saint Thomas said "Naturally, man is a political animal", (*Ethicorum*, I, 9 [112], and VIII, 12 [1719]).

31 ARISTOTLE, *Nicomachean Ethics*, VIII, 12 (7).

32 THOMAS AQUINAS, *Ethicorum*, VIII, 12 (1719).

33 ARISTOTLE, *Nicomachean Ethics*, VIII, 12 (7). The term "couple" needs to be specified since it has been subject to ideological deviation. In this regard, we emphasize the words of Saint Thomas Aquinas: "A community formed by two persons" (THOMAS AQUINAS, *Politicorum*, I, 1 [19]). In marriage, the couple is the rightful

The principle is here in the being and the notion of the human person. In this respect, Maritain's contribution, based on Aquinas,<sup>34</sup> is definitive. The family does not exist except from the people that constitute it. And since the family is a *community*,<sup>35</sup> it has a "dimension" that is properly "societal" and that complements it,<sup>36</sup> confirms the existence of a *common good*, proper to the family, that is, an *end*, a *norm* and tasks,<sup>37</sup> where the "good human life" (Saint Thomas Aquinas) of the family group is accomplished. In this "dynamic", it is important to recognize the strict norms of the *good* that needs to be done and of the bad that needs to be avoided (natural

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union of a woman and a man.

34 Cf. *supra*.

35 That is, a group in which instinct and affection or instinct permeated by affectivity, up to a certain point (and only to a certain point) is more important than "determinations" (Maritain)-not over the operations- of the "human intelligence and will." Cf. MARITAIN, *L'homme et l'Etat*, PUF, Paris 1965, 3. We do not completely agree with the notion of the community that Maritain contrasts to society, following that of Delos and Tönnies.

36 With the clarification already made, we use what seems the appropriate distinction between a community and a society proposed first by F. TÖNNIES (*Community and Society*), and then by J. T. DELOS (*The Nation*), and J. MARITAIN (*Man and the State*).

37 According to Messner, *the commonweal* is "an end and a task" (of society). Cf. J. MESSNER, *El bien común, fin y tarea de la sociedad* (Euro America, Madrid, 1959). Cf. Id., *The social question* (Rialp, Madrid 1960) 354-362.

law).<sup>38</sup> Here is the ethical *principle* and the ethical *norms* of the just act, and the primacy of contemplation over action,<sup>39</sup> as well as of the immanent act over the transitive act.<sup>40</sup> All of that, within the family milieu, should help encourage living together socially as a family. It promotes the growth of the persons in their “coming into being” what they are (Pindar); and their desire “to be more”, as Karol Wojtyla expresses rightly (philosopher and theologian).<sup>41</sup>

Only by assuming the double primacy (of contemplation and immanence), can we respond to the fundamental anthropological demand of *recognizing* the “other”. This acknowledgement, which

is enunciated by Lévinas –not without ambiguity– goes beyond the intellectual knowledge of the other.<sup>42</sup> More precisely, it supposes the connatural affection that implies an “obscure, unsystematic, vital knowledge, which proceeds from a tendential experience or from ‘connaturality.’”<sup>43</sup>

Conceived this way, the *recognition* of the “other” is the work of *love*; of love more than friendship, and more than benevolent love. In other words, the love that gives more than what “it has” to realize itself in “the gift of self.”<sup>44</sup> This gift, especially in the case of the family, implies reciprocity, according to which “the lover gives himself to the beloved and the beloved to the lover, *as their All*.”<sup>45</sup> Here “love without reciprocity is condemned, first to vegetate, and then to die.” The “structure of love is of an interpersonal community.”<sup>46</sup> Especially, “spousal love” (basis and origin of the family) “consists of the gift of the person. Its essence is the gift of self, of one’s

38 J. MARITAIN, *La loi naturelle ou loi non-écrite*, Presses Universitaires de Fribourg, Fribourg 1986, in general.

39 Third level of principles of natural law (exclusive to man), regarding the search for the truth (to *contemplate* it in the first place). Cf. THOMAS AQUINAS, *STh.* I-II, q. 94, a. 3: “The contemplative life gives disinterested satisfaction without being submitted to the law of temporal social existence: work to eat.”

J. MARITAIN, “Action et contemplation.” In *ID.*, *Oeuvres 1912-1939*, Desclée De Brouwer, Paris 1975, 1159-1203 and 1172.

40 “The transitive act is one where a being acts on another, over a *patient*, to produce an effect on him ... The immanent act [...] is a characteristic of the life of the spirit; here the agent has in himself his own perfection as an agent [...], the immanent act is a self-perfecting quality.” (J. MARITAIN, “Action et contemplation”, 1160 and 1161).

41 Cf. K. WOJTYLA, *Persona e Atto*, Libreria Editrice Vaticana. Vatican City 1982, 175-195 (especially).

42 See J. M. AGUILAR, “El pensamiento de Emmanuel Lévinas”: *Atlántida* 12 (October-December 1992), 64-75, particularly, 69; cf. E. LÉVINAS, *Totalité et infini*, 84-89, and 304.

43 J. MARITAIN, *L'homme et l'Etat*, 84

44 J. MARITAIN, *Carnet de Notes*, Desclée De Brouwer, Paris 1965, 302-305; cf. K. WOJTYLA, *Love and Responsibility*, 70.

45 J. MARITAIN, *Carnet de Notes*, p. 307; cf. WOJTYLA, *Love and Responsibility*, 99 and 100.

46 WOJTYLA, *Love and Responsibility*, 62 and 64 (and 92). “The love of man and woman leads, in marriage, to the gift of reciprocity” (p. 71).

'I.'"<sup>47</sup> "Man, must give himself to realize himself."<sup>48</sup>

Here is the "energy" of true *dialogue*,<sup>49</sup> in which the unity of the family group deepens when surpassing (in a certain sense) a mere *relationship* and achieving *identification*. Therefore, dialogue is equivalent to the "*encounter*, considered as having a priceless spiritual value."<sup>50</sup> Dialogue is also the way to a true *participation* for every one and all the members of the family group. Karol Wojtyla rightly refers, to participation as "acting with others", in view of "existing and acting as a person."<sup>51</sup> He also affirms that the common good is the "principle of a correct participation, thanks to which the person acts together with others, performs authentic acts and can become self realized through them."<sup>52</sup> Contrary to what occurs with Marx (and Marxism in general), "*to have* and *to be* should not be opposed too much, as if one had to choose one or the other."<sup>53</sup> This is because "one can-

not be, without having."<sup>54</sup>

Moreover, in this "dynamic" of "acting 'together with others', we discover the principle of participation as an essential feature, and, at the same time, as a particular source of rights and duties."<sup>55</sup>

So, the rights and duties of the human *person* are not only projected first of all in the family, as in a proper subject,<sup>56</sup> but also in that (family) "environment" where its subjective "dimension" is cultivated, and initially and pedagogically its social "praxis". In this respect, in which rights and duties are at stake, the family manifests itself as "the nursery of society" (Saint Augustine). The rights *of* the family are expressed first in relation to its "constitution, founded on the law of the State,"<sup>57</sup> and complementarily in relationship to work and its just remuneration,<sup>58</sup> but not only in these. In a fundamental sense, it is summed up by the right to human life (*simpliciter*) and to the *good* life. This necessarily implies the right to a "free choice of a state of life," where marriage<sup>59</sup> can

47 WOJTYLA, *Love and Responsibility*, 69.

48 L. GARDET, *Ouvrir les frontières de l'esprit*, Cerf, Paris 1982, 152.

49 "The common search for truth and the good", said John Paul II in his XVI Message the World Day of Peace.

50 G. MARCEL, *L'homme problématique*, Aubier, Paris 1955, 70.

51 Cf. WOJTYLA, *Persona e Atto*, 306 (especially)

52 WOJTYLA, *Persona e Atto*, 318.

53 As occurs with the neo-Marxist Eric Fromm (for instance): Cf. E. FROMM, *To have or to be?* Harper and Row, New York

1976.

54 E. MOUNIER, *Le personnalisme*, PUF, Paris 1969, 57.

55 E. MOUNIER, *Le personnalisme*, 310.

56 Cf. JOHN PAUL II, *Familiaris consortio*, 46.

57 J. MARITAIN, *Les droits de l'homme et la loi naturelle*, Éd. De la Maison Française, New York 1942, 136.

58 JOHN PAUL II, *Laborem exercens*, 10 and 19.

59 Cf. C. JOURNET, *Exigences chrétiennes*

be especially found, in its natural and stable unity (indissoluble), and in its natural purposes, linked to the perfection of the spouses, to the procreation and the education of their progeny.<sup>60</sup>

This last is defined by the formation of the minds and the “heart” in the good and in the truth. “The end for which the family exists—said Maritain—is the producing and forming of human persons and preparing them to realize their total destiny. If the state has an educational function... it is to help the family accomplish its mission.”<sup>61</sup> The dignity of such a *mission* (and not a mere *function*) corresponds to the noble anthropological challenge: that man achieves what he really is (Pindar); that the human person “becomes more”. A challenge that necessarily places the family in a wider societal and, in a way, perfect sphere (the political society); as well as in a historical “dynamic” that starts weaving the development of the human person itself.<sup>62</sup>

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*en politique*, Egloff, Paris 1945, 310.

60 Cf. G. THIBON, *La crise moderne de l'amour*, Éditions Universitaires, Paris 1960, 106-107. It is worth recalling here with Josemaría Escrivá de Balaguer, that “marriage and family life are a royal road to sanctification” (cf. V. MESSORI, *Opus Dei. Una indagine*, Mondadori, Milan 1944, 172.

61 MARITAIN, *Les droits de l'homme*, 100.

62 Man is not history, as was assumed by Hegel. However, he is a historical being. Cf. MARITAIN, *Pour une philosophie de l'éducation*, Fayard, Paris 1969.

It is in view of understanding such an anthropological and moral requirement, with reference to the family, that we have looked to the contribution of a current of thought known as *personalism* in some of its most representative authors: J. Maritain, E. Mounier, G. Marcel, K. Wojtyła, Ch. Journet, R. Garrigou-Lagrange, J. Ratzinger, J. Messner, L. Gardet, E. Lévinas. We should also include: N. Berdyaev, M. Scheler, E. Stein, G. Thibon, V. Frankl, M. Blondel, L. J. Lebreton, E. Borne, J. Lacroix, O. Lacombe, A. del Noce, L. Sturzo, G. La Pira, J. M. Escrivá de Balaguer, L. Giussani and J. Ladrière... These authors “converge” on the human person from very different and even contradictory perspectives.<sup>63</sup>

On the other hand, with the exception of K. Wojtyła, J. Ratzinger and J. Escrivá de Balaguer (and to a certain extent G. Thibon), it must be noted that the contribution to the understanding of the family we are considering, is located in more *remote* principles (anthropological and ethical) than in proximate principles concerning the family itself. In other words, “personalist” authors (except for some exceptions) “jump” from the person to society, culture or to history.<sup>64</sup> The family has been

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63 The cases of Maritain, Journet, Lacombe, Gardet, on the one hand and Blondel, Lacroix, Scheler or Berdyaev, on the other.

64 Sometimes “humanity” and even the revolution, as in Berdyaev; probably, the least personalist of the personalists, but-



neglected or even forgotten by those who logically should have privileged references to it. We can agree with Vittorio Messori, that where “the inappropriately abstract, fanaticism, dehumanization, ‘intellectuals’ and ‘ideologues’” abound, “there nobody is concerned about ‘families.’”<sup>65</sup> However, if “personalism” is the “anti-ideology”, as affirmed by Jean Lacroix,<sup>66</sup> in the spirit of Mounier, the “discourse” on the family to a certain extent “mortgages” the *practical* (ethical and social), historical and cultural judgment about the *human person*. Not only is human *nature* important but also (and complementarily) the human *condition*, as shown magnificently by Jacques Maritain, in the spirit of Aquinas.<sup>67</sup> In

any case, if in some sense it is through democracy (not the “real” democracies, but democracy as a synonym of a *good society*) that the “progressive energies of history of humanity”<sup>68</sup> pass; it is not less a fact that a “civilization of universal human ascent,” says Lebreton,<sup>69</sup> passes necessarily through the family. The question here is not only *human* life in the practice of justice and love (and of solidarity), in the exercise of freedoms,<sup>70</sup> in the liberty of exultation, as Maritain says,<sup>71</sup> but also more fundamentally (*de iure* and *de facto*), in the practice of the *truth* that in a profound sense *causes* the *good* life which is personal, familial and political.

In times,<sup>72</sup> sealed by *lies*, the family appears more than ever as a “refuge”

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together with Mounier—the one who invoked personalism the most to identify himself. Cf. N. BERDYAEV, *Libertad y esclavitud del hombre*, EMECE, Buenos Aires 1995, in general.

65 MESSORI, *Opus Dei*, 100. The judgment of Messori does not apply, especially, to Maritain nor Journet, Gardet, Lacombe, Garrigou-Lagrange. An especially sad case appears to us to be that of L. J. LEBRET; the family does not appear in his *Pour une civilisation solidaire* (Paris, 1963), or in his *Suicide ou survie de l'Occident* (French ed., Les Éditions Ouvrières, Paris 1958).

66 Title of his book in 1974.

67 Especially in three of his works on moral philosophy and culture (more than on political philosophy...): *Du régime temporel et de la liberté* (1933), *Humanisme intégral* (1936) and *Le Paysan de la Garonne* (1966). If the reference to Maritain implies a true *inspiration* from his thought and not merely a rough *invoking* of him (as happens in the *decoratively* Christian political spheres, which Maritain

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never trusted), *Humanisme intégral* and *Le Paysan de la Garonne* must be considered as complementary.

68 Cf. J. MARITAIN, *L'homme et l'Etat*. 54.

69 LEBRET, *Pour une civilisation solidaire*, 124.

70 Cf. R. ARON, *Ensayo sobre las libertades*, Alianza Editorial, Madrid 1969, 71-230.

71 Cf. J. MARITAIN, *Principes d'une politique humaniste* (Hartmann, Paris 1944), 14-21.

72 “Oh times; oh customs!” we say with CICERO, *Catilinarie*, I, 1 (2) *De facto*, although not without exaggeration, it could be said with Hannah Arendt, that “truth has never been one of the political virtues; and lies have always been considered perfectly justified in political activity” (H. ARENDT, *Du mensonge à la violence*, Calmann-Lévy, Paris 1972, 10). In the same sense, Berdyaev noted “lies play a huge role in politics, while the role of truth is insignificant” (N. BERDYAEV, *Dialectique existentielle du divin et de l'humain*, J. B. Janin, Paris 1947, 151). For the notion of “lies”, cf. THOMAS AQUINAS, *STh*, II-II, q. 110.

(in any case, the “place”, the *locus*) privileged by *truth*; that is to say “living in the truth,” which is the same as living the truth (as appropriated by Edith Stein)<sup>73</sup>; to *tell* the truth.<sup>74</sup> Here is where (today more than ever) lies the challenge and the *educational* requirement for the family. Within the “context” of the natural “tension between the individual and the social... the family engenders men for temporal life and provides their first education.”<sup>75</sup> “People acquire most of their personal and group characteristics during childhood. This conditioning then operates, transmitted primarily by the family, to conform each of us into our being. In many cases, this configuration changes very little during life.”<sup>76</sup>

Whatever is said about this matter, what is in question here –beyond any

“pedagogical theory” –is the formation of human persons in truth. In this sense, Lévinas’s judgment that “society is the place of truth,”<sup>77</sup> is accomplished morally and pedagogically, and at least (*de iure*), in relation not only to political society (*Polis*), but also to the first and most fundamental expression of human sociability. In other words, in relation to the family, that has its origin in natural and normal human conjugality. Supposing truth is the good of the intelligence, we can say with Fr. Luigi Giussani that “the child is educated and grows with a well formed personality, already by the fact that they belong to their father and mother. This “belonging” is impregnated with teachings; it is rich in words, discourses, indications, and norms, even though these are not fruitful by themselves. On the contrary, the total achievement of the bond between a man, a woman, and the child is what provokes the flowering of the personal structure of the child.”<sup>78</sup> Here we are dealing with a positive “belonging”, rather than “possessing”. Lévinas’s judgment that “possession is the way in which an entity, though existing, is partially denied”<sup>79</sup>

73 Without accepting his judgment (mistaken according to us) on the formal definition of truth: *adequatio rei et intellectus*. Cf. E. STEIN, *Ricerca dell verità*, Città Nuova, Roma 1993, 162 and 163.

74 Cf. ARENDT, *Du mensonge à la violence*, 10-20. “The truth you can trust totally vanishes from public life; and along with it disappears the principal factor of stability in the constant dynamism of human affairs.” (*Ibid.*, 13); cf. ID., *Le système totalitaire*, Seuil, Paris 1972, 114; cf. V. HAVEL, *Disturbing the Peace*, A. Knopf, New York 1990, 72.

75 O. LACOMBE, *Existence de l’homme*, Desclée De Brouwer, Paris 1951, 71 and 72.

76 B. OLLMAN, quoted in R. L. HEILBRONER, *An Inquiry into the Human Prospect*, Norton, New York 1974, 121.

77 LÉVINAS, *Totalità e infinito*, 100.

78 L. GIUSSANI, *Alla ricerca del volto umano*, Jaca Book, Milan 1984, 53. Also, “the child needs to be protected from the world; his traditional place is in the family.” H. ARENDT, *La crise de la culture*, Paris, Gallimard 1972, 239.

79 E. LÉVINAS, “¿Es fundamental la ontología?”, in *Atlántida*, 12 (October-

would apply to the latter.

It is important to highlight, the indispensable (and positive) function of *authority*.<sup>80</sup> According to Hannah Arendt, “the questioning of all established authority, religious and profane, social and political, may be considered the most significant worldwide phenomenon of the decade corresponding to the sixties.”<sup>81</sup> This crisis of authority is closely tied to the pretension of individual autonomy, as pointed out by Cardinal Joseph Ratzinger.<sup>82</sup> This is linked to the crisis of tradition that is to say “to the crisis of our attitude towards everything concerning the past”.<sup>83</sup> Except for “the case of education, the responsibility of the world assumes the form of authority”.<sup>84</sup> More fundamentally, given that the need for authority is inherent to human nature, “antiauthoritarian education is inadequate for man”.<sup>85</sup> What must be rejected is not the indispensable, legitimate and desirable exercise of

authority (*auctoritas*), but “authoritarianism” and “possessiveness” within families. Here the due respect to each person member of a family (that is at the root of a just relationship between them) supposes the recognition of the “other”, in their personal being and in their particular condition (sex, age, capacity, character, vocation...). All of this (it appears to us) agrees with the profound judgment of Lévinas that, “in the acceptance of the face, the will opens itself to reason.”<sup>86</sup> “Love goes beyond the beloved, and because of this, the dark light that comes from beyond the face, filters through the face; something that does not yet exist; from a future that is never sufficiently the future; more distant than is possible.”<sup>87</sup> It is especially from here that the relationship between the family and political society is laid-out. A *de facto* relationship that is ambiguous and problematic, but also *in itself* natural and normal.

Perhaps, what needs to be pointed out first (in this relationship) is the need for a proper homogeneity and conver-

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December 1992), 76-81, especially 80.

80 Moral capacity to rule and be obeyed. cf. J. MARITAIN, *Principes d'une politique humaniste*, 37-65.

81 ARENDT, *Du mensonge à la violence*, 75. cf. ID., *La crise de la culture*, 243.

82 J. RATZINGER, *Il sale de la terra. Cristianesimo e Chiesa Cattolica nella svolta del terzo millennio*. San Paolo, Milan 1997, 191; cf. L. STRAUSS, “¿Que es la educación liberal?”, in *Atlántida* 12 (October-December 1992), 12-19, especially 18.

83 ARENDT, *La crise de la culture*, 247.

84 ARENDT, *La crise de la culture*, 243.

85 RATZINGER, *The Salt of the Earth*, 253.

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86 LÉVINAS, *Totalité e Infinito*, 224.

87 LÉVINAS, *Totalité e Infinito*, 262. This magnificent “Levinian” sense of transcendence has, after all, a sad anthropological mortgage, in what we have called elsewhere the mythical “other”, of Lévinas, for whom the individual person does not exist in itself (does not subsist), but is only in relationship to the “Other”. Cf. LÉVINAS, *Totalité e Infinito*, 220; F. MORENO, “Hermenéutica, política y filosofía,” in *Acta Philosophica* 1 (1992) 1 91-100, particularly 94.

gence between education in the family and academic and school education. Especially when these last two are taken up (directly or indirectly) by the State.<sup>88</sup> Regarding this, Hannah Arendt pertinently condemns, the “ideal of education permeated by Rousseauism, and in fact directly influenced by Rousseau; for whom education became a political means, and politics itself became a form of education,” or better yet “indoctrination.”<sup>89</sup>

However, the reciprocal relationship must not be understood only in relation to education, but also to the family, whose own subjective unity is inserted in the polis. “The spouses—says Gustave Thibon in *La crise moderne de l’amour*—coming together, not only commit to *each other* but also to a reality that contains them and surpasses them: first, they commit to the family whose source and support are themselves, then to the political society, vital body of which the families form the cells.”<sup>90</sup> This family and political “commitment” must reflect and project the natural diversity that constitutes

marriage and the family itself, starting from sexuality. “The woman must be a woman and the man must be a man,” as Edith Stein recalled.<sup>91</sup> In her conference on the *Ethos of the feminine vocations*, the author expresses the different natural qualities of femininity and masculinity. “A man tends to be involved in his issues and even more so if it is something that calls for the interests and disposition of others... For a woman, who is closer to the in temporal, who is not as “contemporary” as a man, this is more natural. With the facility and flexibility that constitute her talent, she penetrates compassionately in remote areas for her and understands them. In these, she would not find any attraction, if it were not for her interest in a person. Moreover, her superabundant richness of heart, her almost unlimited ability to give herself, her patience—while man is capable of doing more, she can resist more; while man has a more impulsive power, she tends to have more energy in reserve—which helps her to participate in the life of the man.”<sup>92</sup>

One could complement the notable characterization made by Edith Stein above with an application to the family (as a subject) of Mounier’s distinction between “a requirement of purity” and “a requirement of presence.” Some

88 It is known (to the point of saturation...) how the ideologues *in* power (and *of* power...) try to *impose* their “ideas” and methods in all the educational work of society.

89 ARENDT, *La crise de la culture*, 227.

90 ARENDT, *La crise de la culture*, 108.

“Marriage constitutes the irreducible nucleus of the human community: if it breaks, it is the whole society which spoils” (*ibidem*). Its indissolubility is already founded on the law of nature. *Ibid.*, 103 and following.

91 Quoted, in J. M. OESTERREICHER, *Siete filósofos judíos encuentran a Cristo*, Aguilar, Madrid, 1961, 429.

92 OESTERREICHER, *Siete filósofos judíos*, 424 and 425.

—like Mounier himself—“are less interested in doctrinal purity than in human contact.”<sup>93</sup> Others, though are—perhaps too scrupulous, if not “Pharisees”—never (or hardly ever) find the “recipe” that ensures (by necessary deduction...) the purity of the act (this time). In any case, both requirements are necessary for a just and proper “commitment” of the Christian and of the Christian family itself. The question here is the necessity of the act and the truth of the act.<sup>94</sup> Maurice Blondel was known for his dedication (almost obsessively so...) to the theme of the act that characterized his intellectual life. This, based on an anthropology in which the subject does not really exist except when and through acting (and in the will that produces it),<sup>95</sup> finishes by mystifying the act itself and proposing activism. “We are not, we do not know and we do not live except *sub specie actionis*.”<sup>96</sup> “In human relations—says Blondel often—, everything is action, everything is born from action, and everything winds up in action.”<sup>97</sup>

The core of a true personalist perspective is (we think) to take action as “a second act”, from the being of man.<sup>98</sup>

Its nature is, in the agent (person), the norm of his acts. In other words, the law of nature constitutes and at the same time, trains man to act in the order of the *good*. This (the good) is the *end* of the agent, who, even if he desires evil, does not want it for itself, but for the reason of good.<sup>99</sup>

Understood in this way (from its anthropological principle), the action that manifests the being of man (it is his epiphany), in turn, leads him towards perfection; it makes him “be better” and through that to “be more”. To the extent that the family can be seen as a subject and a personal agent (composed of human persons), then everything said strictly about the individual person itself can apply to the family in an analogical way. In addition, the family comes to “be more”, by performing the good. All of this supposes an opening and giving to others and to the world. In addition, the family commits (*engagement*) to the exercise of its duties and rights, especially regarding marriage, on the one hand, and human life, on the other.

However, human life, marriage and family are being radically questioned today by the agents of the “culture of death” (John Paul II).<sup>100</sup> Its political-

93 E. Mounier, *Communisme, anarchie et personnalisme*, Seuil, Paris 1966, 25-26.

94 Cf. J. MARITAIN, *Humanisme intégral*, Aubier-Montaigne, Paris s. d. 296-312.

95 M. BLONDEL, *L'action*, 240 and 278 in particular.

96 M. BLONDEL, *L'action*, 293.

97 M. BLONDEL, *L'action*, 348.

98 *Operari sequitur esse et modus operandi*

*modum essendi*.

99 Cf. THOMAS AQUINAS, *De malo*, I, a. 1.

100 These “agents” are individual persons, groups and institutions. Together with Simone de Beauvoir, Judith Butler, Cristina Grela, Elizabeth Schüssler or Jacques Lacan, are the

ideological operativeness leads to the degradation of human life, the family, society and culture.<sup>101</sup> In its *principle*, the *spiritual soul* (which makes up and animates the human person) is replaced by *sexuality*, common to man and to the other animals. From here, and through homosexuality and *gender*, the aim is to destroy the family (called “traditional”...), or at least to subsume it (looking for parity?) in the plural: there will be as many types of families as there are possible heterosexual or homosexual combinations. To an extreme degree, as has already happened—there will be *logical* demands to expand the family to include the relationship (stable or not... it does not matter) between a man (male or female) and an animal (dog, cat...). “On this road, a strange internal mutation occurs, which presents itself as a real uprooting (*déracinement*). What was believed to be normal, is not anymore; it is fulfilled perhaps only through exceptional conditions, which do not gua-

rantee its lasting definitively, as we had naively thought.”<sup>102</sup> How is this new<sup>103</sup> attack on humanity presented? It is important to point out in the beginning that neither the ambiguities nor (to a lesser extent) the holes and deficiencies of “personalism” are indifferent—to say the least—to the problem (a very grave one) that stalks humanity, in which the family appears as the greatest obstacle or as “the last bastion” and a “last resort”.

Blondel, Lacroix, Mounier, Berdyaev have not been completely absent from this perverted and demeaning “dynamics”. That is how the Russian “personalist”, influenced by Kant, Marx, Nietzsche and Schopenhauer (but also by Pascal, Dostoyevsky, Tolstoy and even—very little...—by Maritain),<sup>104</sup> denies the *substantial* character of the human person<sup>105</sup> in order—in a certain way agreeing with Blondel—to emphasize the “creative” act, in the middle of the “effort and (the) struggle,” with which it combines.<sup>106</sup> From here, Berdyaev, in

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UN and the NGOs tied to them. There are also States (the Dutch, English or Chilean) and political parties (who *invoke*, Christianity Marxism or Liberalism) in the ideological and political promotion of that “culture”. *Last but not least*—the great majority of the *mass media* from grotesque and tawdry tabloids, such as Chile’s, The Clinic, to the largest “media” (CNN, London BBC, *La Repubblica*, *Le Monde*...) lean in the same direction.

101 With Gabriel Marcel, we could say that “before our eyes, the insensitivity expands without control” (MARCEL, *L’homme problématique*, 16).

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102 G. MARCEL, *L’homme problématique*, 16 and 17.

103 “New”, we say in relation to the criminal Marxist “experiment”; which today is largely controlled in its criminality and its political “praxis”; cf. J.-F. REVEL, *La grande parade*, Plon, Paris 2000.

104 Cf. BERDYAEV, *Libertad y esclavitud del hombre*, 13-25.

105 BERDYAEV, *Libertad y esclavitud del hombre* 30.

106 BERDYAEV, *Libertad y esclavitud del hombre*, 32. Cf. Id., *Dialectique existentielle du divin et de l’humain*, 157 and 158.

an incoherent way (although not totally improperly) claims repeatedly the primacy of the individual person over the collectivity.<sup>107</sup> This claim supposes more fundamentally a “dialectic” *opposition* in which the collectivity—including the family—is surpassed. Berdyaev pejoratively places the family among the “principles of social conservation... monarchical, national, of authority,... of property”.<sup>108</sup> According to our author, “man is a... slave of the family”<sup>109</sup> and of sexuality.<sup>110</sup> Here Berdyaev, anticipates, one of the “theses” of ideological feminism, and in a certain way, the very concept of *gender*.<sup>111</sup> For the Russian “personalist”, the “sexual union manifestly bears the seal of human decadence.”<sup>112</sup> With this, once more Berdyaev, anticipates in a certain way the current sexist ideology, when it invokes the rights of homosexuality (active or passive...).

Finally, the judgments of the author on love are, to say the least, confusing and bizarre. “One cannot and one must not give up love – he says – in the name of social duty and religion; this require-

ment can only be imposed on slaves.”<sup>113</sup> What a convergence with those who separate sexuality and conjugality; or those who make sexuality (“generic”, but also “physical”...) the norm of any union! Berdyaev believes that marriage and family... deny... the right to love as a vital and ecstatic tension.”<sup>114</sup> However, the idea of love that the Russian author has, “one that re-establishes the full androgynous totality of persons,”<sup>115</sup> can be seen in the relationship between the notions referred to here and his attitude (as arrogant as stupid) towards the very concept and Christian view of love. Nicolas Berdyaev thinks<sup>116</sup> that “the Christian theologians, the masters of the Church, the official representatives of Christianity, never knew how to express themselves about love except by speaking trivialities... A man, such as Saint Augustine –says our author– could write a treatise on marriage that appears identical to one on raising cattle; he has no clue about the existence of love and says nothing about it, like all the other Christian doctors, who, despite their moralism... have always enunciated

107 BERDYAEV, *Libertad y esclavitud del hombre*, 35-40.

108 BERDYAEV, *Libertad y esclavitud del hombre*, 25.

109 BERDYAEV, *Libertad y esclavitud del hombre*, 290.

110 BERDYAEV, *Libertad y esclavitud del hombre*, 290.

111 Cf. *Infra*.

112 BERDYAEV, *Libertad y esclavitud del hombre* 293.

113 BERDYAEV, *Libertad y esclavitud del hombre* 283.

114 BERDYAEV, *Libertad y esclavitud del hombre* 283.

115 BERDYAEV, *Libertad y esclavitud del hombre* 285.

116 With Aristotle, we could make a benevolent interpretation (but not *reverentialis*...), supposing that Berdyaev does not really *believe* what he says(!).

immoral ideas, that is to say, contrary to the idea of personalism, seeing the person as a means at the service of the life of the species.”<sup>117</sup>

Undoubtedly, we are confronted here with a “personalism” that rejects its Christian origin because it is radically corrupted by the influence of Marx, Nietzsche and Freud. It is not the human person, nor true love, which supports the family and marriage, which inspires Berdyaev. He is influenced by the Freudian libido, which conceives the sexual instinct as a tendency to “dominate”, a heated “desire to see and know.”<sup>118</sup> Freud conceives love as the predominance of “the psychic tendencies of the sexual instinct” over “the corporeal or ‘sensual’ demands.”<sup>119</sup>

This reductionism, which perverts the very (spiritual) sense of love, is the principle of degradation and even of destruction of the person (in his own life), of conjugality, of the family, of society and of culture.<sup>120</sup> In this respect,

Freud’s “work” is especially completed (and even deepened...) by Simone de Beauvoir, one of the principal agents of ideological feminism, which has fostered anti-personalism up to now, and on which the “culture of death” is based. According to Simone de Beauvoir, “some passages of the dialectic by which Hegel defines the master-slave relationship could be more applicable to the relationship between men and women.”<sup>121</sup> Later, she mentions that “the society has always been masculine and the political power has always been in the hands of men.”<sup>122</sup> Furthermore “woman –for the French author– is in great part an invention of men.”<sup>123</sup> With all of this, she believes “that the Christian ideology has contributed greatly to the oppression of women.”<sup>124</sup>

This situation has awakened women’s “spontaneous desire to strengthen their power over the world. Thus, they protest against the inferior condition to which they have been condemned.”<sup>125</sup> And this condition, together with “the economic evolution” is what would be “shaking the institution of marriage;

117 BERDYAEV, *Libertad y esclavitud del hombre* 283 and 284.

118 S. FREUD, *Introduction à la psychanalyse* Payot, Paris 1970, 309.

119 FREUD, *Introduction*, 310. cf. R. DALBIEZ, *La méthode psychanalytique et la doctrine freudienne*, Desclée de Brouwer, Paris 1949, 185-267.

120 The notable work of Victor Frankl in the psychological sphere is the best refutation of the Freudian ideology; cf. for example V. FRANKL, *El hombre en busca de sentido*, Herder, Barcelona 1996, 41 and 68-70, especially.

121 S. DE BEAUVOIR, *Le deuxième sexe* I, Gallimard, Paris 1976, I, 114. cf. a pertinent critique in R. L. G. VALENZONA, *UN Beijing Fourth Conference on Women. An Agenda for a New Social Order*, Reyes Publ. Inc., 1995, 5 and 6.

122 DE BEAUVOIR, *Le deuxième sexe* I, 122 and 237.

123 DE BEAUVOIR, *Le deuxième sexe* I, 317.

124 DE BEAUVOIR, *Le deuxième sexe* I, 156.

125 DE BEAUVOIR, *Le deuxième sexe* II, 38.



which becomes a free union of two autonomous individuals... in which divorce can be achieved by either of the parties, under equal conditions. The woman is no longer limited to the reproductive function..."<sup>126</sup> In addition, "marriage in trying to regulate female eroticism, kills it."<sup>127</sup> Moreover, always according to Simone de Beauvoir, the very *principle* of marriage is "obscene because it transforms an exchange, which must be founded on a spontaneous impulse, into rights and duties."<sup>128</sup> So, "to love does not mean getting married and it is very difficult to understand how love can turn into an obligation."<sup>129</sup>

According to this ideology, "freedom must be regained in the bosom of sexuality."<sup>130</sup> We could then make concupiscence a virtue. Additionally, as Dietrich von Hildebrand says, "a man given to the concupiscence turns his back on the kingdom of moral values; he rejects them and ignores them"<sup>131</sup>.

126 DE BEAUVOIR, *Le deuxième sexe* II, 221.

127 DE BEAUVOIR, *Le deuxième sexe* II, 252.

128 DE BEAUVOIR, *Le deuxième sexe* II, 254 and 255.

129 DE BEAUVOIR, *Le deuxième sexe* II, 242. It is good to refer to Max Scheler to understand better the *reaction*. "A rich source of these types of resentments is made up by certain typical relationships between members of the *family* and of *marriages*" (M. SCHELER, *El resentimiento en la moral*, Espasa-Calpe, Buenos Aires 1944, 49).

130 DE BEAUVOIR, *Le deuxième sexe* II, 245.

131 D. VON HILDEBRAND, *Ethica*, Ediciones Encuentro, Madrid 1983, 419.

The supposed liberty turns into grotesque libertinism.<sup>132</sup>

It is not difficult to appreciate the degradation and the contempt for the families here. Making her own the Soviet Comintern proclamation (16 November 1924), the French feminist *par excellence*, affirms that the "revolution is powerless as long as the notion of the family and family relations subsist."<sup>133</sup> At the same time, the continuation of the family as the basis of society will endorse "the total alienation of women." Conversely, if society would abolish private property and "reject the family, the destiny of women, we see, would be considerably improved."<sup>134</sup>

The absurdity of this position allows us to appreciate to what extent "the rejection of the feminists ideologies... constitutes a defense of femininity in what is most proper to it and, consequently, most necessary for the world,

132 Cf. GARDET. *Ouvrir les frontières de l'esprit*, 98.

133 DE BEAUVOIR, *Le deuxième sexe* I, 219. The judgment of the proclamation is not wrong, because the family is effectively the main brake on the designs and methods of totalitarianism. Totalitarianism aims, consequently, to destroy the family. In another way, *consumerism* (not normal and legitimate consumption) could also dissolve the family. "We should not let ourselves be captured as strongly by husbands or wives, as we are by the advertisers (of consumerism)" (J. WOOD KRUTCH. *Human Nature and the Human Condition*, Random House, New York, 1959, 28).

134 DE BEAUVOIR, *Le deuxième sexe* I, 139 and 145, respectively.

for women as well as men, for families and their roles.”<sup>135</sup>

The Feminist ideology is sexist by principle. However, we know that “the sexual appetite if left to itself, tends to become the center of every man.”<sup>136</sup> At the same time it is “trivialized”, “making any type of function interchangeable between a man and woman.”<sup>137</sup> Thus, sex becomes a simple act (independent from fertility and procreation)<sup>138</sup> that operates at the same time as a simple “object of exchange”.<sup>139</sup>

This position (and attitude) is taken to the extreme by the French Freudian Jacques Lacan. He states that the “normalization “of the maturation of the sexual instinct “depends..., in man, on a cultural expedient.”<sup>140</sup> Here we are on the “path” of gender in a more open and unequivocal way than in the case of Berdyaev. The UN talked about the “differences between the achievements and the participation of women and men” as a result “not of the biological differences but of the socially-constructed gender roles.”<sup>141</sup> As an author critical of

feminism rightly states “Gender differences result from the norms and cultural values that define the social concepts of masculinity and femininity”<sup>142</sup>; and “that break the traditional ‘gender stereotypes,’” opening the door to the “legitimization of new forms of the family, a product of the evolution of the changeable gender stereotypes.”<sup>143</sup>

From here on, the different heterosexual and homosexual combinations (at least five) lead to different types of “alliances” and of “families”. In this way, there is a pretension to “be creating new spaces.”<sup>144</sup> In these spaces, the sexual libertinism, and especially homosexuality (of men and women), far from creating new forms of families (in the proper sense of the word) tend to destroy both natural and normal conjugality and, *a fortiori*, the family itself. In this design, motherhood is seen as an obstacle and as a degrading condition for the woman.<sup>145</sup> The woman is not considered as

135 MESSORI, *Opus Dei*, 176. cf., also, VALENZONA, *UN Beijing*.

136 THIBON, *La crise moderne de l'amour*, 84.

137 V. MESSORI, *Rapporto sulla fede: Vittorio Messori a colloquio con il card. Joseph Ratzinger*, Cinisello Balsamo 1985.

138 V. MESSORI, *Rapporto sulla fede*, 104. Cf., also, RATZINGER, *Il sale della terra*, 230.

139 RATZINGER, *Il sale della terra*, 231.

140 J. LACAN, *Lectura estructuralista de Freud*, Siglo Veintiuno Editores, Mexico 1971, 16.

141 Cf. VALENZONA, *UN Beijing*, 4 and 5.

142 VALENZONA, *UN Beijing*, 5 and 6 (also 8).

143 VALENZONA, *UN Beijing*, 6. Cf., see also the feminist J. BUTLER, *Bodies that matter*, Feltrinelli, Milan 1996, 176 and 180-182.

144 A phrase used to refer to the “lesbian experience”: cf. M. HUNT, “Transforming Moral Theology”, in E. SCHÜSSLER FIORENZA, *The Power of Naming*, Orbis Books, New York 1996, 305.

145 Unless it is freely chosen. This is related to the “reproductive” rights of women (as such), and complementarily to contraception and abortion. Cf. VALENZONA, *UN Beijing*, 73-76, 93-99, 102-106.

a natural and vocational mother, but as one who becomes so culturally, through “education and imitation.” Thus, the mother, we are told, is nothing more than “a social construction.”<sup>146</sup> In another way, the child is also a creation, in its humanity, if we believe the Chilean biologist Humberto Maturana.<sup>147</sup> “The humanization of the embryo or the fetus is not a phenomenon that takes place as part of its development, but is the result of cultural relations that are part of its life.”<sup>148</sup> More precisely, such humanization would operate from the moment (not “fixed”) in which the mother during her pregnancy desires it. However, “if there is an abortion before that moment”—says our biologist—“a living being disappears, an embryo or fetus, but not a human being.”<sup>149</sup>

Finally, the positions that we consider and criticize are reinforced today by this diffuse ideology known as the New Age,<sup>150</sup> in which the real mythical ra-

dicalization of sexuality takes place. In this sense, Wilhelm Reich considers the nexus with God through “sexual arousal and orgasm.”<sup>151</sup> Shatk Gawain states that if our spiritual energy is complete and connected to our sexual energy..., our capacity to express love through sex<sup>152</sup> is one of the most important experiences of God...<sup>153</sup> At the same time, the sense and notion of motherhood is radically altered, when its function is assigned to Mother Earth, Gaia or Pacha Mama.<sup>154</sup> However, God himself, converted into an “erotic God”,<sup>155</sup> would be both “father” and “mother”. Thus, the “maternal dimension of the divinity” is claimed.<sup>156</sup> In sum, “sexuality is the expression of the life-giving force which is the foundation of everything.”<sup>157</sup>

We could hardly ignore here the destructive perversion implied in relation to personal life and family life, for society and culture.

It is not necessary to turn the family into a myth, or make an ideology out of it,<sup>158</sup> to claim its true nature and confer

146 S. Mc.FAGUE, “Mother God”, in SCHÜSSLER FIORENZA, *The Power of Naming*, 324-329, particularly 325.

147 Important ideological advisor of the Chilean “concertacionista” (socialist) government.

148 H. MATURANA, *El sentido de lo humano*, Hachette, Santiago 1992, 143.

149 H. MATURANA, *El sentido de lo humano*, 143.

150 In which there is space for both ideological feminism and extreme environmentalism, for example; cf. B. DOBROCYZNSKI, *New Age. Il pensiero de una “nuova era”* Mondadori, Milan 1997.

151 Quoted in DOBROCYZNSKI, *New Age*, 49.

152 To say without euphemism: “to make love.”

153 Quoted in DOBROCYZNSKI, *New Age*, 133.

154 DOBROCYZNSKI, *New Age*, 99.

155 Matthew Fox, quoted in DOBROCYZNSKI, *New Age*, 133.

156 Riane Eisler, quoted in DOBROCYZNSKI, *New Age*, 100.

157 Quoted in DOBROCYZNSKI, *New Age*, 134.

158 As occurs in some ideological-religious cases.

its just subjective value as an agent on it. Firstly, it is accurate to assume, in a certain analogy, that the family, just like the human person, is not self-made; it does not exist without the others (and other families). Now, the openness and dialogue implied in this “becoming more” of the family is established above all “vertically”,<sup>159</sup> in relation to its *first cause*, in relation to God, source of the *self* (and of every being), and Father. The family’s autonomy is not achieved properly without (positive) *dependence* in relationship to its source. It is always and only the case that autonomy deepens and expands in the *liberty* of exultation; which can be only *personal*. All liberation has here its *meaning* and its normal *requirement*.<sup>160</sup>

It is necessary to recognize that this ethical, anthropological and even metaphysical disposition compromises the “other” in a way,<sup>161</sup> *naturally* and *absolutely*; here we find more than a mere *condition*; we find the *cause* of a just “horizontal” relationship *of* the family and *between* families. In other words, the common good of the family (just like that of the *polis*) is “secondary” and is definitely ordered to the *good of the*

*kingdom* (of God).<sup>162</sup> Here is its positive “debt”, and more or less remote norm to its proposal. In this way, the meaning of this just relativization of the family resides in the “pilgrimage through time on this Earth; but one day we will arrive at the Heavenly home,” as Edith Stein recalls for us.<sup>163</sup>

In virtue of this “proportionality”, one can finally say, with Mounier, that the person, without being an isolated subject, is not used up in the family and cannot be considered in absolute terms, as “*res familiae*”.<sup>164</sup>

What is certain, in any case, is that the being of the family itself is naturally and supernaturally what the “Author” of all beings, the same Being who subsists for Himself,<sup>165</sup> “wants” it to be, and not

162 Cf. J. MARITAIN, *La persona y el bien común*, 66-72; cf THOMAS AQUINAS, *Ethicorum*, I, 2, and *De regno*, I, 14. The Italian personalist Giorgio La Pira reminds us of this supra-ordination in general without, referring to the family itself. Cf. G. LA PIRA, *Nuestra vocación social*, Editorial Difusion, Santiago, 1953 26 and 97.

163 Quoted in F. GABORIAU, *Edith Stein philosophe*, FAC, Paris 1989, 104.

164 MOUNIER, *Le personalisme*, 129. On the other hand, with his characteristic ambiguousness, (as Maritain, frequently noted), Mounier states that the universalism of the “national sense is a powerful ‘aid’ against the living selfishness of the individual and the family” (p. 124). The “aid” works in the opposite sense.

165 *Ipsium esse per se subsistens*. cf. R. GARRIGOU-LAGRANGE, *Dieu. Son Existence et sa nature*, Beauchesne, Paris 1928,

159 “Going up”, we could say.

160 Cf. In this respect, the Roman Instruction *Libertatis conscientia* (1986), 18-20 and 23-31.

161 Here, the principle of reciprocal causality is also applied: *causae as invicem sunt causae*.

what the materialist and relativist agents of the “culture of death” arbitrarily pretend the family is or stops being.



# The Family And Philosophy

Hayden Ramsay

F

*The attacks which human beings and the family suffer today are in large part the result of confusions of language. These confusions refer to fundamental questions: person and individual, equality and identity, liberty and lawfulness, pleasure and happiness. They are at the same time a consequence of a reconsideration of marriage, which is the foundation of the family. This natural institution, which is the family, is characterized by a stable union between a man and a woman, who commit themselves to love each other and to transmit life. From the moment in which the two aspects of the conjugal institution are separated, the natural institution is trampled on, and the legal dispositions that regulate it remain without object. The artifice of contraception, dissociated from the two goals of marriage, attacks the very heart of the institution of marriage. Moreover, the words “marriage” and “family” can be used in order to define any kind of union. Semantic anarchy can only produce harmful effects for the social fabric, whose axis has always been the heterosexual and monogamous family. (↗ Enlarged Family; Single Parent Family; Family, Nature and Person; Traditional Family; New Family Models)*

In the Encyclical Letter *Fides et ratio* Pope John Paul II writes: “Every philosophical *system* while it should always be respected in its wholeness, without any instrumentalisation, must still recognise the primacy of philosophical *enquiry*, from which it stems and which it ought loyally to serve” (4). The Pope’s thought is that the great systems of thought constructed with rigour and systematic order by philosophers must serve the inclination to philosophical questions that is found in the heart of every man and woman. All people are filled with wonder at the contemplation of creation, including the creation of the human;

wonder stirs even the simplest to seek true answers to life’s most important questions. Thus the role of the philosopher is rationally to guide and inform the human attempt to create a wisdom for living by, a philosophy of life, and to indicate the differences between reality and appearance, truth and falsity (*Fides et ratio* 81-83; *Familiaris consortio* 8).

Contemporary secular philosophers often dismiss concepts of wisdom, reality and truth. It is argued that if all thought is relative to cultural contexts (“cultural relativism”), there is no wisdom deeper than the wisdom of our own times, our own peers; if all categories are imposi-

tions by powerful males (“postmodernism”), nothing is real, everything is just as it appears to the individual; if all choices are personal tastes (“subjectivism”), there are no moral truths and any sort of vice and imperfection can be judged acceptable and admirable. These and other views are prevalent today in all areas, including the area of family. The philosophical attack on family life does not generally hold “families are bad” but rather “your definition of family is discriminatory; we wish to redefine family to include new forms of relationship.” In this contribution I discuss and respond to the various motives and arguments for redefining family today. In doing so, I am guided by the Pope’s call in *Fides et ratio* for a philosophy that is richly realist-objectivist and provides people with a guide for good living in the world.

## DEFINITION

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Personal relationships involve distinct individuals who form a unity. Some relationships, e.g., commercial or legal relationships, have a unity that is variable, fixed only by custom and use. Other relationships possess an objective unity; these relationships are family and friendship. The unity in friendship is the result of distinct individuals wishing and striving for the good of each other; the unity in family is the result of distinct individuals giving themselves totally to each other (see *Familiaris consortio* 19: “The indivisible unity

of conjugal communion”). Just as all friendship proceeds from mutual well-wishing, all family life proceeds from mutual self-giving. Mutual well-wishing is not sufficient for total self-giving: friendship, however rich and loving, is not family. For total self-giving requires complete acceptance—physically, psychologically and spiritually—by the other of what is offered; complete acceptance can only be of someone relevantly “other” than oneself; and this means total self-giving requires sexual differentiation as well as sexual consummation. Family is founded on the marriage of a man and a woman, a relationship in which individuals are united by radical self-donation that is open to the prospect of offspring (*Catechism of the Catholic Church* 2202; see also Karol Wojtyła, *Love and Responsibility* [London: Collins, 1981], p. 242: “The family is an institution created by procreation within the framework of marriage”). From this concept of family comes the associated concept of extended family, formed from the close relatives of spouses and children who support and enjoy the environment of love which is family life (Pope John Paul II, *Letter To Families* 1994, 14).

## EQUALITY

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One of the great achievements of the modern era has been gradually to win equal recognition of the dignity of all human beings. Equality, however, is often misunderstood. It is a moral and



political principle which states that since human beings have value just in virtue of being human, no human being can be treated as if they have greater or lesser value than any other. Some thinkers, however, claim that we treat people as if they have greater or lesser value whenever we make any differentiation concerning what is due to them; thus when we refuse to call a relationship between two women and a child conceived by artificial insemination a family we are said to be denying equality by treating their relationship as of lesser value than relationships between spouses. Of course, we are doing no such thing. Rather, we are claiming that whereas their relationship might possess unity based on mutual well-wishing, between genuine spouses there is a very different sort of unity based on total self-giving, which requires sexual differentiation. We do not offend against equality by treating different forms of human relationship differently.

Nor do we offend against equality by denying that it is the supreme moral value. The purpose of equality, and of every other moral and political principle, is to assist us to adopt reasonable means in promoting the common good, the full flourishing of all human persons in community. The common good requires a diversity of persons working on different tasks and so possessing different duties and rights: it requires inequalities of *role and responsibility* (Benedict Ashley, *Justice in the Church: Gender and*

*Participation* [Washington DC: Catholic University of America Press, 1996], Ch. 1). This in no way suggests individuals are unequal in *dignity or in basic human rights*. Indeed, to serve the common good in the ways for which one is suited is to enhance one's dignity (see *Laborem exercens* 40) and to foster basic human rights.

Those who call for the natural family to 'lose its privileged position' and make way for a more equal attitude towards personal relationships have thus made equality the master instead of the servant. The type of unity created by family life and the types of unity created by other loving and morally reasonable relationships are both important for the common good—but they are different forms of relationship giving rise to different rights and responsibilities.

## **FREEDOM**

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The growth in political freedom in the late twentieth century was a tremendous achievement. Pope John Paul II has counseled, however, that we may lose this advantage if we hand ourselves over to oppression by the values of the consumerist-individualist West. Many philosophers argue that we are free as long as we are not constrained from doing what we want to do—a view classically argued by the English philosopher Thomas Hobbes. But this is simply not so. A person brought up in a severely deprived environment and offered no significant choices throughout his life

might now have everything he wants but he is clearly less free than a person who has learned to criticize the objects of his wants and to strive to make better and richer choices. Freedom is not doing whatever one wants, but having the opportunity to discover how to want wisely (Wojtyla *Love and Responsibility*, p. 115: "truth is a condition of freedom"). In other words, freedom is making morally reasonable choices that direct us towards ends that contribute to genuine happiness (*Veritatis splendor* 35).

People who believe that freedom is simply lack of constraints may insist on family status for their same-sex relationships, intentionally sterile relationships, casual relationships, group relationships, relationships with minors, and so on. They may argue that refusing to acknowledge these relationships as families amounts to violating their freedom to relate with others as they choose and not as Church or State dictates. The response to this is twofold. First, the natural family is not a creation or construct of any religion, philosophy or political creed (*Catechism* 2202): it is a form of relationship that is as natural to the human person as friendship (and as physical exercise, intellectual activity, delight in beauty, worship of God etc.). It is found and always has been found in all societies, of all creeds and none, and where it is unsupported or attacked, individuals and societies are destabilized (see *Gaudium et spes* 52). Secondly,

people are of course free to form their own relationships, for better or worse, but they are not free to declare that just any form of relationship constitutes a family. This is a form of reductivism: attempting to reduce an independent reality (e.g., family) to some other class of reality to suit our convenience. In fact, all this does is to disguise the truth; it is no more successful than declaring that Christmas falls on 17 June because I like to open presents on that day.

## RELATIONSHIPS

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Part of the failure to understand the philosophy of family is a result of the failure to understand the nature and purpose of sexual relationships. In the contemporary world people often form romantic and sexual unions with little commitment and ambivalent feelings concerning permanence and exclusivity (see Germain Grisez *The Way of the Lord Jesus*, vol. 2, *Leading A Christian Life* [Quincy, Ill.: Franciscan Press, 1993], pp 574-580). These are widely referred to as 'relationships'. When the relationship has lasted for a brief period and both parties would like it to continue, they may describe themselves as 'partners', a term in fact from corporate life which (ironically) perhaps well expresses the secular and contractual elements often found in contemporary love affairs. Many people believe that forming these relationships is the normal and respectable way in which to order one's personal life, and that marriage (and

children), if they come at all, are later and separate developments undertaken closer to middle age by those with a special interest in these things.

On this view, family life is not the natural goal of sexual union and setting up home together, but a minority taste indulged in by those with a religious commitment, need for social acceptance, or strong personal wish to have children. Understandably, if family life is not considered necessary for personal and sexual relationships, it will come to hold a severely limited place in the choices we make about how we are to live: either it will become an option for “traditionalists” only or it will be adapted so as to include all intimate relationships and not only spousal relationships.

In the face of this view we must realize that sexual relationships formed in advance of total (that is: marital) self-giving are misuses of the body and of persons for temporary pleasure or convenience. To hold that such relationships are the norm and that family life is a secondary, “optional extra” is to place physical pleasure over mutual joy, convenience and gratification over commitment and sacrifice, and self-interest over the possibility of new life. On the other hand, where family founded on marriage and childbirth is treated as the natural goal of romantic and sexual attraction these relationships will be guided by the wellbeing of the individuals involved and by the common good. This may be more difficult than forming liaisons

and contracts with sexual “partners”; but the deep fulfillment and contentment it promises both offer more to and require more from loving adults.

## **ATTACKS ON MARRIAGE AND CHILDBIRTH**

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The respectability of unmarried sexual relationships is part of the wider movement to destabilize marriage and decrease childbirth. These two natural institutions—the source of all family life—have collapsed in many parts of the western world in particular. The reasons for this are complex. They include widespread distrust of permanent and exclusive commitments, and of what is seen as the inconvenience of children. In a world that looks no higher than earthly and man-made values, the temporary and replaceable becomes the norm. This leads to the fear of permanence, including permanence of human relationships. Also, the pursuit of temporary, replaceable partners means people fear exclusive relationships; and the pursuit of a ‘quick turnover’ in relationships means children are seen as a hindrance to adult plans and a restriction on their freedom.

All evidence points to massive individual unhappiness and serious social problems due to the collapse in marriage and the birth rate (for example, see Mary Eberstadt, “Home-Alone America,” *Policy Review* 107, June 2001). Undoubtedly, this has helped fuel confusion over what a family really is. Courts, media

and public opinion throughout the world regularly assume that it is for the individuals concerned to decide whether or not they may marry—even if they are same sex. It is also thought to be a purely personal choice whether to have children—and by what means: natural intercourse, or one of the many assisted reproductive technologies available on the market. If marriage and childbirth can be redefined to suit the wishes of casual sexual partners, family life too will continue to be redefined and the natural family will be treated as only one “option” among others.

In the face of these very worrying developments, we should recall that marriage and childbirth are the conditions and the ends of all sexual relationships; without these there is no genuine family life.

## **SEX AND SEXUALITY**

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Human persons are sexed: male or female is a deep part of each individual’s identity. Some people are troubled by their sex, attracted to people of the same sex, or even wish they were of the opposite sex. These experiences of sexuality are clearly imperfect and inappropriate. Because human sexuality is not only physical but also involves our minds and emotions, imperfect sexuality often involves cognitive “thought” and affective “mood” disturbances that can be confusing and distressing.

Unfortunately, many thinkers today view inappropriate sexual thoughts,

feelings and deeds as merely “alternative” methods of expressing sexuality. It is common now to argue that gender (if not sex) is socially constructed and may be chosen by the individual, who is free to lay down his birth-gender or learned-gender and adopt the opposite gender, or at least to live and act as if he were of the opposite gender. In certain jurisdictions it will now be argued that, for example, two men may form a family as long as one of them believes he is a woman. Their family status can then be consolidated by the adoption, or more likely creation through assisted reproductive technologies, of a child. At international conferences it is commonly argued that there are not in fact two genders but many genders (male heterosexual, female heterosexual, male homosexual, female homosexual, bisexual, transgendered persons, hybrids....) and that people are free to construct and alter their genders from a wide range of options.

Why cannot same sex or transgendered or, allegedly, multi-gendered couples form a family? Simply, there are other forms of personal relationship open to them that allow them to find love in morally acceptable ways, without falsifying and undermining the nature of the family. First, we should note, in charity and compassion, that due to original sin the sexual impulses of all humans are imperfect and disordered (*Catechism* 1607); sexual temptation, intemperance, confusion, and curiosity

are part of fallen human life. Those who are confused by, and suffer because of, their sexual impulses are our brothers and sisters and need wise and gentle counsel in the field of sexual ethics.

This will always begin by noting that we are created in love and we need to love and be loved. It will be pointed out that the most complete form of this loving is spousal which may begin with physical attraction but will soon ripen into a co-mingling of souls as well as bodies. If no love is withheld between spouses, the marriage will be open to children, who will share in this love, i.e., form together with their parents a family. Those who for whatever reasons of natural constitution or social experience cannot contemplate or consummate a marital relationship have the difficult burden of avoiding unmarried sexual acts, which, however well meant, will treat others not as self-donors but as means to self-gratification.

This burden is often difficult because of loneliness or guilt, and undoubtedly chastity requires of unmarried people great moral heroism and the good fortune to be taught and advised by wise and compassionate friends.

## **LOVE, PLEASURE AND HAPPINESS**

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Part of the philosophical confusion over family is a confusion about human motivation. Many commentators accept a human psychology in which our choices are always motivated so-

lently by feelings, especially pleasure and pain. These feelings are judged to be our goals as well as our motives: we do what we do because of some positive feeling which it provides or promotes. In the area of relationships the relevant feeling is generally described as "love", and love is considered to be one valuable component of a more general positive feeling called "happiness".

This psychology misrepresents the goods at stake in human relationships and, indeed, in all worthwhile human activity. Feelings do play a role in our choices but they are not usually our reasons for choosing: we choose because of the objects which cause our passionate feelings, we do not merely respond like machines to *whatever* arouses feeling (for example, see John Finnis, *Aquinas* [Oxford: Oxford University Press, 1998], Ch. 3). In the area of relationships love is certainly a reason to act but it is not just a feeling: it describes the reality of relationships in which individuals acknowledge and contribute to the forms of union that exist between them. There are many forms of love—all of them precious. Only certain loves, however, have the nature and purpose of family love.

It is not possible to announce that one has established a family simply by loving someone: the love has to be of the relevant form. All love contributes to the objective happiness or fulfillment of persons but married and family love does so in a particular way. Our hap-

piness is not just a matter of positive feelings: people can be truly happy yet *feel* bad or can feel good yet be *truly* unhappy. Happiness is an objective matter of a morally reasonable approach to all things that are good for us, including family life.

## **EXTENDED FAMILIES**

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There are senses in which it is perfectly appropriate to extend talk of family beyond the spousal/offspring relationship. In common parlance “family” often refers to the system of kindred by which relatives such as grandparents, aunts and uncles, cousins, nephews, nieces and in-laws are included within the domestic circle and share in some of the rights and responsibilities of family life (*Familiaris consortio* 21).

The extended family will include different relatives in different cultures and will also hold to different degrees in different cultures. One sad effect of the declining marriage and birth rates is that parents and children lack this traditional system of care, encouragement and education. Single parents and unmarried couples may have less need of extended family, less sympathy from them, or have less readiness to call on them in need. The decline in extended family life both demonstrates and reinforces the decline in strong community life generally: an interest in the welfare of their families shared by many grandparents, aunts and uncles and others in a particular community helps bind people together in

extended networks of support, concern and practical help. Where extended family is based around the natural, marital family is focused on these committed relationships that are open to the gift of new life; this is of course very different from “extending” the term “family” to refer to forms of relationship that are extra-marital or contraceptive.

## **NEW TECHNOLOGIES**

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Family life must always be child-friendly because it is directed towards having and loving babies. Sometimes, however, couples cannot conceive in the normal way; in these cases the techniques of medical science can often be used to assist reproduction in morally good ways. There are, however, widely available reproductive technologies which are morally wrong: e.g., reproductive technologies that kill or attack any human being, enslave or degrade them, in any other way violate their human status or dignity, or violate the nature of marriage or the marital act (*Evangelium vitae* 14; see also *Donum vitae: Instruction on Respect for Human Life*). The use of technologies such as *in vitro* fertilization, surrogate motherhood, cloning and artificial insemination is increasing all the time. By their use people who could not—or choose not to—have children by normal means are given (immorally) an opportunity of procreating.

This means that there is a sense in which families can now be manufactured and to some extent designed, rather

than received as a gift from God through the expression of mutual self-giving. Children born of these new technologies and societies composed of these children will naturally come to think differently of family life than people have done hitherto. Since children can now be conceived outside the body and outside love, people may come to think of family as an outmoded system for reproducing.

In addition to damaging the institution of family generally, these technologies damage family life by adopting immoral means such as substituting for loving sexual intercourse the skills of a medical technician (*Catechism*, 2376). They may also involve use of the sperm and eggs of those who are not married, indeed of those who are strangers (or worse, related). At their worst, fertility technologies will involve the creation, abuse and destruction of embryonic human beings. With respect to family what such technology does is to pervert all of the human relationships that constitute and define family life. Parents will use each other as sources of reproductive material to achieve their own ends; children will be willed into existence and then live with the knowledge that though created by God, their conception was also masterminded by manufacturers. The manipulation of reproductive material means children may be born to their own grandparents, cloned from pre-existing human beings, or carried to term by siblings. These attacks on fa-

mily must be resisted. Family life is not available on demand.

## POPULATION ISSUES

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Fears over growth or decline of populations in different parts of the world lead some philosophers and politicians to advocate population policies designed to reverse these trends. Many advocate access to contraception, sterilization and abortion as a way of addressing concerns with over-population (*Evangelium vitae* 91). These methods amount to a sustained attack on family life in the name of economic progress and political ideology.

Instead of these policies, the Church recommends that a true concern for the flourishing and the fundamental rights of all involved, including parents and children, born and unborn, means we should first address any outstanding injustices committed against persons that limit their ability to lead fulfilled and contented lives. In addition to remedying such large-scale social injustice, education, including sexual education and basic economics, should be provided and all possible help given to encourage parents and families to make morally responsible decisions about their own fertility. The measures often adopted by governments and other agencies can result in harm to millions of families and to the institution of family life in the region. Governments and other agencies ought to pursue the protection and encouragement of family life as a major

value—something that certainly requires economic security of individuals but is not *replaceable* by economic security of individuals.

Campaigns to decrease population are often highly politicized and ideologically biased. In certain cases coercion or deception has been practiced in order to promote contraception or sterilization as a “duty”, or the only true option. Sound philosophy will always oppose any such manipulation of the person and of the family in the name of an ideology, economic interest or political power. The family is based on mutual love and openness to life; the claim that real love might be closed to life represents the sterility and lack of imagination of contemporary public ethics.

## **ATTACKS ON ETHICS**

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Philosophers from the ancient Greeks to the late medieval period concurred that ethics involves critical-rational thought concerning the human good and the appropriate methods of realizing the human good. This broad consensus broke down at the beginning of modernity. It has, however, shown signs of renewal from the mid twentieth century onwards. Today, a significant number of philosophers, many but not all of them Catholic, take part in important discussions about nature, human existence and values, relationships, and objective morality. Nevertheless, the philosophers most heeded by politicians, media and strategists are those who subscribe to views of

ethics that support unrestricted personal freedom, the personal creation of values, and culturally relative morality. One of the many areas in which these attacks on critical-rational ethics flourish is the area of family.

If the family is built on the objective truth about the human person, those who believe there is no truth about the human person will obviously deny the significance of the family. Thus in libertarian, subjectivist, relativist, and nihilist thought family becomes, respectively: whatever we choose, whatever we enjoy, whatever the majority or the elite says, or nothing worthwhile at all. To oppose these ideologies of family and to establish a contemporary philosophy of family we must vindicate a realist-objectivist view of anthropology and ethics, as Pope John Paul II suggests.

Although many philosophers are engaged in this realist-objectivist ethics at the moment, few philosophers focus their work on the topic of family. Most prefer the more common philosophical themes of life, truth, justice, health, and politics. Nevertheless, the resources for a philosophy of family are available to us in the works of many classic and some contemporary philosophers, in the tradition of the Church, and, particularly, in the teachings of Pope John Paul II. These resources are widely available and together form the basis of a contemporary Catholic philosophy of family.



# Family and Privatization

Alfonso López Trujillo

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*The importance of the family founded on marriage was one of the pillars recognized as a normal requirement for the good of society. These last forty years have seen the institution of the family become increasingly “privatized” and, in a way, a “refuge” for individuals from a competitive and profit-oriented society; a refuge that tends to abandon any social pretensions in order to be a place of intimacy and tenderness. This “privatized” family, a romantic, idealized oasis faced with a demonized and hostile society, is not solid because it is exposed to every form of subjectivism. On the other hand, since public authorities do not see the family as a social good, they no longer protect it and think that the liberty of those who wish to marry, unite in alternative unions or separate should prevail. In this way, urged on by unjust laws, a new pro-divorce mentality has been created that goes against the family’s interests. This article recalls the importance of political ideologies in the recent historical experiences of totalitarianism that invaded the family’s responsibilities and went against its “sovereignty” and mission. Lastly, the author carefully considers the influence of the laws that create and consolidate a mentality adverse to the family and its socio-political role. In view of these phenomena and tendencies, pastors should act so that the family will not close in on itself and renounce its public role, but, on the contrary, affirm its rights strongly, fight unjust laws in the legislatures, and bring the riches of its values to society. (↗ Family and the Principle of Subsidiarity; Philosophy; Family, Nature and Person; Motherhood and Feminism; Personalization)*

The phenomenon of the privatization of the family is both complex and interesting. This complexity increases according to the different points of view evaluating it and the ideological presuppositions in question. In general, as far as society is concerned, this phenomenon negates or notably reduces the public-social role of the family and marriage. Often the family is no longer con-

sidered a good or a value for society. It would belong exclusively to the private sphere and not fall within the interests or responsibilities of the State.

This lack of public importance represents a troubling innovation in laws the consequences of which are considerable. We will only examine some aspects of the variations of this phenomenon.

## IDEOLOGY AND PRIVATIZATION

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Ideologies usually take one aspect of reality, even an important one, and universalize it as if this aspect (economics, politics) was the explanation for everything. Ideologies are often the source of totalitarianism. They imagine that rights have their origin in the power of the State, and that the State grants rights to the family. They tend to see an obstacle in the family founded on marriage. In particular, the right of the family to educate is rejected, a right which the State arbitrarily assumes and imposes. For this reason, there is an attempt to take children and adolescents out of their family context and “educate” them according to what the authorities wish, with the intention of impressing a model on them to which they must conform. This is the usual temptation into which the various forms of collectivism fall. It was clearly an element of Marxist collectivism and a noted position of Marx, later refuted by the facts, as expressed in *The Origin of the Family, Private Property and the State*, which he dictated to Engels according to the laws of “economic determinism”.

This is the collectivist way of presenting the topic with its many equivocal and obviously erroneous aspects. The hypothesis is presented in this way: the monogamous family as a social institution was born from capitalistic private property. It is a place that reflects the

class struggle with the man’s dominance over the woman and the children. It is said that the family will disappear in the future when capitalism is abolished. The primordial state of the family, according to these writings, was one of unlimited sexual promiscuity. The family is just a historical product of solely private interests. It is a superstructure that has the economic infrastructure of the means of production as its foundation. In the future it will be reduced simply to a couple tied together by individual erotic love. With a vision of this kind, it is not strange that collectivism crumbled, not only due to the failure of the economy and the political leadership, but also to the lack of respect for man.

As the Soviet state collectivized the economy, it monopolized the education of children and young persons, “transforming marriage into a merely private fact, favoring divorce and legalizing abortion” (Donati), even though due to a drop in the birth rate, isolation and criminality some modifications had to be instituted after 1936. Something similar occurred with Nazism and Fascism. These painful experiences are well known.<sup>1</sup>

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1 “This is the reason for distancing children from their families in order to organize and indoctrinate them, first in the *Jugendvolk*, and then in the Hitler Youth. In communism it did not go differently. The family did not have a position in the Marxist ideology and was discredited as a bourgeois institution. The family cannot constitute the terrain on which the collective being grows, and therefore the

The family was a “private” reality, not of public interest. But “privatization” in this sense did not respect the individual sphere either because it too was subject to all kinds of pressure. It simply meant a lack of institutional recognition aimed at clearing the way for the social and collective formation of the individual.<sup>2</sup>

Since it necessary to “model” personality according to the interests of the State in order to persuade children to play their obedient role in the social system, the family was denied its formative faculty and its principal and irreplaceable social mediation, which is one of its characteristics, and so it came up

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primary objective of the Socialist state was to weaken the family and lessen its ability to educate” (A. RUSCHER, “Familia y sociedad”, in D. BOROBIO [ed.], *La familia en un mundo cambiante. Congreso Internacional sobre la familia, Salamanca, 16-18 de marzo de 1994*, Eds. Universidad pontificia de Salamanca, Salamanca 1994, 215).

2 The profound ambiguity of Marxism is noteworthy. It maintains that the relations of production are the dominant social factors, while at the same time, in its “unitary” ideological conception, like “a piece of steel”, it ends up giving politics a totalizing character. Because of this, the family remains trapped in an inflexible socio-economic-political system. From a similar perspective “privatization” serves to facilitate the transformation of the family into something merely instrumental to the cause. One can see the anthropological poverty of this. Cf. A. LÓPEZ TRUJILLO, *Liberación marxista y liberación cristiana*, BAC, Madrid 1974, 223-251; ID., *La Liberación y el compromiso político del cristiano*, Mensajero, Bilbao 1973, 92-100.

against all sorts of dangers.

History has seen many attempts to substitute or take away the family’s educational function. Nevertheless, the family is still the only institution capable of the integral formation of the human person. One could refer to the failure in this area of the Israeli *kibbutzim*. History abounds with examples.

## **PRIVATIZATION AND THE LEGAL WORLD**

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From this viewpoint, marriage is conceived as a simple contract with no public value between autonomous individuals who are responsible for its duration and formalities. For them, the stability of marriage becomes something that is variable and changeable and does not resist the inevitable changes of the will and transformations.

Paul Moreau carefully analyzed both in the writings of sociologists and parliamentary debates this very common current tendency to affirm the State’s *neutrality* with regard to the institution of the family and family life, and to understand marriage *as a mere choice of private life* that should be reduced to a simple contract that is not related to a natural institution, with no public importance, which allows each person to get organized as he/she wishes. Moreau writes: “The State is less and less interested in family life, and family law itself leaves everyone the greatest freedom, for example, regarding life as a couple. Marriage no longer seems to be the model

but rather one choice like any other”.<sup>3</sup> It can be clearly seen that the legal demolition of the family whose edifice is taken apart brick by brick will be facilitated. This is how the mentality is prepared for all the “alternatives” to marriage.

## INDIVIDUALISM AND PRIVATIZATION

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It seems to me that individualism, by other paths, will also lead to a certain kind of “privatization”. The family is not a good or value to be defended by the State as something fundamental. One problem that leads to other forms of privatization of the family is to not consider it in its totality as a subject in which all its members are integrated, but instead to take them *separately*. In the Holy See’s *Charter of the Rights of the Family*, this is a central concern: the

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3 “Some sociologists describe in this way –sometimes approvingly– an irreversible evolution marked by the victory of individual liberty, a sign of the triumph of democratic and republican values. Family law should, therefore, free family life from the last remaining residue or vestiges of a moral order that is decidedly inadmissible, and be content to offer –far from imposing obligations and prohibitions– a legal context that is broad and abstract so that each person can find his/her own private choice and the stability of his/her contract. Marriage itself, born as a model, should simply represent an option in private life, one of the ways of life as a couple. It would not be an institution, and once it is contracted, it would only be one way among others to organize the life of the couple and the family” (P. MOREAU, “Penser la famille,” in *Étisque. La vie en question* 3(1996) 21, 50).

family is the supporting subject. I have dealt with this elsewhere.<sup>4</sup> Children should not be taken separately from their parents. Individuals are cut off from their relationships, even the most natural and necessary ones like the family. In this way, St. Thomas’ idea of the family as a “spiritual womb” is not respected.<sup>5</sup> There is a temptation to deny the rights and duties of parents, as if with regard to their children in certain areas (“sexual rights” and sexual education), they did not have a role. This individualistic polarization would also include limitations within the very conception of the *Convention on the Rights of the Child*, which, according to some legitimate observations, could take on a very ambiguous meaning and conceal rejection of the idea of the family itself.<sup>6</sup> The strength would not lie in the *public* dimension that must be recognized to the rights of the family, including full guarantees and attention to the rights of the child, but in something that is largely disconnected from the family as a subject.<sup>7</sup>

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4 A. LÓPEZ TRUJILLO, “De la Charte des droits de la famille”, in J. B. D’ONOFRIO – S. COTTA (eds.) *Les droits de la famille*, P. Tequi, 19-27.

5 Cf. *STh* II-II, q. 10, a. 12.

6 Cf. F. D’AGOSTINO, “Diritti della famiglia e diritti dei minori”, in PONTIFICAL COUNCIL FOR THE FAMILY, *I figli: famiglia e società nel nuovo millennio*, Libreria Editrice Vaticana, Rome 2001, 109-120.

7 Rauscher gave an accurate warning: “Politicians with liberal, individualistic leanings tend not to recognize the pre-existing values

## PRIVATIZATION WITH THE FAMILY AS AN "OASIS" AGAINST SOCIETY

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Another *tendency towards privatization* is the vaguely romantic conception of those who see marriage as a *kind of oasis*, which is strangely in contrast to those who see the family as the tomb of love and an intolerable social burden that suffocates freedom...

These observations are complex. The conception of the family as an "oasis" has the positive aspect of recognizing marriage as a way to self-realization and happiness, which is not a small thing if we think of the outlandish ideas and attacks by some means of communication that are pleased to present caricatures of the family and increase disaffection for it!

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of marriage and the family, or they make these institutions depend on the majority decisions of the legislature. They are not even willing to give the proper weight to the State's family policies. They would like to leave the subject of marriage and the family to the private sector" (RAUSCHER, "Familia y sociedad", 214). Donati's observation goes in this direction: "On the one hand, the family is apparently made public in the form of growing regulations and interventions by the State [...]; on the other hand, and at the same time, one notes a privatization of the family's behavior in terms of actions that follow feelings, aspirations, tastes, preferences, expectations, etc., which are apparently totally individual and subjective, that is, detached from social and moral ties that are in a certain sense common" (P. DONATI, "Gli spostamenti di confine del pubblico e del privato nella famiglia," in ID., *La famiglia come relazione sociale*, Milan, 33).

The family, however, as an oasis in the social "desert", an island in a turbulent sea, or a refuge from a cold society numbed by its lack of values, conceals the distancing from a society that is demonized and rejected.

Today, at least in Western society, a tension seems to exist between the public domain, perceived by our contemporaries as a place of *anonymity*, and the private domain, which, on the contrary, is understood as a place of authenticity, calm and real life in the warm intimacy of the conjugal home. This is related to the problem of a society where man becomes a number lost in the masses. Everything becomes functional. The human face is covered and consumed in the function. Man groans under the weight of "political" demands.<sup>8</sup> The

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8 "And afterwards one must work, produce and struggle to live. There one must take a place in production and exchange and fight to win it, play a role in the competition and conflicts that are imposed by harsh necessity and its inexorable law, there where we are never all that we want to be, because there we are only a role, a function in a whole that surpasses us. There the law of economic competition and political conflict reign. So the world of the family can appear, in contrast, to be the opposite of the public world, the place of privacy and thus of true human relationships. Once we cross the border that delimits the family's space, does it not seem in fact that we enter a completely different place, the place of real human relations, the place where war is abolished? Does it not seem true that when we enter the private space, we can finally take off our masks? This is a world where we can finally let our guard down" (F. CHIRPAZ,

family would be a refuge. A romanticized, sublimated conception of the family as a place of peace in contrast to a homogenizing, aggressive society (where man loses a personal character and is eclipsed, as H. Cox affirms in his work, *The Secular City*), is not exempt from other kinds of less pleasant experiences and tests.

Inside the family dialogue becomes difficult, problems are inevitable, and the educational mission becomes burdensome and tiring. A child is not always valued as a gift but may be seen as a burden and a heavy responsibility to be avoided, even in economically prosperous homes. Often the spouses find themselves unprepared for their mission and afraid to assume the central role as the educators of their children, which also leads to bitterness and disappointment, despite the gratifications and compensations they may get from their harmonious growth and the formidable riches of living and sharing.

In the modern home, the family is not always a place of dialogue. This becomes more complex, even in the workplace, especially for women working outside the home, and offers fewer opportunities for time to be together personally. Strangely, another form of "privatization" comes from within the family itself: children feel treated like strangers in the very place where there

should be a shared life. One author observes that the child's centrality in the home is not always recognized: "On the contrary, the children are always drawing further away from the center of the adults' activities and end up in a separate, *privatized* area, losing contact not only with their parents, but also with the wider world of adults who do not belong to the family".<sup>9</sup>

Moreau warns about the danger of this tendency towards privatization where the public world is demonized and the private world is romantically exalted: "The exaltation of private life as we know it today goes along with a devaluation of public life. It is almost as if only in the family an authentic human life could be led with respect, simplicity, truth, love and peace. Outside of the family lies a public world of competition, struggle, roles, masks, and a lack of authenticity, a world in which the other is nothing but an enemy or at least a stranger. It is significant, in this regard, to see the criticisms directed at the city and the disdain shown for the public sphere, which only has value in so far as it is a means for private life".<sup>10</sup>

On the other hand, in a correct relationship between the family and society, the family is the base, the living cell that prepares a person to be inserted

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*Difficile rencontre*, Cerf, Paris 1982, 70; quoted by P. MOREAU, *Les valeurs familiales. Essai de critique philosophique*, Cerf, Paris 1991, 141).

9 B. MILLER-MCLEMENTE, "Essere ascoltati e visti. La sfida della formazione religiosa delle famiglie", in *Concilium* 4(2002), 71.

10 P. MOREAU, "Familia y sociedad", in *La familia en un mundo cambiante*, 56.

in the right way into society. It is like a school of social virtues, or to repeat Cicero, *seminarium reipublicae*. In a different and opposed concept in which the family is “privatized”, this relation is considered tense and conflictual. In this context, the realization of the person and groups can only be achieved by fleeing from a society that is dehumanized and oppressive. The negative influence that a society can exert is not denied when it has allowed the penetration of anti-values, and even embraced them as achievements. This phenomenon appears evident when many errors, ambiguities and lifestyles are permitted by unjust laws that produce a new culture, a new morality that buries values whose absence threatens living together and survival with respect for human dignity. This situation is called “social sin”.<sup>11</sup> This is how society impoverishes its members. Society, however, cannot be demonized as such and considered an enemy of the person. One must try to heal a state of sickness, denounce vices and shortcomings with hope, dialogue and the fortitude of charity, and against unjust laws, use the right to conscientious objection in clear situations like abortion.

Privatization in a family that is closed in on itself often sees that its “safeties” do not exist, and this provokes reactions and rebellions in closed sects. Another thing is to believe that the fam-

ily entrenched in the private sphere is *self-sufficient*, or to use a technical expression, *autarchic*. This is surely more dangerous because it has its roots in a false philosophical and anthropological conception.

### **THE FAMILY, AUTARCHIC?**

The family, considered as *autarchic*, according to the etymology of the word, would constitute its own power and authority. In a certain sense, it would not need society or the State. A group is called *autarchic* when it is economically self-sufficient and produces everything necessary for its members to live... It would not need other groups or society. This is simply an illusion without any true basis. The family tempted by autarchy separates from other families and the public world from which it expects nothing good. It is evident that there is a lack of realism in evaluating the precarious situation and limitations of the family which is part of a society that should recognize its rights but also require some duties. Since the family needs society and vice versa, the question is to find complementarity and equilibrium. The dependence on society cannot be complete. Everything should be done according to the *principle of subsidiarity* so that once the social relationship of the family is recognized, it will not be absorbed and its “sovereignty” will not be violated.

In Leo XIII’s Encyclical *Rerum Novarum* of Leo XIII we read: “No human

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<sup>11</sup> Cf. JOHN PAUL II, *Reconciliatio et paenitentia*, 16.

law can abolish the natural and original right of marriage, nor in any way limit the chief and principal purpose of marriage ordained by God's authority from the beginning: 'Increase and multiply'. Hence we have the family, the 'society' of a man's house - a society very small, one must admit, but none the less a true society, and one older than any State. Consequently, it has rights and duties peculiar to itself which are quite independent of the State" (n. 12). In the following number of that encyclical, one reads that the rights and duties of the family are in fact, "antecedent... and founded more naturally in nature" than those of society: "It is a most sacred law of nature that a father should provide food and all necessities for those whom he has begotten; and, similarly, it is natural that he should wish that his children, who carry on, so to speak, and continue his personality, should be by him provided with all that is needful to enable them to keep themselves decently from want and misery amid the uncertainties of this mortal life. Now, in no other way can a father effect this except by the ownership of productive property, which he can transmit to his children by inheritance. A family, no less than a State, is, as We have said, a true society, governed by an authority peculiar to itself, that is to say, by the authority of the father. Provided, therefore, the limits which are prescribed by the very purposes for which it exists be not transgressed, the family has at least

equal rights with the State in the choice and pursuit of the things needful to its preservation and its just liberty. We say, "at least equal rights"; for, inasmuch as the domestic household is antecedent, as well in idea as in fact, to the gathering of men into a community, the family must necessarily have rights and duties which are prior to those of the community, and founded more immediately in nature. If the citizens, if the families on entering into association and fellowship, were to experience hindrance in a commonwealth instead of help, and were to find their rights attacked instead of being upheld, society would rightly be an object of detestation rather than of desire"(n. 13).

Further on Leo XIII states: "The contention, then, that the civil government should at its option intrude into and exercise intimate control over the family and the household is a great and pernicious error" (n. 14). The duty to aid families in need is not excluded, nor is helping a member of the family whose rights affected, but nothing more is allowed because "here, nature bids them stop. Paternal authority can be neither abolished nor absorbed by the State; for it has the same source as human life itself. 'The child belongs to the father', and is, as it were, the continuation of the father's personality; and speaking strictly, the child takes its place in civil society, not of its own right, but in its quality as member of the family in which it is born. And for the very reason



that 'the child belongs to the father' [...] 'before it attains the use of free will, under the power and the charge of its parents' (*STh* II-II, q. 10, a. 12)" (n. 14).

*Familiaris Consortio* also enables us to deepen understanding of the truth of the naturalness and preexistence of the family: "Just as the intimate connection between the family and society demands that the family be open to and participate in society and its development, so also it requires that society should never fail in its fundamental task of respecting and fostering the family. The family and society have complementary functions in defending and fostering the good of each and every human being. But society—more specifically the State—must recognize that 'the family is a society in its own original right'<sup>12</sup> and so society is under a grave obligation in its relations with the family to adhere to the principle of subsidiarity" (n. 45).<sup>13</sup>

John Paul II writes in *Gratissimam Sane*: "As a community of love and life, the family is a firmly grounded social reality. It is also, in a way entirely its own, a *sovereign society*, albeit conditioned in certain ways" (n. 17). In this perspective, reference is made to the rights of the family in their *intimate relationship with human rights*: "If in fact the family is a communion of persons, its self-realization will

depend in large part on the correct application of the rights of its members" (n.17).

The principle of subsidiarity must recognize, in the cultural field, a *specific* sovereignty that comes from one's culture and language. This is a question of *spiritual sovereignty*.

The correct application of the principle of subsidiarity is the key to respectful harmony in the area of this specific sovereignty. "Indeed, the family is a social reality which does not have readily available all the means necessary to carry out its proper ends, also in matters regarding schooling and the rearing of children. The State is thus called upon to play a role in accordance with the principle mentioned above. Whenever the family is self-sufficient, it should be left to act on its own" (n. 17).

The Successor of Peter recalled one source of great riches for family law: "Every effort should be made so that the family will be recognized as the *primordial* and, in a certain sense "sovereign" *society*! The 'sovereignty' of the family is essential for the good of society. A truly sovereign and spiritually vigorous nation is always made up of strong families who are aware of their vocation and mission in history. *The family is at the heart* of all these problems and tasks. To relegate it to a subordinate or secondary role, excluding it from its rightful position in society, would be to inflict grave harm on the authentic growth of society as a whole" (n. 17).

12 Cf. VATICAN COUNCIL II, Declaration on religious liberty *Dignitatis humanae*, 5

13 Cf. J. A. PERIS CANCIO, *La familia garantía de la dignidad humana*, Eiuinsa, Madrid 2002, 147.

The family must keep its identity, a legitimate area for action. This is why we should read as a key element in this area of freedom what Aristotle maintained when he affirmed that the family was prior and superior to the State.<sup>14</sup>

A strong temptation for those with political power, even in a democracy, is to forget the rights of the family, for example in the area of education. It is striking to see how democracy, which presents itself as having complete respect for freedom, very often tends to become overbearing. Many times today a case of abusive imposition are the models of sexual education classes imposed by the public authorities.

Privatization, in a false relationship between family and society, leads to this serious danger: it dulls awareness of political duties and drives families away from interest in public responsibilities. Families have to get organized. They must be present in a dynamic way: they have to speak out, dialogue, and make demands. This is the difference between *closed* families and *open* families aware of their political responsibilities. This is what the *Charter of the Rights of the Family* establishes: "The family has the right to exercise its social and political function in the construction of society."<sup>15</sup> a) Families have the right to

form associations with other families and institutions, in order to fulfill the family's role suitably and effectively, as well as to protect the rights, foster the good and represent the interests of the family.<sup>16</sup> b) On the economic, social, juridical and cultural levels, the rightful role of families and family associations must be recognized in the planning and development of programs which touch on family life.<sup>17</sup>" (art. 8).

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## FAMILY AND PASTORAL WORK

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A subtle form of privatization exists which consists in outlining a certain kind of behavior. When faced with a situation of harmful legislation, against which nothing can be done, the important thing would be to live a Christian life within the family. The laws hostile to marriage and the family would go in one direction, and coherent conduct within the family in another. By making this pastoral choice, one renounces intervening in society and getting involved in politics, while working to preserve one's own family and marriage. One may begin to think that an authentic family can protect itself from the influence of society and laws hostile to the

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14 Cf. ARISTOTLE, *Nichomachean Ethics*, VIII, 15-20.

15 *Familiaris consortio*, 44 and 48, cf. *Enchiridion della Famiglia* 616.618.625-627; EV 7/1666-1668, 1675-1677.

16 *Apostolicam actuositatem*, 11: EV 1/957; *Familiaris consortio*, 46 and 72, cf. *Enchiridion of the Family* 622.700-702; EV 7/1672, 1750-1752.

17 *Familiaris consortio*, 44 and 45, cf. *Enchiridion of the Family* 616-620; EV 7/1668-1670.

mission of the family. In this way one gets little experience of society's mechanisms and its considerable conditioning influence.

An individual in exile in the "domestic hearth", seeking a niche of intimacy and warmth, a nest where he can protect himself from the cold surrounding environment, where he can realize his "self" and put his own aspirations in safety in the intimate encounter with his partner, would not succeed in remaining within this sphere of intimate relationships, but would be swept away by the pleasures and enjoyments of the masses. The couple would thus become the identity-intimacy of two bodies in a soap bubble.<sup>18</sup> This is quite different from an authentic communion of love for life, the primordial cell of society!

Donati rightly notes in his detailed and subtle sociological study of the family, particularly its current aspects, the ambiguities of "privatization" in the progressive phenomenon of "individualization" in the "society of individuals" (N. Luhmann, N. Elias). On the one hand, the couple withdraws from the public sphere, closing in on itself, safe from any social regulation, while, on the other hand, all relations with the public sphere are eliminated. The orientation towards privatization becomes more radical until it becomes "solitary". Many couples, in France for example, live apart (each one on his/her

own) and meet at certain times daily or weekly. On the other hand, even though the State takes away the family's public importance and the family itself withdraws, the public sphere continues to be concerned with the couple by legislating on their intimate relations, trying to guarantee that the relations between the sexes are equal, that some decisions are taken together, and that there is no domestic violence. "Libertarian" law tends to control individuals but not their relationships, and it does not promote them. The law promotes and allows "privatization".<sup>19</sup>

We can say that this is a phenomenon analogous to the kind of education that was given in certain "democratic" systems as a *de facto* and not a *de iure* vice in which participation and a certain autonomy appeared to be protected. But education was given in an invasive way and imposed models "from above". Moreover, as we have seen, "privatization" of the couple tends in a certain sense to seek a secure place, a refuge that protects it (together with the children) from any kind of pressure from a society that is less inclined towards respect for persons and values. This makes romanticism prevail or a sentimental relationship that only lasts as long as the parties believe they are receiving benefits that justify stability and continuity (Giddens).

However, this form of privatization, far from assuring a "refuge", exposes the family not only to invasion from the

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18 P. DONATI, *Manuale di sociologia della famiglia*, Laterza, Bari 1999, 314.

19 DONATI, *Manuale di sociologia*, 306-309.

public sphere, but also to systematic intrusion by the means of communication (without many ways to defend itself) that impose cultural models and lifestyles. Privatization weakens rather than strengthens the structure of the family, even from within.

The problem is unavoidable in places, for example, where because of persecution, nothing can be done against hostile laws, such as in the former collectivist Marxist countries on the other side of the Iron Curtain, or today in China or Cuba for some aspects, and in large areas where Islamic fundamentalism is dominant and reduces Christians' area of freedom. It might be said that these are extreme cases. However, where freedom is not so dramatically impeded but subject to "democratic" impositions by a temporary majority in Parliament or government, or the arbitrariness of some institutions, one cannot conclude that nothing can be done and retreat or surrender even before the battle begins.

This defeatist attitude is based on the idea that laws go in one direction and pastoral care in another. This means to forget that laws produce and shape mentalities and outline cultural profiles and ways of thinking and living that "infiltrate". Because of the passive acceptance of unjust laws, one contributes to the growth and spread of evil, and erroneous behaviors, mentalities and worrying cultural models are generated. The Holy Father warns: "Although laws

are not the only means of protecting human life, nevertheless they do play a very important and sometimes decisive role in influencing patterns of thought and behavior" (*Evangelium vitae*, note 90).

We must repeat that today the trend in the legal arena is to take away the public importance of the family and to treat it as something private and irrelevant that does not go beyond private responsibility. A trend of this kind that denies the family's value as an institution and exalts the legal context of a "contract", is really contrary to the good of the society it purports to favor by encouraging the free meeting of wills.

It is necessary to undertake a struggle so that marriage will be recognized as *a good* that regards and interests society to the highest degree, as the Holy Father underlined in his speech to the Roman Rota. Referring to marriage, and particularly to the essential character of indissolubility, he wrote: "I want to examine *indissolubility* as a good for spouses, for children, for the Church and for the whole of humanity" (n. 2), following *Gaudium et spes* very closely. He adds: "*However the value of indissolubility cannot be held to be just the object of a private choice*: it concerns one of the cornerstones of all society." He also encourages in order to avoid permissiveness, to take the initiative: "Among the initiatives should be those that aim at obtaining the public recognition of indissoluble marriage in the civil juridi-

cal order.” He insists on the necessity of introducing a juridical order to improve “the social recognition of true marriage.”<sup>20</sup>

While until now we have insisted more on the phenomenon of privatization in relation to society and the State, other similar forms exist that are close to the concept of the *closed family*. This the Decree on the Laity of the Second Vatican Council refers to this risk: “This mission-to be the first and vital cell of society-the family was received from God” (n. 11), because the family should not be closed in on itself in a selfish or frightened way, but exercise its influence on the Church and society. It is worthwhile to underline the term *mission*, which means more than an action, but also a task, a vocation. The mission opens the family to a dimension in society and the world. One should insist more on the concept of the *open family* not only with regard to the connotations of a political character that should be taken on, prepared and organized, but also its relationship with the Church. We are referring to a kind of pastoral participation that avoids the family’s self-marginalization and isolation without ties to the parish, the diocese, other families and movements.

A lack of consideration for the family as a community was the price paid for “individualism” that wanted to consider the members of the family separately

or according to different criteria: men, women, youth, etc.

## **PRIVATIZATION OF CONSCIENCE**

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Another concept of “privatization” exists within the Church and does not directly concern the dimension considered until now of its relationship to society and its laws. This has to do with the opposition between a *public* morality and a *private* morality, a concept of “autonomous morality”. This concept has spread in a subjective world freed from any binding norms, including the ones that come from Revelation or the Magisterium. It is undoubtedly related to secularization (in the secular orientation) that rejects what is imposed “from without”. It is also related to the rejection of “a church structure” and an “institutional structure”, as if faith could do without belonging to a church while remaining fully coherent in all circumstances. This rejection is subjectivized within the closed area of the individual who becomes the criterion of morality, with an “anonymousness” that does not accept freedom dependent on norms. The subject sets himself up as the norm for his own morality and shows resistance to the fact that, in the Church, what is “public” questions or interferes with his free will and “choices”.

This is a destructive mechanism. Just as in society there is a danger of making a “crime” turn into a “right” because the reign of subjectivism forbids any

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20 JOHN PAUL II, “Address to the Roman Rota” in *L’Osservatore Romano*, 28-29 January 2002.

imposition (or because the same unjust law is interpreted in a way that undermines the ethical structure), in a kind of “privatization” of the Church there is the danger that once the evil of intrinsically disordered acts is denied (because they are not oriented towards the integral good of man and cannot be reoriented towards God),<sup>21</sup> sin is denied.

There is a desire to look for exceptions to the norms (universally binding ones). St. Augustine warned that “with regards to acts which are themselves sins [*cum iam opera ipsa peccata sunt*], like stealing, fornicating, blaspheming, and similar acts to these [...], carried out for good reasons [*causis bonis*] they would not be sins, or an even more absurd conclusion, they would be justified sins.”<sup>22</sup>

Such a concept of “privatization”, of private morality, is an attack against the full truth about man, understood integrally, and undermines the principles of morality.

Franz Joseph Kauffmann makes reference to this kind of privatization: “Today we are in a new phase of religious development which is characterized in the first place by an increasing loss of relevance of what is ecclesial in individual behavior. *Religious affiliation* has become today a private affair, not only in the political sense, but also in the world of life [...]. Churches are

considered important representatives of public morality but no longer an authority in the area of private morality”.<sup>23</sup> The author does not reject the fact that some positions taken by the Church in the public arena (in the sociopolitical sphere in general) find a surprising public resonance. The problem has its roots in this division of the person (and of the family), that opens the way to a capricious “autonomous morality”. When the Magisterium “invades” the world of sexual ethics, for example, many feel exempt in the name of privatization. A “privatization” of conscience of this kind cannot be accepted.

One particularly important area in this “private behavior” is family morality, contraception, the self-serving interpretation of *Humanae vitae*, as if it concerned “only conscience”, without norms, criteria etc.,<sup>24</sup> which is the most sacred and hidden tabernacle where God speaks to man.<sup>25</sup> It is not an enclosure, a bastion closed to the laws of God and the authority of the Church.

We have gone over some aspects of the phenomenon of privatization, which should be deepened, especially in the legal area. It is necessary to recover the family’s specific place in society as

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21 Cf. JOHN PAUL II, encyclical *Veritatis splendor*, 79-82.

22 ST. AUGUSTINE, *Contra mendacium*, VII, 18: *PL* 40, 528.

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23 F. J. KAUFFMAN, *Quale futuro per il cristianesimo?* Queriniana, Brescia 2002, 108-109.

24 PONTIFICAL COUNCIL FOR THE FAMILY, *Vademecum for Confessors concerning Some Aspects of the Morality of Conjugal Life*.

25 Cf. VATICAN COUNCIL II, Pastoral Constitution *Gaudium et spes*, 16.

the primordial cell with a coherent anthropology in a society founded on the good of the family that recognizes, supports and protects it in the legal order.





# Family and the Rights of Minors

Francesco D'Agostino

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*While family law has only developed in relatively recent times, minors or children's law is even more recent. The International Convention on the Rights of the Child of 1989 does not fully reflect the reality in which those rights can be asserted because it describes those rights as though the child were completely autonomous and independent in its development, although the social structure to which children belong is the family. In the family, the child already experiences what the rules are. In the context of family life, it is predominantly the father's role to teach the child certain rules of conduct indispensable for the society, into which he will be welcomed and in which he will, in turn, pass them on to others later on. This is the context for a gradual development of minor's law. This law is supported by the findings of the various social sciences, family law, legislation and jurisprudence, and by various international juridical instruments. The situation as it has developed, however, still contains a paradox. On the one hand, the family is the primordial locus in which the rights of children are vindicated and constituted, promoted and respected. On the other, the family is the object of debates which reflect on the rights of minors. This is the case with attempts to remove children from their parents, or parents from children. The rights of the child, therefore, should be reconsidered in the light of an interpretation that lends greater importance to the role of the family because the members of a family derive their rights from the family. It is the rights of the family that defend the ensemble of the child's rights. (↗ Children and Labor; The Dignity of the Child; Children's Rights and Sexual Violence; Parenthood).*

1. It is an accepted datum of the social sciences that the family is not only the locus for personal growth, the development of the emotions, solidarity and the intergenerational transmission of culture, but also of law, in the full sense of its meaning. It is also the locus for the necessary dialectic between the normative principle (represented by the father) and the principle of care,

understood as *to-be-taken-care-of*, (represented by the mother). It is likewise an established datum, what the sociologists call the *nomological consciousness*, that the essential dimension for the individual growth of every human being as a social subject, derives properly from the family. In other words, the family is fundamentally important for the jurist, as can be seen, among other things,

from the strong desire to constitute not only in epistemologically autonomous disciplines both family law in general and law relating to minors in particular, but also, and more importantly, because of the incessant production of *normative material* at the level of legislation as well as in jurisprudence. There can be little doubt that the sentences pronounced by judges in relation to the family provide scientists with indispensable data for an adequate evaluation of the family's internal and external dynamics.

Further evidence in support of what has just been said may be gleaned from the content and continual expansion of the *corpus* of international law on the subject of the family. Here, mention must be made of a text which was produced a long time ago but which still retains its importance: *The Geneva Declaration on the Rights of the Child* of 1924. Reference must also be made to the primary significance of the *Universal Declaration of Human Rights* approved on 10 December 1948 by the General Assembly of the United Nations, and especially two of its fundamental declarations: in article 16 ("The family is the natural and fundamental group unit of society and is entitled to protection by society and the State"), and in article 25 ("Motherhood and childhood are entitled to special care and assistance. All children, whether born in or out of wedlock, shall enjoy the same social protection"). A further specific declaration on minors, consisting of a

preamble and forty principles, was again adopted by the General Assembly of the United Nations on 20 November 1959: *The Declaration of the Rights of the Child*. We can (provisionally) conclude by referring to *The International Convention on the Rights of the Child*, adopted by the General Assembly of the United Nations on 20 November 1989 which came into force on 2 September 1990. In 54 articles, this convention provides an important cultural and intellectual stimulus not only for the various national Parliaments which ratified it but also, and perhaps more importantly, for all those who are interested in the area of minors. It is an important milestone in the long (and never fully completed) path of the international community in determining more precisely and in defending more effectively this particular area of human rights.

2. The jurist who wishes factually to communicate the present *status quo* of family law and of the law on minors must enter into a complex and rich discourse, if only to transcend minor ordinances; this discourse is clearly and increasingly becoming a supra national dialogue, if not a world wide one, so in order to arrive at a brief and clear understanding of this dialogue, the same jurist must be prepared to expend much effort. In the contemporary world, the traditional nexus between law and family would appear to be confirmed, reasserted and rejuvenated. This would seem sufficient for an (unguarded) optimism in

asserting that the contemporary age believes in the family, defends it, protects it and promotes it.

Instinctively, however, we tend to perceive that such is not the case. It is a fact that the law increasingly devotes its attention to the family and to minors. Aside from that statement of fact, the legal significance of that fact is an altogether different matter. The richness and complexity of legislation, in itself, does not necessarily imply an arrival at *understanding*. What appears to be the emerging heart of the problem facing us is that the proliferation, indeed copious proliferation, of legislation on the family and on minors-to which I would like to vigorously draw attention-can be very ambiguously interpreted. Indeed, it could be seen as a reproof of the dictum *motus in fine velocior*. It could even hide, albeit awkwardly, a rejection of the very idea of family.

From this situation derives a feeling of growing, ever more open and unequivocal *unease* at what lies behind national and international legislation on the family. For some, it would seem that the field of family law and minors law is already governed by a *law of double frenzy*, not differing substantially from that of Henri Bergson: the greater the expansion of legislation in this area, the greater, paradoxically, becomes the ineluctability of the dissolution of the family as a legal institution in the system of inter-individual relations occurring between its components. Sociologically, *the law*

*of double frenzy* manifests itself as a paradox. The sociologist Pierpaolo Donato has for some time drawn attention to this phenomenon: "On the one hand, there appears to be a certain nationalization of the family taking the form of growing regulatory interventions on the part of the State[...] while, on the other hand, there is a growing privatisation of family behaviour, in terms of actions based on sentiment, aspirations, tastes, preferences, expectations etc. which would seem totally subjective and individual, that is, disconnected from the social and moral bonds of any common society"<sup>1</sup>. Consequent on this is the uneasiness – which is unacceptable for any self respecting jurist – that diminishing substance lies behind forms; and that one perceives the increasing possibility of being confronted by legislative systems formally impeccable but in reality desolate and empty. The uneasiness that we have mentioned can equally be hidden or removed by complementing ourselves on the breadth of legislation emanating from international headquarters and in particular regulations that require so much study by jurists of good will. We can even reinterpret the traditional dogmatic definitions, while attempting to demonstrate their perennial vitality. Consciously or unconsciously, this very solution has been

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1 C.f. P. DONATI, "Gli Spostamenti di confine del pubblico e del privato nella famiglia," in ID., *La famiglia come relazione sociale*, Milano 1992, 33.

adopted by many. Unease, however, will persist for as long as the science of law has not succeeded in reconstituting the concept of family as *a legal concept* and in conferring on it a full and coherent meaning. This is a task which will require the efforts of perhaps more than one generation of jurists.

3. Jurists, however, believed that they had discharged this task more than twenty five years ago when they had –half prophetically half ideologically– proclaimed the *death* of the family.<sup>2</sup> We know now, as then, that no objective indices can be produced to predict the disappearance of the family *as a social formation*.<sup>3</sup> The jurists' interest is radically different: his interest is to determine the *quantum* of law that appertains constitutively to the family, and that *cannot be taken from it*, especially in complex societies such as we live in.

It is a fact that the today's family is radically different from the family of the past. It is also a fact that the family no longer has the character of a political organism prior to the State, whose head is invested with original and sovereign power. That this should imply an *abandonment* or the impossibility of law's being able to consider the family as intrinsically juridical (and not simply

as an object of continued international and national legislative interest) is another question. It is precisely on this question that one of the most important Post Modern struggles hinges.

It has to be admitted that, our age seems to be moving in the direction of dissolving the *intrinsic legal nature* of the family. The models, or impetus, for this movement can be very diverse. For its foresight, mention, however, has to be made of the thought of Arturo Carlo Jemolo who defines the true and authentic nature of the family, founded not on traditions but on emotions, as *metajuridical*.<sup>4</sup> It is obvious that, in matters

4 According to the famous phrase, "*the family is like an island that can be lapped by the sea of law: but only lapped since its profound essence remains metajuridical*" (c.f. A.C. JEMOLO, "La famiglia e il diritto", in *Annali del Seminario giuridico dell'università di Catania* 3[1949], 47, subsequently republished in ID., *Pagine sparse di diritto e storiografia*, Milano 1957, 241). Jemolo's observation, apart from its still valid anti-formalistic warning, when taken literally, proves too much, since it is natural for the law generally to lap human experience. In other words, man never acts *juris causa*, but to satisfy his own moral and economic interests. Only to the extent that such interests have co-existential significance should such interests acquire legal structure. If the essence of marriage is metajuridical, analogously, so too, for example, is that of contract (which is never stipulated by the parties in creating a bilateral legal business, which is made simply in response to personal interests), and that wills, and indeed of any public institution, beginning with the State (which exists to fulfil a social end of a political nature).

2 See D. COOPER, *The Death of Family*, London 1971.

3 Legal anthropology has been perplexed in crediting the inevitability of the rise of the so called nuclear family: c.f., for example, the final section of N. ROULAND, *Anthropologie juridique*, PUF, Paris 1988.

concerning the emotions, the law can have but a minimal place. More radical, however, is the position presently advocated by some that it is undue or inappropriate for jurists to speak of the *family* in the singular and that the time has come to decline this noun in the plural. It becomes necessary, therefore, to recognize the existence not only of many anthropological-cultural models of family, but also of numerous *hypothetical models of the family*. Hence, the family is not so much a natural entity as an *artificial* entity and that it is possible to *invent* many new respectable legal-institutional models of family depending on vested interests, circumstances, or personal preferences, in their origins not always subject to objective verification, but deserving of the legislator's active attention. From this perspective, there can no longer be room for *family law*, properly speaking, but only for a *law for individuals within the family*. From the same perspective, indeed, the term *family law*, understood as implying the idea of the persistence of the microcosmic family endowed with its a proper, original, legal subjectivity, would have to be regarded, in fact, as antiquated, or else would have to be subjected to a radical semantic revision.

4. Clearly, in the same context, the law relating to minors has to be understood in a completely new light. With the objective dissolution of family law (which is more and more losing its content), the law relating to minors

must necessarily cease, *de facto*, to be part of family law. What has been said can be demonstrated very quickly by recalling two sufficiently consolidated central points of minors law. One is completely traditional, the other very recent.

The traditional principle is that minors are legally represented by their parents, who are regarded as the sole and exclusive means of expressing the needs and will of their children since it is presumed that there exists a coincidence of interests between parents and children. More recent, however, is the principle of the *pre-eminence of a minor's interests* over those of his parents. This principle has been widely accepted in the great international declarations on the rights of children, and more recently in the 1989 International Convention on the Rights of the Child. Objectively, this principle acts as a corrective to the preceding principle and is based on the obviously more than reasonable presupposition that it is possible to imagine an *abuse* in the role played by parents, against which children should have the protection of law. This principle, however, is already showing signs of encountering grave problems not only because some, especially judges, in determining the concrete *interests* of minors constantly operate according to criteria which do not respect the system of family relationships,<sup>5</sup> but also because there is an

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<sup>5</sup> The following may be regarded as among the more recent and useful innovations on the

increasingly widespread idea that, rather than interests, minors have to be accorded true and proper *positive rights*, not only of a *social* nature (such as a right to health and education) but also of a strictly individual nature (such as that of choosing their residence, changing their names, making their wills, obtaining and using passports, joining religious communities, and stipulating labor contracts etc.). Minors should be able to enjoy these rights independently of their belonging to a family and even by eventual recourse to representatives other than their parents. According to some, this direction should guide the work of completing the International Convention on the Rights of the Child.<sup>6</sup>

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subject of minors law: the so called hetero-familiar custody, as is clear, has application to more than family realities including social volunteers (cf. E. SCABINI-P. DONATI, *Reti familiari e bambini a rischio*, Milano 1988, 9-10; on the same subject cf. also A. BOMPIANI, "Diritti del minore e affidamento eterofamiliare", in *Medicina e morale* 44[1994], 691-722. While undoubtedly true that there is no alternative to interventions in many such cases, the fact remains that they are made without full awareness of their effects on the minor's total experience of life: for some very important considerations on the subject see A. COSTANZO, "Dinamiche psicologiche e sociali interne alla famiglia e nell'ambiente che la circonda, in caso di intervento autoritario" in *Il diritto di famiglia e delle persone* 22 (1993), 290-312. Cf. also ID., "L'esperienza del diritto del minore alla rieducazione", in B. MONTANARI (ed.), *La norma subita*, Turin, 1993, 149-175.

6 The rigorously individualistic character

5. Faced with such cases, where does the jurist stand? It is not easy to give a precise answer to such a general question. If the jurist views himself by the standard of a mere technician of social organization, lacking in all objective critical-axiological standards, whose task is simply to lend formal order and systematic legal organization to any law produced by the legislator (or by social praxis when such is determinative for legislative production), then he will inevitably and submissively accept every dynamic occurring in society (from the most extravagant to the most aberrant) and will inevitably and consciously seek to legitimate them. In this way, he will play an important social role which must undoubtedly be calculating and impersonal, so much so that the specific merit claimed for this particular model can be called into question. An alternative, which, in recent times, has gained ground among jurists who are

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of such proposals clearly emerges when one sees how these approach the problem of determining the age of majority, which, as we know, is usually set at eighteen, but which still remains at twenty or twenty-one years in some legal systems. A distinction is widespread between minors under sixteen (children, *enfants, fanciulli*) and minors over sixteen years old (young persons, *jeunes personnes, giovani*), so as to attribute to the latter, if not a general capacity to act, at least the exercise of a wide array of individual rights. The exercise of such rights, however, for the sake of consistency, should also be extended to minors of sixteen years of age where such have arrived at a sufficient level of discernment.

not prepared to accept the legal-formalist model that we have just described, is to contest the illusion of ideological neutrality, adopt a political approach to reality, and begin the work of social construction. This model has been atrophied by the interminable, inconclusive ideological disputes of the latter half of the twentieth century, and can no longer be seriously regarded. Making political use of the law cannot appear any less unacceptable than the political use of religion or art.

Both approaches that we have mentioned would therefore appear to be precluded. Is there any other approach for the contemporary jurist? Certainly, there is another possibility. It is somewhat inconvenient and less practised because it imposes on the law student the abnegation of a double temptation: that of becoming a docile servant of those with political power (or, as it has been described, a mere *notary of history*) and that (which is perhaps currently more insidious than the former), of becoming the docile servant of the factually dominant morality, and consequently an *fundamentalist*, especially when that morality, as often happens nowadays, is seen as a *libertarian anti-morality*. The jurist has to be able to say no to both such temptations.

It must be said, however, that this welcome double rejection cannot derive from any *a priori* contempt either for politics or morality: the jurist is not competent to sanction either one or the

other, provided they *operate within their proper order*. The question is different: the competence of the jurist—qua jurist—cannot be conducted in reference to principles other than those of his proper scientific discipline, which are precisely the fundamental principles of jurisprudence which are the only absolutely essential principles for the science of law, regardless of whether or not they happen to correspond to the fundamental principles of politics or morality (and history affords clear examples of the coincidence and non coincidence of such principles).

If the family has *rights* (and we shall return to this our central topic), it has them because this is the way it manifests itself in its basic legal structure, and not because it has been benignly conceded such rights by the State or in consequence of specific demands arising in the area of ethics.

6. The jurist who pays attention to the family qua constitutive structure for *man's being* will immediately perceive its character as having an *anthropological-institutional quality*—and hence a *legal quality*—arising from relations that are either/and natural-biological events. In according the family legislative-institutional importance, the law has never denied the existence of an extra-familiar sphere of human existence and action which is real and also worthy of attention. It has, however, always considered this sphere as *inadequate* to give full expression to fundamental anthropological needs and

duties. It is possible to be born outside of wedlock just as it is possible for the law to refuse to give explicit family status to illegitimate children. What is not possible is for the law to regard the birth of a human being (including those born out of wedlock) as an *altogether* irrelevant fact, or that someone born into the world has no status, either positive or negative. The *structural* nature of the family implicitly means that its defense by the law cannot be assimilated to the defense of a *value* or of a *system of values*, given that the nature of the family – as a context of total communication which incorporates persons in the totality of their being and not merely their specialized function imposed on them in virtue of their being beings-in-society<sup>7</sup> – is much more easily assimilated to a factual reality (a *Sein*) than to an ethical ideal (a *Sollen*).

The structures through which man completely realizes his identity are not ideals to be realized. Rather, they are dimensions through which human life acquires *dignity*, and becomes the bearer of anthropological meaning, properly understood (thus, for example, in the context of the general biological phenomenon of reproduction which is common to all animal and vegetable life forms, *paternity* and *maternity* be-

come specifically *human* phenomena, because of their factual giving of each other, independently of any *value* which they may intend to confer on each other on the part of those who—even against their will—become mothers or fathers). In other words, man can certainly exist outside of a family structure, but this mode of being is so *impoverished* as to stunt his humanity (just as it is empirically possible for a slave willingly to accept an experience of life marked by the privation of liberty at the cost of radically *impoverishing* it and of depriving him of all dignity). By guaranteeing the family structure, the law not only guarantees a *human good*, but also the primary institutional structure of man's "Ego".

7. Many of the theoretical considerations that have been raised so far merit more ample and accurate treatment. Among the many possibilities that could be further exemplified, one is certainly emblematic of the current crisis experienced with regard to the nature of the family and its rights, when perceived from the perspective of the *laws of double frenzy*: the paradoxical norms of those European legal systems (following the example of Denmark) which have given conjugal or para-conjugal formal recognition to homosexual unions: thereby, on the one hand, extending the traditional sense of family law, while on the other, giving public recognition to one of the most subversive models of familial community (if the terms can

7 In accordance with the effective characterisation of N. LUHMANN, in "Il sistema sociale famiglia" in *Nuove tecnologie, comunicazione e mondi vitali*, Angeli, Milano 1989, 233ff.



be applied in this case) it is possible to imagine. That this problem is currently of interest is clearly to be seen from the ever increasing instances of this type. Indeed it has reached the point of an authoritative crystallization (which will not be the last one) in the resolution of the European Parliament of February 1994, which expressed the hope that European legal systems, in overcoming what its promoters regard as inherited or arbitrary prejudice coupled with discrimination, would not only admit in general terms of the legitimacy of homosexual unions as a valid form of conjugal life, but also recognize the consequent *right* of homosexuals to be parents – a right to be asserted in assisted fertilization and in adoption<sup>8</sup>.

In this context, the influence of politically inspired ideologies on this specific legislation is of minor interest. Let us merely examine its legal implications for *family law and minors law*.

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8 While commenting this resolution, some suggested that excluding the term marriage from the debate since its “traditional and historical use” would have to be respected (hence, the term would only be used to allude to “a legal union between a man and a woman”); in the case of homosexual unions, it was considered better to use the term “civil unions. The term is certainly effective. It can be easily shown, however, that the European resolution does not use this euphemism. Rather, it speaks of marriage or “an equivalent legal institution.” Unless we want to adopt a sterile nominalism, we have to accept that what is referred to is not a civil union but its factual equivalent which is marriage.

Here we are confronted by a very *serious case* which requires a very rigorous legal understanding. That means that whatever argument is advanced on the subject (especially on the question of the admission of homosexual persons to artificial fertilization and/or adoption) must, as a general principle, exclude any strictly *ethical-religious* evaluation of homosexuality. This is not because homosexuality should not imply such an evaluation, which can never be denied, but because an ethical-religious view of homosexuality cannot have legal relevance. As has been said, it is not for the law to guarantee general moral values, but to promote its *proper and specific ethic* which is that of social co-existence. The law is not merely a technical means of arriving at a *social synthesis*, a strictly coercive system, and neither can it be reduced to being an “authoritarian vehicle imposing values that are not shared”. The law is a system of relationships; it is public and objective, and for the defense and promotion of its relational subjects. It is not for the law, especially in the context of the ethical pluralism in which we live, to advance or impose social syntheses which are not completely shared and hence not structurally present in a given society. The law has but one objective: to guarantee that in the complex weave of social interaction certain dynamics (more or less intentional) are not adopted which lead to the *undue* renunciation or sacrifice of worthy positions or personal interests which are

deserving of *public* protection, or to give *undue* guarantees to positions or private interests (however licit) which have no claim to public protection. The discussion of homosexual marriages amongst jurists, therefore, has not, and ought not to have, a confessional character. This discussion brings into play their ability to propose and promote a *correct* use of the law.

Ultimately, what has relevance for the jurist, in this case, is not whether homosexuals have, or have not, a "desire" to marry but whether such a conjugal desire has, or has not, those characteristics which are deserving or meritorious of a *public* recognition by the legal system analogous to that afforded to heterosexual marriage; or whether such can be reduced to a mere desire to imitate heterosexual marriage which would be essentially confusing; a desire, which, at a *strictly private* level may have relevance, but which, where such is publicly recognized as matrimony or as a "civil union", would be likely to disseminate the confusing character of such an imitation. Such would be legally unacceptable since, generally speaking, all *kinds of confusions* are legally unacceptable.

8. This is the central crux of the question. The "civil union" of homosexuals creates problems for the jurist, not only because it structurally *mimics* matrimonial unions, but also because of the *modality* (confusion) of that mimicking. Jurists are aware that matrimony is the most refined institution that the

law has "invented" to protect the order of generations. It is possible to imagine many imitative forms of marriage, both extra legal (such as concubinage) and legal (non consummated marriages). For such imitations, however, to have sense, and avoid confusion, at the very least, it is indispensable that the spouses, in the order of generation, have not merely a social role, but, more importantly, that they are *human* in what pertains to them, that is, that they are *male* and *female*. Otherwise, we are beyond a question of possible imitation and the relationship can no longer have any para-conjugal character other than that of *being-as* (a man, a woman, a husband, a wife), which is open to the morbid consequences of possession, on the one hand, and of subjugation on the other<sup>9</sup>.

9. If this understanding of the problem is correct, then we can return to the fundamental question raised at the outset. Does it make (legal) sense to recognize as *spouses* two individuals of the same sex, united by unequivocal bonds, in a stable *cohabitation*, who, for whatever subjective reason, demand public recognition of their union? The negative answer that must be given to that question derives, in my view, from a basic motivation. Homosexual cohabitation—for the sole reason that *objectively* it cannot be open to the possibility of procreation—is *of no public interest*.

<sup>9</sup> Thus S. COTTA, *Il diritto nell'esistenza*, Giuffrè, Milano 1991, 124.

While it has to be socially respected as an interpersonal relationship (obviously only when not connected with physical or psychological conditioning or violence), it does not merit institutional recognition nor the protection of the law.

What arguments can be advanced in support of the contrary thesis? According to some, the problem today is one of recognizing the existence of these stable unions which are based on *affection*. Ultimately, it is a question of a variant on the position of Jemolo mentioned above (and one in which he would never recognize himself!). But what is intended by the word *affection*? Two friends—at least at a certain stage of life, for example during their university years—can have a great affection for each other and decide to live together. Is this sufficient for the recognition of their “civil union”? Is this the kind of affection that is intended? Clearly not: in the minds of those who propose new forms of *civil unions* they are certainly linked to *sexual activity*.

But why must sexuality—which is a strictly *private* human experience and whose private nature is fiercely defended—be of public interest? In the case of matrimony, sexual activity is *of its nature*, directed towards generation: traditionally, the law has traditionally given public recognition to marriage for precisely this reason. But when sexual activity is intrinsically *sterile* what public relevance can it possibly claim? Surely,

as has been said, not in the name of its *mimicking* of heterosexual sexuality?

10. Perhaps it is to render this imitation more plausible that homosexual couples demand access to adoption and to assisted fertilization. Jurists who do not seem prejudicially contrary to such suggestions observe that these demands are to be treated as the demands of single women for access to adoption and to artificial fertilization, thereby reducing the problem to the acceptability of these latter demands. It is true that children in such circumstances will be deprived of a father figure. But, it is argued, the forms by which children are socialized are so complex that this affirmation is increasingly challenged. Indeed, there is an increasing body of legislation which permits the adoption of children by single persons, thereby placing considerable doubt on the thesis that the balanced development of children requires the presence of both parental figures. The analogy between the artificial fertilization of a single woman who intends to bring up her child without a father, and that of a homosexual woman who intends to substitute the father for another woman with whom she lives, is clearly fraught with danger. Let us, nevertheless, assume it to be good and then proceed to examine the consistency of the argument we have just outlined.

Let us begin by noting that the validity of those arguments referring to the liberalization of adoption laws in other jurisdictions is particularly weak.

If such legislation truly belongs simply to a *purely ideological* checklist, then the fact of its increasing incidence would merely demonstrate the current *factual* irresistibility of the ideology, and nothing more or different than that. More weighty is the earlier mentioned argument according to which contemporary forms for the socialization of children have become so complex that they often exclude a paternal figure. What type of argument is this? Is it a factual/statistical argument? No reason for the concession of legal recognition can be drawn from it. This would seem to be a factual/axiological argument (claiming that because so many children grow up without a father figure we can deduce from that fact that the absence of a father figure is not injurious for them). This reasoning is fallacious: this is clearly demonstrated by child psychology even though the consequences of the *unhappiness* of children in such situations are not easily statistically measured.

For the jurist, however, the question can be put in simpler terms without embarrassment to psychology, in terms of principle rather than facts: what must be considered as overriding in the case of the undoubted *interests* of a woman (who is sterile) in having a child (by means of assisted fertilization) and the undoubted *interests* of a child (who comes into the world through such means) in having both *a mother and a father* so as to participate in a full experience of family? It can be admitted that both of

these interests have an intrinsic merit, but, when they conflict, common sense impels us to opt for the *least risky* choice, and hence to favor the interests of the unborn child which must be given *overriding* consideration. It is better to sacrifice the desire of a sterile woman to have a child (or of a homosexual couple)—a desire that can be compensated for by many forms of activity in favor of children—than to place a child in a situation of grave, or even, irreparable socio-psychological disadvantage. This is the view taken not only by contemporary adoption laws in Italy (which give precedence to an *objective* capacity to meet and satisfy the *objective* interests of the child over the mere desire of a couple to adopt) but by many foreign legal systems on the subject of assisted fertilization. As has been mentioned, beginning with the United Nations' declarations this view is also taken by all international pronouncements on the rights of children which almost monotonously repeat that *in all cases the interests of children shall be paramount*<sup>10</sup>.

It is not for these international declarations or conventions to determine the basis for the principle of the *paramount interest of the child* over every other adult subject (including parents):

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10 Cf., as an example, The Convention on the Elimination of all Forms of Discrimination Against Women, adopted by the General Assembly of the United Nations on 18 December 1979, article 16, first paragraph, letter *d*.

indeed, in documents of this kind a certain amount of vagueness can be positive since it can immediately draw attention to more urgent problems, especially those of praxis. While theoretical reflection always runs the risk of becoming lost in useless hair splitting, at the same time, it ought to express itself on the subject, precisely because its proper competence is to release praxis from that blindness which can characterize it when abandoned to itself. In this perspective, the question of children's rights is exemplary. The duty of recognizing a *primacy* for the interests of minors is not derived from a *metaphysics of innocence*, that is, from the mere fact that minors are constitutively weak subjects ( which is of course true, but *in se* insufficient to negate Karl Kraus' subtle adage to the effect that before defending childhood we firstly have to *defend ourselves against it*) but from the fact that the objective "weakness" and "innocence" of children requires that we know how correctly to outline the relational dynamics in which they are involved. This penalizes not only the extinction of their interests but also, the more general deformation of the relational ties in which children are protagonists, that is, the falsification of human existence or being as such.

It is therefore evident that no concrete reference to the structural reality of family law lies behind the resolution of the European Parliament. The resolution, rather, is based merely on an ideological choice. The same reso-

lution does not consider homosexuals for what they are but for what they wish to become but cannot accomplish. In essence, the question is posed in such terms. Whoever sees the European resolution as a contribution to the struggle against discrimination clearly indicates a particularly reductive concept of law. The law is not a means to arrive at happiness or even the satisfaction of particular psychological desires. Even less so is the law a means of *acquiring an identity*. The law recognizes an *identity*. It cannot create one and neither can it destroy one (in despotic systems, the law can remove the name or even the life of a person, but it can never remove a person's ownership of self). A married homosexual adds nothing to his identity: he may be able to acquire a *social role*. A married heterosexual acquires more than a role: he bears a *duty* in the existential and generational orders.

11. In his recent *Letter to families* (§17), the Pope defines marriage as a covenant whereby "a man and a woman establish between themselves a partnership of their whole life, and which of its own very nature is ordered to the well-being of the spouses and to the procreation and upbringing of children." He adds: "Only such a union can be recognized and ratified as a "marriage" in society. Other interpersonal unions which do not fulfill the above conditions cannot be recognized, despite certain growing trends which represent a serious threat to the future of the family and of society itself."

In reading these lines, a question immediately arises for the jurist. When defining marriage, the Pope uses the definition given in the Code of Canon Law (precisely canon 1055). Implicitly, he acknowledges that an understanding of the specific value of marriage is inseparable from reference to law. Thus, the definition and treatment of marriage cannot overlook its legal and institutional dimension. It is precisely this aspect of marriage (and the family in more general terms), moreover, that seeks *recognition in its identity* and acceptance in its *social subjectivism* – to borrow the expressions of the *Letter to Families*.

A corollary may be deduced from this consideration which requires the urgent attention of jurists and which serves as a conclusion to our discourse: the defense of marriage and the family certainly implies the defense of *ethical-religious values*, but only to the extent that marriage itself, and the family in general, are objectively understood as *legal-institutional dimensions of human existence*, i.e. according to that dimension which is most properly theirs.

# Family and the Principle of Subsidiarity

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Jose Luis Gutierrez Garcia

*The Church considers the principle of subsidiarity as the core of its social teaching. It is particularly the heart of the Christian teaching about the place of the family in civil and political society. The family predates civil and political society. This is what we mean when we say that the family is the basic group unit of an organized society or that it is the smallest democracy. Therefore, families have a natural right to organize not only to help or protect themselves but also to better develop their irreplaceable role in political society. Nowadays, however, the political authorities frequently intrude upon the privacy of families, limit the freedom of choice of the spouses, and abusively interfere in the education of their children. These abuses of authority, occurring both in the national and in the international arenas, lead some political sectors to try to modify the nature of the institution of the family. Hence, the autonomy of the family needs to be reinforced. The family is autonomous only when parents are free to decide the number of children to have and the education they want for them. The Government and the authorities at all levels must help parents to exercise this freedom. The family unit, born from heterosexual and monogamous marriage, is a communion of persons, and as such, it is a subject with the right to freedom which must be protected. (↗ Demography, Demographic Transition and Demographic Policy; Family and Sustainable Development; Demographic Implosion in Europe; A New Model of a Welfare State )*

## THE PRINCIPLE OF SUBSIDIARITY IN THE POLITICAL COMMUNITY

The principle of subsidiarity or of the subsidiary function was explained and given its exact meaning, universal scope, historical basis and philosophical consistency by Pius XI in the encyclical *Quadragesimo anno* that includes all the array of tasks that authority has in every social group.

Applied to the political community at all levels of expression, present or future, national continental and worldwide (*Gratissimam sane* [GrS] 17), the principle combines all the functions that necessarily correspond to the State in balanced conjunction with the principle of participation, which is specific to society or to regulated collectivities.

Subsidiarity in the political community implies the grave duty of the authorities to provide society with per-

manent, exclusive, and mandatory help and protection since the goal of a political regime, as said by Saint Augustine, is not only to command, *prasesse*, but also and most of all to serve, *prodesse*, those governed.<sup>1</sup> The authority is not there to serve the ruler or his group but those he/she governs.

Civil society, which in the political community holds the primacy ontologically, temporally and in its finality combined with the ruling, that is to say instrumental, primacy of the government is composed of individuals, families and intermediary entities. The State must serve all of them with all its with its three powers because in the order of ends man and the family do not exist for the State, rather the State is there to help and serve the family and the individual.

Respect for the family, helping and serving it, is one of the State's essential tasks. (*GrS* 2)

"By virtue of this principle, the State cannot and must not take away from families the functions that they can perform just as well on their own or in free associations; instead it must positively favor and encourage as far as possible responsible initiative by families. In the conviction that the good of the family is an indispensable and essential value of the civil community, the public authorities must do everything possible to en-

sure that families have all those aids- economic, social, educational, political and cultural assistance-that they need in order to face all their responsibilities in a human way" (*Familiaris consortio* [FC] 45).

For this reason, the principle of subsidiarity has two main tasks: to do and to allow to be done; which are fundamental and irreversible expressions of the essence of the service that the State has to offer to society (*GrS* 17). As a result, everything that violates or impairs the fundamental values of the family shatters the principle of subsidiarity and offends the dignity of the human being (*FC* 76).

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## DIGNITY AND PRIMACY OF THE FAMILY

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The family is the paternal-filial community based on marriage. It is the primary group unit of civil society and of the political community, origin and foundation of both (*Apostolicam actuositatem*, 11). It is the basic institution prior to all the other great social groups (*GrS* 17).

As the original expression of human society (*GrS* 7), the natural origin and the first school of man (*GrS* 15), the irreplaceable and indispensable common good of society and mankind (*GrS* 11), all other social relationships rest upon or come from the family (*GrS* 2). The family is an active and principle subject in the establishment of social justice, in cultural growth and in the development and preservation

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1 ST. AUGUSTINE, Sermon 340A, 3 in *Obras Completas*, XXVI, Sermons (6) (BAC 461, Madrid 1985) 24.



of an authentic humanism. (*Gaudium et spes* [GS] 52, FC 7, 76)

In every generation, the family has fed the immense unfolding of creative subjectivity in society and contributed through its work to development and progress (*GrS* 15).

Despite its original social primacy and status as a sovereign society, the family requires support from society and especially from the State (*GrS* 17). It is from this needy sovereignty that the golden rule of subsidiarity emerges.

“Indeed, the family is a social reality which does not have readily available all the means necessary to carry out its proper ends, also in matters regarding schooling and the rearing of children. The State is thus called upon to play a role in accordance with the principle mentioned above. Whenever the family is self-sufficient, it should be left to act on its own; an excessive intrusiveness on the part of the State would prove detrimental, to say nothing of lacking due respect, and would constitute an open violation of the rights of the family. Only in those situations where the family is not really self-sufficient does the State have the authority and duty to intervene” (*GrS* 17).

Everything that has been stated applies according to reason and natural law. It is a genuine patrimony of humanity. The historical experience over several millennia proves that the character of the family, its primary social function, corresponds with the real principles ex-

pressed allegorically, following the ancient oriental form, in Genesis (*GrS* 6).

## **THE RIGHTS OF THE FAMILY**

The great Charter of the Rights of the Family, published by the Holy See in October 1983, situates itself on the original natural level and in accord with the supernatural. This document, addressed to all those responsible for family policies in the world, gathers together and formulates in a concentrated and highly authoritative way the universal rights of the institution of the family impressed upon the conscience of the human being.

It is important to keep in mind that the rights of the family are closely related to human rights, but are not just a simple arithmetic sum total of these. The family is a pluripersonal community, derived from marriage. It is a bi-personal community, a new subject, different. Like a legal person, it presents itself and acts as a collective subject, with its own creative subjectivity (*GrS* 17). Moreover, as a community the family has natural characteristics that make it different from the rest of the associations or intermediary entities, and it has a net superiority over the nation, the State and international organizations (*GrS* 15).

The family has a vast unequaled natural dignity and the very social nature of man imposes this superiority.

Consequently, the future of humanity passes through the family (*FC* 75,

86). The past was forged, the present is being forged and the future will be forged in the core of the solid homes with the universal moral objectivity that regulates human behavior, in the personal and the social spheres. Societies have been, are and will always be made up of families (*FC* 37).

### **THE RIGHTS OF THE FAMILY IN THE LIGHT OF THE PRINCIPLE OF SUBSIDIARITY**

1. The State must have the general operating rule, by virtue of the principle of subsidiarity, to recognize, guarantee, promote and foster the creative subjectivity of the institution of the family and its leading role in social life.

To this end, and according to such principle, the government must let the family do whatever the family can do by itself; the government must act as an entity at the service of the family and do whatever is in its power to help and protect the family. This is the golden rule stated in item one. All the powers of the State should follow in this line of respect and complementarity (*GS* 48; *GrS* 4, 15, 17; *FC* 45).

2. Having established this generic norm of service and aid, the State has, as its first obligation, to recognize the natural, unique, and morally and legally irrevocable connection between the male and female monogamous union and the family (*GS* 48) The government must recognize their natural identity

and accept them constitutionally as social individuals configured by nature itself.

Consequently, the State must reinforce the indissolubility of marriage and the stability of the family against the hedonistic pseudo-culture that rejects them (*GS* 48, 1; 50, 3; *FC* 20; 46, 3; 68; 84; *GrS* 7, 11; 15, 8).

The natural task of the public authority is to promote the proper development of these two connected institutions, immediately derived from each other, with the dignity, supreme in the social aspect, of the human being. (*GrS* 12, 2) This promotion includes careful vigilance over the tendencies that could destroy such an identity and that often arise from society, driven by ideologically disordered and economically sustained passions.

The State cannot be passive concerning the dominant permissive conformism or arbitrate on unusual, unnatural and sometimes aberrant family morphologies that equate all those so called free unions with marriage and family, as if those unions were entitled to the same social and legal consideration reserved exclusively and properly for authentic marriage freely entered into by a man and a woman before an authority.<sup>2</sup>

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2 One has to consider the effects of the legal treatment of free unions which certainly have a plurality of causes some of which may deserve close attention that is not totally negative. See the document *Family, Marriage and "de facto union,"* 4, published in 2000 by the Pontifical Council for the Family (cf. pp. 11ss).

A State that acts permissively or even gives a positive legal blessing to those extravagant unions will cause a very great threat to the future of the family, to its social function and for society as a whole (*GrS* 17,2). No society can with impunity run the risk of permissiveness in basic issues related to the natural essence of marriage and the family (*GrS* 17, 3).

3. The main duty of the State, according to the principle of subsidiarity, is to represent and guarantee the service to life that marriage and the family by virtue of their nature deliver to humanity (*GS* 50, 1; *FC* 28).

This service to life is the greatest and incomparable service that marriage and the family offer with love and generosity to the country, the nation, the political community at all levels, and to history.

It must be emphasized, over and against contrary tendencies and herodian powers, that respect for and protection of human life from its first spark in the womb of the mother is everyone's overriding duty: of individuals, governments, society and international organizations. A globalization of solidarity regarding the respect for conceived life also has to function here (*GrS* 21, 22).

It is necessary to emphasize strongly that the ominous anti-life mentality is a grave offense to justice, the common good, the patrimony of humanity, and the order established by God. This is the mentality of governments and other authorities, which directly or indirectly

attempt to coercively limit the freedom of parents to decide the number of children they have. Furthermore, at the level of international relations, they try to make technical and economic aid conditional upon the acceptance of coercive birth control programs by the aid recipient peoples (*FC* 30).

4. In the extremely delicate area of education subsidiarity also plays an important and preferential role. Parents and the State must work together, according to the proper hierarchy, in the application of this principle.

It is nature, not the authorities, which gives parents the first duty/right in terms of education. The warning of Aristotle, giving a pre-Christian expression to the incorruptible voice of nature, is still current.<sup>3</sup> To the State belongs the necessary and meritorious work of helping, promoting and complementing, but by no means must it confer on itself this duty/right of parents.

Parents are, by this fact, the first and primary educators of their children (*GS* 52; *GrS* 16; *Gravissimum educationis*, 3; *FC* 36). In the warmth of the family home the first school of social virtues begins (*FC* 42), the first and incomparable school of citizenship (*FC* 37).

By virtue of the principle of subsidiarity, the State and society must respect and promote the primacy of the family within the wide field of education, including sexual education (*FC* 37).

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<sup>3</sup> Cf. ARISTOTLE, *Nicomachean ethics*, VIII, 12, 1-161 a-b.

A good measure of correct or incorrect policy in education and in legislation, as a whole, is the respect or violation of the original, irreplaceable and inalienable right of parents to educate their children (*FC* 36).

5. Within family law and the current policy on the family there are other important issues required by subsidiarity. We just want to mention a brief and incomplete list here:

First, is the access of women to the labor force and to public offices, and then the recognition of the undoubted social value of women's function as mothers and their work demand new means and systems of family assistance (*FC* 23).

It is important to pay attention to children. Their protection around the world should be one of the imperative chapters of the new family policy. Similarly, the State has to work on prevention and possible administrative measures to correct the marginalization and abandonment of the elderly and persons who lack family care (*FC* 26-27; 85).

It is proper to highlight that subsidiarity requires zoning and housing policies which provide sufficient and economically accessible housing. The right to a home comes directly from the right to life and to have a decent standard of living, as John XXIII recalled in the first part of the encyclical *Pacem in terris* (*FC* 81).

## **THE POLITICAL MISSION OF THE FAMILY AND SUBSIDIARITY**

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In the political arena, understood in its fullest sense, at all levels, the State in virtue of subsidiarity should open accessible channels so that families can participate in and become the main protagonists of family policy.

In order to fulfill its role, though, the family should understand clearly that it must organize to assure that the laws and institutions of the State not only do not harm but positively support and defend the rights and interests of the family. Otherwise, the families will be the first victims of the evils they were satisfied to merely observe with indifference (*GrS* 52; *FC* 44).

Families must band together, as it is in their power to effectively defend the exercise of their rights in a timely manner.

The organization of families has a structural base and is more important today than ever before.

The family, in fact, is in a favorable terrain because it shares a natural organic character and structure with the political community (*GrS* 16, 5) which gives the family a radical superiority over simple associations, intermediary social bodies and modern non-governmental organizations. A temporary association cannot compare to the natural association of the family.

The power from united association must be used, since isolated voices are not heard, to imperatively prevent the

spread in public opinion, through the pressure of authoritarian cultural currents, of disdain for the institutional significance of marriage and the family and the equation of free unions with marriages in conformity with law and nature (*FC* 81).

The political dynamism of family associations should be projected at all levels, even in lay associations and the continental expressions of politics in order to provide opportune attention to the coverage of the full set of rights, interests and needs of the family as well as to maintain its standing as a protagonist at all political levels (*FC* 40; 72, *GrS* 16, 14).

## **THE BANKRUPTCY OF SUBSIDIARITY**

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One must admit that today politics does not follow the principle of subsidiarity. There are powerful institutions and social forces in the State and society which flagrantly ignore the morally inviolable rights of marriage and the family, which is a widespread and serious injustice.

Society and public authorities, instead of placing themselves at the loyal service of both institutions, violently attack their values and basic needs. Furthermore, although the family is both the basic cell of society and a subject with rights previous and superior to those of the State, and an institution superior to any other social group, it is the victim of society, through delays, slowness, and even of the lack of inter-

ventions by society and also of open insults and injustices (*FC* 46). There are repeated intolerable usurpations by society and the State in family matters today. Those who affirm that a true family policy does not exist or that it is inadequate from all perspectives are right.

Today the family and marriage are attacked by powerful centers. They want to destroy or distort the institution of the family (*GrS* 3). They set in motion many mutually supporting tactics using fallacious arguments and a network of means of social communication which have become the more or less hidden vehicles of ideologies attacking reason, natural law and even religious faith itself (*GS* 47; *FC* 76).

There are some easily detectable programs, supported by powerful organizations, which appear to be disgracefully oriented towards the disappearance of the family. They try to present as “normal” and attractive situations which, in reality, are completely “abnormal” and sometimes are teratological (*GrS* 5).

Confronted with this very new situation, which in the seventies of the last century exploded out of control, it is essential to openly and forcefully declare that we cannot allow the family to be destabilized. It has to be defended against the usurpations, attacks and neglect it is suffering (*FC* 46). The lies and pitfalls have to be unmasked, in addition to the illusions that the morally blunted sirens of an apparent and false modernity

fabricate, suggest and spread with unabashed insolence (*GrS* 17).

Those who participate happily in the natural meaning of life, the majority of humanity, should not bow to the surrounding cultural conformism. They need to know how to row against the current, because in so doing they will be following the unstoppable current of nature (*GrS* 12, 15).

The State's duty is to attain and guarantee the centrality that corresponds to the family. It cannot be relegated to play a secondary or a subordinate role, cannot be dethroned in society. Without the family at the center of the political community, the social body cannot be healthy (*GrS* 17). The family is one of the decisive keys to determine the successes and the failures in the obligation to subsidiarity of the State and the authenticity of democratic systems.

# Family and Sustainable Development

Alban D'Entremont

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*The term “sustainable development” refers to the need for human societies to manage their development, above all demographically, to fit the available resources and preserve them for future generations while respecting the balance of nature and the biological diversity of the planet. This is frequently associated with family planning strategies. We have become very sensitive about respecting the environment: we must treat nature responsibly. Pope John Paul II spoke, for example, of a “human environment”. The way we act on the environment should neither damage our contemporaries nor endanger the quality of life of future generations. For development to be long-lasting, we must carefully avoid wasting natural resources and degrading the environment, especially through uncontrolled pollution. We nevertheless observe today the emergence of a much more radical conception of the environment according to which man is the purely material product of the evolution of matter and is therefore condemned to an annihilating death. Such a purely material being should accept his subjection to “natural laws,” that is, what “nature” imposes on him. In its more radical forms, this holistic view of the world would include a “charter of the earth’s rights” and in particular the installation of a new cult: that of Gaia, the Earth-Mother. In reality, it is in the family that man learns to administer in a responsible way a creation he receives from God and in which he is invited to discover and follow the footsteps of God. It is also in the family that man discovers the full meaning of human work, which is cooperating with the creative work of God and serving the human community. (↗ Birth Control and Demographic Implosion; Demography, Demographic Transition, and Demographic Policies; Domestic Economy; Family and the Principle of Subsidiarity; A Demographic Implosion in Europe?; Imperfect and Unjust Laws; A New Model of the Welfare State).*

There is a growing awareness of the need to see the many demographic, social and economic dysfunctions in the world as global problems having international effects, not just local or regional effects. Little by little, they are increasingly seen as present institutional

realities having repercussions on future history, as well as multiple implications for individuals.

This awareness has led many in the international community to question whether economic expansion throughout the world, especially in the de-

veloped countries, is not—at its present rate of massive use of natural resources and its aggressions against the environment—destroying the very foundations of the economic and social structures of the earth, thus endangering the possibilities of lasting socio-economic progress for the planet in the medium and long run.

As a starting point for this awareness, the growing idea, ever more widespread and accepted, of the environment as a matter of global and general impact, not just local or regional interest has recently generated a new concept: *sustainable development*.

## **THE CONCEPT OF SUSTAINABLE DEVELOPMENT**

If the environment owes its sociopolitical acceptance to the United Nations Stockholm Summit on the Environment in 1972, this new concept—sustainable development—owes its systematization and recognition to the World Commission on the Environment and Development (better known as the Brundtland Commission) and its dissemination in the report entitled *Our Common Future*, published in 1987.

The concept of sustainable development became more generally accepted since the holding of the United Nations Río de Janeiro World Conference on the Environment and Development in 1992. It is a concept that—despite still being so new—has received great attention in scientific, economic and politi-

cal forums, and is heavily documented in the specialized literature of the last few years.<sup>1</sup>

The notion of sustainable development, according to its original and authentic meaning, can be presented in the following terms:

- it is a situation of progress in which economic changes are occurring—particularly the increase in production and consumption of material goods—but without causing harm to the environment in the short or long run, or squandering natural resources.
- it is a notion applicable to improving the living conditions of people in

1 Cf. W. E. BLOCK (ed.), *Economics and the Environment*; Fraser Institute, Vancouver, 1990; J. PÉREZ ALÁN, “Los imperativos ecológicos de un nuevo paradigma” in *Atlántida*; (October-December 1993); J.A. ELLIOT, *Introduction to Sustainable Development*; Routledge Publishers; London 1994; T. WILLBANKS, “Sustainable Development in Geographic Perspective”; *Annals of the Association of American Geographers*; 84 (1994)4; Y. VEYRAT – P. PECH, *L’homme et l’environnement*; Presses Universitaires de France; Paris 1994; C. CACHÁN, *Manipulación verde. ¿Está en peligro la tierra?*; Ediciones Palabra; Madrid 1995; J. COLE, *Geography of the World’s Major Regions*, Routledge Publishers; London-New York 1996; A. D’ENTREMONT, *Geografía Económica*, (Colección Geografía Mayor), Ediciones Cátedra Madrid, 1997; ID., “Población mundial y políticas demográficas a las puertas del III Milenio,” in *Dimensión de Vida* 9 (2000)35-36; J. BALLESTEROS – J. PÉREZ ALÁN (Eds.), *Sociedad y medio ambiente*, Editorial Trotta, Madrid, 2000.



under-developed countries; that is, to changes that must be made so that these countries—so dependent on their natural resources or raw materials for their political and economic survival—can have balanced development now without great cost to future generations.

- it is a future project, not a present reality—since the social and economic structures of the world have not yet assumed, except only partially or only in words, this primordial objective—which aspires towards a development that satisfies present needs without endangering the possibility of future generations satisfying their own needs.

Seeking a complete and objective technical definition, we could say that sustainable development is that form of long-term economic growth that guarantees not only association but harmonization with nature, limits environmental impact and manages to neutralize attacks on the environment. All this must be done within the framework of redistributing wealth and benefits, while eradicating poverty in the world.

Following these principles, we can affirm that sustainable development is, in the first place, an economic concept, which is inherently linked to an ethical and human foundation. Since sustainable development essentially and necessarily refers to future generations and their environment, this ethical and human perspective cannot be excluded from its definition: sustainable development inherently implies redistributing

wealth and eradicating poverty in the world. Hence sustainable development is a concept that is not only novel but radical.

A characteristic feature of this insight is its implications for the environment, both at a social level (concern for present and future societies) and at an economic level (concern for natural resources and their responsible use). After hardly a decade, this concept is already present in many debating forums, and has become a matter of top priority in our most influential institutions, such as the United Nations, the International Monetary Fund, the World Bank, and the European Union, as well as being part of the agenda of many non-governmental organizations, (NGOs).

But it is not a concept that is exempt from interest groups, controversies, skepticism, ideologies or criticism. Following this line of thought, according to the opinions of some scientists—not all benevolent towards it—the only merit of the Brundtland Commission was its systematizing and popularizing the term “sustainable development”, not its establishing concrete norms and unequivocal criteria having very practical and positive implications or derivatives.

Here we recall the controversies and errors surrounding another relatively new concept—the notion of *biodiversity* (protection of all forms of life)—since the arguments made for and against it, and the ideological focus revolving around it, are usually those for and against sus-

tainable development. Quite often the notions of biodiversity and sustainable development are wrongly interpreted or intentionally distorted, not only in intellectual and academic circles, but above all in economic and political action, with important ramifications for the environment and society.

As a result, attempts are made to legitimize a *biology of population* by those holding that human nature involves no more than a mere "distinction of species" with regards to other animal and vegetative life forms. This erroneous viewpoint implies that the study of ecology, as a sub-discipline of biology, has a global character that does not easily allow for a particular focus, as should be the case for those who defend and proclaim the inherent dignity of the human person above all other considerations and values.

As a consequence, in the same way that the neo-Malthusian theory programs the human population within the boundaries of allegedly immovable economic laws, the incorrect understanding of sustainable development calls for programming the human species–population control—in order to protect all animal and vegetative species, seen as equals, from human beings whose excessive production and consumption threaten the survival of all these species. According to this view, human beings are not unique beings, not global and individual creators and builders of the planet, but dangerous predators and

destroyers of the earth.

This erroneous and dangerous perspective has been denounced by many authors in recent years.<sup>2</sup>

The contrary point of view affirms that sustainable development is not only an economic concept, but one based on the existence of an interdependent relationship between the natural world and

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2 Cf. J.M. CASAS TORRES, *Población, desarrollo y calidad de vida*. Ediciones Rialp, Madrid, 1982; J.L. SIMON, *The Ultimate Resource*; (Spanish edition) *El último recurso*, Editorial Dossat; Madrid 1986; J. KASUN, *The War Against Population*; Ignatius Press; San Francisco (USA) 1988; A. D'ENTREMONT, "Crecimiento demográfico y cambio socio-económico: el dilema persistente," in *Situación* (1988)3; ID., *La población como problema*, Fundación Codespa – Asociación Española de Demografía, Madrid 1990; ID., "Ecology, The New Population Scare," in *Population Research Institute Review*, 1 (1991)3; ID; "El redescubrimiento de la ética en un mundo atribulado" in *Homenaje a Luka Brajnovic*, EUNSA, Pamplona, 1992; ID; *Geografía Económica*; ID., "Población mundial y políticas demográficas," 35-36; A. ZURFLUH, *¿Superpoblación?*, Ediciones Rialp, Madrid 1992; BALLESTEROS, *Postmodernidad*; J. PÉREZ ALÁN, "Los imperativos ecológicos de un nuevo paradigma"; H. LE BRAS, *Les limites de la Planète; Mythes de la nature et de la population*; Flammarion, Paris, 1994; N. EBERSTADT, "Population Policy: Ideology as Science," in *First Things* 39 (January 1994); G.-F. DUMONT, *Le monde et les hommes. Les grandes évolutions démographiques*, Éditions Litec, Paris 1995; M. FERRER – A. PELÁEZ, *Población, ecología y medio ambiente*; EUNSA, Pamplona, 1996; J. BALLESTEROS – J. PÉREZ ALÁN (Eds.), *Sociedad y medio ambiente*.

the human world which gives absolute priority to the human world.

Therefore, more than understanding it as a merely or mainly economic or ecological issue, sustainable development must be considered a fundamentally and essentially *social and anthropological* concept.

In summary, one can say that, in order for there to be sustainable development in the most completely authentic sense of the term, it is necessary to carry out actions that have what we might call an *integral focus*. This cannot be done partially, as so often happens at the aforementioned international forums, institutions and organizations. So, in order for sustainable development to be truly sustainable, it must have as its primordial aim, the welfare of the human person.

Hence, in order to have truly sustainable development, the actions that must be carried out should follow these indications:

- to promote exact (scientific) knowledge of the environmental problems and possible realistic and achievable solutions to these problems.
- to advance the promulgation of pertinent legislation in conformity with new scientific discoveries.
- to seek lasting remedies for environmental problems and apply definitive political solutions on a global scale.
- to battle poverty in less favored regions of the world, fighting against worldwide imbalances and inequalities.

- to promote the economic and social development of peoples, while always respecting their value systems and traditional ways of life.

Imbalances and inequalities in the world are spatial, societal and demographic, but they are also fundamentally economic in nature, as well as, above all, cultural and anthropological. This is how the concept of sustainable development must be focused, rejecting all unilateral, dogmatic, and global approaches so often proposed by political, social and economic classes. It is especially dangerous to attempt to introduce, within the concept itself or even as one of its essential parts, the idea that sustainable development is not possible unless the birthrate in Third World countries is controlled in conformity with supposedly inherent and immovable “demographic laws” that determine the future of humanity. Sustainable development would be subject to what some call an economy of population.

Attempting to legitimize an “economy of population” and firmly establish a supposedly undeniable “demographic law” is not new. It was initially presented two centuries ago in the work of Thomas Robert Malthus (1766-1834) –in his famous publication *First Essay on the Principle of Population* (1803), as well as in the population predictions of certain early schools of economics in the eighteenth century so-called Enlightenment, such as the Mercantilist and Physiocrats, and also in Adam Smith, who

was the first great theorist of the capitalist or market system of economics.

According to this way of thinking, population is a more or less a sure operational factor necessarily required to assure economic growth considered as an historic necessity. As such, population can and should be *programmed*, like all other elements of that “unavoidable economic growth.” If one grants that the “principle” that Malthus claimed to have discovered is an incontestable fact, then birth control becomes an imperious duty - nothing less than what is needed to assure, in the long run, the survival of the human species. He does not hesitate to call his proposal for population control a “moral check”.

It is unnecessary to insist either on the scientific ingenuity of the Malthusian theory or—above all—on the incontestable fact of its absolute lack of correspondence with reality in the two hundred years since it was elaborated. The trajectory of actual birth rates has not followed his projections, nor has it produced any of the catastrophes that he and his followers predicted as inevitable—regarding food production, resource depletion, and an increase in mortality. Neither are there indications that these catastrophes are going to take place, the contrary being the case.

In order to have sustainable development, one must look less to demography and more to politics and the economy. From these points of view,<sup>3</sup>

one must reform current political and economic structures so that instead of destroying the environment, society will work with it, using politics and economics to preserve and improve it.

According to experts uninfluenced by ideology, the imbalances and inequalities in the world can be solved with a better distribution of knowledge, power and wealth on a global scale. Yet some say that this entails an unacceptable condition, because eliminating these imbalances and inequalities would mean a new restructuring of contemporary political and economic power in the world today.

The fact is that there are real powers—for example, those in certain sectors of politics and business—who prefer maintaining this unequal distribution and hope to perpetuate it, not by means of sustainable development and all its accompanying changes of mentality and behavior, but through controlling the population of less developed countries by appealing to a wrongly focused “population economy” and to supposedly “inherent demographic laws”.

These alleged laws are not based on science but on ideology, and do not promote really inherent values, which are ultimately not those of the economy and politics, but of persons. They are based on the self-interests of power minori-

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BLOCK (ed.), *Economics and the Environment*; PÉREZ ALÁN, “Los imperativos ecológicos de un nuevo paradigma”; FERRER – PELÁEZ, *Población, ecología y medio ambiente*.

<sup>3</sup> As the following, among others, point out,

ties, not on those of humanity, as the earlier cited authors and many others have denounced. If we adopt an anthropological point of view and think in terms of individual persons, rather than follow power ideologies and their political, economic and social institutions, there are many important changes that correctly conform to the notion of sustainable development, as stated by the philosophers A. Llano<sup>4</sup> and J. Ballesteros,<sup>5</sup> and the sociologist J. Pérez-Adán,<sup>6</sup> among many other authors.

These changes promote new values in order to ensure that everything implied by sustainable development—still an embryonic project—becomes a reality soon.

These new values go much farther than the economy and the environment. They contemplate the economy and the environment from a unique, authentic and full perspective, that of a global vision of the whole interaction between the natural world and human beings. Such a vision implies the establishment of a new economic and environmental paradigm, which in practical terms becomes a new social and cultural order.

Aside from appreciating and conserving nature, protecting natural resources and fighting pollution, the new values

that would have to be taught to both individuals and institutions (especially the latter), include, among others:

- the desire to find effective means to preserve the precarious peace in the world.
- respect for life in all its forms, human, animal and plant (in the true, full notion of biodiversity).
- a determined and disinterested fight to eradicate the different structural forms of poverty and inequality in the world.
- the abandonment of excessive consumption patterns which characterize the so called “opulent society.”
- the rejection of all selfish and ineffective efforts towards population control in under-developed countries.
- the promotion of ethical, aesthetic and ecological education at all levels of society.

Only with the acceptance of these new values—in accordance with an authentic environmental conscience in conformity with the inherent value and dignity of the human person—can we begin to solve the many problems associated with the economy, natural resources and environment. This will ensure that the future development of our planet will be truly sustainable and sustained.

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## IMPLICATIONS FOR THE FAMILY

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It is necessary to frame the subject of sustainable development within wider

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4 A. LLANO CIFUENTES, *La nueva sensibilidad*, Editorial Espasa Calpe, Madrid 1988.

5 BALLESTEROS, *Postmodernidad*.

6 PÉREZ ALÁN, “Los imperativos ecológicos de un nuevo paradigma.”

parameters, although it is reasonable to concentrate first and principally on the *economic* indicators. Nonetheless, as explained earlier, development has above all and ultimately an essentially *human* dimension.

The chains of misery and insufficiency, which is how under-development in the world is measured, are forged with irons that impede the freedom of individuals at the moment of obtaining higher levels of well-being—not only economic, but essentially social and cultural, that is to say, *personal* well-being. From this it follows that the most accurate indicators of development and under-development in the economic and social order refer ultimately to the lived reality of the citizens of the poor countries, more than to their economic systems, geographic spaces or political structures.

With this in mind, all true and sustainable development necessarily implies an improvement in the quality of relations not only between human beings and their geographic and environmental surroundings, but even more so between human beings themselves.

The search for alternative structures and new values for the improvement of human relations seems to be currently based on an error with widespread consequences that elicit *counter-values* that ultimately lead to the worsening of human relations.

This error consists in the loss, on the part of individuals, of insight into their nature as a personal being. Confused

by the demands implied by their personal condition, and disappointed by the failure of so many models invoked by so many ideologies, contemporary individuals seem incapable of understanding the importance of anchoring models of development on the natural basis of society, the *family*.

In the most diverse areas of society and in the most varied attitudes about global economic and social progress, there are multiple consequences that are no more than a reflection of the existing disorientation regarding a previous, more essential and more basic question, that is, what a human person is supposed to be.

Furthermore, given the fact that the practical relationships between person and family, between family and society, and between society and development, are as close as they are profound, the weakening of the idea of personal dignity leads, not only to a dehumanized family, but also to a dehumanized society. This does not allow any notion of economic and social development—including one as comprehensive and praiseworthy as sustainable development—to be understood in its full and correct meaning. From the beginning, it is doomed to failure.

In a parallel way, the re-encounter of the human person with the natural demands of his dignity as a person opens the road to a personalized family and a personalized society. What is at stake today is the rescue of the *essential nature* of

*the family*, and from there, to the humanization and personalization of society, which is the only way to achieve the true economic and social development of the world.<sup>7</sup>

While other human realities of the world have continuously evolved throughout the centuries—as, for example, the configuration of States and political life—the reality of the family continues to be, surprisingly and substantially, the same today as it was thousands of years ago.

Although there have always been many more or less sophisticated theories about this reality, the family continues to be, despite the passage of time, a living reality among spouses, parents, children, and relatives, subject to only small, accidental changes in its forms, ways, attitudes and basic relations.

This explains the weakness of ideological discourses about the family, since it is a *natural* reality, involving natural sexual differences between men and women, and a fitting environment for personal development, as well as for the

support and education of children. The marital bond and family structure are not merely transitory elements devoid of true meaning, foreign to human nature or unsuitable to the ultimate ends of human existence.

Despite this evident truth, in the modern world and in its representative institutions, we often encounter attitudes and points of view about the family that do not correspond to the basic postulates of ethics or recognize the family as an essential human bond that is based on natural law. These attitudes and erroneous points of view (typical of neo-Malthusianism, for example), that attempt to insert themselves into the notion of sustainable development, include the following:

- the consideration of the family, not as a natural reality, but as a more or less sophisticated social structure derived from some law or circumstances susceptible to change.
- a certain enthusiasm for extramarital relationships aimed towards sexual fulfillment as well as the procreation and education of children, under explicitly equal conditions and rights as the traditional family.
- the tendency to blame the failures of individuals on the institutions of marriage and family, and not on the individuals directly involved in those failures.

Nevertheless, the fullness that is achieved in the natural reality of the family is entirely unrelated to any artificial

7 Cf. P.-J. VILADRICH, *Agonía del matrimonio legal. Una introducción a los elementos conceptuales básicos del matrimonio*, EUNSA, Pamplona 1984; A. D'ENTREMONT, "Lo demográfico y social al encuentro de la vida humana," in *Razones*, 5 (September 1987); ID., "Crecimiento demográfico"; "El redescubrimiento de la ética"; ID; *Geografía Económica*; ID., "Aspectos sociodemográficos de la familia en el mundo," in *Anthropotes* 14 (1998)1; ID., "Población mundial y políticas demográficas."

structure. Rather, it is the fruit of the reciprocal, persevering and irrevocable will of two persons who are the protagonists of their own personal realization as husbands and wives and as parents and educators.

When this uniquely meaningful conjugal will exists, the only structure that connaturally suits it, and that fits perfectly to personal fulfillment—the best “ecological environment” one might say, using a typical expression of sustainable development—is marriage. In the same way, the best “environment” for a child to reach his potential as a human person is a home animated by loving parents.

If we examine other structures different from the family, or if the conjugal will is absent, we find that any other family configuration, however original or extravagant, seems unable to bring about the true social and economic development of the peoples of the world.<sup>8</sup>

To have forgotten these elementary truths rather than to have fully incorporated them into this current panoramic view, brings about, above all in the Western world, a series of evils that frontally attack any developmental plan that must be founded on the nature of the human person as an individual and

as a person, and on the nature of the family as the basis of society. These evils include the following:

- the trivialization of the marital bond and of the family: we encounter many examples of this today, such as fleeting and immature romantic infatuations, or clear and simple self-interest inciting some to acquire or dispose of spouses as if they were mere utilitarian objects.

- a substitution of mere juridical or legalistic notions, foreign to the true nature of these realities, for the essence of marriage, the family and their true goals.

- the increase of the belief that “getting married” and forming a family is simply an act of social conformism, something like “compliance with the law,” as one contemporary author has said, so as to obtain legal permission to have “socially acceptable” intimate interpersonal relations.

- the increase in understanding “marriage” and “family” in ambiguous terms that are applied indiscriminately to any kind of unions, however extraordinarily diverse and contradictory, that have little or nothing to do with the strict understanding of marriage and family. One example is the so called “marriage” of persons of the same sex, relatively stable homosexual unions claiming full legal protection and recognition. This phenomenon has become relatively common in some countries in the West.

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8 Cf. VILADRICH, *Agonía del matrimonio legal*; D'ENTREMONT, “Lo demográfico y social al encuentro de la vida humana”; ID., “Crecimiento demográfico”; “El redescubrimiento de la ética”; ID; *Geografía Económica*; ID., “Aspectos sociodemográficos de la familia en el mundo”; ID., “Población mundial y políticas demográficas.”



All this ends up diluting the natural and precise meaning of the family, and necessarily substitutes legalistic meanings and social conventions lacking any profound, concrete or strict content.

In reality, the true meaning of the family cannot be found in the synthesis of its services or in its utility for certain political, economic or social parameters. It is found in the need for radical solidarity and loving community that comes from the human condition and inherent human dignity. It leads individuals to establish permanent bonds for the sake of mutual assistance and the generation of new lives.

Returning to the use of a typical expression of the concept of sustainable development, we can define the home as the primary “natural habitat” of the individual, as the place where the human person achieves full and primary self-fulfillment. It is only by way of this full realization—the “development”—of the individual and the family, that the full realization—or “development”—of society and peoples of the earth can be achieved.

But if we take a quick look at the world today—with its great division between wealthy and poor countries, the plague of abandoned or mistreated children, attempts at population control, abortion, divorce, exploitation of women and children, overcrowding and lack of decent housing, the materialistic rejection of a hierarchy of values, the abandonment of the elderly, and eutha-

nasia—this should be enough to make us aware to what extent these actions are taken not only *against* the family, but also against humanity, and therefore against human progress and international development.

The extent to which the performance of the established authorities is really defective with regards to the family as well as the extent to which we citizens are not doing everything we can to convert the home into the natural habitat for the full realization of individuals, a place of love and solidarity demanded by the dignity of the human person, converts the family into a terrible and critical mirror of today’s de-personalized and de-humanized society.<sup>9</sup>

All this is more closely related to economic and social development than is usually thought or affirmed. Hence it is urgently necessary to apply solutions that in fact have to be political, economic and environmental, but above all, *anthropological and ethical*. This is how we must understand the notion of sustainable development; only in this way can we accomplish such development for the good of humanity.

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9 Cf. VILADRICH, *Agonía del matrimonio legal*; D’ENTREMONT, “Lo demográfico y social al encuentro de la vida humana”; ID., “Crecimiento demográfico”; “El redescubrimiento de la ética”; ID; *Geografía Económica*; ID., “Aspectos sociodemográficos de la familia en el mundo”; ID., “Población mundial y políticas demográficas.”



# Family Counseling Centers

Luigi Pati

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*The growing complexity of the questions related to respect for life made the organization of centers for family counseling arise. Within the framework of such centers, moral and pastoral problems are taken into consideration. The moral problems which are posed in these centers are basically the same as the ones that are being discussed in the ethical committees. On the whole what is at stake is to know what moral limits such centers are respecting. From the Christian centers it is obviously expected that they would refer to the objective moral norms, which men can discover through right reason, and to the evangelical precepts which are taken up in the new commandment. Nevertheless it happens for such centers to be influenced by subjectivistic and relativistic tendencies that are inclined to exalt freedom against truth. To say it concretely, in these centers one cannot admit for the last word to be left to purely consensual decisions. By themselves these decisions cannot honor the requirements of truth and justice. Furthermore, the centers for family counseling are offering a new field of action for pastoral work. In fact, people turn to these centers when they are living in perplexity or in distress because of a pregnancy presenting risks, that is unexpected or undesired. It is to these centers that couples turn when they have to face the ordeal of sterility and want to realize their vocation of spouses in the exercise of a morally responsible fatherhood or motherhood. (↗ Conjugal Love?; Counseling for Pregnant Women in Germany; Domestic Economy; Sexual Education; Fertility and Continence; Marriage, Separation, Divorce and Conscience; The Contraceptive Mentality; Responsible Parenthood; Person and Integral Procreation)*

Family Counseling Center: a public or private institution charged with offering, through its personnel and the expert people involved, advice and help on questions regarding personal conjugal and family life.

## THE INSTITUTION OF FAMILY COUNSELING CENTERS IN ITALY

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The first kind of counseling center in Italy was born in February 1948, as one of the initiatives of the La Casa Institute in Milan, founded by don Paolo

Liggeri in 1943, with the intention of helping families. It could count on the contribution of a team of experts in various disciplines, who worked both on the various questions regarding marital and family life and marriage preparation for engaged couples. Through its scheduled formation meetings, the promotion of publications and an established collaboration with international groups, this initiative contributed a great deal to making the better informed political sectors and public opinion accept the idea of formally instituting a service of counseling activities throughout the country, to respond to the needs of single persons, couples and families. On March 24, 1968, at Bologna, a group of 29 private family counseling centers of the Catholic milieu decided to create the Union of Italian premarital and marital counseling centers (UCIPEM). Assuming for their inspiring criteria the values of marriage and the family as they appear in the Constitution, the UCIPEM family counseling centers privileged the psychosocial operating model.

Around the middle of the seventies at a political level it was thought appropriate to intervene in the sector providing help to persons, couples and the domestic group through passing on July 29, 1975 law n. 405. Many complex functions were specified for the family counseling centers by the legislators, without considering whether it would be possible for a single organization to do

all of them by itself. Thus it happened that, while in other European countries things moved on by different initiatives that would involve many services connected to each other, in Italy an institution was created, which, from the very start, was condemned to become quite bureaucratic, forced as it was to favor some services to the detriment of others. The least one can say is that a service, which, by itself and at the same time, must attend to absolutely different functions—helping engaged couples, responsible fatherhood and motherhood, family education, conjugal problems and juvenile problems, contraception, voluntary interruption of pregnancy, women's health and care for the embryo—is indeed peculiar.

One should note that law 405/75 stresses the socio-psycho-health aspects of conjugal and domestic life and marginalizes the pedagogical-educational elements. It hints at the latter only in its article 3 where, when referring to the family counseling center staff, mention is made of the needed presence of a pedagogue. However, this indication is in fact being ignored, so much so that some regional laws do not even consider it in their implementation of the law.

In the planning and programming of a socio-assistential policy a reversal is needed for the pedagogical-educational element to be correctly valued. What is urgently needed is for the structure of counseling centers to be totally reformulated, so that their area of interven-

tion may no longer only refer to socio-psychological assistance, to medical and family pathologies, but also and foremost to a service of prevention and educational promotion. It is not farfetched to see that one of the principal reasons for the counseling centers' current crisis of identity is the preponderance given to disturbances in conjugal/family relations and to socio-health factors. The question cannot be resolved, as is too often whispered, by grafting into today's organizational model some kind of "transversal" educational dimension, while leaving the composition of specialists unchanged. If one agrees with the presupposition that family education realities must also be examined and interpreted, using conceptual and methodological instruments proper to the pedagogical discourse, then it is necessary to agree to the full value being given to the presence of a pedagogue. The latter, as *advisors for family education*, will have the onus to work on the family's potentialities to recuperate and grow, based on the promotion and defense of the family's primary educational function.

Regarding revising the way family counseling centers are structured, some people lament the lack of a structure that can help parents accomplish their educational function; therefore they look forward to the institution of two types of centers: one would be the medical kind (informative) while the other would be socio-psycho-pedagogical (formative), and both would be linked

together by effective cooperation. The creation in a few regions of *Centers for family planning* (CPF) seems to correspond to the former indication, since they seem to have an almost exclusively medical function. The CPF's attention is mostly directed towards young people, to whom they offer information regarding the physiology of the reproductive organs, the exercise of sexuality, fertility, contraception and the interruption of pregnancy. Along the same line and with a similar preoccupation to the CPF's, there are counseling centers led by the Italian Association for Demographic Education (AIED), especially those called "Adolescent centers" and the group called "Avanti tutta", born in 1994 and comprised of young people between 17 and 20 years old. In some European countries, in Switzerland, for example, CPFs are operated by movements that work to sway public opinion and various political forces towards decriminalizing abortion. The Swiss Union to Decriminalize Abortion (USPDA) is very active in this area. Its members, moving from the opinion that "the embryo has no 'independent life'", assert that "to prohibit abortion means to condemn women to motherhood".

The CPFs, whose institution were due to a kind of feminism of the seventies and to the campaigns for family planning enacted in some densely populated countries, may be ideologically linked to the International Convention on the Rights of the Child, adopted by

the United Nations' General Assembly on November 20, 1989, ratified in Italy by law n. 176 of May 27, 1991. Art. 24 of the Convention, after having affirmed in its paragraph 1 that the States parties are bound to recognize "the right of the child to the enjoyment of the highest attainable standard of health and to facilities for the treatment of illness and rehabilitation of health", in subparagraph f) of its paragraph 2 stresses that the States should "develop preventive health care, guidance for parents and family planning education and services".

## **THE INSTITUTION OF FAMILY COUNSELING CENTERS OF CHRISTIAN INSPIRATION**

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Especially during the nineties the Christian-inspired family counseling centers (CFC) have gradually started to be characterized by their preventive and educational dimension, thus integrating socio-psycho-medical care, which for too long has been unilaterally set aside and this continues to be the case in public counseling centers.

### **Searching for the roots**

The CFC's pedagogical-educational trend is in line with the Magisterium of the Church. With their recommendation n. 2 in 1975 the Italian bishops' conference (CEI), during their XIIth general assembly, asked for the creation of family counseling centers inspired by Christian values in the various dioceses. This recommendation was totally cen-

tered on the idea of a counseling center as a place where workers are expected to help the person, the couple and the family grow and develop according to precise orientations, and to pursue positive goals of personal and communal growth. According to the bishops, the center should take its inspiration from Christian sources, which, while leading them to face the various questions and problems—personal, conjugal, familial—in the light of the Magisterium of the Church, should urge the workers to use a particular style both in their welcoming people and in their actions. Which means that, through its methodology of dialoguing, listening to and orientating, the first intent of the counseling center's entire activity is to exalt the person and the family's most profound existential significance. For the workers it means that they should not choose simple ways of technical-instrumental intervention and a standardized evaluation of the problems, but rather that they should feel involved in the case being examined, with respect for its freedom and its specific requirements. With reference to the latter, one should stress the contents of a document published in 1991 by the National Office for Family Pastoral Work, according to which the general expression "family counseling center", and more precisely that of "Christian-inspired family counseling center", "does not make us think of a clinic or a place of diagnosis and therapy, but refers to a place to go as protagonists, not patients,

for difficult situations pertaining first to ordinary circumstances, rather than for true pathologies”.<sup>1</sup>

The 1993 *Directory of family pastoral work for the Church in Italy*, created by the Italian Bishops’ Conference, reinforces the previous affirmations. Referring to the above mentioned 1975 Recommendations by the Italian bishops about the “Christian-inspired” family centers, it declares the following: “Their service normally develops both in true personal counseling interventions with single persons, couples and families that are living in difficult circumstances and relationship crises, and prevention interventions through formation initiatives and cultural engagement within the community” (pp. 201-202).

### **Towards action by counseling centers in local communities**

The Magisterium of the Church allows for one to describe CFCs as educational resources that can, directly or indirectly, be of help in recovering a local community’s axiological dimension and exaltation.

a) *recovering the axiological dimension*—One should be aware that the CFC can be of substantial help here, by stressing, with its activities, that it is possible for the values of life, of hope and of solidarity to be carried out with concrete actions.

For the family counseling center, *to*

*testify to the value of life* means to take up and spread out, with one’s activities a culture that, in the first place, cares for the growth of the person, conceived as the greatest value of visible creation, against any trend intending to subordinate it to interests of another nature; secondly, a culture that cares for the future of the couple, with all its inevitable difficulties, conflicts and misunderstandings; thirdly, a culture that welcomes new lives to be born, respecting the human biological rhythms and a complete acceptance of the You; finally, a culture that values the family for being the primary place of educational relationships, which is indispensable for the development of human life in all its forms and manifestations. This culture of life must be translated into a rational justification of its rejection of abortion and the practice of artificial insemination, both because of the temporal continuity of the marital and family bonds, and from the pedagogical conviction that there is a strong and undividable link between the education of man and the advent of a society demonstrating solidarity.

For the family center *to witness to the value of hope* means to continue to believe in man, in the couple, in the family, in spite of today’s practice of cohabitation that favors partial and limiting perspectives. By this “act of faith” in man and in whatever pertains to them, the CFC is led to assume an operative style that is marked by its capacity to strengthen the subjects’ possibility to

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1 UFFICIO NAZIONALE PER LA PASTORALE FAMILIARE, *I consultori familiari su territorio e nella comunità*, EDB, Bologna 1991, 13.

recuperate. As far as personalistic pedagogy is concerned, such a family center is the place where a dimension of "tragic optimism" and "redemption after the fall", which is typical for the human condition, finds its opportunity to be of sustenance and guidance.

For the family counseling center, *to testify to the value of solidarity* implies for it to address its activities to building new and correct webs of interpersonal relationships, which, starting with the family, concur to exalt the unicity, the originality, the unrepeatability of the human being, over and beyond any communication barriers, socio-cultural differences and political-ideological misunderstandings.

All things said, today the CFC cannot forsake its duty to contribute importantly to the elaboration and the spreading of a new culture of man, the couple, the family, the social community. For this to occur, one has to define it as a place that moves along the line of permanent education.

*b) As far as the new organization of its corporate order is concerned*, one should observe that the local community theme is akin to the CFC's very nature. In fact, the CFC develops its activity in a specific socio-political-cultural context and as such is advantaged by the new definition given to the local community. Referring to the latter, the center can become a quite valuable potentiality for making it become ever more humanized. The local community is not a mere

geographical place with its own customs and habits; from the pedagogical aspect it must be seen foremost as a living space animated by precise values, and intended to concretize a general project of cohabiting, with the specific contribution of the various structures, institutions and intermediary social bodies that it is made of. In this perspective, the family counseling center proves to be a meaningful resource for its progress.

The family counseling center theme as an element of growth for the local community implies that the center be more precisely defined. As a matter of fact, it cannot be considered simply as a place where specific problems are being healed or where strategies are being defined to make up for deficiencies. The possibility for the CFC to become a resource for the local community depends first and foremost on its becoming a qualified prevention-education center. This certainly means that, on the one hand, it has to "realistically take upon itself the expectations, the needs, the requests of the specific population that surrounds it, but, on the other hand, it is even more important that it should be able to carry out promotional education, i.e., it should move that population towards ever more human objectives".<sup>2</sup>

### **Operative strategies**

For the CFC to be able to appear as a possibility of growth *of* and *for* the

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2 D. TETAMANZI, "Antropologia cristiana e servizio consultoriale," in *La famiglia* (1985) 113, 41.



local community, some elements are vitally needed. In the light of what has been said before, we wish to stress three of them.

a) The first element is imposed by the urgency for the CFC to define its own *specificity of action*, so that it may distinguish itself from other units and institutions that are operating in the field. Here the directory for family pastoral work of the Italian Church comes to our aid. After stressing that the family counseling centers and the structures of family pastoral work “have in common the finality of aiming at the real good of the person, the couple and the family with attention to sexuality and to life”, it makes a distinction between both as far as their perspectives and methodology are concerned: “Pastoral work acts for the promotion of a Christian life and the building of the Church, and prioritizes the resources of evangelization, sacramental grace, spiritual formation and ecclesial witnessing. Family counseling centers, based on their viewpoint of a personalistic anthropology consistent with the Christian view of man and woman, are rather concerned with personal and relational dynamisms and favor the contribution of the social sciences and their methodologies” (p. 201).

The CFC’s specific perspective and methodology can also be seen in the way they determine their operative fields, together with their unquestionable pedagogical-educational concerns. The Directory lists some of the most urgent

and current ones:

- “the problems of the couple, with particular attention to a life in relationship with all its facets of communication and dialogue; to sexual life; to the regulation of fertility and to welcoming new life;

- education of teen-agers and young people to life, to love, to sexuality, both through direct interventions with them and by suggesting initiatives to their educators;

- preparing engaged couples for marriage. Here the advisers should not be asked to act as delegates or to personally develop any evangelization program or spiritual and ecclesial formation activities, that are instead proper for the Christian communities and their pastors to develop. Instead, the advisers should feel engaged eventually to offer their contribution for the formation of animators charged with preparing the fiancés for marriage and family, and to propose and illustrate, wherever and whenever it will be more convenient, the aspects of marital and family life that pertain to the human, medical and legal sciences, which are also extremely important for conjugal and family life;

- the problems of elderly people, their relations with their families and their living in those families (p. 202).

To the above said operative fields one could add others, especially because of the socio-political-cultural modifications that are occurring. For instance, think of the relational dynamics pro-

voked by mixed marriages (bi-cultural families); the pedagogical-educational aspects of foster care; national and international infant adoption; the questions linked with helping minors that are living with existential problems to rediscover the meaning of life; the educational dynamics linked with the conjugal and family cycles; the problems created by the couple/family's isolation in contemporary society; the lack of intergenerational relationship, even in families where more generations are living together.

b) The second element consists of the necessity for the family center to take upon itself the idea of its more opportune placement in the *integrated formation system* of the local community. In the above mentioned directory for family pastoral work of the Italian Church, it is firmly hoped that the Christian community will promote "ways and initiatives of cooperation and coordination" between the CFCs, other centers of Christian inspiration, as for instance the ones belonging to UCIPEM, and the groups engaged in family pastoral work. "At the diocesan and regional level, while respecting their legitimate differences and autonomies, there could be a collaboration at a cultural level for initiatives geared towards the workers in the centers and towards people that are living in the area, meetings to study emerging problems; finding common actions addressing civil and social life". During their general assembly on June

27, 1975 the Italian bishops had already expressed their wish for this to happen. In fact, in their final deliberation, having expressed the wish that, at the diocesan, inter-diocesan and regional level, "Family counseling centers would arise that would be professionally suitable and of an assured Christian inspiration," the bishops explicitly mention the necessity for the centers to be "linked with the other groups of family pastoral work." They further consider it opportune for them "to be ready to value, with a spirit of openness and discernment, those contributions offered, even to the very Christians themselves, by the already existing centers. Adequate ways of collaboration and connections could eventually be studied and gradually realized".

Today perhaps it is time for the CFC to establish a meaningful and profitable relationship with those organs in charge of youth and family pastoral work, with families, with schools, with lay and religious associations that are engaged in formation activities. Together they should confront their operative projects, so as to guarantee the specificity of each while supporting a suitable and reciprocal integration.

c) The third element concerns the theme of *social participation*. The family counseling center should not limit its engagement to offering services and counseling to the inhabitants of a circumscribed geographic area. It should foster the involvement of families, so

that it may become a real center of social animation, spurring the entire local community to feel co-responsible. It is urgent for this element to be discovered, since it has been ignored by national law n. 405 from 1975. In fact, its text does not adequately value what had been suggested regarding a participative collaboration of the people and the clients, a request of co-management that had been expressed by some opinion leaders. The familiar dimension of the center must be strengthened, in the sense that the domestic nucleus is the primary place for education and families should be implicated in programming the family counseling center's services.

### **TOWARDS THE DEFINITION OF A MODEL OF COUNSELING ACTIVITIES**

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At this stage, it may be useful to try and explain, with the help of real data, *a model of a counseling center* that may work as an efficacious guide, with no intention whatsoever to invalidate and diminish the originality of the single family counseling centers of Christian inspiration that are operative in the various areas. It will be good for every center, when referring to the general model offered, to try and adapt it validly to the human, cultural and geographic reality where it has to interact each day. To enter into the topic we wish to stress two specific elements: the anthropological choice and the structural elements.

#### **The model and anthropological choice**

Independently from the reality to which it refers, the model is not the casual result of circumstances, nor is it given by a fortuitous coupling of elements that might perhaps even be contradictory. Apart from the concrete datum from which it is drawn, it rests on definite orientations that justify its formal consistency and guarantee the validity of its application. The orientations of the CFCs are easy to identify and are directly linked to a precise anthropological choice. It is important to stress this, since the axiological frame on which the centers are resting and to which they continuously refer, corroborates the specificity of their action.

The CFCs act according to the teaching of the Church's Magisterium. From it they take precise indications as far as concerns their way of getting in touch with the people that come to them and the criteria to be used in their intervention. Their concern to always remain consistent with the religious dictates is such that they are moved to consider the *ethics counselor* as the basic element of their organization.

Even if Christian inspiration determines the meaning of the counseling center's action, nevertheless the center must pay attention to two other basic factors. On the one hand, the state law n. 405 of 1975 created family counseling centers all over the country. On the other hand is the document issued by

the CEI office concerning *family counseling centers in the land and in the community*, again dating from 1975. From the former the center draws precise indications about its *socio-political-cultural justification*, the professional resources to which it should refer, and their areas of intervention. From the latter they receive orientations wherewith to *specify their own actions in terms that are inspired by Christianity*, and therefore about how to determine their functioning in harmony with the ecclesial community to which they belong.

### **The model and its structural elements**

We now wish to explain the following aspects that are strictly related to each other:

a) *Secretarial service*. If considering the entire topic of the CFCs at a superficial level, then this may seem to be only a secondary element and of little weight; instead, if one considers things well, then it represents an extremely if not the most important factor: the efficiency and effectiveness of the counseling center depend directly on it. To be at the service of the local and ecclesial community means to give people the opportunity to turn to the center at any time of the day, to be listened to and then directed to the indispensable and following sources of help. Therefore the center must count on a stable presence that is technically and managerially prepared and competent in the field of family relations.

b) *Welcoming service*. All the activities of the family counseling center depend on this factor, since it is connected with the themes of its readiness to listen to people and successively direct the person that is living in bad conditions. To put the latter at ease through efficient communication; to help him/her express his/her sufferings; to guide him/her in identifying the core of the problems that are influencing his/her life; to competently suggest his/her turning to specific professional help; to offer “relational continuity” to the meetings held by specialists; to guarantee the possibility of dialogue when critical moments of the process of change: these are some of the reasons why the organization of this kind of service is urgently desired.

c) *Professionalism of the workers*. Here we can distinguish three levels:

–*Professional level of the team*. The team should consist of specialists who, having professional titles that are recognized by the State, feel interested in a permanent qualification and in continuing education. Be their help voluntary or paid, the professional members of the staff must constitute the “hard nucleus” of the counseling work, and should therefore warrant their continuous presence over time. The scheduled periodical meetings of the team must become a fundamental moment of reflection for all the participants on the common axiological choices made regarding the work that has been done, reciprocal formation, research into new

methodologies and different ways of intervening.

–*Distribution of services.* The user's request for help must be answered inside the center's offices, contrary to the current trend to send the person to a private office of professionals. The family counseling center has its own characteristic mode of action, which does not allow a fragmenting of its services, not even when these services are considered to be the exclusive competence of a specialist. The counseling center must distinguish itself as an "operative center of the local community", that can offer an efficient/effective service without causing more agitation to its users or appearing to be a mere place where requests are taken and distributed.

d) *Correct stress on volunteerism.* The volunteer personnel must fulfill the criteria of professionalism. On the other hand, the availability of volunteer services should not be occasional or fragmented, volunteer activities must go together with the person involved responsibly keeping to his/her commitment. In the family counseling center the services offered must come before the availability of volunteer personnel.

e) *Relations with other structures on the ground.* The family counseling center should not be isolated from the context in which it is inserted and works. With reference to its specific privileges, the center must engage in a web of relations that will allow for a valuable collaboration with various territorial agencies. It

must become part of a real strategy aimed at the creation of a common web in favor of persons, couples and families. This way of understanding the problem also justifies the idea of the center as an agency that can offer multiple prevention services, and not only of the healing or medical kind. Think of the organization of schools for parents, classes in sexual education, workshops for workers, seminars to go deeper into specific cultural themes. However, all these initiatives must stress the *specificity of the counseling proposed*, contrary to a trend towards undue interferences in other sectors that would denature the center's identity and damage the workers' professionalism.

f) *Reference to various forms of self-financing.* Significant here is the experience of counseling centers that have signed agreements with regional bodies that are requesting their services as far as formation activities are concerned. This income will be added to the traditional forms of financing (contributions from the diocese and membership fees), which are often not sufficient to guarantee the service's efficiency/effectiveness. Also to be considered are: possible donations from private individuals and asking for occasional payment for services (formation or counseling) offered to the vicinity.

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## WELCOMING IN THE FIRST VISIT AND EDUCATIONAL COUNSELING

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At this stage it is fitting for us to pay attention to two particular insights that may more exactly qualify the servi-

ces offered by public and private family counseling centers: the service of welcoming and educational counseling.

### **Welcoming**

In the life of a family counseling center the moment of welcoming the user on their first visit is vitally important. In fact, this is what will decide the intervention's possible success, that is, this is where the possibility occurs to guide the user towards those professional helpers that will be more involved in the problem at hand.

This first welcome should never go without a fundamental assumption: the act of welcoming is not something that simply concerns a generic client or user that needs help. Its validity is strongly linked with the worker's capacity to give an effective hand to the anthropological inspiration that motivates the user to act. Under the pedagogical personalistic perspective, therefore, this first welcome postulates the recognition of the other's individuality—it is the welcoming of the other-than-me, of the You, of the different—that is being perceived and, in fact, welcomed globally in its unique, original, unrepeatable existential richness.

It is upon the primary act of recognizing the other's distinctive characteristics, and therefore upon the assumption of the awareness of the priceless value of the You, even if that You has problems and difficulties, that the intervention of the center's worker first grafts; this will later be followed by moments of observation and, at last, there will be the ac-

tual counseling. On the other hand, the latter would be conditioned if the family adviser would lack the conviction that all paths towards improvement, adjustments, personal change, must come from the idea of man as gifted with potentialities, and therefore with the capacity of self-correcting his own behavior.

Among other things, what emerges is the requirement that the counselor, from the very first meeting with the subject in need, manifests a *confirmation* to the subject. In other words, what is called for is the worker's capacity to let his interlocutor understand, especially through non verbal ways, that he is welcoming the user the way the latter says they are, feels ready for that meeting, and prepares himself to revise his own personal world. To confirm, and this is important, does not mean to share. Basically, it postulates the *acceptance* of the existential reality of the other, even though it has become problematic because of circumstances of different natures or because it is characterized by elements of more or less serious crises that can be more or less temporary. This vision justifies the programming/projecting of the entire set of initiatives, according to which the family counseling center should become a welcoming place, from the material, relational and emotive-affective point of view.

The first welcoming theme leads towards the need for the center's worker to be *authentic* and *competent*. About the former, no need to observe that the

worker's authenticity is the one element that can assign to an interpersonal relationship precise connotations that will greatly influence what is implied by counseling. Therefore, the worker cannot withdraw from a preliminary process of self-evaluation, to foresee a refinement of his own relational competence and his mastering of the rules that govern interpersonal communication. The counselor should engage in an organizational process of his own personal authenticity, which greatly influences the structural effectiveness of a relationship of dialogue and a correct ordering of his interventions to help. If the worker will learn to know himself more thoroughly than merely what is required by his professional role in the case at hand, he will be able to adequately satisfy the user's requests, and be ready to establish with the latter a relationship "from person to person".

As far as a *professional competence* is concerned, this calls for the worker's deeper study of some pedagogical-educational indications. Among these, the following should be stressed.

–*To be able to control non-verbal communication.* One should be clearly aware of the moments of approaching, meeting and confirming, that are always implied in a communication relationship. Just as "first impressions" cannot determine the style for an exchange of meanings and the development of a relationship cannot result in confused ties, so also will it be absolutely necessary to accept

the other and to choose him as a "companion in a true discussion", even when one does not share his views.

–*To know how to listen.* It is absolutely essential not only for the adviser to acknowledge what is being verbally transmitted, but also and foremost he should be aware of the ways (and their various nuances) used by his interlocutor to express himself. He should be able to read between the lines of silence, and to throw light on the hidden elements of communication, since they could be fundamental for understanding the problem being uncovered. During first welcoming, the center's worker should be capable of hearing what has not been expressed, of listening to the emotional-affective echo of his interlocutor's problems, so that he may help the latter to better to express what has not been said, through a correct communication code.

–*To know how to offer the right words.* It is opportune to make an appropriate use of language in describing, classifying, listing facts, circumstances, events and people, to go hand in hand with using the words as the appropriate factor in promoting interpersonal communication. Words are the instrument for the "e-vocation" of one's own and the other's interior world, they are the expression of one's own and the other's spiritual reality. As such, they should be cultivated and used with reciprocal respect and a reciprocal awareness of being in dialogue.

—*To know how to conduct verbal communication.* Through an expert use of *feedback*, one should bring to light and define the request for help. It is not only a question of knowing the rules that are governing an exchange of meanings, what is at stake is rather to invite the interlocutor to use terms wherewith more adequately to express his feelings, sensations and fears.

—*To know how to orient.* It is important to have a clear awareness of one's own professionalism, and to notice when the moment and the opportunity have come to refer the subject that is in need towards other workers able to offer him the help that is needed. First welcoming has to do with guidance, against any inclination towards operative self-sufficiency and a fragmentation of professional competences.

On the whole we could say that, precisely because it is a direct expression of the family counseling center's value orientation and strongly influences any later development of the help to be given, the first welcoming theme assumes an adequate preparation of the center's personnel.

### **Educational counseling**

Here one could say that, although it should not be mixed up with education *tout court*, it nevertheless assumes that it is referring to the milieu in which it acts, that is, to the family counseling center of Christian inspiration.

Education can be defined as that intentionally structured process according

to which, persons invested with educational responsibility tend to have the subjects entrusted to them make specific steps towards growth. In this sense, instruction rests on the assumed awareness of whoever interprets and promotes it, on the identification of specific social roles (parents, teachers, community educators, etc.), on the directivity of the proposal at hand. About the latter, one should remember that in the case of instruction the offer of its finalities and objectives is qualified by its need of "having to be", that is, by its proposing a definite formative procedure, which must become functional not so much to what the subject to be educated is at a certain moment of his life, but to what this subject—in accordance with his evolving characteristics and with the reality in which he is placed and wherewith he must interact—can and must become. Therefore, the educator-student relationship cannot set aside the consideration that the situation of asymmetry or complementarity between interacting terms is profitable for proposing norms, prohibitions, encouragement, indications according to which the subject that is growing is being led to favor specific behavior schemes and to shape his own behavior according to this.

Of course, in an educational relationship that is personalist orientated, a situation of objective inequality is always balanced by a situation of equality in values. The educational relationship, according to the personalist pedagogical



view, rests on the axiological equality of the interacting terms, which prevents the directiveness from degenerating into arbitrariness, to shift into training, or at discretion: an axiological equality mitigates the state of inequality.

Educational counseling consists of various elements that go with education *qua talis*; however, it distinguishes itself as far as the methodological aspect and its contents are concerned. The aspect of its methodology rests on its not being directive. With his empathic capacity for dialog, and in a total acceptance of the other, the pedagogical counselor, far from telling the user what he should do, must favor those conditions that let his interlocutor see and choose ways that will let him grow and will lead him to constant improvement. For the adviser this also means being successful in identifying spaces of true “educational agreement”, by which to make the user become actively involved and directly participate.

As far as the contents is concerned, educational counseling postulates a fundamentally clear starting point: the distinction between the user’s evolutive and educational needs, between growth disorders and educational requirements called for by growth. In this situation, it clearly appears that educational counseling will concern that space that is specifically localized in a precise sector: the gap between what the subject (the person or the family) is at a certain moment of its story, and what it can be and can

become, again in that specific moment of his/her/its life. This way of conceiving the problem allows for the counselor to give solidity to his *educational duty*, which should not be confused with the evolutive duty (difficulties that should be leveled, problems to be solved, requirements to be satisfied) that arise due to subjective dynamisms; nor should the *educational duty* be interpreted as simply a reinforcement of the concrete datum (especially the psychological and cultural) which distinguishes the subject’s existence. Instead it has the intent to improve the person and the family, which, born from a need felt by the user, the latter will try to follow and to reach, after having attentively valued the real datum, his individual and/or domestic potentialities, and his subjective availability to a conscious engagement so as to recover from eventual errors.

This way of conceiving educational counseling will also be of benefit to the interdisciplinary work to be developed by the center’s team. In fact, here an encounter between various professional disciplines can lead to cross-pollination, in help offered by one worker to the others, so that all together might best satisfy the requests of those persons that are turning to them for help.

## **CONCLUSION**

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In the present work we have been asserting that, contrary to the public family counseling centers, during the last decade the CFCs have been char-

acterized especially by attention paid to educational problems. On the whole, we are facing a relevant real fact: even though they have to face innumerable economic, environmental and relational hardships, the CFCs are concentrating on the themes of prevention and promotion in their areas, they find their inspiration in the principle of evolutive dynamism which is typical for personal and family becoming, and look for a cooperating relationship with other institutions that are operating on the ground.

This last motivation spurs us to affirm that, as far as the pedagogical aspect is concerned, for the CFCs to function correctly one should not undervalue the request for an *adequate educational policy for the region*. The network strategy theme cannot start if the planning and program policy levels, which are necessary to point out the limits of the separation of competencies and institutional self-sufficiency, are underestimated. Those responsible for the *res publica* must favor more precise finalities towards which the local community should be oriented; they should identify and reinforce such operative institutions that may, with the necessary professional resources, sustain and assist the local community in its moving forward according to new projects to be determined *in loco*. Such a procedure will, from the start, help to determine the developmental path of the entire population, and give the latter oppor-

tunities of permanent growth. Such developmental paths and opportunities for permanent growth require for there to be inter-institutional links. This can be obtained, not through simply formal and/or episodic normative supervision of the officers. On the contrary, it can happen through the pedagogical case of having the various bodies and institutions that are involved in the specific sectors of the community's life follow a *projectual link*.

The territorial network strategy has to do with the pedagogical theme regarding the community to be instructed, and, let us stress it again, cannot be considered to result simply from sector adjustments, but has to be objectively pursued by balancing the many development plans to which individual, family and social life refers. For some time now pedagogical research has been proving that the community is the result of an organized society's educational becoming, and therefore the result of the modification that has occurred, through the definition of objectives deriving from the regulating ideal of an integral human progress in its socio-civic-political-cultural context: we should shift from a fragmentary functioning that is an end in itself, towards an oriented, promotional, systematically interdependent becoming. In this way the family counseling center can and should compare its own intervention projects with the ones developed, for example, by the school, by the church, and by other ser-

vices that are mostly concerned with the wellbeing of the person, the couple, and the family.

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# The Family, Nature and the Person

Jean Marie Meyer

F

*In some circles ethology is fashionable. It is believed that in order to understand the behavior of men one should study animal behavior. This study would allow us to climb the evolutionary ladder and bring to light the materialistic character of the species. Man would not occupy a special place in nature, would not be distinct from nature, and would be a fleeting moment in the history of the world destined to disappear definitively through death. Between man and monkey and other living beings, no difference in value would exist. Instincts residing in man would determine his behavior. He would be destined to search for the maximum individual pleasure, without considering any responsibility towards others. This contemporary version of materialistic Darwinism is surprising. It leads to a radical crisis for the family, to nature, to the person—all these terms are invested with different meanings depending on the needs of the argument. Man, the family, sexuality, the person, etc. would be passé notions; and resignation would be the appropriate attitude. Unfortunately for the supporters of this neodarwinism, they are dealing with obstinate realities. Despite the attacks on the family, it is a value with a future. Human sexuality is not in any way reducible to the physiological processes studied by the zoologists. The person is more than an individual and the human community is more than an animal “society”. Philosophers, sociologists, doctors, and economists—to cite only a few—come to similar conclusions: the family is the primordial place for solidarity, proximity, protection, of survival itself. It is the future of the person, society and the Church. (↗ Enlarged Family; Family and Philosophy; Family and Personalism; Single Parent Family; Recomposed Family; Traditional Family; Motherhood and Feminism; New Family Models)*

## INTRODUCTION

The contemporary world suffers from a crisis of meaning which makes it partially blind to the depth of the words it uses. Such is the case regarding the words “family”, “nature”, and “the person”. In light of this si-

tuation, it is urgent to reestablish human intelligence in its rights so that it may see what is at stake and what these words truly mean.

This partial blindness has practical and painful repercussions. Ignoring what he is, contemporary man has a difficult time knowing what he must

do, how he is to live and what the dead ends and avenues of his freedom are.

In the first part I will attempt to make a more precise diagnosis of the problem. Then I will show different ways of uniting these three terms, thus rendering greater justice to the human person.

## **THE DIAGNOSIS: DISSOCIATION**

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Dissociation probably summarizes best the contemporary situation. In Western Europe current trends promote the idea that there is no such thing as the family, but only families. We are thus witnessing a historical rupture: the contemporary era has revolutionized human relations to the extent that to think of the family in terms of its historical continuity has become obsolete. From this perspective, there would exist different models of family life which have value and meaning only in a given social context without any possibility whatsoever of reaching a universal truth illuminating familial ties.

Similarly, the word "nature" is used in different, disparate ways. The physician uses it as the framework for his study of phenomena. He admits thereby that, though he speaks of nature, he never really studies nature itself. He limits himself to putting order to the diversity of phenomena.

The ecological understanding of nature sometimes elevates it to the level of a deity, of a divine being functioning as

a substitute for technology. Thus the concept of nature undergoes a dissociation of meaning, which for the time being neither of the two disciplines are able to overcome.

Finally, the word "person" also suffers from the effects of dissociation. On the one hand the psychologist underlines the role of conscience, while many biologists hardly recognize the human person in the embryo. Adding up these difficulties, one can understand the perplexity of contemporary man. In order to overcome this perplexity, we shall now attempt to gain greater clarity by letting these terms shed light on each other. My conviction is that in so doing the meaning of each concept becomes better defined and clarified. At the same time, the good of each person becomes again a project both conceivable and possible. In a word, it is possible to think and to live the rich diversity designated by these three words in a unified manner.

## **TOWARDS UNITY: THE NATURE OF THE PERSON**

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To make a connection between the two terms "person" and "nature" in terms of each other is traditional and at the same time quite modern. It is traditional because, for medieval philosophy, these two terms designate the fundamental characteristics of man as seen in his body and in his soul. It is also modern because it permits us to unify and to integrate the progress accomplished

by contemporary psychology with man as the object of its study. The concept of the person refers to a being that knows itself in depth while questioning the totality of the cosmos. This term encapsulates the whole inconscient dynamism rooted in the body, without sacrificing the best results of contemporary ethology. It appears that the human being alone possesses a conceptual language which permits him through the means of words to establish ties with the other. His behavior therefore cannot be fully understood if we forget to take into account his capacity of expression, of making projects and choices, which has no equal in the animal world. To speak of the nature of the person hence emphasizes the fact that what is good or pertinent for monkeys is not necessarily so for man.

Beyond the scientific hypotheses concerning the appearance of human persons, their existence is a fact given by experience. For real persons, good and bad are terms which find their significance in relation to their being. If the human person never really flourishes when violence or affective disorder reign, this is so because—although each one of us is unique (which is what the word “person” signifies)—it is possible to understand the demands common to every human being. Therefore the nature of the person allows us to consider the unity of each person as well as their goal and their good. After all, if human rights are conceivable, it is because there

exists a truth proper to man, in other words a nature of the human person.

This is why the definition of the human person given by the philosopher Boethius in the sixth century: “The person is an individual substance of reasonable nature” remains today as valid as it was then. We understand therefore that there is no need to fear that this expression diminishes our dignity: it is not about reducing our being to the mere organic dimension of our person, but to integrate and to respect the totality of what we are. The originality of the human person is better known every day, and we notice that, though the physiological dimension of our being certainly is crucial, it is structured in such a way that it allows for higher actions. The living human body is therefore never stripped of the dignity attached to a being of reasonable nature. Similarly, our acts are inseparably corporeal and personal. They ultimately go back to a “responsibility in act”. This in its turn reveals a way of being proper to the human person which has no equal in the animal world.

It is from this perspective that relationships with others acquire their most profound meaning. Though our affective needs explain in part our openness to relationships, each one of us has the need above all to be recognized and loved for what he or she is. Moreover, this need for recognition finds its fulfillment when it is reciprocal. Hence friendly relationships are the occasion for a double

discovery: first of oneself, because one finds oneself only in giving oneself, and also of the other, of persons known and loved for themselves, in a disinterested manner. We therefore understand that animal societies are not relevant models for understanding what is truly important in human relations.

## **PERSON AND FAMILY**

We perceive in this context that family or familial ties cannot be understood as something instinctive. Within this relationship, the truth about the person is always involved. This is also why the family has no need to be reinvented. Certainly, each concrete family unites unique persons and therefore also possesses a particular human tonality. But as a community, it must always bring to each one the means to situate themselves as husband or wife, as father or son, as mother or daughter. We do not speak here of abstract positions likely of being inverted. Each one of us possesses a family history and this fundamental fact is meant by the term “genealogy”.

This history, inseparably corporeal and spiritual, ties us to others. The familial tie thus plunges its roots into the most profound human relationships which express and reveal the truth of the human person. From this perspective marriage reveals itself for what it is: a unique pact which engages one for life because it unites the freedom of the person—of each spouse—and the truth of

familial ties. Perhaps more emphasis is needed here, since today one thinks so little about what is truly at stake in this covenant between man and woman. We are content to see it simply as a heritage or custom, while it actually is a personal engagement which ensures for each, beyond the evolution of customs, his or her true place within the family, and which also ensures for the family itself its stability, its condition for balance and happiness.

Thanks to this free choice of the spouses, the meaning of sexuality equally acquires a singularly profound meaning. In fact, within marriage, sexuality lived with an openness to life ceases to have a simply private value, in order to participate in the fruitfulness of a love which is fully personal as well as responsible. Here again, it is important to emphasize what most often goes unseen. Far from devaluating sexuality, marriage confers upon it an exceptional dignity, since (thanks to marriage) it becomes an eminent means for the spouses to assume their responsibility vis-à-vis each other, their children, and society as a whole.

Moreover, the sexual identity of each spouse finds itself confirmed and called to flourish for the greater good, not only of the spouses themselves, but also of the children. For are they not the first beneficiaries of the spouses’ gift to each other?

The natural generosity of the bodies lived responsibly within marriage and



the freedom of the engagement reciprocate the gift between the spouses. We notice here that the natural given—the body—and human freedom do not dialectically oppose each other, because human love lived within marriage unifies and harmonizes the two. That is why the demands of faithfulness and indissolubility contained within the conjugal pact are not arbitrarily added on. On the contrary: they only put in clear evidence the objective demands contained within this pact. On the other hand, pretending to realize an authentic union of persons—for instance by calling it a “free union”—while rejecting these demands, impoverishes human relations to the point of leading each one onto the path of withdrawal into self and of separation.

Nevertheless, the transmission of life also possesses a more profound meaning than the one usually indicated. This dimension of marriage is easily underestimated when the expression *nature of the person* is forgotten or avoided.

This expression permits us to reflect upon the fact that each human person possesses qualities and talents which, in one way or another, must be made available to others; in other words, each one of us is in search of his or her fulfillment and fruitfulness. Yet, this fruitfulness assumes, surrounds, and surpasses the strict fruitfulness of the body. Within marriage, this search for fruitfulness is called to take on a particular shape through paternity and

maternity. Once again the prevailing reductionism in caricaturizing reality destroys reflection and a spirit of wonder: human behavior is in fact distorted when it is confused with the instinctive impulse of reproduction, present within the animal kingdom. Where a careful observation could convince us that the given word, which is at the basis of the family, is also at the basis of behaviors with symbolical value, we content ourselves to record that human beings transmit life to other human beings! Yet this biological evidence should not let us forget the psychological and ethical demands preceding this transmission. Perhaps this makes it easier to see that the family—every family—because it is a human community, is also a place of culture, and that far from going against the nature of the person, it is the place where the person flourishes. Marriage stabilizes interpersonal relations and thus makes an exchange between generations possible without which culture would have no impact. In this respect the term “regulation” often used to speak of marriage within the context of social relations, describes only very imperfectly that which is at stake.

To be a father or a son is not a simple role or a social regulator, but is a dimension of our being; similarly, to have a spouse only acquires its true meaning beyond biological leanings. This is where the concepts of family and the nature of the person come together. These concepts are thus both descriptive and

normative in as far as they indicate what happens and underline that it happens because the good of the persons and of the communities is at stake. The family is thus not only a superstructure or a simple mechanism of a biological or social order, but a real human good. A human good, however, is always rooted in the person and has an influence on society. It therefore makes no sense to separate the good of the spouses from that of the children, for it is an inherent feature of the conjugal pact to open up the intimate relationship between a man and a woman toward those for whose good the marriage has been established, namely the children.

It is therefore not difficult to understand the social function of the family. Society owes its existence to the family in the strictest sense of the word, for all citizens first have to be engendered and educated. Thanks to this education, they can then integrate themselves within society and eventually found their own families. However, in order to engage in this adventure, one needs to know who one is, what one's goals are, what means of action one has, and who the other is. One first learns this in the context of the family.

Among those who carry political responsibility, there are many today who remind parents of their responsibility, their rights and duties to form persons who are neither social parasites nor desperate and violent. In other words, democracies need families that furnish

people who are capable of living in a democracy.

Let me conclude by underlining the socializing function of family relations. The family contains the frail and precious good of humanity. The other is a brother, a sister, a father, a mother, but beyond the age differences and responsibilities, there is a unique being which is irreplaceable and whom I have to respect and love. To try to define, to defend and to promote the family is not a sectarian or narrow-minded attitude. On the contrary, by defending the family today we are keeping the possibility of a future which is respectful of human life.

# Fertility and Continence

Rita Joseph

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*There are two mutually contradictory advertising messages that have been presented for the last thirty years. On one side, fertility should be contained and controlled. Otherwise there would be unwanted pregnancies, with a resulting deterioration of development, scarcity of natural resources and the loss for women of the role that is due to them in society. On the other side, continence, that is to say the ability of human beings to control their own sexuality, is said to be impossible. So here we can see the consequences of these two propositions. On one side, fertility is controlled using any and all means: chemical compounds, mechanical instruments, surgical operations. On the other side, the fertility control solves the question of continence, considered to be impossible, and gives the green light to the most varied sexual practices. This is what is behind this advertising, a purely zoological interpretation of human sexuality and therefore of anthropology. This interpretation ignores the human capacity to administer his own sexuality with judgment and freedom. Against the educational programs inspired by a degrading vision of man, it is necessary to oppose an anthropology denouncing the "pathologization" of fertility, demonstrating that continence, correctly conceived, is not absolutely inaccessible to mere mortals. (↗ Sexual and Reproductive Rights; Motherhood and Feminism; The Contraceptive Mentality; Responsible Parenthood; Reproductive Health)*

Fertility, the natural ability to procreate, must be curtailed, and continence, a function of self-discipline over sexual behavior, is no longer to be expected or entrusted to do the task. Reliance has shifted to "modern methods of fertility control".

This neologism discounts the natural law requirements of men and women, as creatures of intellect and free will, to exercise sexual continence; it denies that fertility is a natural good to be protected and favored and that all that threatens it is to be avoided. The inherent mistake

in this neologism is the failure to understand that it is our sexual behavior, not the physiology of fertility, which needs to be controlled. The introduction of modern methods of fertility control, hailed as a new reproductive right liberating sexual intercourse from "the threat of unwanted pregnancy", has led instead to the pathologizing of women's healthy reproductive systems for demographic, ideological and commercial purposes.

The errant premises upon which this neologism has been based are:

(1) that unregulated fertility poses an imminent threat to the ecological sustainability of the earth's resources;

(2) that unregulated fertility endangers women's and girls' health and lives, and represents an intolerable barrier to women's full and equal participation with men in political, economic and social life; and

(3) that fertility can be regulated only with the aid of a multi-billion dollar world-wide family planning/abortion industry which can ensure that sexually active women and girls of child-bearing age, with their "sexual partners", use "a modern form of contraception", with access to "emergency contraception" and to abortion in case of contraceptive failure.

## IDEOLOGICAL REINTERPRETATION

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Across the radical feminist literature of the past 30 years, fertility has been presented as a political, economic and social handicap imposed only on women. Pregnancy and motherhood are viewed as disempowering roles socially constructed by men to (a) exploit women as "baby-making machines and domestic slaves" and (b) to deny women an equal and equitable share with men in the political, economic and social decision-making of their communities.<sup>1</sup>

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1 The Beijing Declaration and Platform for Action, UN Fourth World Conference on Women, 1995 is riddled with the concept of fertility as an obstacle to women's

Fertility is seen also as threatening the sustainability of the world's resources: women's fertility must be controlled, if overpopulation is to be reduced and ecological disaster is to be averted. Poverty is also blamed on failure to reduce fertility.<sup>2</sup>

## Population control recast as fertility control

Early population stabilization was the central goal set by the UN Population Fund (UNFPA) and the population control lobby at the Cairo International Conference on Population and Development (1994), and to attain this goal, three major objectives emerged:

(1) to manipulate women into having fewer children than they may want;

(2) to teach women and adolescent girls that their fertility threatens the sustainability of the world's resources, and

(3) to free sexual relationships from the responsibilities of procreation.

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empowerment e.g., "In most countries, the neglect of women's reproductive rights severely limits their opportunities in public and private life, including opportunities for education and economic and political empowerment. The ability of women to control their own fertility forms an important basis for the enjoyment of other rights." Para 97.

See also the Cairo Programme of Action, International Conference on Population and Development, 1994. For example, Section 8.6 calls for the provision of "reproductive health-care services to facilitate the proper use of women's time." Para 45.

2 See these as major themes in 2001 *State of World Population Report*, UNFPA.

These objectives were dovetailed nicely with the three major objectives of the radical feminist rights agenda:

- To make access to the widest range of methods for fertility control (includes abortion) a basic human right;
- to free adolescent sexuality from parental supervision by educating adolescents in the “new” human rights such as a right to abortion services without parental notification; and
- to assign the same rights and privileges to homosexual relationships as to traditional marriage and the founding of a family.

It was in the unhappy genius of the Cairo Conference that radical feminism was able to find common ground with ecological utopianism. Eco-utopianism advanced the doctrine that governments must impose population programs on their peoples in order to reach the perfect ecology. In this perfect ecology, a small human elite would be sustained indefinitely amidst biological diversity (and gender equity). This elite few would thrive on an earth that would supposedly continue forever, provided that correct ecological (and gender) balance could be maintained.

The genius of this ideological fusion lay in the successful recasting of the population-control agenda as one primarily concerned with empowering women and girls to control their fertility, for the alleged purposes of improving their health, and of achieving equality with men in the public arena.

The unfortunate truth however is that though the words and rhetoric changed, the population control programs have retained essentially the same purpose—to manipulate women into tampering with their fertility.

## **Fertility Control and Women's Autonomy**

UN propaganda insisted that, whereas the old approach had viewed women's fertility as an object of population control, the new approach at Cairo focused on women's empowerment to exercise personal autonomy over their fertility.<sup>3</sup> Feminist dogma proclaimed that women and adolescent girls cannot control their own fertility without unfettered access to abortion.

According to Carmel Shalev, expert member of the UN Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) Committee, the criminalization of abortion: “...not only impairs women's rights to reproductive choice—to make free and responsible decisions concerning matters that are key to control of their lives—but also exposes them to the serious health risks of unsafe abortion, violating their rights to bodily integrity and, in the most extreme cases, to life itself... Reproductive choice means the right of women to choose whether or not to reproduce, including the right to

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3 Reproductive Health Program Development: Implementing Cairo Biennial Report 1998-1999, WHO, Geneva.

decide whether to carry or terminate an unwanted pregnancy and the right to choose their preferred method of family planning and contraception.”<sup>4</sup>

Shalev’s radical feminist reinterpretation of the right to bodily integrity must be challenged. While rape violates a woman’s bodily integrity, pregnancy does not. Whenever a woman’s right to bodily integrity is respected, then that woman is able to exercise autonomy over her decisions either to have sexual intercourse or to abstain from it. She will have no problem with “uncontrolled” fertility. It is not as though fertility activates itself—it needs a deliberate act of sexual intercourse. The logical point at which a woman should exercise her much-vaunted “right to control her own fertility” is at the bedroom door—not at the door of an abortion clinic. Women, no less than men, are endowed with intellect and free will. Alone of all the animals, human beings have the capacity to refrain from mindless copulation. Our rape laws attest to this. Around the world, rape laws should be strengthened rather than abortion laws weakened.

### **Fertility threatens women and girls’ right to “a satisfying sex life”**

It is claimed that fertility threatens women and girl’s sexual health: it denies

women and girls the enjoyment of a satisfying and safe sex life, untrammelled by the threat of an unwanted child. Reproductive health “implies that people are able to have a satisfying and safe sex life and that they have the capability to reproduce and the freedom to decide if, when and how often to do so.” (ICPD 7.2)

Yet people have always had this freedom where rape laws have protected the freedom to decide if, when and how often to have sexual intercourse. It requires only timely discretion and voluntary restraint together with due recognition and respect for the natural facts of life—that pregnancy is the natural consequence of deciding to have sexual intercourse.

### **Uncontrolled fertility leads to forced pregnancy**

Nevertheless, radical feminism rejects “...the male view of reproduction as a natural process.”<sup>5</sup> Pregnancy as both a natural process and a natural consequence of sexual intercourse is rejected—the term “forced pregnancy” has been coined to “describe the violation of women’s integrity by forcing her to become and remain pregnant.”<sup>6</sup>

4 SHALEV, CARMEL: *Rights to Sexual and Reproductive Health: The ICPD and the Convention for the Elimination of All Forms of Discrimination Against Women. Health and Human Rights, Vol 4, No 2 (2000 pp. 52-3.*

5 OLSEN E: “*Do (Only) Women Have Bodies?*”, Cheah P, Fraser D and Grbich J (eds) *Thinking Through the Body of the Law* (Allen and Unwin, St Leonards, 1996).

6 *Women’s Linkage Caucus Advocacy Chart*, Beijing, August 30, 1995 p. 7.

Although the term “forced pregnancy” was rejected in preparatory UN meetings for establishing the International Criminal Court, the concept remains vigorously alive in UN family planning propaganda e.g. the *Manual of Family Planning for Doctors, Health Education Officers and Nurses in Papua New Guinea* advises:

“Whenever health workers refer antenatal mothers to hospital with problems they should ask if any more children are wanted after this one. If not, a signed TL [tubal ligation] consent form should be sent with the mother... we as health workers do not have the right to force couples to have more than 2 children by denying them the means to stop having babies.”

### **Continence obsolete-replaced by commercial products and services**

Not just health workers but governments too are to assume responsibility for fertility. Radical feminism accuses governments of violating liberty and security “where a state denies women access to means of fertility control and leaves them to risk unwanted and unintended pregnancies.”<sup>7</sup> Personal continence, once valued as a function of self-discipline over sexual behavior, appears to have been rendered obsolete.

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<sup>7</sup> COOK R: “*International Protection of Women’s Reproductive Rights*” (1992) 24 *New York University Journal of International Law and Politics*, p. 696.

Once sexual continence is thrown out the window, fertility control, like disease control, becomes a medicalized necessity that has to be financed, provisioned and controlled as a public health service run by governments in partnership with the World Health Organization (WHO) and the UNFPA. This partnership is committed to the set of new pseudo-human rights called “re-productive and sexual rights” which include the right to access “the full range of methods of fertility control” provided by the multi-billion dollar family planning industry-the pharmaceutical companies, the IUD and condom manufacturers, and the abortion and sterilization service providers.

### **Fertility control advocacy has led to over-medicalization**

Fertility is no longer considered a natural healthy attribute-most of the time it is to be rendered dysfunctional through surgery or chemical ingestion. The “key indicator” for measuring the success of UNFPA women’s health programs is contraceptive use. Such programs refuse to see the long-term dangers of requiring bio-technical modification of the human body to force constant malfunction of normal healthy reproductive systems.

Yet the damaging side-effects of contraceptives and other methods of fertility control tend to be glossed over. For example, consider the cool understatement of the WHO Reproductive

Health Research Unit: "After non-surgical abortions, vaginal bleeding is an important concern, especially in developing countries where anaemia is prevalent." Regrettably, WHO's concern stops short of removing non-surgical abortion from UN health programs.<sup>8</sup>

The length of the lists of contraindications in the current *MIMS Annual* for all the major contraceptives and the size of the pharmaceutical companies' insurance policies should ring alarm bells. According to WHO, the ideal contraceptive—totally free of risks—does not exist and is unlikely to be discovered in the near future, and there is ample evidence that many people do not use modern methods of fertility control because of unacceptable side-effects and possible health risks.<sup>9</sup>

There appears to be little recognition that mass medicalization of women's fertility globally has done immense harm to our very humanity. The international community has yet to learn the dehumanizing consequences of the massive defertilization offensive that has been launched, especially against the naïve and the poor.

Imagine a massive campaign to administer truth drugs.... Such drugs take away part of our humanity—impair our ability to make moral decisions and our

dignity as human beings. Or consider diet pills to control being overweight: every doctor knows that it is far healthier to control overweight by controlling diet and exercise. Imagine the outcry if the UN agencies masterminded a massive global health rights campaign that marketed a full range of diet pills and cellulose-reduction surgeries for all women as a superior more reliable method of avoiding the health dangers of being overweight. Imagine doctors assuring men and women that moderating food intake and taking exercise are no longer necessary.... Yet hundreds of millions of women submit to medicalized control of their fertility—victims of thirty years of widespread promotion of contraceptive technologies. Women and girls are being taught that fertility control is imperative to good health and that fertility control is only possible through chemical, surgical, or mechanical interference.

The fact is that, from an anthropological point of view, most cultures developed traditional methods of dealing with fertility, usually by instituting sexual and behavioral codes requiring, for example, periods of post-partum abstinence and the use of extended breastfeeding

In a lifetime's work, Drs John and Evelyn Billings have shown that Natural Family Planning (NFP) builds easily onto such cultural foundations and is much more acceptable to a wide range of cultures in the developing world.

8 *Reproductive Health Research at WHO: A New Beginning*, Biennial Report 1998-1999 p. 49.

9 *Ibid* pp. 39-49.



Slowly but surely, the medical world is beginning to appreciate this truth. The turning point came when the editorial of the prestigious *British Medical Journal* endorsed the Billings' NFP work (*BMJ* 20 Nov 1993); and more recently, outstanding successes in large scale trials of the Billings Method in India and China have been further acknowledged. (See <http://www.woomb.org/>)

The positive philosophical approach taught in the Billings Method gives women and men a true knowledge of and respect for their fertility, together with a profound appreciation of the wonder and value of each new child conceived:

### **Continence—an unnecessary behavioral restriction**

In contrast, the unchallenged orthodoxy being peddled in standard sexual and reproductive health education programs is that any requirement for adolescents to exercise continence is “unrealistic”.<sup>10</sup> An excessive liberalism insists that no restrictions other than the requirement to use condoms and contraceptives should be placed on sexual activity. Instead, controls must be placed on fertility lest it result in pregnancy which is presented in much the same light as sexually-transmitted diseases like AIDS or Chlamydia. Indeed WHO and UNFPA literature abounds

with warnings about this “dual threat” and health programs concentrate on providing the education and the means to avoid both outcomes which are presented as equally undesirable and life-threatening.<sup>11</sup>

Current education programs teach children to tamper with human biology rather than to moderate sexual behavior. They operate on the assumption that adolescents are or will very soon be sexually active. Promiscuity is a given. It is acceptable behavior, and teachers are to refrain from criticism of any behavior other than **not** using condoms or contraceptives.<sup>12</sup> [The recent controversy at the UN AIDS Conference, Cape Town, June 2001, erupted over this very issue—the ideological refusal to accept that risky behaviors, such as prostitution, illegal drug use and homosexual intercourse can be discouraged and reformed.]

### **Fertility—a health threat: unwanted pregnancy is dangerous**

Regrettably, health education programs for girls and women peddle misinformation designed to inculcate irratio-

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10 For example, see educational resource book for the young people of Australia: *Sexual Health*, Spinney Press, 2000.

11 For example, see WHO Reproductive Health Program Development *op. cit.* “Dual protection is the prevention of two unplanned and undesirable outcomes—unintended pregnancy and HIV/STD infections” p. 57.

12 For example, see *Sexual Health Education: A Training Manual for the Pacific*, Family Planning Australia/AusAID 2001.

nal fear of fertility. Unregulated fertility, they are told, carries with it the terrible health risks of pregnancy: "According to WHO and UNICEF's estimates, more than 585,000 women die each year as a result of pregnancy. At least 7 million women suffer serious health problems, and as many as 50 million suffer some health consequences after childbirth."<sup>13</sup> The UN's *Reproductive Health in Refugee Situations: An Inter-Agency Field Manual* runs the same line under "Some General Facts About Reproductive Health": "585,000 women die each year-one every minute-from pregnancy-related causes... Girls aged 15-19 are twice as likely to die from childbirth as women in their twenties." The implication of these claims is that women and girls are inherently at risk of dying in childbirth, rather than the truth that they are not provided with First World standards of good nutrition and medical care, as well as adequate clean water, sanitation and disease control.

Fertility is said to threaten also the health and well-being of existing children in a woman's family. It is alleged that each additional child not only threatens the mother's life but also jeopardizes the family's ability to provide for the educational, health and other material needs of existing children: "A wom-

an's right to life or right to survive pregnancy" is interpreted by Professor Cook to "incorporate the right to maximize the survival prospects of a conceived or existing child through birth spacing by contraception or abortion."<sup>14</sup>

Yet another theme is that fertility threatens women and girls' access to education, employment, self-determination and economic independence.<sup>15</sup>

## A New Right to Disconnect Fertility from Sexual Activity

Determined attempts to disconnect fertility from sexual intercourse have coincided with the advent of *in vitro* fertilization (IVF) and the rapid expansion of research into the bio-engineering of new methods of asexual reproduction. The natural ties between fertility and sexual intercourse are now viewed as unnecessarily restrictive. One's sexual partner is "not necessarily" one's reproductive partner and the new sexual rights framework must support this choice: "Another central aspect of sexual rights work must be to enable persons, particularly women, to choose whether to connect their sexual activity to desired reproductive ends."<sup>16</sup>

<sup>14</sup> COOK, *op. cit.* pp. 700-2.

<sup>15</sup> For example, see *Into a New World: Young Women's Sexual and Reproductive Lives*, The Alan Guttmacher Institute, 1997.

<sup>16</sup> MILLER, ALICE: "Sexual But Not Reproductive: Exploring the Junction and Disjunction of Sexual and Reproductive Rights" Health and Human Rights, (2000) Vol.4, No 2 pp. 92-4.

<sup>13</sup> SADIK, NAFIS, (at time of publication Executive Director, UNFPA) *Progress in Protecting Reproductive Rights and Promoting Reproductive Health: Five Years Since Cairo*, Health and Human Rights Vol.4 2000, p. 15.

## **New meanings for infertility**

Indeed the old right to found a family is said now “to implicate new rights at opposing ends of the fertility scale from untimely fertility to infertility.”<sup>17</sup>

Infertility, it seems, is a desirous state for all sexually-active women and girls—except on the one or two or at most three occasions (if they are to be ecologically responsible) in each lifetime that a baby is “wanted”.

A related neologism, the term “psychological infertility”, is now promoted by lesbian lobby groups. Psychological infertility is the inability of women to conceive a child where the infertility arises from a woman’s aversion to the natural procreative act in heterosexual intercourse. On this condition is premised the reproductive health right of lesbian women to access IVF services.<sup>18</sup>

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17 Cook, R: “International Protection of Women’s Reproductive Rights” (1992) 24 *New York University Journal of International Law and Politics*, p. 700.

18 See for example DARGAN, FELICITY: *New IVF Rules to Include Lesbians* The Herald Sun, Nov. 14, 2001.



# Free Choice

William E. May

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*The expression “free choice” is connected in today’s public opinion with the struggle conducted by different groups in favor of liberalizing the laws on procured abortion in different countries. In the name of the right of the human person to his own body in order to realize his life’s project, these groups asserted that a pregnant woman has the right to abortion, and that the law has to respect such a right. In the same manner that they put forward the claim in favor of individual freedom, they also asserted the right of everyone to use drugs, or to choose death (assisted suicide). W. May here reminds us of the real sense of the expression “free choice”, enlightened by Christian Revelation. The Catholic Church has always supported the real freedom of the human individual, his capacity to make small or important choices in his life. The “free choice” intended in this way, is not a negative freedom “from”, but a freedom “to”, in which man shows his capability to commit himself in a responsible choice, in his path towards sanctity. (↗ Bioethics Committees; Verbal Engineering; The Manipulation of Language; Principle and Argument of the Lesser Evil; What Bioethics?)*

## **THE EXISTENCE OF FREE CHOICE: DEFINED CHURCH TEACHING**

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A central truth of divine revelation is that human persons, created in the image and likeness of God, have the power of free choice. In order to create beings to whom he could give his very own life, God created persons (angelic and human) who have the power to make or break their own lives by their own free choices. Persons are of themselves, *sui iuris*, i.e., in their own power or dominion. Their choices and actions are their own, not the choices and actions of others. If the Triune God’s of-

fer of his own life and friendship is to be a *gift*, it must be freely received; it cannot be forced on others or settled by anything other than the free choice of the God who freely gives himself and the free choices of created persons who freely accept this gift.

The truth that human persons have the capacity to determine themselves and their lives through their own free choices is integral to Catholic faith. As the *Catechism of the Catholic Church* declares:

God created man a rational being, conferring on him the dignity of a person who can initiate and control

his own actions. "God willed that man should be 'left in the hand of his own counsel' (see Sir 15:14), so that he might of his own accord seek his Creator and freely attain his full and blessed perfection by cleaving to him" (no. 1730; the internal citation is from Vatican Council II, *Pastoral Constitution on the Church in the Modern World [Gaudium et spes]*, 17).

The power of free choice, which Vatican Council II hailed as "an exceptional sign of the divine image within man" (*Gaudium et Spes*, no. 17), is clearly affirmed by Scripture, the Fathers of the Church, and the whole Catholic tradition. In a beautiful passage cited by Pope John Paul II in his Encyclical *Veritatis Splendor*, the great Greek Father, St. Gregory of Nyssa, eloquently described human freedom of choice as our power to "create ourselves," as it were:

All things subject to change and to becoming never remain constant, but continually pass from one state to another, for better or worse... Now human life is always subject to change; it needs to be born ever anew... But here birth does not come about by a foreign intervention, as is the case with bodily beings...; it is the result of a free choice. Thus we *are*, in a certain way, our own parents, creating ourselves as we will, by our decisions.<sup>1</sup>

Like St. Gregory of Nyssa, Pope John Paul II emphasizes the *self-determining* character of free choice. Thus he writes that "freedom is not only the choice for one or another particular action; it is also, within that choice, a *decision about oneself* and a setting of one's own life for or against the Good, for or against the truth, and ultimately, for or against God" (*Veritatis splendor*, 65).

Indeed, the great truth that human persons are free to choose what they are to do and, in and through those choices, to make themselves *to be* the kind of persons they are was solemnly defined by the Council of Trent.<sup>2</sup>

## WHAT FREE CHOICE IS

Free choice makes morality possible and renders us responsible for our actions and our lives (see *The Catechism of the Catholic Church*, no. 1734). It is, as Germain Grisez so rightly emphasizes, the *existential* principle or source of morality. It is the existential principle of moral good and moral evil because moral good and moral evil depend for their being on the power of free choice. This is so because what we do is *our* doing only if we freely choose to do what we do, and it can be *evil* doing or its opposite only if we freely choose to do it.<sup>3</sup>

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cited in *Veritatis splendor*, 71.

2 Cf. H. DENZINGER and A. SCHÖNMETZER, *Enchiridion Symbolorum Definitionum et Declarationum de Rebus Fidei et Morum* (35<sup>th</sup> ed.: Rome: Herder, 1975), 1555.

3 Cf. G. GRISEZ, *The Way of the Lord Jesus*, 1:

1 St. Gregory of Nyssa, *De Vita Moysis*, II, 2-3;

Free choice is experienced when one is aware of a conflict. Different possible alternatives of action are present to one, but they cannot all be realized simultaneously. One deliberates about these possibilities, but deliberation cannot settle the matter. Deliberation cannot determine which of the alternatives promises unambiguously the greater good; it cannot do so precisely because each alternative, to be eligible as a possibility of choice, must promise participation in some good that is simply incommensurable with the good promised by other alternatives. It is for this reason, as will be shown below, why the proportionalist method of making moral judgments is utterly unworkable. Proportionalism claims that one ought to choose the greater good or lesser evil, but this presupposes that we can *know*, prior to choice, which alternatives promise the greater good or lesser evil. But if we could know this then there would be no reason to choose the lesser good or greater evil; to do so would be irrational, and immoral actions, although unreasonable, are not irrational. I will return to this later.

The experience of free choice can be summarized as follows: First, a person is in a situation where he or she is at-

tracted by alternative possibilities and there is no way to eliminate the incompatibility of the different alternatives or to limit the possibilities to one only. A person is free to do this or to do that, but not both; they are real, i.e., eligible but incompatible and incommensurable possibilities. Second, the person realizes that it is up to him or her to settle the matter and determine which possibility is realized. Third, the person is aware of making the choice and aware of nothing that “makes” him or her make it. In other words, one is aware that one is free to settle the matter and to freely choose one option among the alternative possibilities.

### **FREE CHOICE, HUMAN ACTION, AND A PERSON’S MORAL BEING**

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Free choices bear upon actions that we can do. But the actions in question are not simply physical events in the material world that come and go, like the falling of rain or the turning of the leaves. The actions at stake are not things that merely “happen” to a person. They are, rather, the outward expression of a person’s choice, the disclosure or revelation of that person’s moral identity, his or her being as a moral being. For at the core of an action, as human and personal, is a free, self-determining choice, which as such is something spiritual and abides within the person, determining the very being of the person. The Scrip-

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*Christian Moral Principles* (Chicago: Franciscan Herald Press, 1983), 41. See also St. Thomas Aquinas, *Summa Theologiae*, 1, q. 83, a. 1; 1-2, q. 1, a. 1; 1-2, q. 6, a. 1; 1-2, q. 18, a. 1. See also *Catechism of the Catholic Church*, no. 1732.

tures, particularly the New Testament, are very clear about this. Jesus taught that it is not what enters a person that defiles him or her; rather, it is what flows from the person, from his or her heart, from his or her choice (see Matt 15:10-20; Mk 7:14-23). We can say that a human action—i.e., a free, intelligible action, whether good or bad—is the adoption by choice of some intelligible proposal and the execution of this choice through some exterior performance. But the core of the action is the free, self-determining choice that abides in the person, making him or her *to be* the kind of person he or she is. Thus, I become an adulterer, as Jesus clearly taught (Matt 5:28), when I look at a woman with lust, i.e., when I adopt by choice the proposal to commit adultery with her or to think with satisfaction about doing so, even if I am prevented from executing this choice externally. The execution of the choice to commit adultery increases the malice of my act, but even if the choice is not for some reason executed, I have still, by my own free choice, made myself *to be* an adulterer.

This illustrates the *self-determining* character of free choice. It is in and through the actions we freely choose to do that we give to ourselves our identity as moral beings, for weal or for woe. This identity abides in us until we make other, contradictory kinds of choices. Thus, if I choose to commit adultery, I make myself *to be* an adulterer, and I

remain an adulterer, internally disposed to commit adultery, until, by another free and self-determining choice, I have a change of heart (*metanoia*) and repent of my deed. I am then a *repentant adulterer*, one determined, through free choice and with the help of God's never-failing grace, to amend my life and *to be* a faithful, loving spouse.

The significance of freely chosen human acts as self-determining is beautifully brought out by Pope John Paul II. After noting that "it is precisely through his acts that man attains perfection as man," he goes on to say: "Human acts are moral acts because they express and determine the goodness or evil of the individual who performs them. They do not produce a change merely in the states of affairs outside of man, but, *to the extent that they are deliberate choices*, they give moral definition to the very person who performs them, determining his *profound spiritual traits*" (*Veritatis Splendor*, 71).

We might say that freely chosen acts are like "words" that we speak and through which we give to ourselves our moral character, our identity as moral beings.<sup>4</sup> Indeed, *character* or our identity as moral beings, can be properly identified as "the integral existential identity of the person—the entire person in all his

4 On this, cf. the illuminating treatment of human action as language in Herbert McCabe, O.P., *What Is Ethics All About?* (Washington, D.C.: Corpus Books, 1969), 90-94.



or her dimensions as shaped by morally good and bad choices—considered as a disposition to further choices.”<sup>5</sup>

## SMALL CHOICES, LARGE CHOICES, COMMITMENTS AND “FUNDAMENTAL OPTION THEORY”

All of our free choices are self-determining. But some choices we can call “small” choices whereas others can be termed “large” choices or commitments. “Small” choices determine one or another aspect of our being, whereas “large” choices determine us more profoundly, and some—fundamental commitments or “options”—shape our entire moral existence.

A “small” choice can be illustrated thus. I choose to drink my coffee black, i.e., without any additives. In choosing to do so I make myself *to be* a drinker of black coffee and I remain such until I freely choose to add cream or sugar or both to my coffee. I may also choose to tell “small lies” to my wife in order to avoid unpleasant consequences, i.e., that I have indeed mailed a letter she had given me to post even though I forgot to do so and intend to mail it as soon as possible. In choosing to tell this “small lie” I make myself *to be* a liar, disposed to lie in similar circumstances in the future. Telling a “small lie” (light matter and therefore only venially sinful) is an

instance of a “small” choice. Choosing to perjure myself, i.e., to lie under oath in a court of law, on the other hand, is a “large” choice because here the “matter” of the lie is gravely serious and in choosing to lie in this way I make myself *to be* a perjurer, one disposed to lie regarding gravely serious matters under similar conditions.

Among large choices are those we can call “commitments”. Pope John Paul II, in his criticism of certain kinds of fundamental option theories in *Veritatis splendor*, noted that it is correct to emphasize “the importance of certain choices which ‘shape’ a person’s entire moral life, and which serve as bounds within which other particular everyday choices can be situated and allowed to develop” (n. 65). Here he recognizes the crucial moral importance of certain kinds of choices that can properly be called fundamental “commitments” or “options”.

The choice to marry, or to become a priest or religious or a member of the Mafia illustrates this. When a man and a woman marry by freely choosing to give themselves irrevocably to one another in an intimate partnership of life and love (see *Gaudium et spes*, 48), they commit themselves through this choice to a way of life—married life—and it is their moral obligation to integrate other free choices into this commitment, and likewise their duty not to make choices incompatible with this fundamental commitment. They have committed

5 G. GRISEZ, *The Way of the Lord Jesus*, 1: *Christian Moral Principles*, 59.

themselves to a life of utter fidelity to one another, to a readiness “to welcome life lovingly, nurture it humanely, and educate it religiously,” i.e., in the love and service of God and neighbor,<sup>6</sup> and to life together “for better or for worse, in sickness and in health, for richer or for poorer, until death do they part.”

Pope John Paul II, in this section of *Veritatis splendor*, goes on to teach that the “choice of freedom” which Christian moral teaching, even in its Biblical roots, acknowledges as fundamental is “the decision of faith, of the *obedience of faith*” (cf. Rom 16:26). This is the free choice, he then continues, citing a passage from Vatican Council II (which in turn cites a passage from Vatican I),<sup>7</sup> by which man makes a total and free self-commitment to God, offering ‘the full submission of intellect and will to God as he reveals’. The pope continues by saying that since faith is a commitment to God that is to bear fruit in works (cf. Matt 12:33-35; Lk 6:43-45; Rom 8:5-10; Gal 5:22), it demands that one keep the commandments of the Decalogue and follow Jesus even to the point of losing his life for Jesus’ sake and the sake of the Gospel (cf. Mk 8:35) (no. 66).

From this we can see that the *fundamental option* of a Christian is his/her

baptismal commitment. This is a specific free choice whereby a Christian freely commits himself/herself to a life of union with Jesus. In and through this choice—this act of faithful obedience—a Christian freely chooses to share in Christ’s redemptive work and to complete, in his/her own flesh, “what is lacking in Christ’s afflictions for the sake of his body, that is, the Church” (Col 1:24). In and through baptism Jesus pours into our hearts His very own life and love, and by freely choosing to accept this divine gift, bequeathed us by virtue of Jesus’ saving death and resurrection, we in turn commit ourselves to cooperating with our Redeemer in His saving mission so that “we all attain to the unity of faith and of the knowledge of the Son of God, to mature manhood, to the measure of the stature of the fullness of Christ” (Eph 4:13) until Jesus “will change our lowly body to be like His glorious body, by the power which enables Him even to subject all things to Himself” (Phil 3:21).<sup>8</sup> Because this is the Christian’s fundamental choice or option, the one that “shapes” the Christian’s entire life and serves “as the bounds within which other particular everyday choices can be situated and allowed to develop” (*Veritatis splendor*, 65), the Christian must seek to *integrate all his daily choices* into this fundamen-

6 On this, cf. ST. AUGUSTINE, *De genesi ad literam*, 2-9.

7 VATICAN COUNCIL II, *Dei Verbum*, 5; the internal citation is from Vatican Council I, *Dei Filius*, 3: DS 1569.

8 On this cf. GRISEZ, *The Way of the Lord Jesus*, 1: *Christian Moral Principles*, 551-554; W.E. MAY, *An Introduction to Moral Theology* (rev. ed.: Huntington, 1994, 196-202; cf also George T. Montague, S.M., *Maturing in Christ: St. Paul’s Program for Christian Growth* (Milwaukee: Bruce, 1964), pp. 193-230.

tal commitment. Certain choices—mortal sins—are utterly incompatible with this commitment, whereas others—venial sins—while in some way compatible with it are not fully compatible with it. The Christian grows in holiness and becomes a saint—the vocation to which he/she is called—precisely by growing in integrating every choice of every day into this overarching commitment.

Note that John Paul II identifies the “fundamental option” or commitment of the Christian with a *specific act of free choice*, with a *specific act of self-determination*. He rejects, and rightly so, those theories of “fundamental option” which sharply distinguish between the “free choices” that we make every day and a ‘fundamental freedom’, deeper than and different from freedom of choice...whereby the person makes an overall self-determination...leading to a distinction “*between the fundamental option and deliberate choices of a concrete kind of behavior*” (*Veritatis splendor*, 65). Those who propose a fundamental option theory of this kind in effect tear asunder the relationship between the person and his acts and relocate self-determination from *free choice* to an alleged “fundamental” or “transcendental freedom,” deeper than free choice. This theory, which denies the *self-determining* character of free

choice,<sup>9</sup> is rightly repudiated by Pope John Paul II.

## FREE CHOICES: INDIVIDUAL AND COMMUNAL

Some choices can only be made by two or more people. Marriage is a paradigmatic example. Both the man and the woman must choose to give themselves to one another and to receive one another as spouses. Neither’s choice to marry is effective without the other’s. Marriage, in short, comes into being only through the irrevocable personal consent of both the man and the woman (see *Gaudium et spes*, 48).

Human persons are naturally inclined to live in society; they need one another to exist and find fulfillment. Among the reasons for this need is the fact that every choice entails self-limitation as well as self-fulfillment. Some possibilities must be set aside if one is to pursue others. One accepts limitations because one realizes that one cannot do and be everything. But genuine community can make up for this limitation. In a true community one becomes united to others in friendship and harmony and is therefore capable of being fulfilled in others in ways in which one can never be fulfilled in oneself. Thus family members rejoice when one of

9 One of the best critiques of the flawed fundamental option theory is given by Joseph Boyle, “Freedom, the Human Person, and Human Action,” in *Principles of Catholic Moral Life*, ed. William E. May, Chicago 1981, 237-266.

them does something well, players on a team applaud the accomplishments of someone who does what they could not do themselves, etc. A true community is one body with many members (see 1 Cor 12:12-13:13).<sup>10</sup>

Moreover, in any community certain persons can make choices on behalf of the community as a whole. If the persons who do so act within the limits of the authority vested in them, their choices involve every member of the community. Although individual members of the community may resist decisions made by those exercising authority within the community, their resistance to a legitimate authoritative decision of the community alienates them, in whole or in part, from that community. Thus dissent from the authoritative teachings of the Magisterium harms the unity of the Church and alienates dissenters, at least in part, from the ecclesial community (see *Veritatis splendor*, 26). As one contemporary scholar correctly observes

The social [communal] dimension of choice is very important in moral theology. The story of salvation begins with the promise to Abraham that all nations will find salvation through him, and this promise is fulfilled in the Lord Jesus (see Gn 12:1-3; Acts 3:25; Rom 4:13; Gal 3:8,16). It is by social choices that

the relationship between God, the Lord Jesus as man, the Church, and the individual Christian is established and lived. Furthermore, one cannot understand original sin without bearing in mind that in any community someone can and does make the choice which is decisive for the social choice and responsibility of the whole community.<sup>11</sup>

Because some choices are communal, *social sin* is a reality. The sinful choices of individuals, when tolerated and then accepted by the society in which they live, become the practices of the society. They become embedded in the culture and in the laws and mores of a society, its way of life, its way of mediating meaning to people. Thus today in Western societies a "contraceptive mindset" has developed so that many individuals spontaneously regard it as the "natural" thing to do in order to cope with serious problems and have difficulty in even considering that contraception could be immoral. It is in this way that a "culture of death" can develop and indeed has developed. Pope John Paul II clearly recognized the reality of "social sin" in his Apostolic Exhortation *Reconciliatio*

10 Cf. ST. THOMAS AQUINAS, *Summa Theologiae*, I, q. 96, a. 4; I-II, q. 94, a. 2; II-II, q. 129, a. 6, ad 1.

11 GRISEZ, *The Way of the Lord Jesus*, 1: *Christian Moral Principles*, 53. On the idea of a "corporate personality," so central to the Biblical understanding of human community, cf. E. BEST, *One Body in Christ: A Study in the Relationship of the Church to Christ in the Epistles of the Apostle Paul*, S.P.C.K., London 1955, 184-207; J. DE FRAINE, *Adam and the Family of Man*, Alba House, Staten Island, N.Y. 1965.

*et penitentia*. But he rightly emphasized that all social sin is, ultimately, rooted in the sinful choices of particular persons: “the real responsibility [...] lies with individuals” (n. 16).

## FREE CHOICE, TRUTH, AND THE MORALITY OF HUMAN CHOICES AND ACTS

We are free to choose what we are to do and in this way determine ourselves *to be* the persons we are. But we are *not* free to make what we choose to do to be morally good or morally bad. We know this from our own experience, for we know that at times we have freely chosen to do things that we knew, at the very moment we chose to do them, were *morally bad*. We can, in short, choose badly or well. This means that our choices need to be guided by the *truth*, and it likewise means that we can come to know the truth *prior* to choice. There is, in short, an intimate bond between *freedom* and the *truth* or between free choice and the moral “law.” There can be no genuine conflict between free choice and the moral law because, as John Paul II has beautifully shown, the moral “law,” which has God as its author, is *not* a set of arbitrary decrees legalistically imposed upon us in order to restrict our freedom to do as we please, but is rather God’s wise and loving plan for human existence and happiness.<sup>12</sup> Rather, this “law” consists

of *truths* meant to help human persons make true moral judgments and good moral choices and in this way truly fulfill themselves and, as Vatican Council II and John Paul II affirm, achieve the dignity of persons who, freed from subservience to feelings and in a free choice of the good, pursue their own true end (cf. *Veritatis splendor*, 42; *Gaudium et spes*, 17).

I cannot here consider in detail the moral law or “truths” needed to guide free choices. But it is possible to provide a brief account of this critically important matter and to show why the “truth” proposed by proportionalists/consequentialists to guide choices is utterly spurious.

The greatest moral truth is that we are to love God above all things and our neighbor as ourselves, a truth central to the Old Testament (Dt 6:5; Lv 19:18). Indeed, when Jesus was asked, “Teacher, what is the greatest commandment in the law?” He replied: “You shall Love the Lord your God with your whole heart, and with all your soul, and with all your mind. This is the greatest and first commandment. And a second is like it. You shall love your neighbor as yourself. On these two commandments depend all the law and the prophets”

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*humanae*, 3: “the highest norm of human life is God’s divine law—eternal, objective, and universal—whereby God orders, directs, and governs the entire universe and all the ways of the human community according to a *plan conceived in his wisdom and love*” (emphasis added).

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12 Cf. VATICAN COUNCIL II, *Dignitatis*

(Matt 22:36-40; cf. Mk 12:28-31; Lk 10:25-28; Rom 13:10; Gal 5:14).

Moreover, as Pope John Paul II insists, the precepts of the second tablet of the Decalogue, those concerned with our neighbors, while expressed negatively, are rooted in the commandment that we are to love our neighbor as ourselves, a commandment expressing “the singular dignity of the human person, ‘the only creature that God has wanted for its own sake’” (*Veritatis splendor*, 13; the internal citation is from *Gaudium et spes*, 24). In addition, as the Holy Father then rightly notes, we can love our neighbor and respect his inviolable dignity as a person only by cherishing the real goods perfective of him and by refusing to damage, destroy, or impede these goods. Appealing to the words of Jesus, Pope John Paul II emphasizes the truth that “the different commandments of the Decalogue are really only so many reflections on the one commandment about the good of the person, at the level of the many different goods which characterize his identity as a spiritual and bodily being in relationship with God, with his neighbor, and with the material world [...] The commandments of which Jesus reminds the [rich] young man are meant to safeguard the *good* of the person, the image of God, by protecting his *goods*,” goods such as human life itself, the communion of persons in marriage, etc. (n. 13).

Here the Holy Father is articulating once more the whole Catholic moral tra-

dition. Centuries ago, St. Thomas Aquinas emphasized that “God is offended by us only because we act contrary to our own good.”<sup>13</sup> God wills that the goods constitutive of human well-being flourish in us: goods such as life itself, health and bodily integrity, knowledge of the truth and appreciation of beauty, fellowship and harmony with other human persons, etc.<sup>14</sup>

Human actions, moreover, are specified morally by the “*object*” freely chosen. In *Veritatis splendor* Pope John Paul II emphasizes this truth, rooted in the Catholic tradition especially as articulated by Thomas Aquinas, declaring: “*the morality of the human act depends primarily and fundamentally on the ‘object’ rationally chosen by the deliberate will*” (n. 78; emphasis in the original). Then, in a passage that not only summarizes the Catholic tradition but also bears witness to the truth that a human act is no mere physical happening but rather a reality flowing from the inner core of the person insofar as it is *freely chosen*, John Paul II goes on to say:

In order to be able to grasp the object of an act which specifies that act morally, it is therefore necessary to place oneself *in the perspective of the acting person*. The object of an act

13 ST. THOMAS AQUINAS, *Summa contra Gentiles*, III, q. 122.

14 On this cf. ST. THOMAS AQUINAS, *Summa Theologiae*, I-II, q. 94, a. 2; GRISEZ, *The Way of the Lord Jesus*, 1: *Christian Moral Principles*, 115-140.

of willing is in fact a freely chosen kind of behavior. To the extent that it is in conformity with the order of reason, it is the cause of the goodness of the will; it perfects us morally [...] By the object of a given moral act, then, one cannot mean a process or an event of the merely physical order, to be assessed on the basis of its ability to bring about a given state of affairs in the outside world. Rather that object is the proximate end of a deliberate decision [=free choice] which determines the act of willing on the part of the acting person (n. 78).<sup>15</sup>

In short, the "object" of the moral act is precisely what one freely chooses to do here and now and, in doing so, ratifies in his heart and endorses. With this understanding of the "object" of a human act in mind, it is easy to grasp the truth of what the Pope then says: "Reason attests that there are objects of the human act which are by their nature 'incapable of being ordered' to God because they radically contradict the good of the person made in his image. These are the acts which, in the Church's moral tradition, have been termed 'intrinsically evil' (*intrinsece malum*): they are such *always and per se*, in other words, on account of their very object, and quite apart from the ulterior intentions of the one acting and the

circumstances" (n. 80). In other words, a human person cannot freely choose to *kill* an innocent person, intentionally to deprive that person of the *good of innocent human life*, without *willing evil* and making himself/herself *to be a killer*. One might choose to do so for some good *ulterior* end, e.g., to prevent the deaths of other innocent human beings, but human persons, made in the image of God, are not to *will that evil be*, just as the God whose image they are is absolutely innocent of evil. They can, like God himself, *permit* or *allow* evil to occur under certain conditions, but in order to exercise their free choices rightly, to conform their choices to the *truth*, they ought never *intend that evil be*, i.e., to freely choose a moral act specified by an "object" whose willing violates the good of the person made in God's image by violating one or another of his "goods," goods such as bodily life itself, the marital communion, etc.

Proportionalists deny this truth. They contend that a human person can rightly *intend* or *choose evil*, such as the death of an innocent human being, *for the sake of a greater proportionate good or lesser evil*.<sup>16</sup> They come to

15 Cf. also ST. THOMAS AQUINAS, *Summa Theologiae*, I-II, q. 18; *Catechism of the Catholic Church*, 1751.

16 Theologians advocating this view include L. Janssens, J. Fuchs, S.J., R. McCormick, S.J., and many others. Cf., for instance, L. JANSSENS, "Ontic Evil and Moral Evil," *Louvain Studies* 4(1972), 115-156; J. FUCHS, "The Absoluteness of Moral Terms," *Gregorianum* 52(1971), 415-458; R. MCCORMICK, *Ambiguity in Moral Choice: Père Marquette Lecture in Theology*, Marquette University Press, Milwaukee 1973.

this conclusion because they claim that the basic normative principle enabling us to distinguish between morally good and morally bad possibilities of choice, is that one ought to choose the alternative promising the greater good or the lesser evil. John Paul II accurately describes this claim when he says that proportionalism, “by weighing the various values and goods being sought, focuses on the proportion acknowledged between the good and bad effects of [one’s] choice, with a view to the ‘greater good’ or ‘lesser evil’ actually possible in a given situation” (*Veritatis splendor*, 75). In repudiating this way of making moral judgments to guide free choices, which he judges unfaithful to the Catholic tradition, the Holy Father observes that “everyone recognizes the difficulty, or rather the impossibility, of evaluating all the good and evil consequences and effects—defined as pre-moral—of one’s own acts: an exhaustive calculation is not possible” (n. 77).

I would like now to show why the claim of the proportionalists is utterly unworkable and incompatible with the reality of free choice. Earlier in this essay I emphasized that free choice is possible only when there are eligible or choosable alternatives. And there are such alternatives *only* when the different alternatives of choice promise participation in some *good* not commensurable with the good promised by other alternatives. For example, if one is thinking of buying a house and wants a house (a)

within a certain price category, (b) with four bedrooms and a family room, (c) within walking distance of church and elementary school, and (d) proximate to public transportation, and if one house out of four available promises *all* these benefits (a,b,c,d) whereas none of the others do, then no choice is possible or needed as long as one is still willing to buy a house fulfilling these conditions. Of the alternatives available only one has all the benefits one is seeking; hence the appeal (the eligibility) of the other houses disappears. They are no longer eligible or choosable because they promise no good not present in the house that has all the benefits one is seeking. But if none of the houses available has all the benefits one wants, then one must make a choice among them if one wishes to buy a house, and ultimately the matter is settled either by choosing one or by choosing not to buy a house now and to postpone such a purchase.

But proportionalism as a way of making moral judgments requires that two conditions be met, and the two conditions are incompatible. The conditions are: (1) that a moral judgment is to be made, which means both that a choice must be made and that a morally wrong option could be chosen after the judgment is made, and (2) that a judgment identifying the alternative promising the greater good or lesser evil can be made prior to choice and that the morally obligatory option is the one promising the greater good or lesser evil. But



these two conditions cannot be met simultaneously.

If condition (1) is met and the morally bad option *could be chosen*, its morally acceptable alternative must be known, for otherwise one could not choose wrongly, for one can do so only when one knows which option one *ought* to choose but nonetheless chooses another. But if condition (2) is met, then condition (1) cannot be. It cannot be because if a person knew, *prior to choice* (as condition [2] requires), which option promises the definitely superior proportion of good to evil (or the lesser evil), then its inferior alternatives simply could not be chosen—there would be no *reason* to choose them. If a person *knows*, prior to choice, the alternative promising the “greater good” or “lesser evil,” then other alternatives (those allegedly not morally acceptable) would simply fade away and one could not choose them.<sup>17</sup>

Moreover, proportionalists fail to take seriously the truth that we determine *ourselves* by our free choices. They do not recognize the *reflexive character* of human free choice. For they claim that it is morally permissible to *choose evil* for the sake of securing a greater good or avoiding a greater evil. For them, we can *will that evil be*. As John Paul II says, they “do not take into sufficient consideration the fact that the

will is involved in the concrete choices which it makes” (*Veritatis splendor*, no. 75). Their interest, as several outstanding theologians have rightly noted,<sup>18</sup> focuses on the external states of affairs in the outside world that our actions bring about. Their focus is on what our actions *get done* in the external world, and they want the moral agent to choose those options judged most effective means for bringing this state of affairs about.

## CONCLUSION

As we have seen, human actions are of critical moral significance not because of what they get done in the outside world, but because of what they have to reveal or say about *ourselves*. For at the core of a human, moral act is a free, self-determining choice whereby we *give to ourselves our identity as moral beings*. And, as living images of the God who calls us to holiness, we ought not freely choose to do evil and thus to make ourselves *to be evildoers*. As we have seen, it is what flows from a person, from his or her heart, from the core of his or her being, from his or her *free choice*

17 On this, cf. GRISEZ, *The Way of the Lord Jesus*, 1: *Christian Moral Principles*, 152-153.

18 For example, cf. J. FINNIS, *Moral Absolutes: Tradition, Revision, and the Truth* (Washington, D.C.: The Catholic University of America Press, 1991, especially 20-24, 93-100; M. RHONHEIMER, “Intentional Actions and the Meaning of Object: A Reply to Richard McCormick,” in J.A. DINOIA – R. CESSARIO, (eds.), *Veritatis Splendor and the Renewal of Moral Theology*, Midwest Theological Forum, Chicago 1999, 241-270, especially 245-250.

that defiles him/her or, on the contrary, identifies him or her as a human person whose *will* is to do what is pleasing to the Father, to love and respect the *good* of the human persons made in God's image and in this way honor their inviolable dignity.

# Gender

Jutta Burggraf



*Usually when speaking about gender, our reference is to the male gender or the female gender. Just as the male sex exists, the female sex also exists. Today, in a number of international organizations, the concept “gender” is used without providing any clear definition of the term. In this sense, the term “sex” refers to natural traits. Thus two sexes exist that are differentiated in distinctly anatomical ways. But, together with sex, there is also “gender,” a term that describes the roles played by individuals in society. These roles are born in the course of history and result from the interaction between culture and nature. Recently, however, an equivocal concept of “gender” has appeared, one conceived as exclusively coming from culture, and therefore can appear and disappear depending on the currents of society and also individuals. The individual-family-society link is lost, and the person is reduced to the individual. Some, for example, affirm that maternal love is not inscribed in the nature of woman; rather it is a feeling born in a particular cultural context and can thus disappear or be destroyed if the culture changes. We find ourselves in the presence of a new cultural revolution. Whatever their sex, humans (according to this view) can choose their gender: they can choose heterosexuality, homosexuality, lesbianism. They can opt for transsexuality, to change their sex. Some plans for declarations of “gender” rights exist. This strange disassociation of sex and gender, nature and culture, destroys the personal dimension of the human being and reduces it to simple individuality. The ideology of “gender” therefore includes a radical calling into question of the family and everything that it means in and for society. (↗ Sexual and Reproductive Rights; Discrimination Against Women and CEDAW; An Ideology of Gender: Dangers and Scope; Motherhood and Feminism; New Definitions of Gender; Patriarchy and Matriarchy; Equal Rights for Men and Women)*

## **THE IDEOLOGY OF GENDER**

The feminist ideology of gender began during the decade 1960-1970. According to it, masculinity and femininity are not fundamentally determined by sex, but instead by culture. While the

term “sex” refers to nature and implies two possibilities (man and woman), the term “gender” comes from the field of linguistics and includes three varieties: masculine, feminine, and neuter. The differences between male and female (outside of the obvious morphological

differences) would not correspond to a “given” nature; instead they would be culturally “fashioned” according to socially constructed roles and stereotypes that each society assigns to the sexes.<sup>1</sup> This viewpoint emphasizes (not unreasonably) that in the past the differences were overemphasized, which led to situations of discrimination and injustice for many women. For many centuries, there was a “feminine destiny” to be an inferior being excluded from public decisions and higher education. But today—they continue affirming—women are aware of having been victimized, so they break out of the role that was imposed on them. They want to free themselves, above all, from marriage and motherhood.<sup>2</sup>

Some, following different considerations, assert the existence of four,

five or six genders: male heterosexuals, female heterosexuals, homosexuality, lesbianism, bisexuality, and trans-gendered. In that way, masculinity and femininity do not appear in any way to be the only naturally derived models of a biological sexual dichotomy. Any sexual activity would be justifiable.<sup>3</sup> Far from being “obligatory,” heterosexuality would mean nothing more than one of the possible sexual practices; its procreative role would not make it preferable. Some affirm that in “more imaginative” societies, biological reproduction could be assured with other techniques.<sup>4</sup> And since gender identity is allegedly undefined and indefinitely adaptable to new and different meanings, it would be up to each individual to freely choose the kind of gender to which he or she would

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1 In languages in which two different words are not available (sex-gender), one usually hears of “biological sex” and “psychosocial sex”. And so, for example, in German, it is “biologisches Geschlecht” – “psycho-soziales Geschlecht”.

2 Some gender feminist adepts propose the following: “In order to be effective in the long run, family planning programs should not only focus on attempting to reduce fertility within existing gender roles, but rather on changing gender roles in order to reduce fertility.” The quotation is taken from DIVISION FOR THE ADVANCEMENT OF WOMEN FOR THE EXPERT GROUP MEETING ON FAMILY PLANNING, HEALTH AND FAMILY WELL-BEING, *Gender Perspective in Family Planning Programs*, Bangalore (India), 26-30 October 1992, organized in collaboration with the United Nations Population Fund (UNFPA).

3 Cf. JUDITH BUTLER, *Gender Trouble. Feminism and the Subversion of Identity*, New York-London 1990, p.6: “In theorizing that gender is a radical construction independent of sex, gender itself comes to be an artifice free of ties. As a consequence, man and masculine could mean a feminine body as much as a male body; woman and feminine can mean a masculine body as much as a feminine body.” Though this work is itself criticized in several even more radical extremist circles for not completely separating itself from the biological dimension, it can be considered one of the key works presenting the ideology of *gender*.

4 H. HARTMAN: *The Unhappy Marriage of Marxism and Feminism*, Boston 1981, 16. Like many others, the author anticipated, in part, the complete disassociation between sexuality and procreation, motherhood, fatherhood, and filiation which artificial interventions make possible today.

like to belong in the different situations and stages of life.

To obtain universal acceptance of these ideas, the promoters of radical gender feminism try to achieve a gradual cultural change, the so-called “deconstruction” of society, beginning with the family and the education of children.<sup>5</sup> They use ambiguous language to make new ethical presuppositions seem reasonable. The goal consists in “reconstructing” a new and arbitrary world that, in addition to the masculine and feminine, includes other genders in describing human life and interpersonal relations.

These pretensions found a favorable environment in the individualistic anthropology of radical neo-liberalism. They depend, on the one hand, upon different Marxist and structuralist theories,<sup>6</sup> and on the other, on the postulates of some of the representatives of the “sexual revolution”, such as Wilhelm Reich (1897-1957) and Herbert Marcuse (1898-1979), who invited everyone to experiment with all types of sexual

situations. More directly, one can see the influence of atheistic existentialism on Simone de Beauvoir (1908-1986) who announced in 1949 her well-known aphorism: “You are not born a woman! They make you into a woman!”,<sup>7</sup> later completed with the logical conclusion: “You are not born a man; you are made into a man! So neither is the condition man a given reality in principle”.<sup>8</sup> The sociocultural studies of Margaret Mead (1901-1978) can also be included in this historical process that consolidated a new branch of radical feminism, even though the scientific validity of her contributions was questioned by other investigators.<sup>9</sup>

Proclaiming that masculine and feminine genders are exclusively social factors wholly unrelated to personal sexual dimensions, the proponents of this gender theory oppose a model, equally unilateral as theirs, that sustains a contrary viewpoint, denying any interaction between the individual and the community at the time of setting a personal identity as man or woman. It affirms that each sex has, given its biological needs, corresponding fixed

5 PONTIFICAL COUNCIL FOR THE FAMILY, *Familia, matrimonio y unions de hecho* (26 July 2000), 8. Gender feminism has been well received in a good number of important international institutions, among which stand the United Nations. And some universities are also trying to raise *Gender Studies* to a new scientific rank.

6 It was Friedrich Engels who established the union between Marxism and feminism. Cf. F. ENGELS, *The Origin of the Family, Property and State*, New York 1972. (original German *Der Ursprung der Familie, des Privateigentums und des Staates*, 1884).

7 S. DE BEAUVOIR: *Le Deuxième Sexe*, Paris 1949.

8 S. DE BEAUVOIR: *Alles in Allem*, Hamburg 1974, p.455.

9 Cf. M. MEAD, *Male and Female. A Study of the Sexes in a Changing World*, New York 1949; G. SOLÉ ROMEO, *Historia del feminismo. Siglos XIX y XX*, Pamplona, 1995, 50-53.

social functions, invariable in history.<sup>10</sup> This model, however, is considered false today at both the theoretical and legal levels, at least in the western world.<sup>11</sup> The problem has been partly, not totally, resolved through legislation,<sup>12</sup> but there remains an undeniable influence of these ideas in social practice.

## THE PROCESS OF IDENTIFYING WITH ONE'S OWN SEX

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In the human person, sex and gender – the biological principle and the cultural expression – are not identical, but neither are they completely independent. To establish a correct relationship between them, it is good to consider the process in which the identities of a man and a woman are formed. The experts

point out three aspects of this process which are normally and harmoniously woven together: *biological sex*, *psychological sex* and *social sex*.<sup>13</sup>

“Biological sex” describes the bodily aspect of the human person. It is customary to distinguish several factors. The “genetic or chromosomic sex”, determined by the XX chromosomes in the female, or the XY in the male, is set from the moment of fertilization and, through the gonadal sex, is responsible for hormonal activity. The “gonadal sex”, in turn, influences the “somatic or phenotypic sex” in determining the structure of the internal and external reproductive organs. It is good to consider the fact that these biological foundations profoundly intervene in the entire organism, in such a way that for example each cell of the female body is different from each cell in the male body. Medical science even indicates different structural and functional differences between the male brain and the female brain.<sup>14</sup>

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10 With respect to the different models that are presented relating to man and woman, Cf., the clarifying framework of M. ELÓSEGUI, *La transexualidad. Jurisprudencia y argumentación jurídica*, Granada 1999, 91-118.

11 The subordination of women is contrary to the principle of equality between the sexes and against human rights recognized by the Universal Declaration of the United Nations in 1948, as well as in many other documents of the UN.

12 Cf. the studies of M. ELÓSEGUI, “Los derechos reproductivos. Un nuevo concepto jurídico procedente del mundo legal anglosajón”, in *Anuario de Derecho Eclesiástico del Estado*, 16 (2000), 689. “There still exists today direct, indirect and hidden discrimination in the field of work, in social security, in banking law, etc.”

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13 Biological sex is ordinarily and simply called *sex*, while psychological and social sex are called *gender*.

14 Cf. D. D. KELLY, “Sexual Differentiation of the Nervous System,” in *Principles of Neural Science*, by E. R. KANDEL - J. H. SCHWARTZ - T. M. JESSEL, Appleton and Lange, Norwalk, (Connecticut) 2000, 1131-1149; P. NOPOULOS - M. FLAUM - D. O’LEARY - N.C. ANDREASEN, “Sexual dimorphism in the human brain: evaluation of tissue volume, tissue composition and surface anatomy using magnetic resonance imaging,”

*Psychological sex* refers to human psychic experiences as man or woman. It consists in the consciousness of belonging to a determined sex. This consciousness is formed, from the beginning, between the ages of 2 and 3 years old, and usually coincides with the biological sex. It can be profoundly affected by the education and environment provided to the child.

*Sociological or civil sex* is the sex assigned to a person from the moment of birth. It is expressed as it is perceived by the surrounding persons. It signifies the specific way of acting of a man or a woman. In general, it is understood as the result of historic-cultural processes. It refers to functions, roles and stereotypes which are assigned in each society to diverse groups of persons.

These three aspects should not be understood as isolated from each other. On the contrary, they must be integrated into a wider process consisting in the formation of one's own identity. A person progressively acquires, during infancy and adolescence, a consciousness

of "being oneself" ("who one is"). They discover their *sexual identity and in it each time more profoundly the sexual dimension of their own being*. Coming to realize bio-psychological factors of one's own sex and the difference regarding the other sex, they gradually acquire a *gender identity* and discover the psychosocial and cultural factors of the role that men and women have in society. In a correct and harmonious process of integration, both dimensions correspond and complement each other.

A special consideration ought to be given to *intersexual* states (the so-called *intersex* persons) since some argue that the existence of transsexuals and hermaphrodites would demonstrate that there are more than two sexes. But these intersexual states are anomalies with various clinical characteristics that tend to occur at a very early embryonic stage of human development. They are defined by the contradiction of one or more of the criteria of sexual definition. That is, transsexual persons have a pathology in some of the links of the biological chain leading to sexual differentiation. They suffer alterations in the normal development of the biological sex and, as a consequence, also of the psychosocial sex.<sup>15</sup> Instead of using them as propa-

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*Psychiatry Res* (2000) 2, 1-13. H. DAVIDSON - K.R. CAVE - D. SELLNER, "Differences in visual attention and task interference between males and females reflect differences in brain laterality," *Neuropsychologia* (2000) 4, 508-514. N. SADATO, V. IBANEZ - M.P. DEIBER - M. HALLETT, "Gender Difference in Premotor Activity During Active Tactile Discrimination," in *Neuroimage* (2000) 5, 532-540. K. KANSAKU - A. YAMURA - S. KITAZAWA, "Sex Differences in Lateralization Revealed in the Posterior Language Areas," in *Cereb Cortex* (2000) 9, 866-872.

<sup>15</sup> The phenotypical sex does not fully correspond, for example, to the chromosomal and the gonadal sex, just as there is little correspondence between external and internal sexual organs. Thus transsexual persons perceive themselves as belonging to the opposite sex from the one indicated

ganda to obtain the “deconstruction” of the foundations of the family and of society, one should show respect to them and give them appropriate medical treatment.

One must distinguish *sexual identity* (man or woman) from *sexual orientation* (heterosexuality, homosexuality, and bisexuality). Sexual orientation is commonly understood to be the sexual preference that is established in adolescence coinciding with that stage of human cerebral development. It has a biological basis influenced by other factors such as education, culture, and personal experiences. Even though the numbers vary according to diverse investigations, one can say that the immense majority of human persons are heterosexuals.<sup>16</sup>

Another matter that must be considered is sexual conduct. In the normal sense, it is designated as personal chosen behavior, since there is a wide margin of freedom in the manner in which men and women can live their sexuality.

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by their anatomy. For more information, Cf. J. GONZÁLEZ MERLO, “Estados Intersexuales”, in *Ginecología*, Barcelona 1998, chpt. 3, A. C. MARCUELLO – M. ELÓSEGUI, “Sexo, género, identidad sexual y sus patologías,” in *Cuadernos de Bioética* (1999) 3, 459-477.

<sup>16</sup> Cf., for example, the studies of psychiatrist G. J. M. VAN DEN AARDWEG, *Das Drama des gewöhnlichen Homosexuellen. Analyse und Therapie*, Neuhasen-Stuttgart <sup>3</sup>1995, 17-47. (original English *Homosexuality as a Disease of Self-Pity*).

## TOWARDS AN UNDERSTANDING OF SEXUAL DIFFERENCE

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Since the whole human person is either man or woman “in the unity of body and soul”,<sup>17</sup> masculinity or femininity extends to all areas of his/her being: from the profound significance of the physical differences of man and woman and their influence in corporeal love, to the psychic differences between both and their different ways of manifesting their relationship with God. Although no specific psychological or spiritual trait can be attributed to only one of the sexes, there are characteristics that are to be found with special frequency and in a more pronounced way in men, and others in women. It is supremely difficult to distinguish rightly in this area. It will probably never be possible to determine with scientific exactness what is “typically masculine” or “typically feminine”, for nature and culture, the two great formative influences, are closely intertwined from the beginning. But the fact that men and women experience the world in different ways, carry out their tasks differently, sit down, plan and react differently, shows that each of the latter has a solid foundation in the biological constitution of both man and woman.

Sexuality reveals both identity and otherness. Men and women have the

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<sup>17</sup> VATICAN COUNCIL II, Pastoral Constitution *Gaudium et spes*, 14.



same human nature, but they have it in different ways. In a certain sense, they complement each other. A man “constitutionally” tends towards a woman, and a woman tends towards a man.<sup>18</sup> They do not seek an androgynous unity, as the mythical vision of Aristophanes in *The Banquet* suggests. But they do mutually need each other to fully develop their humanity.<sup>19</sup> The Creator gave woman to man as a “helper”, and vice-versa - which is not a “servant”, nor does it express disdain.<sup>20</sup> In the husband-wife relationship, the “submission” is not unilateral, but reciprocal. What is desirable is mutual subordination in love.

It is a biological fact that only a woman can be a mother, and only a man can be a father. Procreation is thus ennobled in them by the love in which it develops and by their union in love, placed by God in the center of the human person as a joint labor of both sexes. Common parenthood is a special protagonist and evidence of an immense confidence in God.

Both man and woman are capable of satisfying the fundamental needs of the other. In their mutual relationship, each leads the other towards self-discovery and self-realization in their own sexual being. Each one also makes the

other conscious of being called to a communion and capacity to give self to the other in mutual loving subordination. Both, from different perspectives, find inner happiness in serving the happiness of the other.

While the arbitrary change of gender testifies to a certain eagerness for self-sufficiency, human sexuality shows a clear disposition towards the other person. It is evident that human plenitude is found precisely in this relationship, in this being-for-the-other. The search for human fulfillment clearly pushes a person to go out of self, look for the other and rejoice in his/her presence. It is like a seal placed by the God of Love in the structure of human nature itself. Although each person is loved by God “for himself/herself”<sup>21</sup> and called to individual fulfillment, this cannot be achieved without communion with others. Humans are made to love and be loved. From this we see that sexual life has an immense value in itself. Both sexes are called by God Himself to act and live together.<sup>22</sup> This is their vocation. It can also be affirmed that God did *not* create us men and women primarily so that we can engender new human beings. On the contrary, man, created in the image and likeness of God, is capable of

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18 Cf. A. SCOLA, *¿Qué es la vida?*, Madrid 1999, 128.

19 Cf. A. Scola: *¿Qué es la vida?*, 129.

20 Cf. JOHN PAUL II, Apostolic Letter *Mulieris dignitatem* (15 August 1988), 10. Also the psalmist says to God: “You are my help.” Psalm 70, 6. cf. Ps 115, 9.10.11.; 118, 7; 146, 5).

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21 Cf. *Gaudium et Spes*, 24, and *Mulieris dignitatem* 7, 10, 13, 18, 20, 30.

22 Human sexuality makes reference to the ineffable will of God. Cf. Gen 1, 27: “God created man in His image, in His image God created them; man and woman He created them.”

engendering so as to express and perpetuate that divine image reflected in his sexual condition.

But it must be clarified that to be a woman or a man does not consist solely in being a mother or a father. In considering the specific qualities of woman, "spiritual motherhood" becomes a subject of reflection. Pope John Paul II defines this concept and aptly speaks of the "feminine genius".<sup>23</sup> This concept constitutes a basic and firm attitude that corresponds to the physical structure of the mother and is strengthened by it. In effect, it is far from absurd to suppose that intense guardianship of life by a woman can generate in her certain particular dispositions. Just as, during pregnancy, a woman experiences a unique closeness towards a new human being, so also her nature favors an interpersonal encounter with those who surround her. And so "feminine genius" can be translated as a delicate sensibility towards the needs and requirements of others, in their capacity to recognize and understand their possible interior conflicts. She can be carefully identified with a special capacity to show love in a concrete way<sup>24</sup> and to develop a caring "ethic".

Where there is a "feminine genius", there must also be a "masculine genius", a talent specific to man. By nature, man

stands at a greater distance apart from concrete life. He is always "outside" pregnancy and birth, and can only be a part of them through his wife. This greater distance can enable him to undertake more serene actions to protect life and assure a future. It can lead him to be a true *father*, not only in a physical dimension but also in a spiritual dimension.<sup>25</sup> It can lead him to be a faithful, confident and trusted friend. But it can also lead him towards a certain disinterest in concrete and daily matters, which unfortunately has been fostered in the past by a unilateral education.

In all the areas and sectors of society, in culture, art, politics and economics, in public and private life, men and women are called to mutually accept each other and to build together a habitable world. This world will reach its fullness at the moment when both sexes harmoniously give their specific contributions.

## **A JUST RELATIONSHIP BETWEEN SEX AND GENDER**

There is a profound unity between the corporeal, psychological and spiritual dimensions of the human person, an interdependence between the biological and the cultural. Work is founded on nature and cannot be wholly dissociated from it.

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23 Cf. J. BURGGRAF, "Juan Pablo II y la vocación de la mujer," in *Scripta Theologica* 31 (1999) 1, 139-155.

24 Cf. *Mulieris dignitatem*, 30.

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25 Spiritual fatherhood supposes freeing oneself from egocentrism, "to be conquered by love." Cf. K. WOJTYLA, "Radiation of fatherhood," in ID., *The Collected Plays and Writings on Theater*, Berkeley 1987, 355.

The unity and equality between man and woman does not eliminate these differences. Although the feminine and masculine qualities vary in great measure, they cannot be ignored completely. A background of natural formation is present that cannot be annulled without desperate efforts that definitely lead to self-denial. Neither woman nor man can go against his/her own nature without falling into unhappiness. Breaking with biology frees neither the woman nor the man: it is rather a path that leads to pathology.

Culture in turn must provide an adequate answer to nature. It should not be an obstacle to the progress of human groups. It is evident that many injustices against women have existed historically and some continue to exist in the world. This long list of different kinds of discrimination has no biological foundation, but rather cultural roots, and these must be eradicated. Social functions cannot be considered as irremediably united to genetics or biology. It is desirable that women assume new roles that are in harmony with their dignity. In this sense, Pope John Paul II explicitly rejects the fixed biological notion that all roles and relations between both sexes are fixed into one static model, and calls on men to participate in "the great process of women's liberation."<sup>26</sup> It is clear that the incorporation of women in the labor market is an advance that

certainly creates new challenges for both sexes.

The term *gender* can be accepted as a human expression which is based on a masculine or feminine biological sexual identity.<sup>27</sup> It correctly describes the cultural aspects that surround the construction of the functions of men and women in society. Yet not all of these functions are things that are voluntarily constructed. Some have larger biological roots. Therefore, "one can appreciate that the presence of a certain diversity of roles in no way is bad for women, for that diversity is not the result of an arbitrary imposition, but rather an expression of what is specifically masculine or feminine".<sup>28</sup>

Today many persons are beginning to see clearly again that they cannot become free beyond the limits of their own nature. They see that sex is more than a privilege or a discrimination but is always an opportunity for one's personal development. Hence they strive to promote the welfare of women not only outside the home but within it as well. While it is certain that women are not only wives and mothers, many are or want to be, so one must create the possibilities for them to achieve these desires in a dignified manner. Women

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26 JOHN PAUL II: *Letter to Women* (29 June 1995), 6.

27 Cf. The documents of the Delegation of the Holy See are incorporated in the Acts of the World Conference on Women held in Beijing in 1995, collected by J.M. CASAA-TORRES,: *La cuarta conferencia mundial sobre la mujer*, Madrid 1998, 78.

28 JOHN PAUL II: *Letter to Women*, 11.

who have an active external professional life cannot be the sole model, the only ideal of feminine independence, notwithstanding all the respect that this model deserves.

The family is certainly not the exclusive task of women. But even when the man demonstrates his responsibility and adequately lives his professional and family duties, it cannot be denied that the woman plays a supremely important role in the home. The specific contribution she makes must be taken fully into account in legislation and should also be justly remunerated in economic and socio-political ways.<sup>29</sup> The collaboration needed for this type of legislation must also be internationally considered not only as the right, but also as the duty of women.

## **FINAL NOTE**

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The development of society depends on the employment of all human resources. Therefore, women and men must participate in all spheres of public and private life. The attempts to reach that just goal on the levels of political government, business, culture, social and family circles can be undertaken under “the perspective of gender equality” if that equality includes the right to be different. In fact, some countries and international organizations take into account the different situations of men and women, and develop plans for

equal opportunities that can lead to the promotion of women. When the time comes to set up policies, the “gender perspective” can lead to an understanding of the possible effects of those decisions for the respective realities of men and women.

This “gender perspective” that defends the right to differences between men and women, and promotes co-responsibility in work and family, should not be confused with the radical proposal noted at the beginning of this discussion, that ignores and crushes the natural differences of both sexes.

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<sup>29</sup> JOHN PAUL II: Encyclical *Laborem exercens* (14 September 1981), 19.

# Genome and the Family



Roberto Colombo

*Addressing families in Gratissimam sanæ, n. 9, Pope John Paul II states: "Human fatherhood and motherhood are rooted in biology, yet at the same time transcend it". Genetics began in the second half of the XIX century and already has arrived at the point of being able to manipulate genetic material, even to the extent of modifying what is genetically inherited. The author asks how scientific knowledge will influence our understanding of man and the family. In a reductionist outlook, it is feared that only one or more elements of reality will be taken into account, and then under the ideological influences operating on scientific thought. Thus, the essence of the human person will be reduced to a series of chromosomes that control corporeal development. The parents' vocation will merely supply gametes while the familial and personal dimension of human existence will be forgotten. According to a deterministic outlook, everything eventually depends on genes. One sees a threat to the liberty and responsibility of persons being posed by such an outlook that denies any role for education in the formation of personality. A second concern of this outlook is that of the power of bio-technology, which can easily forget that the human being possesses a biological human nature which is endowed with the anthropological and moral value of a human person. This is the risk of genetic treatments which are not strictly therapeutic and which reduce life to an object. The final aspect mentioned is that of the need to educate about liberty and responsibility so as to ensure a correct use of knowledge concerning the human genome. In this last area, the Church has a special vocation to educate about liberty and responsibility in favor of life, especially in its spiritual dimension. It is also a call to respect the integral humanity of the person. (↗ Neutral Genetic Counseling; Contragestion; Assisted Procreation and IVF; Embryonic Selection and Reduction).*

John Paul II, in his *Letter to Families*, written for the Year of the Family (1994) laid the foundation for a theory on the relationship between the family and biology: "Bound up with the family is the genealogy of every individual: *the genealogy of the person*. Hu-

man fatherhood and motherhood are rooted in biology, yet at the same time transcend it".<sup>1</sup>

The biological dimension of filia-

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<sup>1</sup> JOHN PAUL II, letter to families *Gratissimam sanæ*, 9.

tion cannot be underestimated. We are all aware that none of us would be here today had our parents not been able to conceive us because of some deficiency of the physiological processes of reproduction and development. Nevertheless, we also recognize with gratitude that we did not originate simply as a result of these biological processes, as in the case of all other animals. "The life which God gives man is quite different from the life of all other living creatures, inasmuch as man, although formed from the dust of the earth (cf. Gen 2:7, 3:19; Job 34:15; Ps 103:14; 104:29), is a manifestation of God in the world, a sign of his presence, a trace of his glory (cf. Gen 1:26-27; Ps 8:6) [...] in man there shines forth a reflection of God himself."<sup>2</sup> The loftiness of this supernatural vocation reveals the greatness and the inestimable value of human life even in its biological roots. Biological life, in fact, is the fundamental condition, the initial stage and an integral part of the entire unified process of human existence.<sup>3</sup>

From the time of its inception in the middle of the XIX century, a branch of modern biology—genetics—set out to discover how characteristics were transmitted from parents to children. In the following decades, genetics has contributed to clarifying the biological basis

of double somatic constitution, male and female: an essential characteristic both for the nuptial meaning of the human body and for procreation. During the second half of the twentieth century, genetics set out to research the structure and function of those elements that transmit biological information, and to discover how this information expresses itself in the body. More recently, scientists have begun to manipulate genetic material in an effort to arrive at an effective means of correcting hereditary diseases, or to modify the genetic patrimony of a specific cell or of an organism. While our knowledge of man's bodily dimension increases and new means of eliminating or alleviating diseases and pain are discovered, these discoveries and their application—which are certainly exciting and promising—are not free of anthropological, ethical and social problems.<sup>4</sup>

Three basis problems are here outlined. The first concerns *scientific knowledge*. Science generates knowledge. In what way does knowledge of our most intimate biological structure—genetic structure—modify our understanding of the human person and his origin? The second question is that of *technological power*. Knowledge brings

2 JOHN PAUL II, encyclical letter *Evangelium vitae*, 34.

3 Cf. JOHN PAUL II, encyclical letter *Evangelium vitae*, 2.

4 PONTIFICAL ACADEMY FOR LIFE, *Human Genome, Human Person and the Society of the Future. Acts of the IV General Assembly, 23-25 February 1998*, edited by J. VIAL CORREA – E. SGRECCIA, Vatican City 1999.

power. A new form of power is added to the list of powers that man has over the sons of man. In what manner ought we use the most absolute power deriving from biological knowledge, i.e., from research deriving from the human genome? The third point relates to *liberty* and *responsibility*. Power requires liberty and responsibility. A free and responsible subject is necessary in order to face up to the "new scientific revolution" brought about by the biological sciences. How is it possible to become men and women of this stature?

## SCIENTIFIC KNOWLEDGE

It is likely that the scientific knowledge deriving from the study of the human genome (*The Human Genome Project*) will profoundly influence our understanding of ourselves and of our families. We ought to be aware of this consequence of the research. This cultural challenge is currently moving quietly, and unnoticed, in two directions that can be considered as ideological derivatives of scientific theory. One is *reductionism*, implying that only one or more factors of reality are taken into consideration while others are discarded or minimized. Hence, the essence of the human person is reduced to two series of homologous chromosomes which bear the genes necessary for the development and sustenance of bodily life. The role of parents in the generation of children is consequently reduced to that of providing gametes for the process of

fertilization or perhaps, one day, only to that of providing DNA for cloning.

Reductionism overlooks the personal aspects of human life, which differ from the biological aspect, and the family aspects of human life, which differ from the genetic aspects of life, leading thus to a blind, non-realistic conception of human life. This outlook bears little resemblance to our original, elementary experience of life, that is, our experience of "that complex of experiences and demands with which man faces the challenge of all that exists."<sup>5</sup> Even reason rebels against genetic reductionism. "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."<sup>6</sup>

*Determinism* is a second ideological derivative of genetic knowledge that requires careful consideration. In this light, the kind of persons that we are, our thoughts, emotions, and all of our actions, are ultimately determined by our genes. Genetic determinism, often accompanied by or implying biological reductionism, constitutes an attack on man's liberty and responsibility and radically negates the fundamental role of education in the formation of the personality of each one of us. Hence, the family, the school and society are deprived

5 L. GUSSANI, *Il senso religioso*, Milano 1997, 8.

6 JOHN PAUL II, *Evangelium vitae* 101.

of their essential role in promoting the development of a positive orientation in children and young people towards the truth, the good and the beautiful. Through such determinism, a strong current of eugenics is slowly but surely gaining ground among the new generations of scientists, doctors, politicians and even parents.

## TECHNOLOGICAL POWER

A second cause of apprehension derives from the ability of biotechnology to plan and execute research directed at modifying the genetic patrimony of a single tissue or of the entire organism of an individual human being.

What is important to remember concerning interventions designed to interfere with the biological structures of a human organism is the fact that these are the structures of a human person. The human genome has an anthropological and moral relevance, in that every action bearing on them also has a bearing on a human person.<sup>7</sup> To appreciate the import of this argument, it has to be recalled that a human being is not merely a material entity or a purely psychological, rational and spiritual entity, but a being that is simultaneously physical and metaphysical: *corpore et*

*anima unus*<sup>8</sup> or *una summa*.<sup>9</sup> Biological human nature is not “subpersonal” or “prepersonal”. It already possesses the same anthropological and moral value as any human person. Our biological human nature is not something separate from what we are. “Anthropological reflection, in fact, leads to the recognition that, by virtue of the substantial unity of body and spirit, the human genome not only has a biological significance, but also possesses anthropological dignity, which has its basis in the spiritual soul that pervades it and gives it life”.<sup>10</sup> The human genome has a singular di-

8 SECOND VATICAN ECUMENICAL COUNCIL, Pastoral Constitution on the Church in the Modern World *Gaudium et spes*, 14.

9 JOHN PAUL II, apostolic exhortation *Familiaris consortio*, 92.

10 JOHN PAUL II, “Discourse to the IV General Assembly of the Pontifical Academy for Life (24.2.1998)” in *L’Osservatore Romano*, 25 February 1998, 5. Cf. ID., “Discourse to the Participants On the Convention on Biological Experimentation promoted by the Pontifical Academy of Sciences (23.10.1982)” in *Acta Apostolicae Sedis* 75 (1983), 36-37: “The substantial unity of body and soul, and indirectly with the cosmos, is so essential that all human activity, even of the most spiritual kind, is in some way permeated and colored by [man’s] corporeal condition; on the other hand, the body ought to be governed and directed to its end by the spirit. There is no doubt that man’s spiritual activity comes from a personal individual center which is predisposed by the body to which that soul is united. Hence, the great importance for the spirit of the sciences that promote knowledge of the corporeal reality and activity.”

7 Cf. B. JOHNSTONE, “The Human Genome Project: Catholic Theological Perspective,” in R. E. SMITH (ed.), *The Interaction of Catholic Bioethics and Secular Society*, Braintree (Mass.) 1992, 265-279.



gnity that can be identified as that of participating in the dignity of the human person.<sup>11</sup>

John Paul II has clarified the meaning of this when it comes to formulating specific moral judgments: "A strictly therapeutic intervention, whose objective is to cure certain illnesses—such as those deriving from chromosomal defects, can be regarded, in general terms, as desirable, provided it is directed to the genuine personal welfare of man, and does not constitute an assault on his integrity or cause his life conditions to deteriorate."<sup>12</sup> On the other hand, any genetic manipulation which is not strictly therapeutic must be considered "arbitrary and unjust when it reduces life to an object, overlooks that it is dealing with a human subject capable of intelligence and freedom, who must be respected whatever his limitations; or when it treats the human subject according to criteria not derived from an integral understanding of the human person, which compromise the dignity of the human person. This scenario exposes man to the caprices of others and deprives him of his autonomy"<sup>13</sup>.

11 Cf. J. SEIFERT, "Respect for the Nature and Responsibility of the Person", in PONTIFICAL ACADEMY FOR LIFE, *Human Genome*, 351-394.

12 JOHN PAUL II, "Discourse to the 35<sup>th</sup>. General Assembly of the World Medical Association (29.10.1983) in *Acta Apostolicae Sedis* 76 (1984), 392-393.

13 JOHN PAUL II, "Discourse to the 35<sup>th</sup>. General Assembly," 394.

## FREEDOM AND RESPONSIBILITY

The efforts being made to arrive at rules, deontological codes, and legislation on matters concerning research on the human genome and the on the biological applications of such research can do much to avoid serious abuses. On their own, however, such efforts will not guarantee that the truth about, and dignity of men and women and the family will not be overlooked or downtrodden by the power of technology. Only education in *liberty* and *responsibility*, that is an education which transmits a love for the entire truth about human life rather than opinions or preconceptions about life which we have received or in which we have been formed, will ensure a correct use of our knowledge of the human genome. The Church, which has received the *Gospel of life* from the Lord as a fount of truth and salvation—the very person of Jesus Christ "the way, the truth and the life" (John 14:6)—knows that the Gospel surpasses all human expectations, while surprisingly responding to the heart of mankind.<sup>14</sup> In virtue of this supernatural gift, the Church has a special vocation to educate towards freedom and the responsibility to love and serve, defend and promote, human life.

In what does education to freedom and responsibility consist? Above all, it implies an education being attentive to

14 Cf. JOHN PAUL, *Evangelium vitae*, 2.

the totality of factors at play in human life, the most forgotten of which during the era of research on the human genome is the spiritual dimension of our existence which is at the very core of our life. Moreover, education to responsibility means an education in a capacity to accept the project of living in a manner consistent with our humanity in its entirety, and to embrace all that this implies. Freedom and responsibility begins with a judgment that goes against the dominant cultural current. This demands *ascetic work*. It is a demanding and difficult task. But a love of our own destiny and that of all of our children should convince us to undertake this work under the guidance of the Holy Spirit.

# Hardness of Heart: A Future Possibility?

Juan Antonio Reig Pla



*It was indispensable to take up the “trick question” made to Jesus and about the “licit nature” of divorce and the “hardness of heart” cited by Jesus himself. In the usual comments on the pertinent scriptural texts (particularly Mt 5, 17-20; 19,3) reference is often made to the asymmetry between the man who, according to the Hebrew tradition, has rights over the woman and the woman who has none regarding the husband. Jesus rejects in a radical way this concept of marriage and re-establishes the original plan of God. This study here presented proceeds from a different approach which reinforces the conclusion concerning the illicit character of divorce by beginning from the heart of man and the hardness of heart which can prevent one from loving in truth. (↗ Conjugal Love?; Family and Privatization; Indissoluble Marriage?; Marriage, Separation, Divorce and Conscience; De Facto Unions)*

## **THE QUESTION ASKED OF JESUS ABOUT DIVORCE**

We must begin this theme from the teaching of Jesus. The Evangelists cite the question directed to Jesus on whether divorce can be licit: “Is it against the Law for a man to divorce his wife on any pretext whatever?” (Mt 10, 3; cf Mk 10, 2) This is an insidious question, for the Pharisees asking it understood the incompatibility between the Mosaic permission of a writ of divorce (Dt 24, 1) which discriminated against women, and the pure and full justice witnessed in the words and gestures of Jesus Christ (for example, Mt 5, 17-20 & Jn 8, 11).

The answer of Jesus Christ is a full and rich affirmation of the unity and

indissolubility of marriage which states that “Everyone who divorces his wife and marries another is guilty of adultery, and the man who marries a woman divorced by her husband commits adultery” (Lk 16, 18; cf. Mt 19, 4-9; Mk 10, 4-12; *Gaudium et spes* 48; *Familiaris consortio*, 19-20). Jesus affirms the truth of matrimony according to the divine plan “from the beginning” (Gn 1, 27; 2-24). This plan creatively inscribed in the heart and body, in the whole being of man, has a noumenal or substantial, therefore permanent and universal meaning. (*Veritatis splendor*, 51)

God creatively uses the conjugal union in the flesh to mold a human being into a husband or a wife: (Gn 1, 27; 2, 24). Jesus teaches one of the

consequences of these words of Genesis when he affirms that man should not separate what God has joined (Mt 19, 6). The divine permission in the Mosaic Law was a compassionate mercy towards the Israelites because the “hardness of their heart” (*sklerokardia*) and their sinful habits caused them to degenerate into “structures of sin,” (*Reconciliatio et penitentiae*, 16) making them incapable of understanding and living the fullness of the Law on matrimony (Mt 19, 8).

## WHAT IS THE HUMAN “HEART?”

Before exploring the various meanings of “hardness” applied to the human heart in different passages of Holy Scripture, we should ask ourselves what the term “heart” really means. The heart of man is the place of his intimacy, of his personal spirit, of his most proper and deepest self or “I”. The heart of man is not only the place of his emotions, but of his knowledge and will.

The identity of a human being is to be found in his divine vocation to love. (*Gaudium et spes*, 24) Precisely because each human being is loved by God, he or she is a personal subject possessing a heart. The root or nucleus of the mystery of each person lies in the fact that he or she is a being loved in order to love in quest of true and complete happiness.

God the Creator alone knows the heart of all and of each in its unrepeatable history (Ps 33, 15 & 39; Lk 16, 15; Ac 1, 24). The heart of man is the place

of personal encounter with the God of the Covenant (CCC 2563). The God of Love wants each human being to share in the intimacy of the eternal life of the Heart of the triune God.

The divine image and likeness is personally formed in each heart which is both unique and unrepeatable, and called to communion with others. The “original human unity-duality,” that is to say, the fact that the human being is male or female, is the basic form of human communion in which the divine image is manifested (*Mulieris dignitatem*, 7; *Gratissimam sane*, 8).

The human being is the “unified totality” of body and soul (*Familiaris consortio*, 11; CCC 362-368). “Inside” of each human body there is a heart, a spiritual soul. The creation narrative describes this reality figuratively: “Yahweh God fashioned man of dust from the soil. Then he breathed into his nostrils a breath of life, and thus man became a living being” (Gn 2, 7). The breath of the Creator infuses a spiritual soul into man and confers on it a special participation in the interior life and Spirit of God himself.

The sexually differentiated human body expresses the person as called to the communion of intimacy of hearts through physical union. In conformity to the “spousal language of the body” (cf. The first cycle of the papal catecheses on human love in the divine plan, John Paul II, *Man and Woman He Created Them*), man and woman encounter

each other, are called to become one flesh and at the same time, one heart through love (Sg 2, 6).

### **THE FIRST SIN ORIGIN OF “HARDNESS OF HEART”**

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The divine image and likeness is the “Essential and indelible theological constituent” of the human being. This must be understood as *called* (this dynamic meaning is implied in the phrase “in his image and likeness.”) This is a call to develop one’s own capacity through actions, in order to broaden loving interpersonal communion (CCC 1702, 1704). From the beginning God inscribed the natural law on the heart of man (CCC 2070; *Veritatis splendor*, 46-50). When man follows that law, he builds his personal and social life towards perfection.

The human heart was created in a state of friendship or filial alliance with its Maker. In paradise, the first man and the first woman were docile to the voice of the Lord and followed trustingly the impulses of grace (CCC 374-379). This antecedent pre-lapsarian state, the beatific state of original innocence, was conformed to the goodness and holiness initially received from God. In it, the human being found himself fully integrated: his heart, in loving communion with his Father and Creator, harmoniously centered human relations around the love of himself, of his partner and of his surroundings.

Sin implies and causes “hardness of

heart.” The result of original sin for all the human family is the state of fallen or degraded nature (CCC 396, 412). Man rejects his loving Father, mistrusts his Creator, pretends to be his own master and source of himself, or denies his filial being. Prolonging the biblical symbolism, we can say that by rejecting his Maker, man uproots himself, cuts himself off from the tree of life, and plants his own tree of good and evil (*Dominum et Vivificantem* 33-38). This brought about various ruptures of the “original unity”.

Still, the corruption of human nature through sin is not total, but partial (DS 1510-1516, 1555, 1557). Distressing signs of interior disunity and fragility appeared: difficulty in understanding the plan of God in one’s life so as to see the truth of one’s being (ignorance); and difficulty in desiring and realizing communion of love (concupiscence). The human heart, alienated from God, remains wounded, sick, weak, divided, hardened in trying to realize goodness (Ps 95, 7-11; Hb 3, 7-13); tends to be impermeable, closed to grace, opaque, blind to the light of divine truth (Is 6, 9-10; Mt 13, 14-15; Rm 1, 21; 2 Co. 3, 15; Mk 8, 17); and insensitive to the beauty of divine love.

As separation from God, sin produces a deterioration in the interior of a human being. It supposes a passage from wisdom to stupidity, from the full identification of one’s own body in communion with that of one’s partner

to sharing in the “original nudity” in the sight of God (Gn 2, 25), to feeling oneself estranged from self and others (“original shame”), to a utilitarian reduction of the human body (Gn 3, 7); from true love which elevates to interpersonal communion (freedom of the gift of self, “fitting helper”: Gn. 2, 18) to the disordered desires that destroy human unity (submitting to the lower passions, “he will lord it over you” Gn 3, 16); from fraternity to fratricide (Gn. 4, 2-16; *Evangelium vitae* 7-24).

The conscious and voluntary structure of human actions tends to transform man into what he desires. (*Veritatis splendor* 71) He lowers or raises himself as he loves the terrestrial (disordered passions) or the celestial (true love). Thus egoism generates isolation, self-centeredness, loneliness, individualism, sadness, difficulty in self-giving, in going out of oneself to communion with others: it tends to generate a “deaf and insensitive heart” for spiritual values.

### **“REDEMPTION OF HEART”**

The redemptive work of Christ is an integral healing, a re-integration, an elevation of the interior of man. It is a “redemption of the heart” (cf. the second cycle of the catechesis of John Paul II, *Man and Woman He Created Them*). Jesus Christ is the Redeemer who penetrated the mystery of the heart of man. (*Gaudium et spes* 22; *Redemptor hominis* 8). He is the new Adam come to heal our human nature,

and to bring salvation to our sick hearts (Rm 5, 12-21).

Jesus Christ teaches divine law in all its perfection (Mt 5, 17-19). Answering the astonishment of the apostles, who asked how anyone could live such demands, Jesus answered, “For men, it is impossible, but not for God: because everything is possible for God” (Mk 10, 27). Man in the fallen state of nature cannot be totally restored to the plan of God. But sin is not the definitive reality of our condition. In the Easter mystery, all of humanity has been regenerated and baptized. Through his Passion, Jesus assumed our weak condition, carried our sick nature, and has taken our sin upon himself (Is 52, 13-15, 53, 1-12). On the Cross, Jesus took the hardened heart of sinful man and made it his own. Thus the Heart of the crucified Savior, pierced by the lance, was pierced and converted into a fountain of living water (Jn 7, 37-39).

Instead of destroying the destructive forces of concupiscence that are within us, Jesus infused into our hearts a new and more powerful center of regenerative energies. Man is redeemed by the grace of the Holy Spirit, healing and invigorating our capacities of heart to live according to the plan of divine love. In Christ, it is possible for the human being to free himself from sin and conform himself to the original design of creation, orienting himself towards human perfection in love: “*Only in the mystery of Christ’s Redemption do*

*we discover the “concrete” possibilities of man.* “It would be a very serious error to conclude... that the Church’s teaching is essentially only an “ideal” which must then be adapted, proportioned, graduated to the so-called concrete possibilities of man, according to a “balancing of the goods in question.” But what are the “concrete possibilities of man”? And of *which* man are we speaking? Of man *dominated* by lust or of man *redeemed* by Christ? This is what is at stake: the *reality* of Christ’s redemption. *Christ has redeemed us!* This means that he has given us the possibility of realizing *the entire* truth of our being; he has set our freedom free from the *domination* of concupiscence. And if redeemed man still sins, this is not due to an imperfection of Christ’s redemptive act, but to man’s will not to avail himself of the grace which flows from that act. God’s command is of course proportioned to man’s capabilities; but to the capabilities of the man to whom the Holy Spirit has been given; of the man who, though he has fallen into sin, can always obtain pardon and enjoy the presence of the Holy Spirit” (*Veritatis splendor*, 103).

For the “old man” with a heart hardened in sin, it is impossible to live the fullness of the divine law by his own strength. But for the man regenerated by grace, who has received a new heart, it is possible to love with the love of Christ himself to true heroism (Jn 13, 1; *Veritatis splendor*, 22-24). Hardness of heart does not constitute the future of

progress for mankind, but degeneration and retardation. To fashion law for the “man of sin” on the pretext, perhaps, of a confusion between the normal process of gradualism in educational growth and a presumptive gradualism in moral law is, in reality, inherently false (*Familiaris consortio* 34), a return to the old, to the senile. “You must give up your old way of life; you must put aside your old self, which gets corrupted by following illusory desires. Your mind must be renewed by a spiritual revolution so that you can put on the new self that has been created in God’s way, in the goodness and holiness of the truth” (Ep 4, 22-24).

## **I WILL GIVE YOU A NEW HEART**

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With the outpouring of the Holy Spirit, fruit of the Resurrection of Christ, our hearts are purified and conformed to the new or Evangelical law (Ac 2, 17-21; Ezk 11, 19, 36, 25-28, 37, 1-14; Is 31, 31-34; Jn 3, 1-5; 2 Co 3, 3). The grace of the Holy Spirit communicates to us the love of God himself. The Holy Spirit creates in us a “new heart,” conforming us to the gentle and humble divine-human Heart of Jesus Christ (Mt 11, 29; CCC 478), and transforms the aged heart scarred by sin into a rejuvenated heart renewed by love. In the beloved Son, the Christian is newly adopted by the paternity of God, re-born as a son of God, and can live and work as such.

The Word of God penetrates our hearts which had become “stony” due to sin, concupiscence, pride and impenitence, and makes them “flesh” sensitive and gracious enough to understand, taste and desire the plan of God, which is the true good of man. Just as water dissolves rock in forming beautiful stalactites and stalagmites, so is it here.

The fire of love that Jesus brought to the world (Lk 12, 49) is the Spirit, the Communion or union of Love between the Father and the Son. Divine Love is capable of softening the hardest of hearts, just as the forge of a blast furnace softens and purifies iron, making it resistant and malleable, giving it properties superior to its natural state. Suffering and sacrifice are the Holy Spirit’s medicine cauterizing, healing and anointing the wounds of the human heart: (*Salvifici doloris*, 25); a divine ointment capable of healing the blindness and deafness of concupiscence so that we recover our faith under the loving sight of God (Rev 3, 18).

The teaching of St. Paul describes the interior division, the tension between the “earthly or carnal man” and the “heavenly or spiritual man” (Rom 7-8; Gal 5; *Dominum et vivificantem*, 55-60). The first tends to have an “enslaved, confused and blinded heart” due to a disordered will and mind which are apathetic towards authentic goodness. This first heart is “weak and incapable” of beautiful love, “weighed down” by sin (Lk 21, 34), and “deceived and

seduced” by apparent goods which morally debase man, lead to the emptiness of frustration, the instinctive pursuit of pleasure, the somnolence of impenitence and, soon enough, to discord and rivalry.

The second man, on the other hand, tends to have a “free, clairvoyant, wise heart” due to right order in his desires and knowledge; a heart “sensitive” to the beauty of true love, the discovery of the value of each person, and the call to receive and to give. He is “nimble, swift and skillful” in realizing true goodness, awake and vigilant (Sg 5, 2), “strong, patient, persevering, virtuous, inclined” to realize the best activities according to the perfection of Evangelical holiness, the way to salvation. Eager to fulfill the law of God (Ps 119, 32), he is characterized by harmony, cordiality and mercy.

## **THE CHRISTIAN PEDAGOGY OF THE HEART**

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We could describe the discipleship of a believer in Christ as a “Christian pedagogy of the heart.” The apprenticeship of virtue is like the acquisition of other human skills. The trained athlete possesses flexibility, strength and endurance. The elderly are subject to stiffness, weakness and softness. The virtuous artist has a skill, a sensitivity, a capacity. The one uninstructed in that art suffers from a dullness, an insensitivity, an incapacity. Thus to work at the task of imitating Christ requires continence and self-mastery: control of the disor-



derly desires of concupiscence (Mt 5, 27-30; Si 5, 2; 37, 27-31) and mastery of the tendencies of one's own heart.

This is a journey of conversion (CCC 1432). Through knowing the infinitely merciful Heart of God, the Father revealed in the Heart of his Son Jesus Christ, a man moved by grace recognizes the uncleanness and sickness of his own heart coming from sins of commission and omission, and decides to change his life and recover the purity of his first love (Rv 2, 4).

It is a process of purification: grace cleanses our heart (Ps 51, 12, 19), enlightens the eyes of our heart (Ep 1, 18), enables us to see God (Mt 5, 8) in heaven and even in this life through faith, and to see the divine image in each human being. "Even now (this purity of heart) enables us to see according to God, to accept others as "neighbors;" it lets us perceive the human body - ours and our neighbor's - as a Temple of the Holy Spirit, a manifestation of divine beauty" (CCC 2519).

Listening to the Word of God, meditating on it, praying as Mary did in her Immaculate Heart, occupies an essential position in this school of the Heart of Christ. That living Word is like the seed which fell on good ground and produced abundant fruit (Mt 13, 3-23). Also necessary are the testimony of Christ and his saints, spiritual accompaniment and doctrinal formation, as well the practice of charity and the works of mercy lived through following Christ.

The Holy Spirit is the Master and interior Artist in this progressive conformity to Christ. Grace elevates the capacities of the human heart to a divine level. God alone can directly and immediately touch and move the heart of man, (CCC 2002), caressing and softening its hardness with the unction of the Spirit. The Holy Spirit is the sculptor, Christ the model. In his Heart, there are infinite treasures of love (Col 2, 3). He does not seek his own interests, but seeks to please the Father in all things (Lk 22, 42). This discipleship or following is identification with Christ or "Christification." It gradually lifts us up to share his feelings (Ph 2, 5), his desires (Col 3, 1s), his will and his love (Ep 5, 2), his thought and mind (1 Co 2, 16), his glance, his words, his works, (Col 3, 23-25) his compassion, humility and gentleness (Mk 6, 34; Mt, 11, 29). The docile, and those who open themselves up to the actions of God, are conformed by the Holy Spirit to the intimacy of the heart of Christ, *Rex et centrum omnium cordium* (from the litany of the Sacred Heart of Jesus), the revelation of the merciful Heart of the Father of infinite tenderness (*Dives in Misericordia*, 8).

"Where your treasure is, there will your heart be also" (Mt 6, 21). Profound desire determines the direction of life itself. The inherent order of love directs us to place God in the first place. "You shall love Yahweh your God with all your heart, with all your soul, with all your strength" (Dt 6, 5; Mt 22, 37).

God alone has the right to ask us for our whole heart (Pr 23, 26, Vg.), for God alone is good and worthy of adoration, the infinite good who can entirely satisfy the heart of man. But men deceive themselves over and over again, loving creatures inordinately, seeking apparent goods and desiring them as idols. Such goods frustrate our expectations, while God entirely satisfies our yearnings. Hence we must repeat the prayer of petition: Through love of your precepts and hope in your promises, *ibi nostra fixa sint corda, ubi vera sunt gaudia* (Collect of the 21<sup>st</sup> Sunday of ordinary time).

## **PARTICIPATION IN THE SPOUSAL OFFERING OF THE HEART OF CHRIST**

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The divine plan comes to perfection in the mystery of Christ, Spouse of the Church, in the new and eternal covenant, through whom, with whom and in whom we are created man and woman and called to participate in the communion of trinitarian divine life. The union between Christ and the Church is the great sacrament of salvation, an indissoluble, unbreakable bond: Christ the Spouse made himself one sole flesh and one sole heart with his Spouse (Ep 5, 25-32).

In the sacrament of matrimony, Christian spouses share in the same covenant and in the same spousal charity of Christ. It is a total, intense, generous love generating a faithful, open, fertile, irrevocable life. But participating in offering the Heart of Christ constitutes a new modality: the

Gospel of virginity or Christian celibacy (Mt 19, 12; 1 Co 7, 1, 7-8, 32-34). Sharing the spousal love of Christ, some of his disciples receive the vocation to renounce matrimony in favor of an exclusive love of God, offering themselves to him with an undivided heart. Their entire life appears as a sign, anticipation or hope of the heavenly kingdom.

In the resurrection at the end of time, the heart of each human being will receive all the fruits of the Passion of Christ, and will remain fully transfigured by the glorious and eternal love of God. The communion of saints in the heavenly Church will be the participation of all her members in the eschatological Christ, in the trinitarian Communion of the Heart of God (CCC 1027, 1045). There, human hearts will remain definitively penetrated by the gentleness of the Spirit of Life and of Love.

## **CONCLUSION: THE FUTURE OF MAN IS CHRIST**

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At the end of this endeavor to understand the Gospel meaning of *sklerokardia*, let us conclude with a synthesis. The answer to the question “Is ‘hardness of heart’ a possible ideal for man’s future?” is completely negative. The moral law should not conform itself to the worst in human beings, but to the best; it should not give an honest appearance to sin and misery, but indicate the possibilities of greatness and perfection. And the best of man and his capacities

is Christian salvation, which creatively and transcendently constitutes the fullness of what is human: the heart of man conformed by grace to the Heart of the Redeemer. Therefore the promise of the future, our hope, is man “in Christ”.



# Homosexuality and Homophobia

Tony Anatrella



*Homosexuality is a sexual inclination that begins during the affective development of the person and is organized on the basis of an unresolved psychological conflict. Homosexuality is, according to some authors, a phenomenon comprising less than 1% of the population, while we know that 3-4% of persons admit to having had a homosexual experience in their lives. Homosexual demands, however, have grown since the seventies through movements and organizations that have tried to make this orientation appear normal and to give it social status. These entities have denied that a psychological problem is at the root of homosexuality and renders it contrary to social ties founded on the masculine and feminine identities. Today, with the pretext of a “right to difference”, pressure groups, often very strong ones, demand legal recognition for unions of persons of the same sex and their right to adopt children. The argument most used by this lobby is “homophobia”, a term created by homosexual associations to stigmatize all those who pose questions or do not accept the normality or the “normalization” of homosexuality. A whole system has thus developed to give society - and the heterosexuals of society - a sense of guilt vis-à-vis homosexuality. Every criticism, all reflections on homosexuality become almost blasphemous, seen as an offense: the “offense of homophobia”. Granting the demands of homosexuality to become a subject with rights ruins the fragile balance established by reason in the course of the centuries and opens to the doors to an incoherent world. (↗ Sexual and Reproductive Rights; Sex Education; Sexual Identity)*

## INTRODUCTION

We will define the concepts “homosexuality” and “homophobia” so as to see what they mean for society and their effects on society. Even if we make a detour into individual psychology in order to explain their psychological functions, the object of our study is to underline the social stakes of and not only to describe the internal psychology of homo-

sexuality: that is another debate. One should not confuse the psychological aspect of homosexuality and the way that an individual will live it with the needs of society and social ties. Does recognizing and accepting that all people have rights and duties signify that one should legitimize all subjective inclinations? In other words, can the logic of psychology be assimilated into the logic of society?

Sometimes people make assumptions, imagining that to criticize the demands for legal recognition of same-sex pairs, their right to marriage, adoption or medically assisted procreation (MAP) means that one does not love or that one rejects homosexuals. To switch over in this way from the conceptual level to the affective one is a methodological confusion that is often sustained to the point of forbidding all observations that do not support or validate a particular lifestyle. If everyone is free to live as they choose, must the law ratify the mores of a period because of militant pressure so as to make them a norm as with any other? Is there a psychological equality between heterosexuality and homosexuality? What are the basic principles from which society is built and endures through history? What kind of sexuality can one institute that will be profitable to society? These are the questions we will answer.

## **DEFINITION OF HUMAN SEXUALITY**

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Human sexuality is not reducible to genital expression. It is at the base of the developmental psychology of the affective life, of relations with others and of desire. Sexual expression, on the other hand, is inscribed within a double perspective, which is to enrich the relationship with the other through the pleasure of being together and procreation in a couple with a man and a woman.

The origin of the sexual drive is unconscious, and is progressively expressed in psychological life through a system of representations that the subject gives himself during the first affective experiences. The object of the drive is not biologically determined. The choice of the object depends on the way the child lives the stages of sexual development and maturation. If the sexual identity of the person is an objective given, the sexual orientation will be determined according to the way the subject will treat the different incomplete drives (voyeurism, exhibitionism, transvestism, transsexualism, pedophilia, etc.) In the best of cases there is a psychological continuity between the sexual identity and sexual orientation. The sexual drive harmonizes with the general functioning of the personality through childhood and adolescence. The child will learn to be in relationship with others and discover the meaning of love. Otherwise, he runs the risk of remaining with an impulsive, aggressive and possessive vision of sexuality.

There is sometimes a tension, even incoherence, between one's sex, the fact of being a man or woman - belonging to the masculine or feminine gender, and the sex or sexuality of our affective and emotional life and one's self-representation and relationship with others. In the best of cases, there is in the personality an articulation and continuity between belonging to a sex and one's sexual expression, which gives an authenticity

and a coherence to the personality. The organization of society depends on the association between men and women, who are the only ones who form a couple and create a family. The “gender” theory, which wants to replace the difference of the sexes with the difference of sexualities, leads current thought into error by affirming that social ties can develop based upon a sexual inclination. This is a vision of social relations that is at the very least exploded as these relations are so dependent today on the imagination and in the arts.

In certain societies ruptures, disassociations and the breaking of ties are favored in the field of sexuality. There was an intent to separate procreation from sexuality, then parenthood from the couple, and now sexual identity is separated from sexuality in order to favor sexual orientation. This perspective poses many problems.

## **DEFINITION OF HOMOSEXUALITY**

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Homosexuality represents a more or less exclusive sexual attraction for persons of the same sex. It corresponds to a sexual inclination that occurs during the affective development of the person but which is based on an unresolved psychological conflict. Homosexuality is a “disturbance of sexual identity” (*DSM IV*). In all the debates concerning same-sex marriage and the adoption of children, there is a complete lack of discussion of the sexuality of a homosexual duo (who

are wrongly called a couple, which implies a sexual dissymmetry) and what this sexuality represents psychologically. It has its own structure that is not comparable to what is the basis for a couple created by a man and a woman. But one refuses to hear or to question oneself on the denial of homoerotic sexuality and the difference between the sexes that a certain sociology-influenced psychiatric and psychoanalytic literature testifies to. It does not correspond to the opinion of the majority of practitioners, who are forced to keep quiet so as not to be punished in the name of the *politically correct* orthodoxy in fashion.

## **THE PSYCHOLOGICAL FORMATION OF THE HOMOSEXUAL REPRESENTATION**

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If sexual identity, that is to say, the fact of being a man or a woman, is an objective given, sexual orientation, we have added, is the result of a history. A naive vision suggests that some are born heterosexual and others homosexual. There has never been any proof of the genetic origin of this inclination. It is rather a psychological representation of the individual's drives that is articulated around attraction for persons of the same sex and excludes attraction for the other sex.

In many research and theoretical studies inspired by the scientific literature on the subject, as well as the clinical experience we have had through

conducting psychotherapy with homosexual persons, we have observed that the psychological reasons that lead to this affective fixation are numerous and vary according to individuals. Homosexual fixation can arise very early and give the impression to the subject that they were born with this inclination. Thus, in the so-called mirror stage (between six and eighteen months) there is a phase when the child begins to become self-aware through the eyes of their parents, particularly of the mother, but also through the means of a mirror which reflects their image. He can fall in love with this image and try later on to find it again among others of the same sex. The child, as an adolescent, passes through stages of over-investment in themselves that are termed narcissistic or oedipal identification, but also psychological bisexuality, acceptance of their sexual identity and moving towards heterosexuality.

Psychological bisexuality is put into place when the subject accepts the other sex and interiorizes the sexual difference. This means that he becomes capable of putting the two sexes in dialogue within himself and not, as is often asserted, that he feels both male and female. The body of each person is of the male or female sex, leaving aside the exceptional cases of hermaphroditism. This is a given to be recognized and integrated psychologically. Most persons do this, while some refuse and others play at being both sexes. It is indispensable

that the subject have enough confidence in himself to arrive at the sense of the sexual other from which he will be able to be in an intimate relationship with the other sex. The failure of this process facilitates different problematic sexual inclinations: lack of symbolization of sexual difference, alternation of relations *vis-à-vis* persons of the same sex and of the other sex, hesitance and identity confusion, homosexuality, transsexuality, pedophilia, etc. These are many psychological tasks that, if they are not reworked, can arrest the subject in the first stages of affective/sexual life.

It is good to distinguish between the experience of same-sexuality, that is the choice of a same-sex object, that corresponds to a need to be in contact with members of the same sex and the homosexual orientation (homosexuality) from which the subject tries to eroticize the contact.

Generally speaking, same-sex identification (the choice of a same-sex object) is a classic process that is unconsciously lived by all subjects. It is a component part of human sexuality in the sense that it corresponds to a necessary identification with persons of the same sex in order to confront one's own sexual identity. The process of identification begins positively or negatively with the image of the parents. The child can, for different reasons, refuse to identify with the parent of the same sex. They risk a predisposition to later look to persons of the same sex for imaginary characte-



istics such as strength and power that they feared in the same sex parent. Thus, when homosexuality remains exclusive and eroticized without being able to be sublimated and becomes a drive to socialize, the individual installs himself in acting defensively towards the other sex and what it represents. Moreover, if society favors this sexual inclination to the extent of making it a normal relationship, social ties will lose their coherence.

**Homosexuality is a fixation acquired in primitive sexuality**

Homosexuality does not represent the high point of the psychological development of sexual life. Psychoanalysis, according to Freud's thinking, proposed a general theory of homosexuality that has been confirmed by clinical experience. Homosexuality is a fixation acquired from a sexual drive that maintains the person in the first phase and expresses a failure of the oedipal experience and a regression to the pre-genital drives and fantasies. For the most part, these personalities remain affectively immature, even if they can shine socially to a certain extent. There is often a depressive basis to them that can be compensated by narcissistic claims, by a need to present themselves as the victims of others, of their family, of society, etc., by a need for constant recognition. Affective choices with same-sex partners are frequently unstable because of the immediate and partial eroticization. Freud brought to light the link that ex-

ists between homosexuality and paranoia<sup>1</sup> (which is a feeling of persecution, jealousy and delusions of grandeur) as a means of always protecting oneself from imaginary attacks. It is a kind of counterattack and revenge against the castration linked to the limitation represented by the image of the father for the son or of the mother for the daughter.

The subject adopts a pose of *bella figura*, of self-affirmation and seeking after all that symbolizes strength (cult of muscular fitness, genital organs, certain ways of dressing, a strong self image that really imposes rigidity, etc.) so as to find in same sex partners what they refuse to find in their parent. Homosexuality is lived as a narcissistic compensation for a change of identification with the parent of the same sex.

**Male homosexuality**

Male homosexuality represents, among other things, a complex of actions that unconsciously express a feminine relationship with the father. In the histories of homosexual persons, one frequently observes resentment toward the father that is in relation to an impossible identification with the father. The subject reproaches his father, in a more or less imaginary way, his absence, his weakness and an undefined desire regarding him. This leads to problems in working out psychological requests (super-ego and ego-ideal) for self valorization, finding his limits, accepting his

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1 S. FREUD, *Névrose, psychose et perversion*, PUF, Paris, 1973.

sexual identity and coming to reality. The mother could be overly esteemed according to the way that she does not recognize or value the father's place.

### **Female Homosexuality**

Female homosexuality is not symmetrical with male homosexuality, even if it shares some common characteristics. There is often among lesbians a massive identification with the image of the father, paradoxically accompanied by disgust for the male image that leads to a distrust and a sexual rejection of men. The mother is often idealized and lived as someone who slights the body. This relationship bears witness to a difficult maternal identification that is needed in order to access femininity. The identification failure will be reduced to a relational game in fantasies about the mother-child or father-child relationship that cements the castration, that is to say the impossibility to really accomplish their femininity in a masculine relationship. A female homosexual can adopt virile attitudes or, on the contrary, submissive ones, and look for complementary partners with an active or passive profile. In this context the desire for a child at all costs is a way to affirm oneself against the parent of the same sex and eliminate the father.

### **Different reasons**

Other reasons, which cannot all be examined here, can preside over the development of and eroticization of the relations with persons of the same sex following the failure of the choice of a

same-sex object, which is transformed into homosexuality. As mentioned above, the adolescent child needs to identify him/herself with persons of the same sex (choice of same-sex object) to confirm his/her sexual identity. It is when this psychological work has not been done that the subject is at risk, among other things, to fixate on attraction for persons of the same sex (homosexuality). One must note that everything in a family that gives children poorly sexually individuated parental images and everything which in education and society eliminates sexual differentiation favors homosexuality. One has to remark that a certain contempt for men and also a negation of the father and hyper-valorization of women in contemporary Western societies lead to a homosexual compensation at present. This fact has been observed many times in history.

## **HOMOSEXUALITY AND SOCIETY**

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### **A marginal demand that seizes power**

Homosexuality is, and has always been, a marginal phenomenon. According to serious studies, only 3 to 4% of a given population admits to having had at least one homosexual experience in their lives (study by *Spira France* 1992). If one deducts from these numbers adolescent experimentation and reactive behaviors, the percentages decrease to below 1%. (According to INSEE there

are 12.4 million married couples in France, 2.4 million cohabitating couples, 700,000 divorced and remarried couples, 800,000 single-parent families and 33,000 duos of same-sex persons). Since the 1960s, however, homosexual demands have not ceased to grow. They have been amplified by movements and organizations that intimidate rather than allow reflection. A lobbying effort led them to force the American Psychiatric Association to remove homosexuality from the list of mental illnesses in 1973. This decision was made by a vote (5,816 for and 3,817 against) and not as the result of a real study. For the first time in history, a scientific question was decided by a simple vote. This caused strong reactions within the association and a promise never to treat psychiatric questions in such a nonrigorous way in the future.

### **Confusion between sexual identity and sexual inclination**

Homosexuality remains a psychological problem in the organization of the sexual life of the personality. Wanting to normalize this orientation and give it social status conflates it with sexual identity. There are only two sexual identities: male and female. There is no homosexual identity. Homosexuality belongs to the category of human psychological sexual inclinations that are numerous and varied. In the best cases they are sublimated and placed under the rule of sexual identity. The individual can only socialize and enrich their

social links starting from their identity (as a man or woman). It is not possible to think that one can be socialized using a sexual inclination, unless one causes a regression in social ties. It is useful to recall that sexual inclinations are on the side of drives while identity is fact to be accepted or refused, and is integrated; it is thus on the side of culture and the development of drives. To valorize one inclination over others suggests that one could live socially following partial drives that are not sublimated, without a global vision of oneself, of others and of society.

### **The law validates homosexuality**

The social valorization of homosexuality, since in some countries it is legalized to the point of being treated equivalently to the relationship of a heterosexual couple living in a contractual civil union, will in the near or longer term be a source of relational confusion. Homosexuality has no social value and no finality. It facilitates a turning away from fundamental points of reference. It is nonetheless rather strange to note that in certain societies the couple, marriage, filiation, and blood relationship are rethought taking homosexuality as a starting point. This is truly a lack of reasoning and nonsensical since homosexuals are in a situation contrary to these realities which only take on meaning from a relationship constituted by a man and a woman. The couple and the family are based on sexual difference and on a union over generations. This double

dimension is an anthropological truth, since it is universal, and is not a subject for laws that can be modified following electoral changes in democratic legislatures. It is not reasonable to think that one can establish homosexuality as an equal source of couples and the family. This would be an anthropological and symbolic transgression with heavy consequences for persons and society. The principles of reason are inversed and the symbolism is sabotaged. Symbolism has as its goal the reunification and representation of two correlative aspects: thus filiation is the expression of the union of the man and the woman which associates the biological, generational and the educational. A duo of persons of the same sex is not in the best position to guarantee out these symbolic functions. When a society loses its understanding of the meaning of sexual difference and of generations, it in fact, loses understanding of the truth of realities. Those in political power lack courage, and incur a grave responsibility *vis-a-vis* future generations when they modify the law to establish homosexuality. Homosexuality will necessarily be questioned one day by citizens if one wants to make it a model of the couple and the family because it goes counter to the anthropological foundations and is incompatible with social ties. All societies have always tried to promote the value of the couple of a man and a woman without ever establishing on an equal basis relationships based on a partial sexual inclination.

### **A false difference**

The realistic position that affirms that only men and women form a couple, marry, procreate and have descendants is intolerable to some homosexuals who see it as a discrimination against them. In the name of the equality of citizens they think that they should be able to have access to these diverse realities, that their "difference" should not exclude them from marriage, adoption, even conceiving through biological manipulation. They forget that they do not meet the conditions for marriage and even less for the conception and education of children.

As to their "difference", this cannot be an alternative to heterosexuality. It is rather, from the social perspective, the negation of difference. The difference between a man and a woman cannot be compared to the difference between heterosexuality and homosexuality since this last blocks one from arriving at the real meaning of the difference. It follows from the interiorization of sexual otherness. Most of the arguments that are advanced by homosexual activists are frequently concepts taken from other realities which are just and true, but they are manipulated and turned away from their original meaning. The inversion touches thought and cheats the facts of reality.

### **Homosexuality is a private problem**

If society, in the name of morality, must call for respect for all persons, no

matter what their particular situation, it cannot encourage subjects to close themselves into what forms the basis of homosexuality; the search for sameness or what is similar. It also cannot cut up the social fabric into as many sexual inclinations as exist. Homosexuality cannot remain a private problem, since wanting to recognize a sexual inclination implies wanting to organize all of them socially. The partisans of the “gender” ideology are favorable to this view when they affirm that the subjective way a person lives their orientation should take precedence over their belonging to one sex or another as the basis for the organization of society. Each should choose their sexual inclination (even though this is not a choice), and this “option” can lead to the formation of several kinds of couples or families. It is incoherence and irrationality then that are inscribed into the social fabric, once again, as a consequence of insecurity, relationship problems and troubled identities.

Individual situations belong to a different debate that should not be confused with the social question that we are examining here.

### **POLITICAL STAKES BASED ON THE FIGHT AGAINST HOMOPHOBIA**

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Homosexuality has become politicized and the involvement of homosexuals in politics in order to serve their designs has become a priority. That is why they organize lobbying of the different agen-

cies of the United Nations (UN), the European Parliament in Strasbourg and the European Commission in Brussels. Texts concerning the couple, the family and marriage are thus modified through the influence of an active minority that becomes dominant without being the majority. Homosexuality has become a major criterion for evaluating European policy and to force the new member states to modify their legislation in this direction when there is no legal obligation to do so. It is not reasonable to legalize homosexuality in order foster marriage and the adoption of children, and even less so to create a social crime punishing any critical remarks in the name of homophobia.

The notion of *homophobia* has become a fetish word that prevents all debate and tries to stigmatize those who think that homosexuality poses a social problem. For the partisans of the fight against homophobia, any social criticism of homosexuality stems from a fear of homosexuality in those who express it, or perhaps fear of their own unconscious homosexuality.

The expression *homophobe* merits discussion. It means fear of the similar. How does this relate to homosexuality? Who can be afraid of homosexuality when it has never been so omnipresent, normalized and praised? They would like to make us believe that those who adopt this lifestyle are constantly threatened. If that were the case, we would be the first to defend and protect them,

even though we are opposed to making homosexuality a legalized social model. But one must not confuse the respect due to persons with the requirements of society which rests on the one sexuality represented by the union of a man and a woman. It is doubtful to see in every discourse an attack against homosexuals. On the other hand, one must denounce the crimes against persons in some situations. The legal arsenal in force is sufficient to deal with these behaviors as is seen by the trials of those who committed crimes of this kind. They are usually odious acts by individuals with antisocial personalities.

### **Homophobia and homosexual anguish**

Must society institutionalize homosexuality? Only persons have rights and responsibilities; this is not the case for a sexual inclination. Homosexual activists make their sexual inclination an object of rights to marry and adopt children when they are, as we have already said, in a situation that contradicts this double reality. They often give the impression of fleeing questions on this subject and also shy away from their psychological experience, especially when one knows that most subjects discover their homosexual inclination in a tormented way.

One very often notes that the anxiety and anguish tied to homosexuality are not caused by society under the single pretext that society is only based on the relationship of the male/female couple

and is thus heterosexual. The torment of discovering a same sex attraction originates mainly for psychological reasons. These are numerous and varied, beginning with the fact of not being capable of an intimate affective relationship with a person of the opposite sex. This incapacity leads to an anxiety causing powerlessness that personalities weakened by their narcissism try to overcome through social recognition.

Certain subjects, of course, after a long progression, can accept themselves that way and take on homosexuality without resentments or making demands on others. Many homosexuals are completely uninterested in activism, which they see as foreign to themselves. They are not especially "proud" of the *gay pride* parade. They know it would be incoherent to press for same-sex marriage, and even more so for the right to adopt children or to "manufacture" them by all possible means (MAP). They think children would be placed in a dishonest relationship and could benefit in their development from the double presence of a man and a woman, their parents. Their personal situation is already a problem and they do not wish, on top of this, to take a child hostage. Really, the child that is demanded as such, is more required and instrumentalized to calm the anguish of the adult instead of to transmit life and to ensure the symbolic functions of parenthood in the best interests of the child. The child needs to represent to him/herself that he/she

exists thanks to the union of a man and a woman. This task is impossible to accomplish with two persons of the same sex. The interests of the child are denied as they become only a narcissistic crutch that adds to and becomes an accessory of homosexual persons who want recognition through the child. The need for a child in these conditions is imaginary and illusory. The child here is not accepted for himself. We must also recall that having a child is not a right, unless one considers that one could "manufacture" children only for oneself by playing the sorcerer's apprentice. It is paradoxical that the Western societies, which have a deliberately anti-natalist mentality to the point of being in demographic decline, have also made the child an object of personal satisfaction for adults.

The child is no longer understood as the one who assures the replacement of the last generation and the continuity of the family, but as a way to copy oneself. We are close to the cloning mentality. It would be a grave matter to encourage this individualist mentality which leads to all the dependency and attachment pathologies which often reveal problems of emotional stability, of filiation and sexual identity. Do we have to add other problems to those which already exist because of divorce by placing children in situations that are contrary to their needs and interests? Society must try to assure that a child is welcomed, protected and educated in the best possible conditions - by a man and a wo-

man.

Many homosexuals recognize these self-evident facts, and have a healthier perspective on their situation. Others, on the contrary, are unable to accept their homosexuality and act in paranoid ways<sup>2</sup>. They turn against others and attack their families, their education and society with their sexual inclination. The subject then displays a deeply ingrained jealousy and wants recognition for the very area where he lacks self-esteem. He projects onto others his difficulties and tries to get rid of the problem in the social arena. Since his psychologically lived experience cannot be recognized by himself, much less treated, the subject avoids showing interest for what happens to him and simply transfers it to the social domain and demands legitimacy.

**The thought police under the guise of homophobia make heterosexuals feel guilty**

One frequently notes a determination, in the name of a sexual orientation and homosexuality in particular, to change society which is considered unjust because it is founded only on the couple relationship formed by a man and a woman. The yoke of sexual difference, of conjugal and family normality, must be denounced, the activist literature affirms. An entire political surveillance system, a thought police is thus put into place in order to combat discrimination which is supposed to afflict homosexuals. These rules of language try

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2 S. FREUD, *Névrose, psychose et perversion*.

to make society feel guilty, and this intimidation and manipulation of history, law and democracy is currently working well. There is nothing discriminatory, however, in saying that only men and women can marry and become parents. Let us repeat that society can only recognize a male/female relationship and not sexual inclinations. They marry first because they are man and woman and not because of their heterosexual inclination, which is only a consequence of their unity and personal coherence. There cannot be a psychological or social equivalence for a couple formed in the name of a double identity, male and female, and a relationship between two persons of the same sex in the name of their partial inclination. The sentimental attraction between these persons changes nothing in this constitutive fact of social ties. Society, which accepts, organizes, and expresses the division of the sexes, cannot represent itself beyond sexual difference, which is in the realm of partial drives as academic nihilism in the humanities influenced by the dominant contemporary ideals would have it do.

Homophobia is an argument in bad faith and a product of the anxiety of homosexual psychology. In the name of homophobia, activists want above all to make heterosexuals feel guilty. They achieve this goal and sow doubt in people's minds, as the perverse person who makes allusions to his knowing more about the psyche of others in order to manipulate them better. Really, this in-

tellectual harassment by some homosexuals goes back to a primary fantasy which they depend upon, heterophobia. This is the fear of the other sex, of the stranger to one's sex, of the sexual difference that is the source of the other. We also see a pernicious loss of a sense of the other, which is based in sexual difference and not on the fact of being in the presence of two distinct personalities. Let us repeat that it is the person that is worthy of respect, that has rights and duties and not a sexual inclination that can rest on a problematic base.

### **A strategy of intellectual surveillance and censorship**

The strategy of surveillance and denunciations by the homosexual lobby is preparatory to acts of repression aided and abetted by some politicians with the complicity of the mass media. This could happen if, in different places, society continues to lack common sense. The media play the role of a moral censor in presenting a simplistic and sentimental portrayal of homosexuality. The self-censorship of the written and audiovisual press is evident, and involves the repetition of homosexual pressure groups' slogans. Those who are interviewed are carefully selected, and books or articles that go counter to the canons of the sole accepted viewpoint are systematically ignored, as are any reflections on what homosexuality represents psychologically and its effects on society.

This media filter makes it harder and harder for most people to find re-



flections on what the fact of imposing on society a sexual inclination that is dissociated from the relational dimension of man and woman means. In some psychiatric organizations (in the USA and in Europe), it is even forbidden for practitioners to mention that they have helped certain subjects, thanks to psychotherapy, to modify their sexual orientation from homosexuality to heterosexuality. We are therefore faced with a paradox: we admit that one can go from heterosexuality to homosexuality, but refuse to accept that the reverse can take place. This kind of ideological straightjacket is serious, as we know that there are different forms of homosexuality, some of which are open to psychoanalytic treatment, and others which are really irreversible.

All criticism, every reflection showing that homosexuality represents a serious psychological handicap in sexual growth, all humorous words, or those that could lead to mockery *vis-à-vis* homosexuality, or even recalling to mind that the practice of homosexuality is not morally just and that most religions consider it an anthropological contradiction of a universal value that only the male/female couple relationship is the foundation of society and law, is judged to be racist or, following the popular new slogan, homophobic. This unfounded psychological interpretation expresses a *lacuna* in thought that assails persons in order to better discredit their words and the questions they pose.

Thus, the homophobia slogan is taken up as an emotional chant in an almost sectarian narrow logic. Thinking and knowing what it means to wish to institute a sexual reality is not really the point but rather to carry out a manipulation and have influence on minds and make them feel guilty.

**Homophobia is an effect of language that destabilizes persons and society**

The use of the slogan "homophobia" is an effect of language that does not take reality into account. Most people are indifferent to homosexuals and respect them, even more so in an individualistic society where everyone does what they want. Problems arise, however, when one wants to make this inclination a norm for society. Another complication arises in a family when a son or daughter reveals their homosexuality: it is never simple to learn that one's child has homosexual inclinations and to take a position *vis-à-vis* this type of situation. If for the parents their child is always their child, they accept them first as such. The family is more prepared to rejoice at the announcement of a wedding or a birth than it is for the declaration of a homosexual wish or the signing of a civil union contract as is now permitted by the law in a number of countries.

Homosexuality can also cause worry or distrust, in particular when some activists display their inclination in a way that harasses others and society. Why

should one want to show one's inclinations when, in the best of cases, one presents oneself first as a man or woman, or as a citizen?

Homosexuality is linked to narcissism and the first phases of infant sexuality: love of one's image, identification or counter-identification with the parent of the same sex, hesitation tied to sexual identity, etc. These are so many characteristics that each individual had to develop unconsciously in their sexual representations. But the homosexual who uses his or her orientation in a subversive way against everyone can be experienced as an invitation to regress—what people reasonably do not wish to do—and to establish the most primitive aspect of human sexuality, that is to say narcissistic self-sufficiency and being closed in on what is the same or similar.

The public authorities do not realize that in legalizing homosexuality they are transgressing the sexual difference on which their subjects have organized themselves psychologically and on which society rests. Citizens are unconsciously attacked and made insecure when one foments a return to their archaic psychology that bears with it the risk of social violence. It is not surprising that the provocation of some elected officials and associations in illegally “marrying” same-sex persons or in demanding the adoption of children lends itself to aggressive reactions in attitudes and words. These activists interpret this

as proof of what they call ambient “homophobia”. In their intellectual blindness they do not see that they are causing and creating it by their behavior, particularly among the youngest persons who, because of their immaturity, are uncertain about their identity. Normalized homosexuality emphatically awakens unconscious conflicts inherent to juvenile sexuality, which the subject had wanted to leave behind, while the social discourse makes one think that these first choices can become a point of reference, and if they are criticized, the citizen may be pursued by the law. Thus the law becomes crazy by placing itself outside reason and the process of affective and sexual maturation.

A partial sexual inclination that is proclaimed and protected by the law in such an ostentatious way, by virtue of non-discrimination, does not serve social cohesion. In Western countries any attitude is taken for “mental abuse” or “discrimination” because persons live as victims and victims of life. Outside of very precise cases that it is good to address, most frequently we are faced with complaints that reveal more about a personal lack of well-being than a real injustice. The symptom is sustained when the public authorities create “high commissioners” to denounce and prosecute acts which are on the borders of subjectivity and to judge supposed intentions. The political discourse forges a society of fear and mistrust. These countries say they are free and democratic while ma-

king ever more laws repressing freedom of expression and debate in the name of the struggle against homophobia. The dictatorship of *mores* is imposed according to criteria that are incompatible with the psychological and moral values that found the couple, marriage, the family and filiation. How do we not see that so-called democratic societies, which cut social ties according to private demands and to the detriment of the common good, depress their citizens? They multiply laws from day to day that are often unneeded, and alienate citizens in favor of questionable technical and ideological considerations. The law ends up amplifying and accelerating the manifestation of problems that the legislator wanted to eliminate.

Depression is affecting more people in societies where one can hypothesize that it comes from the fact of a harmful culture and laws which create existential illnesses that are not treatable by psychotropes or psychotherapy. The increase in the number of people suffering from anxiety and attempting suicide is often revelatory of the dysfunction of social norms that contradict human constants. It is thus that one destabilizes the security of citizens and social cohesion. To deny the principle of sexual difference as a value in regulating and institutionalizing sexuality in society is the source, in the short on long term, of violence beginning with the youth, as seen in school violence, since a basic point of reference is blurred. The devaluation of

the principle of sexual difference brings at the same time the devaluation of all the other laws, since the citizen feels that they are serving particular interests instead of honoring and respecting the common interest. To each his own law, following their subjective requirements, so as to enclose themselves in their narcissism and individualism while despising the sense of the other. Will the public authorities, instead of being at the service of the common good, depend on activists charged with legally validating their particular demands? We have inverted the place from which the law is erected when the subject trumps social ties and universal principles. There are so many reasons to consider that homosexuality, which is lived by a certain number of persons, cannot be a point of reference inscribed in the law.

### **Homophobia is a projection of the fear of sexual difference**

The abusive use of the image of homophobia places us before an interpretation of projection. A phobia, a fear, is no doubt more present among those who use it as a banner than among those who are targeted by these activist's words. The usual mechanism of a phobia consists in pushing onto the exterior world the anguish that an impulsive movement inspires, but which is experienced as a danger or an unpleasantness coming from outside. Freud was right in underlining that it is sometimes impossible to be heard when one denounces a projection as a mistaken

perception. Interpretations of projections can, for a time, sweep into psychological obedience (which produces the phenomenon of sects) or a political way of belonging (which produces the dictatorship of *mores*) because these interpretations offer a system for managing relations that is very reassuring in our current individualistic society. This is true until minds are ready to be freed from this tyranny.

The intellectual repression goes so far as to imagine the creation of a legal penalty to fight homophobia and to identify it with the struggle against anti-Semitism and racism. An intellectual fraud is hidden behind this confusion between racism and refusing to give equality in society to homosexuality, which is nothing but a sexual inclination among others, and the two sexual identities that alone prevail in social ties. In other words, the sexual orientation of a person is not comparable to their race or ethnic origin. How can one think that a sexual inclination is part of the fundamental rights of the dignity of the human person? How can one even come to the point of giving it a sacred character? We are faced with an error in reasoning, as the Congregation for the Doctrine of the Faith's declaration emphasizes. It is first of all principles of reason that are in question, and not moral or religious requirements as some want to make others believe in order to better hide what is at stake.

"ncluding 'homosexual orientation' among the considerations on the basis

of which it is illegal to discriminate can easily lead to regarding homosexuality as a positive source of human rights, for example, in respect to so-called affirmative action or preferential treatment in hiring practices. This is all the more deleterious since there is no right to homosexuality which therefore should not form the basis for judicial claims. The passage from the recognition of homosexuality as a factor on which basis it is illegal to discriminate can easily lead, if not automatically, to the legislative protection and promotion of homosexuality. A person's homosexuality would be invoked in opposition to alleged discrimination, and thus the exercise of rights would be defended precisely via the affirmation of the homosexual condition instead of in terms of a violation of basic human rights."<sup>3</sup>

It is unreasonable—even absurd—to want to make all criticism of homosexuality a crime. In most societies, persons and goods are protected by laws that guarantee their being respected. There is no need for particular rules and justice based on exceptions that on top of this are outside of the common good. To create a crime of "homophobia" is a way to take society hostage on the question of the problems of the organization

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3 CONGREGATION FOR THE DOCTRINE OF THE FAITH, *Some Considerations Concerning the Response to Legislative Proposals on Non-discrimination of Homosexual Persons*, (Rome, July 24, 1992): *Documentation Catholique* (1992) 2056, 783-785.

of the sexuality of a subject. As we have said, the discovery of this inclination in one of the children is always a tragedy for parents. Should they be brought before the courts on the pretext that they refuse to welcome in their home the partner of their son or daughter? Many specialists think that homosexuality is the result of a "disturbance of sexual identity". Should they be taken to court for not conforming to what is *politically correct*, which carries with it and manipulates the public authorities? Should the Bible and much literature, both fiction and scientific, beginning with psychiatric works, be censored for the crime of bad thinking and delivered to book burnings of sinister memory? In this craziness are we going towards making homosexuality a norm and a value whose criticism is legally punished? But it is homosexuality which, erected as a system in social life, is a transgression of the unavoidable given of sexual duality. We repeat, when society loses the sense of sexual difference, it perverts itself and loses a sense of reality and the truth. Homosexuality is a sexual inclination that, when it invades the social scene, is a sign of relational confusion.

One must not mistake the debate: homosexuality is more about psychological conflict than political negotiations, unless one wants to "externalize" the infantile homosexual neurosis that has no solution against others and society. It is not up to society to recognize homosexuality, since it would then have to do this for all sexual inclinations and protect

them by law. We easily see what kind of social atomization one would arrive at in this kind of regression. Society cannot hold and last except by privileging the sexual and social organization of the relationship formed between a man and a woman. The rest is in the private and particular domain, and does not correspond to laws of general interest.

### **The exploitation of fear**

Persons are currently turning to society, asking for it to fulfill a function, in a roundabout way, for which the subjects lack the resources, while each person should be returned to themselves. It does not belong to society to become involved in looking after the intricate individual and psychological problems of human sexuality. Nevertheless, there are more and more demands that society recognize and make laws on these subjective intrigues and to regulate personal sexuality. The law should thus take power and substitute itself for the psychological life's work so as to reassure the citizen, and play the role of the mother protecting a child worried about its emotional life. This political motherhood maintains childishness instead of having recourse to the symbolic fatherhood which recalls what makes the law and signifies the limits that allow the work of the sublimation of partial drives and for life to develop. If society refuses, it is led to understand that it is not generous and is afraid. This exploitation of the fear and the feeling of guilt of citizens is a well known strategy used by all

those who try to hide the truth. Society is allowing itself to be manipulated, because regressive and defensive models of sexuality are dominating psychologies, and the stakes are not yet clearly seen by decision makers. There is, nonetheless, a loss of the sense of the common good, an increase in violence and juvenile delinquency, and contempt for the moral law which is constantly growing. This testifies to the loss of fundamental points of reference like the difference between generations, sexual difference and the symbolism that accompanies this, and of marriage as a commitment of a man and a woman and the family. Relationships and society are troubled by this up to the point that, faced with so much damage, future generations will call the generations that preceded them to justify themselves.

## **CONCLUSIONS**

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Socially, homosexuality poses many problems when one wants to legitimize it without any discernment, but rather only repeating the affirmations of the activists. It is not possible to treat homosexuality on the society-wide level in the same way as on the individual level. A sexual inclination is not a subject for rights since it has no social value; only persons have rights and duties. It is not a transmissible reality since it is unthinkable to educate children to have sexual attraction towards a person of the same sex. It is also not the sign of the culminating point of human sexuality.

It remains a psychological question and a sexual immaturity that society cannot institutionalize socially since it cannot institute any kind of sexual inclination without taking into account the objective and universal reality represented by the couple formed by a man and a woman. Only this couple is the foundation for social ties and the development of history.

The difference between the sexes helps the subjective differentiation that allows the person to be, in the best of cases, coherent with their sexual identity and sexuality. This is the psychological problem of the person who can also, for different reasons, go into discontinuity between their sexual identity and a sexual inclination. This is nothing new, but today one wants to transpose what is a psychological question without any political value onto the social plane. Contrary to what one hears about homosexuality and the lack of difference between the sexes, neither can be a source of civilization. Equality between persons does not entail the canceling of anatomical reality creating the two sexes that exist, men and women, the requirements of fatherhood and motherhood as functions and the prohibition of incest in all its forms.

Western societies have a suicidal vision of social ties by giving pride of place to the subjective expectations of individuals to the detriment of objective realities and general interests. Out of a wish to be all-powerful, ecologi-

cal equilibrium has been denied, putting the planet in danger. Now there is contempt for human ecology and the constants that structure what is human. This ruins, in the name of the pleasure principle, the fragile structures that reason developed over the course of the centuries. It opens the doors to an incoherent world for the generations that will follow.





# Homosexual “Marriage”

Aquilino Polaino-Lorente



*We have gone with surprising speed from one demand to another from homosexual groups. The climax was well orchestrated and does not seem to have encountered more than a light opposition that fears being accused of “homophobia” and thus being pilloried. After breaking with psychoanalysis and psychoanalysts, after World War II homosexual groups have never ceased to proclaim, often in a disproportionate or even aggressive way, their “normality”. In this exercise in self-justification the request for “non-harming” and “homosexual rights” rapidly assumed the form of a demand for civil recognition. Therefore, the proposal of “contracts” and “pacts” has become a driving issue for homosexual groups. Today one is seeing a demand for a homosexual “marriage” which would be given the same rights as real marriages. Recently some countries have inserted into their laws a “marriage” of this kind. Already today homosexual “couples” ask for the right to adopt children. The very idea of a homosexual “marriage” is a mystification that contradicts the very essence of marriage. In a period where the protection of the institution of the family should be foremost among the concerns of the governments of the rich countries, caught in the vise of a demographic winter and growing criminality among the youth born into broken families and recomposed “families”, the proposal of a homosexual “marriage” and its being taken seriously by rulers demonstrates a profound disorder in these countries. (↗ Discrimination Against Women and CEDAW; Sexual Identity and Difference; Homosexuality and Homophobia; Equal Rights for Men and Women; De Facto Unions)*

## INTRODUCTION

To any scholar of marriage and the family, the expression homosexual “marriage” is incomprehensible. And yet, this expression is widely circulated in society today. The recent legal approval of “marriage” between homosexuals in some countries is a key to explaining this paradox.

The law moves slowly but surely. The law follows life, but sooner or later it always ends up regulating aspects of life. But it sometimes happens that “security” and “regulations” go against life itself, as when the human person’s being is not respected and human nature is not taken into account. In this last case, the law poorly serves the person, or worse still, attacks him in a cer-

tain sense. Since this generates a loss of meaning in the law, the law itself is poorly served.

From *de facto* couples the law passed on to a "law to register couples" (for example, the "common law union contracts" and the "law of registered living together" in Holland; the "pact of common interests", the "contract of social union" and the "civil pact of solidarity" in France; the "law of stable unions of couples" and the "contract of civil unions" in Spain; etc.). Soon after these laws were passed, the move towards the legalization of homosexuals living as couples (homosexual "marriage") began. Finally, today there is an effort to go further in trying to satisfy certain demands from minority social groups like the adoption of children by homosexual couples. It is an example of strong social pressure, especially by some homosexual persons, which is met with little resistance by legislators.

The gap is widening and deepening every day among those who are responsible for national legislation. Thus it is not strange that, after new legislation, there are new demands – even among transsexuals, who want the right to "marry" as well.

The most recent legislative proposals arising principally in Denmark, Norway, Sweden, Holland, Spain, and Canada, are conspicuous examples of this. The landmarks described above are along the legal "path" that some European legislators seem to have chosen.

Today it is possible to find the cause

or inspiration for these recent legislative proposals. Remember that the European Parliament, in the resolution *Equal Rights for Homosexuals and Lesbians in the European Community*, passed on February 8, 1994, over ten years ago, made the following recommendations to its member States (n. 14): a) "Eliminate the prohibition to contract marriage or to accede to legally equivalent regimes for lesbian and homosexual couples;" and b) "end all restrictions on the right of lesbians and homosexuals to become parents, to adopt or to raise children".

Yet, despite these recommendations, there has not been specific legislation on this matter, particularly in Germany, Italy, England and France. For the moment, it is only in the countries mentioned earlier that the rights under Family Law are applied, with certain differences, but never fully. For now, the right to adopt children is not granted.

In any case, it is one thing for legislators to pass this type of legislation, and another thing for judges to uphold it. It is not surprising that judges are presently divided on this matter. Judges cannot agree about the role of human sexuality in marriage and family matters.

Faced with the stubbornness and inevitable consequences of this type of legislation, the consciences of citizens must be well informed—and sufficiently formed—so that every person knows how to understand these relevant questions. For this, the best way to begin is by recalling what Christian marriage is.

## WHAT IS MARRIAGE?

Marriage is understood according to the *Code of Canon Law (CIC)* as "the matrimonial covenant by which a man and a woman establish between themselves a partnership of the whole of life and which is ordered by its nature to the good of the spouses and the procreation and education of offspring" (CIC 1055, 1). It states that "the consent of the parties, legitimately manifested between persons qualified by law, makes marriage; no human power is able to supply this consent" (CIC 1057, 1); "matrimonial consent is an act of the will by which a man and a woman mutually give and accept each other through an irrevocable covenant in order to establish marriage" (CIC 1057, 2); "from a valid marriage there arises between the spouses a bond which by its nature is perpetual and exclusive. Moreover, a special sacrament strengthens and, as it were, consecrates the spouses in a Christian marriage for the duties and dignity of their state" (CIC 1134).

From the perspective of Canon Law, the term "marriage" designates both the *act* by which a man and a woman mutually give and accept each other permanently and exclusively, with the right to each other's bodies regarding the acts ordered to procreation; and the *permanent society* that arises between them as a consequence of the earlier commitment.

The contractual nature of a Christian marriage is rooted in the free and mutual consent that "persons who are legally capable" (a man and woman) give each other through the pertinent declaration of their respective wills.

The expression of consent in the Christian marriage also follows the Roman rule by which *nuptias non concubitus sed consensus facit*. According to a new understanding of marriage, it is not the fact of sexual intercourse (*concubitus*) but the couples' mutual consent (*consensus*), that is the foundation of the marriage. That consent is not restricted to the demonstration of the common and continued will to take each other as husband and wife, but also includes their freely declared intention to respect the divine law of procreation. And procreation obviously requires sexual intercourse between man and woman. All this means that for marriage to be carried out as it ought to be, its ends must be respected and the union must be between persons of the opposite sex. Otherwise, the contract would be impossible to fulfill because of violating the first of the conditions, that establishes that it is between "legally capable persons" according to law, that is to say between a man and a woman.

This is also why the "fact" of sexual intercourse between persons of the opposite sex (*qua talis*) is not the guarantor of marriage. Another very different thing is the desire to appeal to this "fact" of sexual union in order to establish

the so-called "*de facto* unions". It is of little consequence that a "fact" of this nature is isolated or repeated in time, because it does not support or identify marital consent. It is impossible, as regards the contractual act that is of the same nature as that of marriage, for the contract and society to spontaneously emerge as marital consent based exclusively on sexual intercourse. This is why alleged homosexual "marriages" cannot be considered alternatives to the institution of marriage, nor even as equivalent to it. Simply, one cannot establish any analogy, no matter how remote or improper, between these two.

It is poorly understood or misunderstood that, since 1981, there have been many legislative attempts to equate marriage between man and woman, which is the foundation of a family, with "marriage" between homosexuals. Any analogy between these unions is without any doubt impossible, no matter how much homosexuality may attempt to rely on analogy *analogatum princeps* inspired by marriage to establish an equivalency.

## A PRELIMINARY SEMANTIC QUESTION

The concept of marriage, as defined earlier, has always been clearly understood. Yet this is presently not the case. In reality, the concept of marriage is enshrouded with ambiguity and double meanings that are foreign to it. This

causes confusion. Under these circumstances, it is good to inquire into the semantics of marriage.

Why is the concept of marriage now so confused? How was this "ideological niche" prepared which has facilitated the easy "construction" of confusion?

It is possible that the aim in this is to empty the concept of "marriage" of meaning; that the term marriage will be insufficient in itself to signify something concrete and, therefore, one will be forced to appeal to some adjective.

But, if this happens to a concept, it is because many contradictory elements have been introduced into it such that the sheer force of so many contradictory meanings results in destroying any meaning. This semantic key also can justify the fact of eliminating expressions such as homosexual "marriage" that should never be admitted into or used in colloquial speech.

Today, there appears to be more emphasis on "models of marriages" than on marriage itself. This option is possible only if previously one admitted socially a parallel option with respect to the family. More than the family, today one speaks also of "models of family". That is the reason we find names that usage sanctions as relatively the same or equivalent such as, for example, "reconstructed families", "single-parent families", "*de facto* unions", "love couples", "permanent affective unions", etc.

If it allows this new terminology to be introduced, the family would no

longer continue to be what it has always been, by its very nature. Facing the different "family models" proposed today, it would be good to recover the pristine, original, unequivocal and precise concept of marriage. The concept of marriage always designated very concrete and clear human relations: those established exclusively between a man and woman and identify the special bond that unites them.

Lamentably, the family as a natural institution, the family as it has always existed, has been given a pejorative label when the concept is given the adjective "traditional" ("traditional family"). One knows that what is traditional is not current or in fashion, especially in this post-modern era, which despises and avoids anything suspected of making reference to history. Once the term "traditional family" is sanctioned by usage, it is much easier to reclassify this type of family as obsolete, without any social relevance. Hence this perennial type of union between man and woman is verbally ostracized from social use.

These attempts make it difficult to understand the evident vitality of many families who joyfully live out this union as it has always been traditionally understood. Where does the strength of the family come from, to have the vigor to be able to resist the many blows inflicted against it throughout centuries of history? We might well ponder this question.

Towards the middle of the last century, some authors predicted the "death of the family". But after over a half century, and despite being in crisis today—something which is true—the family continues—also today—to be a rigorously solid institution, healthy and adorned with a winning vitality, despite the many attempts to abolish it.

To any observer, no matter how much or how little he may know about this subject, it must be clear that—whatever the controversies concerning it—the strength of the family is due to its being a spontaneous manifestation that is proper to the person, as eminently natural to the human condition, despite the many objections that can be raised against it.

If this has been the tortuous semantic road of the concept of the family, it is reasonable to expect a similar battle regarding marriage. It could be no other way, since marriage is the foundation of the family. Hence, when confusion is sowed about the meaning of family, confusion cannot be avoided also regarding the meaning of marriage.

The "models" of marriage refer to the "models" of family, as they really are: their natural extension. As these are formulated, so will the others be postulated. We have seen here some of the effects of manipulating and hijacking language. In order to prevent the continued bad effects of this, it is advisable not to use—verbally or in written form—certain terms that without doubt are very

confused and betray the meaning of marriage and the family (terms such as homosexual "marriage"; marriage using quotation marks, "marriage"; the "traditional family", etc.).

Use should also be extended to the verbal forms of these terms, since phonetics – which includes non-written communication – embodies meaning. By colloquial use, the phonetic articulation of the same term is identified with the written term which ends up losing its quotation marks (homosexual "marriage"), and is hardly differentiated from the term without quotation marks (marriage by itself), such that the significance and meaning of both expressions end up being the same.

As a result, designating the unions between homosexuals with this term provides a new meaning to such unions: the meaning that is exclusive to Christian marriage. Afterwards, there will be no or almost no sociological difference between one or the other concept, whether it is a union between a man and a woman, or between persons of the same sex.

## **ANTHROPOLOGICAL DIFFERENCES BETWEEN THE CONJUGAL UNION AND OTHER TYPES OF UNIONS**

We can see some of the characteristics that distinguish conjugal unions from other types of unions, as they unveil and implicitly emerge from their

respective anthropological foundations. In the following we will pay particular attention above all to the characteristics that are proper to the conjugal union of marriage.

The anthropology that is implicit in the conjugal union establishes that this union must be between a man and woman.

The anthropology that is implicit in the conjugal union affirms equal dignity between man and woman, while at the same time respecting the differences that exist between them according to their psychobiological peculiarities and mutual complementarity.

The anthropology that is implicit in the conjugal union assumes a natural attraction between man and woman – ordered towards procreation – around which revolves the free will of both to reciprocally and fully give and accept each other reciprocally in all the being of their persons.

The anthropology that is implicit in the conjugal union establishes that this will of the spouses is made more explicit in the conjugal pact, forming itself into a mutual consent, a bond or stable, irrevocable and definitive commitment.

The commitment is made public, formed into a contract that regulates what ought to be just between the spouses through the new relationship upon which it is founded. The public manifestation of such a commitment underlines the social dimension of marriage. In this way, the marriage bond is made visible to all of society.

Through marriage, the true and free love between a man and woman becomes transformed in its nature. In a certain way, beginning with the conjugal union, love ceases to be "elective" in order to become a love that is "owed" in justice, as was manifested in the mutual giving of at the moment of consent between the man and woman. From that moment, the commitment that emerged between the spouses became not only moral but also legal. Such a commitment is the living manifestation of an efficacious love that protects while it lasts and benefits both spouses, the offspring and even society.

Love that is founded on marriage is not a mere expression of affection, nor is it limited to versatility and the confusion of emotionalism. Love in marriage requires the presence and corporeal and sexual commitment of a man and woman open to the transmission of life. Sexuality in marriage is not a mere accident or even an affective alternative in which spouses may find satisfaction. Sexuality in marriage proceeds from the reciprocal giving of the spouses, and the mutual act of the will by which they freely decided to act not only lovingly but justly towards each other, in a reciprocal way.

Conjugal love that arises in marriage is open to fertility and the generation of children, as something owed in justice.

Consent regarding these promises is permanent and demands unity, exclusivity and fidelity. These characteristics

of the conjugal union have their origin in the very nature of the love between a man and woman. When a man and a woman love each other, they always want to be together (unity); they do not want to share their lives, bodies or intimacy with other persons (exclusivity); and they want to remain together forever (fidelity). As a result, the will to act in justice towards the other arises, and their mutual love is transformed by marriage into a love owed in justice to each other.

A marriage establishes a union in which both wills wish to share all their goals in life, that is, what they have and what they will have, who they are and what they will be.

Marriage thus becomes a social institution. As a matter of fact, there is no other social institution in which such a radical, strong, and definitive commitment is found; so radical that even love is transformed – paradoxically – into something owed, even from the legal perspective. It is logical that it be so, given that the family founded on marriage is the point from which society emerges. It is from this spring that the originating social institution of the human person and of society arises.

Marriage is a natural society between a man and woman. This naturalness has been proven throughout time by: 1) the natural attraction between men and women; 2) the natural origin of children from men and women; 3) the natural demands of complementarity between

men and women; 4) the natural need of children for a father and a mother to strengthen their personal identity; 5) the various natural needs of children in their upbringing, security, protection, affection, and education, provided by the parents.

When a man and a woman freely want what this love encompasses, they also naturally desire to give to each other the right to mutually demand the fulfillment of these promises. If all this is lived with no consideration for human love, it becomes a heavy burden. But if it is lived within the context of human love, it becomes a haven of peace and joy naturally flowing from conjugal and parental communion. Love between a man and a woman transforms the attraction between them into a fusion without a loss of personal identity; their personal lives into a life together, the existence of each one into co-existence; and the union between them into communion ("one flesh").

These are the characteristics that distinguish the conjugal union. We observe in the following what happens in unions between homosexuals.

## **HOMOSEXUAL "MARRIAGE": THE QUESTION OF ITS LEGAL RECOGNITION AND EQUIVALENCE**

To have "marriages" between homosexuals legally recognized implies falling

into many flagrant errors, irrespective of whether or not such recognition has its roots in "political correctness".

To recognize "marriages" between homosexuals indicates a lack of knowledge about marriage and/or about the homosexual conduct of the persons involved. It all depends, to a great degree, on what is meant by "recognition".

To give recognition to something implies to "examine with care a person or a thing; to learn its identity, nature and circumstances; to look at all aspects of the person or thing in order to fully understand it or to rectify a prior judgment made about it" (*Dictionary of the Spanish Language*).

Thus, if a right for homosexuals to join in marriage is recognized, it is because a legislator has not examined with the necessary care the identity, the nature or the circumstances of these persons. Neither has the legislator examined and compared the marital union with the homosexual union that is being made equivalent. To recognize the capacity of homosexuals to unite in marriage presupposes an acceptance of the "new state of things".

What is the "new state of things"? It is very probable that the answer would be that such a "state" has its roots in social phenomenon, that is to say, in some "social facts" that from their existence require a certain legal regulation. The mere fact of the occurrence of this conduct that takes place between persons—in very restricted social scenarios



—would make it convenient for such conduct to be regulated by law. But what would in no case be justified is that this regulation should be so mistaken as to fail to distinguish between unions of a man and a woman, and unions between persons of the same sex.

The *factum* of these unions between persons of the same sex cannot be confused with the empirical facts of unions between persons of the opposite sex (the latter being incomparably more numerous). Whether because of the crass errors made about the proper understanding of the conjugal union, the nature of homosexual behavior, or both, the fact is that this legislation is unreasonable, that is, there is no rational reason for it.

There are many characteristics regarding marriage to which we have alluded earlier, when it is approached from a natural anthropological perspective. None of these characteristics are met or satisfied regarding relations between persons of the same sex, no matter how much an attempt is made to raise it to the same level as conjugal unions. And this is so because of certain conditions that must be met because of the very nature of the human person.

These relations cannot be made equivalent, simply because of the fact of the type of union between homosexuals cannot be considered equal or equivalent to the marital union between man and woman. And this is so, not only because of the difference of their res-

pective sexual characteristics, but also because of the modality of their respective beings from psychobiological and anthropological perspectives.

The inequality and disparity between these relationships make parity impossible. The relationship between a man and woman goes much further in the area of marriage, in comparison with "living together" arrangements between persons of the same sex. To give recognition to "marriages" between homosexuals is essentially a pretension, and patently distorts the human relations between persons of the same sex; that is, it is to make a statement about human relations that is now and forever false.

The legal and social recognition of "marriages" between homosexuals constitutes a fraudulent simulation of what the human being is in their sexed condition, an imposture of what "marriage" is between persons of the opposite sex. It is a personal and social deception that artificially establishes an anthropological fiction: the impossible psychobiological identicalness between men and women and, consequently, of the unions that can be made between homosexuals.

On this point, it can be said that in terms of legal recognition, there is no justice, especially if what is understood by equity is that it is "the natural justice as opposed to the letter of the positive law" (*Dictionary of the Spanish Language*). The lack of equity in the law that regulates "marriages" between homosexuals is

manifested as a corruption of the law. As Saint Thomas Aquinas stated, "every human law has just so much of the nature of law, as it is derived from the law of nature. But if in any point it deflects from the law of nature, it is no longer a law but a perversion of law".<sup>1</sup>

Where there is a grave anthropological error, there are consequences to this type of legislative action that attempts to legally approve and regulate the *factum* of homosexual behavior. The right reason of legislators, the *recta ratio*, cannot even be presumed, since it is obvious, at the most elementary rational level, not to confuse the natures of male and female persons.

What are the consequences of this confusion about the "identity" of the marital union? There are many consequences, several of which can be examined:

- The artificial regulation and almost deliberate *a fortiori* creation of the framework of a social and legal common life incompatible with human nature;

- The social reinforcing of some rare human behaviors which, once institutionalized, would remain reified and established in an almost definitive way;

- The emergence of a form of unnatural interpersonal relationship, which is strengthened and presented to many young people to be imitated as an educational model capable of inspiring new and similar behavioral patterns (the

educative and exemplary consequences of the law);

- The regulation of certain relationships as if these were proper to marriage without being so, since no ties between persons of the same sex are created, nor are they demanded, nor are the "marital" duties, which these legislative regulations cover, defined;

- The inflation of law that loses its meaning to the extent that it lacks rationality. It is certain that life precedes law, or if preferred, law follows life. Yet if life is regulated in an unnatural way through legislation, such a manner of proceeding makes life even harder to live. Can a law that does not serve life be considered law? This is what happens when, through laws, certain conditions contribute to the dissolution and deterioration of an institution, which is natural, such as marriage. No "fact" or social pressure should confuse or distort rationality. Right reason should be the origin and mandate of any legislation.

The right to marriage is trampled upon precisely because equal status is given to what is not analogous to marriage, such as a "marriage" between homosexuals. It is true that the legal recognition of these "facts" – the recognition of something real, the relations between homosexuals in a democratic and pluralistic society – should be regulated by "just" laws, since "human law cannot prohibit all that opposes virtue".<sup>2</sup> But such a law

1 THOMAS AQUINAS, *STh* I-II, q.95, a.

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2 THOMAS AQUINAS, *STh* II-II, q. 97, a. 1 ad 1. b.

would be unjust if in its regulation it created an equality of the homosexual union with the conjugal union.

The family is discriminated against with such an unjust comparison, because marriage, on which it is founded, is not given "what is due to it". Also, because some things that are not similar to nor equivalent in duties, functions and services to society (the marriage between a man and woman and the "marriage" between homosexuals) cannot be the same or equivalent in the legal area which regulate them. This is even more so when a similar status is attributed to two different human relationships. The situation becomes even more serious when, as is well known, marriage as the foundation of the family precedes the State. Marriage does not proceed from the State, it is superior to it.

As a consequence, all of society is damaged by this arbitrary discrimination against the family. In fact, the institution of marriage, which is essentially a stable and monogamous institution between a man and woman, constitutes the first factor in the generation of the social fabric. Each child is a new citizen, who, with his interpersonal relationships, creates a new social web that reaffirms all of society. Each new citizen, with his work, not only sustains an entire society, but also sustains the "coffers" of the State. Without marriage there is no family and without the family there is no generation and education of children. Without children there

is no society. Without society there is no State. To discriminate against the family contributes to increasing demographic imbalances, a fragmentation and dissolution of the delicate social fabric, and a creation of difficulties with the continuity and perpetuation of the State. As a consequence, it is reasonable to expect a rise in the movement of population and the problematic consequences stemming from immigration.

The natural sequence from the person to the State is as follows: person, family (natural society), societies (intermediary or not) and the State. To understand this sequence, if taken from its origin, one must see it in its full dimension which is, of course, *irreversible* and *unidirectional*. (from the person to the State). But if, on the contrary, this sequence is analyzed from its functional point of view, one has to affirm that relations between the different elements that compose it and the manner in which these are put together appear *reversible* and *bidirectional*. In other words, the relationship between these elements, which create an interaction between the person and the State, are *originally unidirectional* and *functionally bidirectional*. As a consequence, the laws of a State substantially affect society, the family, and the person. But it cannot be forgotten that such an effect, sooner or later, ends up detrimentally affecting the State.

The fact of not wanting to discriminate against persons whose homosexual

behavior is manifest, does not authorize any confusion regarding what marriage is, nor discrimination against persons (men and women) who so bind themselves, and even less against the entire family (also the persons of the children) whose foundation they form. Such a manner of proceeding lacks any basis, if one appeals to the absence or insufficiency of legal measures regulating and protecting the family as is the case. In effect, it is obvious that each child, each new citizen, is essentially unique and irreplaceable, without any doubt, with reference to the common good. But it happens that this good that is each person – without whom there is no possible common good – needs many things during the first years of his life. This leads to the necessity to protect him. One way of not protecting the child and the family is by lack of proper legislation – defending the family. Another way is to attempt to give equal value to the natural context that is necessary for the growth of the child, with other alternative and unnatural contexts. This would make it very difficult for the child to strengthen his personal identity and develop well.

It is strange that at the same time when the number of marriages between persons of different sexes is decreasing – from which fact some infer a certain loss of prestige for the institution of marriage, this same institution is demanded for persons of the same sex. This paradox requires reflection: if the responsi-

bilities of marriage are so serious and heavy, if for that reason many persons of both sexes prefer not to marry, where does the demand of homosexual persons that their relationships be recognized and sanctioned as "marriage" come from? Does this mean that homosexuals want to carry the weight of marital responsibilities? Could it be that they want the marital "rights" without any of the marital "duties"?

But in this case, before searching for a legal framework, legislators ought to ask themselves: What is more important for creation of the social fabric: marriages between persons of the opposite sex or "marriages" between persons of the same sex? Which one is the foundation, self-constitutive and "genetic" principle of society? Which of both these societies founded by these respective relationships will transmit values to the next generation better? In which one will citizens receive better formation and develop in a natural way their respective personalities? On the other side, what "obligations" are assumed by persons of the same gender that enter into this type of union? What "obligations" should society assume regarding each one of these types of marriages? Does it not mean that unions between homosexuals are privileged, at the same time that they are exempt from marital duties, which are so essential to society? With such a legal framework, how does each one of these types of marriages contribute to an increase in the common good? What do

each of these unions receive in exchange from society?

Without any doubt, in marriages between persons of the opposite sex, there are many rights and duties (between the spouses, between parents and their children, between these families and the respective families of origin, etc.), which are considered in legislation. What are the duties considered in "marriage" between homosexuals?

Legislative measures such as those mentioned can constitute an authentic threat to the future of society. It is known that the family, naturally constituted, is the best place for the prevention of many psychological traumas, in the behavior and personality of children. But the voracity of these claims by homosexuals has reached the extreme of wanting the right to adopt children. There are many reasons to oppose this request:

1) Among children deprived of their natural parents who are later adopted, there is a greater incidence of psychopathological trauma (changes in behavior, low scholastic achievement, aggressiveness, separation anxiety, psychomotor retardation, hyperactivity, dyslexia, depression, antisocial behavior, suicide, psychosis, etc.) than among children who have their natural parents.

2) The child has the right to acquire and establish, in an adequate manner, that which is relevant and inalienable as is his own sexual identity. This

right is blocked or gravely threatened when the child is exposed to certain behavioral models, such as homosexual conduct. It is precisely homosexuals who have this identity crisis.

3) The child has the right to be protected against further pathology that comes from this exposure, which would cause additional harm to the child by the simple fact of not living with his biological parents and having been separated from them.

4) Boys and girls need their father and mother, in order to identify with a person of their same gender, and to learn respect, affection, and complementariness with the person of the opposite gender. The attachment and bond that is forged from this relationship is indispensable to establish the child's identity.

5) The child has the right to mature his affectivity, observing the bond – affective, cognitive, and personal – that is established in the father-mother relationship. This relationship is the cradle for the child's firm development consolidating the maturation of his affectivity and future personality.

6) In the psychological profile of a homosexual, there is a higher incidence of psychopathological features (egocentrism, self-pity, affective immaturity, a high level of jealousy, infidelity, depression, etc.) that in no way contributes to the harmonious development of the child who is adopted and exposed to this behavioral model.

7) The child that lives only with homosexuals does not learn about gender differences between men and women. On the contrary, the child learns that it is irrelevant to need and complement persons of the opposite sex, as well as the differences that characterize them. This is a false and unnatural learning experience.

8) The child that lives only with adopting homosexuals suffers a loss in socialization skills. The child does not interiorize the genuine family spirit that is rooted in the community established between a man and a woman. The child is left impoverished in self-esteem; there is also relevant deterioration in self-identity, since it was left only partially structured.

9) As a consequence, the adopted child of homosexual parents possesses an identity that has been mistreated, left incomplete, partially deprived, mutilated, incorrect, and hence unsatisfactory.

10) The adoption of a child by homosexuals does not meet the criteria necessary for adoption, since it would incur in an adoption without adoption, an *adoptio sine adoptio*, that is, as a legal fiction.

The end of adoption is the protection of a defenseless child; it is not meant to satisfy an adult who does not have descendants. In addition, there is an old legal maxim that states: *adoptio imitate naturam*, that is, adoption must imitate nature. We are talking about the

nature of the family constituted by a father and a mother as adopting parents, with a stable relationship, in such a manner that it facilitates the growth and development of the adopted person.

In the natural development of the children given in adoption to homosexuals, would it not follow that society must assume, in the future, the difficult and heavy burden of a traumatized child that would be the fruit of such an adoption? In virtue of what principle could exposure to the possible alteration and breakdown in the development and personal identity of the child be allowed? Would not such a premise contribute to the increase of young people who in the future would choose homosexual behavior? If that were the case, then the entire cultural-educational values of the legal system would be in serious jeopardy.

## TO CONCLUDE

A brief comment must be made regarding the meaning of these neologisms, this new terminology ("marriage" between homosexuals).

It can be said that where concepts are increasingly blurred, confusion is near as is the emergence of ideologies.

In effect, concepts such as marriage and family have been systematically blurred in these last decades. There are many reasons for this phenomenon. One reason is technological (especially those deriving from artificial reproduc-

tion); another reason is sociological (the sexual revolution, contraception and sexual permissiveness); and yet another reason is political (what is "politically correct"). Yet, none of these, nor all of them together, have been able to bring about the emergence, beyond the confusion they have created, of an alternative to what is natural: the conjugal union, marriage and the family.

In conclusion, the following suggestions are submitted:

- reject the colloquial use in speaking, in different languages, adjectives or labels that because they seem harmless, are used in conjunction with the concepts of marriage and family;
- demand of the respective legislative powers what is just for marriage and the family;
- resist and oppose what, with respect to marriage and the family, establishes unjust equivalencies or ambiguous recognition and artificial equality with other kinds of unions, relationships and institutions with those they cannot be identified with;
- require from government leaders the modifications that are pertinent in legislation to respect the identity of marriage and the family. But this respect will not be given if, through current respective legislation, the good of the natural society (the family and especially children) is not protected as the origin, foundation and purpose of the common good of the whole of society.





# The Human Person and Integral Procreation

Abelardo Lobato



*The concept of personhood is one of the major contributions of theological reflection to philosophy, law and education. Frequently there is still a tendency to separate the biological aspects from the other aspects that form part of the magnificent reality of human procreation. There is a great impoverishment when procreation is understood as only a biological term. This happens based upon a one-dimensional and reductive anthropology that has lost the concept of the ontological richness of the person. Procreation is not only a biological reality: it is also an educational and ethical reality, a Christian and social event. With the birth of the child procreation continues through the educational mission of the parents: an integral building and fostering of the person. The task of the parents is expressed through the total procreation of the children, the formation of the person made in the image of God. (↗ Children and Labor; Dignity of the Child; Children's Rights; Children's Rights and Sexual Violence; Family and the Rights of Minors; Parenthood; Responsible Parenthood; Personalization)*

Procreation, as an act of paternity and maternity, is not limited to the act of sexual generation, i.e., to the union of man and woman in the sexual act. That is the normal beginning of a long process of continuity between the work of God and that of man. On the one hand, God's work is prolonged in what we call nature. As St. Ambrose says, what is natural, like what is above it, is from the author of nature: *quod ultra naturam est, ab auctore naturae est.*<sup>1</sup> ("what is beyond nature is from the

author of nature") The beginning of the process, starting from the human act of the union of both sexes, male and female, is a work of nature, an admirable work, for the incipient being is already an architect of himself, building not only his own body but also the placenta which envelops him. But once the event happens that we call birth or separation of the fetus from the mother, the tasks confided to man over man begin. From the first one of engendering, follow two other complementary ones which are not accomplished except through loving integration into the family which promotes the development

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<sup>1</sup> ST. AMBROSE, *De virginibus*, I,2,5: PL 16/190.

of the whole human being, body and soul: nourishment and education in a human style and manner which implies a culture. That is the true task confided to parents.

It is easy enough to appreciate the difference in this new field of all living beings. Plants develop their lives from seeds; animals have greater or lesser degrees of dependence on their parents before they can survive by themselves. Human beings appear to be the most dependent on their parents in the beginning, their helplessness is much greater, their infancy the longest. Left to himself, the human infant is incapable of surviving. Aristotle noted the difference and gave the reason for it. The human being, deprived in infancy of the gifts necessary to obtain by himself the necessities of human life, achieves them by means of the parents. Nature gives him something superior to anything in the animal world: his hand and his mind. With these two supports, a solitary human being is open to the infinite and transcends all other animals. It is true enough that he has neither the strength nor the instincts nor the capacities that the other animals have. But in place of those gifts, he exclusively possesses two instruments: hands open to the whole of reality, and a mind open to an intentional order through which he transcends himself and makes himself *quodammodo omnia*.<sup>2</sup> Undoubtedly

Aristotle was referring to the song of Sophocles in *Antigone*, which celebrates the power of man compared to the elements of nature.<sup>3</sup>

The development of human potentialities comes about slowly in family life, where man learns how to be a man and succeeds in being what he can be but is not yet. That is Pindar's invitation: "Become what you are."<sup>4</sup> Man matures in humanity by the side of his progenitors. The necessities of his development come from both: from his mother in a more immediate and fitting way, and from his father in the evolution of his personality. Together with them both, the son educates himself and forges his own way of being human.

Thomas Aquinas describes this task of caring for children in a family as the education and promotion of the humanity of man. The child is confided to the parents until he attains the capacity of behaving as an adult, in the perfect state, which is that of virtue.<sup>5</sup> This process is analogous to the previous one: its basis is nature, but has as its extrinsic helpers the progenitors.

The new being is formed in human life and in the cultural life of man taking advantage of the resources of the family, and in a complementary way, that of the school. The family and the school are

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3 SOPHOCLES, *Antigone*, canto IV. "What exists that is more powerful than man."

4 PINDAR, *Pythian Odes*, IV, 6.

5 ST. THOMAS AQUINAS, *In IV Sent.*, d. 26, q. a. 2.

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2 ARISTOTLE, *De anima*, III, 8, 431 b 21.

like a new “spiritual womb” that exercises an analogous function to that of the physical womb of the mother. Thus Thomas says that man is formed *in quodam spiritali utero*.<sup>6</sup> This new “spiritual” womb is like a store in which the new human being lives and is formed by the persons making up the family or school. The mother exercises five tasks with her child analogous to those exercised by our “mother the Church” towards her members: she conceives them, she carries them towards birth, she takes them in her hands and arms, she gives them her milk and raises them to the table of the father.<sup>7</sup> His is the task of forging personality with example, authority and words that appropriately fit their different situations. All this is completed in the school where the masters lend their cultural help insofar as that exceeds what the family can give.

In this task of forging the humanity of the child, one must above all take into account the center of unity. Life develops from the inside towards the outside. The unity which congregates all the elements of the individual human being is the person. The concrete being is a human person and must be treated as such from the beginning. He or she is not a thing, an object, or a possession, but a personal being in need of a horizon of totality, of welcome and of

appreciation. Three notes distinguish a person: to be a unique and unrepeatable whole, to have a spiritual nature, and to subsist in an independent way. All that is to be found in the two moments of a living pilgrim being who at the same time already is and is becoming. This respect for personal dignity is decisive, as is the gradual formation until he himself or she herself becomes capable of exercising the qualities of a free and intelligent person.

The forging of a person in its first steps should be proportionate to the capacity of that person. The parents are responsible for the forging and should not delegate their fundamental responsibility. It is they who should guide the schoolmasters, who co-operate with the parents in cultural matters, but only in a secondary way. To be a father and to be a mother implies that gift of their being in the transmission of life and fostering of persons. The rule of their conduct is that announced by John the Baptist, “He must increase and I must decrease.” (Jn 3, 30)

The human being as person implies a being held and respected as such, and requires an environment created for the development of interpersonal relations, among which the pre-eminent one, for the incipient life is the gift of self in love - the architect of spousal life and the force through which persons deliver and dedicate themselves through the total gift of themselves to others. The personal subject grows under the diligent

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6 ST. THOMAS AQUINAS, *STh* II-II, q. 10, a. 12; cf. ID., *Quodl.* XI. q. 2, a. 2.

7 ST. THOMAS AQUINAS, *Opusc. Contra retrahentes*, c. 2., n. 5.

gaze of parents capable of admiring the marvel of the child that is theirs - who is not the repetition, but the different image of both.

Procreation is integral when the subject is introduced to life so as to develop in a comprehensive way, *mens sana in corpore sano*, or to develop one's natural capacities through learning the arts and virtues. The family and the school are the fitting places for this initiation into integral humanism.<sup>8</sup>

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<sup>8</sup> JOHN PAUL II, *Familiaris consortio*, 36-37.

# An Ideology of Gender: Dangers and Scope

Oscar Alzamora Revoredo



*Behind the increasingly common use of the expression “gender” instead of the word “sex” lies an ideology which tries to eliminate the idea that human beings are divided into two sexes. This ideology aims to affirm that the differences between men and women, beyond the obvious anatomical ones, do not correspond to a fixed nature, but are products of the culture of a certain country or epoch. According to this ideology, the differences between the sexes are regarded as something conventionally attributed by society and everyone may “invent” him/herself. The distinction between what is allowed and what is prohibited in this field disappears. “Gender feminism”, or radical feminism, which produced this ideology, arose at the end of the sixties from the previous feminist movement in favor of the equality of the sexes. It is based on an analysis of history as a class struggle between oppressors and the oppressed, viewing monogamous marriage as the first antagonism between men and women. The “gender feminists” call urgently for “deconstructing” the “socially constructed roles” of men and women, because this socialization, in their opinion, affects the woman in a negative and unjust way. That is why the “gender feminists” insist on the necessity of “deconstructing” the family, not only because it makes the woman a slave according to them, but because it socially conditions the children into accepting the family, marriage and motherhood as natural. Along the same lines, the “gender feminists” consider that an essential part of their program is the promotion of “free choice” in matters related to reproduction and life style. “Free choice in reproduction” is, for them, the key expression to refer to procured abortion, while “lifestyle” aims to promote homosexuality, lesbianism and all the other forms of sexuality outside marriage. The ideology of gender is a closed system, with which there is no way of reasoning. There are many persons unaware of the dangers of this new proposal. Taking into account the central position that this perspective succeeded in taking in the North-American culture, it is a challenge that must be vigorously faced in order to avoid the dire consequences that it is already producing in the societies of developed countries and that it aims to produce in the developing ones, by means of the so-called “reproductive health”. (↗ Sexual and Reproductive Rights; Discrimination Against Women and CEDAW; Gender; Motherhood and Feminism; New Definitions of Gender; Patriarchy and Matriarchy; Free Choice; Equal Rights for Men and Women).*

## IDEOLOGY OF GENDER: DANGERS AND SCOPE

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"Gender is a cultural construct; consequently, it is neither the causal result of sex nor as apparently fixed as sex... When the constructed status of gender is theorized as radically independent of sex, gender itself becomes a free-floating artifice, with the consequence that man and masculine might just as easily signify a female body as a male one, and woman and feminine a male body as easily as a female one".<sup>1</sup>

These words that might seem taken from a science fiction story predicting a serious loss of common sense in human beings are nothing but an extract from the book *Gender Trouble: Feminism and the Subversion of Identity* of the radical feminist Judith Butler, which has been included in the curriculum of various prestigious North American universities for many years, and in which the gender perspective has been heavily promoted.

While many could consider the term "gender" as simply a polite form of saying "sex" to avoid the secondary meaning "sex" carries in English and have "gender" refer to feminine and masculine human beings, there are others who have, for many years, decided to spread a whole "new perspective" of the term. This perspective,

surprisingly enough to many, refers to the term gender as "socially constructed roles".

The United Nations Fourth World Conference on Women, organized in 1995 in Beijing, was the chosen setting for the promoters of the new perspective to launch a strong campaign of persuasion and diffusion. This is why, since the summit, the "gender perspective" has come to penetrate different circles not only of industrialized countries but also of developing ones.

## DEFINITION OF THE TERM "GENDER"

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At the summit in Beijing, many of the participating delegates who did not know this "new perspective" on the term in question, asked the principle persons proposing it for a clear definition which would shed light on the debate. Thus, the heads of the UN conference issued the following definition: "Gender refers to the relations between men and women based on the socially defined roles assigned to one sex or the other".

This definition created confusion among the delegates at the summit, mainly among those coming from Catholic countries and the Holy See, who asked for a better explanation of the term, as it might hide an unacceptable agenda that would include the tolerance of homosexual orientations and identities, among other things. It was then that Bella Abzug, former congresswoman of the United States, intervened

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1 J. BUTLER, *Gender Trouble: Feminism and the Subversion of Identity*, Routledge, New York 1990, 6.

to complete the new interpretation of the term “gender”: “The meaning of the term “gender” has evolved, and has differentiated itself from the term “sex” in order to express the reality of the fact that the situation of the roles of women and men are social constructs subject to change.”

It thus became clear that the supporters of the gender perspective were advancing something more reckless, like, for example, “a natural man or woman does not exist, that a sum of characteristics or conduct exclusive to one sex does not exist, not even in psychological life”.<sup>2</sup> Thus, “the absence of a feminine or masculine essence allows us to reject the supposed ‘superiority’ of either sex, and to question the possibility of the existence of a ‘natural’ form of human sexuality.”<sup>3</sup>

Faced with this situation, many delegates questioned the term and its inclusion in the document. Nevertheless, the former congresswoman Abzug defended it firmly: “the concept of “gender” is embedded in contemporary social, political and legal discourse. It has been integrated into the conceptual planning, the language, the documents and programs of the systems of the United Nations... the current attempt by several Member States to expunge

the word “gender” from the Platform for Action and to replace it with the word “sex” is an insulting and demeaning attempt to reverse the gains made by women, to intimidate us and to block further progress”.

Bella Abzug’s passionate effort to include the term in Beijing got the attention of many delegates. However, the fear and confusion intensified later when one of the participants distributed some texts used by the gender feminists, professors in various renowned colleges and universities in the United States. In agreement with the delegate’s series of readings, the “gender feminists” defend and spread the following definitions:

- *Hegemony or hegemonic*: Ideas or concepts universally accepted as natural, but which are in reality social constructs.

- *Deconstruction*: The task of denouncing the hegemonic ideas and language (that is, those universally accepted as natural), in view of persuading the people to believe that their perceptions of reality are social constructs.

- *Patriarchy, patriarchal*: The institutionalization of the masculine control over women, children and society, perpetuating the subordinate position of women.

- *Polimorphous perversity, sexually polimorphous*: Men and women do not feel any attraction to persons of the opposite sex naturally, but due to societal conditioning. Therefore, sexual desire may be directed to anyone.

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2 Cf. the work of C. DELGADO, *Reporte sobre la Conferencia Regional de Mar de Plata*, Argentina, in which he records various quotations of the “gender feminists”.

3 DELGADO, *Reporte sobre la Conferencia*.

- *Mandatory heterosexuality*: People are forced to think that the world is divided into two sexes sexually attracted to one another.

- *Sexual preference or orientation*: Different forms of sexuality exist—including homosexual, lesbian, bisexual, transsexual and transvestite—that are equivalent to heterosexuality.

- *Homophobia*: Fear of relations with persons of the same sex; people with prejudices against homosexuals. (The term is based on the notion that the prejudice against homosexuals has its roots in the exaltation of heterosexual tendencies.)

These definitions were taken from the compulsory material of the course “Re-imagining Gender” given in a prestigious North American *college*. Likewise, the following affirmations belong to the same obligatory bibliography: “Feminist theory cannot afford the luxury to simply voice a tolerance of ‘lesbianism’ as an ‘alternative lifestyle’ or to make occasional allusions to lesbians. A feminist critique of the obligatory heterosexual orientation of women has been delayed for too long.”<sup>4</sup> “An appropriate and viable strategy for the right to abortion is to inform every woman that heterosexual penetration is a rape, regardless of her contrary subjective experience.”<sup>5</sup>

The quoted affirmations may appear sufficiently revelatory of the dangerous agenda of the promoters of this “perspective”. Nevertheless, there are still other postulates that the “gender feminists” advance with greater force every time: “every child is assigned to one category or another on account of the shape and size of its genitals. Once this is done, we turn into what our culture thinks we are, man or woman. Although many believe that the men and women are a natural expression of a genetic plan, gender is a product of human culture and thought, a social construction which creates the ‘true nature’ of all individuals.”<sup>6</sup>

Thus for the gender feminists, this “implies class, and class implies inequality. Struggling to deconstruct gender will bring us to our goal faster.”<sup>7</sup>

## GENDER FEMINISM

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But of what does gender feminism consist, and what is the difference between it and what has been commonly known as feminism? In order to fully comprehend the discussion around the term “gender”, it is worthwhile to answer this question.

The term “gender feminism” was first coined by Christina Hoff Sommers in her book *Who Stole Feminism?*, aiming to distinguish the earlier equity feminism from the radical ideology that

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4 A. RICH. “Compulsory Heterosexuality and Lesbian Existence”, in *Blood, Bread and Poetry*, 27.

5 RICH. “Compulsory Heterosexuality”, 70.

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6 I. GILBER - P. WEBSTER. “The Dangers of Femininity”, in *Gender Differences: Sociology Of Biology?*, 41.

7 *Gender Outlaw*, 115.



arose at the end of the sixties.

Here are the words of Hoff Sommers: "Equity feminism is simply the belief in the legal and moral equality of the sexes. An equity feminist wants for women what she wants for all: fair treatment, lack of discrimination. On the contrary, gender feminism is an ideology that pretends to include everything, according to which, the North American woman is caught in an oppressive patriarchal system. The equity feminist considers that things have improved considerably for women; the gender feminist often thinks they have worsened. They see signs of patriarchy everywhere and think the situation might get worse. But this lacks a basis in the reality of North American society. Things have never been better for women, who today comprise 55% of college students while the wage gap continues to close."<sup>8</sup>

Apparently, this "gender feminism" had a strong presence at the Beijing conference. This is what Dale O'Leary, author of numerous essays about women and a participant in the Beijing conference, maintains. She affirms that, during the working days, those women who identified themselves as feminists lobbied persistently for the inclusion of the "gender perspective" in the text, for the definition of "gender" as "socially constructed roles" and for the use of "gender" as a substitute for woman or masculine and feminine.

So, all those persons familiar with the objectives of "gender feminism" immediately recognized the connection between the ideology mentioned and the draft of the *Platform for Action* of February 27th, which included proposals and particularly ambiguous terms that appeared innocent.

## **NEOMARXISM**

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In the words of Dale O'Leary, the theory of "gender feminism" is based on a neo-marxist interpretation of history. It starts with Marx's assertion that all history is class struggle, the oppressor against the oppressed, and a battle which will end only when the latter acknowledge their situation, start a revolution and impose a dictatorship of the oppressed. Society will be totally reconstructed and a new one will emerge, classless, free of conflicts, ensuring a utopian peace and prosperity for everybody.

O'Leary adds that Friedrich Engels was the one who established the basis for the union of feminism and Marxism. She cites the book *The Origin of the Family, Property and the State*, written by the German thinker in 1884, in which he points out: "The first-class antagonism in history coincides with the development of the antagonism between men and women in monogamous marriage, and the first-class oppression with that of the female sex by the male."<sup>9</sup>

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8 Interview of C. HOFF SOMMERS, in *Faith and Freedom* (1994), 2.

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9 F. ENGELS, *The Origin of the Family, Property and the State* International Publishers,

According to O'Leary, the classical Marxists believed that the class system would disappear once private property was eliminated, divorce was facilitated, illegitimacy was accepted, woman's entry into the labor market was made compulsory, children were placed in day-care institutions and religion was eliminated. However, for the "gender feminists", Marxism erred by concentrating on economic solutions without directly attacking the family, which was the real cause of classes.

In this sense, feminist Shulamith Firestone affirms the necessity of destroying class differences, but even more, the differences between the sexes: "To assure the elimination of sexual classes requires the revolt of the underclass (women) and the seizure of control of reproduction: the restoration to women of ownership of their own bodies, as well as feminine control of human fertility, including both the new technology and all the social institutions of childbearing and childrearing. And just as the end goal of socialist revolution was not only the elimination of the economic class privilege but of the economic class distinction itself, so the end goal of the feminist revolution must be, unlike that of the first feminist movement, not just the elimination of male privilege, but of the sex distinction itself; genital differences between human beings would no longer matter culturally."<sup>10</sup>

## **WHEN NATURE INTERFERES**

It is clear then, that for this new "gender perspective", the reality of an inconvenient nature is disturbing, so it has to disappear. In this respect, Shulamith Firestone herself said: "the 'natural' is not necessarily a 'human' value. Humanity has begun to outgrow nature; we can no longer justify the maintenance of a discriminatory sex class system on the grounds of its origins in Nature. Indeed, for pragmatic reasons alone it is beginning to look as if we must get rid of it."<sup>11</sup>

For the passionate defenders of the "new perspective", no distinctions should be made, because any difference is suspect, bad, offensive. Furthermore, they say that every difference between men and women is a social construct, and therefore must be changed. They try to establish a total equality between men and women, without taking into account the natural differences between both, especially the sexual ones; even more, they relativize the notion of sex to such an extent that, according to them, the two sexes do not exist, but rather many "sexual orientations".

In this way, the mentioned promoters of "gender" have seen no other option than to declare war on nature and the options of women. According to O'Leary, the "gender feminists" often denigrate respect for women with the

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New York 1972, 65-66.

10 S. FIRESTONE, *The Dialectic of Sex*,

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Bantam Books, New York 1970, 12.

11 FIRESTONE, *The Dialectic of Sex*, 10.

same vehemence with which they attack lack of respect, because, for them, the “enemy” is difference.

However, it is evident that not all difference is bad, much less unreal. Both men and women—created in the image and likeness of God—have their own natural particularities, that must be put at the service of the other, in order to reach a mutual enrichment. This does not mean that the personal resources of femininity are less than the masculine resources; it simply means they are different.

In this sense, if we accept the fact that men and women are different, a statistical difference between men and women taking part in a particular activity could be, more than an example of discrimination, the simple reflection of these natural differences between men and women.

Nevertheless, when faced with the evidence that these differences are natural, the supporters of the “new perspective” have not questioned their proposals, but rather attack the concept of nature.

Moreover, they consider that the differences of “gender”, that according to them exist because of social construction, force women to become dependent on men and, because of this, freedom for women consists, not in acting without undue restrictions, but in liberating themselves from “socially constructed gender roles.” In this sense, Ann Ferguson and Nancy Folbre affirm: “Feminists must find ways to support women’s identifying their interests with women, before her personal duties to men in the

context of the family. This requires the establishment of revolutionary feminist culture, self-defined by women, that can support women ideologically and materially “outside of patriarchy”. The networks of anti-hegemonic, material and cultural support can supply substitutes to women who are identified with patriarchal sexual-affective production, that offer women greater control over their bodies, work time and self-images.”<sup>12</sup>

With this aim, Ferguson and Folbre identify four key areas of “attack”:

1) to demand official economic support for child care and reproductive rights;

2) to demand sexual freedom, including the right to sexual preferences (homosexual/lesbian rights);

3) feminist control over ideological and cultural production (this is important because cultural production affects in the end the sense of self, the social networks and the production of educational and affective networks, friendship and social relationships);

4) to establish mutual support: systems of economic help for women, from networks of identification with women only, to committees of women in unions that fight for female interests in paid work.<sup>13</sup>

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12 A. FERGUSON - N. FOLBRE, “The Unhappy Marriage of Patriarchy and Capitalism” in *Women and Revolution*, South End Press, Boston 1981, 80.

13 FERGUSON- FOLBRE, “The Unhappy Marriage”.

## A GOOD EXCUSE: WOMEN

After examining the strange “feminist agenda”, Dale O’Leary points out that the purpose of each point is not to improve the situation of women, but to separate women from men and to destroy the identification of their interests with those of their families. Thus, adds the expert, the primordial interest of the radical feminists has never been to directly improve the situation of women or increase their freedom. On the contrary, for the active radical feminists, improvements might impede the class revolution of sex/gender.

This assertion is confirmed by the feminist Heidi Hartmann, who radically affirms: “the women’s question has never been the ‘feminist question’.

This is directed towards the causes of inequality between men and women, the male domination of women”.<sup>14</sup>

It wasn’t in vain that, during the Beijing conference, the Canadian delegate Valerie Raymond manifested her determination that the women’s summit should be treated “not as a conference on women” but that “the themes should be seen through a gender lens.”

Thus, says O’Leary, the “new perspective” has as its objective to promote the homosexual/lesbian/bisexual/transsexual agenda, and not the interests of common, normal women.

## SOCIALLY CONSTRUCTED ROLES

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In order to discuss this point let us take the definition of “gender” from a brochure that circulated at the Prep-Com meeting (Preparatory Committee for Beijing) by the supporters of the perspective in question. “Gender refers to the roles and responsibilities of women and men that are socially determined. Gender is related to the way in which we are perceived and the way we are expected to think and act as women and men, according to the way society is organized and not by our biological differences”.

It should be pointed that the term “role” distorts the discussion. According to O’Leary’s study, role is primarily defined as part of a theatrical production, in which a person, specially dressed and made up, plays a part dictated by a written script. The use of the term “role” or the expression “roles performed” immediately transmits the sense that something artificial is imposed on a person.

When “role” is substituted with another term, such as vocation, it becomes clear that the term “role” affects our perception of identity. A “vocation” involves something authentic, not artificial, a calling to be what we are. We follow our vocation to fulfill our nature or develop our talents and innate capacities. In this sense, for example, O’Leary’s study highlights the feminine vocation to motherhood, as mother-

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14 H. HARMANN, “The Unhappy Marriage Of Marxism And Feminism,” in *Women And Revolution*, 5.

hood is not a "role".

When a mother conceives a child, she establishes a life-long relationship with another human being. This relationship defines a woman, gives her certain responsibilities, and affects almost every aspect of her life. She is not playing the role of mother; she *is* a mother. Culture and tradition certainly influence the way in which women fulfill the responsibilities of motherhood, but they do not create mothers, declares O'Leary.

Yet the promoters of the "gender perspective" insist that every relationship or activity of human beings is the result of a "social construction" that grants men a superior position in society and women an inferior one. According to this perspective, the progress of women requires that all of society be free of this "social construction", so that men and women will be equal.

The "gender feminists" point out the necessity of "deconstructing these socially constructed roles", which can be divided into three main categories in their opinion:

*Masculinity and femininity.* They consider adult men and women to be social constructions; that, in reality, the human being is born sexually neutral and is later socialized as a man or woman. This socialization, they say, affects the woman in a negative and unjust way. Because of this, the feminists suggest that education and all means of communication be purged of all stereo-

types and specific images of gender so that children may grow up without being exposed to "sex-specific" work.

*Family relationships: father, mother, husband, wife.* The feminists not only propose to substitute these "gender specific" terms for "gender neutral" ones, but also aspire to no differences in conduct and responsibility between men and women in the family. According to Dale O'Leary, this is the category of "socially constructed roles" to which feminists attribute the most importance, for they consider that the experience of "sex-specific" relations in the family is the main cause of the system of "sex/gender" classes.

*Occupations or professions.* The third type of "socially constructed role" includes the occupations that a society assigns to each sex.

Although the three categories of "social construction" could be sufficient, the "gender feminists" repertoire includes one more: human reproduction, which, according to what they say, is also socially determined. Heidi Hartmann affirms: "the way in which the human species propagates itself is socially determined. If biologically people are sexually polymorphous and society was organized in such a way as to permit equally all forms of sexual expression, reproduction would be the result of only some sexual encounters: heterosexual ones. The strict division of labor by sex, an invention common to all known societies, creates two very

separate genders and the necessity that the man and the woman unite for economic reasons. This contributes to orienting their sexual requirements towards heterosexual realization and towards ensuring biological reproduction. In more imaginative societies biological reproduction could be ensured with the help of other techniques.”<sup>15</sup>

### **THE OBJECTIVE: THE DECONSTRUCTION OF SOCIETY**

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It is clear, then, that the goal of the promoters of the “gender perspective”, strongly present in Beijing, is to reach a society without sexual classes. To achieve this, they propose the deconstruction of language, family relations, reproduction, sexuality, education, religion, and culture, among other things. In this respect, the working material of the course *Re-imagining Gender* says the following: “gender implies class, and class presupposes inequality. To struggle to deconstruct gender will bring us faster to our goal. Now there is a patriarchal culture, and gender seems to be basic to patriarchy. After all, men would not enjoy male privilege if they weren’t men. And women would not be oppressed if such a thing as “woman” didn’t exist. To end gender is to end patriarchy and also with the many injustices perpetuated in the name of the inequality between genders.”<sup>16</sup>

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15 HARTMANN, “The Unhappy Marriage”, 16.

16 *Gender Outlaw*, 115.

In this sense, Susan Moller Okin writes an article in which she foretells what would be the “dream future without gender” for her: “there will be no presumptions about masculine or feminine roles; giving birth would be conceptually so distant from child rearing, that it would be astonishing if men and women were not equally responsible in the domestic areas, or that children would spend more time with one parent than the other. It would be a future in which men and women participate in approximately equal numbers in all the spheres of life, from child care to political roles of the highest level, including the most varied kinds of paid work. If we want to keep the most minimal loyalty to our democratic ideals it is essential to distance ourselves from gender... It seems undeniable that the dissolution of gender roles will contribute to the promotion of justice in our society, by turning the family into a place more apt for the children to develop a sense of justice.”<sup>17</sup>

For this they also propose the “deconstruction of education”, as it appears in the speech that the president of Iceland, Vigdis Finnbogadottir, delivered at a preparatory conference for the Beijing conference organized by the Council of Europe in February 1995.

For her, as for all the defenders of the “gender perspective”, it is urgent not only

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17 S. MOLLER OKIN, “Change the Family, Change the World,” in *Utne Reader* (March-April), 75.

to deconstruct the family, but education as well. Girls must be oriented towards nontraditional areas and should not be presented images of women as wives and mothers, nor should they be involved in traditional female activities. "Education is an important strategy to change the prejudices about the roles of men and women in society. The gender perspective must be integrated into the programs. The stereotypes in school books must be eliminated and the teachers should make sure that the girls and boys make informed professional choices, not ones based on traditional prejudices about gender."<sup>18</sup>

### **FIRST TARGET, THE FAMILY**

"The end of the biological family will also eliminate the need for sexual repression. Male homosexuality, lesbianism and extra-marital sexual relations will not longer be perceived as alternative options, out of the reach of state regulations... Instead of this, even the categories of homosexuality and heterosexuality will be abandoned: the same "institution of sexual relations", in which men and women played a well defined role, will disappear. Humanity will finally be able to revert to its naturally perverse polymorphous sexuality".<sup>19</sup>

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18 COUNCIL OF EUROPE, *Equality and Democracy: Utopia or Challenge?*, Palais de l'Europe, Strasbourg, 9th-11th February 1995, 38.

19 A. JAGGER, "Political Philosophies of Women's Liberation", in *Feminism and Philosophy*, Littlefield, Adams & Co., Totowa (New Jersey) 1977, 13.

These words of Alison Jagger, author of various books of texts used in the curricula of women's studies in North American universities, clearly reveals the hostility of the "gender feminists" towards the family.

"The radical feminist equality means not just basic equality before the law and not even equal satisfaction of basic needs, but that women – the same as men – do not have to give birth... The destruction of the biological family that Freud never visualized, will permit the new men and women to emerge, different from those who had previously existed".<sup>20</sup>

It seems that the main reason for the feminists' rejection of the family is that, for them, this basic institution of society "creates and supports a system of class sex/gender". This is what Christine Riddiough, who writes for the magazine published for the international anti-life institution "Catholics for a Free Choice", declares: "the family gives us the first lessons of the ideology of the dominant class, and it also imparts legitimacy to other institutions of civil society. Our families are the ones teaching us religion first, how to be good citizens... The hegemony of the dominant class and family are so complete that we are taught that this incarnates the natural order of things. It is particularly based on a relationship between men and women that represses sexuality, especially women's sexuality."<sup>21</sup>

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20 JAGGER, "Political Philosophies", 14.

21 C. RIDDIOUGH, "Socialism, Feminism

For those having a Marxist vision of class differences as the cause of problems, O'Leary points out, "different" always means "unequal" and "unequal" is always "oppressive".

In this sense, the "gender feminists" consider that, when a woman takes care of her children at home and the husband works outside the home, the responsibilities are different, thus unequal. They then see this "inequality" in the home as a cause of "inequality" in public life, as the woman, whose primary interest is the home, does not always have the time and the energy to dedicate herself to public life. Therefore they affirm: "We think that no woman should have this option. No woman should be allowed to stay at home and take care of her children. Society must be totally different. Women should not have this option, because, if this option exists, too many women will choose it."<sup>22</sup>

Furthermore, the "gender feminists" insist on the deconstruction of the family not just because it enslaves women, but because it socially conditions the children to accept the family, marriage and motherhood as something natural. In this respect, Nancy Chodorow affirms: "If our goal is to overcome this sexual division of labor in which women mother, we need to understand the mechanisms

which reproduce it. My account points to where intervention should take place. Any strategy for change whose goal includes liberation from the constraints of an unequal social organization of gender must take account of the need for a fundamental reorganization of parenting, so that primary parenting is shared equally between men and women."<sup>23</sup>

It remains clear that, to the "gender" supporters, the responsibilities of women in the family are supposedly inimical to her self-realization. The private context is considered secondary and less important; family and housework are a "burden" that negatively affects the "professional aims" of women.

This open attack on the family, nonetheless, contrasts notably with the Universal Declaration of Human Rights issued by the UN in 1948. In its article 16, the United Nations emphatically defends family and marriage:

1) Men and women of full age, without any limitation due to race, nationality or religion, have the right to marry and to found a family. They are entitled to equal rights as to marriage, during marriage and at its dissolution.

2) Marriage shall be entered into only with the free and full consent of the intending spouses.

3) The family is the natural and fundamental group unit of society and is entitled to protection by society and the State.

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and Gay/Lesbian Liberation," in *Women and Revolution*, 80.

22 C. HOFF SOMMERS. *Who Stole Feminism?*, Simon & Shuster, New York 1994, 257.

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23 N. CHODOROW, *The Reproduction of Mothering*, University of California Press, Berkeley 1978, 215.



However, the artifices of the new “gender perspective” present in the women’s summit placed all these premises aside and, on the contrary, pointed out even then the necessity to “deconstruct” the family, marriage, motherhood and femininity itself in order for the world to be free.

On the other hand, the representatives of the principle nations engaged in the defense of life and family values who participated in Beijing, raised their voices against these types of proposals, above all, on discovering that the document of the summit arbitrarily eliminated from the vocabulary of the program the words “wife”, “husband”, “mother”, “father”. Before that, Barbara Ledeen, Director of the Independent Women Forum, an organization to protect women widely known in the United States, pointed out: “The document is inspired by ultra radical feminist theories, of an old conflicting nature and represents a direct attack of the values of family, marriage, and femininity.”

Pope John Paul II, for his part, before the Beijing conference, had already insisted on pointing out the close connection between women and the family. During a meeting before the summit with Gertrude Mongella, Secretary General of the Women’s Conference, he said: “There is no answer to the themes about women that can ignore her function in the family [...] In order to respect this natural order, it is necessary to confront this mistaken concept that the

function of motherhood is oppressive for women.”

Sadly, the proposal of the Council of Europe for the Platform for Action in Beijing was completely outside the orientations of the Holy Father. “It is high time to make it clear that gender stereotypes are outdated: men are no longer only macho bread-winners and women not only wives and mothers. The negative psychological influence of showing stereotypes of women should not be underestimated”.<sup>24</sup>

Faced with this position, O’Leary writes in her report that, if it is true that women should not be shown only as wives and mothers, many *are indeed* wives and mothers, and therefore there is nothing wrong with a positive image of women dedicating themselves solely to housework. Yet, the goal of the gender perspective is not to authentically represent the lives of women, but an opposite form of stereotyping, according to which, the women who are “only” wives and mothers never appear in a favorable light.

## **HEALTH AND SEXUAL/ REPRODUCTIVE RIGHTS**

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Along the same lines, the gender feminists include, as an essential part of their agenda, the promotion of “free choice” in matters related to reproduction and lifestyle. According to O’Leary,

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24 COUNCIL OF EUROPE, *Equality and Democracy*, 26.

“free choice in reproduction” is the key expression to refer to abortion; meanwhile “lifestyle” points to the promotion of homosexuality, lesbianism and other forms of sexuality outside marriage. Thus, for instance, the representatives of the Council of Europe in Beijing launched the following proposal: “The voices of young women should be heard since sexual life is not solely attached to married life. This leads to the point of the right to be different, whether in terms of lifestyle—the choice to live in a family or to live alone, with or without children—or sexual preferences. The reproductive rights of lesbian women should be recognized.”<sup>25</sup>

These “rights” of the lesbians also included the “right” of lesbian parents to conceive children by means of artificial insemination, and to have their companions legally adopt their children.

But the “gender” defenders not only propose these kinds of aberrations, they also defend the “right to health”, which in truth, is completely distinct from the real health of the human being. In effect, totally ignoring the right to life of every human being, they propose the right to health, which includes the right to sexual and reproductive health. Paradoxically, this “reproductive health” includes abortion and the death of unborn human beings.

It is not in by chance that the “gender feminists” are strong allies of the

environmentalists and demographers. According to O’Leary, even if the three ideologies do not concur in all aspects, they have the promotion of abortion in common. On the one hand, the environmentalists and the demographers consider the strict control of fertility essential for the success of their agenda, and are willing to use the “gender perspective”. The following quote from the Division for the Advancement of Women advanced in a meeting organized together with the UN Population Fund, reveals the way of thinking of those primarily interested in there being less awareness of “gender”: “in order to be effective in the long term, family planning programs must seek not only to reduce fertility within the current gender roles, but to change the gender roles in order to reduce fertility.”<sup>26</sup>

So, the “new rights” proposed by the “gender feminists” cannot be reduced simply to rights of “reproductive health”, which, as mentioned before, promote abortion of an unborn human being, but also require the “right” to determine one’s own sexual identity. In a flyer that circulated during the Beijing conference, the NGO International Gay And Lesbian Human Rights Commission demanded this right in the following terms: “We, the undersigned, call all Member States to recognize the right to determine one’s own sexual identity; the

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25 COUNCIL OF EUROPE, *Equality and Democracy*, 25.

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26 DIVISION FOR THE ADVANCEMENT OF WOMEN, *Gender Perspectives in Family Planning Programs*.

right to control one's own body, particularly in establishing intimate relationships; the right to choose when and with whom to conceive and raise children, as fundamental elements of all the human rights of all women, without any distinction as to sexual orientation."

This is even more worrying when we take into account the fact that, for "gender feminists", there are five sexes. Rebecca J. Cook, professor of Law at the University of Toronto and chief editor of the official report of the UN in Beijing, points out, along the same lines with her companions in arms, that the masculine and feminine genders are a "construction of the social reality" which should be abolished.

Unbelievably, the document by the Canadian feminist affirms that "there are not two sexes, but five" and therefore one shouldn't speak of men and women, but of "heterosexual women, homosexual women, heterosexual men, homosexual men and bisexuals."

The "freedom" of the "gender" defenders, to affirm the existence of five sexes, totally contradicts scientific evidence according to which there are only two options from the genetic viewpoint: either one is a man or a woman, and there is absolutely nothing, scientifically speaking, in between.

## **ATTACKING RELIGION**

Although the "gender feminists" promote the "deconstruction" of the family, education and culture as a pan-

acea for all problems, they put special emphasis on the "deconstruction" of religion, which, according to them, is the main cause of the oppression of women.

Many NGOs accredited to the UN have criticized those whom they called "fundamentalists" (Catholic Christians, Evangelicals and Orthodox, Jews and Muslims, or any person who refuses to change their religion's doctrine so as to match the agenda of the "gender feminists"). A video promoting the NGO Forum at the Beijing conference produced by Judith Lasch observes: "Nothing has done more to restrict women than religious teachings and creeds."

Likewise, the report of the Meeting for Global Strategies for Women contains numerous references to fundamentalism and the necessity to resist their supposed attacks against women's rights. "All forms of fundamentalism, internationally accepted, be they political, religious or cultural, exclude women from the norms of human rights and turn her into a target of extreme violence. It is a concern of the international community to eliminate these practices."

On the other hand, the report of the preparatory meeting of the Beijing conference, organized by the Council of Europe in February 1995, includes many attacks against religion: "The rise of all forms of religious fundamentalism was seen as posing a particular threat to the enjoyment by women of their human rights and to the full participation

of women in decision-making at all levels of society.”<sup>27</sup> “Women must be given the chance to determine what their cultures, religions and customs mean to them.”<sup>28</sup>

It is obvious that, for “gender feminism”, religion is a human invention and the main religions were invented by men to oppress women. Therefore, the radical feminists postulate the re-imagining of God as Sophia: Feminine wisdom. In this sense, the “gender feminist theologians” propose the discovery and adoration not of God, but of a Goddess. For example, Carol Christ, self-proclaimed “gender feminist theologian”, says the following: “A woman who voices the dramatic assertion of Ntosake Shange: ‘I will meet God in myself and I will love him fiercely’, is saying: The feminine power is strong and creative. It is saying that the divine principle, the saving and sustaining power will be in herself and she will not look up to the man or the masculine figure as a savior.”<sup>29</sup>

Equally strange are the words of Elisabeth Schüssler Fiorenza, another “gender feminist theologian”, who denies the possibility of Revelation, as one reads in the following quote: “the Biblical texts are neither a revelation of the verbal inspiration nor doctrinal principles, but historical formulations... Ana-

lagously, feminist theory insists that all the texts are the product of a patriarchal, androcentric culture and history.”<sup>30</sup>

Moreover, Joanne Carlson Brown and Carole B. Bohn, both self-proclaimed theologians of the “gender feminist school”, attack Christianity directly as promoting child abuse: “Christianity is an abusive theology glorifying suffering. Should we be surprised that there is so much abuse in modern society, when the dominant theological image in the culture is the “divine abuse of the son”—God the Father who demands and causes the suffering and death of his own son? If Christianity wants to free the oppressed, it must first free itself from this theology.”<sup>31</sup>

Therefore, the owners of this “new perspective” promote a frontal attack against Christianity and any figure who represents it. In 1994, Rhonde Copelon and Berta Esperanza Hernández wrote a flyer for a series of working sessions of the International Conference on Population and Development in Cairo. The flyer directly attacked the Vatican for opposing their agenda, which included, among other things, “reproductive health rights,” and, consequently, abortion. “This demand for elementary human rights is opposed by all types of religious fundamentalists, by the Vati-

27 COUNCIL OF EUROPE, *Equality and Democracy*, 13.

28 COUNCIL OF EUROPE, *Equality and Democracy*, 16.

29 C. CHRIST, *Womanspirit Rising*, 277.

30 E. SCHÜSSLER FIORENZA, *In Memory of Her*, Crossroad, New York 1987, 15.

31 J. CARLSON BROWN – C. B. BOHN, *Christianity, Patriarchy, and Abuse: A Feminist Critique*, 26.

can as the leader in organizing the religious opposition to reproductive health rights, even including family planning services.”<sup>32</sup>

Contrary to these positions of attack and aggression towards religion, the Church, concretely the Vatican, are the majority of women in the world who, according to O’Leary’s report, defend their religious traditions as the best protection of the rights and dignity of women. Catholic, Evangelical, Orthodox and Jewish women are grateful, in particular, for the teachings of their creeds on marriage, the family, sexuality and respect for human life.

The Holy See, for its part, pointed out before the panels in Beijing, the danger of the tendency in the text proposed by the UN, to leave aside the right of women to freedom of conscience and of religion in educational institutions.

## **CONCLUSION**

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In the words of Dale O’Leary, “gender feminism” is a closed system against which there is no way to argue. There is no possibility of appealing to nature, reason, experience, or the opinions and desires of real women, because, according to the “gender feminists”, all this is “socially constructed”. It does not matter how much evidence is gathered

against their ideas; they continue to insist that it is simply additional evidence of the massive patriarchal conspiracy against women.

Still, many persons exist who, due to lack of information, are not aware of the new proposal and its dangerous scope. It is worthwhile, thus, to know this “gender perspective” which, according to reliable information, is currently not only gaining strength in developed countries, but also seems to have started infiltrating our environment. It is sufficient to look at some educational materials distributed not only in the high schools of Peru, but also in prestigious universities.

Today, in the United States, the “gender feminists” have managed to place themselves in the center of the North American cultural trends. Prestigious universities and colleges in the United States openly spread this perspective. Moreover, many North American television series participate in the distribution of the following message: sexual identity can be “deconstructed” and masculinity and femininity are nothing more than “socially constructed gender roles.”

If we take into consideration that the advance of technologies has made these programs with the new “gender perspective” arrive daily to the developing countries, mainly through cable television without ruling out the other media that exist in our times, we are faced with a new challenge that has to

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32 R. COPELON - B. E. HERNÁNDEZ, *Sexual and Reproductive Rights and Health as Human Rights: Concepts and Strategies; An Introduction for Activists*, Human Rights Series, Cairo 1994, 3.

be tackled as soon as possible in order to avoid the serious consequences that have occurred in the First World.

This is even more true, when, in the words of O'Leary, the "deconstruction" of the family and the attack against religion, tradition and cultural values that the "gender feminists" promote in the developing countries, affects the entire world.

# Imperfect And Unjust Laws

Angel Rodríguez Luño



*A passage of the encyclical *Evangelium vitae* has become famous because of the aberrant interpretations to which it has been subjected. Forgetting the totality of the text and eager to find in it that which it doesn't contain, some "interpreters" have searched here for approval of votes in favor of laws that allow abortion, as long as it is kept within certain limits. This passage of the encyclical has been, in fact, abusively used to persuade Christians to support unjust laws, not only through parliamentary channels but also through referendums. It is necessary then to oppose interpretations that aim at intentionally spreading distorted readings of a text that is, on the other hand, perfectly clear and preceded by strong affirmations, such as the ones contained in numbers 9, 58, 60 etc. of the encyclical, as well as in the Catechism of the Catholic Church, at number 2270, or the Code of Canon Law, at article 1398. (↗ Biotechnology: The State and Fundamentalism; Birth Control and Demographic Implosion; Demography, Demographic Transition and Demographic Policies; Family and the Principle of Subsidiarity; Family and Sustainable Development; A New Model of a Welfare State; Principle and Argument of the Lesser Evil)*

The task of the civil laws is to "ensure the common good of persons through the recognition and defense of their fundamental rights, and the promotion of peace and public morality."<sup>1</sup> The political common good is the ethical-political standard criterion of evaluation of the civil laws. The laws that here and now are congruent with the common good are just laws; those that here and now oppose or injure the essential contents of the common good are iniquitous or unjust. Just laws will always

or almost always be perfectible, at least from the point of view of their expression and technical-legal effectiveness. Unjust laws can be more or less iniquitous, but from the point of view of their ethical-political evaluation, there is no intermediate category between the first and second ones.

Unjust laws can be classified into four groups:<sup>2</sup>

1) The first one includes the laws intended to regulate conduct not rele-

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1 JOHN PAUL II, *Evangelium vitae*, 71.

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2 We take up basically what we wrote in A. RODRÍGUEZ LUÑO, *Ética general*, Eunsa, Pamplona 2001, 271-272.

vant for the common good, that is to say behaviors that, considering all the concrete circumstances, are exclusively personal or private, and for this reason remain outside of the competence of the State and its legislative organs. The encyclical *Evangelium vitae* affirms in this sense that “in no sphere of life can the civil law take the place of conscience or dictate norms concerning things which are outside its competence.”<sup>3</sup> For this reason laws ordering or forbidding personal behavior that the citizens consider illicit or compulsory due to religious or ethical motives are gravely unjust.

2)The second group is constituted of laws that injure or deprive of the necessary tutelage goods or rights belonging to the common good (the fundamental rights of the person, public order, justice etc.). Not only are the laws that allow the State to attack one of the rights of man unjust, but so too are the laws with which the State fails in its duty to forbid and reasonably and proportionately punish the violation of the fundamental rights of a person by another or others (this is the case for laws that allow abortion).

3)To the third group belong laws not approved legitimately, that is to say laws issued by one who is not competent, or laws approved by those, who while having the competence, do not respect the formal requirements provided for by the legal system in force. For this reason, for example, a federal law intending to regu-

late, without a just cause, a matter that, according to the constitution, pertains properly and exclusively to the states or to the municipalities, and *vice versa* is unjust; or alternatively the law issued by the Parliament fraudulently evading essential elements of the parliamentary regulations is unjust.

4)Finally laws that do not distribute equally and proportionately among the citizens the duties and the advantages derived from our living together are unjust. That would be the case, for example, of a tax law that would penalize a certain category of citizens (employees, families etc.) or that would lead to an unjustified situation of privilege for other categories (the self-employed, singles etc.).

About the way that we should behave when confronted by unjust laws, it would be necessary to make exhaustive and complex distinctions. Briefly it can be affirmed that those laws do not bind the conscience and that, at least as regards the laws organized in the first two groups mentioned above, there exists the moral obligation not to follow their normative dispositions, to oppose them civilly and not to give them our own vote, not to collaborate in their application, to repeal them, and if this is not possible, to try to reduce their negative effects.<sup>4</sup>

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4 Cf. CONGREGATION FOR THE DOCTRINE OF THE FAITH, *Declaration on Procured Abortion*, November 18<sup>th</sup>, 1974; JOHN PAUL II, *Evangelium vitae*, 72-74.

3 JOHN PAUL II, *Evangelium vitae*, 71.



Referring to the moral duty to reduce, as far as possible, the negative effects of gravely unjust laws, number 73 of the encyclical *Evangelium vitae* has resolved a “problem of conscience” that was created for the members of the legislative assemblies of some countries. To this problem and to its solution we have often referred, for the sake of brevity, using the expression “imperfect laws”.

It is necessary to say straightaway that the expression “imperfect laws” is not very clear and can bring about erroneous interpretations. Maybe that is why it was not employed by the encyclical *Evangelium vitae* nor, as far as I know, by other documents of the Church’s Magisterium, and the authors who have used it usually put it between quotation marks. It has been rightly written that such an expression is “not only insufficient, but also misleading: every human law is by its nature imperfect or perfectible, but when a law is in grave contradiction with and permits a violation of fundamental human rights, it is not only imperfect, but also unjust.”<sup>5</sup>

But let us approach now the substance of the problem. The expression “imperfect laws” can mislead about the attitude to assume towards unjust laws, both from the perspective *de iure*

*condendo* and *de iure condito*, if we do not understand well the reasons that are the basis for the third paragraph of number 73 of *Evangelium vitae*; more concretely, if we make the error to think that what is affirmed is based on the idea that an unjust law, which is more restrictive than the one in force, is in reality only an “imperfect law”, that is acceptable enough to collaborate with it.

But the sense of *Evangelium vitae* number 73 is completely different.<sup>6</sup> After having related the main moral

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6 For reader’s convenience we write the full paragraph: “A particular problem of conscience can arise in cases where a legislative vote would be decisive for the passage of a more restrictive law, aimed at limiting the number of authorized abortions, in place of a more permissive law already passed or ready to be voted on. Such cases are not infrequent. It is a fact that while in some parts of the world there continue to be campaigns to introduce laws favoring abortion, often supported by powerful international organizations, in other nations—particularly those which have already experienced the bitter fruits of such permissive legislation—there are growing signs of a rethinking in this matter. In a case like the one just mentioned, when it is not possible to overturn or completely abrogate a pro-abortion law, an elected official, whose absolute personal opposition to procured abortion was well known, could licitly support proposals aimed at limiting the harm done by such a law and at lessening its negative consequences at the level of general opinion and public morality. This does not in fact represent an illicit cooperation with an unjust law, but rather a legitimate and proper attempt to limit its evil aspects” (JOHN PAUL II, *Evangelium vitae*, 73,3).

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5 L.MELINA, «La cooperazione con azioni moralmente cattive contro la vita umana», in R. LUCAS-E.SGRECCIA (eds.), *Commento interdisciplinare alla “Evangelium vitae”*, Libreria Editrice Vaticana, Città del Vaticano 1997, 479-480, note 26.

principles regarding unjust laws, clearly affirming that the laws authorizing or favoring abortion or euthanasia “are completely lacking in authentic juridical validity”,<sup>7</sup> the third paragraph of *Evangelium vitae* number 73 formulates a judgment on an issue of fact, that is to say it explains *what is the moral object* of the action with which a parliamentarian, who finds himself in the situation considered, offers his own support to proposals aimed at limiting the damages of an permissive abortion law in force or one coming up for a vote, and at reducing the negative effects on the culture and on public morality. The essential elements of the situation taken into consideration by the encyclical are the following:

- a more permissive abortion law is already in force or is to be voted on;
- it is not possible to eliminate or to completely abrogate a permissive abortion law in force or one coming up for a vote;
- the absolute personal opposition to abortion from this legislator is common knowledge, so as to exclude confusion and scandal;
- we find ourselves in a situation in which denying our own vote to the more restrictive proposal implies, through a simple question of numbers of voters and votes, to support the more permissive law, thus becoming responsible for it.<sup>8</sup>

7 JOHN PAUL II, *Evangelium vitae*, 72.

8 It must be noted that this condition is

In this concrete context, *the moral object of the action realized by the parliamentarian is the elimination of all the unjust aspect of the previous law that here and now he can eliminate*, without therefore becoming the cause of the preservation of other unjust aspects that he does not want and does not accept, but that he is not able to eliminate.<sup>9</sup> What becomes the direct object of the will is what he can do: eliminating a part of the unjust legal provisions, that it is without any doubt good; and not what escapes his power: eliminating the remaining unjust provisions. *Ad impossibilia nemo tenetur*: no one can choose impossible things and no one is bound to prevent things that cannot be prevented.<sup>10</sup> Of the things that it is not possible to prevent we are not morally responsible.

In the situation described above, the moral licitness of the action of the

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essential. If it is possible to abrogate some articles of the previous law without participating in the final vote on the resulting text, the final vote has to be avoided. If the more permissive law is going to be abrogated even without the Catholic parliamentarian lending his vote to the more restrictive law, he has to vote against the latter.

9 Cf. J. FINNIS, “Le leggi ingiuste in una società democratica. Considerazioni filosofiche,” in J. JOBLIN - R. TREMBLAY (eds.), *I cattolici e la società pluralista. Il caso delle “leggi imperfette”*, Edizioni Studio Domenicano, Bologna 1996, 99-144.

10 Cf. THOMAS AQUINAS, *STh* I-II, q. 13, a. 5: “Utrum electio sit solum possibilem”; and also: “In decem libros Ethicorum Aristotelis ad Nicomachum Expositio” (lib. III, lectio 5).

parliamentarian is not based on the idea that it is preferable to become responsible for a smaller number of abortions rather than of a greater number (theory of the lesser evil), but on the fact that the legislator is not morally responsible for any intrinsic disorder, because nothing intrinsically disordered is wanted or caused by his will. The object of his will is the elimination of all the injustice that he can eliminate. Therefore it has to be clear to everyone that he neither wants nor accepts in any way the unjust provisions still present in the more restrictive law. These normative provisions remain because he is not able to eliminate them. It is equally clear that *Evangelium vitae* does not affirm that the restrictive law is acceptable. It remains always an intrinsically immoral law, with which we cannot collaborate in any way, and with regard to which medical and paramedical personnel must invoke their conscientious objection. What is declared licit is the action to limit all the damages that it is possible to avoid *hinc et nunc* or, in other words, it is declared licit and dutiful to act to partially abrogate when it is not possible to totally abolish it.

*Evangelium vitae* number 73 is not therefore an application of the theory of the lesser evil. In *Evangelium vitae* number 73, other people commit both the greater and the lesser evil, and they cannot be totally blocked by the parliamentarian who respects life. They eliminate the unjust aspects of the law insofar as

it is possible to do so, and this intervention to limit evil is the only thing that they want and do. With his action, he limits the evil done by others, but also this lesser evil, is performed by others, and not the parliamentarian whom *Evangelium vitae* number 73 talks about. What has been affirmed by *Evangelium vitae* number 73 has nothing to do with the position of those who would think that a compromise is a good solution, because it is right that a person who wants to have an abortion can do it within certain limits, and would approve a restrictive law, while being able to obtain *hinc et nunc* much more. They would then desire both what the law forbids and what the law permits. This difference is not only subjective in the worst sense of the word, but it is a difference that can be verified objectively: having the possibility *hinc et nunc* to obtain a greater defense of life, they do not propose such an aim to themselves because they think that in a pluralistic society a certain permissiveness on abortion is just. This is like affirming that a little bit of injustice does no harm. In such a hypothesis, the moral object directly willed is completely different from the one willed by the parliamentarian the encyclical talks about. Speaking rigorously and precisely, the more restrictive permissive abortion law that remains in force after the parliamentarian, referred to in number 73 of *Evangelium vitae*, has abrogated everything it was possible for him to eliminate, is an unjust law. And

regarding this law, we must have the attitude described above: there exists the moral obligation not to obey it, to civil opposition to it, not to collaborate in its implementation (conscientious objection), to try to change it, and if possible to further reduce its negative aspects.

We should therefore conclude that the laws that offer an imperfect defense of the right to life, even if they defend this right more than other existing laws or others that are voted upon, are unjust in every aspect. *Considered in themselves* they are neither acceptable nor can they be supported with our vote. According to *Evangelium vitae* number 73, we can give our vote in a legislature to a law of this type, only if we find ourselves in a situation in which this vote is the only way and the only real meaning that it has is to accomplish a legitimate and dutiful attempt to limit the iniquitous aspects of a law already in force or put to the vote, and not to make ourselves responsible for the maintenance of a more unjust law. Nevertheless, from the prospective of *de iure condito*, we will observe the same behavior towards it as for any gravely unjust law.

One cannot exclude the possibility that other situations may arise that are morally analogous to the one described in *Evangelium vitae* number 73, to which the same solution can be legitimately applied. We will have to proceed with extreme caution. The intervention will be morally possible only if, all concrete circumstances considered, in reality it

takes the form of a partial abrogation of an existing unjust law, or one to be voted on, that here and now it is not possible to completely abolish.

# Indissoluble Marriage?

Francesco Di Felice



*From the Old Testament to today, the questions of divorce and the indissolubility of marriage have raised debates. Jesus brought to them insights which historical and exegetical studies have shown to be uncomfortable. The ubiquitousness of divorce has further brought to light the “provocative” character of the Lord’s teaching. For those who wanted to set a trap for Jesus, divorce was only the unilateral act of a man’s will, who renounced the exercise of his rights on a woman. Jesus rejects not only divorce based on this argument, but also denounces the concept of marriage that lies behind it. From the beginning, underlines the Master, it was not so. Man and woman had the same dignity: marriage granted to the man rights on the woman and to the woman the same rights on the man. Human love is in this way revealed in its whole splendor as a reflection of the love without reserve that circulates among the persons of Trinity. So the question is neither about a unilateral discretionary power of man on woman, nor reciprocally, a discretionary right of woman on man. The human will cannot prevail on the union blessed by God. As it is presented today, and as it is often legalized in civil codes, divorce is presented as an enlargement of the pharisaical conception, because it consists in affirming not only that a man can repudiate his wife, but also that a woman can repudiate her husband. These forms of adultery assume a symmetrical character when man and woman divorce through “mutual assent”. Divorce is not, then, only the exclusion of being together underlined by a public and solemn promise, it is also an attempt, destined to fail from the beginning, to put asunder what God has joined together. The question is to specify the meaning of the word *pornéia*, that should not be confused with the meaning of *moichéia* (adultery), but as illicit (cf. Lev 18) and incestuous unions, that refers to the Hebraic concept expressed by the term *zenût*; therefore, unlike the Orthodox and Protestants, who interpret *pornéia* as adultery (and with that, marriage is broken), the Catholic tradition has seen in the passages of Matthew (5,32 and 19,9) the situation of an illegitimate union that cannot be considered a marriage. (Conjugal Love?; Hardness of Heart, a Future Possibility?; Family and Privatization; Marriage with Disparity of Cult; Mixed Marriage and Discrimination; Marriage, Separation, Divorce and Conscience; *De Facto* Unions)*

## PREFACE

The New Testament is characterized by the clear refusal of any extramarital or unnatural sexual act. In this matter, it follows the Israelite-Old Testament preaching, and leads to the overcoming of the legalistic praxis of late Judaism, of which Jesus' words reveals the deficiency. The radicalization made by Jesus is possible and real only because the Gospel is the redeeming forgiveness that reveals the power of God in time. From here comes an essentially new attitude towards the woman: she is not her husband's property anymore, but a companion with the same dignity before him and God.

In the Gospel of Matthew (19,3-9) Pharisees ask Jesus if it is licit to repudiate one's wife "for any cause." They question him, says the text, "to test him" (19,3) and to see to which rabbinical school he belonged: to the one of Rabbi Shammai (that admitted divorce only in few cases) or to the laxist one of Rabbi Hillel (that practically admitted divorce for any trifle, such as for the wife's lacking ability in cooking...). Jesus answers promptly, overtaking at once the positions of both the schools with their endless casuistries and going back to the original intent of God for marriage: "Have you not read that he who made them from the beginning made them male and female, and said, 'For this reason a man shall leave his father and mother and be joined to his

wife, and the two shall become one'? So they are no longer two but one. What therefore God has joined together, let no man put asunder" (19,4-6).

The Pharisees understand they have been radically surpassed in their question; they make then a last attempt: "Why then did Moses command one to give a certificate of divorce, and to put her away?" (19,7). And Jesus, rectifying the question, refers again to the first intent of God: Moses did not "command" this law, he only "permitted" it, "for your hardness of heart, but from the beginning it was not so" (cf. 19,7-8). "And I say to you: whoever divorces his wife, except for concubinage, and marries another, commits adultery" (19,9).

The clauses of Mt 5,32 (*lógon pornéias*) and 19,9 (*mè epì pornéia*) are not present either in Mark or in Luke. It is mostly believed that the simpler form of Mark and Luke represents the older tradition, and that the clause of the two passages goes back to the evangelist Matthew. It can be objected that it is strange that Matthew in this case refrains from that radicalization of the Torah which he generally tends to. Even the late radicalization that can be noticed, for example, in the different *logia* of the material of Luke (cf. Lk 6,20; 12,33; 14,33 etc.) and the ecclesiastical praxis that became partially more severe in later times (cf., among other things, *Shepherd of Hermas*, vis. 4,1, 4-8) seem to exclude a late drafting of these clauses. At least the possibility has to be ad-

mitted then, that the text of Matthew is original, due to the fact that even from the critical-textual point of view it is incontrovertible.

In the drafting of Mark and Matthew, Jesus presents the *indissolubility* of marriage in an incisive way, as an absolute will of God (cf. Mk 10,9; Lk 19,6). Even according to the testimony of Paul (1 Cor 7,10), Jesus demands that marriage should be *indissoluble*. In this way he clearly rejects the Judaic praxis that presents repudiation as a unilateral right of the man to be used according to his judgement, only requiring that he give the woman a letter of repudiation, on the basis of which, if she wants, she can get married again. The text on which scribes base themselves for any further discussion is Dt 24,1 that mentions *erwat dābār* (LXX; *schmon prāgma*) as a motivation for repudiation. It is possible that in Mt 5,32 *lōgou pornēias* is modeled on the Hebrew formula. Shammai and his school underlined the term *erwā* and saw in it something morally shameful; Hillel instead underlined *dābār* and interpreted it as “any cause” (of annoyance), such as the fact that the wife had allowed the food to burn. It has to be noticed that the additions to what Jesus said which we are discussing, are present only in Matthew. It is therefore presumable that their meaning has to be deduced from this concrete context intended as their *Sitz im Leben*. While it seems that during the period of the prophets, man was free to forgive his

wife’s infidelity (cf. Hos 3,1), in Jesus’ times the law became stricter: the adulterer could not have sexual intercourse anymore, either with her husband, or with the one who seduced her; the husband was obliged to dismiss her.

The interpretative key to these two clauses is the constant reference of Jesus to the original intent of God for marriage, that underscores his will to restore the full dignity of marriage and to proclaim about it the newness of the Gospel of salvation: a *monogamous, single and indissoluble* marriage, established by God, which man receives as a gift to be preserved and respected. “So they are not longer two but one. What therefore God has joined together, let no man put asunder” (Mt 19,6). Marriage, in fact, in the biblical vision, does not simply belong to the human institutions, but it is an expression of the creative plan of God: it is a reality willed by God for man and woman, and in last analysis, for all of humanity. That is the proclamation of Jesus on marriage: he establishes the original *unity* and *indissolubility* of marriage, abolishing the tolerance introduced by the Mosaic Law and bringing back marriage to its initial dignity.

## DISCUSSION AND INTERPRETATION OF THE CLAUSES

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Examining the teachings of Jesus regarding the indissolubility of marriage, some bring up the two clauses “*lōgou pornēias*” (5,32) and “*mè epi*

*pornéia*" (19,9) as an exception to the rule. Examining these expressions, one should note that we are faced with authentic texts, attested to by all the manuscript tradition. Therefore, any attempt to overcome difficulties by declaring them inauthentic or inserted later, has to be considered unjustifiable.

In the exegesis of these clauses, there has been unilateralness, ambiguity and confusion through the centuries. I will limit myself to reporting the most widespread ones.

The interpretation that is attributed to Saint Jerome (in Mt 19,9; PL 26,135) and which is also accepted by Saint Thomas (*Supp.* q. 62, a. 5, ad 4) sustains that it is a real exception, for which Jesus allows the husband to repudiate his adulterous wife, but without permitting him to marry again. That is to say that Jesus would have made an exception for adultery, admitting in this case a personal separation. The meaning of *pornéia* would coincide with *adultery*. This interpretation seems insufficient, because it is not clear from the text that the clauses are referring only to the first part (dismissal) and not to the second part of the sentence (new marriage); and also because his audience could not have any idea of a personal separation.<sup>1</sup>

There is another opposing interpretation which is based again on an interpretation of prepositions: the meaning

would not be exclusive but inclusive: divorce is not allowed, "not even in case of *pornéia*." But this interpretation is said to require excessive grammatical and linguistic gymnastics<sup>2</sup>. It seems to be excluded in particular for Mt 5,32. The most widespread interpretation among Protestant exegetes, and among ancient and recent members of the Orthodox Church, is that it is an authentic exception. *Pornéia* would mean *adultery*. Christ, in the case we find ourselves facing such conduct, would recognize that the marriage would be destroyed and that, therefore, repudiation would be licit. Nevertheless, this interpretation, also on a purely exegetical level, presents some difficulties. In fact, it appears to contradict the teaching of the other evangelists and Paul: it is even in contradiction with the context itself. In Mt 5,32 we would not find a perfecting of the Law and the newness of the Gospel, because Jesus would be embracing the Mosaic Law, as supported by one of the pharisaic schools: "When a man takes a wife and marries her, if then she finds no favor in his eyes because he has found some indecency in her, and he writes her a bill of divorce and puts it in her hand and sends her out of his house and she departs of his house" (Deut 24,1).

The fact that some Oriental Churches have admitted divorce in the case of adultery and have allowed the innocent spouse to contract a new marriage

1 Cf. G. CERETI, *Matrimonio e indissolubilità. Nuove prospettive*, EDB, Bologna 1971.

2 Cf. G. CERETI, *Matrimonio e indissolubilità*.



“has to be attributed to the relations in force in that period, between the State and the Church and to the influence of the civil law that sanctioned the legitimacy of divorce and of a new marriage in that case. The *Novella Justiniani* on the different causes of divorce, in fact, was introduced in the Code of the Oriental Church called *Nomocanon* and in order to justify this praxis the Oriental Churches appealed to the clause of Matthew on divorce in the case of adultery. Nevertheless, as these Churches admit other causes of divorce besides the one mentioned above, they have followed a more human than evangelical mode of behavior. Whatever could have been the usages of these churches, the Catholic Church has *always* clung to the doctrine of the Gospel about the *indissolubility* of marriage, because it is not in its competence to change that which is of divine right.”<sup>3</sup>

## DETERMINATIONS

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The different clarification of opinions and solutions proposed concerns, in particular, the meaning that should be given to the Greek word *pornéia* and the integration of this meaning within the immediate context. After a serene lexicographical examination it is difficult to give to *pornéia* the same meaning as the Greek word *moichéia*, that

is to say adultery. Matthew knows the two terms and uses them in their different meanings (cf. Mt 15,19). Moreover the exception understood in this way would be a banal tautology, because the evangelical antithesis to the legal praxis of repudiation would be reduced to this statement: “Whoever repudiates his wife, except in the case of adultery –already existing and *de facto* annulling the marriage–exposes her to adultery”. Adultery, as a perversion of the conjugal relationship, has been already radically condemned in the previous antithesis (cf. 5,27) so it cannot be taken now into consideration as an exception that justifies repudiation.<sup>4</sup>

Similar incongruities are caused by the solution proposed by those who understand *pornéia* in the generic sense of “immorality” on a sexual level, such as prostitution, fornication etc. In reality, this situation would be the same as adultery, since the text of Matthew does not refer to an occasional immorality, but to the one occurring in the conjugal context and for that reason corresponds to infidelity. In this case, the praxis provided by Matthew would fall in line with the one recommended by the Jewish matrimonial jurisprudence, represented by R. Shammai.

It cannot even be asserted that Matthew, in this way, wants to present Jesus as the one who does not contradict the law of God on divorce and the bill of

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3 *Acta synodalia sacrosanti concilii oecumenici Vaticani II*, volumen IV, periodus IV, pars III, Congregatio generalis CXXXIX, Typis Polyglottis Vaticanis MCMLXXVII, 57-97.

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4 Cf. R. FABRIS, *Matteo. Traduzione e commento*, Borla, Roma 1982.

repudiation, as it is formulated in Dt 24,1-4, but that limits its application to the case of adultery-immorality. This concern does not appear from the entirety of antitheses that propose a radicalization of the "law", a surpassing of its literal text.

## POSSIBLE SOLUTIONS

The most satisfactory solution, even if hypothetical, is the one that looks back to the particular situation of Matthew's community, for the addition of the exception that characterizes the text of the first evangelist in comparison with the others in the primitive Christian tradition on marriage. This situation can be reconstituted on the basis of some data: first of all the mixed composition of Matthew's Church, composed of Christians proceeding from Judaism and paganism; second, the special meaning of the term *pornéia* in some pastoral and disciplinary texts of the early Church regarding marriage: it designates *illegitimate unions* between consanguineous persons. This is the sense of *pornéia* in 1 Cor 5,1, which treats the *incestuous* cohabitation of a Christian with the second wife of his father, and probably also in Acts 15,20-29, due to the disciplinary context.

In these two cases we could have a reference to Leviticus that condemns these unions among consanguineous persons as an abomination: "None of you shall approach any one near of kin to him to uncover nakedness. I am the

Lord" (Lev 18,6ff.).

J. Bonsirven underlines<sup>5</sup>, in his turn, the fact that Matthew, the most Judaic of the Gospels, refers to the Jewish background. The word *pornéia* - treated above as "illicit sexual intercourse" is not the word generally used in Greek for adultery, which is precisely *moichéia*. Bonsirven thinks that *pornéia* translates the Aramaic *zenût*, which means illicit union in the sense of concubinage. This would be the case that Jesus excludes from the discussion, because it is marriage only in appearance and not in reality. The formula, as it can be found in Mark and in Luke, is against any known Jewish interpretation and represents one of the most original characteristics of the moral teaching of Jesus. The same moral teaching is repeated by Paul (1 Cor 7,10-11) not as a doctrine of his, but of the Lord. Paul, nevertheless, admits the breaking up of marriage only in the case in which the non-believer spouse takes the initiative (cf. *Pauline Privilege*, 1 Cor 7,10-16).

Pierre Bonnard affirms in his work *L'Evangile selon Saint Matthieu*: "Pornéia designates marriages between prohibited degrees of kinship. Indeed, many clues make us think that the decree of Acts 15 reflects the same historical circumstances, the same difficulties and scruples as those of Matthew. The thought of our verse would then be the following: prohibition of repudiation, with an excep-

<sup>5</sup> J. BONSIIVEN, *Le divorce dans le Nouveau Testament*, Tournai 1948.

tion in the case of illegal marriage from the point of view of Lev 18 (but not from a pagan point of view, that amply tolerated certain marriages between consanguineous persons).

Perhaps we can, carefully, take a step forward with M. Baltensweiler. We know that the Jewish casuistry used to authorize some unions forbidden by Lev 18 in the case of pagans converted to the Jewish faith.<sup>6</sup> Our text would protest against such authorizations to *re-establish the strong position*, which is the one of Acts 15: no repudiation is possible except for the cases of illegal unions provided for by Lev 18.<sup>7</sup>

Also A. Alberti, in the volume *Matrimonio e divorzio nella Bibbia*,<sup>8</sup> takes up the argument of Bonsirven and affirms that *pornéia* must be translated as “unlawful marriage”. This terminology would be confirmed by a text of the Qumran caves, where the Hebrew word *zenût*, “fornication”, refers both to polygamy and to marriages between consanguineous persons. (CD 4,12-5,14).

Briefly, Matthew adds to the sentence of Jesus the exception clause to make it applicable to the situation of his Christian community, where the case of converted pagans whose marriages went

against that law of God that Jesus came to reveal and to fulfil in its fullness was posed. Once again, according to Matthew, Jesus reveals and realizes the higher justice, that is to say the original and deep requirement of God’s will, formulated in the law of the Old Testament, rejecting the “justice” of the Scribes and Pharisees, that is to say their way of interpreting and fulfilling the law.

## MARRIAGE AS A SACRAMENT

Many ambiguities in interpreting the clauses of Matthew arise from the fact that many authors, over the centuries, did not have a clear understanding of the sacramental dimension of Christian marriage, which has in itself the dimension of *indissolubility*. If we take a look at the Magisterium of the Church, indissolubility appears clearly evident.

### **a) The Fathers of the Church**

Following the example of the Letter to the Ephesians 5,23ff, the Fathers exhort the spouses to love each other “as Christ loved the Church”. In the extremely concrete Patristic mentality, this influence of the union Christ-Church on marriage cannot be considered only as the influence of a model or of an example; it is also an important communication of the dignity and of the greatness (we could say, of the grace) of the union Christ-Church to the inferior reality of the conjugal union. With this conviction the Fathers felt and expressed the idea of an elevation of marriage to something sublime and really super-

6 Cf. STRACK-BILLERBECK, *Kommentar zum Neuen Testament aus Talmud und Midrasch*, Vol. 3, Frankfurt 1926, 353-358.

7 Cf. P. BONNARD, *Evangelio según San Mateo*, Ediciones Cristianidad, Madrid 1976, 111-112.

8 A. ALBERTI, *Matrimonio e divorzio nella Bibbia*, Massimo, Milano 1962.

natural; they expressed in an equivalent way and according to the development of that period, the dogma of marriage as a *sacrament*.<sup>9</sup> The analytical thought of Scholastic philosophy was interested instead in the internal structure of the sacramental sign, its efficacy and validity. Moreover, from the eleventh through the thirteenth centuries, the problem of the sacramentality of marriage was connected to the struggles between the theories of consent and copulation. With Scholastic philosophy, the concept of the sacramental sign of the Fathers is substituted by the concept of a sign with an accentuated conceptual character, and so mainly theoretical-rational. According to Patristic doctrine - even if it is sometimes steeped in reservations regarding sex - marriage, supported by biblical symbolism and by the Church's concept of mystery, is delineated in a perspective that embraces the whole life of the spouses. The concern of making the matrimonial reality alive *in the Lord* induces the Fathers to accentuate the role of generous, faithful and fruitful love that has to exist between the spouses following the example of Christ towards the Church. We are faced with a vital and existential presentation of marriage, in which interpersonal commitment and the total and *indissoluble* community of life has an important role.

9 G. OGGIONI, "Matrimonio e verginità presso i Padri," in AA.VV., *Matrimonio e verginità*, Venegono Inferiore 1963, 413-415.

## b) The Council of Trent

A council that offers a wide treatment is Trent. It has a double concern: to affirm sacramentality in particular against the Protestant doctrine; and to defend the rights of the Church in matrimonial matters. The proof of sacramentality is deduced in a generic way, by the salvific work of Christ. The text of the Letter to the Ephesians makes a simple mention of sacramentality. Trent is the first council that speaks about the specific grace of the *sacrament* of marriage. Grace has a triple aim: "*perfecting* natural love, *confirming* indissoluble unity, *sanctifying* the spouses" (Denz 1797). The relationship "love-grace" is presented in a broad way; that is to say, grace is depicted not only in its healing aspect, but principally in its elevating aspect: the verb *perficere* openly indicates this.

## c) Vatican Council II

The presentation of marriage offered by Vatican Council II presupposes the encyclical *Casti connubii* (December 31, 1930) of Pius XI, the contribution of several theologians (one thinks for example, of Scheeben) and most of all the biblical revival. Vatican II, particularly in the dogmatic constitution *Lumen gentium* and in the pastoral one *Gaudium et spes*, was able to find that comprehensive vision in which the different dimensions and elements of marital reality are brought to a harmonious existential unity. The key to this progress is the presentation of the *sac-*

rament of marriage in the perspective of salvation history, of the pact between God and Israel, between Christ and the Church. The biblical symbolism of the conjugal alliance is taken up by the council, referring to the prophets Hosea, Jeremiah, Ezekiel and particularly to the Letter to the Ephesians. From this perspective, the relationship of the whole conjugal life with Christ is better highlighted. In fact, it is this encounter with Christ, in his attitude of love towards the Church, and so the participation in the total sanctifying love of Christ for the Church, that is put in the first place. Christ *remains* with the spouses (is an active presence), he continuously gives himself to them “as He loved the Church and handed Himself over on her behalf, the spouses may love each other with perpetual fidelity through mutual self-bestowal” (*Gaudium et spes*, 48). In the vision of Vatican II, it comes out even more clearly how sacramental grace is not private grace, but establishes the community through the Holy Spirit for unity in the only body of Christ which is the Church. Sacramental grace makes the family the “domestic church” (*Lumen gentium*, 11), the smallest but a true church, community of the redeemed, of the sanctified; a domestic church open to the world.<sup>10</sup>

## CONCLUSION

According to the traditional vision of the Church, the sacrament of marriage, transfiguring earthly reality, fully ratifies and realizes the *unity* and *indissolubility* of marriage. The grace that flows from the participation of the spouses in the mystery of the alliance of Christ with the Church unites them to each other in an inseparable way, and calls them to realize an alliance that is just as irrevocable. The alliance of Christ with the Church is, as a consequence, the *principle* and the *model* of the unique and indissoluble alliance of the spouses. Only death can separate what God has joined together (cf. Mt 19,3-9). “From a valid marriage arises a bond between the spouses which by its very nature is perpetual and exclusive” (CCL, can. 1134). This bond does not represent in fact simply a human agreement, but an alliance established *in the Lord*; an alliance rooted in the one of Christ with his Church, which reproduces the proper dimension of irrevocable unity.

From the reality of marriage itself as an “alliance in the Lord,” comes the obligation of reciprocal fidelity. Unlike Israel, the Church, spouse of Christ, is confirmed in a definitive and faithful alliance from God. Christian marriage is a figure and live participation in this alliance. The affirmation of the need for fidelity between Christian spouses—besides the earthly reality of true love—flows from this deeper nature of marriage. “As

10 Cf. G. BALDANZA, “Concilio di Trento”, in *Dizionario teologico interdisciplinare*, Marietti, Casale Monferrato 1977, 512-513.

a mutual gift of two persons, this intimate union... imposes total fidelity on the spouses and argues for an unbreakable oneness between them" (*Gaudium et spes*, 48). This *indissoluble fidelity* is even the concrete way to manifest and realize the full meaning of the event of grace of the marriage. The "yes" that spouses said to each other in the Lord, in fact, has now become a part of the "yes" that Christ said to the Church.

# Informed Consent

Angel Galindo García



*It is frequently the case that patients are not given sufficient information when asked to make decisions regarding family planning methods, “assisted” procreation, gynecological therapies, or in the case of terminally ill patients. The term “informed consent” is thus used in an ambiguous way. Past are the days when doctors would not usually inform patients of their true medical condition nor explain to them the proposed treatment and the chances of success. In a society in which the family planning centers and medicine have at their disposal ever more complex resources, the relationship between doctors and their patients should more than ever be an interpersonal relationship, one of trust. It happens sometimes today that patients are ill-informed, that information concerning them is hidden from them, that they are not consulted on the questions on which their health, fertility and their very lives depend. In some situations patients are even made to undergo, without their knowledge, interventions that mutilate them—for example surgical sterilization—and which are often irreversible. In other situations, on the contrary, informed consent becomes a way for doctors to unburden themselves of their own responsibility to communicate to the sick person, with more or less tact, a “scientific truth” that the patient may not be capable of understanding or of enduring. The World Medical Association, in its Helsinki Declaration (1964), revised last year, dutifully formulated in a rigorous way the milieu and the content of informed consent. The patients themselves must also know how to defend their rights and take on their personal responsibilities. (↗ Biotechnology: the State and Forms of Fundamentalism; Sexual and Reproductive Rights; Euthanasia; A New Paradigm of Health; Quality of Life; Reproductive Health)*

Until recently, traditional principles existed that helped us in the orientation, resolution or answering of many dilemmas that arose in the field of bioethics. Besides the principles proper to basic morality, among the more common were: the principles of “double effect,” of “totality,” of “confidentiality,” as

well as the principle that the law is favored where there is a point in moral theology that is subject to discussion. These are applied in the world of bioethics to different medical questions such as transplants, to so-called “indirect abortion,” and finally to the doctor-patient relationship.

Today we have a kind of “secular bioethics” that, basing itself on a kind of alleged rational revelation, seems unwilling to consider any possible foundation for the dignity of the human person. For the followers of this school of thought, bioethical discourse can be based only on the fragile equilibrium between the principles that form the so-called “bioethical trinity”: the principle of the “autonomy” of the individual, the principle of “beneficence”, i.e., “helping, not harming others”, and the principle of “justice”. This establishes the relationship: society-doctor-patient.

After defining “informed consent,” we will present the philosophical references that explain the origin and context of the thought supporting this concept. In order to discover its fundamental elements, it is important to study anthropological perspectives. Finally, a critical and ethical evaluation is made of this proposal, indicating the possibility of opening new paths.

## **DEFINITION<sup>1</sup>**

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Within the principle of individual autonomy there is the “requirement of ‘informed consent’ of the person who is actually or potentially ill.”<sup>2</sup> According

to this new model of medical ethics, this principle tries to regulate the “ethical principles expressed by the patient who, given his dignity as a person, has the right to decide autonomously whether to accept or reject what is done to him both as to diagnosis and treatment.”<sup>3</sup>

“Informed consent” consists in explaining to an alert and mentally competent patient the nature of the illness, the relation between its effects and the risks and benefits of the recommended procedures in order to obtain the patient’s approval or rejection of those procedures. On the one hand, the patient must be well informed in deciding on a treatment in accordance with his convictions, and, on the other, must clearly give his signed confirmation that he authorizes the physician to carry out the treatment or not.

This definition requires that the presentation of information to the patient be understandable rather than cursory. The patient’s cooperation should be obtained without coercion, and without the doctor taking advantage of his scientific prestige. In the same context, the doctor must be attentive to the patient’s attitude, that is, that the patient’s decision is well-reasoned, compatible with the principles of his life, that the decision is neither forced nor conditio-

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1 In order to better understand the content of this work it is necessary to keep in mind the teachings and documents of the Holy Father John Paul II, including: *Veritatis splendor*, *Evangelium vitae*, *Donum vitae*, *Fides et ratio*, etc.

2 J.R. FLECHA ANDRÉS, *La fuente de*

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*la vida. Manual de bioética*, Ed. Sígueme, Salamanca 1999, 61.

3 V. VIAFORA, *Principi della bioética*: DB 740.



nal, but voluntary and free, not based on ignorance but on the evaluation of all possibilities, and that he is mentally competent to make a decision.

As a result, if all these requirements are met, the doctor, although he may think that the patient's decision is incorrect, should respect it. This effort of accompanying, informing and respecting the patient's decision is the precise meaning of the term "informed consent". This presupposes that human beings are autonomous individuals capable of choosing according to their own system of values. It also implies that the doctor must provide all necessary information to the patient, accompanying his decision and conjointly taking it with him. The patient has the last word, not the doctor.

## **PHILOSOPHICAL BACKGROUND**

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The basis for informed consent lies in the principle of autonomy. This autonomy is manifested in many situations in which health is either at risk or exposed to ethical dilemmas, including extreme cases such as AIDS, although there are limitations. It is a question here of respecting the most fundamental freedoms and civil rights, among which is the right to privacy. Such respect imposes the obligation, for example, of not carrying out therapeutic or epidemiological interventions without seeking the

informed consent of the recipients.<sup>4</sup>

This principle seems to be directly recognized by the *Convention on Human Rights and Biomedicine*: "An intervention within the field of health can be carried out only after the patient has given free and unequivocal consent. That person should previously have been adequately informed about the finality and nature of the intervention, as well as its risks and consequences. At any moment, the patient must be freely able to withdraw his consent."<sup>5</sup>

Therefore the principle of autonomy is intimately connected with the said right of "informed consent". This right is invoked as much by laws relating to life as by habitual bioethical reasoning about medical dilemmas. The informed consent of the patient or his legal representatives is continually required, both to legitimize therapeutic experimentation and assure that surgical operations, or more routine procedures like pre-natal diagnosis, are legitimate.

There is no doubt that this position recognizes, from the patient's point of view, a process of autonomy that is not always absolute. Decisions regarding an illness in which he is directly implicated belong to an area of radical and dynamic choice. Radical because they affect

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4 J. J. FERRER, *SIDA y bioética: de la autonomía a la justicia*, Ed. UPC, Madrid 1997, 96.

5 CONVENTION ON HUMAN RIGHTS AND BIOMEDECINE, 4 April 1997, c. II a. 5.

the foundation of his life and are related to questions that are basic to man (life, death, suffering and health). Dynamic insofar as they are always moving and developing. They are definitive in their chosen context, but limited and variable in their development.

In this sense, the philosophical origin of informed consent is to be found in the principle of autonomy, which is rooted in the thought of Kant.<sup>6</sup> In this philosophy, individual persons are the agents of their freedom. The social and political framework safeguards the exercise of freedom and therefore fosters some negative rights, that is, those limited to protecting the environment of freedom in which human beings decide. They do not promote models of a good life, but respect and defend personal decisions. They impose liberalism, both in the moral arena and in the defense of autonomy, in the social and economic areas of free markets as well as in *laissez faire* politics.

This process leads to thinking of man as a self-legislator, an empirically self-governing being. That is to say, man is an autonomous moral subject, a person capable of deciding morally, freely and from his heart, a person responsible in conscience for his actions.

Accordingly, the traditional fra-

mework of health concerns, in which the patient was considered incapable of making moral decisions and left decision-making to the doctor, no longer makes sense. It is necessary to articulate a new model that respects the autonomy of the patient: within this model, the relationship will be horizontal; paternalism disappears and a doctor-patient dialog in search of the best possible course of action appears. Within this model, the doctor is not the all-wise "father" who knows best for the patient, but instead is a professional with technical knowledge which should be shared with the patient so that he can choose with the help of his personal set of values. This new model of relationship expresses itself in the theory of informed consent, and is, in good measure, the origin of current bioethics.

## **HISTORICAL AND LEGISLATIVE ORIGINS**

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As we have seen, the remote origins of informed consent are to be found in the thought and philosophy of Kant (1724-1804), particularly in his concept of autonomy. Its more recent origins lie, of course, in legislation. The first incidents that paved the way for European legislation were the experiments carried out by the concentration camp doctors of Nazi Germany. They led to the Nuremberg Code, which established the necessary bases for ethically acceptable scientific investigations of human beings:

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6 I. KANT, *Critique of Pure Reason*. Cf. A. CORTINA, *La crítica de la razón pura: una crítica de la razón sistemático-teológica, en teorema*, 1982.

“The voluntary consent of the human subject is absolutely essential. This means that the person involved should have legal capacity to give consent; should be so situated as to be able to exercise free power of choice.”<sup>7</sup>

Before that time, several North American judicial decisions began stressing the importance of informing the patient regarding the decisions to be made and the need for respecting his free will. One of those cases was *Schloendorff vs. Society of New York Hospital* (1914), which recognized the patient’s right to “self-determination” or autonomy in decision-making: “Every human being of adult years and sound mind has the right to determine what shall be done to his body; and a surgeon who performs an operation without his patient’s consent commits an assault, for which he is liable in damages.”<sup>8</sup>

This right of self-determination was already recognized in civil laws but is now applied in the field of medicine. From that moment onwards, the concept of informed consent began to be a constant in different legislations. It was in 1957, in another judicial case in the United States of America, that the term “informed consent” was used for the first time.

In 1964, the World Medical Assembly also used the term informed consent within the Helsinki Agreement, which was ratified with amendments in Tokyo in 1975, in Venice in 1983, and in Hong Kong in 1989. The American Association of Hospitals also included the term in its *Charter of the Rights of Patients* in 1973, as did the General Health Law of Spain in 1986.

The list of declarations would be unending, but it is clear that informed consent is the practical way of applying respect for the autonomy of individuals. Informed consent has become an element in clinical practice that cannot be renounced.

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## ANTHROPOLOGICAL CONSIDERATIONS

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In order that informed consent, seen in the light of autonomy, can be a human act of the patient or his representatives and a fundamental human option, other more general factors than autonomy alone must be taken into consideration.

### **Avoiding exaggerated paternalism through balanced beneficence**

Human welfare depends on a medical care whose reason for being is the promotion and defense of life. The end of ethical health principles is the defense of life and relief of suffering within the perspective of respect for the dignity of human life.

In this area, most ethical codes require professionals to intervene in cases

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7 Nuremberg Code, art. 1 (1947)

8 Ruling of Justice Cardozo in the case of *Schloendorff vs. Society of New York Hospital* (1914).

of necessity—even if the patient cannot express his consent. In its reference to protection of human beings who are unable to express their consent, the above cited convention relative to human rights states: “When, because of an emergency situation the appropriate consent cannot be obtained, any medically necessary intervention may be carried out immediately for the benefit of the health of the individual concerned.”<sup>9</sup>

For this reason, a physician cannot reduce informed consent to mere acquisition of a signature to avoid possible legal liabilities in cases of conflict. That kind of informed consent would lack content: it would not be based on communication between doctor and patient; and there is no way of evaluating the doctor’s decision.

### **Opposing therapeutic contractualism through a search for justice**

Both in the case of the patient’s consent and in the performance of medical professionals, society has its word to say, a word guided by the principle of justice. In society, all subjects deserve the same respect and all have the same right to life, health and equity in the distribution of common health goods.

The undeniable socio-economic aspects involved in illness and in the collectivization of medical assistance create many problems that need to be resolved.

They can be solved through new ethical approaches “whose origin is almost always found in the predominance of a competitive over a cooperative or common good morality in society.”<sup>10</sup>

Man is not purely corporeal, but is a complex entity, a personal psychosomatic structure. Therefore, the human phenomenon cannot rightly be understood by reducing it to pure “physicality” and hence one must respond to the anthropological principle of his “personality” in relation to his social interaction.

For man is a social being, not an isolated being. He lives a series of relations that form his being and cause him to become this particular individual being. Yet one cannot absolutize individuality at the expense of life in society. In this sense, it is evident that there are exceptional circumstances that can justify the rejection of an informed consent situation, or that subordinate either the patient or the doctor to the common good. Such cases can be, for example, an emergency, a threat to life, a danger to public health, the absence of legal methods of rendering the patient harmless, judicial demands, or the alleged “therapeutic privilege” where individual psychological integrity and morality are preferred to the right to information and personal decision-making.<sup>11</sup>

10 P. LAÍN ENTRALGO, *La medicina actual*, Dossat, Madrid 1981, 124.

11 P. SIMON, “el consentimiento informado y la participación del enfermo en las relaciones sanitarias,” in *Medifam* 5 (1995)5,

9 CONVENTION ON HUMAN RIGHTS AND BIOMEDECINE, 4 April 1997, c. II a. 8.

**Becoming promoters of a fundamental and open option**

In relating the principle of beneficence to the principle of autonomy, it is important to correctly define what informed consent involves. Physicians must keep in mind the patient's conscious or unconscious decision during an illness, even if the patient had previously expressed their consent, as objective criteria.

The patient's capacity to choose and the axiological coherence of his value options are determinant at the moment of implementing either the principle of beneficence or that of autonomy. The Convention on Human Rights demands: "the previously expressed wishes relating to a medical intervention of a patient, who is not, at the time of the intervention in a state to express his or her wishes shall be taken into account" (a. 9). In general, what is sought is a concrete judicious decision between conflicting values in a patient's particular situation. Such a judgment would try to assess both the habitual ethical values of a patient's life and a scale of "objective values" that places life and human dignity at the highest levels. This leads to some fundamental questions: How does one judge the patient's dynamic process of decision making if the key re-

ference is the previously given consent? What should one do if one cannot be sure whether the patient's choice changed from the moment of his signature to his being operated on? What level of knowledge or freedom does a patient have when he finds himself wrapped up in a subjective experience that overpowers him?

Informed consent should be the expression of an authentic and responsible life. Like every responsible decision, it arises from desire or has its roots in the will. The growth of that expression of a fundamental option is gradual, integral and rational.<sup>12</sup> Thus we are facing an anthropological problem that is difficult to formulate in either an oral or a written declaration. Hence informed consent can never be understood in a static and once-and-for-all way. When dealing with vital questions, if one is trying to respond to the desire for happiness, decisions are important and always open to new expressions and renewals.

The literature on medical ethics sometimes expresses this idea in terms of the authenticity of the patient or his characteristic acts. Authenticity generally means what is licit, genuine or true. Within this context, the preferences or behaviors expressed by the patient are authentic only insofar as the person is choosing things that are coherent or

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264-271; ID., "El consentimiento informado: teoría y práctica I y II," in *Medicina clínica* (1993) 100, 659-663 and (1993) 101, 174-182; ID., *El consentimiento informado*, Ed. Triacastela, Madrid 2000.

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12 A. GALINDO GARCÍA, *La opción fundamental en el pensamiento de San Alfonso María de Liborio* (Eset, Vitoria 1984).

compatible with his previous behavior. In the case of a decision that must be made by a representative of the patient, "authenticity is more than the mere freedom to choose; it is a choice by a person who faithfully represents the person (the patient), expressing firmly established preferences and beliefs rather than acts or options motivated by desires and aversions of momentary, brief or fleeting duration."<sup>13</sup>

Nonetheless, the principle of beneficence authorizes, even where there is informed consent, acting upon the patient who, going against his previous, apparently autonomous but evidently inauthentic decisions, tries to safeguard the value of his life or, if one prefers, the value of the quality of his life. We maintain here that what is involved is safeguarding the value of his life. This avoids the attitude of certain schools of thought that impose a criterion of manipulation because of other ideological or partisan ends.

## **FUNDAMENTAL ELEMENTS OF INFORMED CONSENT**

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During the last decades, the right of the patient to be informed has been notably strengthened. But "the topic of informing the patient is not mentioned in the Hippocratic Oath, the Ge-

neva Declaration, and the International Code of Medical Ethics. This is a clear sign of the paternalistic trend of these codes. The Indian oath affirms: 'Even knowing that the patient's life has reached its end, I will not mention it, if doing so would cause a commotion in the patient or in others'. As one can see, paternalism extends here its frontiers to the world of India,"<sup>14</sup> and in general to the whole globe.

Hence, there is not always a duty to inform. "The right to be informed of one's diagnosis, treatment and prognosis in understandable terms is the negation of frequent paternalistic attitudes which deprive the patient of all information." Situations exist where it is not medically advisable to inform the patient; in these cases, the information should be provided to a person who is related in some way to the patient. Nonetheless, the right to informed consent exists: this term is used in recent biomedical literature coming from the United States of America and England. The patient has the right to give permission for a treatment to be given to him, but only after he has been sufficiently informed of the risks, existing alternatives and consequences... Much has been written about this type of "informed consent": on the great difficulties of currently carrying it out in an authentic manner and not just in a perfunctory way. In any case, the

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13 T. L. BEAUCHAMP – L. B. MCCULLOUGH, *Ética médica. Las responsabilidades morales en los médicos*, Barcelona 1987, 133.

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14 J. GAFO, *Dilemas éticos de la medicina actual*, UPCO, Madrid 1986, 29.

recognition of this right constitutes a great advance in the affirmation of the patient as an adult person who continues to be capable of making decisions about his own life.<sup>15</sup>

In order for informed consent to be accepted, one must overcome the difficulties it entails by following an anthropological investigation into the characteristic elements of its definition. The paternalistic system eliminates many of these problems by encouraging the patient to leave freedom of choice to the physician. The imposition of this scheme of blind obedience fosters a superficially ordered and stable system. Since the new model, based on mutual communication, recognizes the plurality of moral options and the defense of liberty, it is more complicated and can generate more conflicts.

One must keep in mind that informed consent is a process of information in which the important element is the exercise of a right to safeguard health care workers who, in this way, avoid possible legal action in the event of a possible, or even anticipated and foreseen negative result. The perversion of consent lies precisely in converting it into a nominal and perfunctory gesture.

Yet, its essence consists in the relationship between the physician and patient. It is a process of communication in which the physician recognizes

the other as a person and respects his system of values or manner of understanding reality. This active/interactive participation in a dialogue tries to articulate common objectives and personal attentions that are merely reflected in a final document requiring only a signature to serve as verification.

In all this, it is necessary to confirm the patient's ability to receive information and make decisions, the adequacy of his information and willingness to give consent for an event that plays an important role in his life.

### **Capability**

The definition of informed consent presupposes that information is given to a competent or capable patient. If he is not able to decide for himself, the process is fruitless and must be delegated to a person who is able to decide. Capability of free choice is defined as an ability to understand the situation in which he finds himself, the values that are a part of the process, the possible courses of action as well as the risks, benefits and possible consequences of each of these. Having all this, the person should be able to take, express and defend a decision that is compatible with his system of values.

From the field of anthropology that defines the capacity to choose, one must distinguish between legal capacity, the capacity to act, and ethical capacity, keeping in mind freedom and reference to objective criteria. Since the second and third factors are dynamic, they can vary

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15 J. GAFO, *Derechos de los enfermos*, 34.  
From the Patient's Bill of Rights USA, 1973.

according to persons and situations. It is here that, given the particular complexity of the case, one can encounter difficulties in accepting informed consent given in isolation. Several different levels of capability to decide can be established among persons:

*On the first level*, in extreme cases, the incapable or incompetent are those persons who are unconscious due to, for example, profound mental retardation. To be valid, informed consent requires a minimum level of both consciousness and consent.

*The second level* involves growing experience of consciousness and consent, or a clear capacity for understanding and choosing.

*On the third level*, the most competent are those who are legally adults and capable of reflection, self-analysis, and reasoning, along with the ability to reach a rational decision based on understanding and awareness of consequences in conformity with their own principles and scale of values.

The followers of the theory of informed consent ordinarily explain and prefer legal capability and the so-called capacity to act without trying to show the value of ethical capacity. Moreover, they give greater value to the patient's capacity to act than that of the doctor, basing their judgment on subjective rather than objective capacity. These cases are usually called "most personal acts."<sup>16</sup>

## Information

As we have seen above, the process of communication between physician and patient is an exchange of information. The patient needs data about all that is happening (diagnosis); about what is expected to happen (prognosis) and about the possibilities of therapeutic action, its ensuing consequences, risks and benefits. But the doctor also needs to know what the patient is experiencing, what are his symptoms and expectations, how he understands his illness, and how he integrates it into his life. The doctor must not only exercise his responsibility in reaching an acceptable level of informed consent, but is also involved in his own process of professional decision-making.

All this is more than mere information; it is real communication. This is not easily achieved because physicians have not always been educated in how to communicate. The first problem is knowing how much information should be given. And together with "how much" and "what" to inform, the "how" and the "when" are important as well. For this, it is necessary to consider three factors: the reasonableness of the physician; the reasonableness of the patient; and what the patient wants to know.

Accordingly, in addition to understanding the information, the patient

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316; X. O'CALLAGHAN, "Compendio de derecho civil", in *Revista de Derecho Privado*, (1986) 1.

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16 SIMON, *El consentimiento informado*,



must be able to accept it. That is, he must understand it to be proper and accurate, and must understand its significance and consequences so as to be able to formulate a personal judgment regarding the information received that can lead him to make a decision.

### **Voluntary consent**

The final stage of the process of informed consent consists in making a decision in accordance with a system of values that the person defends, taking into account the facts of the information received. The compatibility of factual information with the beliefs and values of the patient is important, since a decision reached outside of such values or principles leads one to suspect its authenticity.

The decision should be made voluntarily, that is, the patient's freedom should not be impaired by efforts to persuade or manipulate him. In current situations, there are many ways of attempting to influence someone who is making a radical decision of this type. Some influences come interiorly from the patient, such as fear, which diminishes or negates his exercise of freedom. Other influences come from outside the patient, such as certain opinions that are imposed on the patient without objective ethical substantiation. "The morality of the human act depends primarily and fundamentally on the 'object' rationally chosen by the deliberate will" (*Veritatis splendor*, 78).

In order for informed consent to be voluntary, it must come from more than the formality of requesting consent or a signature before beginning a medical intervention. The level of knowledge of the illness and its consequences must be kept in mind; one must respond to the dynamic anthropology, that is to say, the human decision responds to a gradual, historical knowledge. The same must be said for relative and time-limited information. Lastly, the patient in his decision-making and the physician in his information-giving and own decision-making, have to keep in mind that the intervention affects the totality of life, in which beliefs and ethical values have a special place. Hence, during the entire process, the order of objective values must be respected; that is, both patient and doctor must be capable of choosing between good and evil without creating good and evil; because "the power to decide what is good and what is evil does not belong to man, but to God alone" (*Veritatis splendor*, 35).

## **EVALUATION AND PROPOSAL**

It seems to us that the transition from the oaths or ethical codes to the lists of the rights of sick persons has brought about an important advance in overcoming paternalistic attitudes. Despite their illness, patients have dignity and value. The concept of informed consent summarizes very well a kind of relationship between the doctor and the patient where the latter continues to be

an adult person, to whom his situation and his treatment are explained, and who personally and permanently assumes responsibility for his own decisions about something as vital for him as his own existence and his physical or psychological integrity.<sup>17</sup> To achieve this, the patient's decision process should be respected: freedom, the possibility of choosing within an ongoing decision-making process, and decisions made as fundamental options.

After all this, we find ourselves with a new and different model of doctor-patient relationship.<sup>18</sup> Until now, the only and undisputed model has been the paternalistic model inspired by Hippocrates. Its root principle is beneficence: the physician must always act for the good of the patient. According to that model, only the doctor objectively sees what is scientifically best and which is the most reasonable path to take. Here, the patients must allow themselves to be guided and obey the doctor's decisions.

The present situation confronts the paternalistic model with an autonomous model that, in our judgment, is misnamed "rational" in guaranteeing that today's patient is better informed and knows what he wants, yet often this does not coincide with what is scien-

tifically most appropriate for him. In this model, the freedom of the person affected prevails even when he rejects a treatment that is favorable to him. In this sense, the subjective abandonment of objective criteria can have extremely negative results.

As we have seen, questioning this ancient paternalistic model grew out of the affirmation of individual autonomy in modern culture, in the Enlightenment and in liberalism. "The paradigm of autonomy has gradually extended into all the different spheres of political and social life from religion to economics, and has flourished under liberalism. In following benevolent paternalism, only medicine has resisted, for a long time, a kind of sanctuary following the law of absolutism, under the control of benevolent paternalism. The right to freedom, in the form of the right to self-determination and autonomous election, has appeared on the health scene as a second-generation right, with respect to the fundamental rights that constitute the foundations of democratic society"<sup>19</sup>. One is dealing with the autonomy of reason becoming the fabric of judgment in *Veritatis splendor* 35ff.

This cultural path, begun in the USA during the second decade of the twentieth century, has contributed to the rules of informed consent for treatment and research, as well as ever

17 J. GAFO, *Dilemas éticos de la medicina actual*, op. cit., 39ff.

18 E. D. PELLEGRINO – D. C. THOMASA, *Per il bene del paziente. Tradizione e innovazione nell'etica medica*, Ed. Paoline, Milan 1992.

19 PELLEGRINO – THOMASA, *Per il bene del paziente*, 14.

increasing guardianship of a patient's right to be included in all clinical decisions affecting him. The doctor-patient relationship, always an isolated relationship, has become part of a network of relations created by the presence and participation in the doctor's decisions of judges, philosophers, bioethics experts, theologians, ethics commissions and legislators. Under the special regime that seemed to end the last bastion of paternalism, medical ethics was converted into social ethics. In a parallel way, the patient was invited to assume an increasingly active role in the therapeutic relationship. We might well say that the most decisive moment of the long development of patient autonomy was the passage in December 1991 of the "Self-Determination Act" or law. With the right to self-determination and informed consent recognized by law, the spirit of the Enlightenment conquered one of the last territories it lacked.

This took place in the United States and in an Anglo-Saxon culture. But in the European world, the first model of medical ethics, the Hippocratic paternalistic model, still prevails. As a practical form of action, it has survived for millennia. But in a normative form, Europe is following the lead of the United States. The most important reference is found in several of the declarations that appear in the *Convention on the Rights of Man and Biomedicine* adopted by the Council of Europe on 19 November

1996. It is good to point out Article 5,<sup>20</sup> to which Article 10 can be added: "Everyone is entitled to know any information collected about his or her health." But does the right to be informed automatically imply the ability to decide? We believe not, given the conditions we have pointed out in previous sections.

But a rigid and exclusive choice between one of these two models, with a total rejection of the other, leads to bad effects, causing harm to the patient and to society. For example, "granting superior status to autonomy over beneficence means abandoning the patient at the moment of need."<sup>21</sup> Our proposal is to re-examine the entire doctor-patient relationship with the intent of re-establishing a medical ethics that is sensitive to both autonomy and beneficence, without absolutizing either paternalism or autonomy. If we may admit that the paternalistic model is antiquated, we would have to reject all that has been positively realized in a long tradition of medical beneficence.

Rather than opposing the two models, let us try to unite them by carefully redefining both. In other words, a kind of third way saves the valid elements of both Hippocratic and modern medicine, without falling into unilateralism. It proposes a beneficence that includes the values of the traditional doctor-patient relationship while respecting the

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20 FERRER, *SIDA y bioética*, 96.

21 FERRER, *SIDA y bioética*, 34.

patient's autonomy, which it foresees, respects and fundamentally fosters as an authentic human decision.

It is logical for physicians to initiate a proposed declaration that explicitly shows how the proposals it offers are realizable because they are based on real and verifiable facts. Its characteristic note would be that of founding the theory of beneficence on confidence. Uniting beneficence and autonomy can be realized through following certain tactics:

- Situating the good of the patient at the center of professional medical practice.

- Respecting the moral rights of patients; letting them participate in decisions affecting them; clearly and gently explaining the nature of the illness as well as the advantages and risks of the proposed treatments.

- Working mainly for the patients' best interests.

- Assisting patients, without coercion, deceit or ambiguity, to choose actions that coincide with their values and opinions.

- Always helping patients, including when they are recovering; and when death is inevitable, providing assistance so that they can die in accordance with their life principles.

- Guaranteeing that the doctor's responsibility is based on objective views about good and evil, and that the medical method used is technically correct.

- Acting with awareness that human freedom cannot create values nor have primacy over the truth (cf. *Veritatis splendor*, 35).

One should not forget, however, that more changes have been introduced into medical ethics in the last two decades than in the previous 2,500 years. These changes have shaken up the entire edifice of Hippocratic ethics, and some of its arts have been weakened. We are entering a post-Hippocratic era with an uncertain future, and ask ourselves whether the medical profession can be re-unified again under a series of common ends and obligations.

The task that medical ethics should undertake is one of reconstruction: building a new ethics based on past elements that are still valid, while rejecting those that are not. We believe that the principle of "beneficence in confidence" that we propose will strengthen the foundations of a coherent effort in the best Hippocratic tradition, and yet prove sensitive to the needs of contemporary society.

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# The Legal Status of the Human Embryo

Rodolfo-Carlos Barra

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*Discussions about the humanity of the embryo, product of the male-female union, arise as one tries to formulate premises that facilitate the legalization of abortion and the practices that threaten the very existence of the new being. In this context, it became necessary to coin the term “pre-embryo.” This procedure is not new. From antiquity, people have questioned the humanity of other persons every time it became necessary to use arguments to exploit or terminate them. Slaves? An example. Barbarians? Second-class humans. Today, this process takes on a new meaning in the new perspectives opened by biology. Should we legalize everything we do and everything we can do? Should we not first declare the human reality of the embryo and then grant him/her a legal status that guarantees his/her right to life from the moment of conception?* (↗ Counseling for Pregnant Women in Germany; Dignity of the Human Embryo; Right to Abortion; Medical Interruption of Pregnancy; Voluntary Interruption of Pregnancy; Safe Motherhood; Partial Birth Abortion; Assisted Procreation and IVF; Pro Choice).

## INTRODUCTION: THE CORE OF THE DEBATE

The previous definition of the humanity of the embryo is at the core of the debate about the use of “stem cells” obtained from human embryos. However, that is not the only problem. There is also the question of the manipulation of embryos for different scientific or commercial purposes; the generation of “spare” embryos in the process of artificial insemination, where their destiny is destruction or death; the use of chemical or mechanical means with abortive

effects such as the “morning after pill,” or the “IUD” (intrauterine device). For many, at the beginning of their existence—until the moment of “implantation”—the embryo is not human. It is called a “pre-embryo,” a tiny, amorphous conglomerate of “multipotent” cells, which do not allow the embryo to be described as an “individual”.

Consequently, some assert that during the period between the formation of the “pre-embryo” (commonly called “conception” or “fertilization”) and the first or second week (according to different positions), the “pre-embryo” is not

“human” and thus does not have rights, but only the protection that legislators are willing to grant it.

That does not mean that this “pre-embryo” is consciously considered an unimportant or valueless “thing.” Man protects beings or things more or less strictly according to human interests (economic, political, cultural, religious, moral, etc.). He can protect artistic and historical goods, endangered animal or plant species, etc., not strictly for the sake of the good being protected, but for man’s own sake. From this perspective, the protection can never be absolute. It always requires a “cost-benefit” analysis of different values or interests. Because of this, the thing or being protected could yield its protection to benefit other interests judged to be absolutely or relatively more important.

The “pre-embryo” may be protected—there aren’t many examples of concrete protections—but these protections may yield to the scientific demands for research on elements that benefit human health, or the material needs of artificial fecundation, oriented to satisfy the human interest in procreation, or conversely, human interest in non-procreation, all of which allow destruction of the embryo. The “pre-embryo” can be frozen, stored, altered or destroyed providing there is an end strong enough to justify the means. The “pre-embryo” is an object, not a subject, and hence is an instrument that depends on the ends that man defines from a position higher

than that of that “something”, which, even though it will turn into a human being, is not yet human.

Of course, this position has not been quietly accepted. Many of us, from different viewpoints, consider that at the very moment of “conception” a new human being is created, one different from his generators, and thus a legal person and not an object of relative protection. This is the core of the debate: Is the conceived—the “pre-embryo”, or embryo, whatever we want to call it<sup>1</sup>—a subject of rights, a person? If so, it is also entitled to rights, which, among the ones we call fundamental—is life, the foundation of all the other rights: dignity, physical and psychic integrity—all of which are absolute, and as such they should be guaranteed under any circumstances.

## **THE PERSON: A CREATION OF LEGAL CIVILIZATION**

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Article six of the *Universal Declaration of Human Rights* states that: “Every

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1 We will use the term “embryo”, which is more comprehensive. The question is, in itself, a nominal one because the question of the qualification is not related to the problem of the quality of the subject and his/her rights from the moment of conception by the bonding of the female and masculine gametes. Anyway, the expression “pre-embryo” lacks a scientific basis, as shown by A. SERRA, in “Lo stato biologico dell’embrione umano. Quando comincia l’essere umano?”, in the combined publication of the PONTIFICAL ACADEMY FOR LIFE, *commento interdisciplinare all’“Evangelium vitae”*, Vatican 1997.



human being has the right to recognition everywhere as a person before the law.” In this way the concepts of “human” and “person” are united, or even better, those of “human” and legal “person or subject” entitled to rights are united. *The American Convention on Human Rights* is still clearer. It states in article 1, item 2 that: “...a person is every human being.”

Hence there is an absolute assimilation: every human being is a person before the law, and if, under law, a person is an entity entitled to rights (subject of rights and entitled to legal protection by ordinance), such entitlement is necessarily granted to every human being. However, this has not always been the case. The history of rights has gone through periods in which not all human beings were considered persons. This turned humans into objects of legal relationships—for example, buying and selling—rather than subjects of rights.

The legal concept of “person” and its application to every human being is a creation of legal or juridical civilization especially influenced by Christianity. Every human being is a person and all human beings are “equally” persons, that is, there are no degrees of personhood or entitlement and (legal) possibility of enjoying such rights. There are no second-class human beings—the legal structure forbids it—there are no persons who to possess fundamental rights have to be of a certain age, have

a particular social or economic condition, belong to a political party or religious faith, have a particular racial origin or sexual orientation, a specific skin color or state of health, physical or intellectual capabilities, nor even the use of reason. A mentally challenged person, one in a merely “vegetative” state, a child, an invalid, all are persons.

## **HUMANITY AND LEGAL PERSONHOOD**

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These are legal findings which are supported by biological, philosophical, moral and religious affirmations. All men are equal because they are biologically equal. There is a fundamental biological community among men which science has proved through the equality and particularity of human DNA. The “carrier” of a specific type of DNA is a human being, who belongs to a biological species that we call “human,” and is a member of “humanity.” Because he or she is a being, not a thing, we call him or her a “human being.”

Of course, the concept “human being” transcends mere biology. All human beings are equal in dignity. The human being, simply by being human, “deserves” dignity. Humanity is in itself a dignity, an inherent, fundamental and absolute value or worthiness that confers a corresponding dignity on its members. A human being has absolute worth, absolute dignity.

Philosophy searches for the essence of all that exists, and in that search, it

has not been difficult to discover that among the different men and women of all generations and whatever circumstances, there is a common link, an essential identifier: humanity. Like all the other animals, we recognize those of our own species, not only in an instinctive manner, but rationally, understanding the universal concept “human” from its existential realizations. If I am, in my humanity, essentially equal to others, what I deserve as a human being, the other also deserves. Our “other,” in an extended sense, is fully human, and “I should not do to others what I do not want others to do to me,” according to a basic established rule of morality.

These basic philosophical and moral reasons are reinforced in the light of religion. Women and men are created by God and have Him as their end. Everybody is equally transcendent, equally dignified by his/her origin and his/her enduring future. We are all children of the same Father; we are brothers and the brother is the closest “other,” the neighbor. What most brings men together is their humanity, and for many, God Himself became our neighbor—human—in order to save us. For these reasons, for the law, every man or woman is a person, that is to say, equally entitled to rights. Personal quality is synonymous with human quality. If the law did not give this answer, equal dignity would be frustrated, as it was when the legal solution was different.

## **EQUAL, BUT NOT ALWAYS**

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Legal civilization has advanced a long way, as we have said, even though there have been practical drawbacks and structural setbacks. However, the XXI Century still suffers from the legal burden of the nefarious *Roe vs. Wade*<sup>2</sup> rule: it is not possible to discuss or legally define the humanity of the unborn.<sup>3</sup> Moreover, since the Constitution does not describe the unborn as a person, he/she is not entitled to absolute legal protection. When the unborn is by definition a non-person and devoid of rights, the interest of the States in protecting the unborn as well as the right of the unborn to be protected do not prevail over the interests of the mother as expressed in her rights to life and health, to decisions relevant to her own body, to her privacy, and to the choice of her “own life-style.” Obviously, none of these rights,<sup>4</sup> would provide any

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2 This is the ruling of the Supreme Court of the United States of America (410.US. 113) that in 1973 declared the unconstitutionality of the state laws prohibiting abortion. It established the doctrine of the “three trimesters”: during the first, abortion is completely unrestricted; during the second one, it could suffer certain restrictions for the benefit of the mother’s health; during the third, it could be forbidden, unless it is required for the benefit of the mother’s health.

3 This term, from the Roman legal tradition, encompasses all the pre-natal evolution of the human being, from conception to birth.

4 Some incorrectly formulated scientifically, as the one regarding “to one’s own body”, since the “unborn” is distinct from its mother.

grounds for appeal if it were the life of another person; such rights could not be exercised if they brought about the death of another human being.

Please note that the Court did not deny the humanity of the unborn - it would have been daring to have done so. It denied that they are legal subjects as it did in *Dred Scott vs. Sanford*,<sup>5</sup> which denied that blacks could be citizens of the United States. The blacks did not belong to the same category as the white people; they did not enjoy the same legal subjectivity. That is why they could be bought or sold. In other words, they could be objects of legal relationships. This logic was the same that, in the beginning of the XX century, created the famous “separate but equal” rule, and which helped protect the apartheid practiced in different states of the South.

In the reasoning of the court, the unborn is not a person, even though it is human. Thus, it could be killed, even during the third trimester, if it is vaguely justified by an unclear appeal to the health of the mother, as was admitted implicitly by the same Court, which allowed the cruel and bloody “partial birth abortion.”<sup>6</sup>

In sum, not all human beings are always regarded as equal. Some are not, because during their prenatal life they are not considered persons.

### **ABORTION: A LOGICAL INCONGRUITY AND A LEGAL CONTRADICTION, BUT AN ACCEPTED REALITY**

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Strangely, we seem to have gone back in time and have divided the concepts of humanity and personhood or legal subjectivity. In fact, the theory of the “pre-embryo” implies accepting the humanity of the embryo, at least from the fourteenth day of pregnancy—because it attempts to sustain its “non-humanity” before that moment. It does not state that the unborn is not a human being, but that the pre-embryo is not human because not until the fourteenth day does it possess certain biological qualities.

In applying the norm of article 6 of the *World Declaration of Human Rights*, mentioned above, to this reasoning, it is easy to conclude that the pro-abortion countries contradict the international legal ruling referring to human rights because they do not provide every human being with the protection required by their legal personhood.

Every abortion method performed after the fourteenth day of pregnancy—which so far have been the usual practice—is contrary to the human rights recognized in the ordinances of

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Therefore, the woman who voluntarily has an abortion is deciding about the body of another and not her own.

5 60, US, 393, ruling of the year 1857.

6 *Steinberg, Attorney General of Nebraska v. Carhart*, 530. U.S. 914, ruling dated April 25, 2000.

current international law. Contrary to international rights, these “factual ways” or aberrant practices go against the most fundamental right, which is life. The States that tolerate these practices violate the *World Declaration*.<sup>7</sup> Regionally, for example, they violate the *American Convention on Human Rights* or the “Pact of San José de Costa Rica,” which they promised to comply with, through “progressive measures of national and international nature” (introductory paragraph). The *U.N. Declaration* was passed in 1948, and even though its fiftieth anniversary was lavishly celebrated, since then some States (the United States, and many members of the European Union) have made legal decisions accepting the practice of abortion despite explicit prohibitions against it in 1948. More than inconsistency, this is hypocrisy.

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7 The first paragraph of the Preamble of the *World Declaration* states that “...liberty, justice and peace in the world based on the acknowledgement of the intrinsic dignity and the equal rights of all the members of the human family”. While abortion is tolerated, there will be no justice in the world. Article 3 of this *Declaration* states that “every individual has the right to live...”. Article 4.1 of the *American Convention on Human Rights* states that “every person is entitled to the rights that protect their lives. This right is protected by law, and in general, from the very moment of conception. Nobody can be deprived of his or her life arbitrarily”. This is consistent with article 6.1 of the *International Pact of Civil and Political Rights*: “The right to life is inherent to the human person. This right is protected by law. Nobody should be deprived arbitrarily of the right to live.”

## **THE HUMAN EMBRYO**

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But today, in the great “health market,” we are faced with a greater challenge: the production of human embryos for commercial purposes, not only for so-called “artificial fecundation” practices, but also for their use as raw materials for elaborating curative means for certain diseases. The health purpose is excellent; the economic end is highly respected and even commendable within a capitalist system based on free enterprise. The problem is the means.

This converts the embryo into a means, a thing, an object of manipulation and legal relations. If embryos are raw materials, their commercialization in the health market logically follows, in the same way that blacks were bought and sold because they were not considered persons.

It is time to reflect on the affirmation of international law that every human being is a person. In its initial stage of development (before the fourteenth day), is the embryo human?

To begin with, men and women generate a human product without using any external material other than their own bodies. It is therefore a very special human “product” resulting exclusively,<sup>8</sup> directly and immediately from the creative potential of human

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8 This does not exclude that laboratories could, hypothetically, produce human embryos from cells submitted to special treatment, but even in this case, the creative potential will always come exclusively from the human cell.

biology. It is a human product which participates in human dignity. That is insufficient, however: it could be an extrinsic dignity similar to the one attributed, for instance, to human cells.

The embryo enjoys a special dignity because, by itself, it is already human life. But one could object that evolving into human life is not the same as being human. Up to this point, the embryo can be entitled to a special, considerate, respectful, protected treatment, but is not the subject of rights. Therefore, all such respect could yield to a higher human interest such as the health of those who have already been born, and who are undoubtedly human.

The problem is said to lie in the fact that the embryo, during its initial stage, does not enjoy individuality or identity because, being formed by multi-potent cells, one or more as yet unidentified human individuals could be in formation.

But let us reason this out. The embryo (we refer to the so-called “pre-embryo”) is a being. Under this expression—being—we mean the existing, living reality that is in potency to its own biological development, which is differentiated and autonomous: it has in itself its own evolutionary force. It has within itself what it needs to survive and “nourish” its own autonomous development. Additionally, and fundamentally, it develops on its own, without playing any “role” outside of its own being. A cell is not a being because it “functions” as

part of a whole; its development forms part of the development of the whole in which it is inserted. The embryo is not part of any whole. It is not fundamental to the biological life of the mother. Thus, if we “produce” embryos in the laboratory, they lack “utility”—unless they are implanted in the uterus to continue the biological cycle which leads to birth. Or if they do not complete the gestational stage in the laboratory either, and they are not implanted eventually, they will be “discarded,” “destroyed,” or simply “killed,” which are all synonymous terms.

Therefore, the embryo, from the fertilization of the egg, differentiates itself from its generators. It is identifiable and individualized in relation to its generators and to any other embryo or living individual. It is a being, but of what species? Its genetic structure differentiates it from other kinds of beings. It is not a plant; it is an animal. It has the genetic structure of a vertebrate, a mammal, a human. Hence it cannot evolve into an orchid, a worm or an elephant. It evolves “humanly”, as every other human has evolved and will evolve from its pre-natal stage.

If it is an individual of the human species, it is a human being. Morphologically and organically, an individual human being is equal to other human newborns.<sup>9</sup> Genetically, it is not.

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9 Neither is the embryo, immediately after the fourteenth day after conception. However, it seems that even in this case it is not possible

But *for some thinkers* it is not an individual. This affirmation is relative; the embryo is individualized compared to other living beings, to its generators, and to other embryos. It is individualized in its entity, existence and identity, even though it can become many beings.

I was not a sperm, or an egg, simply because I resulted from a determinate and precise combination of a spermatozoon and an ovum, for if the same spermatozoon had fertilized the ovum of another woman, I would not be today. I am the result of a precise substantial combination out of which came my own self, according to a specific and unique genetic conformation.

I was an embryo, that embryo. Essentially, I am that embryo, as I am the eight-month old fetus, or the three-year-old child or the twenty-five-year-old youth. The identification is perfect.

Of course, it may happen, though exceptionally, that the same embryo might be the embryo of John and of Peter. From that perspective, some state that the embryo is not an individual because it is susceptible to division. However, let us note that even in that hypothesis, the embryo equally enjoys an identity: John and Peter were and are that embryo (depending on whether one considers the embryo from a temporal perspective or as a substantial reality). Aren't the Siamese twins, who are united and sharing the same vital organs, human beings despite being united and having

to be separated in order to survive even if producing the inevitable death of one of them? If the so-called "pre-embryo," in its evolution, does not multiply into two or more human beings, but remains only one, it was always that human being. Even if it multiplies or, in reality, develops sequentially,<sup>10</sup> it was always those human beings and those human beings were and are that embryo. Or—we are not certain—a specific first being generates a second one. In either case, the embryo is fully identified—it has its own identity—even though it is not relatively individualized. In any event, this is a problem that should be answered by metaphysics, for biologically the "pre-embryo" is a living being of a human genetic structure, of a human species and nature, and therefore a human being. He/she is an entity carrying human nature in him/herself, bearing

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10 As explained by SERRA, "Lo stato biologico dell'embrione umano", 593-594, when analyzing the "mechanisms which lead to the formation of mono-zygotic twins [...] it could be certainly affirmed that, in any case, there is a 'first' from which the second originates, or that the first system has originated the second system. On the other hand, it is inaccurate to state that the first system is transformed into two or more systems contained within itself in a confused state. Additionally, while the second system begins its own individual ontological existence the moment it begins to develop—which could happen before its physical separation from the first—it continues uninterruptedly its development keeping its own biological and ontological identity."

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to scientifically deny its humanity.

the genetic code which individualizes him/her.

## THE LEGAL RESPONSE

This is the foundation for a possible legal answer. The lawyer, the legislator and the judge cannot reach absolute conclusions on issues that are not of their specialty. In spite of that, they could give answers that are coherent and reasonable. If the law were indifferent to these answers, it would be reducing a being that belongs to the human race to the condition of a mere “thing” or “object.” It would be an object especially and eventually protected, but such protection would be subordinated to higher end, *and so, just relatively protected*. How, for example, could we avoid speculating about the possibility of creating human beings from human embryos with the exclusive purpose of using their organs for transplants? This is the logic of the *Roe* case: no action on the embryo should be prohibited to the extent that there is an intention of satisfying a higher purpose than protecting that “something” which deserves more respect than an animal, an ecological system or a work of art.

Nevertheless, the law cannot be indifferent to scientific facts—at least, the ones we have up till now—which necessarily lead us to affirm the humanity of the recently conceived. In this sense, the argument developed by the President of the Supreme Court of Justice of Argenti-

na<sup>11</sup> is very interesting. It shows how law finds solid grounds in favor of recognizing the legal subjectivity of the embryo. The Civil Code of Argentina, in article 51, states that: “All entities that present characteristic signs of humanity, beyond qualitative or individual differences, are persons...” This legal principle, (stated almost a century and a half ago), follows a Roman tradition oriented towards an exclusively morphological validity which has significant meaning today. President Nazareno goes to the heart of the question when he says: “given that law is a practical idea that is nourished on reality, it is wise to refer to the sciences that study biological human reality, such as genetics, in order to establish which are the characteristic traits of humanity...” in the Civil Code. In accord with biology, the characteristic sign of humanity is the special conformation and sequence of deoxyribonucleic acid—DNA—belonging exclusively to the human race. It is the one that the embryo has from conception as well as the so-called “pre-embryo”. “From that we can deduce” Nazareno says, “that human DNA or the human genome identifies a person as belonging to the human race and therefore characterizes humanity in terms of the law.” From a biological point of view, and prescinding from spiritual reality- the “possession” of human DNA

11 This is about Julio Nazareno’s vote in the case *Tanus, Silvia vs. The Government of the City of Buenos Aires* ruling from January 11, 2001.

allows us to define a human being as such, beyond its individual qualities or differences, that is to say, beyond specific morphological, organic characteristics, efficient reasoning, nervous system, cellular evolution, and length of gestation, among others.

Until the contrary is scientifically demonstrated, law can and must affirm that there is a typically and exclusively human DNA, and that every individual who has it belongs to the human race and is a human being. And if he is a human being, he is a person, and is a legal subject. Moreover, if he is a person, then he is entitled to all the fundamental rights that other persons enjoy. Among these, the first and absolute right is the right to life and to physical integrity.<sup>12</sup>

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12 That is why *certain* thinkers are mistaken. Ronald Dworkin, for instance, sees in the unborn, not a human being, but an object of protection, even the basis for an ethical imperative, but one which cannot be imposed on those who do not think the same way. This is also why abortion, although bad in itself, cannot and should not be forbidden (*Life's Dominion*, 1993). A second example is zoologist Stephen Jay Gould. He absurdly sustains that we cannot grant the "status" of human life to a group of cells set on a dish, produced by *in vitro* fertilization, and explicitly destined to be disposed of by the free decision of the man and woman who contributed with their components" ("What Only the Embryo Knows", *The New York Times*, August 27, 2001). The scientist fails to point out that this "bunch of cells" has human DNA, and would at least demand not to be placed on a dish, nor to have debates about the ethical considerations of producing them in

## THE RIGHTS OF THE CHILD (*NASCITURUS*)

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Besides the already cited article 4 of the *American Convention on Human Rights* which acknowledges the right to life "from the moment of conception," there is a specific convention in international human rights law designed to protect children: the *Convention on the Rights of the Child* (United Nations General Assembly, November 20, 1989). This convention specifically defines the issue under discussion.

Article one of the *Convention* establishes that "a child means every human being below the age of eighteen years". The Preamble—which is the document designed to explain the will of the legislator, and is therefore the first element of an authentic interpretation of the norm—reiterates what had already been said in the previous *Declaration of the Rights of the Child*: "the child, by reason of his physical and mental immaturity, needs special protection and care, including appropriate legal protection, *before as well as after birth*" (my emphasis).

Consequently, the Convention recognizes the humanity of the child in its pre-natal state,<sup>13</sup> without any distinc-

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laboratories, and to prohibit their "storage" and "disposal", even against the twisted will of their generators.

13 As proof that the quoted is an authentic interpretation of the Convention—which results from the Preamble—it is worth mentioning that the Republic of Argentina



tion of stages or biological evolution. This is a ruling principle of international law which the signatory States are obliged to respect—sanctioning the “appropriate legal protection” of the unborn child—under the supervision of the “Committee on the Rights of the Child” created by article 43 and following of the *Convention*.

The *Convention* creates the image of the “child” as a subject with special rights, “without discrimination of any kind, independently of all other conditions of the child” (art. 2.1). For this child, the States “undertake to ensure... such protection and care as is necessary for his or her well-being...” (art. 3.2). They “recognize that every child has an inherent right to life”, and commit themselves to ensure “...to the maximum extent possible the survival and development of the child” (art. 6). The child has the right to “know his or her

parents” and “preserve his or her identity” (art. 7 and 8). The States should adopt “all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental abuse” (art. 19). Fundamentally, the *Convention* establishes that in every public or private action related to children, “the best interests of the child shall be the primary consideration” (art. 3.1).

All these articles are perfectly applicable to the “child-subject of rights” in his pre-natal state, as mentioned explicitly in the Preamble of the *Convention*.

The legal subjectivity of the unborn at every stage of his biological development is thus a commitment taken by States that the United Nations should enforce.

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adhered to it with “reservations and comments” including the following: “In relation to Article 1 of the *Convention on the Declaration of the Rights of the Child*, the Republic of Argentina declares that it should be interpreted that a child is any human being from the moment of the conception until he is 18 years old”. Now, then, Article 51 of the *Convention* sets that the reservations are to be communicated to all the member States, and that “a reservation incompatible with the object and purpose of the present *Convention* shall not be permitted” (Paragraph 2). The Argentinean proposal was not rejected by any of the signing States. This shows that it is compatible with the object and purpose of the *Convention*: the total protection of the child in the widest possible sense.



# The Principle and Argument of the Lesser Evil



Francisco C. Fernández-Sánchez

*The principle of the “lesser evil” has assumed increasing importance in the ethical discussions of our time. What was presented by St. Thomas Aquinas as the “less noxious of solutions” in an extreme situation involving a moral obligation and leaving little room for freedom of action, and which St. Alphonsus called the choice of a perplexed conscience faced with a situation that does not present any radiance of goodness, has today practically become an authentic general “criterion” for moral discernment. We have passed, without crying “watch out”, from the exception to the rule. Clearly the argument is being abused - as are consciences - when the choice of “lesser evil” solutions to moral “dilemmas” is proposed when it is also possible to choose a good. (↗ Verbal Engineering; Manipulation of Language; What Bio-Ethics?; Free Choice)*

The alleged “lesser evil argument” or the application of the “principle of the lesser evil” is a model of practical argumentation frequently used in politics, law, and ethics. In recent political campaigns in the United States of America, this term was widely used and debated during the political confrontation of the candidates. It has even been used strategically as a political slogan (for example: in 2000, it was used during the election campaign by Mr. Gore against Mr. Nader). In legislative matters, it is the kind of argument frequently used during parliamentary discussions over laws with great ethical content, such as depenalizing abortion and euthanasia. When

proposals to amend legislation are very difficult to support as being “good”, it is argued in favor of these proposals, while recognizing that they are an evil, they should be allowed and legalized based on the consideration that they constitute a “lesser evil” with respect to the current legislation that is to be modified. In parliamentary forums, it is common to argue in this way for voting in favor of bad legislative proposals to amend laws considered to be worse, as a better alternative that will “limit the damage” of current bad legislation, for example, regarding abortion or drugs. Also, in judicial practice, the “lesser evil” argument is often employed as a strategy by

both sides to win the case; and judges habitually use the “lesser evil” argument to support the reasoning in judicial sentences of the courts.

In the area of ethical debates, the principle of the “lesser evil” is very frequently used when referring to the personal and social spheres. In applied particular ethics, it is usually part of a discussion regarding ethical problems in medicine, procreation, and bioethics (for example: eco-social, genetic, environmental problems etc.). It is also used in contemporary debates on the strategic use of military forces, nuclear deterrence, the moral justification for decisions to intervene in international conflicts, as well as in the traditional ethical questions on the means used by military tactics in wars. It is also used in discussions related to the negative effects of globalization. Regarding ethics in medicine, the “lesser evil” argument is used often in debates around the moral evaluation of medical interventions with negative effects, generally tied to the so-called “therapeutic principle”. In recent years, the use of this medical term has extended into other areas of medicine that have social relevance, such as in epidemiology and workplace medicine, which are very linked to public policy in health.

The so-called “principle of lesser evil” can be expressed, in its widest sense, in the following manner: when facing inevitable evils, one must choose the lesser among them. Even though it would ap-

pear to be a clear formula, its actual interpretation and use, given how widespread this argument is, shows in the end that an ambiguity exists in the different meanings when saying something is an “evil” and that “one has to choose”. The “lesser evil” argument degenerates into sophistry when used in a context where no consideration is given to the ethical demand for objective moral truth and of the existence of moral absolutes, but consideration is solely and exclusively of consequences evaluated as “positive” or “negative” apart from the morality of the choice in itself.

The “lesser evil” argument has two spheres of application: from the generic to the practical, and in the specific ethics of decision-making. Under the first sense, which is wider, the “lesser evil” argument means that, among several forms of evil that could be suffered and which are inevitable, it is preferable to permit, by means of making a decision, that evil which is less, in order to avoid the greater evil. In a second sense, which is stricter, the “lesser evil” argument means that when it appears that all possible decisions that can be taken on the matter are evil, and there is no way to avoid making a decision, then one must decide for the least evil one. In the first sense, the “lesser evil” argument refers to the *consequences* that derive from this decision, in a situation where one is forced to make a choice and the situation is unavoidable, and one chooses the least evil consequence. The second sense

refers to a decision that is *problematic in itself* because any possible decision is negative. In such a perplexing situation, a decision must be made for what is least evil. Under both senses, the application of the principle of the “lesser evil” has ethical limitations which will later be discussed, and which are related to “moral absolutes” or intrinsically disordered moral actions.

Traditionally, the “lesser evil” argument has been applied in matters of social ethics, in the permission for public authorities regarding specific evils and the avoidance of worse evils.<sup>1</sup> From the sixteenth century, this notion is widened to encompass personal ethics, legal ethics, and the action of governments. It is then that there arose the contemporary concept of “tolerance” understood as an attitude among States accepting the primacy of certain individual decisions in matters of public order which are less significant for the common good. This slowly opened a constantly growing gap or dissociation between individual morality and public order as seen in J. Locke’s *Epistle on Tolerance* (1689) or in Voltaire’s *Treatise on Tolerance* (1763).

Nonetheless, this gradual process has demonstrated its contradictions. The sophistic use of the “lesser evil” argument, particularly within a context

separate from the perceived absolute ethical demands about the truth of the human person and his dignity, have been denounced in contemporary thought, especially after World War II. Hannah Arendt, in *Personal Responsibility under Dictatorship* (1964), sharply criticizes the aberrant and ideological uses of the “lesser evil” with the aim of putting to sleep the moral conscience during the period of National Socialism: “The acceptance of the lesser evil was consciously used to habituate government officials and the national population to generally accept evil in itself.”<sup>2</sup>

## HISTORICAL OVERVIEW

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The themes of the “greater good” and the “greater evil” in society had been laid out by Plato in his *Dialogues*, insisting that it could not be left outside of any consideration that needed to be made in favor of the human being; that is, the moral good.<sup>3</sup> This is a matter that forms part of the traditional repertoire of ethical problems confronted in stoicism, framed by the affirmation that the only true evil is vice, given that the only true good is virtue. The other forms of evil, in comparison to this one, are not genuinely evil. Cicero and Seneca, for example, insisted repeatedly in their works that it was preferable to suffer the worst evils, and even death, than to

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1 *Cum autem inter duo, ex quorum utroque periculum imminet, eligere oportet, illud potissime eligendum est ex quo sequitur minus malum.* Thomas Aquinas, *De regimine principum*; I, 6.

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2 H. ARENDT, *La disobbedienza civile ed altri saggi*; (Giuffrè, Milan, Italy; 1985).

3 Cf. PLATO, *The Republic*, 5.

do an immoral evil, an ethical principle that is valid in political action.<sup>4</sup>

Aristotle places the “lesser evil” problem within the context of justice. Justice is proportion; he who is unjust attributes to himself more than he ought to have, while he who suffers the injustice receives fewer goods than what he ought to receive. Regarding certain forms of evil (understood not as the choice of an immoral evil but as that which must be borne by human beings as a result of adversity or stubbornness), the contrary occurs: “The lesser evil can be categorized as “good” in relation to a greater evil. And the good is always preferable, and the more preferable the good, the greater is the good”<sup>5</sup>. The lesser evil is therefore preferable; not because it is a good<sup>6</sup>, but because the good that will be lost because of the greater evil is more valuable. The lesser evil, according to Aristotle, is the consequence of a just decision: it is preferable to deny oneself material goods, for example, rather than to deny oneself the right to life. Therefore, it is preferable to deny oneself material goods, and even life, rather than commit an injustice. An unjust choice is always a greater evil because we never see ourselves obliged to act wrongly, although sometimes we are obliged to suffer (for example: a privation of goods),

precisely in order to avoid making an unjust choice.

The “lesser evil” argument is framed in the practical argumentation about what is preferable, not only for communities but also for individuals. In Book III of his *Topics*<sup>7</sup>, Aristotle amply discussed several formal aspects of this model of argumentation: “When two objects are very close to one another, *and no superiority can be perceived regarding one or the other*, one must analyze them from the perspective of their consequences. In effect, the consequence most desired is the greater good. If the consequences are evil, it is preferable to accept that which is a lesser evil. Even if both objects are desirable, nothing prevents them from having some undesirable consequences.”<sup>8</sup> It is a matter therefore of a criterion for choosing between similar things as to the more or less preferable of their respective consequences. In both *Politics* and *Nicomachean Ethics*, there are many arguments dealing with concrete results that demonstrate a specific decision to be preferable because its consequences are less evil. Nonetheless, Aristotle is conscious that this manner of reasoning, in order to reach a decision in difficult practical situations, as to what is the best or worst of possible consequences, is many times doubtful because often factual experience demonstrates the existence of factors not

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4 Cf. CICERO, *De finibus bonorum et malorum*, 3; *Tusculanae disputationes*, II, 2; SENECA, Letters to Lucilius, 95, 85.

5 ARISTOTLE; *Nicomachean Ethics*, V, 3.

6 Cf. ARISTOTLE; *Nicomachean Ethics*, V, 3.

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7 ARISTOTLE; *Topics*, III.

8 ARISTOTLE; *Topics*, III.

taken into account when reaching that decision and evaluating its consequences.<sup>9</sup>

In Christian reflection, the lesser evil argument is tied, much more than in the thinkers of antiquity, to the consideration of the existence of specific moral absolutes. In effect, the Pauline admonition to rectitude of behavior and avoiding compromises with evil (*non sunt facienda mala ut eveniant bona*, Rom 3, 8), is present in the spirit of the first Christian communities. Saint Augustine (for example, in *On Lying*), or Boethius insisted on the need to consider choosing evil as always being a greater evil than permitting some privation of goods of this world. Nonetheless, since the public authorities cannot prevent all evils, one must, in imitation of Divine Providence, “allow many things to go unpunished which should be because Divine Providence will act to chastise with justice.”<sup>10</sup>

Regarding the personal aspect of the lesser evil argument, Saint Thomas Aquinas understood the term “lesser evil” to mean the preferable choice between several inevitable evils.<sup>11</sup> He added that moral evil cannot be committed because the foreseen consequences represent lesser evils with respect

to the sad material consequences that come about after acting justly<sup>12</sup>. The one who suffers injustice is not unjust; in the same way, the one who permits the lesser evil is not evil. Precisely for this reason, it is less bad to suffer harm from it than it is to commit moral evil.<sup>13</sup> For example, neither lying nor homicide can be justified on the basis of the lesser evil because committing a moral evil is worse than suffering the consequences that can arise when acting honestly<sup>14</sup>. The choice of a lesser evil, therefore, is only licit when there is no other possible alternative, and the evils that follow are inevitable. It is licit then to choose the least evil among these evils. Aquinas gave a similar example: the doctor chooses the lesser evil for the patient, but only if there is no possible cure.<sup>15</sup> If a cure is possible, then it must be chosen and not the lesser evil. This just appraisal of the superiority of moral values with respect to material goods (and therefore of the evils that befall man) is opposed by human fragility and weakness. It is easy to attempt to justify moral evil, showing it as if it were a lesser evil, through aversion

9 ARISTOTLE, *Rhetoric*, II, 23.

10 S. AUGUSTIN, *De libero arbitrio*, I, 6, 14.

11 *Minus malum pro maiore malo permittendum est; De duobus malis eligendum est minus malum*; THOMAS AQUINAS, *Comm. Libr. Sententiae*, II, d. 23, q. 1, a. 2; IV, d. 6, q. 1, a.1.

12 *Sicut enim non est verum syllogizandum ex falsis, ita non est perveniendum ad bonum finem per mala* (THOMAS AQUINAS, *Super Ep. Ad Romanos*, 3, lc.1).

13 THOMAS AQUINAS, *Sent.. Libr. Ethicorum*, V, lc. 17, 14.

14 THOMAS AQUINAS, *STh*, II-II, q. 110, a. 3, ad 3m; II-II, q. 68, a. 11, ad 3m.

15 For example, THOMAS AQUINAS, *Comm. Libr. Sententiae*, IV, d. 19, q. 2, a. 3.

for the painful consequences of acting justly.<sup>16</sup> Then, by weakness, they place moral evil at the same level as the other forms of evil (which presuppose a privation of human goods) when, in reality, the moral good is completely superior to all else. Within this sense, human fragility and weakness tend to lead astray the rectitude of moral judgment. Saint Thomas points out that, for a consistent person, the right choice includes choosing the lesser evil (for example, the loss of precious goods) because of fearing the greater evil (for example, the failure to fulfill one's duty). Yet for an inconstant person, the opposite occurs: the right choice is precisely the greater evil to be avoided<sup>17</sup>. Saint Thomas, in *De malo* (approx. 1272), poses the problem in the faculty of reasoning such that the evil consequences of a just act are preferable to an immoral act, which is why moral absolutes cannot be considered a lesser evil with respect to the painful consequences that ensue from a just act. Immoral acts are a greater evil than harmful consequences, which he illustrates with several reasons and examples.<sup>18</sup> There are also degrees of evil. Not all moral evils are the same: there are worse

evils than others (more or less evil), but moral evils are never a moral good, even if they bring about good consequences of an infinitely inferior order.<sup>19</sup>

Regarding the social aspect of the lesser evil argument, it is true that rulers have the duty and the right (authority) to adopt measures pertaining to the common good of the political community, creating social conditions that make possible the full realization of man's end. But it is also true that, for this matter, the authentic condition of man must be considered. In the constitution of laws, those who rule over their communities must attend to the fact that human law is the ordering of reason that must derive from the natural law. When a law is contrary to reason, it does not derive from natural law, which is written in the hearts of all men by their Creator. Instead, it is an act of violent imposition (often done in the name of the majority over a minority) that has the appearance of law, but is an unjust law.<sup>20</sup> The approval of unjust laws is not a lesser evil because it is an injustice, a moral evil. This does not mean that human laws must prohibit all that is contrary to the natural law. It should do so only for the most serious cases. Divine Providence permits the commission of moral evil by individuals in order to attain greater good. For that reason, human law

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16 *Quia etiam minus malum videtur aliquantulum esse bonum in quantum est eligibile* (THOMAS AQUINAS, *Sent. Libr. Ethicorum*, V, lc. 1, note 14).

17 THOMAS AQUINAS, *Comm. Libr. Sententiae*, IV, d. 29, q. 1, a. 2

18 THOMAS AQUINAS, *De malo*, q. 1, a. 5; Cf. *Id.*, *STh*, I, q. 48, a. 6.

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19 THOMAS AQUINAS, *De malo*, q. 2, a. 9.

20 THOMAS AQUINAS, *STh*, I-II, q. 93, a. 3 ad 2m.



cannot prohibit everything the natural law forbids<sup>21</sup> because doing that could bring evils on the whole civil community. God Himself, although permitting evil in the world, “neither wills evil to be done, nor wills it not to be done, but wills to permit evil to be done; and this is a good.”<sup>22</sup> We should not confuse the divine order of Providence and the sanctioning of acts by God in the life of men with the governing of the political community ordered for the common good. Otherwise, we would fall into totalitarianism, confusing the spheres of law and morality. “Now human law is framed for a number of human beings, the majority of whom are not perfect in virtue. Wherefore human laws do not forbid all vices, from which the virtuous abstain, but only the more grievous vices, from which it is possible for the majority to abstain; and chiefly those that are to the hurt of others, without the prohibition of which human society could not be maintained: thus human law prohibits murder, theft and such like.”<sup>23</sup> Nonetheless, there is a clear limitation as to tolerance in all that causes harm to others, since it is understood that it would harm the common good.

Starting in the fifteenth century, the models for moral argumentation were progressively consolidated into “prin-

ciples”, in a similar way to the natural sciences, where each particular science is articulated on the basis of axioms and laws. By means of these principles, moral issues are resolved. It is then that the “principle of the lesser evil” began to be alluded to, and slowly, the focus of attention of the lesser evil argument passed from “evils” and choice itself, to the subject who must choose. Thereafter, the problem of the “lesser evil” is considered within the context of a conscience in doubt. The manuals on morality treat the lesser evil when they address doubt in matters of conscience when the person thinks that something they will do is evil. Often “typical” cases will be presented. Perhaps the oldest of these (Saint Augustine refers to it<sup>24</sup>) is whether one should or should not answer the questions of persecutors seeking an unjustly persecuted person who has taken refuge in your home, or the case of Abraham who has a divine order to sacrifice Isaac, or the person caring for a sick person who is uncertain about leaving to attend Mass, and the case of the confessor who is uncertain about the obligation to impose restitution as part of the penance, etc.<sup>25</sup>

In reality, these are very heterogeneous cases in ethics. It is interesting to point out that each of these cases is examined within the context (typical of

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21 THOMAS AQUINAS, *STh*, I-II, q. 96, a. 3 ad 3m; cf. *Íd.*, *Contra Gentes*, III, 123.

22 THOMAS AQUINAS, *STh*, I, q. 19, a. 9 ad 3.

23 THOMAS AQUINAS, *STh*, I-II, q. 96, a. 2.

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24 S. AUGUSTINE, *De mendacio*, V, 9.

25 Cf. P. DELHAYE, *La conciencia moral del cristiano*, Herder, Barcelona, 1980, 281.

moral concerns in these modern times) of a conscience in “doubt” when facing an urgent situation that requires immediate action. Far beyond the objective consideration of the ethical problem, the concern in these cases is the need for a practical solution when facing a subjective doubt and it is necessary to do something. This particular state of subjective doubt is called a “perplexed conscience”, and this is when moralists have established that the principle of the lesser evil, understood as a principle for reflection, should be applied. Saint Alphonsus Maria Liguori, in *Moral Theology* (1755), summarized it in the following manner: “a perplexed conscience is one in which, when facing two established precepts, believes they will sin if they choose one or the other... If acting can be postponed, there is an obligation to do so while consulting someone with competence. If acting cannot be postponed, then the lesser evil act must be chosen, avoiding transgressions of the natural law and human or divine positive laws. If it is not possible to discern which is the lesser evil, there is no sin in whichever act is chosen, because in this case they lack the freedom required for the commission of a formal sin.”<sup>26</sup>

It is in this way that the classic form

of the lesser evil argument has come to the present day, both in its personal aspect (conscience) and its social aspects (collective decisions).

## **CRITICAL EVALUATION**

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Both the personal and social aspects of the lesser evil argument are properly understood within an ethical model inspired to meet the absolute demands of human dignity and inalienable human rights. It is the fruit of the natural effort of human reason to search for and to find the truth about good and evil. By means of faith, founded on Revelation, such truth is naturally recognizable by reason and is mainly clarified by it, corroborated and freed from doubts and errors which frequently arise due to the weakness of the human condition. To avoid a greater evil and to obtain and keep a greater good, it is licit in certain cases to permit a lesser evil.<sup>27</sup> The Magisterium of the Catholic Church is explicit in this sense. “Yet, with the discernment of a true mother, the Church weighs the great burden of human weakness, and well knows the course down which the minds and actions of men are in this our age being borne. For this reason, while not conceding any right to anything save what is true and honest, she does not forbid public

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26 S. ALPHONSUS MARIA LIGUORI, *Theologia moralis*, I, 1, 10. Similar thoughts are found in Génicot, Salsmann, Noldin, Veermersch, Lanza, Delhaye, Prümmer, Merckelbach, Roberti, Zalba, and many other consulted Catholic moral theology manuals.

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27 Cf. LEO XIII, *Libertas* (1888) 609; PIUS XII; Discourse to the National Congress of Italian Catholic Jurists, 6 December 1953; PAUL VI, *Humanae vitae*, 14; JOHN PAUL II, *Veritatis splendor*, 80.

authority to tolerate what is at variance with truth and justice, for the sake of avoiding some greater evil, or of obtaining or preserving some greater good. [...] But if, in such circumstances, for the sake of the common good (and this is the only legitimate reason), human law may or even should tolerate evil, it may not and should not approve or desire evil for its own sake; for evil of itself, being a privation of good, is opposed to the common welfare which every legislator is bound to desire and defend to the best of his ability. [...] But, to judge aright, we must acknowledge that, the more a State is driven to tolerate evil, the further is it from perfection; and that the tolerance of evil which is dictated by political prudence should be strictly confined to the limits which its justifying cause, the public welfare, requires. Wherefore, if such tolerance would be injurious to the public welfare, and entail greater evils on the State, it would not be lawful; for in such case the motive of good is wanting.”<sup>28</sup> Hence, the approval (personal or public) of those means that are offensive to moral values are not a lesser evil, since “the damage to moral values is always a greater evil for the common good than any disadvantage in the economic or demographic order.”<sup>29</sup>

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28 LEO XIII, *Libertas* ASS 20 (1888) 609-610.

29 CONGREGATION FOR THE DOCTRINE OF THE FAITH, *Declaration on procured abortion*, 18.

The true context of the interpretation of the principle of the lesser evil must be an ethics that takes into account the difference between a moral evil and all others and is not quantitative but simply essential. Moral evil is the worst of all evils. It is not a matter of the evils that can come about by choice, but rather the choice in itself. Through an evil choice, the person becomes evil. The person makes himself evil by consciously and freely choosing evil. Even if the choice of evil is done under the appearance of good, nobody chooses evil because it is evil, but because it presents an appearance of good. To the person who makes the choice, all choices of moral evils appear as a “lesser” evil.

The contemporary context presents, in a sense, a strong tendency towards relativism and subjectivism. Utilitarianism and pragmatism tend to value the morality of decisions, collective and personal, by calculating the consequences, ignoring the morality of the actions considered in themselves. In the calculation of these consequences, the different goods and evils taken into consideration constitute the “state of the matter” with no ethical differentiation. “For some, concrete behaviour would be right or wrong according as whether or not it is capable of producing a better state of affairs for all concerned. Right conduct would be the one capable of “maximizing” goods and “minimizing” evils”.<sup>30</sup>

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30 JOHN PAUL II; *Veritatis splendor*, 74.

With this mode of reasoning (known as “consequentialism”), it is almost inevitable that the principle of the lesser evil is converted into a kind of general moral principle, given its inadequate understanding of the object of moral action, and to consider the subjective intention as the only source of morality.<sup>31</sup> An action, therefore, would be good or bad “with a view to the ‘greater good’ or ‘lesser evil’ actually possible in a particular situation.”<sup>32</sup>

A correct understanding of the lesser evil argument must keep in mind that “the consideration of these consequences, and also of intentions, is not sufficient for judging the moral quality of a concrete choice. The weighing of the goods and evils foreseeable as the consequence of an action is not an adequate method for determining whether the choice of that concrete kind of behaviour is “according to its species”, or “in itself”, morally good or bad, licit or illicit. The foreseeable consequences are part of those circumstances of the act, which, while capable of lessening the gravity of an evil act, nonetheless cannot alter its moral species. Moreover, everyone recognizes the difficulty, or rather the impossibility, of evaluating all the good and evil consequences and effects—defined as pre-moral—of one’s own acts: an exhaustive rational calculation is not possible. How then can one

go about establishing proportions which depend on a measuring, the criteria of which remain obscure? How could an absolute obligation be justified on the basis of such debatable calculations?”<sup>33</sup>

In this way, it is easy to understand that there is a growing tendency to employ the lesser evil argument in an ambiguous and abusive manner, especially in its personal aspects. This is especially serious when life and family values are involved. A concrete example of this phenomenon is contraception. There is an attempt to justify the use of resources that are inherently contraceptive (for example, the condom) as a lesser evil, with the purpose of family planning or epidemiological prevention of diseases (like syphilis, gonorrhea or AIDS), thus ignoring the intimate natural link between sexuality, family life, and human life, and the ethical consequences of this. This is an erroneous moral position given that “though it is true that sometimes it is lawful to tolerate a lesser moral evil in order to avoid a greater evil or in order to promote a greater good,” it is never lawful, even for the gravest reasons, to do evil that good may come of it (cf. Rom 3, 8), in other words, to intend directly something which of its

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31 JOHN PAUL II; *Veritatis splendor*, 75.

32 JOHN PAUL II; *Veritatis splendor*, 75.

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33 JOHN PAUL II; *Veritatis splendor*, 77; cf. S. PINCKAERS, *Ce qu’on me peut jamais faire. La question des actes intrinsèquement mauvais; Histoire et discussion*, Ed. Univ. Fribourg-Le Cerf; Paris 1986; B. KIELLY, “*The Impracticability of Proportionalism*”, In *Gregorianum* 66 (1985), 655-686.

very nature contradicts the moral order, and which must therefore be judged unworthy of man, even though the intention is to protect or promote the welfare of an individual, of a family or of society in general.”<sup>34</sup>

Even more troubling is the tendency to consider this reigning mentality as a legal criterion. It is true that the law cannot prohibit everything that is contrary to the natural law, but the legal promulgation of something that is opposed to the natural law causes an intrinsic disorder. Given their special gravity, attacks against life are very harmful, not only to the personal good, but also the common good. This is the case with abortion. “Although many citizens, in particular the Catholic faithful, condemn abortion, many others hold that it is licit, at least as a lesser evil.”<sup>35</sup> In this way, many pro-abortion strategies promote legal abortion as an alternative to clandestine abortion, proposing pro-abortion as a “reduction of harm”, that is to say, a lesser evil<sup>36</sup> This is also the case with euthanasia. “While public authority

can sometimes choose not to put a stop to something which—were it prohibited—would cause more serious harm (cf. THOMAS AQUINAS, *STh*, I-II, 96, a. 2), it can never presume to legitimize as a right of individuals—even if they are the majority of the members of society—an offence against other persons caused by the disregard of so fundamental a right as the right to life. The legal toleration of abortion or of euthanasia can in no way claim to be based on respect for the conscience of others, precisely because society has the right and the duty to protect itself against the abuses which can occur in the name of conscience and under the pretext of freedom (cf. VATICAN COUNCIL II, *Dignitatis humanae*, 7).”<sup>37</sup> It is also the case also for “all laws which would do harm to the family, striking at its unity and its indissolubility, or which would give legal validity to a union between persons, including those of the same sex, who demand the same rights as the family founded upon marriage between a man and a woman”<sup>38</sup>.

The lesser evil argument is properly applied, on the other hand, in decisions relating to the ordering of human resources for the common good. This is clear when dealing with limiting economic and environmental damage in

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34 PAUL VI, *Humanae vitae*, 14. Cf. JOHN PAUL II, *Veritatis splendor*, 80.

35 CONGREGATION FOR THE DOCTRINE OF THE FAITH, *Declaration on procured abortion*, 19.

36 CONGREGATION FOR THE DOCTRINE OF THE FAITH, *Declaration on procured abortion*, 19. With respect to so called “embryonic reduction”, a form of “therapeutic” selective abortion, cf. PONTIFICAL COUNCIL FOR THE FAMILY, *Declaration regarding “Embryonic Reduction”*, 12 July 2000

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37 JOHN PAUL II, *Evangelium vitae*, 71.

38 JOHN PAUL II, Address during the Jubilee for government leaders, members of parliament and politicians, 4 November 2000.

certain set circumstances.<sup>39</sup> One of the cases in which it may also be applied is in improving unjust laws relating to the family and life. Even if the approval of unjust laws is not a lesser evil, and can never be justified, what can be justified is their substitution for laws that are less unjust, when it is not practically possible to do otherwise: “A particular problem of conscience can arise in cases where a legislative vote would be decisive for the passage of a more restrictive law, aimed at limiting the number of authorized abortions, in place of a more permissive law already passed or ready to be voted on. Such cases are not infrequent. It is a fact that while in some parts of the world there continue to be campaigns to introduce laws favouring abortion, often supported by powerful international organizations, in other nations—particularly those which have already experienced the bitter fruits of such permissive legislation—there are growing signs of a rethinking in this matter. In a case like the one just mentioned, when it is not possible to overturn or completely abrogate a pro-abortion law, an elected official, whose absolute personal opposition to procured abortion was well known, could licitly support proposals aimed at limiting the harm done by such a law and at lessening its negative consequences at the level of ge-

neral opinion and public morality. This does not in fact represent an illicit cooperation with an unjust law, but rather a legitimate and proper attempt to limit its evil aspects.”<sup>40</sup>

The same can be said with respect to legislation on the family: “This means that laws, whatever the areas in which the legislator intervenes or is obliged to intervene, must always respect and promote human persons—in all the variety of their spiritual, material, personal, family and social needs. Hence a law which does not respect the right to life—from conception to natural death—of every human being, whatever his or her condition - healthy or ill, still in the embryonic stage, elderly or close to death—*is not a law in harmony with the divine plan*. Consequently, Christian legislators may neither contribute to the formulation of such a law nor approve it in parliamentary assembly, although, where such a law already exists, *it is licit for them to propose amendments which would diminish its adverse effects*. The same must be said with regard to all laws which would do harm to the family, striking at its unity and its indissolubility, or which would give legal validity to a union between persons, including those of the same sex, who demand the same rights as the family founded upon marriage between a man and a woman. Certainly in today’s pluralistic society Christian lawmakers are confronted by

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39 JOHN PAUL II, Address to the participants of the General Conference of the FAO, 23 October 1995.

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40 JOHN PAUL II, *Evangelium vitae*, 73.

ideas of life and by laws and requests for legalization which run contrary to their own conscience. Christian prudence, the virtue proper to Christian politicians, will make clear to them how they should act so as not to fall short, on the one hand, of the demands of their correctly formed conscience, and not to fail, on the other hand, in their duty as legislators. For Christians today, it is not a question of fleeing the world in which God's call has placed them, but rather of bearing witness to their own faith and being faithful to their own principles in the difficult and ever new situations which mark the world of politics"<sup>41</sup>

## CONCLUSIONS

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The ambiguity that can be seen in the current use of the model of argumentation of the lesser evil, has three fundamental components: 1) the confusion between *moral goods and values*, with *other goods*, such as economic goods, health, well-being, life; 2) the inadequate distinction between the good and evil *consequences of acts*, and the good or evil of the choice itself; 3) the different sense given by it as to what is preferable, given that on some occasions it must be indicated what is *obligatory*, and at other times, what is simply *better*.

In its social aspect, the principle of the lesser evil means that, foreseeing two

social evils that will inevitably occur, and always as long as the decision is not evil in itself (as happens, for example, with the legislative approval of abortion, euthanasia, etc. that are in themselves a moral evil), the choice for the lesser evil is licit. Where there are grave reasons, tolerance with respect to the moral evil of citizens can be licit, if it will not cause harm to others or to the common good of society. The parliamentary intent to improve unjust laws can also be licit as a choice of a lesser evil over a greater evil, when there is no other possible alternative. Yet the legislative approval of unjust laws, contrary to the natural law, on the other hand, is always illicit.

In its personal aspect the principle of the lesser evil is applied in those situations of a perplexed conscience (which, in principle, are rare), in which any act that is done appears morally evil to the individual, there is no way to resolve the doubt, and there is a need to act. As long as there is no other way of acting (as would happen if the Magisterium of the Church has already made a pronouncement on the matter), it is licit to choose what appears to be less evil, attempting as much as possible to avoid going against the natural order of human morality.

Although the lesser evil argument has been traditionally employed in a series of practical arguments, its principal content is specifically moral, as great thinkers have pointed out since antiquity. This is the principal source of confusion. When

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41 JOHN PAUL II, Address during the Jubilee for government leaders, members of parliament and politicians, 4 November 2000.

the primacy of moral values is not clear with respect to the order of goods and evils present in human life, fundamental concepts disappear, such as moral absolutes derived from the ethical demands of the truth about the human person and human dignity. The wars that bloodied the world during the twentieth century were a lesson that should not be forgotten so quickly, particularly in debates of such magnitude as those that affect the family and life. There are specific spheres of decision-making in which the lesser evil argument cannot be applied, because it would suppose placing moral evil on the same set of scales with the penalties, troubles and adversities of the human condition. This is a grave error, denounced by Socrates from the beginning of ethics, at the dawn of Greek philosophy, when he taught his disciples that it was better to suffer an evil than to commit it.

An authentic rational reflection on decision-making, public or personal, cannot set aside consideration of the morality of decision-making in itself before pondering its consequences. Politics and law cannot be separated from ethics, since in a manner of speaking it is the soul of the social body. The choice of a lesser evil is based on this delicate relationship. Without becoming assimilated within each other, politics, law and ethics must be in a profound symbiosis with each other. Otherwise, the consequences are very serious, ranging from social relativism with its attendant

public and personal moral breakdown, to totalitarianism. This delicate balance will never be realized without the recognition of the primacy of ethics over other pertinent considerations in the assessment of the absolute ethical demands of human dignity and by taking into consideration its existential fragility.



# Manipulation Of Language

Warwick Neville



*In the debates on respect for life, on family and on marriage, the question of language has to constitute the object of special consideration. We have to take into account two levels of difficulty. In the first place we have to realize that, starting with nominalism, the meaning of words can change considerably depending on the voluntary definitions of those who define their content. An example among others: the definition given to abortion can change depending on the convenience of the legislator. Abortion, it is said, for example, in a new false “definition”, consists in voluntarily expelling the implanted embryo. We have to go back then, to a conception of language that yields before those realities that man does not create, but that, on the contrary, are imposed on him, and before these facts, expressed in language. If marriage is a natural reality, it cannot be reduced to a contract that is always at risk of changing mutual wills. But the difficulties connected to language regarding marriage and family are also on the theological level. In order to reveal himself to men, God used human language, a language that expresses the human experience in order to understand through the light of faith something of the divine mystery. God reveals himself as Father, and we have experienced what human fatherhood is, but divine fatherhood is even infinitely richer than human fatherhood. Since language has become a weapon against family and against life, it is essential to dwell upon it and see how it can be re-evangelized. (↗ Bioethics Committees; Verbal Engineering; Principle and Argument of the Lesser Evil; What Bioethics?; Free Choice)*

## INTRODUCTION

1. The theological and jurisprudential traditions agree that the *Universal Declaration of Human Rights*, proclaimed in 1948, heralded a new era in the recognition of human rights. In the first encyclical of his pontificate, *Redemptor Hominis* (1979, n.17), John Paul II noted that “the Declaration of Human Rights linked with the setting

up of the United Nations Organisation certainly had as its aim not only to depart from the horrible experiences of the last world war but also to create the basis for continual revision of programmes, systems and regimes precisely from this single fundamental point of view, namely the welfare of man—or, let us say, of the person in the community—which must, as a fundamental factor

in the common good, constitute the essential criterion for all programmes, systems and regimes.”

2. This new epoch clearly established a significant emphasis, internationally, on the role of law as a vehicle available for groups and individuals to advance claims for the acknowledgment of rights not previously recognized at law. One way in which this occurred was by the radical change in the character and intention of international law. Formerly, its principal focus was the conduct and interests of nation states as between themselves. More recently, it has turned its attention to the conduct, behavior, attitudes and relationships of persons in each nation state.

3. The new era of “rights” has also introduced a new, overstated vocabulary in aid of the advancement of these rights. In this regard, it is important to note that this age of rights, replete as it is with an emphasis upon “rights talk” and “rights creep”, formally completed many of the projects begun by the *philosophes* of the Enlightenment. By this is meant that historians and scholars of politics, among others, recognized that “in the first half of the [18<sup>th</sup>] century, the leading *philosophes* had been deists and had used the language of natural law; in the second half, the leaders were atheists and used the vocabulary of utility.” (P. Gay, *The Enlightenment: An Interpretation*, 1966) In terms of the formal “agenda” of the Enlightenment, it is true to say that its vastly ambitious

project was a program of secularism, humanity, cosmopolitanism, and freedom, above all freedom in its many forms - freedom from arbitrary power, freedom of speech, freedom of trade, freedom to realise one’s talents, freedom of aesthetic response, freedom, in a word, of moral man to make his own way in the world. (P. Gay) In certain respects, at the root of this freedom was the so-called right to sever the connection between faith and morals, so that one’s moral conduct became increasingly individualised and unaccountable to any external, objective norms. (W. Kasper, “Autonomy and Theonomy”) There was an overt, deliberate rupture between individual and communal morality and the classical Christian heritage, evidenced perhaps most graphically in Rousseau’s ‘declaration’ that “the state ought to emancipate itself from the notion of marriage as a sacrament and treat it exclusively as a civil and, of course, dissoluble, contract.” (C. Anderson, “Marriage and Family in Western Society”) To be free, the human person - both male and female - must, according to the *philosophes*, be free from the corrupting moral and social norms, and responsibilities, imposed by marriage and the family, especially as these structures of grace are comprehended by the Church.

4. In the last two decades, the emphasis upon “rights” has increased significantly with international agencies and individuals using “rights talk” as the standard rhetoric of persuasion to

advance claims in favor of (a) uninhibited sexual license (notably but not exclusively in the context of the discussion of the prevention of the spread of HIV/AIDS), (b) the promotion and recognition of a wide range of relationships outside of marriage, (c) the acceptance of definitions of “family” unsupported by the exclusive, faithful, covenantal relationship of husband and wife, and (d) unfettered rights to abortion, contraception and artificial reproductive technologies. Each of the above have been, and continue to be, advocated under the guise of language redolent with studied euphemism and deliberate ambiguity.

5. This time of international activism has taken place aided and abetted by philosophical, cultural, and even legal emphases upon the supremacy of autonomy (without any corresponding emphasis upon responsibility) and its fawning attendants of individualism and utilitarianism. In short compass, this same period has seen the comprehensive rejection of truth, most notably those truths already adverted to regarding (a) the sanctity of all human life, with special reference to the unborn and those who are frail, aged or infirm, (b) the holiness and goodness of human married love and the Christian family on which it depends, and (c) the almost complete rupture between faith and reason. All of these dislocations with respect to “truth” have been the subject of legal determination and or legislative regulation.

## **ROLE & CRITIQUE OF MODERN CULTURE**

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6. Traditionally, “culture” was understood to embrace four dimensions –intellectual, moral, material and practical/institutional. For example, one definition notes that “culture is [...] a system of inherited conceptions (intellectual), a set of common standards of behavior (moral), a pattern of meanings embodied in symbols (material), and a series of conventions governing human interaction (institutional), by which human beings communicate and perpetuate, but also modify and develop, their knowledge about and attitudes to life.” (A. Nichols, *Christendom Awake*, 1999) It is a central feature of Pope John Paul II’s teaching about the “new evangelization” that culture, as well as the individuals who constitute it, must be evangelized. (A. Dulles, *The Splendor of Faith*, 1999; R. Martin, *John Paul II and the New Evangelization*, 1995) He is equally insistent on appropriate terminology - e.g. the nuptial significance of the body, human dignity, fidelity, love and responsibility, to name only a few critical terms. (*Evangelium vitae*, n. 58; M. Prokes, *Toward a Theology of the Body*, 1996)

7. In recent times, western culture in particular has aided and abetted the advancement of “rights” unsupported by and divorced from classical ethical systems consistent with Christianity. Scholars note a number of features of

modern culture, such as individualism, instrumentalism (a term for a combination of economic rationalism and social darwinism), emotivism, and the loss of genuine freedom. (C. Taylor, *The Ethics of Authenticity*, 1991; A. MacIntyre, *After Virtue*, 1984) It is also noted that society has become increasingly "contractual" by which is meant that in the modern era, people assemble in order to think and to discuss together within new sociability structures. In a contractual society, 'social truth is absolute while being changeable with time. Absolute, because it is the product of the group's reason at a given moment; changeable, because it depends on the moment when it was elaborated by the group. (F.-X. Guerra, "The Paradoxes of Modernity") Similar phenomena of malleability are apparent within theological circles over many moral questions, for example, whether there are any moral absolutes?

8. The Church, at all levels, has sought to counter these persistent trends in culture, philosophy, law and public policy. For example, John Paul II has consistently declared, for the common good and for the good of the individual, (a) the centrality of objective truth and the correct relationship between conscience and truth (*Veritatis splendor*), (b) the critical protections necessary in law and elsewhere for all human life from the first moment of existence until its natural end (*Evangelium vitae*), (c) the centrality of marriage and family both

as the foundational theological and legal structure of relationships within and for society, as well as providing the fundamental sanctuary of life (*Familiaris consortio*, *Centesimus annus*), and (d) the need to reunite the two lungs of theological and philosophical life, namely the restoration of the link between faith and reason (*Fides et ratio*).

## LANGUAGE - GENERAL PRINCIPLES

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9. The exploration of language - its interpretation, etymology, use in argument and such matters - has occupied human minds for millennia. For example, Aristotle begins his remarks on interpretation, stating that;

"First we must settle what a name is and what a verb is, and then what a negation, an affirmation, a statement and a sentence are.

"Now spoken sounds are symbols of affections of the soul, and written marks symbols of spoken sounds. And just as written marks are not the same for all men, neither are spoken sounds. But what these are in the first place signs of - affections of the soul - are the same for all; and what these affections are likenesses of - actual things - are also the same." (*De Interpretatione*)

Elsewhere, he says:

"Rhetoric is the counterpart of dialectic. Both alike are concerned with such things as come, more or less, within the general ken of all men and belong to no definite science. Accordingly all

men make use, more or less, of both; for to a certain extent all men attempt to discuss statements and to maintain them, to defend themselves and to attack others. Ordinary people do this either at random or through practice and from acquired habit. Both ways being possible, the subject can plainly be handled systematically, for it is possible to inquire the reason why some speakers succeed through practice and others spontaneously; and everyone will at once agree that such an inquiry is the function of an art.

“[...] the technical study of rhetoric is concerned with the modes of persuasion. Now persuasion is a sort of demonstration...” (*Rhetoric*)

10. Throughout history, human beings, as individuals or as representatives, in one way or another, of their culture, have endeavored to record matters of significance in language appropriate to each occasion or circumstance. For example, Justinian's *Institutes* (promulgated on 21<sup>st</sup> November 533 AD) record a system of law for the good and just ordering of society. His first consideration is on the relationship between justice and law. He says: “Justice is the constant and perpetual desire to give to each man his due right. Jurisprudence is acquaintance with things human and divine, the knowledge of what is just and what unjust.” Appropriately, his language is that of law and of the philosophy of law.

Cicero's *Laws* (written *circa* 52-46 BC), by contrast, differ noticeably in style, some areas of content, and in certain ways, language. Similar contrasts can be made across a range of disciplines, be they philosophy, poetry, or literature of whatever genre.

The simple point is that there has always been an attempt in every generation to express accurately and appropriately what is good, noble, beautiful and true about the human condition and the heroic (or otherwise) endeavors of individuals and communities. A recent example is the divergent literary responses to the horrors of the Holocaust in the writings of Edith Stein, Simone Weil, Anne Frank and Etty Hillesum. (R.F. Brenner, *Writing as Resistance*, 1997)

11. The scriptural and theological traditions have always evidenced a clear appreciation of the appropriate use of language. For example, the Psalms (be they laments, songs of praise and much else besides), the Book of Job and the Song of Songs are acknowledged as unparalleled expressions of the most vibrant and profound of human dispositions. The scriptural tradition holds that all interpretation belongs to God alone (Gen 40,8) and that creation is in fact a word from God. The formal study of the art of interpretation dates at least from the time of Origen (*Peri Archon*) and Augustine (*De Doctrina Christiana*; cf. L. Alonso Schokel, *A Manual of Hermeneutics*, 1998). The biblical tradition also holds as true that each person, and

each community, throughout history is involved in a “messianic drama” of the kind articulated, for example, in Psalm 2 and elsewhere. The manipulation of language has assumed a prominent role in this ‘messianic drama’ precisely because of its use in attacking fundamental truths concerning the inherent dignity of the person, made in the image and likeness of God, destined to be eternally with the Holy Trinity. Equally attacked are truths concerning marriage, family and life itself in all of its stages.

12. To take one example from the tradition, it is said of St Bernard that the monastic tradition, of which he was a prime exemplar, developed a sacred philology, especially under the influence of Gregory the Great. (C. Straw, *Gregory the Great: Perfection in Imperfection*, 1988) This tradition approached the sacred text in a way similar to the Rabbinic convention by which texts were explained “by reminiscence”, which is to say that the sacred reading of the text was akin to eating it. It was something to be masticated so as to become part of the person, part of their heart, part of their being; indeed, one became a type of living concordance, a living library. It was also part of the theological tradition that prayer was indispensable to the understanding of the Scriptures and the continued savoring and exposition of them. Bernard’s exposition of the Scriptures, consistent with the whole Christian tradition, were always with the view of leading souls to God. (J.

Leclercq, *The Love of Learning and the Desire for God*, 1961)

All of this is in keeping with the spiritual tradition in which “theology is light and prayer is fire.” That tradition sought to nurture and to protect the divine life in individuals and in the community. It sought also to nurture and to protect the moral life of God’s people. The language of the Church and of those engaged in the art, or sacred science, of theology, sometimes consciously, sometimes not, developed over time a sacred philology which had its own place in protecting and nurturing the moral and spiritual ecology of the Church and such influence as it has (or had) on the culture and society in which the members of the Church lived and worked. (R. Fisichella, “Theological Language”)

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## THE PRACTICES OF LANGUAGE:

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### Examples of Post-Modern Manipulations

13. Summarily, one can note that bank account holders, drinkers, patients, passengers, consumers (of anything) and even dead bodies have been homogenized into “customers”, while students, the unemployed, prisoners and welfare recipients, among others, are now accorded the title of “clients.” Doctors, physiotherapists, nurses, wards-men (and presumably wards-women), hospitals, and religious orders, among others, are now called “health care professionals” and/or “health care providers.”

14. In the absence of a common morality, common goals of happiness, and a common philology (e.g. virtue, goodness, truth, beauty, etc) for both Christian and non-Christian alike, law provides both the paradigm, and often the only commonly accepted system, based upon duty and rights, for settling communal and personal disputes. Such matters had previously been resolved according to generally accepted ethical norms. Law also provides an alternative, substitute language of discourse, predicated upon rights. For example, the language of marriage and family has given way, as a matter of public discourse, to that of law so that "spouse" now becomes "partner", a term taken from the Western common law tradition of contract, as opposed to the biblical tradition of covenantal, faithful and exclusive love. It is increasingly common-place in legislation today to include in definitions of what were once described as "common law" marriages or *de facto* relationships, "same-sex" relationships. Relationships have become contractual, terminable either at will or with due notice, rather than covenantal.

15. In certain feminist, anti-life circles, it is customary to refuse to refer to women using the title of "Mrs" because it denotes the acceptance of notions of marriage and life-nurturing which are anathema to the promotion of autonomy. The preferred title in such environs is that of "Ms."

16. Perhaps one of the most regularly employed linguistic tools is the post-modern use of "discrimination;" it is now the pejorative term *par excellence*. Its use ensures that there is a presumption of guilt, not innocence. Invariably, the qualifying words of "just" or "unjust" are ignored. It is becoming commonplace for single persons, whatever their "sexual preference", to claim a right to a child and a correlative right of access to artificial reproductive technologies. These claims are part of the panoply of rights presumed under the heading of "sexual" or "reproductive health." Such persons claim that it is "discriminatory" to exclude them from these technologies and to make them available only to those who are married or in a recognised, longer-term *de facto* relationship. According to this view of the world, marriage is an anachronism and children are commodities.

A corollary to the broadening of rights for some members or classes of society, is that nothing is done to protect the rights and responsibilities of those who are in the sacred relationship of marriage.

17. "Family", too, is now a generic term used to describe, and specifically to include, a wide range of relationships. Legal commentators refer now to more than 21 different definitions of relationships of which "marriage" is but one among the many. Relationships are described almost exclusively today in terms of law. No longer are persons referred to as either "married" or

as someone's "spouse." Rather, as noted above, the accepted terminology today is in terms of "partnership" with all of its overtones of the law of contract and obligation, rather than "the law and language of love." Often in certain theological circles words like "creative" and "prophetic" are used to justify new uses of words which are employed to broaden the definition of otherwise certain realities. For example, if one seeks to expand who or what constitute a "family", certain philosophical circles distinguish between "conservative political rhetoric" which favor the "traditional family" and other, neo-Marxist influenced traditions which purport to use a 'justice-based' approach based on "mutuality in partnerships" to include a wide range of unconventional relationships said to be deserving of the title "family." (L. McGee, "Family"; L.S. Cahill, *Family: A Christian Social Perspective*, 2000)

19. By way of further example, an entry for the topic of "marriage" written by a professor of Christian Ethics at the prominently Jesuit Boston College begins, "Traditional marriage is an interpersonal, sexual, domestic, economic, and social partnership of heterosexual persons." It concludes, "Christian feminism...seeks to transform marriage toward greater equality and reciprocity of partners. ....Christian feminists are re-envisioning marriage as committed and equal partnership, possibly including same-sex unions." (L.S. Cahill, "Marriage" in *Dictionary of Feminist Theologies*, 1996)

20. Within the Church and elsewhere, there is a veritable plethora of pejorative terms, as well as an interesting range of euphemisms. The following is but a random sample, firstly of the pejorative: Pope, bishop, Church, Magisterium, patriarchy. In certain contexts, whenever these terms are used, it is in a significantly antagonistic manner. Always, the litmus test, however, is "authority." Within the Church, this is usually understood only in a pagan manner because it is interpreted to mean "power" and thus it is used by the powerful to dominate the weak. For Christians, "authority" refers to the right ordering of relationships between persons who are all equal in the sight of God.

21. The area of "life" itself is another which is replete with euphemisms which disguise fundamental truths. For example, "women's rights/reproductive rights" in the wider community means an unfettered right to abortion. These rights are read into international human rights instruments according to tenets of "dynamic interpretation." (Eriksson, *Reproductive Freedom* 2000; H. Charlesworth & C. Chinkin, *The boundaries of international law: A feminist analysis*, 2000) Within certain ecclesiastical circles, the code words are "women's rights" or "participation of women." De-coded, this can mean either "the ordination of women" or "reproductive rights" (including abortion) –or both. In the wider community, the



tag “pro-choice” was coined in the abortion debate to mask the intentional destruction of nascent human life. Within the Church, a prominent dictionary of feminist theology offers the following illuminating comment on “abortion”:

“Recurring themes in feminist theological reflection on abortion include (1) a commitment to bodily integrity as a fundamental feature of respect for the well-being and dignity of women; (2) a view of pregnancy as a creative moral action to be undertaken with freedom, intelligently and with forethought rather than simply a “natural process”; (3) an insistence on an adequate description of abortion, i.e., as a genuine moral dilemma encountered under specific socioeconomic, historical, and cultural conditions; and (4) a critique of assumptions concerning “natural gender roles.” [...] an adequate analysis of abortion must draw from all available sources of moral wisdom, most particularly from the lived experience of those who bear (and have always borne) the burdens of reproduction.” (M. Ryan, *Dictionary of Feminist Theologies*, 1996)

22. The current cloning debate has proved to be a fertile field of linguistic artistry. Thus, corrupt and utterly disingenuous distinctions are made between “therapeutic” and “reproductive” cloning. Similar obfuscation is found in terms like “pre-embryo”, “pro-embryo”, and “embryoid bodies,” all of which are designed to fudge the humanity of the embryo so as to allow any kind of

research, including that which will destroy the embryo. In a recent issue of a prominent bioethics journal, there is a discussion of embryo research and the need to distinguish between “moral” and “non-moral” respect due the embryo. The distinction is not altogether clear. In the same journal, a discussion of various forms of artificial reproductive technology takes place in terms of “existence-inducing technologies.” (*The Hastings Center Report* (July-August 2001))

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# Marriage with Disparity of Cult

Cosmo Francesco Ruppi

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*Mixed marriage with disparity of cult is analyzed starting with canon 1086 of the Code of Canon Law (CIC), comparing it with canons 1124-1129 CIC that specifically treat mixed marriage. After showing the profound difference between mixed marriage and marriage with disparity of cult, the difficulties of this kind of marriage are examined, affirming that “the division of faith leads the spouses to also feel divided in their thoughts, actions and lives, above all when living in an environment different from their own”. In this context, marriage between Catholics and Muslims is examined, dealing with the treatment of women in Islam and the Muslim conception of marriage. Having revealed the profound differences between the Islamic and Christian theologies and anthropologies, the conclusion is that “a marriage between a Christian and a Muslim poses more problems than it resolves.” (↗ Conjugal Love?; Hardness of Heart a Future Possibility?; Indissoluble Marriage?; Mixed Marriage and Discrimination; Marriage, Separation; Divorce and Conscience)*

Besides *mixed marriage*, which is thoroughly treated in its own chapter, there also exists *marriage with disparity of cult* which canon 1086 CIC speaks to explicitly, and to which canons 1124-1129 on mixed marriage partly apply.

For this kind of marriage it is also necessary to refer to the *motu proprio* of Paul VI, *Matrimonia mixta*, from the 31<sup>st</sup> of March, 1970<sup>1</sup> and to many other

later documents which have highlighted its theological, juridical and pastoral aspects.

The expression *disparity of cult* is a technical term that designates marriage between a baptized Catholic and an unbaptized person of another religion, dif-

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1 PAUL VI, *Matrimonia mixta*, 31 March, 1970: EV 3/2415-2447. Later the problem we are studying was treated explicitly in the *Lettera Circolare* of the Pontifical Commission for Migration and Tourism of the 26<sup>th</sup> of May 1978: EV 6/820-1001. In this document it is recognized that “today human mobility

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offers many occasions for encounters with non-Catholics and non-Christians. The phenomena of migration causes specific problems to arise, one of them being mixed marriages”; in this scheme “experience proves that this subject is very delicate and it is recommended that this kind of marriage should be treated with wisdom and patience in order for them to be concluded with the necessary precautions” (n. 912).

ferent from Christianity, or having no religion (atheist). This kind of marriage is not possible and it is not valid without the necessary dispensation.

In the above-mentioned *motu proprio*, *Matrimonia mixta*, both *mixed marriage* celebrated by a Catholic and a non-Catholic Christian and also *marriage with disparity of cult* are treated together.

The difference, however, between the two kinds of marriages is vast and profound because they have a different basis and the legislation relating to them is different, even if both canons 1127 and 1128 *CIC* also apply to marriages with disparity of cult.<sup>2</sup>

The conjugal union between spouses with the same Christian faith is undoubtedly more stable and valid than a

conjugal union between a baptized and an unbaptized person who has a totally different faith or no faith in God. One is dealing with, as you can see, a very relevant difference that places different obligations on the baptized person and certainly constitutes more complex and sometimes very difficult living conditions.

In the apostolic letter *Pastoralis migratorum cura* of Paul VI, it is recognized that the phenomenon of migration, one of the most serious and significant phenomena of our times, causes innumerable pastoral problems for the Church, among which is attention to marriage.<sup>3</sup>

That is why canon law by Canon 1086 *CIC* specified: "A marriage between two persons, one of whom has been baptized in the Catholic Church or received into it and has not defected from it by a formal act and the other of whom is not baptized, is invalid."

Canon 1086 provides, therefore, for different situations that should be considered attentively. The first is a marriage between a person baptized in the Catholic Church or received into it (if the baptism was received in another church or non-Catholic Christian ecclesial community) and an unbaptized person. The second regards a baptized

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2 The *CIC* specifically takes on the problem of marriage *with disparity of cult* in Canon 1086, recognizing that the impediment of disparity of cult touches the Catholic party directly because, as it is dealing with church law, the obligation is only for Catholics (Canon 11), but indirectly the unbaptized party is involved through Canon 1059. The misgivings of the Church with regards to marriage with disparity of cult is the reason for which a *dispensation* is required for a *valid* celebration of the marriage, because the faith and Christian practice of the Catholic party must be protected since they could be obstructed or compromised by the living with a non-Christian spouse. There is also later reason, which is not irrelevant, of assuring the Christian education of the children and the realization of a united family, with a serene and spiritually rich life.

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3 CF. PAUL VI, *Pastoralis migratorum cura*, 15 August 1969: EV 3/1496ss. This *motu proprio* was followed by *Nemo est* of the Sacred Congregation for Bishops, where the pastoral norms for the spiritual care of migrants are given: EV 3/1500- 1605.

person *who has defected* from the Catholic Church *by a formal act* even if, as the brightest canonists note, “it is not always simple to concretely specify when a formal defection from the Catholic Church has taken place.”<sup>4</sup>

Both for *mixed marriages* and for those *with disparity of cult*, the dispensation can be given only by the diocesan Ordinary, “if there is a just and reasonable cause,” and only if the conditions are “fulfilled”, that is “the *Catholic party* is to *declare* that he or she is *prepared* to *remove* dangers of defecting from the *faith*, and is to make a *sincere promise* to do all in his or her *power* so that all *offspring* are *baptized* and *brought up* in the *Catholic Church*” (CIC, Canon 1125, § 1); “the other *party* is to be *informed* at an *appropriate time* about the *promises* which the *Catholic party* is to make, in such a *way* that it is *certain* that he or she is *truly aware* of the *promise* and *obligation* of the *Catholic party*” (CIC, Canon

1125, § 2) and finally, “both *parties* are to be *instructed* about the *purposes* and *essential properties* of *marriage* which neither of the *contracting parties* is to *exclude*” (CIC, Canon 1125, § 3). The three requirements for a *marriage with disparity of cult* should be made known and declared according to the forms prepared by each conference of bishops.<sup>5</sup>

## DIFFICULTIES OF MARRIAGES THAT HAVE DISPARITY OF CULT

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Both *mixed marriages* and *marriages with disparity of cult* present major difficulties, because the division of faith leads the spouses to also feel divided in their thoughts, actions and lives, above all when living in an environment different from their own, in which it becomes more difficult to maintain one’s own religious convictions and to obtain respect for one’s own faith. We are thinking of a Catholic who marries a non-Christian woman, and they live together in the spouse’s country, which is overwhelmingly non-Christian.

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4 L. CHIAPPETTA, *Il codice di diritto canonico*, Edizioni Dehoniane, Naples 1988, 207. The illustrious canonist recognizes that “normal defection is without doubt abandoning the Catholic faith, through a written declaration or even an oral public one that is disseminated; apostasy, heresy or schism; joining a non-Christian or non-Catholic ecclesial community; affiliation to atheist ideologies or movements that are in open opposition to the Catholic faith. An areligious attitude or even a life far removed from Christian practice and the principles of Catholic faith and morals, is not enough to create an impediment.”

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5 As far as Italy is concerned, these norms are found in the decree of September 25, 1970 of the CEI: *ECEI* 1/984-986 and in the general decree *il matrimonio canonico* from November 5, 1990: *ECEI* 4/2611-2684. In this decree, at numbers 47-52, the problem of the Catholic spouse who contracts or wishes to contract marriage with a non-Catholic spouse whose former marriage was dissolved by a civil or religious authority, assuming that they “send to the Holy See a petition to dissolve this marriage *in favorem fidei*.”

Paul the VI already recognized this in the *motu proprio Matrimonio Mixta*, where he affirms that “mixed marriages, precisely because they admit differences of religion and are a consequence of the division among Christians, do not, except in some cases, help in reestablishing unity among Christians”, and explains that “there are many difficulties inherent in a mixed marriage, since a certain division is introduced into the living cell of the Church [...] and in the family itself the fulfillment of the Gospel teachings is more difficult because of diversities in matters of religion.”<sup>6</sup>

John Paul II has spoken several times referring to this matter. He did it explicitly in the August 15, 1986 *Message for World Migration Day* advising people to always keep in mind that “to come together in one same love, one must love God with the same love”, specifying that this criteria must be kept in the forefront when it comes to marriages between believers and non-believers, between Catholics and unbaptized persons.

John Paul II recognizes that difficulties are even more serious when it comes to *marriages with disparity of cult* than in *mixed marriages* when “the Catholic spouse must live in a country with a culture that is not open to the Christian faith, or that is even doctrinally and practically opposed to it in

daily life, legislation and customs”. He recommends pastors to prepare “an appropriate catechesis for engaged couples of mixed religion [...] that aims to form persons with strong religious convictions and who are engaged in society, who know the reasons for their own faith and hope, as well as consciences and faith of others: they should be committed to serving the poor people and the entire community.”<sup>7</sup>

John Paul II also invited “due attention to mixed marriages and those with dispensations for disparity of cult which are favored and facilitated by the current migratory phenomenon, as well as by the modern climate which encourages cultural exchanges between peoples”<sup>8</sup> in his August 6, 1993 *Message for World Migration Day*.

The apostolic exhortation *Familiaris consortio* of November 22, 1981 underlines “the particular difficulties inherent in the relationships between husband and wife with regard to respect for religious freedom: this freedom could be violated either by undue pressure to make the partner change his or her beliefs, or by placing obstacles in the way of the free manifestation of these beliefs by religious practice.”<sup>9</sup>

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6 PAUL VI, *Matrimonia Mixta*: EV 3/2416ss.

7 JOHN PAUL II, *Message for World Migration Day*, 15 August 1986: *Ench. Della Chiesa per le migrazioni*, Bologna 2001, 736.

8 JOHN PAUL II, *Message for World Migration Day*, 6 August 1993: *Ench. Della Chiesa per le migrazioni*, Bologna 2001, 886.

9 JOHN PAUL II, *Apostolic Exhortation*

In many different parts of the world, as John Paul II recognizes in *Familiaris Consortio*, “Today in many parts of the world marriages between Catholics and unbaptized persons are growing in numbers. In many such marriages the unbaptized partner professes another religion, and his beliefs are to be treated with respect, in accordance with the principles set out in the Second Vatican Council’s Declaration *Nostra Aetate* on relations with non-Christian religions”.<sup>10</sup>

The Italian bishops, while recognizing that mixed marriages and marriages with disparity of cult “do not constitute as relevant a problem as in other countries”, have not failed, since 1972, to give attention to this problem, recognizing that as regards marriage between a baptized and someone of another or no religion is concerned, a different pastoral perspective is necessary. While, for two baptized persons, even if they belong to different confessions, the dialogue may be founded on the common faith in Jesus Christ and baptismal unity, for spouses with disparity of cult “one must found it upon the search for hu-

man and religious values outside Christianity”, therefore, precisely because of this, “the Catholic party will be invited to strengthen their own faith in the direction indicated by Saint Paul: ‘*the unbelieving husband is sanctified through his wife and the unbelieving wife is sanctified through the believing husband* (1 Cor. 7,14).’”<sup>11</sup>

## MARRIAGES BETWEEN CATHOLICS AND MUSLIMS

In recent years, with the intensification of the phenomenon of migration, Europe and many other parts of the world have faced with greater intensity the problem of marriage between a Catholic and a Muslim, or between a Muslim and a Christian or Catholic woman. The growth of Islam in Europe

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*Familiaris consortio*, 78.

10 JOHN PAUL II, Apostolic Exhortation *Familiaris Consortio*, 78. John Paul II recommends that bishop’s conferences and individual bishops in their pastoral measures “attention must be paid to the obligations that faith imposes on the Catholic party with regard to the free exercise of the faith and the consequent obligation to ensure, as far as is possible, the Baptism and upbringing of the children in the Catholic faith.”

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11 CEI, *Indicazioni pastorali circa i matrimoni mixti*, 20 June 1972: *ECEI* 1/4231- 4244. This document was prepared by the Episcopal Committee for Ecumenism as a direct application of the *motu proprio Matrimonia Mixta*. Among other subjects, it also speaks of marriage with a unbaptized person and also with a baptized Orthodox person; for marriages between Catholics of the Latin rite and Eastern Orthodox persons the norms of the decree *Crescens Matrimonium* (22 February 1967) apply, as integrated into those of the *motu proprio Matrimonia Mixta*. It is the moment to emphasize that the Italian bishops, in giving guidelines regarding mixed marriages and those with disparity of cult try to bring together the requirements of the Catholic faith, the natural law right to marriage, the freedoms of conscience and religion.

has increased from year to year as recent statistics show;<sup>12</sup> the Islamic presence in the Americas is also significant, while in many countries of Africa and Asia they are the majority or widely present. It is not easy to quantify and calculate the expansion of Islam in the contemporary world, but it is undoubtedly growing rapidly in many countries.

If we look only at Europe, we can estimate at 12 million the number of Muslims, with 40% of them coming from North Africa, 30% from Turkey, including Kurds, 10% from Asia and the rest from other regions.

That is why there are many marriages between Christians and Muslims and many problems deriving come from them because of the profoundly different conceptions of marriage that exist between the followers of Christ and Mohammed's followers.

The problem is certainly delicate and should be faced seriously and serenely

by the competent authorities. Here we will limit ourselves to delineating the essential outline, having the certitude that an organic reflection on this subject will permit a serene and pastorally fruitful approach.

a). The condition of women in Islam

The first issue to clarify, in order to understand the gravity and the delicate nature of marriage between Catholics and Muslims, is the different conception of women. In the *Koran*, in fact, the superiority of men over woman is affirmed: verse 228 of the Cow *sura* says that "men are superior to women," literally that "men are one step higher." Verse 34 of the Women's *sura* says that "men have authority over women due to the preference that God concedes to the one with respect to the other and because they spend their goods for them". A subtle scholar of Islam notes that "masculine superiority is tied both to divine preference and to an economic motive, even if this aspect is often left in the dark by exegetes and jurists."<sup>13</sup>

The Islamic conception of women's inferiority finds its application in family law. The first difference regards *the different way of contracting marriage*: men have the possibility of being married to up to four wives at the same time, while

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12 In a recent *Rapporto sull'islamismo* by the Center for Ecumenical Studies edited by G. PAOLUCCI and C. EID, Genoa, 2002, the following numbers related to the spread of Islam in Europe are given: France 4,200,000 (7.11%) of population, Germany 2,500,000 (3.5%), Italy 700,000 (1.2%), United Kingdom 1,742,000 (2.92%), Spain 500,000 (1.28 %) etc.

As far as Italy is concerned, on the basis of the *Dossier statistico sull'immigrazione* of Caritas, one sees that Muslims are about 56.8% of the foreign population and constitute *de facto* the second religion in Italy by number of believers.

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13 S. KHALIL SAMIR (interview with) *Cento domande sull'Islam*, edited by Centro studi sull'ecumenismo, 80.



women are denied the choice of marrying more than one husband.

A second difference is that *a woman cannot marry* a man of a different faith unless he converts to Islam first.

Therefore, mixed marriage cannot exist because somebody who is not a Muslim must first convert and then can marry. The children, even born of a Christian mother, are always considered fully Muslim, even if they had been baptized.

The third difference is the fact that the husband can repudiate his wife by repeating the expression "I divorce you" three times, while a wife can never repudiate her husband. Divorce can be obtained only at the husband's request and, in these cases, the children always belong to the father who makes the decisions concerning their education; *only the father has parental authority*. With regard to inheritance, women receive half of what a man is entitled to get. The last grave difference between men and women is the fact that the testimony of a male is equivalent to that of two women together.

Actually, the most serious difference between men and women is the fact that the man has *absolute* authority over his wife, with the obligation, if necessary, to correct her with beatings until she obeys.<sup>14</sup>

b) Mixed marriage: Christians–Muslims

The most evident statement is that marriage between a Muslim man and a Catholic woman (the most frequent case) is always a *one-way* marriage; that is, a Muslim man can marry a non-Muslim woman, while a Muslim woman cannot marry a non-Muslim man, unless he agrees to convert to Islam first.

The difference between a Christian and a Muslim marriage is profound: Christian marriage is a sacrament, while Muslim marriage is a contract between a man and a woman; with the particularity that the woman cannot make the contract alone, but through a tutor, called a *waliy*.

Married life is understood in very different ways by Christians and Muslims, as well as the organization of family life which always and only depends on the man. In the case of mixed marriage, the wife has no right to inherit her husband's assets unless she converts to Islam. In case of separation, children go with their father while the mother has the duty to

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the following studies: ALUFFI- BECK-PECCOZ, *Le leggi del diritto di famiglia negli stati arabi del Nord-Africa*, Turin 1997; and G. PERROTTI BARRA, *Sposare un musulmano. Aspetti sociali e pastorali*, Cantapula (Turin) 2001. The bishops from Emilia-Romagna have addressed the problem of marriages between Catholics and Muslims in a document of the BISHOPS CONFERENCE OF EMILIA-ROMAGNA, *Islam e cristianesimo*, Bologna 2000.

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14 To understand better the legal and sociological aspects of marriage and the condition of women in Islam, one can consult

take care of them only while they are infants, until no later than seven years old.

This conception of marriage of the Muslim world is starting to be disputed; in Tunisia, for example, a process of modernizing family law, eliminating discrimination, has begun but the road is long and uncertain, because the immense majority of Islamic states are still applying the ancient law.

In this legal context, it is obvious that a marriage between a Christian and a Muslim is highly at risk, and constant experience brings to us a series of failures and domestic dramas which take place all over the world.<sup>15</sup>

"The problems of a mixed couple (Christian - Islamic) may become very burdensome, in some cases, for the European wife when the family settles in a Muslim country. She is not familiar with the cultural context in which she has to insert herself either for love, or

because she has no choice."<sup>16</sup>

This means that it is very improbable that this kind of marriage can have good results for the Christian party, and even more so for the education of the children. This leads to the problems that pastors of souls become acquainted with above all in the areas where these marriages happen frequently.

This is why, from many quarters, there are requests for a uniform homogeneous practice among the individual local churches, with the direct involvement of pastoral agents who should do everything in order make the Catholic party aware of the risks this kind of marriage has.

In Italy, the problem of marriage between Catholics and Muslims has been brought to the attention of the Christian community by means of the Permanent Council from 24-27 of January 2000. The communiqué issued on the 1<sup>st</sup> of February 2000 wished to promote reflection with a view to common guidelines from the bishops. On that occasion the conviction was expressed that "the attitude to have with regards to Muslims must avoid both ingenuous irenism that underestimates the difficul-

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15 The most tragic drama of these marriages regards the children, because they belong to the father, must follow the Muslim religion precepts and have no freedom to choose a religion. In Italy there have been truly dramatic cases, for example the marriage between a Muslim emigrant and an Italian Catholic woman; the husband took the children to his native country in order to show them to his parents and then refused to bring them back to Italy. The distressed mother tried to get custody of the children, but nothing could be done because Islamic law says that the children must belong to the best faith which is the Islamic one.

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16 G. LA TORRE, *Islam: conoscere per dialogare*, Turin 1991, 114. For a documentation concerning Islamic Family Law, cf. C. CAMPIGLIO, "Famiglia e diritto islamico. Profili internazionali privatistici", in *Musulmani in Italia. La condizione giuridica delle comunità islamiche*, edited by S. FERRARI, Bologna 2000, 175-185.

ties of dialogue and the differences between religious concepts, and excessive alarmism in facing the force of Islamic propaganda.”<sup>17</sup>

In conclusion, it is good to make mention of two documents together, the conciliar declaration *Dignitatis Humanae* concerning the right to religious freedom which is “the endowment of persons as individuals is also to be recognized as their right when they act in community” (n. 4) and the declaration *Nostra Aetate* in which we read that the Church “regards with esteem also the Moslems. They adore the one God, living and subsisting in Himself; merciful and all-powerful, the Creator of heaven and earth, who has spoken to men” (n. 3), without ever forgetting the deep, for many verses opposed, theological and juridical differences that exist between Christianity and Islam. Besides the profound differences that exist with the Islamic theology and anthropology, there is a great difference in the conception of religion itself; for the Islamic reli-

gion and the State are the same; while for us the Church is not identified with the State. Very delicate problems derive from such as Islamic fundamentalism and radicalism which seem to many an expression of a deviation from the true Islam, and to others appears as an expression of a current which wants to be Muslim in the genuine sense of the word.<sup>18</sup>

In both cases, it is more than obvious that a marriage between a Christian and a Muslim poses more problems than it resolves.

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17 ECEI 6/2611. The Permanent Council of Italian Bishops in that circumstance repeated, together with the duty to welcome and respect other religions, “the duty to proclaim the Gospel, also to Muslims, following the mission Christ gave his Church, which cannot be abandoned.”

The Italian bishops have formulated the desire for a *rigorous praxis* with regards to how to act towards mixed marriages with Muslims, “evaluating each case individually to see if the conditions for granting the dispensation to marry exist.”

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18 To learn more about this aspect of Islam, consult an expert like the current apostolic nuncio to Turkey, and before that to Tunisia and Algeria: E. FARHAT, “Diritti umani e libertà religiosa nell’Islam in espansione,” in *Il nuovo Areopago* 18 (1999)3, 20.

Also useful are the studies of S. KHALIL SAMIR – M. BORRMANS, *Islam e cristianesimo. Le vie del dialogo*, Rome 1993. From the same M. BORRMANS, *Gesù Cristo e I musulmani del XX secolo. Testi coranici, catechismi, commentari, scrittori e poeti musulmani di fronte a Gesù*, Milan 2000; useful on the specific subject of marriage is V. ABAGNARA, *Il matrimonio nell’Islam*, Naples 1996.



# Marriage, Separation, Divorce and Conscience

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*The author examines the indissolubility of marriage, the questions of separation and divorce of the spouses, and analyzes the problems of conscience, which arise, particularly for some professional people, such as, for example, lawyers and magistrates, when they have to face these kinds of situations. A marriage that has been validly entered into, even by non-baptized persons, is indissoluble, and therefore can be dissolved neither by those who have entered into it, nor by any other human authority. This is true both for natural marriage and for marriage as a sacrament. The author recalls how the Holy Father John Paul II has forcefully insisted, in this regard, on the Church's consistent teaching in this matter. The author makes a further distinction between the problem of nullity and that of divorce. These are by their nature totally different. A marriage can be declared null by the Church when it has not been validly contracted since the conjugal bond never existed. A validly contracted marriage, however, can never be dissolved. The Church says no to divorce, since matrimonial indissolubility comes from that very natural law which the Creator has inscribed in marriage. Finally, the author offers some indications about the criteria that can render the possibility of a separation between spouses licit or not. (↗ Conjugal Love?; Hardness of Heart: a Future Possibility? Family and Privatization; Indissolubility of Marriage?; Marriage with Disparity of Cult; Mixed Marriage and Discrimination; De Facto Unions)*

God Himself is the author of marriage. It has many values and finalities, and it is in marriage that man and woman give themselves to each other in total love. In virtue of matrimonial consent, they constitute between them a communion of their entire life characterized not only by its unity, but also by its indissolubility, as the Second Vatican Council writes: "Hence by that human act whereby spouses mutually bestow

and accept each other a relationship arises which by divine will and in the eyes of society too is a lasting one."<sup>1</sup>

1. Any marriage validly entered into, even by unbelievers, enjoys intrinsic indissolubility,<sup>2</sup> both by natural law and

1 VATICAN COUNCIL II, Pastoral Constitution *Gaudium et spes*, 48, in AAS 58 (1966), 1025-1115.

2 Cf. ST. THOMAS AQUINAS, *STh*, Suppl., q. 49, a. 3; Id., *Comment. in Lib. IV*

by divine positive law, and can never be dissolved either by the contracting parties' consent,<sup>3</sup> or by any other human authority.<sup>4</sup> This is valid also when the marital pact is not elevated to the dignity of a sacrament.<sup>5</sup>

The indissolubility of the marital bond has been given to humanity by divine-positive law, clearly expressed from the mouth of Adam at the appearance of Eve, his companion.<sup>6</sup> However, in the Old Testament, Moses, as divine ambassador to the Jews, admitted limits

to this indissolubility.<sup>7</sup> This was a dispensation given by God to his people *propter duritiam cordis*,<sup>8</sup> but in the beginning it was not that way.

In the New Testament, after he had revoked Moses' concession, Christ our Lord restored the indissolubility of marriage, already fixed in the earthly paradise, and promulgated it more clearly.<sup>9</sup>

The Apostle Paul insists on the same truth, using almost the same words.<sup>10</sup> Only the death of one of the spouses can dissolve the bond<sup>11</sup> of the two that have become one flesh.<sup>12</sup>

Jesus Christ has only one spouse,

*Sententiarum*, dist. XXXI, q. 1, a. 3c; PIUS XI, Encyclical letter *Casti connubii*, in *AAS* 22 (1930) 550s.

3 Cf. ST. THOMAS AQUINAS, *STh*, *Suppl.*, q. 45, a. 1; VATICAN COUNCIL II, *Gaudium et spes* 48; PIUS XII, *Allocutiones iis quae inter fuerunt conventui Unionis catholicae italicae inter ostetrices*, Romae, die 29 octobris 1951, in *AAS* 43 (1951) 845; PAUL VI, *Allocutio ad Tribunal S. Romanae Rotae auditores et officiales*, die 9 februarii 1976, in *AAS* 68 (1976) 207; *CIC* 1055 and 1057; *CIC*-'17 1012 and 1081.

4 Cf. F.M. CAPPELLO, *Tractatus canonico-moralis*, 5: *De matrimonio*, Marietti, Torino 1961, 38.

5 Cf. PIUS IX, *Syllabus*, § 8: "*Erroris de matrimonio christiano*", 67: By the law of nature, the marriage tie is not indissoluble, and in many cases divorce properly so called may be decreed by the civil authority (nn. 9 and 12)" (in H. DENZINGER-A. SCHÖNMETZER, *Enchiridion Symbolorum*, Herder, Barcinone<sup>35</sup> 1973, 2967).

6 "This one, at last, is bone of my bones and flesh of my flesh; This one shall be called 'woman,' for out of 'her man' this one has been taken. That is why a man leaves his father and mother and clings to his wife, and the two of them become one body" (Gn 2:23-24).

7 "When a man, after marrying a woman and having relations with her, is later displeased with her because he finds in her something indecent, and therefore he writes out a bill of divorce and hands it to her, thus dismissing her from his house: if on leaving his house she goes and becomes the wife of another man... then her former husband, who dismissed her, may not again take her as his wife after she has become defiled. That would be an abomination before the Lord" (Dt 24:1-4).

8 Mt 19:8.

9 "It was also said, 'Whoever divorces his wife must give her a bill of divorce.' But I say to you, whoever divorces his wife (unless the marriage is unlawful) causes her to commit adultery, and whoever marries a divorced woman commits adultery." (Mt 5:31-32). Furthermore, Jesus adds: "I say to you, whoever divorces his wife (unless the marriage is unlawful) and marries another commits adultery" (Mt 19:9; cf. Mk 10:11-12; Lk 16:18).

10 Cf. 1 Cor 7:10-11:39.

11 Cf. Rom 7:2-3; cf. *Italian Civil Code*, art. 149.

12 Cf. Eph 5:31.

i.e. the Church, and the Church has only one spouse, Jesus Christ, who is her Head and Savior. It is on this divine model that Christian marriage is modeled and therefore this bond, as the one between Christ and the Church, is not only holy but perpetual.<sup>13</sup> The contents of these scriptural pages are well summed up in the words of Christ himself,<sup>14</sup> with reference to the invaluable worth of indissolubility.

The two passages mentioned earlier<sup>15</sup> do not allow us to say that adultery can occur after the matrimonial bond has been dissolved. Adultery justifies the bill of divorce, without admitting of a new marriage. Traditional authority has always given a practical interpretation of indissolubility to these two passages.

2. The Council of Trent did not want to explicitly condemn the Greek Orthodox interpretation to the contrary, which, based on these two passages, admit of divorce in the case of adultery. But the condemnation, already included in the letter *Cum dudum* to the Armenians,<sup>16</sup> is implicit in the anathema ex-

pressed against those who dare to accuse the Catholic Church of erring in its traditional teaching.<sup>17</sup> Furthermore, there is no doubt that the Council of Trent later explicitly condemned Protestantism, which was the first to introduce divorce in the West and had presented more reasons for breaking the indissolubility of the matrimonial bond.<sup>18</sup>

The Council of Trent and the Code of Canon Law<sup>19</sup> are echoing centuries

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when they unite conjugally, commit sin [...] because they say the marital act is sin as is also marriage.”

17 COUNCIL OF TRENT, sess. XXIV, decr. *De matrim.*, c. 7, *Denz 1807*: “If any one saith, that the Church has erred, in that she hath taught, and doth teach, in accordance with the evangelical and apostolic doctrine (cf. Mt 5,32; 19,9; Mk 10,11s; Lk 16,18; 1 Cor 7,11), that the bond of matrimony cannot be dissolved on account of the adultery of one of the married parties; and that both, or even the innocent one who did not give occasion to the adultery, cannot contract another marriage, during the life-time of the other; and, that he is guilty of adultery, who, having put away the adulteress, shall take another wife, as also she, who, having put away the adulterer, shall take another husband; let him be anathema.”

18 COUNCIL OF TRENT, sess. XXIV, decr. *De matrim.*, c. 5, *Denz 1806*: “If any one saith, that on account of heresy, or irksome cohabitation, or the affected absence of one of the parties, the bond of matrimony may be dissolved; let him be anathema.” The canons of the Council of Trent on the matter have dogmatic value.

19 The Tridentine doctrine is confirmed in *CIC* 1134 and 1141; *CIC-’17* 1110 and 1118; cf. *Summa Rolandi*, causa 32, c. 5, ed. F. Thaner, Innsbruck 1874, 181 and 186. In the

13 Cf. Eph 5:25.27-29.32.

14 “Therefore, what God has joined together, no human being must separate” (Mt 19:6).

15 “Unless the marriage is unlawful ... commits adultery” (Mt 5:32; 19:9).

16 Cf. BENEDICT XII, *Libellus cum dudum ad Armenios*, Aug. 1341, 19, in DENZINGER – SCHÖNMETZER, *Enchiridion Symbolorum*, 1012: “These say to such an extent [...] that concupiscence of the flesh is sinful and evil, that the parents, even Christian ones,

of the Church's teaching,<sup>20</sup> both in the East, where defenders of indissolubility with no exceptions are not lacking,<sup>21</sup> and in the West, where the tradition remains constant.<sup>22</sup> So much so that the Pontiffs continued to proclaim the principle of indissolubility,<sup>23</sup> and therefore,

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IXth century, the doctrine of the vast majority of ecclesiastical authors was for the absolute indissolubility of matrimony: Incmar of Reims (cf. H. SCHORS, *Hincmar von Reims*, Freiburg in B. 1884, 179ss) and Pseudo-Isidore (cf. *Decretales Pseudoisidorianae*, ed. P. Hinschius, Lipsia 1883, 90).

20 Around the middle of the II<sup>nd</sup> century, The Pastor of Eromas allowed for the husband, in case of adultery, to abandon his adulterous wife, but he would call him adulterous if he would dare to marry another wife (*Mand.* 4, c. 1,6; F.X. FUNK, *Patres apostolici*, Tübingen, 1901, 175-176). Clement of Alexandria, towards the end of the same century, considers adulterous whoever marries again while the first spouse is still alive (*Strom.* 2,23: PG 8,1095). However, there are fathers that seem to admit of a possibility of divorce for the innocent party in case of adultery (cf. HILARY OF POITIERS, *Comm. in Mt.* 4,22: PL 9,940; ASTERIUS OF AMASEA, *Homil. in Mt.* 19,3-9: PG 40,227; BASIL, *In Epist. can. ad Amphil.*, 9: Mansi III, 1191).

21 Cf. JOHN CHRYSOSTOM, *De libello repudii*: PG 51, 221.

22 Cf. JEROME, *Epist.* 55 *ad Armand.*: PL 22,562; LEO THE GREAT, *Epist. ad Nic. Aquil.*: PL 54,1136.

23 Cf. SIRICIUS (384-399), *Epist. ad Hincmerium ep. Tarrac.* 4,5: Mansi III, 657; cf. INNOCENT I (402-417), *Epist. ad Exuperium Tolos.* 12; *ad Vitric. Rotomag.* 15, in P. CONSTANT, *Epist. Rom. pontif.*, Paris 1721, I, 754 and 794; GREGORY THE GREAT (590-604), *Epist.*, XI, 27; XI, 30, in P. EWALD – L.M.

during the first half of the XII<sup>th</sup> century the absolute indissolubility of marriage was admitted and no longer disputed.<sup>24</sup>

The Roman Church and the Apostolic See, in teaching and acting, always supported the absolute indissolubility of a Christian marriage celebrated and consummated through *copula carnalis*, which represents more exactly Christ's union with the Church.<sup>25</sup> Thus, theologians call indissolubility a *bonum sacramenti*, i.e., a sacramental character once consummated, that can never be dis-

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HARTMANN, *Registrum*, MGH, Berlin 1887, 289 and 301.

24 Cf. H. PORTMANN, *Wesen und Unauflöslichkeit der Ehe in der Kirchl. Wissenschaft und Gesetzgebung des XI. u. XII. Jahrh.*, Emstetten 1938.

25 Three meaningful facts in different times are to be noted: 1) Adrian I (772-795) supported the Patriarch of Constantinople and the famous Theodore Studita in reproving the divorce of Constantine VI, Emperor of the East, from Maria Armena, and his entering into a new wedding with Theodora, a lady of the court (cf. BORONIO, *Annales ecclesiastici* XII, Lucca 1743, a. 795, n. LVI, 307 ss); 2) Innocent II (1130-1143) did the same with Raoul, Count of Vermandois, who had repudiated his legitimate wife to marry King Louis VII of France's sister-in-law (cf. C. BORONIO, *Annales ecclesiastici* XVIII, Lucca 1746, a. 1142, n. Iss, 614ss); 3) Clement VII (1523-1534), regarding Henry VIII's divorce from Catherine of Aragon, showed the world how the Catholic Church must tolerate everything, even the apostasy of a kingdom (cf. I. TRÉSAL, *Les origines du schisme anglican* Paris <sup>3</sup>1923, 42ss), to remain true to the Lord who said: "Quod Deus coniunxit, homo non sepat" (Mt 19,6).



solved by any human power or for any reason except death.<sup>26</sup> The Holy Father John Paul II teaches that conjugal communion is characterized not only by its unity, but also by its indissolubility, and it is the Church's duty to strongly reaffirm the doctrine of the indissolubility of marriage.<sup>27</sup>

Other marriages, not consummated by *copula maritalis*, are intrinsically indissoluble, but in certain cases, under specific circumstances, they are dissolvable through the Roman Pontiff's intervention.<sup>28</sup> This is the case for a celebrated marriage in the form of marriage valid for baptized people<sup>29</sup> that has not yet been completed through consummation, but, being gifted with sacramentality, the Church sanctions it *ratum tantum*.<sup>30</sup>

However, a marriage entered into by two non-baptized persons is dissolved by the Pauline privilege.<sup>31</sup> This principle, which states that in doubtful cases the privilege of faith enjoys the favor of law,<sup>32</sup> concerns the Pauline privilege and the use of vicarious power by the Roman Pontiff; by its application a marriage that is objectively valid but subjectively doubtful is dissolved in virtue of that vicarious power.

It is important to mention that through a valid marriage a bond arises between the spouses, which, by its nature, is perpetual and exclusive;<sup>33</sup> it further creates the *impedimentum ligaminis*, since it touches the truly essential notes of Christian natural marriage, that is, unity and indissolubility,<sup>34</sup> whe-

26 Cf. CIC 1141; CIC-'17 1118; *Italian Civil Code*, art. 149.

27 Cf. JOHN PAUL II, Apost. Exhort., *Familiaris consortio*, 13, in AAS 74 (1982) 93-96 (cf. n. 14, 96: "Thus the couple, while giving themselves to one another, give not just themselves but also the reality of children, who are a living reflection of their love, a permanent sign of conjugal unity and a living and inseparable synthesis of their being a father and a mother."; cf. also n. 20, 103).

28 Cf. CIC 1142; CIC-'17 1119.

29 Cf. CIC 1061,1; CIC-'17 1015,1; VATICAN COUNCIL II, *Gaudium et spes*, 49, in AAS 58 (1966), 1025-1115.

30 Cf. F. LÓPEZ-ILLANA, *Secolarizzazione della società ed esclusione dell'indissolubilità del matrimonio canonico. Commento all'allocuzione del Santo Padre al Tribunale della Rota romana il 21 gennaio 2000*, Ed. Adriatica,

Bari 2002, 130-131: "I principi teologici dell'indissolubilità del matrimonio canonico."

31 Cf. CIC 1043-1149; CIC-'17 1120-1125.

32 Cf. CIC 1150; CIC-'17 1127; *Sacra Congregatio Sancti Officii*, resp., 10 iun. 1937, in AAS 29 (1937), 305-306.

33 Cf. CIC 1134; CIC-'17 1110; VATICAN COUNCIL II, *Lumen Gentium*, 41; *Gaudium et Spes*, 48.

34 Cf. CIC 1056; CIC-'17 1013,2; PIUS XI, *Casti connubii*, in AAS 22 (1930) 546-556 and 550: "Haec sunt igitur, quae bono fidei comprehenduntur: unitas, castitas, caritas, honesta nobilisque oboedientia; quot sunt nomina, tot sunt coniugum atque coniugis emolumenta, quibus pax, dignitas, felicitas matrimonii in tutto collocentur atque promoveantur"; cf. *Gaudium et spes*, 48, in AAS 58 (1966) 1025-1115; PAUL VI, Encyclic. lett. *Humanae vitae*, 25 iul. 1968, in AAS 60

re for whatever marriage entered into by one who is bound by the bond of a previous marriage before the latter has been legitimately and certainly declared null and dissolved, will be invalid even if unconsummated.<sup>35</sup> Since it was a celebrated and consummated sacramental marriage, not even the Pontiff can dissolve it.<sup>36</sup>

3. In this context, special attention must be paid to the difficulties, the reciprocal misunderstandings between spouses, their inability of opening themselves to an interpersonal relationship that “can unfortunately lead to the often irreparable breakdown of valid marriages.”<sup>37</sup>

There is no doubt that, in conformity with the doctrine and the tradition of the Church, the pontifical teachings and the current law, the spouses should lead a life in common, except if they would be excused from it for a legitimate reason, which also includes reasons derived from natural law and not only those indicated by positive law. This means that the human person’s fundamental requirements are to be respected

in both the spouses and in the children. Separation, with the conjugal bond remaining, can occur by mutual consent or by the initiative of one party without the other party’s consent, by abandoning the other spouse temporarily and even permanently. In whatever way, separation is an extreme remedy and creates many dangers for the spouses’ continence and, therefore, should occur only when no other remedies remain. According to Catholic doctrine, separation of the spouses is admitted as open-ended, and is performed for the reasons considered by the Code.<sup>38</sup> The marital bond remains, and the two spouses cannot marry again.

Perpetual separation without mutual consent can be chosen by the innocent spouse in cases of adultery, although it is insistently recommended that the spouse, moved by Christian charity and for the family’s welfare, should not refuse to forgive the adulterous party and not break their conjugal life.<sup>39</sup>

However, when a verified, morally certain and not only suspected adultery occurs, the other spouse, the conjugal bond remaining, has the right to dissolve their life in common even perpetually, except if the latter has given his consent

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(1968) 481-503.

35 Cf. *CIC* 1085,1-2; *CIC* ’17 1069,1-2.

36 Cf. JOHN PAUL II, “Address of 21 January 2000 to the Prelate auditors, the Officials and the lawyers of the Roman Rota”, 6, in *L’Osservatore Romano*, 22 January 2000.

37 JOHN PAUL II, *Familiaris consortio*, 83, in *AAS* 74 (1982) 184: “Causae variae [...] acerbè validum matrimonium ad disruptionem saepe insanabilem possunt adducere.”

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38 Cf. *CIC* 1151-1155; *CIC* ’17 1128-1132.

39 JOHN PAUL II, *Familiaris consortio*, 83, in *AAS* 74 (1982) 184: “Obviously, separation must be considered as a last resort, after all other reasonable attempts at reconciliation have proved vain.”

to the wrong, has been the cause of it or has expressly or tacitly condoned it, or has committed one him/herself. Tacit condoning occurs when the innocent spouse, while informed about the other party's adulterous behavior, has continued to have relations of conjugal affection; condoning is presumed when the innocent spouse has observed a marital life in common for six months and has not sent the adulterous spouse away or has not him/herself abandoned the latter, and has started no regular action with the ecclesiastical or civil authority.<sup>40</sup>

Thus, according to the present canon law, the innocent spouse can start, upon the diocesan bishop's license,<sup>41</sup> a regular action with the ecclesiastical or civil authority.<sup>42</sup> Since no preferential classification is expressed between the ecclesiastical and the civil authority, the spouse that wants the separation can address his/her local diocesan bishop, who, after evaluating the particular circumstances of the case, can give his permission for the cause to be treated in civil court.

There is also the possibility of conjugal separation by one's own initiative, when one of the spouses is causing serious harm to the soul or to the body of the other spouse or of the children, or in some way renders life in common

too harsh, and the danger exists that in the meantime the local ordinary might decree that separation.<sup>43</sup> Furthermore, it is established that conjugal separation entered into by one's own initiative implies the obligation to restore cohabitation and to renounce legal action if the reason for that separation would cease, unless the ecclesiastical authority has already established differently.<sup>44</sup>

4. Civil laws allow for the separation of spouses by mutual consent,<sup>45</sup> and this is against the spirit of the Church that wants to guarantee respect for the conjugal bond and its consequences, by giving, in a Christian spirit, a helpful hand in the sad situations of separated spouses and provide for a fair maintenance and education of the children.<sup>46</sup> In the present Code of Canon Law a new kind of procedure has been introduced for those cases in which the spouses want to legally formalize their separation.<sup>47</sup> The Code stipulates the terms

40 Cf. *CIC* 1152; *CIC-'17* 1129.

41 Cf. *CIC* 1692,2; *CIC-'17* 1130-1131; Pius XII, motu proprio *Crebrae allatae*, 22 Feb. 1949, in *AAS* 41 (1949) 89-117; 119-120.

42 Cf. *CIC* 1152,2; *CIC-'17* 1129,2.

43 Cf. *CIC* 1153,1; *CIC-'17* 1131,1; *Pont. comm. ad Codicis Canones authentice interpretandos*, resp. III, 25 iun. 1932, in *AAS* 24 (1932) 284.

44 Cf. *CIC* 1153,2 and 1155; *CIC-'17* 1131,2 and 1130.

45 Cf. *Italian Civil Code*, art. 158: "Consensual separation. Separation with only the mutual consent of the spouses has no effect unless ratified by the court (711 p.c.). The procedure for the separation of the spouses is regulated by articles 706-711 c.p.c."

46 Cf. *CIC* 1154; *CIC-'17* 1132.

47 Cf. *CIC* 1692-1696; *CIC-'17* 1130-1131; *Pont. comm. ad Codicis Canones*

of a specific procedure, which reaffirms the Church's authority and jurisdiction. Cohabitation of the spouses is an essential consequence of the constitution of the marital bond. Their separation is not simply a civil effect of marriage, therefore to be considered as a rightful claim by the civil law; rather, it is the immediate consequence of the sacramental bond, carrying with it important spiritual and moral effects for the life of the spouses and for the Christian family. For this reason the Church cannot give up its right to know and decide about separation, especially where there is the risk that the civil jurisdiction would refuse or impose separation on the spouses against divine law.

Furthermore, in various nations legislation on divorce and the principle of dividing between ecclesiastical and civil jurisdictions have been spreading, and precise canonical norms have become necessary with reference to the separation of the spouses, while, in specific cases, leaving the exercise of its own jurisdiction to the civil authority, as far as the properly civil effects of marriage are concerned, for civil matters about children and financial affairs, the so-called civil effects, to be settled.

Having to face this alternative, whenever the ecclesiastical decision will not produce civil effects and when it is considered that the civil decision is not

contrary to divine law, having evaluated the particular circumstances, the local diocesan bishop can grant permission to go to the civil court.<sup>48</sup>

If merely civil matrimonial effects are involved in the cause for the separation of the spouses, the ecclesiastical judge, when legitimately required to do so, should observe what is prescribed by canon law for the spouses' local diocesan bishop to do, and see to it that the case be deferred to a civil court for its treatment.<sup>49</sup> However, the ecclesiastical tribunals obviously maintain their jurisdiction over these cases for separation, even if their decisions have no civil effects, as far as the necessary precautions are concerned in matters regarding separation, so as to avoid that the civil judge's verdict be against the principles of divine law.

For this reason, the Christian believer who wants to introduce a cause for separation will rely upon the authority of the local bishop where they live, who, by his decree, will decide the case administratively or else the judge will do so judicially, except where other legitimate provisions will have been taken by concordat law or by specific laws pertaining to the various dioceses.<sup>50</sup> Particular ecclesiastical laws may establish that the cases for the separation of the

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48 Cf. *CIC* 1692,2.

49 Cf. *CIC* 1692,3.

50 Cf. *CIC* 1692,1: "Nisi aliter pro locis particularibus legitime provisum sit."

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*authentice interpretandos*, in *AAS* 24 (1932) 284.

spouses should choose only one of the two paths, but if this is not foreseen the party that asks for separation can choose between the administrative and the judicial channel. The administrative one seems more opportune so as to avoid the complexity and the publicity of a judicial procedure. If, instead, one chooses the judicial, oral contentious or the ordinary procedure,<sup>51</sup> as far as the competent court is concerned, one of the following four courts can be chosen: 1) the court of jurisdiction of the place where the marriage was celebrated; 2) the court of the place where the defendant is resident or living; 3) the territorial court of the place where the plaintiff resides, as long as both parties belong to the jurisdiction of the same bishops' conference and the judicial vicar of the defendant's place of residence, having heard the latter, is willing to agree. If by any particular chance the diocesan judicial vicar is not present, the bishop's consent will be required; 4) the court of the place where in fact most of the proof will have to be obtained, as long as the judicial vicar of the defendant's place of residence will agree and the defendant will have been asked whether he/she has anything against the cause being proposed to that court.<sup>52</sup>

51 Cf. *CIC* 1693.

52 Cf. *CIC* 1694 in relation to what can. 1673 is disposing. The causes reserved to the Apostolic See are excluded from the norm of this canon. These causes are those of separation (cf. *CIC* 1694) and annulment of Heads of

In both cases only a single judge is foreseen,<sup>53</sup> although the hypothesis should not be excluded that the latter may be assisted by two counselors (clerics or lay people of blameless behavior).<sup>54</sup> However, before admitting or starting a cause for the separation of spouses, the judge must consider the possibility of reconciliation, and if he would see hope for reconciliation to have a positive issue, he should use all possible pastoral means to have the spouses reconcile, avoid (even a temporary) cessation of the marital bond and restore their conjugal life.<sup>55</sup>

In the cases for the separation of the spouses, it has been established that the promoter of justice will always be present<sup>56</sup> and the lack of his presence will annul all acts that will have been done

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State (*CIC* 1405,1, comma 1). This privilege cannot be extended to the children of the latter and to whoever would be proximate to eventual succession (cf. *CIC* 1557,1, comma 1).

53 Cf. *CIC* 1657 and 1425; PIUS XII, motu proprio *Sollicitudinem nostram*, 6 ian. 1950, 453, in *AAS* 42 (1950) 5-120; *CIC*-’17 1576; *Pont. comm. ad Codicis Canones authenticè interpretandos*, in *AAS* 24 (1932) 314; CONSILIIUM A PUBLICIS ECCLESIAE NEGOTIIS, *Normae*, 28 apr. 1970, 3; SACRA CONGREGATIO PRO GENTIUM EVANGELIZATIONE SEU DE PROPAGANDA FIDE, *Formula facultatum*, 1 ian. 1971, 20; SECRETARIA STATUS, *Normae*, 1 nov. 1974, 2.

54 Cf. *CIC* 1424; *CIC*-’17 1575; PAUL VI, motu proprio *Causas matrimoniales*, 28 mar. 1971, 5,2.6.7, in *AAS* 63 (1971) 441-446.

55 Cf. *CIC* 1695.

56 Cf. *CIC* 1696.

in his absence,<sup>57</sup> since these cases also concern public welfare, because they have obvious effects on the education of the children, the organization of life in society and so on.

The usual procedure, for the cases of separation, is the oral contentious one.<sup>58</sup> Provision has also been taken by the legislator,<sup>59</sup> that, upon the request of the parties or of the promoter of justice, one can following ordinary contentious procedures.<sup>60</sup> This faculty that is given

to the parties and to the promoter of justice cannot be disregarded by the competent court, and has the purpose of guaranteeing all legitimate rights and interests.

If the ordinary contentious procedure has been chosen and an appeal is brought, a tribunal of second instance will proceed by pronouncing a decree,<sup>61</sup> as established for the cases of annulment.

5. Cases for the separation of spouses should not be confused with the declaration of nullity of marriage, that can occur out of defect of consent,<sup>62</sup> because of the existence of a diriment impediment,<sup>63</sup> or because of a defect in

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57 Cf. *CIC* 1433; *CIC*-17 1587; SUPREMUM TRIBUNAL SIGNATURAE APOSTOLICAE, 15 mar. 1921, in *AAS* 13 (1921) 269; SACRA CONGREGATIO DE DISCIPLINA SACRAMENTORUM, Instruction *Provida Mater*, 15 aug. 1936, 15,2, in *AAS* 28 (1936) 313-361.

58 Cf. *CIC* 1656-1670; PIUS XII, *Sollicitudinem nostram*, 453-467, in *AAS* 42 (1950) 5-120.

59 Cf. *CIC* 1693,1.

60 Cf. *CIC* 1501-1655; *CIC*-17 1706-1922; PIUS XI, *NORMAE SACRAE ROMANAE ROTAE TRIBUNALIS*, 29 iun. 1934, in *AAS* 26 (1934) 449-491; SACRA CONGREGATIO DE DISCIPLINA SACRAMENTORUM, *Provida Mater*, in *AAS* 28 (1936) 313-361 (cf. artt. 41,4, 55,2. 56,57, 60, 61, 62, 64, 65, 66, 67, 70,1 comma 1, 74,1-2, 79, 80, 81, 82, 84, 85, 87, 89,1-2, 92, 93, 94, 95, 96,1-2, 97, 98,1-2, 99, 100, 101, 102, 103,1-2, 104,1-2, 110, 111, 112, 116, 118, 119,1-2, 120, 121,1-2, 122, 123,2, 125,1-2, 126, 127,1, 127,3, 132,1, 133, 135, 136, 138,1, 141, 142,2, 147,1-3, 147,4, 148,1, 152, 154,1-2, 155, 156,1-2, 159-160, 170,1, 173, 175,3-4, 177,1-2, 178,1-3, 179,1-2, 180,1-4, 186,1-5, 187, 189,1-2, 189,4, 190,1, 191,1, 192,1, 193, 195, 196,2, 197,3, 198,1-5, 199, 200,1-5, 201,1, 202,1-4, 203,1-2, 204,1, 205,2-3, 207 commi 1-3, 208, 209

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commi 2-4, 210, 211,1-4, 212,3, 213, 214,2, 215,1-2, 217,1, 218,2, 219,1, 221,2-3, 232-236, 237-240); PIUS XII, *Alloc.*, 3 oct. 1941, in *AAS* 33 (1941) 421-426; PIUS XII, *Alloc.*, 1 oct. 1942, in *AAS* 34 (1942) 338-343; SACRA CONGREGATIO SANCTI OFFICI, *Instr.*, 12 nov. 1947; PIUS XII, *Sollicitudinem nostram*, in *AAS* 42 (1950) 5-120 (cf. cann. 207, 226, 266, 429, 430, 431, 432, 433, 434, 435-439, 441-444, 450), PIUS XII, *Alloc.*, 5 dec. 1954, in *AAS* 47 (1955) 64; CONSILIUM A PUBLICI ECCLESIAE NEGOTIIS, *Rescr.*, 28 apr. 1970, 13 and 18; SUPREMUM TRIBUNAL SIGNATURAE APOSTOLICAE, *Rescr.*, 10 nov. 1970, 1 and *Rescr.*, 2 ian. 1971, II, 1; PAUL VI, *Alloc.*, 8 feb. 1973, in *AAS* 65 (1973) 100-103; JOHN PAUL II, *Alloc.*, 4 feb. 1980, in *AAS* 72 (1980), 174-176; ROMANAE ROTAE TRIBUNAL, *Normae*, 18 apr. 1994, in *AAS* 86 (1994) 508-540.

61 Cf. *CIC* 1693,2.

62 Cf. *CIC* 1095-1107; *CIC*-17 1082-1093.

63 Cf. *CIC* 1083-1094; *CIC*-17 1067-1080.

lawful form.<sup>64</sup> To establish the nullity of a marriage, a judicial procedure is needed. Although marriage cases never become final, a quasi judgment is reached once the ruling that has declared the nullity of that marriage for the first time has been confirmed upon appeal, or else, with a decree ratifying the first judgment,<sup>65</sup> or with a second affirmative judgment<sup>66</sup> pronounced by the competent ecclesiastical tribunal.<sup>67</sup> In fact, this

judgment does not dissolve any marriage, which it could not validly do; it only declares, after a regular process, that the union, which had been started with the nuptial celebration, truly never validly existed, because of the existence of an impediment,<sup>68</sup> a defect of consent,<sup>69</sup> or a defect of form.<sup>70</sup>

Whoever objects that the Church herself has her own form of divorce, which she wants to keep for herself without recognizing the same power to the State, is therefore ill informed about judicial doctrine. This reasoning can even become a lack of goodwill, when it is added that the Church thus grants divorce only to those who can pay for it, that is, to rich people and other famous personalities belonging to the scientific field,<sup>71</sup> while not admit-

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64 Cf. *CIC* 1108-1123; *CIC*-17 1094-1103.

65 Cf. *CIC* 1682,2; PAUL VI, *Causas matrimoniales*, 7,2-3, in *AAS* 63 (1971) 441-446; *Id.*, *motu proprio Cum matrimonialium*, 8 sep. 1973, 8,2-3, in *AAS* 65 (1973) 577-581; *Pontificia commissio decretis concilii Vaticani II interpretandis*, resp., 31 oct. 1973, in *AAS* 65 (1973) 620; resp., 14 feb. 1974, in *AAS* 66 (1974) 463; resp., 1 iul. 1976, in *AAS* 68 (1976) 635.

66 Cf. *CIC* 1684,1; *CIC*-17 1987; SACRA CONGREGATIO DE DISCIPLINA SACRAMENTORUM, *Provida Mater*, 220, in *AAS* 28 (1936) 313-361; PAUL VI, *Causas matrimoniales*, 8,3, in *AAS* 63 (1971); PIUS XII, *Sollicitudinem nostram*, 495, in *AAS* 42 (1950) 5-120; PAUL VI, *Cum matrimonialium*, 8,3, in *AAS* 65 (1973) 577-581.

67 Cf. *Cf. CIC* 1673; *CIC*-17 1962 and 1964; *Pont. comm. ad Codices Canones authentice interpretandos*, resp. XIV, 14 iu. 1922, in *AAS* 14 (1922) 529-530; SACRA CONGREGATIO DE DISCIPLINA SACRAMENTORUM, *Instr.*, 22 dec. 1929, in *AAS* 22 (1930) 168-171; *Id.*, *Provida Mater*, 3,5-8, in *AAS* 28 (196) 313-361; PIUS XII, *Sollicitudinem nostram*, 470 and 472, in *AAS* 42 (1950) 5-120; CONSILIUM A PUBLICI ECCLESIAE NEGOTIIS, *Rescr.*, 28 apr. 1970, 7; *Id.*, *Rescr.*, 1 nov. 1974; SUPREMUM TRIBUNAL

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SIGNATURAE APOSTOLICAE, *Rescr.*, 2 ian. 1971; *Id.*, decreto *Instantia diei*, 6 apr. 1973; *Id.*, *Decl.*, 12 apr. 1978; PAUL VI, *Causas matrimoniales*, 3-4, in *AAS* 63 (1971) 441-446; *Id.*, *Cum matrimonialium*, 3-4, in *AAS* 65 (1973) 577-581; *Pontificia commissio decretis concilii Vaticani II interpretandis*, resp., 14 feb. 1977, in *AAS* 69 (1977) 296.

68 Cf. *CIC* 1073 and 1094; *CIC*-17 1036 and 1080.

69 Cf. *CIC* 1095-1107; *CIC*-17 1082-1093; see also, according to various reasons for nullity, many decisions and judgments of the Court of the Roman Rota from 1932 to 2002; cf. LÓPEZ-ILLANA, *Secolarizzazione della società*, 95-153.

70 Cf. *CIC* 1108-1133; *CIC*-17 1094-1103.

71 Cf. the affirmative judgment c. Grazioli, *Westmonasterien.*, dec., XIV, diei 11 aprilis 1927, RR-Dec., XIX, 104-115: *ex capite*

ting that many professional and working class people have obtained declarations of nullity of their marriage through free legal assistance.<sup>72</sup>

6. Precisely because of this, the Pontiff John Paul II stresses the Church's fundamental duty to strongly reaffirm the doctrine of the indissolubility of marriage, "in a secularized society pervaded by strong divorce currents".<sup>73</sup> And this is why the Holy Father also stresses the incidence of a "growing number of divorces."<sup>74</sup>

Doubtlessly, marriages are also of interest to civil society and to the State. What is deplorable is that the civil agreement appears as if it were the duplication of a real marriage, as if two marriages were occurring, one religious or canonical, the other civil. Secularist parliamentary forces have more or less consciously proceeded by steps against the Church: first step, the introduction of civil marriage; second step, divorce.

A civil marriage is a marriage contracted before a public official ac-

cording to civil law.<sup>75</sup> In some States, religious marriage is recognized, while in other States it is not recognized as a civil marriage. This creates a conflict between the various kinds of civil marriage:

a) civil marriage is obligatory or necessary, if it has to be agreed to in front of a public official and only according to civil laws, under penalty of otherwise not having civil effects;

b) it is free or optional, if all can contract marriage before a religious minister, according to both the civil and ecclesiastical laws, or in front of a public official according to the civil laws;

c) it is subsidiary, if the civil law allows for it to be contracted before a public official by whomever does not profess any religion or by Christian subjects in general, who, having no reli-

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*exclusae indissolubilitatis.*

72 Cf. the affirmative judgment with decree of ratification c. López-Illana, *Pacten.*, dec., diei 14 dec. 1994, RRDec., LXXXVI, 687-717: *ob incapacitatem obligationes matrimonii essentielles assumendi* (cf. can. 1095,3).

73 JOHN PAUL II, *Speech of 21 January 2000*, 4.

74 JOHN PAUL II, *Familiaris consortio*, 6, in AAS 74 (1982) 87: "the growing number of divorces" and also "the scourge of abortion; the ever more frequent recourse to sterilization, the appearance of a truly contraceptive mentality."

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75 A civil marriage must be publicly celebrated in the town hall, in front of a public official to whom request for publication has been made (cf. *Civil Code*, art. 106; cf. also arts. 107-113 and 83-104). A public official is one who is directly responsible to the State or has a legal position among the citizens in a given territory. The public official's authority extends, by law, to ordering all acts regarding four registers; here, what is of concrete interest to us is the register for the celebration of marriages (cf. *Civil Code*, arts. 124-135; cf. also arts. 93-123). What is required is: the presence 1) of the public official who receives the declaration, writes the act and signs it; 2) of the declarer, who is the party interested in having the fact established; 3) of the witnesses, normally two, attesting to the truth of the declarations, by signing the act together with the declarer.



gious community, also lack the presence of an authorized minister of the cult before whom they could give their marital consent; or if, even when a legitimate minister of that cult is at hand, the latter justly refuses to be present at that marriage because of some impediment, foreign to civil law, that is lacking regular dispensation.

The Church disapproves of, and condemns, civil marriage for baptized people,<sup>76</sup> as an attack against one's own rights and one's freedom of conscience, and for being a source of incalculable damage for public morals. In fact, to the Christian conscience the marriage of baptized people is no double act, rather it is one, cannot be split and is undividable; one cannot enter into a marriage that is not also a sacrament;<sup>77</sup> therefore, if it is valid as a sacrament, it is valid also as an agreement and vice versa. Thus, each marital union entered into by baptized Catholics without the sacrament of marriage is intrinsically perverse and blameworthy as truly simply cohabitation. Since the civil act has no sacramental value, in conscience it also lacks the value of marital pact.

Where civil marriage is obligatory, the Christian faithful can licitly agree to it as long as they intend it to be a purely civil ceremony, but, if possible, they

should first contract a religious marriage, and, in case the civil act must be performed first, they cannot cohabit until the religious marriage will have been entered into, since the civil act is not enough for them to be real spouses.<sup>78</sup>

Such obligatory civil marriage can be legally celebrated by a public official, with the same intention of celebrating a purely civil ceremony. If the parties will later not celebrate the religious marriage or if something prevents this religious marriage because of an impediment by divine or ecclesiastical law, then the public official's assistance, in the first case, not being intrinsically wrong, can also be licit for a reason that is proportionately serious and, especially in the second case, he should not take part in it in conscience, or, in case there is a very serious reason for him to be forced to assist, it will not be for the public official but for the diocesan bishop to express his judgment.<sup>79</sup>

For those who voluntarily enter into a civil marriage:

a) clerics that have attempted marriage, even only civilly, will *ipso iure* be

<sup>76</sup> Cf. *CIC* 96, 204, 205, 209, 209, 212; *Lumen gentium*, in *AAS* (1965) 5-75 (cf. nn. 8, 9, 14, 15, 32, 33).

<sup>77</sup> Cf. *CIC* 1055; *CIC* 17 1012.

<sup>78</sup> Cf. S. PENITENZIERIA, 15 December 1865 Id., Instruction *De matrimonio civili*, 15 January 1866, in *AAS* 1 (1865/66; 1872) 509-511; *Syllabus*, prop. 68-72, 74, in DENZINGER-SCHÖNMETZER, *Enchiridion Symbolorum*, 1968-2972 and 2974; LEO XIII, Encyclical letter *Arcanum*, 10 Feb. 1880, in *Acta*, Romae 1882, II, 10-40; PIUS XI, *Casti Connubii*, in *AAS* 22 (1930) 539-592.

<sup>79</sup> Cf. *CIC* 376; decree *Christus Dominus*, 28 oct. 1965, in *AAS* 58 (1966) 673-696.

removed from their ecclesiastical office,<sup>80</sup> i.e., the loss of office is automatic. However, the intervention of the authorities is required, accompanied by the issuing of an act declaring the vacancy of that office. A suspension *latae sententiae*<sup>81</sup> is added, which is the heaviest punishment for clerics, together with other optional penalties, generally indicated as eventual deprivations, that can go as far as a possible dismissal from the clerical state if the culprit will give no signs of amendment or will continue to cause scandal. The same sanctions are valid for clerics that are members of religious orders,<sup>82</sup> and who lack the regular position for receiving orders;<sup>83</sup>

b) Religious with perpetual vows<sup>84</sup> that have entered marriage, even only civilly, must *ipso facto* be considered dismissed from the institute.<sup>85</sup> For it to legally result that these are dismissals, as soon as he has gathered the proofs,

the major superior, together with his council, should send forth a formal declaration of the fact. The religious also incurs an interdict *latae sententiae*,<sup>86</sup>

c) Lay people bound by a previous religious marriage,<sup>87</sup> that would presume to enter a marriage that is only civil, can be punished by law,<sup>88</sup> so as better to prevent or repair the scandal<sup>89</sup> and to realize two instances that are theologically and pastorally inalienable: the good of souls and the good of the ecclesiastical institution itself, since ecclesial power should be exercised "to edify Christ's flock in truth and holiness."<sup>90</sup>

Public officials should not officiate in marriages indicated in a), b) and c), because, as a Christian believer, in the Catholic arena he has the right of subjective conscience to follow its dictates and can therefore resist the injunctions of the public authorities, saying that for moral reasons he cannot participate in such civil marriages, because what is at stake is the greatest good of the moral order, which is superior to material goods. On the other hand, it seems in conformity with equity that the laws of the State would humanly provide for the cases of those who, for reasons

80 Cf. CIC 194,1, comma 3; CIC-'17, commi 4 and 5.

81 Cf. CIC 1394 § 1; CIC-'17 238; S. PENITENZIERIA, Decree *Lex sacri coelibatus*, 18 apr. 1936, in AAS 28 (1936) 42-43; *Decl.*, 4 maii 1937, in AAS 29 (1937) 283-284.

82 Cf. CIC 207 § 1; CIC-'17 107; CIC 1008; CIC-'17 948; *Lumen gentium*, 10, 11, 20; PO 2,5,7-12; PAUL VI, ap. const. *Pontificalis romani*, 18 iun. 1968, in AAS 60 (1968) 370-371.

83 Cf. CIC 1041, comma 3; CIC-'17 985, comma 3.

84 Cf. CIC 1088; *Communicationes* 9 (1977) 365; CIC-'17 1073.

85 Cf. CIC 694,1, comma 2; CIC-'17 646,1, comma 3.

86 Cf. CIC 1394,2; CIC-'17 2388.

87 Cf. CIC 1073; CIC-'17 1036,2.

88 Cf. CIC 221,3; CIC-'17 2195 and CIC 2222.

89 Cf. CIC 1339; CIC-'17 2306, commi 1 and 2; CIC-'17 2307, 2308, 2309.

90 *Lumen gentium*, 7, in AAS 57 (1965) 5-75.

of conscience, would refuse to celebrate marriages that are leading to simple concubinage.<sup>91</sup>

The public official's participation in such marriages indicated in a), b) and c) cannot be in any way justified by invoking respect for the freedom of others or by insisting on the fact that the civil law calls for or requires it. In fact, for those acts which each person does personally, there is a moral responsibility that nobody can avoid and according to which each person will be judged by God himself.<sup>92</sup>

The public official, by not officiating in such civil marriages gives his answer to God's call and by not exercising his office, contributes, as a ferment, to the sanctification of the world, to the manifestation of Christ to others, principally by witnessing –with his own life and with the brightness of his faith– to his hope and charity.<sup>93</sup>

The Church has no direct jurisdiction on the marriages of unbelievers; the State has it, but it cannot destroy indissolubility, because the State cannot change natural law. From this it results that civil law cannot dissolve a licit marriage, not even if it was entered into by

two unbelievers. The Catholic Church has never admitted divorce, not even in the case of a licit marriage between unbelievers, because, as we already said, it is an intrinsically indissoluble marriage that can be dissolved by the Pauline privilege when one of the spouses converts and the other refuses to cohabit without offending the Creator.<sup>94</sup>

7. It is meaningful that divorce is showing up in the legislations of Christian and Catholic countries together with the ruin of moral and Christian values. Civil marriage first, then divorce, as we already said, have led marriage back to the dregs of paganism.<sup>95</sup> Between the Roman and Jewish divorce and the divorce appearing today in Catholic countries, there is an enormous difference that rests on twenty centuries of Christianity. In any case, the introduction of divorce in the Christian society of almost all the countries of the world, driven by the usual secularist influences, has destroyed twenty centuries of the Church's patient work to carry out the marital doctrine promulgated by Christ.<sup>96</sup>

Therefore, unfortunately, almost all civil codes in force today sanction divorce for various reasons and according to some circumstances, which is a very serious offense against the natural law.

91 Cf. CIC 1093; CIC-'17 1078; *Pontificia commissio ad Codicis Canones authentice interpretandos*, resp. II, 12 mar. 1929, in *AAS* 19 (1927) 170.

92 Cf. Rom 2,6; 14,12: "So (then) each of us shall give an account of himself (to God).

93 Cf. *Lumen gentium*, 31, in *AAS* 57 (1965) 5-75.

94 Cf. CIC 1143 and 1147; CIC-'17 1149.

95 Cf. LÓPEZ-ILLANA, *Secolarizzazione della società*, 116-117.

96 Cf. LÓPEZ-ILLANA, *Secolarizzazione della società*, 99-118.

It is a serious injury inflicted on the sign of Christ's covenant with the Church.<sup>97</sup>

Experience teaches that, once divorce is introduced into a nation or a State as a remedy for so-called hard cases, it can no longer be contained and divorces keep extending and multiplying until they become a serious menace to the stability of canonical marriage and the peace of couples, creating enormous damage, especially for the party that is faithful to the sacrament of marriage and is being unjustly abandoned; it causes even more damage to the children that remain traumatized by the spouses' separation, when they do not become a cause of contention between them. Divorce, as is well known, has a contagious effect on society, it encourages immorality and favors juvenile delinquency.

This is a problem of conscience that legislators should ponder, in those legislatures where their vote could be decisive in order to completely revoke divorce laws; through their conscientious objection they could place their abilities at the service of the values highlighted by the pontifical magisterium.

It is true that the Church recognizes as good all forms of states that are able to actualize the finalities of the State, i.e. the common good. Therefore, it

is necessary for the power of the State to express the people's will, and that congressmen and deputies be conscious of the intimate values, which the citizens bring into the political life of the parliament with their votes. This is where the Second Vatican Council tells us that: "Praise is due to those national procedures which allow the largest possible number of citizens to participate in public affairs with genuine freedom. Account must be taken, to be sure, of the actual conditions of each people and the decisiveness required by public authority. If every citizen is to feel inclined to take part in the activities of the various groups which make up the social body, these must offer advantages which will attract members and dispose them to serve others. [...] We can justly consider that the future of humanity lies in the hands of those who are strong enough to provide coming generations with reasons for living and hoping."<sup>98</sup>

There is no doubt that, with the help of God's grace, there are and there will be legislators that, recognizing the dignity of the sacrament of marriage, – now obscured by polygamy, by the plague of divorce, by so-called free-love and by other deformities – will abolish the divorce laws and all other laws in which moral principles are lacking, which are often widespread and are causing a loss of serenity in many families and are opening the way to vice, because they

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97 JOHN PAUL II, *Familiaris consortio*, 83-84, in *AAS* 74 (1982) 184-186. "Divorce" commonly indicates the faculty given by the civil authority to the couple, to separate and remarry. Cf. LÓPEZ-ILLANA, *Secolarizzazione della società*, 102-110.

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98 *Gaudium et spes*, 31.

are truly nothing else but seeds of instability for the people's active, responsible and fruitful insertion into society's wider horizons.<sup>99</sup>

In a democratic form of government, whose authorities are equally elected by all citizens, and where divorce reigns, many faithful, moved by that wider individual freedom, have recourse to divorce according to the civil laws and even enter into new civil unions, which is objectively against the law of the Lord,<sup>100</sup> because the bond of their canonical marriage remains indissoluble.<sup>101</sup>

8. Petitions for divorce are still being materially presented by the spouses as long as the civil legislations reserve to the spouses, or at least to one of them, a judicial action for divorce, and do not yet go so far as to grant divorces *ex officio*, or even upon the request of other interested parties outside of the couple.

The spouse against whom the action of divorce is started, may propose the so-called counterclaim. With this request, if the plaintiff's action is accepted, the defendant can ask for the pronouncement of provisions unfavorable to the counterpart.

A petition for divorce is licit only when the spouses are requesting civil divorce, not because they want the bond to be dissolved so as to be able to marry again, but only because, by the cessation of the civil effects of that marriage, they will be deprived of serious inconveniences, which cannot otherwise be avoided. When personal or legal separation suffices to reach this purpose, a request for divorce is obviously not licit, since there are no other good reasons for it. Evidently all the more so can the spouses not ask for divorce in order to marry again, since in that case they would be asking for something that is doubtlessly evil and incompatible with divine law.<sup>102</sup>

Since marriage cases belong to the competence of the ecclesiastical forum, the spouses cannot licitly ask for divorce as long as they have not obtained an annulment or personal separation from the ecclesiastical tribunal.

Often, in those countries where divorce obtains, Catholics, either out of

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99 Cf. JOHN PAUL II, *Familiaris consortio*, 37, in *AAS* 74 (1982) 127-129.

100 Cf. Mc 10,11-12. Faithful to Jesus Christ's words, the Church affirms that it cannot recognize as valid any new union, while a previous marriage is still valid.

101 Cf. SYNODUS EPISCOPORUM (1980), *Propositiones Post disceptationem de muneribus familiae christianae in mundo hodierno*, 24 octobris 1980: *Typis Polyglottis Vaticanis* 1980, *Propositio* 13,1: "Synodus denuo affirmat doctrinam de indissolubilitate matrimonii rati et consummati inter christifideles"; cf. JOHN PAUL II, *Familiaris consortio*, 83, in *AAS* 74 (1982) 184; cf. also *CIC* 1151-1155.

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102 JOHN PAUL II, *Familiaris consortio*, 84, in *AAS* 74 (1982) 185: "Daily experience unfortunately shows that people who have obtained a divorce usually intend to enter into a new union, obviously not with a Catholic religious ceremony."

religious ignorance or because of their lack of Christian feelings, address their request for divorce directly to civil courts only, also because the ecclesiastical tribunal's judgment does not also have civil effects.<sup>103</sup>

9. When the faithful licitly ask for divorce to obtain the cessation of civil effects, their lawyers, by defending their clients, are licitly engaged in obtaining that divorce.<sup>104</sup>

Furthermore, it is tolerated for a Catholic lawyer to assist one spouse against the other party that is applying for divorce, if the lawyer is opposing the petition as *per sé* unjust. There are no other difficulties to his exercising his profession except the fact that the case

is being handled in an incompetent forum, i.e. the civil forum.

His assisting his client in these cases can be tolerated, as long as the diocesan bishop is aware of the lawyer's probity, and the lawyer does nothing that runs against the principles of natural and ecclesiastical law.

But when the spouses, for no just reason or with the bad intention of later marrying again, apply for divorce, then the lawyers can certainly not licitly accept to defend their case. If their case is very serious, with the local Ordinary's license, they can defend their client without conforming to their intentions.<sup>105</sup>

10. The law permitting divorce would be useless if no civil magistrates, in the exercise of their duties, would make rulings of divorce thus allowing for the spouses to separate and civilly remarry.<sup>106</sup> However, if he is a faithful

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103 To the question whether it was lawful to apply for divorce as the only efficient way to disown the paternity of children born from adultery, the Sacred Penitentiary answered on 7 January 1892 *non licere*; but on 30 June 1892, the latter answered instead: *Orator consulat probatos auctores*. And the opinion of these authors, at least of a major part of them, was that in the case avowed there was a proportional reason for applying for divorce. Over and above the disownment of paternity, one very serious and proportionate reason for applying for divorce would be, according to these authors, a specific danger menacing the education of the children, or exceptional damage to wealth.

104 Lawyers assist one of the parties with their work and counsel, theirs is a ministry of defense, they write their defense memorials which they sign together with the attorney, they discuss the cause orally, they direct and develop the behavior of the defense and make it meet the requirements of the lawsuit.

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105 Cf. CIC 134; CIC-'17 198; S. CONGREGATIO CONSISTORIALIS, *Decl. 20 ian. 1919*, in AAS 12 (1920) 43; S. CONGREGATIO DE PROPAGANDA FIDE, *Ep.*, 8 Dec. 1919, in AAS 12 (1920) 120.

106 Cf. DECR. S. OFFICII, 27 maii 1886, in AAS 22 (1889/90), 635s.: “(*De divortio civili*). Some bishops in France presented to the Sacred Roman and Universal Inquisition the following questions: In the letter of the Sacred Roman and Universal Inquisition of 25 June 1885 to all the Ordinaries in territories under French jurisdiction on the law for civil divorce, the following is debated: In consideration of the very grave state of affairs, the times and places, one can tolerate that *those who are magistrates or lawyers* can conduct marriage cases in France

Christian, the magistrate must proceed in the exercise of his office with a right conscience, if he does not want to commit a sin against God's law and so be obliged to make amends for damages.<sup>107</sup>

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without having to renounce their posts [...]

*Question:* 1) Is the widespread interpretation, which has also appeared in the press in France, correct that a judge may fulfill the conditions above, even if a certain marriage seen as valid by the Church, disregarding that this is a true and stable marriage, and applying the civil law ruling that the conditions exist for a divorce because interiorly he intends to dissolve only the civil effects and the civil contract and only this is referred to in the promulgated ruling. In other terms, can the given ruling be said to be against divine and ecclesiastical law? 2) After the judge has ruled that there are the conditions for a divorce, can the mayor, if he also intends only the civil effects and only the civil contract, as said above, grant the divorce even though the marriage is valid for the Church? 3) Once the divorce has been granted can the same mayor officiate at a civil marriage with another spouse even though the preceding marriage is valid for the Church and the other spouse is still alive? *Answer* (confirmed by the pope): No, to 1, 2 and 3."

107 Cf. Ex 18: It is the civil magistrate's duty to apply the law to the concrete fact, according to the positive norms fixed by the law. He does not judge the law, but objectively tries to apply the laws to the actual fact, although he is obliged to ponder everything according to the values of his own conscience. Professional morals require for the officer to proceed with the greatest diligence and completeness in instructing the lawsuit and with the greatest prudence in passing sentence. As far as the instruction of the lawsuit for divorce and the pronouncement of the sentence

However, when the civil magistrate takes cases of divorces and pronounces the sentence, he is acting illicitly and unjustly, since he is usurping the jurisdiction of the Church. If the civil magistrate recognizes the jurisdiction of the Church, he is acting licitly only if the following conditions are met: a) if he intends for the effects to be only civil for that marriage; b) if there are very serious reasons for taking that case; c) if he prevents scandal by openly admonishing the spouses and the other people that his judgment does not refer to marriage itself but merely to its civil effects; d) if it is not expressly prohibited by the Church.

Again, public officials and other personnel obliged, because of their official duties, to carry out the ruling should do so as far as the civil effects are concerned.

Everybody certainly knows that the law on divorce is unjust, since it is doubtlessly contrary to a superior natural and positive divine law. The natural law which lies within man's heart, is the normative reference point of civil law itself: "Every law created by men has its reason as law in as much as it derives from natural law. If, instead, it is contrary to the natural law in something, then it will not be a law but a corruption of the law."<sup>108</sup>

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of divorce are concerned, cf. note 104.

108 THOMAS AQUINAS, *STh* I-II, q. 93, a. 3, ad 2.

The civil law's duty is also quite different from, and more limited than, moral law, and "In no sphere of life can the civil law take the place of conscience or dictate norms concerning things which are outside its competence,"<sup>109</sup> i.e. to guarantee the welfare and the common good of the persons through the recognition and defense of their fundamental rights, the promotion of peace and of public morals.<sup>110</sup> In fact, the civil laws or authorizations that are contrary to the moral law, and therefore, consequently, "contrary to the will of God, have no binding force [...] in such a case, therefore, clearly authority ceases to exist and degenerates into an offence."<sup>111</sup>

The civil magistrate, faced with an unjust divorce law, is bound by a grave duty of conscience to obey God rather than men.<sup>112</sup> And this is an essential right of the Christian magistrate which, as such, should be provided for by the legislature and therefore by the civil law itself. In this sense, the possibility to re-

fuse to participate in the preliminaries of a divorce suit should be guaranteed for the practicing Catholic magistrate, since he cannot in conscience later cooperate in actions that are morally wrong by pronouncing a sentence of divorce.<sup>113</sup>

Moralists admit that it is licit for the civil magistrate to apply the divorce law, wherever this law applies, as long as the spouses that are applying for it with him know that the sentence of divorce will eventually have civil patrimonial effects only.<sup>114</sup> In such a case, the civil magistrate will simply declare that the civil law allows, in certain circumstances, for the purely civil bond to be annulled. This is especially the case when the parties belong to the kind of baptized persons or Catholics who do not want to choose a religious celebration of their marriage. But those Catholics that celebrate only a civil marriage, except if they are exceptionally so authorized by the ecclesiastical authorities, are considered public sinners

109 CONGREGATION FOR THE DOCTRINE OF FAITH, Instr. *Donum vitae*, 22 Feb. 1987, III, 1632, in *AAS* 80 (1988) 98.

110 Cf. decl. *Dignitatis humanae*, 7 Dec. 1965, 7, in *AAS* 58 (1966) 929-946: "These matters constitute the basic component of the common welfare: they are what is meant by public order."

111 JOHN XXIII, encyclical letter *Pacem in terris*, 51; cf. PIUS XI, encyclical letter. *Mit brennender Sorge*, 14 March 1937, in *AAS* 29 (1937) 159.

112 Cf. At 5,29.

113 Cf. note 104.

114 Cf. *CIC* 1059; *CIC* '17 1016; PIUS XI, *Casti connubii*, in *AAS* 22 (1930) 577-583, and at p. 574 one can read: "Iam secessionis huiusmodi causas, condiciones, modum simul et cautelas, quibus et liberorum institutioni et familiae incollumitati fiat satis, atque incommoda item omnia, sive ea coniugi, sive proli, sive ipsi civili communitati impendent, quoad poterit, praecaveantur, legum erit sacrum statuere, et ex parte saltem, etiam civilium legum, pro civilibus scilicet rationibus et effectibus." Cf. VATICAN COUNCIL II, decree *Unitatis redintegratio*, 21 nov. 1964, in *AAS* 57 (1965) 90-112.



with all the implied consequences, and, although treated with great charity, “the pastors of the Church will regrettably not be able to admit them to the sacraments.”<sup>115</sup>

Really, divorced persons who have civilly remarried cannot be admitted to Eucharistic communion as long as such a situation continues.<sup>116</sup> This norm for divorced persons that remarry has no punitive character nor is it discriminatory; it only expresses an objective situation that makes their admittance to Eucharistic communion impossible.<sup>117</sup> For the same reason, the believer that is habitually cohabiting *more uxorio* with a person that is not his legitimate wife or husband can have no admittance to Eucharistic communion.<sup>118</sup> Because of the gravity of the matter, the requirements

of the person’s spiritual good and the common welfare of the Church, pastors and confessors have the gravest duty to admonish them that such a judgment of conscience is in open contradiction with the doctrine of the Church.<sup>119</sup>

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115 JOHN PAUL II, *Familiaris consortio*, 82, in *AAS* 74 (1982) 183-184: “While treating them with great charity and bringing them into the life of the respective communities, *ecclesiae pastoribus, pro dolor, non licet eos ad sacramenta admittere*”.

116 Cf. *Catechism of the Catholic Church*, 150 and also 1640; cf. COUNCIL OF TRENT, sess. XXIV, in DENZINGER-SCHÖNMETZER, *Enchiridion Symbolorum*, 1797-1812.

117 Cf. JOHN PAUL II, *Familiaris consortio*, 84, in *AAS* 74 (1982) 185-186: “Besides this, there is another special pastoral reason: if these people were admitted to the Eucharist, the faithful would be led into error and confusion regarding the Church’s teaching about the indissolubility of marriage.” Cf. CIC 915; CIC- ‘17 855; cf. also JOHN PAUL II, *Reconciliatio et paenitentia*, 2 Dec. 1984, 34.

118 Cf. 1 Cor 11,27-29.

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119 Cf. CIC 978,2; *Ordo paenitentiae*, 2 dec. 1973, 10a, JOHN PAUL II, *Familiaris consortio*, 81, in *AAS* 74 (1982) 182-183: “The pastors and the ecclesial community should take care to become acquainted with such situations and their actual causes, case by case. They should make tactful and respectful contact with the couples concerned, and enlighten them patiently, correct them charitably and show them the witness of Christian family life, in such a way as to smooth the path for them to regularize their situation. But above all there must be a campaign of prevention, by fostering the sense of fidelity in the whole moral and religious training of the young, instructing them concerning the conditions and structures that favor such fidelity, without which there is no true freedom; they must be helped to reach spiritual maturity and enabled to understand the rich human and supernatural reality of marriage as a sacrament.”



# Medical Interruption of Pregnancy (MIP)

Jean-Marie Le Méné



*The term “medical interruption of pregnancy” (MIP) can be classified as belonging to the same vein as other manipulations of public opinion using ambiguous language for utilitarian ends. Already at the end of the 1960s the euphemism “voluntary interruption of pregnancy” (VIP) was substituted for the term “abortion” in the context of demands for women’s rights when the procedure was legalized in cases of danger for the woman, a general expression commonly used when no objectively justifiable reason can be found. The same tolerance for the procedure is masked by another euphemism, “therapeutic interruption of pregnancy” (TIP), when the reasons to justify the procedure relate not to the woman but to the sick or handicapped child. Successively, medical interruption of pregnancy (MIP) did not even require a time limitation for the abortion. Furthermore, resorting to MIP requires the participation of doctors who, to avoid any kind of suffering at all costs for the patient who would have to take such a painful decision, take the initiative and decide the fate of these fetuses. Behind the easy justifications of danger for the woman are hidden collective socio-economic motives. Even diagnostic tools are used to justify these practices. The classic case is the use of prenatal diagnosis to justify MIP, in short abortion, as a means of preventing the birth of infants with Trisomy 21 or Down Syndrome which collective approval and a certain consensus have decided to eliminate. It is a situation that makes one recall the sad story of Nazi eugenics. The self-justification is pushed so far as to distinguish between criminal eugenics, done wholesale, and medical eugenics, on individuals, which would be more acceptable, not because of the object of the act, but because of the utilitarian motives involved and to assuage the consciences of people. Thus, by eliminating a “wrongful life” one eliminates the value of the life itself and of the person. The child becomes interchangeable, and his attributes can be modified at the beginning of his life in order to satisfy certain projected criteria of the parents or society. Even his body can be substituted and his cells used for utilitarian ends through experiments on embryos. These practices are morally pointless and pointlessly immoral! (↗ Dignity of the Human Embryo; Voluntary Interruption of Pregnancy; Safe Motherhood; Assisted Procreation and IVF; The Juridical Status of the Human Embryo; Pro-Choice)*

Medical interruption of pregnancy (MIP) is most easily defined as an abortion because the child is sick or handicapped. The difference between voluntary interruption of pregnancy (VIP) and MIP consists in the fact that the former is focused on the woman while the latter is focused on the child. The arguments are not the same to the extent that they do not refer to the same person, although in the end, by some means or other, they always take advantage of the woman's distress to justify the abortion. Continuing the pregnancy is considered impossible not because the woman is in distress, but because the pregnancy is considered impossible since the woman is in distress.

While the causes of VIP need not be formulated insofar as the distress depends not on the situation, but rather only on the woman's estimation, the causes of MIP can be constantly reworded and explained by an ever changing list of pro-abortion medical reasons. They are not fixed and do not depend on the woman. Interpreting the rhetoric on this subject is necessary.

Whereas the causes of VIP are personal, the causes of MIP are based on social and economic criteria with public and collective consequences. At least for these three reasons, the meaning of MIP is ambiguous. This ambiguity manifests itself in the fact that MIP is practiced as a "guilt-free" and even "positive" procedure.

**Because MIP is not considered an act of convenience, it is a "guilt-free" abortion**

On the one hand, MIP as a "guilt-free" abortion is not chosen by the woman but is rather done to her, and on the other hand it is not initiated by the woman but by the doctor.

MIP is not chosen by the woman but it is done to her.

*MIP compares favorably to VIP*

The history of legalized abortion began from the 1960's and 70's, initially with proposals to eliminate malformed children. Then, rapidly, into this breach was insinuated the long-awaited and militant proposal to legalize abortion when a woman is in distress, that is to say, without an objective reason but with a fixed time limit. This is the voluntary interruption of pregnancy (VIP). Public opinion holds that this unconditional right to abort ("a child if I want and when I want"; "my body belongs to me") was won after an intense fight and will never stop congratulating itself on this. In fact, this pretended victory for women's liberty overshadowed a little the concomitant legalization of abortion for malformed children, classified at that time as a therapeutic interruption of pregnancy (TIP), which today is called a medical interruption of pregnancy (MIP) and which are allowed without any time restrictions in the pregnancy. In other words, for public opinion, if unconditional abortion except for a time restriction is permit-

ted, then *a fortiori*, the authorization to abort for objective reasons, like a malformed fetus, without any time restrictions poses no particular difficulties for acceptance.

At the same time, in the spirit of those who do not wholly accept the principle of abortion, a kind of moral frontier is created between so-called abortion for personal convenience and so-called therapeutic abortion. The former can be considered the object of a certain disapproval because we can imagine that it is often based on selfishness and that the moral or material distress can be solved through a less radical method than the child's suppression. The latter, even if it is regrettable in principle, can be tolerated or even assisted as it is presented as being outside of the woman's choice. It seems to be imposed on her. The woman cannot do anything about it. Finally, if the child brought into the world is to be sick, malformed or handicapped, it is no longer only about individual convenience but involves the child's interest, the woman's survival and beyond her, the whole family adversely affected by the affliction. The promise of an almost certain suffering endured by a couple and sometimes by a community, is considered an unbearable threat. In the name of what can she be allowed to undergo unforeseen injuries? How can an outsider be the judge in this context if they have not been faced with a handicapped child's birth? What do you know about the suffering and

what do you do about it? As severe as one could be regarding the frivolousness of the woman who chooses VIP or the subjectivity of her motives, one is more open to the objective arguments of the woman who endures a MIP. The act is not experienced as a relief but as an injustice, an amputation. More and more often the dead child is presented to his (her) parents to facilitate their mourning. How can you condemn this situation? Christians are not the last ones to give in to the seduction of this false distinction between a kind of abortion that would be unacceptable and another that would be less so. For some people there is here a tolerably comfortable position of accommodation with their consciences, which at the same time reassuringly favors a prohibition but is disposed towards accepting wrongdoing.

*Diagnoses that do not allow for discussion*

The advanced technology of prenatal diagnosis reveals pathologies which, because they cannot be treated today, almost always lead to the interruption of pregnancies without hesitation. Officially, there is no list establishing when a MIP is justified. However... "It is generally accepted for example, that without the conviction or the emotional disposition of parents to the contrary, a fetus with Trisomy 21 can legitimately be subjected to a MIP in the name of collective and individual ethics. There is a sort of general consensus, a collective approval, a unity of opinion, an order

established in the favor of this decision, such that the couples who must endure an interruption of pregnancy for Trisomy 21 will not question themselves regarding the difficult question of the pertinence of their individual choice. In a way, society or general public opinion has answered the question for them. Everyone or almost everyone would act in the same way. This guidance seems so established that parents almost consider it as a right. Who thinks to argue against them? They are spared anguished questioning on this choice.”<sup>1</sup>

What is true for Trisomy 21 is naturally the case *a fortiori* for all terminal diseases of the fetus, but also for certain serious conditions such as malformations of the neural tube (spina bifida, for instance), or less serious ones, around which a social consensus builds gradually.

Added to the diagnostic techniques is a growing intolerance for handicaps and the perception that caring for handicapped persons costs too much. These two additional elements, one moral and the other financial, contribute to the establishment of a norm favorable to the suppression of those who are out of step with the standards of the day.

**MIP is initiated not by the woman but by the doctors**

The doctors assume for the parents the responsibility of an impossible choice.

MIP is not the woman’s problem but the doctor’s. The law gives them the freedom to propose to the woman the interruption of their pregnancy if “there is a strong possibility the unborn child will have a serious impairment that is recognized as being incurable at the time of the diagnosis.”<sup>2</sup> Two doctors have to attest to this after an examination and in principle after a discussion, even if, as we have already seen, this is often only theoretically the case. In principle, the woman cannot obtain a MIP by her own initiative without having it proposed to her by the medical establishment.

The woman not only does not propose it and is passive, but moreover, if the evaluation is ambiguous, the doctors consider it their responsibility to assume the task of making a choice considered too difficult for her. It is beyond the woman’s ability to evaluate the seriousness of the condition which she risks to impose on her child. She knows that this risk exists. She does not have certainty, but this doubt which is intolerable today will be similar tomorrow. It forces the woman to make a decision. But she does not have the strength to do it because it is an inhuman choice which includes the possibility of making a mistake, of “wrongly” aborting her child based on a diagnosis which could be mistaken or incomplete. In this case the medical profession does not hesitate to make a decision intending to spare the woman

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1 J. Milliez, *L'euthanasie du fœtus*, Éditions Odile Jacob, Paris 1999.

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2 Art. 16.4 of the French Civil Code.

the regrets of a bad choice. Abortion for medical reasons in these conditions is not controlled by the woman. It is almost imposed by the doctor for so-called compassionate reasons. MIP can easily be seen as a kind of burdensome and inevitable occurrence both for the woman and for the doctor. This explains that why, for some, a critical moral evaluation of MIP is hard to accept.

*Individual not collective eugenics*

It is no wonder that the practice of MIP can make one think of eugenics. MIP is based on the selection of another according to physical criteria, a judgment based on his capacity to live and his elimination due to weakness. Accepting only the birth of healthy well-formed children, obviously corresponds etymologically to the eugenic approach. Then what substantial distinction exists between the elimination of handicapped persons as practiced during World War II at a very high level and the current practice of MIP in our democratic societies? With a view to criticizing MIP, it is not always easy or opportune to present this analogy between these two practices that comes spontaneously to mind. There is a risk that others will reply that comparing MIP with the practice of extermination could be understood as minimizing the case of the Shoah. On the contrary, the revulsion towards the eugenic genocide implemented by the Nazi regime must lead one to worry that such detestable practices are entering common practice through false pretexts. Attentiveness

must not be diminished just because the horror becomes commonplace. Practices already seen historically which are repeated with new justifications are suspect. They should elicit even greater vigilance.

In fact, the problem of eugenics is all the more pertinent since the practitioners of MIP are the first to consider it and try to give an answer to this. What distinction do they make between medical eugenics and criminal eugenics? There is almost no distinction between the modalities of execution or operation between these two categories of eugenics. What justifies medical eugenics is "the purity of intent. Fetal euthanasia is only ethically tolerable in its eugenic dimension because it is only conceived, organized and planned only for interest of the person, the individual benefit of the couples, and it is accepted freely by them without the least exterior constraint. Its motivation is to avoid unacceptable, lasting, incurable suffering on the part of the child and for the parents the heartbreak, the insufferable burden, and the perpetual wound of their child's handicap. It thus proceeds from a compassionate and individual attitude with consent. This is opposed to criminal euthanasia that uses coercion and would be derived from a collective criminal project. The objective of embryo selection or a medical interruption of pregnancy remains a single, individual medical intervention whose decision results from the private dialogue between the parents and the doctors. It represents the

reverse of a submission to the directives of a public health entity, an economic or political criminal program.”<sup>3</sup>

Therefore, public opinion is reassured if it is presented with a negative eugenics to be condemned and a good eugenics to be praised. The “good” eugenics would be recognized by the fact that it is not collective but individual and that it would be used to benefit parents who are thought not to be able to accept the birth of a handicapped or sick child.

The doctor would then be the “neutral” service provider of a guilt-free society that has collectively accepted the principle of individual eugenics.

The surprising text coming from the French bioethics law shows the freedom our societies have regarding eugenics: “Any eugenic practice tending to organize the selection of persons is forbidden.”<sup>4</sup> This wording actually allows, with impunity, the organized selection of persons without the accusation of eugenics. “Yes, we do indeed organize the selection of persons,” admit some practitioners, “but our practice is not eugenic, it is the parents who ask us to do it.”

As in detective novels, it is the perfect crime because it is committed by those who are above suspicion: the parents.

**Because MIP comes from a medical perspective and one of solidarity it is a “positive” abortion**

MIP is a “positive” abortion not only because it is considered a way to avoid evil but also because it would even seem to be a way to do good.

**Through the prevention of some diseases MIP is perceived as a means to avoid evil**

*The extraction of unwanted children from their mothers’ wombs (through prenatal diagnosis-PND)*

Disease is considered the most unbearable evil. Unfortunately, society has come to the decision to eliminate some diseases through eliminating the sick. The most evident example in this respect is that of prenatal diagnosis (PND) of Trisomy 21. The generalization of testing for Trisomy 21 among all pregnant women which the State or social security pays for has given credibility to the idea that there is an effective solution for this disease: prevention. And, in fact, the live birth of children with Trisomy 21 has decreased markedly, which is viewed as a success.

Prevention has two stages. First, the gynecologist must propose a test with serial markers to all pregnant women. The results of the test indicate if the woman is in a risk category to give birth to a child with Trisomy 21. These women with a risk level revealed by the test are offered an amniocentesis test that would diagnose Trisomy 21 of the child *in utero* thanks to the counting of the chromosomes taken from the amniotic fluid. At the end of the process MIP is the rule in almost all cases of children with Trisomy 21.

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3 Milliez, *L’euthanasie du fœtus*.

4 Art. 16.4 of the French Civil Code.



The system in place paints a “positive” light around MIP as the abortion of the trisomic child is the only official means of prevention proposed and adopted. In fact, a preventive means which would not eliminate the disease would not make sense to the community which finances it. Results are needed to justify the commitment of the funds. What is the result that validates and promotes the financial outlay of the community in the case of Trisomy 21? It is the decrease in births of trisomic children through abortions. The univocal character of the proposed system was understood at the moment of its institution. Its promoters expressed their wish that the detection of disease be accompanied by an equivalent financial effort in the area of research regarding this disease and in the care of the sick. But it must be admitted that these expressed desires have remained unfulfilled. On the contrary, it has been admitted arbitrarily and tacitly that Trisomy 21 is incurable and that abortion is the only solution. There is therefore a narrow and rigorous parallel between the increasing curves of detection and MIP. This means on the one hand that the abortion is the “only” solution proposed by society to Trisomy 21 and on the other hand that it is a “good” answer because it is chosen by all couples with this problem.

Passing simply from a means merely proposed to women to an extended public health policy, the system has chan-

ged its purpose and largely escaped the control of its promoters. It has become a habit for doctors, medical services or social services offices to instantly propose abortion after the diagnosis of Trisomy 21 without even thinking that another way for parents could exist, without thinking of the research that scientists might be willing to do in order to understand and treat the sickness better if, of course, they had the financial resources for it. It is systematic that most parents wonder how they would react to the news that their unborn child has Trisomy 21. In the majority of cases the parents ask themselves if they would keep the child and they respond in the negative. Public health and social services authorities respond with one voice and proudly to questions about what society is “doing for” Trisomy 21: prevention, because the numbers speak for themselves. At the same time these public health and social services authorities deplore the fact that 40 year old pregnant women now directly ask doctors for “their” amniocentesis test as if it were an ordinary service. The reason is that public opinion congratulates itself that the progress of medicine through prevention has overcome Trisomy 21.

*To introduce into mothers' wombs only wanted children*

From the extraction of unwanted children through prenatal diagnosis (PND) to the insertion of wanted children into mothers' wombs through pre-implantation diagnosis (PID) there

exists a marked continuity. PID consists of the detection of an anomaly in an embryo before its implantation in the uterus. It is done on one or two cells taken on the third day of the embryo's development *in vitro* (8 cell stage) and consists in looking for a genetic or chromosomal anomaly which the parents have. Only embryos without anomalies will be selected and implanted in the patient.

Some who already favored the child's selection through PND followed by MIP have seen PNI as progress. According to them, this method would allow resolution of the ethical and painful problem of abortion because it would avoid the need for MIP on the woman since the selection is practiced before implantation. This assessment is wrong on a number of counts. (↗ Pre-implantation and Emergency Contraception)

First, saying no abortion took place *in utero*, ignores the fact that a kind of abortion took place *in vitro*. It's possible the term "abortion *in vitro*" is unseemly. But the human embryos who existed *in vitro* were eliminated. To say that this method solves the ethical problem hides in fact the ontological reality of the human embryo, beginning with the fertilization *in vitro*, and violates with impunity the respect due to it as full member of the human species. The fact that the woman does or does not feel a comparable trauma to an abortion *in utero* changes nothing in the materiality of the killing committed against a very young human being.

Then the practice of PID does not dispense with PND. On the contrary, when the embryos are selected and then implanted, prenatal diagnosis is still necessary to confirm, to falsify or to complete the pre-implantation diagnosis. It is therefore clear that, even if the embryo was selected once *in vitro*, it must pass the tests of *in utero* selection. Obviously, which technician responsible for an *in vitro* conception, followed by a PID, will accept the principle of a handicapped or sick child's birth even if the handicap or the sickness is different from those for which PID was prescribed? What parents who submitted to the difficulty of the *in vitro* fertilization process would accept giving birth to a child free of myopathies, but who is a carrier of a trisomy?

Another form of attack on life is inherent to the methods of assisted procreation. It is the technique called "embryonic reduction" which, after the implanting and developing of several embryos up to 9-10 weeks after the end of menstruation, consists in the selective abortion of one or more of them in order to avoid multiple pregnancies. (↗ Embryonic Selection and Reduction) Since the chances of obtaining a pregnancy are proportional to the number of implanted embryos, the embryos' reduction is considered a solution to high level multiple births (4 to 10 children). This paradoxical situation is not without psychological consequences to the woman, divided between the joy of finally

being able to give life and the drama of the “duty” to already cause death. Embryonic reduction is a typical case of medical interruption of pregnancy initiated by the doctor and endured by the woman with no personal convenience of one or the other making it *a priori* “guilt-free”. Nevertheless these women to whom the embryonic reduction is done cannot avoid grieving the death that will take—according to what logic?—one or more of their children.

In the end, it must be remembered that the re-implanting of the “good” embryo is inseparable from *in vitro* fertilization. The difficulty of ovarian stimulation, the high risks of failure, and the costs of the technique force the technician to implant not just any embryo. The law is cautious, however, reserving PID to cases of families who risk transmitting particularly serious disorders. This ethical barrier, however, is not very solid. The proof is in the tendency to open the door, for example, to the woman who wants to avoid at all costs the conception of a trisomic child. In this case, we are no longer among the classic inherited genetic diseases, trisomies being considered a chromosomic accident. In the medical world and from certain pressure groups, there exists the temptation to propose and accept PID in order to respond to some more subjective worries, such as the child’s sex or the color of the eyes.

**Through actions like “wrongful life” and the child’s replacement, MIP is seen as a way to do good**

## **THE WRONGFUL LIFE SUIT**

If MIP is authorized till the end of pregnancy with several moral and compassionate arguments, it is not illogical for its defenders to make the most of this, economically and financially. To accept the principle of MIP means to accept the idea that the birth of a sick or handicapped child is inadmissible. In other words, if the birth of a sick or handicapped child still occurs, even though everything should have been done to prevent such an event, do not the parents and society suffer damages?

For the parents who were given assurances of the birth of a normal child, it is seen as an undoubted damage to see that reality goes counter to this promise. Nothing is more difficult to accept than the case of a “false negative”. When all prenatal tests come back negative, it is commonly thought this means there is no risk and the child must be born perfect. If this is not the case, a world of certitudes crumbles and it is much harder to accept the handicapped or sick child than if no test had been done.

As for the society which invested in prevention, the birth of a child “outside of the norm” undoes its plans and financial calculations. It has anticipated that the “avoidance” of a handicapped or sick child would cost less than his care throughout his entire life, with his reception, care, education and aging. It has already paid for this child by financing its prevention and is not ready

to pay once again for him. Hence the significant term of "escape tax" to describe the children who make it through the holes in the nets of prenatal diagnosis and who cause, through their birth, an injustice to society.

In these conditions, nothing is as evident as the attempt to obtain reparation for an unwanted birth. Since the norm is the birth of a normal child, the fact that avoiding the birth of an abnormal child through MIP was not possible is transformed into damages to be redressed. The only act through which damage could be avoided was abortion. Abortion sets things in order. Abortion prevents chaos. Abortion symbolizes security and economy. Abortion preserves happiness. Non-abortion becomes unanticipated, an evil, a deprivation of an option which must be available, appreciated and paid for to benefit the parents, society and the child. All that is necessary is to designate the doctor at the same time as responsible and liable to pay.

Some supreme courts, like the Court of Cassation in France in the *Perruche* case, did not hesitate to bend the law in order to establish jurisprudence in this vein. The highest French authority admitted that the diagnostic mistake of a doctor could be the cause of a congenital handicap of a child, not because the doctor physically caused the handicap, but because he involuntarily but culpably allowed this child to live. The child should have, taking into account

his health, been aborted. It can be said that the law was twisted insofar as the French Court of Cassation established a causal link between the diagnostic mistake of the doctor and the damage ensuing from the handicap. This causal link is understandable only if one prejudges that, if a correct diagnosis had been given, abortion would certainly have been the solution proposed by the doctor and accepted by the woman. By ruling this way, the French Court of Cassation went from the right to abortion to the duty to abort some lives which do not deserve to be lived.<sup>5</sup> The handicapped child's abortion therefore became a good whose absence, loss or deficiency merits financial compensation. Of course, the most complete reparation would be assured by postnatal euthanasia, the only definitive way to repair the damages. It would be logical that this solution, which does not entail a change of nature but only of degree, might someday be legalized.

The *wrongful life* suit completes the thinking buttressing MIP. The collectivity begins by investing in the prevention of unwanted births; then it saves money by avoiding paying for the care of handicapped persons or medical research due to them because they are not born; finally, it reimburses itself for the

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5 An "anti-*Perruche*" law was thankfully passed by the French Parliament to prevent the extension of this juridical precedent from the Court of Cassation.

costs attendant upon unwanted births from those responsible (doctors, laboratories and maybe someday the parents themselves). The *wrongful life* suit is not itself an abuse but rather limits itself to following the law which allowed MIP, the original aberration. Abortion is definitely the act conferring meaning here.

## **THE SUBSTITUTION OF CHILDREN**

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The fact that a handicapped child's birth can lead to a request for compensation signifies something even more serious: the unborn child is interchangeable. The unborn child is not a person from his beginning but a desirable phantasm which can eventually be concretized under certain conditions.

Without the mistaken diagnosis which caused the handicapped child's birth through non-abortion, "another" perfect child could have been born, to the joy of his parents and of society. In fact, when the judges rule that a handicapped child suffered damages because of his birth, they do not compare his existence with his non-existence. They compare the life a handicapped child with that of a healthy one which the child should have been. Being born without handicap or sickness is now something one can demand from technology and justice. The birth of children with particularly severe handicaps is almost unthinkable for most of our contemporaries. It is not infrequent

to hear, even from some Christians, that "children like that should no longer be seen". Thus we can understand why MIP is considered a good for the child, the parents and society. MIP has become a procreation technique following a parental and societal project. Thanks to abortion the child can be born healthy, even if one is no longer speaking of the same child but a virtual one, perfect and meeting all the standards in place. The practitioners of MIP generally agree that they are pro-natalist and work for the happiness of society by permitting women to have a new pregnancy in order to give birth to a healthy child. If the child is born handicapped, the parents suffer damages to their parental projects, society is injured in its prevention policy, and the child's right to be another rather than being who he is is a cause of complaint. The human life of this individual has no value in itself. It takes its value only from his normality, the absence of suffering and the collective acceptance of those looking at him.

The situation of *in vitro* embryos exemplifies exactly this substitution of bodies. They are conceived in large numbers, sorted, then transferred or frozen, stored, used, destroyed. So that a child born from *in vitro* fertilization will necessarily be healthy, one embryo or another will be used until the final product meets the standard of the order. The existence of this or that embryo is not noteworthy or does not

matter much. One goes back to the reserve of embryos until one has used all the stock, created for this purpose, to satisfy the societal demand of prenatal diagnosis. Society congratulates itself because science allows suffering families poorly favored in the genetic lottery to be happy again through a healthy child's birth. However, one must point out the falsity of the general opinion spread by certain associations which appeal to the generosity of the public to fund embryonic selection. Medicine does not come to the aid of procreation, but it is only procreation which in its abundance and diversity comes to medicine's aid, permitting it to make a qualitative selection. The healthy child born after an embryo's selection, followed by eliminating the other affected subjects, was never healed for the very good reason that he was never treated and was never sick. He was healthy when selected *ab initio*.

Taking the cells from the brains of aborted fetuses for transplantation and embryonic experimentation are other examples of utilitarian value placed on human life which are accepted with enthusiasm by the prophets of an illusory progress. These very young human beings, sacrificed just to achieve the restoration to health of the elderly, are seen as taking part in the solidarity between generations which must elicit admiration according to the supporters of this "science without conscience" which "is ruin for the soul." Indeed, as Professor

Jerôme Lejeune said, to those who believe that these practices are "morally necessary and necessarily immoral" one must respond to the contrary, that they are "morally useless and uselessly immoral."

MIP has built a destructive ideology that has reduced man to the status of useful object for the welfare, comfort and pleasure of society by contesting the unique and irreplaceable character of human life right from the moment of conception (life does not begin, it only continues), making the embryo or fetus have an interchangeable and commercial value.

The generalized relativism which has resulted in all sectors of life, political, economical and social – is not foreign to a return to violence as a dominant means of expression and as a way of regulating difficulties both between individuals and states.

# Mixed Marriages and Discrimination

Cosmo Francesco Ruppi

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*This article analyses the problem of mixed marriages, starting from the fact that populations are constantly on the move because of wars, poverty and immigration, and treats the problem using the Magisterium of the Church and the many ecumenical relations that already exist as its foundation. In analyzing the extensive ecumenical work that has always accompanied the problem of mixed marriages, the article recalls some of the most important resolutions that have treated the value and the limits of such marriages, taking as the basis for its reflections the *motu proprio* *Matrimonia mixta* of Paul VI and insisting, in particular, on shared baptism, on the need to support the Catholic spouse and on the opportunity to accompany the couple on the spiritual path they are called to follow, on the foundation of the Ecumenical Directory. The conclusion of the present reflection is quite clear and meaningful: “No preclusion or discrimination against mixed marriages”, but also a renewed commitment by the pastors and the Christian communities to accompany the Catholic spouses that have married a non-Catholic spouse, with prayer, spiritual guidance, and fraternal love: “The problem of mixed marriages will become an ever greater task for bishops, pastors and priests all over the world, but all the more will it engage the ecclesial community which must accept this reality, seeing it as a call to walk along the ecumenical path and as a privileged occasion to bear witness to our common love for Christ and of the one and indivisible Church.” (↗ Conjugal Love?; Hardness of Heart a Future Possibility?; Indissoluble Marriage?; Marriage with Disparity of Cult; Marriage, Separation; Divorce and Conscience)*

In our present society, characterized as it is by people that keep moving from one place to another because of wars, poverty, immigration and other civil and social reasons; a society that is facing an increasing process of globalization while contacts between men and women of different cultures, races, languages and religions are constantly increasing, the phenomenon of marria-

ges between Catholics and baptized persons of other Christian communions, between Catholics and non-Christians, and between Catholics and non-believers are becoming ever more frequent.

As far as we are concerned, we will concentrate on *mixed marriages*, that is, on *marriages between Catholics and baptized persons of other Christian communions*, even if marriages between

Christians and Muslims are constantly on the increase, with consequences that everybody can see, they deserve separate consideration.

As far as mixed marriages are concerned, we need to first observe, over and above taking note of them with objective and pastoral realism, the fact that was already admitted in *Familiaris consortio*, "Marriages between Catholics and other baptized persons have their own particular nature, but they contain numerous elements that could well be made good use of and developed, both for their intrinsic value and for the contribution that they can make to the ecumenical movement."<sup>1</sup>

The problem has been thoroughly treated in important documents, both by the universal Church and by individual Bishops Conferences, that have deepened, explained and defined what can already be found in the Code of Canon law (*CIC*) at canons 1124 ff.<sup>2</sup>

As far as Italy is specifically concerned, this theme has been deepened on the occasion of the approval of the

*Testo comune per un indirizzo pastorale dei matrimoni tra cattolici valdesi o metodisti in Italia*, signed in Rome on June 16, 1997, by the moderator of the Waldensian Board, the president of the Permanent Committee and the Work for the Evangelical Methodist Churches in Italy, and the president of the Italian Bishops' Conference. This *Testo comune* was successively complemented with a *Testo applicativo*, signed at Torre Pellice on August 25, 2000.<sup>3</sup>

These are meaningful documents, which afford calm reflection on the subject of mixed marriages, also because their structure allows for widening the ecumenical horizons to other European nations, America and the entire world, in a climate not only ecumenically but also culturally advanced, since it highly respects religious pluralism and the possibility to value whatever is positive that may be found in a conjugal relationship

1 JOHN PAUL II, *Familiaris Consortio* 78.

2 For more information, cf. PONTIFICAL COUNCIL FOR PROMOTING CHRISTIAN UNITY, *Direttorio per l'applicazione dei principi e delle norme sull'ecumenismo*, Rome 1993, 143-160 and CONFERENZA EPISCOPALE ITALIANA, *Decreto generale sul matrimonio canonico*, Roma 1990, 47ff.

Even the *Direttorio di pastorale familiare per la Chiesa in Italia*, 1993 pays particular attention to the subject of mixed marriages (n. 88) and to inter-religious marriages (n. 89).

3 These texts, very meaningful for our topic, can be read in COMMISSIONE EPISCOPALE DELLA CEI PER L'ECUMENISMO E IL DIALOGO, *I matrimoni tra cattolici e valdesi o metodisti in Italia*, Bologna 2001, with a presentation by Msgr F. Coccopalmerio and significant contributions by Msgr. G. Chiaretti (ecumenical profile), Msgr. D. Mogavero (juridical profile), M. Polastro (pastoral profile) and S. Maggiani (liturgical profile). In this publication it will be useful to read about the norms, procedures and forms for mixed marriages between Catholics and Waldensians-Methodists together with a draft of "Letter from Catholic fiancé" to their bishop (pp. 67-68) and the outline of a "Letter from the pastor" (p. 69).



between persons that belong to different denominations.

The *Direttorio ecumenico* (Ecumenical Guidelines), however, remains the main source to draw from as far as our topic is concerned, although one should keep in mind that these guidelines are a synthesis of a long ecumenical labor in the aftermath of the Vatican II Ecumenical Council, a period that offered not few moments of theological, juridical and pastoral reflection.

## MIXED MARRIAGES: A LONG ECUMENICAL WORK

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### a) Vatican II's first effects

In the aftermath of Vatican II, the problem of mixed marriages arises for the first time in the Malta Report (1968) from the Anglican-Roman Catholic Joint Preparatory Commission, constituted during the Archbishop of Canterbury's visit to Paul VI in March 1966. This report recognizes "the need to accurately study the doctrine of marriage in its sacramental dimension, its ethical requirements, its canonical situation and its pastoral implications."<sup>4</sup>

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<sup>4</sup> COMMISSIONE INTERNAZIONALE ANGLICANO-CATTOLICA ROMANA, Report: *Il matrimonio tra anglicani e cattolici romani*, Venice, 27 June 1975: EO 1/181-260. This report is fundamental, because it represents the first ecumenical study on mixed marriages and also because it was a first step along the difficult, but certainly fruitful, dialogue between the Catholic Church and the Anglican Church. Later, at Versailles, in 1978 the theme

This work led to the 1975 Report of the Anglican-Roman Catholic International Commission on the subject of *Il matrimonio tra anglicani e cattolici romani*, signed in Venice on June 27 1975.<sup>5</sup>

For the first time after a *division* that had lasted for four-hundred years, together with the theological doctrine on baptism and on the Church, the delicate topic of anomalous marital situations and of mixed marriages was faced, while recognizing the validity of the promise made by the parents at their child's baptism, to educate him/her in the Catholic faith, but also of the duty to respect the other spouse's right of conscience, and of the duty to preserve the unity of the family.

The 1975 Catholic-Anglican Report, while fully recognizing the canonical form of Catholic marriage, opens

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of women's ordination to the priesthood was discussed; and successively to the very delicate question of the primacy of the bishop of Rome.

<sup>5</sup> COMMISSIONE INTERNAZIONALE ANGLICANO-CATTOLICA ROMANA, Report: *Il matrimonio tra anglicani e cattolici romani*, 239-260. It is interesting that there is recognition that the problem of mixed marriages is continuously evolving: from a first phase, when these marriages were discouraged and considered as possible only in some cases, to their being considered as a meaningful datum in the ecumenical dialogue and on the ecumenical path. This is where the topic is directly linked to the documents of Vatican II *Unitatis redintegratio* and *Dignitatis humanae*, that suggested not only a change from the theological point of view, but also a change in pastoral praxis.

the way to recognizing mixed marriages, providing that they can be celebrated both in the Catholic and in the Anglican Church. At this time difficulties and conflicts are still present, especially about the engagement-promise of the Catholic spouse to educate the children in the Catholic faith, because this was considered contrary to one's freedom of conscience; however, both the Anglican pastors and the Catholic priests clearly recognized the need for joint *pastoral care* for the preparation and accompaniment of the engaged couple, as had already been desired by the *motu proprio Matrimonio mixta*, published by Paul VI on March 3, 1970. We are here facing a first clear assumption of pastoral responsibility, that is here expressed as follows: "What will count in the end will be the dedication, wisdom and sensitivity of the individual pastor, whether working with individual families or with groups of families. This will help to determine whether mixed marriages are to be an occasion of spiritual growth or decay, an ecumenical opportunity or an ecumenical menace."<sup>6</sup>

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6 COMMISSIONE INTERNAZIONALE ANGLICANO-CATTOLICA ROMANA, Report: *Il matrimonio tra anglicani e cattolici romani*, 260. The effort to understand the respective theological positions on marriage are noteworthy, but so too are the remarks about the existing differences, as well as the commitment to work together at the pastoral level, so that mixed marriages, over and above being a *problem*, may become an invaluable ecumenical opportunity. In this report the

### **b) Catholic - Reformed Lutheran mixed marriages**

After the Catholic-Anglican reflection in Venice, another one occurred about the *Theology of marriage and the problems of inter-confessional marriages*, between Catholics and reformed Lutherans, led by a study commission nominated by the Lutheran World Federation, the Reformed World Alliance and the Secretariat for the Union of Christians. The complete text of the final report of this dialogue on the *Theology of marriage and the problems of inter-confessional marriages* can be found in *Enchiridion Oecumenicum* 1, nn. 1758-1871.<sup>7</sup>

Here too one can see the different theological concept of marriage as far as its relationship with Christ is intended, as an event that is binding the spouses for the rest of their lives, and yet deeper differences emerge as far as marital indissolubility is concerned. However, there

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canonical position of the Catholic Church is presented and discussed, with the request to eliminate any reciprocal diffidence in the area of problems relating to mixed marriages.

7 EO 1. The Denver Report is found at nn. 1872-2003, while the Dublin Report can be found at nn. 2004-2128. In the Dublin Report the theme of mixed marriages has been inserted into a wider topic about the family and emphasizes that what Catholics and Methodists have in common is much vaster than whatever differences still exist on the doctrine of marriage. Also noteworthy is the invitation to witness together that marriage is central to God's design for the Christian community, and to positively value the opportunity offered by mixed marriages for ecumenical progress.

is a pronounced will to have a *common pastoral activity*, not limited only to the engaged couple, but addressed to the *mixed* family, their children, and their ecclesial commitment.

This theme is developed in the dialogue with the Methodists, as results from the Denver Report (1981) and the Dublin Report (1976), where the recognized differences, though still lasting, are strongly overcome by those facts that are considered to be common to both faiths.<sup>8</sup>

c) Increasing interest in mixed marriages

While the theological debate on mixed marriages, both with the orthodox and with the reformed world, is still going on, the various Episcopal Conferences are concretely facing the problem from the pastoral and disciplinary point of view.

Let us shortly remember the most meaningful documents, just to pinpoint how the interest in the problem has been

on the increase in the local Churches, with no discrimination whatsoever of the Catholic part against the non-Catholic part.

In *France*, ever since 1968 first Recommendations on mixed marriages are being prepared by a mixed Committee of the Catholic Church and the Lutheran and reformed Churches, in which indications are given about the preparation and celebration of such marriages, with particular reference to the couple's spiritual life and the couple's insertion into the life of the Church: both spouses have to be helped so that they may participate in the life of their own Church, but one should also tend at having the couple be present together in both Christian communities, so that the spouses may grasp the spiritual life that both have been nourished by.<sup>9</sup>

These recommendations have been reviewed and repeated in 1977 in preparation for the Anglican-Catholic Recommendations in 1980, where the

8 COMITATO MISTO DELLA CHIESA CATTOLICA E DELLE CHIESE LUTERANE E RIFORMATE IN FRANCIA, *La pastorale commune dei matrimoni misti*, 1968 Recommendations, revised in 1977: EO 2/422ff. The conclusion to these recommendations is interesting: they are not "universally valid solutions, and even less are they *recipies* to be translated everywhere into juridical dispositions"; they only seek to instill a new spirit into priests and pastors, "convinced that in mixed families, through an active and attentive pedagogy, a sense of personal responsibility has to be awakened" (n. 467).

9 Cf. COMITATO EPISCOPALE CATTOLICA PER L'UNITA E COMITATO INTEREPISCOPALE ORTODOSSO DI FRANCIA, Recommendation, *La pastorale commune dei matrimoni misti*, 1971: EO 2/591ff. This document also insists very much on the spiritual life of the mixed couple, on the education of their children, and on the couple's insertion into the life of the Church, especially in their respective parish communities. The ecumenical aspect of these couples is very clear in praising their courage so that their behavior "shines forth on the Churches and make them progress on the path to full unity" (n. 629).

difficulties and riches of mixed marriage are further specified: the mixed couple—it is there said—has the vocation to favor better communication between the two communities, Catholic and Anglican.

France is fully moving on the area of dialogue with the Reformed and Anglicans, but does not neglect the Orthodox either, as the 1971 Recommendations showed.

As in France, even *Germany*, where the problem of mixed marriages is constant and increasing, the problem has not failed to be analyzed in a series of documents issued by the German Bishops Conference and by the Council of the Evangelical Churches in Germany, from which we here wish to briefly cite some major passages.

On January 18 1971 in Munich a *Common document for pastoral collaboration in marriages between spouses of different denominations* was published; it looks on these marriages more positively than in the past and calls for joint pastoral care.<sup>10</sup>

A few years later the German bishops directly face the problem of *Preparing for marriage between spouses of differing denominations*, advising not to underestimate the theological differences, but to seriously analyze them instead, with

a view to mutual better understanding allowing each one to deepen their own faith, thus contributing to unity.<sup>11</sup>

Ten years later the German bishops again return to the question with a much more detailed and profound document, in which they give *Common recommendations for the pastoral care of marriages and families from differing denominations*. This document, while prepared by the German Common Ecumenical Catholic-Evangelical Commission, is however signed respectively by the President of the German Bishops' Conference, Cardinal Hoffer, and the president of the Council of the Evangelical Church in Germany, Lohse.<sup>12</sup>

10 Cf. CONFERENZA EPISCOPALE TEDESCA E CONSIGLIO DELLE CHIESE EVANGELICHE IN GERMANIA, *Documento commune per la collaborazione nella pastorale dei matrimoni tra partner di confessione diversa*, Munich, 18 January 1971: EO 2/1208-1216.

11 Cf. CONFERENZA EPISCOPALE TEDESCA E CONSIGLIO DELLE CHIESE EVANGELICHE IN GERMANIA, *Raccomandazioni comuni delle Chiese per la preparazione al matrimonio tra partner di confessione diversa*, 1974: EO 2/1217-1234. Significant in this document is the way in which it insists on inviting the *mixed* couple to remain strongly linked with their own community: "Even after marriage, both spouses should remain rooted in their own Church and participate in the life of its community. In the way in which each spouse is living his/her own faith, the other will discover something that will enrich him/her [...]. This is how inter-confessional marriage may become an element of growth for ecumenism" (n. 1233).

12 Cf. COMMISSIONE ECUMENICA COMUNE CATTOLICO-EVANGELICA IN GERMANIA, *Common Raccomandazioni comuni delle Chiese per la preparazione al matrimonio tra partner di confessione diversa*, December 1981: EO 2/1241-1300. The conclusions of these recommendations are quite exemplary and

The statistical data of twenty years ago are quite interesting: thirty per cent of the marriages in Germany were already *mixed*, showing that “denominational differences are of little importance to the engaged couples.” Without denying the theological, juridical and pastoral difficulties that objectively persist, a *climate of ecumenical confidence* is hoped for, that may lead to common pastoral care for marriage and the family, so that a “thoughtful and concrete collaboration” may be decided upon between the different religious denominations, until a real communion in faith may be reached. In this document emphasis is given to the theme of common prayer and common listening to the word of

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stimulating, worthy of being summarized here, to encourage and motivate the pastors of souls: “Pastors and their collaborators who will follow the way indicated by the present recommendations will certainly not be spared disillusion, lack of success and setbacks. But they will experience how much spouses of differing denominations will be grateful if they will be informed of a path to live their marriage starting from what is common in their faiths. Wherever this occurs a piece of the wall that is still keeping Christians divided will crash. In marriages where, in spite of divisions in the faith, unity is being lived and experienced, a hope shines through that in these churches the differences that have been dividing these churches can be eliminated and overcome and that churches and ecclesial communities that have been divided until today may become the future subjects of a the one multifaceted Church of Jesus Christ. For this objective it is therefore worthwhile to pray, serve and act” (n. 1300).

God: “a common reading of the Bible in the family may help the spouses of different denominations to keep alive, on the one hand, their faithfulness to their own faith and Church, and on the other hand, an attitude of sympathy and understanding towards the world of faith and the Church of their spouse”.

The increasing number of mixed marriages (one out of three today is between a Catholic and an Evangelical) led the German bishops to take up the topic again in a joint document with the Evangelical Church on January 1, 1985, facing the problems of intercommunion and an *over-hasty joining of the spouse's Church*. Again the document repeats that inter-confessional marriages are an opportunity for growth in one's faith and along the path to unity:<sup>13</sup> “Chris-

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13 Cf. CONFERENZA EPISCOPALE TEDESCA E CONSIGLIO DELLE CHIESE EVANGELICHE IN GERMANIA, *Documento comune sui matrimoni misti*, Bonn-Hannover, January 1, 1985; EO 2/1467-1500. Among the many documents on the topic, this seems to be one of the more realistic ones, not only because it makes Christians aware of the difficulties that still exist for whoever enters into a mixed marriage, but also because it recalls that each spouse should remain within his/her own Church, while together they should give a Christian education to their children, insisting on the value of prayer and of listening to God's word. While the document recognizes that today mixed marriages are no longer as exceptional as they were in the past, it calls to their mind that “over and above the limits and differences that still remain, the experience of a communion in their faith in the One and only Lord who gives

tians that live mixed marriages—among other things we read—will engage in increasing the Churches' ecumenical collaboration in their communities [...]. All this serves to create the awareness of there being a Christian common unity and to look for a way to overcome the division that still exists."<sup>14</sup>

It is above all the nations where strong majorities of Catholics and non-Catholics have studied the problem of mixed marriages from a thoroughly ecumenical point of view that have given rise to specific documents.

Together with France and Germany, the Bishops of *Canada* should be mentioned among others, who, in 1988, gave specific pastoral guidelines in a vast document entitled *Interchurch Marriages*,<sup>15</sup> in which it is affirmed that

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them the necessary strength to accept these limits and differences" (n. 1467).

14 Cf. CONFERENZA EPISCOPALE TEDESCA E CONSIGLIO DELLE CHIESE EVANGELICHE IN GERMANIA, *Documento commune sui matrimoni misti*, EO 2/1478. This document stresses repeatedly the difficulties and sufferings that go with mixed marriage, especially if celebrated at a totally equal level, with no religious discrimination, yet it explicitly affirms that this suffering too can contribute to restoring unity: "If at times they have to suffer because of the division that is still manifest in Christianity, they will, however, contribute in the endeavor to find new paths that have unity in Christ for their goal" (n. 1481).

15 Cf. GRUPPO DI DIALOGO FRA ANGLICANI E CATTOLICI IN CANADA, *Dirretive pastorali per i matrimoni interecclesiali tra anglicani e cattolici in Canada*, 1988: EO 1/6-65.

the unity of the domestic church is a prophetic sign of the unity of faith and life, a path that Anglicans and Catholics are now following.

*Finland*, in facing the problem of mixed marriages between Lutherans and Orthodox faithful in their Valano colloquium at the end of October 1990, gave specific juridical-pastoral guidelines,<sup>16</sup> while in *Switzerland* the problem of mixed marriages is treated in a *declaration* of the Commission for Dialogue between Catholics and Orthodox of December 1985. This *declaration* recognizes that Catholics and Orthodox share the same doctrine and spirituality of Christian marriage, and want to engage in witnessing such unity of faith. The Catholic party does not hesitate to recognize that mixed marriages can be celebrated according to the Orthodox rite, or in a common celebration, recognized by both Churches.<sup>17</sup>

At the beginning we touched on an *Agreement on mixed marriages* between Catholics and Waldensians or Methodists in *Italy*. We here wish to conclude

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16 Cf. GRUPPO DI DIALOGO FRA LUTHERANI E ORTODOSSI FINLANDESI, *Seconda sintesi dei dibattiti teologici ufficiali*, New Valano, 10 October 1990: EO 4/436-442.

17 Cf. COMMISSIONE PER IL DIALOGO FRA ORTODOSSI E CATTOLICI ROMANI IN SVIZZERA, *Matrimoni interconfessionali fra cattolici romani e ortodossi*, Geneva-Ingenbohl, December 1985: EO 6/2433-2452. The document is extremely short, but it clearly stresses what they have in common: marriage is truly accepted and lived as a true sacrament.

this overview, recalling that “A marriage between Christians belonging to two different confessions takes place in the Lord and therefore in his body, which is the Church”, and that “The spouses remain inserted in their own communities, with their own denominational particularities [...]. It is essential that neither member of an inter-confessional couple allow the ties with their own community to slacken but, on the contrary, make them stronger. Their experience, together with that of others, can serve as an inter-personal bridge of ecumenical understanding and trust between the two communities. The inter-confessional couple desires, therefore, to live and witness to their personal faith in the Lord, whom they call upon as the source and architect of the unity of all Christians.”<sup>18</sup>

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18 *Testo comune per un indirizzo pastorale dei matrimoni tra cattolici e valdesi o metodisti in Italia*, signed on June 16, 1997 by the president of the Italian Bishops' Conference, by the moderator of the Waldensian Board and the president of the Permanent Committee and the Work for the Evangelical Methodist Churches. This *Testo comune* was successively complemented with a *Testo applicativo*, signed at Torre Pellice on August 25, 2000. Both documents, together with the illustration (note 3), can be found in COMMISSIONE EPISCOPALE DELLA CEI PER L'ECUMENISMO E IL DIALOGO, *I matrimoni tra cattolici e valdesi o metodisti in Italia*. The quotation above is in *Testo comune*, n. 19, which specifically refers to mixed marriage.

## VALUE AND LIMITS OF MIXED MARRIAGES

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Canon 1124 CIC declares that a mixed marriage is a one between two baptized persons one of whom is Catholic while the other is not. It is a marriage of *mixed religion*, because it is between two persons that have in common both baptism and faith in Christ, the Son of God, while a marriage between a baptized person and an unbaptized person is a marriage with *disparity of cult*, because it occurs between a Christian and a person of another religion or with no religion at all. The Code of Canon Law dedicates six very delicate canons to this kind of marriage, because they imply problematic situations not only at the juridical, but also and even more at the theological, pastoral and social level.

In his *motu proprio Matrimonia mixta* of March 3, 1970, Paul VI had already discussed the problem, recognizing that “In the past Catholics were separated from members of other Christian confessions and from non-Christians [...]. In more recent times, however, not only has this separation been reduced, [...] as a result, there has been a great increase in the number of mixed marriages. Also, a great influence in this regard has been exercised by the growth and spread of civilization and industry, urbanization and consequent rural depopulation, migrations in great numbers and the increase in numbers of exiles of every kind.”

In the old Code of Canon Law the impediment of *mixed religions* was seen as very serious and canon 1060 of the CIC-'17 prescribed very severe penalties, including *latae sententiae* excommunication. In the new code these penalties have been suppressed and the material has been reorganized, not only in the foresaid canons of the CIC, but also in the canons of the Oriental Code. One should remember that this problem had been addressed in the First Assembly of the Synod of Bishops in October 1967; from this Synod Pope Paul VI would take the useful material to publish the already mentioned *motu proprio*.

Canon 1124 prohibits mixed marriage, except with the express permission given by the competent authority, i.e. the local Ordinary, and only with the guarantee that the conditions indicated in the following canon will be observed.<sup>19</sup>

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19 The conditions for a mixed marriage to be permitted are indicated in canon 1125; they are the following: the Catholic party is committed to not abandon the faith and to make a sincere promise to do all in *his or her power* so that all children are baptized and educated in the Catholic faith. There is also the obligation to inform the non-Catholic spouse of this *promise* and both parties are to be instructed about the purposes and essential properties of marriage, the first of which is indissolubility. The Bishops' Conferences have given the concrete norms for such engagements to be enacted, and appropriate forms and declarations are to be used for this purpose, which all national bishops' conferences have done.

This very much needed and articulated canonical legislation was followed by the *Directory for the application of principles and norms on Ecumenism*, commissioned by Pope John Paul II and published by the Pontifical Council for Christian Unity. This directory, also called the *new directory* because it was replacing the directory published earlier in two separate parts, one in 1967 and one in 1970, deals with communion of life and spiritual activities between baptized persons, and enters into the details of mixed marriages, thus opening various new pastoral horizons, due to the solicitude of the Church, which is at the same time *mater et magistra*.

#### **a) Common baptism**

A first fact to be stressed about inter-confessional marriages, is that both spouses have the same baptism and therefore enjoy the same dynamism of grace. Therefore there can be no preconceived discrimination in front of two baptized persons of different Christian denominations that decide to marry religiously.

Thus, if on the one hand the Church is conscious that the couple will have to face hardships so as not to defect from their faith and to educate their children in the faith, on the other hand—according to the new directory—the Church has great pastoral solicitude toward those couples that are preparing to enter into a mixed marriage.

When it is chosen freely and out of conviction there is no preconceived



hostility towards mixed marriage, rather there is openness and commitment to support this choice by valuing all the intrinsic and extrinsic elements that can support the spouses in their faith.

Inspired by *Familiaris consortio* (n. 78), the Church wants to look maternally at spouses of different denominations, so that together they may live the grace of baptism and, in their mutual exchange of love, may constitute an ecumenical leaven and a future model of a family that is fully living the unity willed by the Lord.

#### **b) Supporting the Catholic spouse**

The Church is committed to support the Catholic spouse in his/her faith and his/her life as a couple, guiding him/her to live a holy marriage and to make his/her family a *domestic church*.

This is the duty of the priest or deacon, who is responsible for accompanying the spouses in their marital walk of life, walking side by side with the Catholic spouse, so that he/she may live the grace of the sacrament, deepen his/her knowledge of the truth and practice Christian life generously and assiduously.

#### **c) Walking together**

The new *Ecumenical Directory* wishes for mixed marriages to be characterized by the spouses' deep spiritual unity and explains that "to reach a better understanding and a deeper unity, each spouse should try to know better the religious convictions of the Church or the Ecclesial community to which

his/her spouse belongs."<sup>20</sup> Therefore it insists that praying together is essential for their spiritual harmony and that reading and study of the Sacred Scriptures are especially important.

#### **d) Education of Children**

The education of children is undoubtedly a delicate aspect of mixed marriages. In fact, there is the *promise*, made before marriage, to educate and baptize the children in the Catholic Church, but the directory says that "At the same time, it should be recognized that the non-Catholic partner may feel a like obligation because of his/her own Christian commitment" (n. 150). What, then, is to be done?

The directory says again that "it is to be noted that no formal written or oral promise is required of the non-Catholic party", suggesting that "those who wish to enter into a mixed marriage should, in the course of the contacts that are made in this connection, be invited and encouraged to discuss the Catholic baptism and education of the children they will have, and where possible come to a decision on this question before the marriage" (n. 150).

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20 SEGRETERIATO PER LA PROMOZIONE DELL'UNITÀ DEI CRISTIANI, *Ecumenical Directory*, EDB, Bologna 1993, 149. Among other things, it is recommended that in the period of marriage preparation each spouse commits to understanding better their spouse's religious tradition, evaluating not only the differences, but also the concordances and the common inspiration by the Spirit.

To avoid problems of conscience and lacerating pains, that most certainly do not please the Lord, the directory offers the following precise indications: “the Catholic parent in fulfilling their duty to transmit the Catholic faith to the children will do so with respect for the religious freedom and conscience of the other parent and with due regard for the unity and permanence of the marriage and for the maintenance of the communion of the family. If, notwithstanding the Catholic’s best efforts, the children are not baptized and brought up in the Catholic Church, the Catholic parent does not fall subject to the censure of Canon Law. At the same time, his/her obligation to share the Catholic faith with the children does not cease” (n. 151).

What is important is that he/she would contribute to the Christian atmosphere of the family doing all that is possible by word and example to enable the other members of the family to appreciate the values of the Catholic tradition. But he/she can do more: he/she can pray with the family for the grace of Christian unity.

Thus, the directory, together with its ecumenical spirit, has a great pastoral solicitude, and a deep human inspiration full of Christian charity, which also becomes respect for difference, dialogue, understanding, openness of one to another.<sup>21</sup>

### e) Pastoral Charity, *suprema lex*

To conclude the present reflections and repeating again that the Church does not preclude or discriminate against mixed marriages, the last words of the *CIC* come to my mind, that “the salvation of souls, which must always be the supreme law in the Church, is to be kept before one’s eyes. (*salus animarum suprema lex*) (canon 1752), but also that the whole of the Church’s legislation is moved by only one principle, the principle of charity. It is pastoral charity that must guide the pastors of the Church, to whatever church or denomination they may belong, so that the souls, guided with wisdom, may know God, who is love, and may live in that love, becoming witnesses of love.

The problem of mixed marriages will become an ever greater task for bishops, pastors and priests all over the world, but all the more will it engage

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of the celebration of mixed marriages, that may be different between Orthodox and Reformed people, since Catholics and the Orthodox consider marriage to be a true sacrament, which means that “marriage between a Catholic party and a member of an Oriental Church is valid if it has been celebrated according to a religious rite by an ordained minister”, specifying that the canonical form of celebration is necessary *for its licitness*, while the canonical form for a marriage between a Catholic and a Christian of another Church or Ecclesial Community is required for its validity” (SEGRETARIATO PER LA PROMOZIONE DELL’UNITÀ DEI CRISTIANI, *Ecumenical Directory*, 152).

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21 The directory also addresses the problem

the ecclesial community which must accept this reality, seeing it as a call to walk along the ecumenical path and as a privileged occasion to bear witness to our common love for Christ and of the one and indivisible Church.

In the *Applicative text* of the *Agreement* between the Catholic Church and the Waldensian Methodist Church, one can read that “The applicable indications of this document (on mixed marriages) are based on the acknowledgement of the mutual rights and duties of the spouses, on the support the churches offer them, and, especially on the respect for the personal freedom of the future spouses. This freedom, which concerns the mode of celebration, the community in which the couple decide to baptize their children and the kind of spiritual upbringing they choose to give them, will be expressed in mutual decisions which both faith communities should accept without putting obstacles in their way” (n. 2).

Truly serene words that take away any shadow of discrimination, but which increase instead the common responsibility to look *together* for God’s will and follow the Spirit, the paraclete “dwelling in those who believe and pervading and ruling over the Church as a whole, who brings about that wonderful communion of the faithful. He brings them into intimate union with Christ, so that He is the principle of the Church’s unity” (*Unitatis redintegratio*, 2). Mixed marriages too are one of the

*new ecumenical paths*, which the Lord of the Church is calling us to follow.<sup>22</sup>

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22 John Paul II’s encyclical *Ut unum sint*, inserts this problem within what he calls “practical collaboration” between Christians, where “Relations between Christians are not aimed merely at mutual knowledge, common prayer and dialogue”, but also “presuppose and from now on call for every possible form of practical cooperation at all levels: pastoral, cultural and social, as well as that of witnessing to the Gospel message” (*Ut unum sint*, 40). Therefore, mixed marriages fit well into an *ecumenical cooperation* which is a dynamic path towards unity. By living together, cooperating together to live the holiness of the family, *mixed* spouses bear witness not only of dialogue but also of a *path together*, and offer to both communities, Catholic and non-Catholic, an example of cooperation between Christians, that becomes a *sign and instrument* of true ecumenism.



# Motherhood and Feminism

Janne Haaland Matlary



*What is the meaning and the place of motherhood in today's feminist movements? The answers to this question are articulated around two poles. On one side, in the most radical feminist currents, the word motherhood is hidden and often forbidden. In the name of gender ideology, persons of the female sex would be interchangeable with persons of the male sex. Motherhood would be a burden from which women should free themselves of, in order to take their place in the society of production. But, on the other side, we can see a new feminism emerging, which, in opposition to radical feminism, rediscovers female specificity and recognizes the maternal dimension which is essential to femininity. Based on new anthropological research and supported by several other social sciences, this new feminism specifies the essential role of women and of mothers in the nuclear family. It also makes us discover the determining role of the mother in the children's education. Finally, it reveals that the action of the mother, if it is good for husband and children, is equally good for society. This new feminism then has the right to claim status for mothers and recognition from the public authorities of her contribution to the human community. (↗ Sexual and Reproductive Rights; Fertility and Continence; Gender; The Contraceptive Mentality; Responsible Parenthood; Reproductive Health)*

The terms “motherhood” and “feminism” are used differently in international contexts, such as UN conferences. Whereas “motherhood” is seldomly referred to, “feminism” is a term which is positively laden but not used so much in international texts themselves. Here the preferred term is “women's rights” and “women” as the generic term.

For instance, at the Fourth World Congress for Women in Beijing in 1995, there was an attempt to substitute “motherhood” with the term “women

in procreation”. This did not succeed, however, but it shows the importance some delegations attached to avoiding the term “motherhood” as such. In the concluding document of the conference, there were very few instances where terms like “motherhood”, “family”, etc. were mentioned.

The reason for this is that ‘motherhood’ cannot be used in any other meaning than its natural definition, viz to be a biological mother (naturally the term “spiritual motherhood” has a clear

meaning in the Christian tradition, but that is not topical in UN contexts). Further, "motherhood" is a term that is hard to redefine. Therefore it is not very popular, as it seems to connote that a mother is a natural part of the family and it places the woman in a specific relation so to speak, that of being a mother to children. This relation is not what radical groups or states want to focus on. "Motherhood" is an "essentialist" term because one either is, or is not, a mother.

Further, the groups and states opposed to the family and to women's primary role of mother do not want to focus on this. They instead use the term "woman" as the substitute for "mother". A "woman" is now the main term used in international contexts, also when we speak about the work of motherhood. One rather speaks about "women with children".

It goes without saying that the main focus in terms of substance at these conferences has not been on family and the role of the mother. For all sorts of reasons, one has wanted to divorce the mother from both the family context and from the relationship with father and child. The reluctance to employ the clearly defined, natural terms "mother", "father", "family", etc. is related to this. By opting for the "neutral" term "woman", she is not related to either father or family. By extension, those who want to point to the importance of these natural relations and of the family, should of

course employ these terms.

"Feminism", however, it is a term used more in public and political discussions than in UN documents. In the latter there is more talk about "women's rights".

Feminism covers an ideological movement that is variously understood around the world.

Today there is little understanding of the normal epistemological procedure of defining one's terms. Rather the common idea is that things and concepts mean one thing to some, something else to others. This philosophical position, known as nominalism, has today degenerated into constructivism, which means that also ontological reality is subjective: the world is only knowable to me, and only exists as I see it. From this perspective, "family" means whatever I understand by it, and can be changed. The position that terms can be defined, and that they therefore have a meaning, is often called "essentialist" by those who oppose such a view.

This is important for how these terms, like "feminism", are used. If we look for a precise definition, no one will provide it. Rather the terms acquire, by their political promotion, a positive or a negative connotation. The political process against "motherhood" and "family" have exactly these features: one tries to make the term appear old-fashioned, reactionary, etc.

By suppressing their use, or giving them a negative flavor when used, such

as talking about the family as a repressive institution, one “redefines” the terms in the public debate.

This is done by linking their usage to negative themes, such as ‘violence in the family’.

In the usage of the word “feminism”, we will on the one hand not find any definition anywhere, but we will find both a promotion of the concept as something positive for women, as well as a cluster of political issues that make up its understanding in everyday usage.

Mostly feminism has been used to connote the liberation of the woman from the family setting as well as the issue of abortion. A counter-strategy then is to reclaim the term oneself, calling it something a bit different, such as the “new feminism” which I have used in an attempt to say that we are feminists when we promote motherhood and family alongside professional advancement for women.<sup>1</sup>

My intention is exactly this: to redefine the term to fit issues that a Catholic would promote.

The question then becomes one of strategy: does one succeed in reclaiming and redefining feminism so that the opposition, which originated the concept, will lose the advantage of calling themselves feminists? To date it is unclear whether this is so, as feminism in

its variant from the 70’s (which I have called “the old feminism”) seems to be dead as an attractive ideology, at least in the Scandinavian states where it originated. Young women today refuse to be labeled feminists, and are not interested in ideology or politics. They take abortion and sexual freedom as natural “rights”, and do not even discuss these issues any more.

In conclusion I would say that the term “feminism” has lost its appeal very much, as the proponents from the 70’s are outdated and unappealing to a younger generation of women.

Thus, this term is not so important any more. What is important, however, is discerning which political issues are promoted under the labels “feminist”. Today this term is so “tainted” and old-fashioned politically that it is not so useful to promote the issues I have mentioned above.

Instead we see the use of terms like “safe motherhood”, “reproductive rights”, “sexual rights”, etc. to promote abortion. “Motherhood” is abolished by always using “women with children” so that the family and the relation to a man has no relevance for the mother. “Family” as such is relativised by referring to “families” in the plural, connoting also homosexual couples where one has a child.

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1 Cf my book on the “new feminism”: J. HAALAND MATLARY, *Il tempo della fioritura: su un Nuovo femminismo*, Mondadori, Milan 1999.





# Neutral Genetic Counseling

Gonzalo Herranz Rodríguez



*Advances in knowledge and in instruments for diagnosing genetic disorders have led doctors to become counselors to families affected by these diseases. The family members must be as completely informed as possible in order to help them make proper decisions with respect to their children (especially when it comes to deciding on whether or not to allow a child with genetic anomalies to be born). From its beginnings in the 1960s, there has been a desire to make this “counseling” “neutral” merely informational, without influence on the decisions of the family members involved. At least in the beginning, this counseling was regarded as a reaction to the frequently coercive excesses of eugenics, which extended from before the Second World War to the end of the sixties. It was also increasingly influenced by the “dominant ideas” of its contemporary pragmatic and hedonistic society which demanded a “perfect child” and rejected pre-natal life wherever any defects could be detected. In reality, this idea of ethically “neutral” counseling is an illusion because the only concrete solution that medicine can offer today to the parents of a child who will be born with a handicap is abortion. Refusing to adopt an ethical position in order to limit oneself to the informational role already implies a negative moral decision, that of not helping the parents with humanity and compassion to make the right decision, which is to respect life. “What would you do in my place?” asks the anguished mother, the disoriented father, a question that puts a humane end to the inhumanity of the neutral ethics. (↗ Quality of Life; Pre-implantation and Emergency Contraception; Contragestion; Dignity of the Human Embryo; Legal Status of the Human Embryo; Genome and the Family; Medical or Voluntary Interruption of Pregnancy; Assisted Procreation and IVF; Embryonic Selection and Reduction).*

## INTRODUCTION

Neutral genetic counseling has been defined as a process through which doctors and patients try to know and resolve biological and human problems that arise when a genetic problem or the risk of a genetic problem appears

within the family. In this process doctors and patients exchange information on the nature, evolution and symptoms of the disease that future members of the family will tend to suffer from as well as the risks and benefits of diagnostic tests and the possibilities of treatment. Finally,

through due counseling and reflection, a decision on what should be done is reached. The decisions taken usually have a strong moral content since they refer to life and death issues for human beings, bringing a child into this world or not, taking a position on the value of vulnerable life, accepting or rejecting one's suffering or another's or putting limits to aspirations for happiness.

It is reasonable that in these extremely critical situations, people go to doctors and genetic counselors both to get their expert opinions and to obtain their advice on what could be done. They go to be informed and guided, to get facts and recommendations and to make decisions flowing from this. To ask advice from experienced and prudent persons is a sign of moral maturity, of a healthy moral life. Their advice cannot be sought in order to abdicate one's own responsibility; it is never an order that one obeys blindly. Advice adds a more or less qualified element in judgment that the counseled person must ponder in conscience before God and must, in conscience, decide whether to follow or not. Advice appeals to personal freedom and responsibility. Counseling and coercion are essentially incompatible.

Thus genetic counseling should always be: communication between doctors and patients or families who always are and act as moral subjects; they must be mutually respectful of the freedom and dignity of each person, but they cannot decline their own responsibility.

For several decades, however, genetic counseling has been an exception to the medical tradition of advising and making recommendations to patients: it is forcefully said that in genetic matters the advice of the doctor must be neutral, non-directive, non-judgmental. The doctor must limit himself to informing and, as a consequence, will tend to abstain not only from making recommendations but also from proposing solutions. He must act, in the final analysis, as a counselor who does not advise.

The goal of this entry in the *Lexicon* is to demonstrate that the expression neutral genetic counseling is self-contradictory. It is doubtful, and perhaps impossible, that in practice one can give neutral genetic counseling, i.e., say something which merits being called advice and at the same time is free from any ethical evaluation, any insinuation of what, in the counselor's judgment, is the choice that here and now is most appropriate for the person being counseled.

Without doubt the main reason leading to the adoption of the expression "neutral genetic counseling" was in order to culturally distance the modern practice of clinical genetics from the coercive eugenic practices of the first half of the XX century and its tragic degeneration into the Nazi racist experiment. But the idea of neutral genetic counseling was not only born as a reaction to the painful past. It is also both the product of

the feel good mentality so widespread in our contemporary society, and of converting medicine into an instrument at the service of the powerful. It is also a covert expression under which the new postmodern eugenics conceals itself.

Confronted with the bland and indeterminate ideology of neutrality, one must affirm that neutral genetic counseling is always oriented advice strongly involving both the person of the counselor and the one being advised as moral subjects.

### **THE PSYCHOLOGICAL AND ETHICAL IMPACT OF GENETIC ILLNESS**

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Genetic illness is unique: it is not only a painful reality for the individual suffering from it, but also implies a widespread and worrisome risk for entire families. It is a situation in which persons and families feel obliged to know many things in order to readjust their existence. Faced with the diagnosis of genetic illness in a relative, his or her family members ask themselves what is the nature and intensity of the problems the illness causes and when it manifests itself. They also feel an urgency to know if it is hereditary or not and how it is transmitted; if it will affect the children that could come and what is the prognosis for those who are already alive; if the healthy members of the family are obliged to find out if they are carriers of the modified genes or not; if there is a way of preventing the illness in future

children or if disease transmission is inevitable.

In order to know all this, to receive advice and to make decisions, these persons or families need to go to a competent doctor who knows clinical genetics. In order to answer these questions adequately, a doctor often must make a detailed family history, do thorough clinical tests and genetic screening for patients and their families, including healthy or apparently healthy persons. Only after the diagnosis and the ways of transmission of the illness are sufficiently known can the doctor begin offering information on it, recommend available procedures and therapies and give the needed genetic counseling.

To begin with, genetic counseling involves an informational side, which includes not only the biological facts about the illness (its genic or chromosomal basis, its molecular mechanisms, its modes of transmission from one generation to the next, and the way in which the environmental circumstances modify the course of the illness), but also the medical aspects (certainty of diagnosis, evolution of the symptomatology, possibilities of curative or palliative treatment, prognosis) and psychosocial aspects (degree of stigmatization, reproductive options, access to eugenic abortion, economic burden, availability of economic and other help, support groups, the need for special education). There is therefore an abundance of complex information to be imparted, which

is not easily understood or assimilated and which, given its potential to arouse intense emotional reactions, must be given in advance in a prudential and circumspect way. Genetic counseling is a very delicate medical intervention that reaches a very deep level of the personality. The cause of the sickness is not from the outside but is rooted in one's own biological flesh, the patient carries it in his own genes, it is a part of him. It is not surprising, therefore, that it can cause feelings of shame, guilt, low self-esteem and permanent disgust. Genetic illness can bring families together, but it also can have a negative influence that strains family relations.

Genetic counseling can be the bridge linking general and abstract knowledge of the science of genetics with the personal, familial and societal reality in which these concrete individuals are inserted. This bridge is crossed by the clinical geneticists when they evaluate the clinical and laboratory data of their patients, put them in relation to the current algorithms of genetic science and explain the information in a simple and easily comprehensible way. A high level of competence is needed to translate this data into plain formulas so that the risks are understood regarding reproductive possibilities and what remedies are recommended. These questions are tremendously loaded with ethical conflicts.

None of the phases of genetic counseling is free of subjective contamination. The extent and detail to which

the genetics of the patients is explored, the commitment with which this data is cleaned up and examined in the light of current scientific knowledge, the tone in which opinions are expressed, the verbal and non-verbal language in which opinions are transmitted, are all inevitably influenced by the personal criteria with which the counselor interprets the prevailing clinical directives, the dominant ideas in society and in families about the value of each human life and, more concretely, the value of genetically damaged human life.

Genetic counseling is exercised in this highly tense ethical and emotional arena. The idea of neutral genetic counseling does not go well with, in fact appears incompatible with, the inevitably subjective and personal interpretation that the doctor impresses upon the data and advice. Facing the patient with a genetic disorder, the doctor speaks and acts as a fellow human being and not as an oracle of science. Even for the most expert counselors, it is extremely difficult to simultaneously keep in mind, throughout a complex genetic consultation, the informational and emotional needs of his patients, the institutional routines, and the socio-economic context in which he works while completely refraining from expressing any personal positions.

Neutral genetic counseling is a fiction that has been invoked for two reasons: to free clinical genetics from a dirty historical past and to free the

doctor from very heavy ethical burdens. Neutral genetic counseling was born as a historical alibi, and it is becoming an ethical alibi.

## **NEUTRAL GENETIC COUNSELING, AN HISTORICAL ALIBI**

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A short historical overview is enough to corroborate the fact that ideological forces have dominated the field of human genetics in the past. During the first decades of the XX century the fields of genetics and social biology were dominated by an optimistic and brutal eugenics. As is well known, this eugenics was not limited to Nazi Germany, but also flowered in many other advanced societies in Europe and North America. Many prominent scientists, intellectuals and politicians fell into the temptation of genetic determinism and joined progressive social reform movements which tried to improve humanity through science. Their programs included improving the genetic quality of the upper classes, and most of all, slowing the demographic growth of disadvantaged groups and reducing the genetic “dregs” of humanity. Since it was not possible to legislate in favor of the reproduction of the gifted, laws were promulgated authorizing the court-ordered sterilization of undesirables, degenerates, alcoholics and the mentally handicapped.

Some of these laws were still in force well past the start of the sixties. Nevertheless, after the Second World War,

anything related to violent eugenics was discredited and fell into oblivion. The rejection of the Nazi atrocities forced eugenic dreams to be abandoned for a time.

With the passage of time, however, things changed. On the one hand, abortion was almost universally allowed for genetic reasons. On the other, the capabilities of clinical genetic diagnosis increased rapidly above all thanks to the development of molecular genetics, DNA technology and information derived from the Human Genome Project. Clinical genetics was thus armed with many ways of detecting serious genetic problems while at the same time lacking truly effective treatments for these conditions. Gene therapy is still years away. In the interim there is practically only one “solution”: eugenic abortion detects and eliminates those embryos and fetuses with genetic disorders. The risk of falling into eugenic “cleansing” is evident, as is the need to put a human face on clinical genetics. The mask took the form of neutral genetic counseling.

Just as the Nuremburg Code began a new era in the ethics of bio-medical research in condemning once and for all the coercive use of “human guinea pigs” in Nazi experimentation, and established informed consent of the human subjects as an absolute ethical condition for bio-medical research, so the creation of neutral genetic counseling tries to make one forget the sad past of racial hygiene and violent eugenics in order

to create a new ethical environment for applying genetic science to man.

All possible association of genetic ideas with the coercive and violent past was excluded by the new emphasis on the free and voluntary character of the eugenic decisions which are no longer in the hands of doctors and social agents but are transferred to the patients and their families. The new model of genetic counseling established a firm rejection, at least in theory, of all coercive and authoritarian interventions, and gave a death blow to the power of paternalistic medicine which dominated previous eras. With one blow it ended the image of clinical genetics as a police force controlling reproductive efficiency.

But did neutral genetic counseling grant freedom to patients with genetic illnesses? It appears not. There are ever more geographical zones and social classes where one rarely sees children with Down's Syndrome. The pressure against genetic defects today does not come from an ideology of a superior race or an elitist sociology, but from several ideological tendencies which are very much a part of the dominant and pragmatic hedonist culture: social repugnance for obvious genetic handicaps, the desire for a perfect child, intolerance for one's own suffering or that of others, economic rationalism that rejects the added cost of genetic illness, the optimization of health spending that looks for investments with high and visible profitability, the need of clinical genetics practices to

have a reputation for efficiency due to a public which rewards the elimination of certain diseases because of a questionable cost-benefit analysis.

With or without neutrality, genetic counseling seems to have tied an alliance between counselors and clients against the weak. In fact, the numbers show us that the progressive disappearance of genetic disorders achieved by today's geneticists is not really different from the goals of the social "purification" projects of the rudimentary and violent social cleansing movements of the first half of the XX century. The motivating ideas and means used are different; the final results are strangely similar.

## **NEUTRAL GENETIC COUNSELING, ETHICAL ALIBI**

In the context of neutral genetic counseling, the counselor is a servant, not a master, who must respect the autonomy of the persons who come to him. The counselor must act in a climate of confidence, support and respect which completely avoids violence, an overbearing attitude and intellectual or cultural superiority. Ethical neutrality, and more specifically its non-directive character, has become the central dogma of the theory and practice of genetic counseling.

In its original and strong interpretation, to say that genetic counseling must be neutral meant that it should merely inform. The counselor not only must inform without prejudices, but paradoxically, must free his clients from

moral fears, abstaining from any normative or paternalistic act.

How is such radical neutrality put into practice? In ideally neutral conditions, the doctor begins by offering a pre-treatment consisting of anesthesia for the ethical pain tied to the patient's decision to submit to the laboratory tests, to accept the results and the anguishing making of decisions. Usually the doctor tries to calm his patients and reassure them that sometimes there is no single or only "correct" solution to the problem and that the geneticist will support the decision that the patient makes, whether it is accepting or rejecting an abortion, modifying reproductive plans (deciding not to have more children, sterilization or recourse to assisted reproduction techniques).

In the new model, genetic counseling on the part of the doctor consists only in informing. Once he has given the patient the pertinent facts, his active function has ended. The responsibility to make a decision falls exclusively on the patient, while the doctor puts her/himself at their disposal to carry out the decision. It is a typical case of the division of functions resulting from the radical interpretation of the principle of autonomy into the doctor/patient relationship: the doctor brings the science and knowledge of techniques; the patient, the ethics. The doctor destroys her/himself as a moral agent, neutralizes her/himself ethically: limits her/himself to sorting and transmitting facts,

to offer factual empirical information free of any ideological or ethical bias. The patient puts forward the values and decides according to the criteria that he holds are congruent with the project for the good life that he wishes to lead.

Leaving aside problems that arise later, one has to ask oneself if it is really possible to offer ethically sterilized information. In genetics the information is often "electrically charged" ethically. Following what some codes of ethics of genetic counseling centers prescribe (the main preoccupation of genetic counselors is the interests of the client), the counselor could be required to forget objectivity and bow to giving a different version of the facts, especially when the relationship is dealt with as a counselor/client relationship and not a properly doctor/patient relationship. This latter relationship is more demanding and resistant to manipulation. Whereas a counselor sees only one client, the doctor sees two in the mother-fetus relationship. The doctor recognizes that they cannot serve both at the same time, but will have to take the side of the stronger against the weaker or, do something much harder, follow the Hippocratic tradition and take the opposite side.

The counselor/patient relationship is much less complex. The counselor can be committed to a relationship that is nominally based on the values of service and respect for the autonomy, individuality, well-being and freedom of the

client; as well as to give priority to the beliefs, cultural traditions, inclinations and feelings of the client so as to allow them to make decisions autonomously and free of coercion. But this is achieved at the cost of an ethical catastrophe: becoming selectively blind to the existence of an embryo or fetus and forgetting that they also are their patients, human beings with a human destiny.

### **DOES SO-CALLED NEUTRAL GENETIC COUNSELING EXIST IN PRACTICE?**

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Neutral genetic counseling is not practiced in the same way, nor does it have the same meaning for all. Studies made on this topic show that genetic counselors profess different attitudes, convey different options and recommend, or abstain from recommending, certain behaviors. The commitment to neutrality is neither consistent nor universal. In fact, many doctors give advice outside the neutral framework.

But, on top of this factual question, it is worthwhile to ask oneself if it is desirable that the function of the human genetic counselor should really be inspired by the norm of neutrality and indifference to ethical values.

Some understand the practice of neutrality as consisting in: a constant effort to counsel only those who voluntarily want to be advised; in giving information about clinical and genetic facts in a comprehensible and balanced manner; in offering a sincere and rea-

listic menu of behaviors that could be adopted; in responding to all the questions the patient wishes to ask, and finally, in respecting the decision that the patient takes and helping them to carry it out. Essentially, one has to inform in an understandable way, but one cannot express a judgment on what should be done.

That kind of neutrality, however, is problematic in all aspects. As he imparts information the geneticist cannot free himself of his judgments and prejudices about what is the boundary between the pathological and the normal, what should be understood as an illness and what are merely peculiarities, defects or anomalies. A genetic defect can be something trivial or something terrible depending on the environment in which the subject lives. The correlation between genetic facts, intellectual quotient and quality of life is the object of very different interpretations as are the appreciations of the value and dignity of a child with Down's Syndrome. If one does not respect all human life in all its stages as a fundamental principle, the genetic diagnosis is inevitably relativistic and conditioned: it is radically insufficient when separated from ethical values.

Furthermore, it has been argued in a very convincing way that in a society in which eugenic abortion is allowed by law, neutral genetic counseling is not possible: society, through its permissive law, has taken the side of abortion when



prenatal diagnosis discovers an anomaly. The legal authorization of eugenic abortion opens up a societal choice that embraces in a systematic way the public and professional sector. It leaves each person the tremendous choice of freely determining what level of genetic suffering is tolerable and what level can legally be "remediated" through eugenic abortion.

The relativism of neutrality is made evident in the behavior of the different professions that are involved in genetic counseling. Specialized nurses, geneticists, pediatricians and obstetricians have different professional traditions relevant to eugenic abortion. Obstetricians, taken as a whole, are more favorable to the interruption of pregnancy. This is not surprising given the interventionist character of the specialty and the inevitable conflict of interests which can go so far in some obstetrical departments as to lead to the omission of information regarding other treatment options, including the most basic of these: not having recourse to abortion when the child's defect is incompatible with post-natal life. This interventionist character puts abortion before the infinitely more human and natural alternative, to continue the pregnancy to the end.

Furthermore, there is a close correlation between accepting eugenic abortion and the practice of prenatal examinations. Since many doctors feel that the primary end of prenatal diagnosis is the detection and subsequent abor-

tion of abnormal fetuses, they see no point in doing a prenatal diagnosis on patients who refuse abortion. Clinical genetics is increasingly succumbing to eugenics in an ever stronger and more explicit manner. James Watson clearly said so in praising the role the Human Genome Project will play in the genetic happiness of humanity. "Genetic tests will make routine diagnosis of countless genetic problems and their elimination through abortion possible ... it is an act of moral cowardice to allow children with known genetic defects to be born". Nothing is left here of neutrality in genetic counseling.

In practice, neutral counseling is not very practical because it is very time-consuming and in the end often leaves the patients perplexed. It requires thorough information and leaving time for reflection and doubts. The problems do not lend themselves to resolution in one session no matter how extended it is. In order to save time, doctors choose to inform in a summary way. Given the working conditions of their activities, they cannot, even if they wished to, dedicate time to explaining thoroughly and understandably the validity of the data obtained or the quantitative aspects of the implied risks. There is also no lack of doctors who underestimate their patients' capacity to understand and prefer to leave them in "blissful ignorance" or foster their desire not to know. The patients allow themselves to be carried along because they go to the session

already influenced by what they read in the press or see on television about the triumphs of biomedical investigation. This credulity in the power of science puts them, paradoxically, in a situation of being easily manipulated.

## **RECOVERING THE DOCTOR AS A MORAL AGENT**

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The idea of neutral genetic counseling is not well received by many doctors. Those who have strong ethical convictions based on respect for the Hippocratic and Christian tradition of respect for life and the dignity of all, manifest it to their patients. Others, out of adult personal respect, inform them and get their consent for doing the diagnostic tests which they think are appropriate. They advise them according to the best criteria and finally propose one or more treatments that are supposed to be more efficient based on the diagnosis. These doctors do not abstain from judging the quality of life, present and future, of those who suffer from genetic malformations. They generally have very definite ideas about the corrective or rehabilitative treatments that should be applied in the different cases. Tragically, they do not absolutely exclude eugenic abortion from their practice.

To offer genetic counseling with ethical respect for genetically damaged persons is a very difficult and arduous task today, radically at variance with neutrality of judgments and values. To be a defender of handicapped life requi-

res very intense and sincere efforts on the part of the counselor to inform their patients of the situation without exaggerating or diminishing it, giving them time to settle and reflect, to clear up doubts and to help diminish emotions and anguish. The doctor who respects life must free himself from the technological prejudice to intervene at all costs which, when there is no true therapy for genetic illness, makes eugenic abortion the only possible "treatment". They must give up many social and economic incentives and refute with ideas and examples the widespread idea that genetic defects are always a social deficiency, a catastrophe for the family and a professional failure. The genetic counselor needs to acquire a clear consciousness of the limits of medicine and the role compassion, consolation and palliative care play when nothing effective can be done.

If society wants to be truly human, it can never abandon the humanizing value of the presence of the weak. There are signs that the increasingly human and scientific quality of recent decision-making about genetic illness is resulting in a statistically significant tendency to opt for the continuation of pregnancies and to reject abortions.

## **DOCTOR, WHAT WOULD YOU DO IN MY SITUATION?**

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That the neutrality of genetic counseling is arbitrary, an artifice, is demonstrated by the common fact that meet-

ings between geneticists and patients almost systematically lead to a question with enormous ethical resonance. Victimized by perplexity or anguish, the patient asks: "And you, doctor, what would you do in my place?" This question relativizes the whole process of neutral informing and counseling. Not answering this question would absolutize the principle of the autonomy of the patient so as to abandon the person being counseled. Ethical neutrality serves as a means for the doctor to escape and not implicate themselves in the human conflict of patients, to leave them drifting with unresolved doubts. For the doctor to respond to the patient: "I cannot tell you anything: it is not my problem, it is yours" is the equivalent of putting on a blindfold so as not to see the grave need of one's neighbor. It would almost be a case of failing in the duty to treat/counsel by omission, an arrogant act of affirming the principle of autonomy over other ethical/professional principles that are no less important.

Patients do not go to the doctor to hear a lecture on genetics or receive a clear exposition with precise information about the facts and risks of their illness. They go to receive advice, to be helped to know the motives and consequences of the various different decisions to be made. This process is based on confidence. True assurance requires that no significant information is omitted and that the first obligation of ethical respect for persons is followed: knowing

the others' convictions so as to protect and guard them. Experience shows that mothers, because they are mothers, tend to favor, to welcome the child wounded by genetic illness and even accept them as a gift of God.

"What would you do in my place, doctor?" is a tremendous question that reveals the inconsistency of neutral genetic counseling.



# New Definitions of Gender

Beatriz Vollmer de Coles

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*It is paradoxical that the premises on which the positions taken by radical feminists rest lead to conclusions that go against female specificity. According to these feminists, the roles assigned to men and women in the society are a product of the culture. We should make a cultural revolution whose object is the denial of the importance of genital differences. It is curious nevertheless, that with the establishment of the new culture only genital differences will survive. They would subsist in any case, but they would not have any influence on the roles assumed by men and women in society. These roles, invented during the course of history, would be rejected. This refusal is an indispensable requisite of a new culture that excludes marriage, motherhood, the family, and which welcomes all possible and imaginable types of sexual practices. We are faced by a contemporary form of Manichean dualism. The gender ideology is the heart of the new gnosticism, and those who accept it would not be obliged to follow any norm of moral conduct. At the heart of this gnosticism is the denial of any type of connection between “the transcendental dimension of human sexuality” and the merely physiological dimension of this sexuality. Through this divorce—this alienation—men and women choose their own sex or change it, according to their individual inclinations. All those who do not accept this gnosis should, evidently, be denounced as members of an outdated culture that has to be fought. The author offers an interesting perspective in order to get beyond this dualism. She shows that sexual identity has in itself a dimension that transcends mere genitals and opens itself in a personal, cultural and spiritual perspective. In this way gender does not clash with sex, but is an intrinsic dimension of it and at the same time transcends it. (↗ Sexual and Reproductive Rights; Discrimination Against Women and CEDAW; Gender; Ideology of Gender: Dangers and Scope; Motherhood and Feminism; Patriarchy and Matriarchy; Equal Rights for Men and Women)*

If we look at most dictionaries, the definition for the word “gender” briefly explains its etymology and then two more meanings.

The term gender originates from the Latin *genus*, *generis*, which had a variety

of meanings ranging from a classification in a kind or a class to the indication of a family, dynasty or even a people with a distinct identity or a nation.

More recently, and particularly in the English language, *gender* has had a

grammatical meaning. In this context nouns, pronouns, adjectives and verbs must agree in number and gender. To be precise, these words must agree not only in the plural and the singular, but also in various grammatical subclasses, including masculine and feminine.

Common usage in the last half of the 20<sup>th</sup> Century has shifted the meaning of *gender* to individual sexual identity. Feminists claimed that not all of human sexuality is found in the body, and they adopted *gender* to denote the intangible aspect of sexuality, albeit in an atheistic and resentful context. They also added that patriarchy had alienated women's gender by social expectations and pressures, thus making gender a social construct capable of being modified.

The great error made in the distinction between sex and gender is that feminists separated both concepts so radically, that they became independent from each other and have endangered the human integrity of body and soul. The feminist agenda was interested in this severance in order to achieve some of their goals of liberation.

Gender feminists get their name because they instituted 'gender' as a feminist term meaning individual sexual identity as a product of social pressures. Their intention was to help dissociate woman from the place nature and society set aside for her and formally separated sex from gender for their own political ends. They also introduced the

belief that the differences between the sexes are socially constructed. Physical differences, which are allegedly socially and politically neutral, leave total freedom to choose a partner. According to these feminists, homosexuality, heterosexuality and bisexuality are all equally valuable and are a matter of preference. They affirm that differences between male and female have no relation to natural or biological causes, but are due to social impositions.

Late structuralists of a Marxist slant, such as Derrida, Lacan and Foucault are the background philosophers for today's gender feminists. These adopted Derrida's definition of the "deconstruction of philosophy" and started a movement to "deconstruct gender" in an attempt to destroy what they call patriarchy, social roles, religion, tradition, education, politics, and so on. The deconstruction of gender and a gender-less society are now the main goals of the feminist agenda.

The greatest innovation to feminism has been the radical severance of sex and gender in the human person: if sex is an indifferent biological reality and gender a social construct, the alleged inferior situation of women is due to a malfunctioning society, in other words, patriarchy. Their possible advancement, according to feminists, thus requires that society be freed from this social construction so that men and women will finally be the same. Gender feminists are interested in deconstructing, among other things, language, family

relationships, reproduction, sexuality, work, religion, government, and culture in general. Difference is to be avoided if not eliminated. If gender identity is constructed, it is flexible and can always change.

Gender feminists should get credit for *creating* a word indicating an aspect of sexuality that goes beyond the body. Before their time, this intangible dimension was only implied in the all-encompassing term of human sexuality. In this sense, their contribution of the term 'gender' has been valuable, but in my opinion, incomplete, and the sex-gender separation, as suggested by feminists, is a new form of dualism, which, as we know, offends against human dignity. If the body (along with it a specific sex) is made more important than the soul (along with it a specific gender), or vice versa, the resulting polarity leads to a limited concept of the human being.

As Wittgenstein said: the meaning of a word is the use it is given in language. It seems senseless, then, to reverse or deny the usage of the term *gender*, as it is so widely used, even in other languages. It seems more logical to extend the new meaning and complete it, so as to reunite sex and gender in an integral human sexuality, and no longer offend against human dignity.

By adopting a new perspective of the human person, or rather, by taking a new look at the age-old theory of composite beings, we can find the key to this reunion. I would like to present an au-

dacious analogy of the relationship between body and soul with sex and gender, for I believe that just as the body has a metaphysical dimension by virtue of the soul, our sex has a metaphysical dimension by virtue of our gender. This is more an invitation to discussion than a statement of definitive truth!

It is undisputable that body and the soul are inseparable during the life of a person; our souls are embodied within us. Human embodiment communicates meaning and is implicit in every human relationship. All our expression and fulfillment derive from it: love, masculinity, femininity, human activity, openness to society, personal relation with God, and much more. A human body can *only and always* be either male or female so that embodiment necessarily implies a sex. In other words, sexuality is a necessary aspect of being human. However, it should not indicate a mere physical dimension.

Saint Thomas Aquinas explains the make-up of composite beings in *De ente et essentia* (*On Being and Essence*). In this short but thorough work, he illustrates how all tangible things are made of matter and form. The human being is classified in the highest category of all beings because our soul is our form, and it transcends the physical world in which we exist. While Aquinas states that, in humans the body relates to matter and the soul relates to form, I would like to add in terms of proportionality that *sex* is to matter and the

body what *gender* is to the form and the soul, without jeopardizing human dignity and individuality.

St. Thomas affirms that composite beings are made up of both matter and form; the matter being the principle of individuation, the form accounting for substance. In the case of the human person, Aquinas says that the soul is the substantial form of the body. While he states that matter and form cannot be separated in composite beings, they should be distinguished for the sake of a better understanding of the entire being. Aquinas then explains that a form cannot come into existence without matter, and a soul cannot come into existence without a body. If I may superimpose *sex* on the tangible, material, bodily side of the human composite and *gender* on that of transcendence, form, and soul, it does not seem possible that a gender (masculine or feminine) could come into existence without a specific sex (male or female).<sup>1</sup> **This is the great error of the feminist agenda. They intend to leave gender as an entity independent from the body or the sex in which it exists.**

When we speak of matter and form as different, we mean that they have equally necessary but distinguishable functions when constituting a being. In

the case of human beings, we can speak of universal substances (man or woman), which only exist in the mind, or in terms of reality and therefore individual substances whereby the individual matter and substantial form are unique (this woman—Jane or this man—Peter). In other words, a person's gender is also individual but conditioned in its possibilities by a given sex. The feminist request for "freedom to choose" among several genders seems absurd. Although there is room for individual variance, sex and gender are and will remain interdependent. The question is how much each one determines the other and whether external influences, such as family, society, or even divine grace make a difference to the final composite.<sup>2</sup> I believe that they do, and in this way, our gender and our souls are influenced by other elements than the self.

St. Thomas also states that it is the form that perfects matter. Once again superimposing gender and the soul (form), we should never consider either of them static; instead we can only grow towards our own fulfillment or perfection, by the very fact of having a transcendent dimension in our embodied (material) existence. We must acknowledge that both gender and the soul are influenced by grace, culture, family,

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1 Perhaps the awareness of gender begins to exist long after the sex does, but I think it is safe to say that, like the soul, it grows with the person from the very beginning.

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2 It is important to remember that soul and gender, body and sex are not intended to be the same, but they belong on the same levels of existence: the transcendent and the contingent, respectively.



individual experience and much more, so they are both at least partially “constructed” rather than inborn. A “gender-less” society, as so desired by certain feminists, then seems impossible; it would be a soul-less society.

Aristotle’s theory of movement by means of the four causes can also illustrate the constitution and fulfillment of the sexed being. A cause is anything that influences the being of an object. In the *material* cause we can identify the body, including its sex, which remains constant and permits individuality; in the *formal* cause, which is the soul, we can identify the gender. This combination is then driven to change and individual variation due to and depending on the *efficient* cause, which is not only the social input but also the inner changes (or as Wojtyła terms it, “what happens in man”)<sup>3</sup>. The *final* cause, which indicates the *proper* direction of a being’s perfection and fulfillment, is already suggested in the three previous causes and can be seen, in abstract, as the personal fulfillment of masculinity or femininity through a particular vocation in a life. The true perfection of a being cannot be fulfilled, and should not even presume to do so, in something it does not have the tendency to become. The act, and therefore the perfection of a being, is

presupposed in matter, its potentiality. There is a two-way influence: while potency (in the matter) limits act (in the form); the form (*determinans*) is what perfects the matter (*determinabile*). In other words, the matter of a particular being is its own potential, and the *formation* is its gradual fulfillment towards its *own* perfection. Only by means of the constant enrichment of matter and form, can a creature reach its pre-designed perfection. In the context of gender, the bodily sex suggests the direction of fulfillment in a particular gender. It seems like a contradiction for one sex to fulfill itself in the opposite gender: the composite of a female body with a male soul does not seem to realize the potential of a human person.

Thus, it is in the human person’s composition of body and soul that the metaphysical difference between man and woman is revealed. If indeed the soul is the *form* of the body, the differentiation of the sexes should in some way already exist in their form – with its higher degree of perfection – and not only in their matter. Aquinas states that God creates every soul individually so that it can inform a certain body,<sup>4</sup> but this could imply that God creates

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3 See WOJTYŁA, Karol. *The Acting Person*, (*Analecta Husserliana*, vol. X), D.Reidel Publishing Company, Dordrecht 1979. (Orig: *Osoba I Czyn*, Polskie Towarzystwo Teologiczne, Cracow 1969).

4 See FORMENT, Eudaldo. “La dignidad de la persona humana como hombre y como mujer,” in *Atti IX Congresso Tomistico Internazionale*, III: Antropologia Tomista, Libreria Editrice Vaticana, (Pont. Accademia di S. Tommaso) Citta del Vaticano 1991, 149-161, p. 156.

every soul with a gender to inform a body that necessarily has a sex.

Each soul, in consonance with the body it “informs”, distinguishes itself from others. It would follow that feminine and masculine souls inform female and male bodies. In a similar way to the bodies, masculine and feminine souls, however, are not two different species of the human soul, but modes of participating in the same human essence. It seems, then, that the sexed body and the gendered soul make up the composition of the embodied person.

A reviewed definition of gender acceptable by the Church could be:

Gender: the transcendental dimension of human sexuality, which is compatible with all levels of the human person, encompassing the body, the mind, the spirit and the soul. Gender is thus malleable, due to inner and outer influences on the human person, but it must obey natural order already given in the body.

## **STATICS AND DYNAMICS**

The fact that the differences between the sexes are subordinate to their identity, at an ontological level, has already been stated. Like an optical illusion, the human “picture” appears differently depending on our focus: when focusing on the empirical facts, the differences seem to override the similarities, but when analyzing the transcendental value of the human person, their identity seems incontestable.

It is necessarily so that the sexes are mutually exclusive. To be a man automatically excludes being a woman, in concordance with the principle of non-contradiction—there is no third possibility, yet both are fully human. And it is precisely this limitation, the impossibility of being the other, which permits the fulfillment of the human being. What does this say about their being? The mutual exclusivity of the sexes can also be approached from another angle: the human *being* can only and must always *exist* either as male or female.

Man and woman cannot be defined separately. They are co-relative to each other but not totally complementary. To speak of the sexes exclusively as either complementary, equal, or the same is not only one-sided but incomplete in their regard. Different angles show that the sexes can be all of these in distinct ways, but seen in their integrity (“holistic approach”) and combining the levels of similarity and difference, man and woman make up an asymmetrical structure. The asymmetry of the sexes is also enhanced by the fact that there is both dynamism and staticity in their being and existence.

## **SEXED EXISTENCE AND GENDERED ACTION?**

The “cohabitation” of sex and gender within the human person seems to have more depth to it than the mere aspect of nature and nurture. Assuming the analogy of being, and using Wojty-

la's thought, "we may regard man's acting as well as what happens in him to be the fulfillment of a potentiality. The one and the other is an actualization, the dynamic unity of potentiality and act."<sup>5</sup> Let us consider that a person's given sex is a part of "what happens in him" and that the correlative gender is reflected in his "acting", whereby "acting" is more perfect than "being acted upon", or the form is more perfect than the matter. The conjunction of these two becomes the "fulfillment of potentiality"; they are the "dynamic unity of potentiality and act."

The outcome of this dynamic unity, even in other objects, can be grouped, if stressing generality and similarity, into genus and species, but when focusing on particularity and difference, each combination makes up a unique individual, identical to itself. What makes the human subject ontologically different from objects is that personality is added to individuality.

The person, the human being as the person—seen in its ontological basic structure—is the subject of both existence and acting, though it is important to note that the existence proper to him is *personal* and not merely individual—unlike that of an ontologically founded merely individual type of being. Consequently, the action—whereby is meant all the dynamism of man including his

acting as well as what happens in him—is also personal. The person is identifiable with an ontological basic structure in which a provision is to be made: the ontological structure of 'somebody' manifests not only its similarities to but also its differences and detachment from the ontological structure of "something".<sup>6</sup>

Wojtyła affirms that "[s]ubjectiveness is seen as structurally related to what happens in man, and efficacy is structurally related to his acting."<sup>7</sup> Man is subject when something is happening to him, but 'actor' when doing. These two moments cannot be completely separated when distinguished, although it could be argued that the subjective ego (subjectiveness) is less perfect than the transcendent ego (efficacy). It could be considered that man is a subject as a result of his/her sex, while s/he is 'actor(tress)' to the extent of his/her gender. The former conditions the possibility of the latter, just as existence presupposes being or nurture cannot happen without the previous existence of nature.

Thus, it can be said that action is relatively influenced by 'what happens' or what precedes it. Without underestimating the power of freedom, the acting person must necessarily be influenced not only by "what happens *in* him" but also by "what happens *to* him", among other things, by society. In this way, the formation of gender which is not only a

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5 WOJTYŁA, Karol. *The acting person*, p. 65.

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6 *Ibid.*, p. 74.

7 *Ibid.*, p. 71.

social (external) manifestation of one's being but also has a mediating position between "happening" and "doing", must be, in some way, conditioned by social construction.

'What happens in man', in this context, his/her sex, requires and involves no freedom, while 'man-acts', or gendered acts, involve what Wojtyla calls, "efficacy" which is to know that and what s/he is doing. Reflexive knowledge of actions is not only embodied and potentially social, but also socially constructed due to embodiment (in the world, in society).

Wojtyla associates "fulfillment" with action, following the Scholastic theory of act which perfects potency, but he takes the term 'fulfillment' through to its usage today (self-fulfillment), in which his definition still applies.

In the notion of "felicity" there is something akin to fulfillment, to the fulfillment of the self through action. To fulfill oneself is almost synonymous with felicity, with being happy. But to fulfill oneself is the same thing as to realize the good whereby man as the person becomes and is good himself.<sup>8</sup>

Felicity, then, is not pleasure, because the latter *happens* in man whereas the former is a result of his actions. The actions are more perfect and more perfecting than "what happens", so they are also more fulfilling. Wojtyla specifies the distinction so that it would seem

that felicity were an emotion which is characteristically human while pleasure remains in the realms of sensation. "Felicity points to the *personal* structure while pleasure can be related to what may be viewed as the simply *natural* structure of the individual [...]."<sup>9</sup> The ever yearned for self-fulfillment of women can only be reached, then, as a result of their actions as persons, not by liberating themselves from family or other "feminine" obligations, which does not mean that they should be confined to those activities.

For there to be felicity and fulfillment, the actions must be good. Forment comments that male and female perfection is not reproduced in a single type of being but fulfilled in two distinct ways: the masculine person and the feminine person. As persons, man and woman are equal so that being either a man or a woman does not limit personhood or dignity. However, this equality does not eliminate the diversity which is essential to the fulfillment of the human person. These two ways of being a person must be seen as expressing God's image and constituting masculine and feminine originality.<sup>10</sup> The fulfillment of being human *must* be different depending on whether one is a man or a woman.

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<sup>9</sup> *Ibid*, p. 177.

<sup>10</sup> FORMENT, Eudaldo. "La dignidad de la persona humana como hombre y como mujer," p. 153.

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<sup>8</sup> *Ibid*, p. 174.

Some understand “gender” as referring to societal and cultural ideals of masculinity and femininity and their corresponding sex-based roles, and that these ideals are forcing men and women to behave in a certain way which is not proper to their nature. In the case of women, these expectations have been accused of limiting their area of action in society, their autonomy, and finally their personal identity and fulfillment. This would mean, in consequence, that the cultural ideals “force” a gender upon a man or a woman, thus limiting the authentic blossoming of their nature. They see liberation as freedom of their gender identity from the pre-defined roles dictated by society.

If women wish to “fulfill” themselves particularly as women, they must first define what they understand as their natural “self”. Are given facts, such as embodiment and spiritual endowment, considered the entire or only a part of the self? Gerl-Falkovitz explains that since the 1960’s there has been a generalized reluctance to accept anything which might be interpreted as constitutive of a feminine essence. But in order to fulfill themselves “as women” they must find constant unvarying elements which must be perfected.

Recent feminism certainly avoids in its theory any term such as “essence” or “ontology”, which is what the older discussion of the 1920’s (with Edith Stein and Gertrud von le Fort) tried to grasp. This tendency was following the tracks

of Phenomenology and was in search of constant factors and values of womanhood. However, even out of current feminism, one can derive an unspoken quest for given ontological elements in women.<sup>11</sup>

She states, however, that there is a fear of discovering that these given facts are biological and that child-bearing will remain women’s “hand-cuffs”. The result of this denial of the biological level is what Gerl-Falkovitz calls the “neutralization of embodiment”, which is done primarily with chemistry or abortion – the ‘deadly’ emancipation. In this context, many feminists believe that women will at last be liberated when these ideals and expectations change, but more importantly, when “roles” are no longer bound to the sexes specifically. They hope to create a society that “transcends sexual gender”, and people will be “androgynous” so that work distribution will be equal and gender neutral.

Again confronted with extremes, there is also the trend which exalts the biological to such an extent that moth-

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11 “Der Feminismus, der von letzterem ausgeht, vermeidet freilich in seiner Theorie den Begriff “Wesen” oder “Ontologie”, womit die ältere Diskussion der 20er Jahre (Edith Stein und Gertrud von le Fort) in den Spuren der Phänomenologie die Konstanten des Frauseins zu fassen suchte. Tatsächlich aber zieht sich eine unausgesprochene Frage nach den ontologischen Gegebenheiten der Frau durch den Feminismus.” GERL-FALKOVITZ, Hanna-Barbara. “Gleichheit und Unterschied: Wo ist die Frauenfrage angelangt?” p. 60.

erhood becomes the supreme value, at the expense of the child. They believe that women can only fulfill themselves truly by having a child. This extreme seeks liberation from the dependence upon men, so artificial insemination has become their final victory.

There are two observations to make regarding these claims: a.) because gender identity is necessarily, although not totally, socially constructed, there will always be so-called predefined roles in the models we see before us. The absurdity is clearer if we think of depriving a child of learning its "mother-tongue" so that it may later choose the language it prefers. b.) At a more abstract level, the theory of act and potency states that things cannot become what they are not destined to be. What a thing will actually become is already implicit in its potentiality. A person of the female sex cannot become anything other than feminine, because she would not be fulfilled. There is an endless number of variations to being feminine, but it is impossible to be gender-neutral. The discussion rests in defining what is finally femininity and masculinity. Both extremes are evidence that it lies neither totally in biology nor totally in meeting social expectations.

In the context of 'liberation' as the key to fulfillment, Graham observes that liberation from something means that someone ceases to be what s/he was (so-called "disanalogy"):

Slaves who have been liberated cease to be slaves. Women who are liberated do not cease to be women. The point of liberating slaves is the elimination of any difference between slave and free. Now, the point of women's liberation could indeed be construed as the elimination of all *moral* differences between men and women (it could hardly be the elimination of *biological* differences) [...].<sup>12</sup>

The propositions of the liberation from pre-defined gender roles have important implications: 1.) that the liberated person (either male or female) is gender neutral, his/her sex being totally independent from it, but adapting to any (social) environment. Hence 2.) gender difference is only socially constructed (not innate) and can therefore change (how often? for how long? etc). 3.) Sexual difference is fundamentally indifferent to gender and consequently to personal identity. 4.) Gender becomes a part of personal identity although it may not correspond to a sex.

This approach to sex and gender not only divorces the constituents of sexual and personal identity but in fact devalues the body, having perhaps worse consequences for women than for men, if it is true, as Gerl-Falkovitz and Buytendijk observe, that men and women are very different from the point of view of their embodiment. Women cannot abstract from it as men can, because it

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12 GRAHAM, Gordon. "Two types of feminism," *American Philosophical Quarterly*, 1988 (25), 303-12, p. 308.

involves and interferes much more directly in their daily life. In fact, to determine where the “waist-line” begins for women is difficult; perhaps it starts in their mind!

However, to make comparisons of this sort is risky; there is no way to experience the other’s gendered awareness. If our particular existence is sexed and our actions are gendered, it will be interesting to analyze how these facts could possibly affect aspects of our knowledge. Without compromising the validity of knowledge, nor rendering it relative, there is the possibility that male and female approach perceive and process the object of their knowledge differently.

### **SEXED CONSCIOUSNESS AND GENDERED INTENTIONALITY?**

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The specific development of living beings makes their sexuality more or less distinct. The human being, whose specification is crowned by the use of reason, is distinct in his/her sexuality not only biologically but also beyond the body. Reason makes us aware of sexuality, gives it meaning but also projects it in many of our perceptions and actions. Our sexuality must in some way affect our consciousness and our intentionality if so many issues in ethics deal with it and affect perhaps only implicitly our sense of responsibility and moral obligation.

The outward expression of sexuality shows the male-female differentiation.

This obvious statement has many more, but less evident ramifications. Ales Bello explains phenomenologically how the subject recognizes the other.

If the subject analyzes not only itself but others, it must first of all pass through their embodiment, thus becoming aware of their physical, embodied and spiritual constitution and, in order to understand what happens in the other community, it needs empathy, by means of which it will grasp the life of the members of that community intuitively.<sup>13</sup>

The consciousness with which the subject is conscious is the same as that with which the subject is conscious of the object.<sup>14</sup> This means that through consciousness the subject becomes present to itself and the object present to the subject. If the subject is necessarily sexed, will that fact not “color” at least slightly both the consciousness of itself and of its object? How independent can one become of one’s sexed existence? If one is conscious of an object as different from one’s self, does the fact that one is sexed make a difference to one’s awareness?

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13 “Se il soggetto non analizza solo se stesso ma gli altri, deve in primo luogo passare attraverso la loro corporeità e quindi si rende conto della loro costituzione fisica, corporea e spirituale e, per comprendere ciò che accade nella comunità estranea, ha bisogno dell’empatia, attraverso la quale coglie intuitivamente la vita dei membri di quella comunità.” ALES BELLO, Angela. *Fenomenologia dell’essere umano: lineamenti di una filosofia al femminile*, p. 149.

14 See HUBER, Carlo. *Critica del sapere*, p. 106 ff.

If all knowledge is in reference to objects as other than oneself and in this way it is intentional, this “outgoing motion” must be gendered if the subject is gendered. Our knowledge is conscious when considered as an activity of the subject, but it is intentional when considering it an activity which tends towards the object. As personal subjects we cannot fully objectify our sexuality or sexed being, so it would seem that consciousness is sexed when we consider that it is an activity of the sexed subject while it is gendered when tending towards the object. So just as consciousness and intentionality are one and the same thing from different points of view, perhaps sex and gender can be considered the same if we consider them as “inner” (sexed) and “outgoing” aspects of that same subject. The difference of male or female does not make any difference to the validity of knowledge although it must influence their approach to reality.

Although it is not the intention to open a new discussion on a gender-specific theory of knowledge, without thereby implying relativism, further study in this direction could be of great interest and perhaps helpful in determining structures and invariant properties of both sexes.

While it remains an enigma, Melchiorre states that the human being—man and woman—has a symbolic definition: “What is symbolic [...] consists of an expressive duplicity, whereby a

meaning, which as such would never be reachable, is grasped but only transparently and in the inseparable intimacy with another meaning.”<sup>15</sup> In the case of the sexes, this ‘other meaning’ shows itself in the other sex. Maleness or femaleness individually are hardly comprehensible, rather, they are grasped in a veiled way thanks to their inseparable intimacy with the other sex. This does not mean that their definitions are complementary, in a strict sense, just as the Cross is a symbol of the mystery of Christ’s death and resurrection without being a complementary definition of it.

Melchiorre speaks of intentionality as being what indicates ontological unity: at its origin, the intentional relationship is always a co-existence of the uni-diversity of the self and the world: the thing is for the self and the self for the thing. This unity, in which the subject and the object are indissoluble and participate in the reciprocity of their being, happens [...] due to the anticipating glance or the embodied condition of that glance.<sup>16</sup>

15 “Il simbolico—conviene ricordarlo—consiste appunto in una duplicità espressiva, ove un significato, che in sé non sarebbe mai raggiungibile, si lascia cogliere ma solo in trasparenza e nella inscindibile intimità con un altro significato.” MELCHIORRE, Virgilio. *Metacritica dell'eros*, p. 70.

16 “all’origine il rapporto intenzionale è pur sempre un con-essere o un vissuto della uni-diversità dell’io e del mondo: un essere della cosa per l’io e dell’io per la cosa. Questa unità, in cui il soggetto e l’oggetto sono indissolubilmente



If this is so regarding the relationship between the subject and objects, there should be all the more reason for it to happen between two subjects of opposite sex. In this way, the body has a double aspect or duplicity in being visible and seeing, touchable and touching, objective and subjective. Intentionality and consciousness are, in this sense, embodied, communicative and therefore gendered. Words and gestures then, as sequels of intentionality and consciousness, are signs of the body's transcendence over the mere biological corporeality. Bodily differences, therefore, do not merely constitute sexual differences, but, being human and intentional, they also constitute different intentional dispositions.<sup>17</sup> If bodies are different, then the intentionality must be somewhat different.

Are traits and characteristics essential to the ontological differentiation? The classic images of women's soft, caring, nurturing-ness and men's aggressive, outward, adventurous-ness seem to be due to biology and society. Biology must be a determining factor for iden-

tity although certainly not the only one, but how much can one say that society determines it? First I am born, then I enter society, but my being is already complete although not fully developed. To deny this would imply serious ethical problems (abortion, infanticide, etc.).

That man and woman experience the world differently should be assumed, because of their different bodies and subsequent social input (active and passive). This does not mean that their knowledge is in any way relative or of different value; it only means that what each perceives as the same object is interpreted and assimilated differently. In other words, it acquires different meaning after it is perceived. We could even say this about any two individuals. However, there may be something common to the way that men as a group or women as a group perceive and interpret; this thing in common (which is not tangible) is something which goes beyond the social or cultural, and it is that which makes them experience the world and society in a certain characteristic way. There is a form of 'in-built' bias, in Lonergan's terminology, which shapes our perception.

Due to political and ideological reasons, Sánchez states that the feminine has been refused, suppressed, for so long that the only way to discover the essence of the feminine is beginning with biology. In the meantime, masculinity, which was not consciously repressed, has lost its co-relative significance. He believes

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e nella reciprocità del loro essere, si dà - come dicevamo - in forza dello sguardo prospettico o della condizione corporea dello sguardo." *Ibid.*, p. 21.

<sup>17</sup> "La stessa diversità anatomica e quella delle funzioni corporee non andranno, allora, intese come costitutive di mere differenze sessuali: in quanto sono umane, in quanto sono attraversate da una corrente intenzionale, sono anche a loro volta costitutive di differenti disposizioni intenzionali." *Ibid.*, p. 25.

that the way of being of women: rounder, softer, protective, waiting, etc. tells as much about the essence (Wesen) of the feminine as do the classic characteristics of man: harder, stronger, goal-oriented, conquering, unquiet. These are what he calls the "ontological determinations of femininity and masculinity according to the body and the psyche."<sup>18</sup> We have seen with Badinter that these characteristics can vary in different cultures, periods of history and so on. For this reason, we have not wanted to state any of these factors as constitutive of masculine or feminine identity.

The sexes are ontologically so relative to each other, that each receives his/her meaning and being from the other so that the real meaning of the "Androgyn" only in this way has a sense: only man and woman together can be called *der Mensch*.<sup>19</sup>

Masculine without feminine, logically speaking, are unthinkable, a bit like father/mother without son/daughter, although this does not mean that they are totally complementary. It is more that one becomes itself, refining its definition, in contrast with the other.

The concept of asymmetry I have tried to express implies uniqueness. The relationship and difference between men and women is constituted by each

individual's uniqueness, although they can still be divided into two groups: men and women. The fact that each is unique does not mean that they have nothing in common. This would take us back to solipsism.

Azzaro states that if Christian civilization has recognized and guaranteed that every human being has a personal identity and if genetic investigations have concluded that every human being has a determined and specific biological identity, together they constitute a unique structure.

Our thesis consists of maintaining rationally that both of these [personal and biological identities] cannot but constitute a unique ontic nucleus which is the foundation of any possible psycho-physical development, which depends on it and not vice versa: and it is in this that [man's] absolute dignity exists, which makes a person out of the human being.<sup>20</sup>

Azzaro defines the set of personal and biological identities which constitute an inseparable unity as that "ontic nucleus" of the human person, because it exists

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18 "ontologische Bestimmung des Weiblichen, bzw. Männlichen gemäß Körper und Psyche" SÁNCHEZ DE MURILLO, José. "Vom Wesen des Weiblichen," p. 91.

19 *Ibid*, p. 93.

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20 "La nostra tesi consiste nel sostenere razionalmente che le due non possono che costituire un unico nucleo ontico, il quale sta a fondamento di ogni possibile sviluppo psico-fisico, che da esso dipende, e non viceversa: ed in ciò consiste la sua assoluta dignità, che fa dell'essere umano una persona." AZZARO PULVIRENTI, Rosalia. "Fondazione teoretica di un nucleo ontico della persona umana," *Rivista rosminiana di filosofia e di cultura*, 1992 (86), n.3, 233-254, p. 233.

as a singular entity from the moment of conception until death. This view of the set-up not only has important consequences in bioethics, but also speaks in favor of the identity and difference of the sexes with their common dignity.

If sexuality, as Jacobson suggests, is an “atmosphere of existence” which adds depth and meaning to one’s personal experience, and a means of expression, in such a way that it plays an important role in the formation of symbols, it would seem that sexuality has a determinant part to play in our intentionality. Consciousness, which seems to be influenced by sexuality, necessarily has bodily limitations; these limitations are, in turn, essential elements of sexuality and indicate that human existence is social and communal.<sup>21</sup>

The horizon of man’s life, then, is not relative to his body, because he is a subject, and thanks to this fact, he can take distance from his body and from his world. Gender is a unique manifestation of our sex, which transcends the body and can take distance from society, while it owes all of its existence to both.

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## SEX – GENDER OR BODY – SOUL

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Human embodiment communicates meaning and is always implicit in every relationship. All our expression and

realization derive from it: love, masculinity, femininity, human activity, openness to society, personal relation with God, and much more. If embodiment necessarily implies a sex, then what the body communicates should imply, along with the message, a gender.

If one can use the Scholastic model of matter and form to clarify the relationship between body and soul, let us see if it also holds for the distinction between sex and gender.

Considering matter, in this case, as a specific sex (male or female), it is the condition which makes a specific gender, the form (masculine or feminine), possible. That which is imposed by matter (a sex) not only conditions the possibility of the form (the resulting gender), but depending on the matter to begin with (*causa materialis*), the outcome of the form will be different. According to Scholastics, matter and form cannot be separated in composite beings, but they can be distinguished for a better understanding of the whole.

Composite beings are made up of both matter and form, whereby it is the form (act) that perfects the matter (potency). If matter and form are predicated by analogy as sex and gender within the sexed being, the question is how much each one determines the other and whether extraneous influences, such as society, make a difference to the final composite. Sex and gender are different but inseparable and certainly not disasociable.

Let us continue to use the classic

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21 JACOBSON, P. “The return of Alcibiades: An approach to the meaning of human sexuality through the works of Freud and Merleau-Ponty.” *Philosophy Today*, 1978 (22), 89-98, p. 97.

equation of matter and form by analogy, whereby matter is not to be understood as *materia prima* but in its particular distinction from form. When we speak of matter and form as different, their distinction does not lie in different essences but in their essential differences of purpose when constituting a thing. In the case of human beings, the individual matter is unique but the *type* can vary in two ways, masculine or feminine. The resulting form is also unique, but conditioned in its possibilities by matter. Man and woman do not result in being two separate species, which is why we can speak of *homo* in general terms, with general attributes, such as *sapiens*, *faber* or *ridens*.

Seen in this way, we can affirm that gender *is* socially constructed, that the soul or form should never be considered something static, but can perfect itself, by the very fact of being embodied and therefore social. In fact, it cannot be any other way. A “gender-less” society, then, seems impossible; it would be a soul-less society.

If the sexed being is to be seen as a dynamic living being, we can apply Aristotle’s theory of the four causes to his/her integral constitution. In the *material* cause we can recognize the body, including its sex, which remains constant and permitting personal identity (like the marble of Aristotle’s statue); in the *formal* cause which is the soul, one can possibly recognize the gender of that person. This seemingly static combination

is then driven to change and individual variation due to and depending on the *efficient* cause, which is not only the social input but also the inner changes and genetic combination (or as Wojtyła terms it, “what happens in him/her”). The *final* cause which indicates the proper direction of a being’s perfection and fulfillment is already insinuated in the other three causes and can be seen in the abstract sense as masculinity or femininity. The true perfection of a being cannot be fulfilled, and should not even presume to do so, in something it does not have the tendency to become. The act, and therefore the perfection of a being, is presupposed in its potentiality. There is a two-way influence: while potency (in the matter) limits act (in the form); the form (*determinans*) is what perfects the matter (*determinabile*).

Thus, it is in the human person’s composition of body and soul that the metaphysical difference between man and woman is revealed. The soul, being an immaterial substance, does not need the intervention of matter for it to operate.<sup>22</sup> The body, then, is a condition for understanding, but does not interfere with the soul directly although it needs the cooperation of the perceptive

22 See FORMENT, Eudaldo. “La dignidad de la persona humana como hombre y como mujer,” in *Atti IX Congresso Tomistico Internazionale*, III: Antropologia Tomista, Libreria Editrice Vaticana, (Pont. Accademia di S. Tommaso) Città del Vaticano 1991, 149-161, p. 154 (See Aquinas, *Summa Theologiae*, I, q. 75, a.2.).

forces. If indeed the soul is the *form* of the body, the differentiation of the sexes should in some way already exist in their form – with its higher degree of perfection – and not only in the matter. It would seem then, that although matter is the principle of individuation and contains sexual individuation, Aquinas states that it is only an incidental cause (“*causa ocasional*”) because every soul is individually created by God so that it can inform a certain body<sup>23</sup>.

Each soul is individual and possesses its own characteristics.

Each soul can only find one “match” in a body, having no choice.

If each soul has a certain consonance with the body it “informs”, thus distinguishing itself from others, there must be feminine and masculine souls which inform feminine and masculine bodies. But, these bodies are not the efficient cause of masculinity or femininity. God creates the souls of men and the souls of women, and the body only intervenes incidentally.<sup>24</sup> Masculine and feminine souls, however, are not two different species of the human soul, but two modes of being of the same essence. If the soul is defined as the substantial form, one must accept that the body is, in fact, the “matter” which is correlative to the form. One could say, then, that the sexed body and the gendered soul make up the composition of the unity

of the embodied person.

The great danger in the theoretic distinction of matter and form, body and soul, sex and gender, is the natural tendency to separate them and never unify them again, leaving a gaping dualism and reducing the human integrity to one of its parts.

Man and woman cannot be defined separately. They are co-relative to each other and their relationship is so intricate and dynamic, that they seem to make up an asymmetrical structure.

The horizon of human life cannot be reduced to our mere body; because we are subjects, we can transcend our body and our world. Gender is a unique manifestation of our sex, which goes beyond the body and surpasses social surroundings, while it owes all of its existence to both.

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<sup>23</sup> *Ibid*, p. 156.

<sup>24</sup> *Ibid*, p. 157.



# New Family Models

Joseph Hagan

# N

*In all human civilizations, the family, born from heterosexual and monogamous marriage, presents itself as the basic cell of society. Obviously, the natural institution of the family gives rise to various forms of organization depending on the times or places. Nevertheless, from the patriarchal family to the nuclear family, we always find the same fundamental reality. In this concrete reality which is the family, men and women reciprocally receive each other, they edify one another, they love each other and transmit life. It is with an abuse of language that today, some governmental, international or private organizations, use the expression "new family models". In this context, the word "family" is used to designate unions of persons of the same sex, which were already known in ancient times, but that no society of that period ever wanted to qualify as a "family". The abuse of language does not limit itself to this. The so-called ideologies claim for these "new family models" recognition by the public authorities and a similar legal status to the one which the family traditionally enjoys. They go so far as to claim, for these would-be new family models, the right to adoption. It is therefore indispensable to show that, in the expression "new family models", the word "family" is completely out of place and the way in which it is used is false. (↗ Enlarged Family; Single Parent Family; Family, Nature and Person; Recomposed Family; Traditional Family; De Facto Unions)*

"New Family Models" refers to a variety of arrangements, stemming mostly from the impact of modern technology and the related dominance of utilitarianism and relativism in the realm of moral discourse.

These arrangements include, actually or potentially:

1. "free union" between a man and a woman that, with the assistance of various contraceptives, have no procreative intention.

2. "free union" between members

of the same gender who subsequently seek to adopt children or, with the assistance of artificial insemination, *in vitro* fertilization or "surrogate motherhood," have children of their own.

3. "same sex marriages," reinforced by civil law, whose partners subsequently seek to adopt children or, with the assistance of artificial insemination, *in vitro* fertilization or "surrogate motherhood," have children of their own.

4. "single parent families" subsequently seek to adopt children or, with

the assistance of artificial insemination, *in vitro* fertilization or “surrogate motherhood,” have children of their own.

5. Families, either as normatively understood, or in any of the arrangements described above, that include cloned or “genetically engineered” human persons.

6. Families, normatively understood, for whom abortion is available as a form of birth control.

7. Families, either normatively understood or in any of the arrangements described above, for whom euthanasia or assisted suicide is available as a form of eliminating one of its members whose life is judged to be burdensome or useless.

The term “new family models” obviously intends to convince people that these arrangements should be understood as morally acceptable and on a par with, if not a substitute for, the normative notion of family, namely, a man and a woman who, as permanently committed to one another as husband and wife, are open to the gift of children in their marital relations, and who, when blessed with children as a result of their carrying out their sacred marital mission of procreation, raise these children physically, morally, and spiritually.

Adopting the euphemism in one’s discourse would lead precisely to the ambiguity and relativism desired by the euphemism’s proponents. Such ambiguity and moral relativism, they think, is necessary to establish a consensus in favor of the euphemism, and, more im-

portantly, to the acceptance of the arrangements, described above, to which the euphemism points.

More seriously, acceptance of these arrangements would be morally evil, not only in and of itself, but also because of the lethal harm it would inflict on the family normatively understood. The harm inflicted by contraception, already predicted by Pope Paul VI in *Humanae Vitae*, is easily both observed and documented in terms of the correlative rise in divorce rates throughout the world, the correlative rise in the number of abortions, and the recently emerging evidence, staunchly resisted by the euphemism’s proponents, of the serious medical side effects of contraception, including breast cancer. The deliberate rupture, by contraception, of the unitive and procreative meanings of the marital act, has fueled modern society’s assault upon the dignity of women, either by reducing them to the object of male predatory tendencies or by inflicting suffering on women by denying their sexual experience’s span from conception, through gestation, to giving birth, to breast feeding. Moreover, contraception has encouraged an “adolescent” ignorance, even within the medical community, but also among men and women in general, about the inner workings of fertility within the woman.

Contraception’s rupture of the unitive and procreative meanings of the marital act is truly the key to all the



other new “arrangements” described above. For once unitive meaning’s separation from the procreative meaning is adopted:

1. “free unions,” both between men and women and between members of the same gender, become more logically arguable, even though these “arrangements” directly violate both the permanent nature of marriage, the complementarity of masculinity and femininity, and the indispensability of both of these for the raising of children.

2. *In vitro* fertilization becomes more logically arguable, even though this technique violates the right of the child to be conceived and borne in his mother’s womb as a result of the marital love, body and soul, between husband and wife; and even though this technique violates husband’s and wife’s sacred mission of procreation with their bodies and souls.

3. “Same sex marriages” become more logically arguable, even though this “new arrangement” violates the complementarity of masculinity and femininity and deprives children of the God-given design that is indispensable to the moral, psychological, and spiritual well being of children.

4. “Single parent families” become more logically arguable, even though it deprives children of having two parents, a mother and a father, and makes fashionable the idea of “having children” in the way in which one might “have” or “collect” inanimate products, things, or pets.

5. Genetic “engineering” of children becomes more logically arguable, even though this violates the dignity of a child by reducing him or her to a “designed product.”

6. The cloning of human persons becomes more logically arguable, even as, with the emergence of contraception, the term “human reproduction” gradually replaced the term “human procreation” even if the cloning of human persons, in the end, renders the God-given design of the complementarity between masculinity and femininity obsolete, and institutionalizes as a “new arrangement” that which is known as incest.

7. Abortion, euthanasia, and assisted suicide become more logically arguable, for these three “arrangements” illustrate what all these “new arrangements” have in common: a contempt for the created design of nature, and for the moral wisdom contained in that design.

Aptly, therefore, Pope John Paul II labeled this modern contempt for nature the “new Manichaeism.” Like the ancient heresy, Manichaeism, these new arrangements consistently express a dualism between body and soul: a dualism that suggests that the further away soul is from body, the better off soul is. However, unlike the ancient heresy, the “new Manichaeism” also proclaims a contempt for the body, and reduces it to insignificant matter that can be engineered, or disposed of, at will.

Another name for the “new Manichaeism” is “distorted masculinity” that aims to reduce femininity to a mirror image of itself. Distorted masculinity is characteristic of modern technology’s *hubris* in the practice of exerting its power over and manipulating nature rather than listening to nature and learning the moral wisdom in its design. This *hubris* is carried over into the utilitarian mentality that informs the euphemism, “new family models.”

This is why the defense of the dignity of women, especially their “feminine genius,” is indispensable to defending the family against the impostors described above. For it is woman who, by her “genius,” knows uniquely how to recognize other persons as *other* persons. It is woman who teaches humanity the meaning and importance of honor, which is crucial to the family’s defense against the “new Manichaeism” or “distorted masculinity”.

Honor is not equivalent to respecting someone’s rights. As important as they are, rights without honor form an empty shell; they fall like a house of cards, lacking the spirit of honor that can flow between human persons alone. Honor includes justice, which enables each person to recognize respect, and render what is due to other human persons as others. However, justice alone does not and cannot exhaust the wellsprings of human personhood. Ultimately, human persons discover and express themselves fully in the total gift

of self to another, and in the consequent living by the demands of that gift. Thus, honor includes both justice and love.

The fourth of the Ten Commandments says “Honor your father and mother.” If children discover and express their human personhood by honoring their parents, men and women—as husbands and wives—discover and express the hidden treasures of manhood and womanhood in a fatherhood and motherhood that is deserving of honor. Thus, parents must also honor their children by their total gift to each other and to their children. This must include a way of life that deserves to be honored. In fact, in this reciprocal relationship of honor, it is the mother and father who take the initiative, beginning with the marital act of conjugal love, procreation of a new human person from the moment of conception, and the gestation of that new person in the mother’s womb. From the moment of conception, through gestation, to birth, and beyond, the mother must honor her child, even as the child, in an incipient way, honors his or her mother by a trusting dependence on her, by learning her voice, her heartbeat, her moods, and her goings about. In the meantime, the mother draws her husband into this reciprocal relationship of honor and teaches him the fatherhood that is the fullness of his own personhood as well as his participation in his wife’s motherhood. As a result, the personhood of mother and father—the “we” of hus-

band and wife—blossoms into the “we” of family.

Family, rooted first in the fertility and “genius” of woman, and then the nuptial mutual and total self-giving of husband and wife, is the first, irreplaceable, and indispensable school of human personhood and honor. Every authentically human enterprise rests ultimately on this original relationship to mother and father. The life of every nation and of the Church rests on this original relationship. There is no substitute for nature’s design called family, whose meaning we do not invent but discover as objectively true. Anything going by the name of “family” that contradicts this original relationship is an impostor, a lie, and a dishonor to the human person.

Among the Ten Commandments there are only two that are positive precepts. While the eight negative precepts (Thou shalt not...) constitute a “flood” beneath which human behavior becomes less than human, the two positive precepts point to an infinite horizon: “Keep holy the sabbath” and “Honor your father and mother.” One can never exhaust these two precepts; one can never glorify God or honor one’s parents sufficiently; nor, it follows, can parents honor their children sufficiently.

It is noteworthy that these two precepts follow consecutively in the order of the Ten Commandments, for there is an analogy between the worship rendered to God and the honor rendered to par-

ents. The linchpin of this analogy is the profound meaning of the procreation of children. By procreating and educating their children, parents participate in the creative activity and Fatherhood of God, the source of the meaning of human fatherhood and motherhood.

Also noteworthy is the fact that the commandment to honor one’s father and mother is the link between the two tables of the Decalogue. It is in the family that one first learns one’s duties to God and to others. It is the family alone that can properly nurture our nature to grow into the honor of full human personhood.

This truth about our human nature has been further illumined and also transformed by the Incarnate and Resurrected Son of God, Jesus Christ. At a specific point in time, the Son of God was conceived in the womb of Mary by the power of the Holy Spirit, was nurtured in her womb—that is to say, was a fetus, was born and was brought up in a family. The fact that the Son of God underwent the human process of conception, gestation, and birth tells us that there is an eternal significance to human life from conception to natural death. This helps us to see that every human person ought to be honored from the moment of his or her origin, that is, his or her conception. Moreover, through Christ’s suffering, death, and Resurrection, we have been made members of His Body, the Church, by the power of the Holy Spirit. This means that the

family not only images God, but also communicates God to its members as the “domestic church” or the “church in miniature.” Also, in the light of the Resurrected Christ—body and soul—we ought to see more clearly the intimate unity of body and soul, and, therefore, that respect for what is distinctively human calls for respect for everything human. We ought never to treat the human body—even our own—as a mere thing, or as property to be disposed of at will.

In his *Letter to Families*, Pope John Paul says that the family must be the school in which human beings—husbands, wives, mothers and fathers and children—learn to honor each other with wholeness and with a contemplative outlook, that sense of wonder over the gift of life. This honor not only does not inform but also contradicts “new family models,” even as it is indispensable to the defense of the family against impostors of the family.

# New Human Rights

Abelardo Lobato Casado

# N

*Three years after the end of the Second World War the United Nations proceeded to solemnly proclaim the Universal Declaration of Human Rights (1948). The war that had just ended, the document noted, had as its deepest cause the refusal to recognize that all men are born free and with equal dignity, and that all have the same rights beginning with the right to life. In order to prevent these kinds of conflicts, it was a duty to invite all the nations of the world to commit themselves to respecting human rights and to translate the rights proclaimed by putting them into force in national legislation as appropriate. This Declaration entered a rich tradition that considers man capable of discovering, through the use of his reason, that he is the subject of fundamental rights. These rights impose themselves on every person with the splendor of their truth. They are declared and proclaimed; all men are capable of recognizing them and are invited to promote and protect them. The 1948 Declaration intended to found international relations on this solid base. Along with the Charter signed in San Francisco (1945), this document defines the reason for the existence of the UN and assigns its essential mission to it: to work for peace and for development while respecting persons and nations. Actually one notes a tendency to redefine human rights along different lines from those that inspired the 1948 Declaration. Under the influence of a certain pragmatism that is typical of the Anglo-Saxon tradition, it is held that no truths are imposed on man as such. The origin of human rights must be found by searching elsewhere. This is found in consensus. Human rights are thought to have been born through a process at the end of which a majority would define what is just and true. Justice therefore proceeds from the will of the majority. There is no truth as a reference point and no longer rights derived from the nature of man. In the juridical field, the law is the expression of the will of the person who promulgates the norm. The object of legal practice is no longer justice but rather the law. It is in the light of this debate between two radically different concepts of the philosophy of law that the question of "new human rights" is posed today. The debate can be summed up in a very simple question: does the will of the stronger suffice to validate the justice of a law or to legitimate "new rights" like abortion and euthanasia? (↗ Children's Rights and Sexual Violence; Sexual and Reproductive Rights; The Right to Abortion; Discrimination Against Women and CEDAW; Catholics for a Free Choice; Euthanasia; Family and the Rights of Minors; Equal Rights for Men and Women)*

As we cross over the threshold of the third millennium, the daily experience of being a *homo viator* grows more intense with the call to tread step by step on this long path like a true Christian pilgrim. We have, before us, another long period of a *thousand years*! We live the joy of the first moments, and with a certain natural instinct, knowing that we will live forever, call it *our* millennium. We understand it in its totality and include it in our existential project. Between two millennia, we are given the opportune occasion to reflect on what it means to be *Christian wanderers*, to note with the Andalusian poet the unity between the *wanderer* and the *road*, to imitate the poet Zamorano who always *travels light* carrying little. Seated on the side of the road, we can dedicate some moments to shaking the dust off our feet. The century we are leaving behind has habituated us to its fast pace. We are coming out of it while barely noticing a layer of dust that weighs on us as if it were made of lead. For many the dust has penetrated deeply and it will not be easy to free themselves of it. The third millennium calls for fast walkers.

These images prepare us to understand the theme of our reflection: *“the new human rights”*. This phrase is commonly used and has a certain attraction, because at first sight it brings together two fascinating concepts: newness and human rights. Life requires novelty, it is non-repetitive and escapes from the

merely mechanical and that which will return again to the beginning. In life, above all in human and even more in Christian life, newness is constantly imperative: *“Renew yourselves, be converted.”* (Ep 4:24; Mk 1:14). Saint Thomas Aquinas thought that in order to approach the mystery of the Eucharist, everything should be renewed, the heart, the voice, one’s works. The desire for newness stems from the desire for justice. The modern conscience wants all men to possess the rights to which they are entitled as persons. That is the reason speaking about *new human rights* is contemporary and stimulating.

Yet this expression, as with many others that were part of the subculture of the past century, is not as innocent as it appears. It carries hidden within it differences in semantic meaning. It is enough to see how and when it is used. We speak of “new human rights” referring to those who are “different” yet, notwithstanding their “diversity” are struggling to obtain, not only what they think is due to them, but also everything which “normal” people have. It is common to speak of subjects that many want to exclude from all ethical consideration as belonging to an area of *privacy*. The category of these privacy rights is said to encompass the initial and final stages of life. It is used when attempting to supplant the natural transmission and defense of human life. The papal encyclical *Evangelium Vitae* alludes to the perversion of language to describe as

“rights” acts which in reality have always been considered to be “crimes” (*Evangelium vitae*, n. 11).

It is evident that the phrase “new human rights” is ambivalent. In fact, by using it in this manner, it becomes a vehicle for ideas and practices that in reality contradict what they are supposed to mean at first sight. In those cases, the expression is “changed” by being camouflaged to aid its circulation and use in society. The intelligent man does not use it as his own expression. Rather, it is the language imposed on us by the powerful mass media and speaks to us. Seen in this secondary perspective, the contradiction really becomes apparent: it is no longer something “new”, nor is it speaking of authentic human rights. It is a phrase that we can see carries the dust of the decadent culture of the XX century.<sup>1</sup>

This phenomenon of camouflaged ambivalence is repeated in many other expressions. Orwell anticipated it in his novel entitled *1984*, written in 1948. *Big Brother* manipulated language in such a way that it meant the opposite of what was said. Words are signs invented by man, as a “speaking animal” and are meaningful, *signa ad placitum*, as has been said since Aristotle. Words imply a

relationship to a concept and similarly to things. Speaking follows thinking and thought has weight insofar as it becomes an expression of reality, which precedes it. It would be just to tie together these three levels: word, idea and reality. By nature, man tends to do this, but, as he is capable of bringing these levels together, so can he also separate them.

One of the great inventions of man, if not the greatest, is language. One need only think of the marvel every language is, and the many languages that exist, as well as the almost infinite number of dead languages. There is a linguistic world, a conceptual world, and a real world. The Sophists in Greece already defended their profession by referring to Gorgias, on the inadequacy of a word to a concept, and of the concept to the things signified. Hence the ambivalence of the expression “*new human rights*” finds its justification “in the animal that possesses the word” and makes the sign into a subjective instrument. This expression is not the only one in use. Some make use similar phrases such as “*a new focus on human rights*.” Instead of calling things by their names, saying bread for bread and wine for wine, they invent expressions that do not offend the ear, such as “*interruption of pregnancy*” which really means “*abortion*”, but sounds different; or take the word “*euthanasia*” which is a “*fine phrase*” which really means a “*bad death*”.

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1 Cf. J.M. KLINK, “El enfoque de los nuevos derechos humanos,” in PONTIFICAL COUNCIL FOR THE FAMILY, *Familia y vida. Actas del III Encuentro de políticos y legisladores de América*, Edizioni Rinnovamento nello Spirito Santo, Roma 2000, 67-81.

One of the most recent similar expressions is the “*morning after pill*”, meaning not only a contraceptive but a true abortifacient. When speaking of a “couple”, or of a “significant other”, there is an attempt to appropriate the rights of the family. There is no doubt that man, when using language as an instrument of communication, can use it for the purpose of manipulation. The same word can be a balm or a poison. The word is a sign with infinite extension: a definite word can also exist more penetrating than a two-edged sword. There are words of eternal life, dense words, also words that can kill and casual words. One must really say that the XX century culture paid more attention to words and language than to concepts and realities. By setting aside what is, and putting thought in the penumbras, our culture has opted for speaking, *homo loquens*, language, because it is something quantifiable and verifiable through experience. Heidegger can affirm that it is not the singular subject that speaks but the language that speaks in us.<sup>2</sup>

Our problem is to unmask the expression “new human rights”, and to denounce the abuse that is made of this phrase today because, in truth, the way of understanding it by those who placed it in

circulation denies the three things that at first sight seem to be affirmed, newness, rights and a human content. To speak of *human rights* is easy, but to do so in a proper way is not that common. In fact, abuses are committed on opposite sides. At the time of the rule of the generals, a UN delegation came to Buenos Aires to study the human rights situation. The delegation members found the city covered with posters with this expression: *Here we are all rights and we are all humans!* Reality was sadly quite different because many “injustices” were being committed and the black list of the “disappeared” continued to grow. In 1975 the two existing political blocks confronted each other in Helsinki. While for some only social rights existed granted by the omnipotent civil state, for others, they only possessed them when it was recognized they belonged to the subjects, who are prior to the State. There was a complete breakdown. Thankfully, since this event, the Holy See has made the cause of human rights its own as something inherent to the Gospel.

Currently all constitutions speak of human rights as the basis for democracies. How they are respected is another matter. The latest Peruvian constitution devoted a great deal of space to human rights. It did not take many years to show that this was not worth the paper it was written on. The real human rights situation is described by Amnesty International by saying we know rights by their absence or their opposites, and through

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2 Cf. A. Lobato (ed) *Homo Loquens. Uomo e Linguaggio* Edizioni Studio Domenicano, Bologna 1989.



violations of these committed with impunity in many nations.<sup>3</sup>

Our analysis is limited to the generic meaning of the expression, its right use and the actual abuses of it, leaving to one side the application of each one of the wrongly called "new human rights". The development of the theme can come on three levels of the same problem. The first step presents the core implication in this expression of *human rights* as a *sign of the times*, one of the great achievements of the XX century. The second step considers rights as a cultural reality which is constantly developing, which need renewal. In fact, after 50 years separating us from their worldwide diffusion, it is quite right to be concerned about promoting them anew. *Newness* is implicit in the same reality of human rights which are vital but also fall under the ancient dilemma: *aut crescit, aut moritur!* A third and last step is distinguishing between legitimate desires and the so-called human rights that some try to promote by the manipulation of language. Obviously this is a very important question. Human rights have great cultural repercussions because they are a cornerstone when it comes to the promotion of man.

It is instructive to see the behavior of Christian thinking faced with this cultural reality: it has gone from ana-

thema to a warm embrace, from the moment when it reflected on the fact that man is the first and principle way through which the Church moves. John Paul II has proposed, from the start of his magisterium, the promotion and defense of man, and he found a key in human rights, taking into account not only the letter but especially the spirit of them.<sup>4</sup>

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## HUMAN RIGHTS, SIGNS OF THE TIMES

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The Dominican theologian M.-D. Chenu, with his ability to penetrate to the historical reality, applied the Gospel expression "*the signs of the times*" to some phenomena that are relevant to contemporary history and culture.<sup>5</sup> The expression was popular and became widespread thanks to John XXIII. *Human rights* have been designated from time to time as one of these signs of the times capable of characterizing all the long period from the end of World War II to the present day. During this long half century, there is no other phenomenon as relevant and with so many consequences. Thanks to its growing ascendancy it has taken on meanings, and is one of these words which Paul

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3 CF. L. CASCO-FORTÍN, "Los derechos humanos universales y los pretendidos", in *Familia y vida*, 89-99.

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4 CF. R. ETCHEGARAY, "Culture Chrétienne et droits de l'homme: du rejet à l'engagement", in *Christianity and Human Rights*, Academia, Louvain La Neuve 1991, 3-15.

5 M.-D. CHENU, "Les signes du temps": *Nouvelle Revue de Théologie* (1965).

Valéry said sings more than speaks and poses more questions than answers. This sign of contemporary times is apt to express one of the dimensions of man, his constant struggle for justice, and the desire for a world that measures up to human dignity. The human being is a “man of desires”, who appreciates the value of freedom more when imprisoned in jail. The hunger and thirst for human rights, consciousness of his dignity, have followed along throughout history, but it was precisely the experience of the worst violations of this dignity that have led to a preoccupation with it. It is sad but true that we do not appreciate the true value of sight, having two eyes for a lifetime, until we lose one or both of them. The same thing happens with freedom. Prisoners appreciate its value while they are in jail and dream of what they could do if allowed to leave.

This observation of human limitations is corroborated in the appreciation of rights, because one has to say that the current consciousness of human rights grew from the ruins of Europe reduced to dust in two world wars. The *Universal Declaration of Human Rights*, made by the United Nations in Paris on December 10, 1948, is an evident expression of the new consciousness that the total collapse of values brought out in man. The situation of the prodigal son in the parable of Luke when he reflected on his situation, dying of hunger and covered with sores in a “far country”, so different from what he had before in his

father’s house with his brothers and servants (Lk 15) was repeated on a world scale. In the age of the *atom bomb*, the big question is not if God exists, since “the death of God” is taken for granted, but rather if man truly exists. Even in the case that he exists, the situation in Europe after the war left him in a situation of real agony and threatened by extinction more than any other species. Again man became a wolf for man, more cruel than ever. Technology gave him so much destructive power that he has come to believe himself a god who can transform everything according to his whim led along by his desire for power and selfishness. In this situation of total collapse he realizes that he must change paths in order to live together and save humanity. The slow process of change begins with recovering the consciousness of the value of the human being, his dignity and his rights.

The *sign of the times* is that man demands the right to be man, and for this must receive everything necessary in order to live an authentically human life. The dignity of the personal self is the basis for human rights. Article 1 indicates the change of direction imposed on history: “All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood”.

The UN document is a key event in history. It is only a *declaration*, the proposal of an ideal toward which one must

tend. Its elaboration was difficult, its basis was not very secure and its approval was full of compromises. In the course of creating it, three great obstacles on which there was no possible agreement had to be sorted out: the relationship of man to God, the absolute basis of rights and the limits of these rights, and their relationship to duties. These three topics reflect the post-modern cultural reality and are like the other face of the *Declaration*. These limitations of the document are not accidental, but are more like a genetic deficiency, something general and basic. The countries that signed agreed with what the *Declaration* said, but they could not be asked about the basis for these rights. René Cassin, however, the coordinator of the writing team which included Jacques Maritain, proposed a positive reading of the document, as if it were the façade of a Greek temple: a platform of considerations that are the stairway to enter, four great pillars of rights, individual, familial, social and political, and a pediment above that unifying the 30 articles in a vision of humanity as a family of peoples brought together to live an authentic freedom in justice and peace. The flight forward that had occurred, the welcoming of each man for his humanity, the equality of nature and weight of his rights that preceded those of the State, were the only security of salvation and of the possibility of a very urgent process of humanization.<sup>6</sup>

The document was expected to have big repercussions, and was unveiled in its newness and cultural weight only with the passing of time. Something analogous happened with the discovery of the New World in 1492. Many years had to pass before this exploit was appreciated as the most important event since the incarnation of the Word. The signs of the times require special attention, and for this reason escape the understanding of most mortals. When the document is analyzed from the distance of 50 years, one realizes it is at the center of a cultural process which radically affects Western history and culture. It is something hoped for, searched for but never gained to this degree.

One can distinguish two different stages in this long road of promoting justice in the world: leading up to it and leading from it. Before it, no document had managed to cover all men and be accepted with a universal scope. But this novelty was only possible because of the efforts and conquests of the past. Now we see that human rights have an undeniable Christian origin that is inherent in the Gospel. Hegel had a sure intuition in giving eloquent testimony that freedom does not come to man through any of the ancient cultures, not Greece or Rome, to make possible civil liberties. The truth is that freedom belongs to each man, not because of his city of birth or the State to which he

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6 R. CASSIN, *Les droits de l'homme*, Paris,

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1974, 330-331.

belongs, because the mere fact of being human only arrives in the culture with the Gospel. Jesus Christ reveals man to himself: his dignity, his conscience and interiority. All men recognize in themselves the *imago Dei*. This Christian idea is the yeast and fermentation for all promotion of man in a holistic way which is at the origin of human rights. The process of consciousness of his own dignity emerging was slow but Christian. Saint Leo the Great invites us to wake up from this unconscious dream with his famous watchman's cry on human dignity in the Christian: *Agnosce, o christiane, dignitatem tuam!* "The seed is already sown in the furrow and grows even while the sower sleeps."<sup>7</sup>

In antiquity and the Middle Ages, we find the first clues to the humanizing process with a universal scope. The most salient application of this doctrine is in the Christian anthropology of Thomas Aquinas, and reaches its most advanced realization in his disciples of the XVI century. Only at that time did man know fully and in its roundness the planet on which he lives. And only then was the existential question about man put in its fullness, such that the question about man referred to all men, males and females, white or black, Indian or Spanish. Christian revelation had the answer, even though it was not applied

in the cultural reality. In the light of the Thomistic doctrine, which proposes a basis for human rights in the Natural Law, defending the natural right of all peoples and proclaiming that grace does not destroy but perfects nature, it is possible to achieve the project of promoting man in a holistic way. The Christian presupposes man and transforms him from the inside. In order to become Christian, the freedom to embrace the proposal of faith in Jesus Christ is required. The school of Francisco de Vitoria in Salamanca, the valiant defense of the Indians in the Caribbean by the Spanish Dominicans of Hispaniola, the voice of Pedro de Córdoba and Antón Montesinos, the writings of Fray Bartolomé de las Casas in favor of the human rights of the Indians, of their peoples and cultures, the work of evangelizing the New World, are preambles to the new Christian consciousness in which emerge the dignity and the rights of every man. Vitoria postulates a universal forum of peoples that could legislate for humanity, the *communitatis orbis*, and could develop the *rights of peoples*.<sup>8</sup>

The first legal proclamations of human rights are found through the XVIII century in the formation of the American countries. The French Revolution was made in the name of human rights,

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7 Cf. LOBATO, *La dignidad del hombre y los derechos humanos*, Studium, Madrid 1982, 71-106.

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8 Cf. A. LOBATO, "El triple legado antropológico del tomismo del s. XVI," in *Dignidad personal, comunidad human y orden jurídico*, Ed. Balmes, Barcelona 1994, 47-72.

liberty, fraternity and equality—three Christian ideas which in this revolution, as Chesterton said, became crazy. The Russian Revolution led, with unheard of violence, to the proclamation of the rights of the proletariat, a class with rights at the cost of personal rights. Really, the *Universal Declaration* of Paris, despite not being effectively imposed, is made possible thanks to the past which prepared the way. At the same time that it surpassed in extent and content the previous stages of the struggle for justice, with it a new stage begins. John XIII called it a great step for humanity and John Paul II did not hesitate to enlarge the image to a “milestone” on the road of humanity. If the path going *towards* the *Declaration* was slow and tortuous, the itinerary *following* it has accelerated and been very fruitful. Human rights have become a key point of the constitutions of all nations. Regional declarations have followed the *Universal Declaration*. The one in Europe, with the Council of Europe, the European Commission and the European Court of Human Rights, became the most advanced organism of this kind. Human rights have been the object of constant development, not only in the abstract, but also in the different subjects of rights: women, children, foreigners, the elderly, prisoners, the sick. Social, cultural, civil, economic, and environmental rights have also received attention. As time passes from the point of departure, we can notice that attention is being fixed on different

areas and this multiplication of objects runs the risk of losing the nucleus that sustains rights, which is the human person and his dignity.

A consideration that merits special attention is the conduct of the Catholic Church, which went from anathemas to promotion in this area. At first, when the French Revolution carried persecution of the Church to its limit in all the Napoleonic conquests, she called the promotion of human rights as nothing less than an *opus diaboli*. The truth of this expression was in the horrendous crimes against humanity committed in the name of the Revolution. Throughout the XIX century, the French Revolution’s perspective on human rights was the dominant concept. It only considered the individual middle class male and citizen. One has to arrive at the end of the century to find a new path in the valiant documents of Leo XIII, beginning with *Rerum Novarum*. With Pius XII, in the middle of the din of the war, the Magisterium speaks of human rights and proposes for the first time the equal dignity of men and women. Pius XII did not agree to sign the UN *Declaration* because it did not mention God. Fifteen years after the document, John XXIII in 1963’s *Pacem in Terris* expressed for the first time acceptance of the *Declaration*, and corrected its deficiencies from a religious and transcendent foundation, affirming the absolute value of the person, establishing a hierarchy of rights and paying more atten-

tion to duties. This line was reflected in Vatican II, which dedicated a great deal of attention to human rights, as did Paul VI who, in his visit to the UN, recognized their great importance.<sup>9</sup>

John Paul II went further than the others in this same line of acceptance. He is the *defensor hominis*, who from the start of his pontificate has asked himself the question concerning human rights and committed himself to their promotion, defending the duty of international organisms to intervene where human rights are being violated. His last cry at the beginning of the third millennium is, "by saving man we save ourselves". No one has raised their voice in defense of the voiceless as much as him accusing the violators of human rights. The voice of the Magisterium of the Catholic Church has resounded in all the world in defense of man and his dignity, reflected in his rights.<sup>10</sup>

## THE DEVELOPMENT OF HUMAN RIGHTS

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Human rights follow the same fortunes as man. This is because rights show something which St. Augustine called "the abyss" of man. Man is the subject of rights because of his condition as a being with personhood, throu-

gh his connatural dignity. In order to know human rights in depth, one has to return often to the nucleus from which they burst forth, the mystery of a being with personhood, where being is found, the act and its relationships. Human rights do not come from without. They are not given to man by another man or a human institution like the State. They are something that belong to man before any human institution existed. The declarations, like the one from Paris, are a way to unveil the human being, but do nothing except to propose what man requires due to his very condition. In a similar way science, when it is truly authentic, limits itself to reading the reality it examines, excluding all projections from the subject; rights are unveiled, declared so as to be enforced and promoted later. The first step of the encounter generally contains within it the implication of the next steps all the way to completion. This is why one speaks of the *achievement* of rights, of the *struggle for freedom and justice*.

Thomas Aquinas indicates a path with safeguards for the encounter. This path begins by observing the profound *inclinations* of human nature, like self-preservation, the tendency to propagate ourselves, the hunger and thirst for transcendence that is in all humans.<sup>11</sup> There is in us a dynamic directed toward the development of nature. All declarations

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9 Cf. PH. DE LA CHAPELLE, *La Déclaration universelle des droits de l'homme et le Catholicisme*, Paris 1967.

10 Cf. Jean Paul II *et les droits de l'homme*, Fribourg (Switzerland) 1980.

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11 THOMAS AQUINAS, *STh* I-II, q. 94, a. 2.

of rights, by their similar nature, having to base themselves on signs, are limited and must be open. Therefore it is normal that there should be an unceasing development, typical of all living things. The success of the promotion depends on the connection with the personal being. Rights cannot exist except in the horizon of what is just, due, and right. In the past one only paid attention to two points of support, the just goal and legal justice, and one spoke of natural and legal rights. There was a certain oscillation between the *ius-naturalismo* and the *ius-positivismo*. Now a third way has opened, the subjective path, which takes into account the faculties and freedoms of a community. In this context, a legal triangle presents itself to indicate that its three sides can help with the development of human rights: *natural and objective rights* are placed at the angle on the left at the base, the angle on the right has *subjective rights or faculties*, and the top vertical angle that closes the triangle is reserved for *legal rights*. Certainly this is not an *equilateral* triangle, because the rights that emanate from it do not have the same reach or extent when one speaks of universality and the power to impose these rights. The law as such cannot identify itself with the just, because it is only a certain part of it. And the liberties or faculties of the subject cannot be applied to all the inhabitants of the planet to the same degree, given that the possibilities among existing communities are not equal. What

is certain is that the development of human rights goes on three fronts and that it is a constant list of the many rights of human subjects.

The development can take place in two complementary directions, from the inside, as if it were a tree with roots that needed to go deeper in the soil that sustains it and, from the outside, when new subjects and modes of application are found. In both cases one bumps into new rights which must be enumerated again. In reality, both paths have been taken during the 50 years since the proclamation of the UN.

The first significant impetus was given by the 1963 encyclical *Pacem in Terris* of John XIII. With this courtesy gesture, which served to cause the absence of the Holy See's signature on the *Declaration* to be forgotten, the valiant contribution to the promotion of man by the document was recognized. The encyclical, in taking steps down the same road, tried to find the valid basis for the hierarchy of rights, and took into account the presence of women in public life as a *sign of the times* and made a new enumeration of human rights: the right to existence and a dignified life, the rights that are relative to moral and cultural values, the right to religious liberty, the family, and economic and political rights. The achievement of peace demands the development of human rights because they are a fruit of justice.<sup>12</sup>

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12 Cf. A. LOBATO, "L'Eglise et les droits

Following the pontifical acceptance of the *Declaration*, the promotion of the development of human rights has constantly grown. It is enough to follow the concrete *iter* of the infinite enumerations of human rights, the winding road covered with thorns in the promotion of women, the attention paid to the child or the defense that Vatican II makes of religious liberty in the declaration *Dignitatis Humanae*. One of the most significant documents has been the *Charter of the Rights of the Family*, published by John Paul II in 1983. The application of human rights has concerned all fields, from the most debated area of the status and rights of the embryo or the unborn child, to the rights of the sick, the elderly, the immigrant or the environment.

The road of its development has only begun. In the midst of praising its work and looking back favorably at the past during the celebrations of the 50 year anniversary of the UN or the *Universal Declaration*, John Paul II, who has completely taken on the cause of human rights in an exemplary way, raised his voice at the UN headquarters in 1995 to denounce radical deficiencies. Until now, the promotion of human rights was centered on the individual, something which K. Marx denounced in his time: "None of the so-called human rights goes beyond the selfish man, the

man as member of bourgeois society."<sup>13</sup> This is not sufficient or just since in reality the individual human is a kind of abstraction. Man is first of all a family being, a being who is born and grows up in a concrete culture, in a people who have a language and way of being. The insufficiency of this limitation observed until now is shown by the wars that have been fought between peoples and cultures, the violence of man against man through the length and breadth of these 50 years. Faced with this situation which calls out for an urgent healing, the future of the institution, one of whose ends is peace between peoples and development of human rights, must be to find a way to promote in the next 50 years the rights of peoples so that the UN itself will become the place for the families of peoples.<sup>14</sup>

There is not the slightest doubt of the necessity to continue working along the three open paths, the path of justice, of freedoms and of laws, in order to achieve new human rights. The law and human regulations always follow life, but they follow in their footsteps because they are at their service. "Man was not made for the Sabbath," repeated the Lord (Mk 3, 5).

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13 K. MARX, *Manoscritti economici-filosofici del 1844*, in *Scritti filosofici giovanili*, la Nuova Italia, 1990, 194.

14 Cf. JOHN PAUL II, Speech to the UN, 5 October 1995; Cf. A. LOBATO, "Nuevos horizontes de los derechos humanos", in *Angelicum* 73 (1996), 185-216.

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de l'homme", in *Les médecins et les droits de l'homme*, Strasbourg 1987, 5-17.



## DISCERNMENT BETWEEN RIGHTS WITH A BASIS AND FALSE RIGHTS

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If the consciousness of the second half of the XX century considers human rights as one of the most characteristic signs of the times, and if that consciousness opens three paths for the achievement of those rights, it is normal that rights will proliferate, and there should be many who are passionately in favor of the new rights. If the cause of man is being determined today in human rights, no one can stop being interested in them: *res tua agitur!* Among the many things that occupy man, none is as important as man himself. It is clear that, in the question of new human rights not all that glitters is gold. In order to orient ourselves in this forest we need sound criteria of discernment. We know of the current misleading language used to pass off as innate, inalienable and universal human rights that which is really only rhetoric from the marketplace.

The three sources from which rights are derived do not offer the same guarantees. It is clear that not just any law is sufficient, even in the case where it comes from competent organisms, to form the basis for an authentic right, as do those who peacefully accept the Rousseauian concept of the law as the expression of the will of the majority. If the law is not just, it is not law but a corruption of the law and cannot bind

the conscience.<sup>15</sup> But in fact we have laws in favor of abortion and euthanasia coming from parliaments. We also cannot accept the validity of the whims of individuals who, doing as they please, decide on their own sex, join together in homosexual couples and seek to enjoy the rights that society grants to the institution of the family founded on the marriage of a man and a woman which is stable and indissoluble and has a public character to it. Their decision goes against nature and is an aberration. Because of this risk of going against the nature of things when one proceeds from these two open paths to human rights, there is a whole area of law from the best traditions that confronts the indiscriminate promotion of human rights. When one is dealing with “new rights” one must use discernment.<sup>16</sup>

The norm must be taken from the same nucleus of human rights. One gives to man everything that he requires from his very condition as Vatican II says in *Guadium et spes* (n. 26). Human rights belong to man as such, that is to say, to man as a rational animal. The good of man demands conformity with its ontological condition: *secundum*

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15 THOMAS AQUINAS, *STh* I-II, q. 95, a. 2.

16 Cf. E. CANTERO, *El concepto de derecho en la doctrina española* (1939-1998). *La originalidad de Juan Vallet de Goytisolo*, Fundación Matritense del Notariado, Madrid 2000, 571-584.

*rationem esse* says Thomas Aquinas.<sup>17</sup> His destiny is not well formulated by the Stoic's *sequere naturam*, but the formula should rather be *sequere rationem, sequere Christum!*

Three things are implied in authentic human rights: the dignity of the personal self, a foundation in the moral law of men, and the condition of humans as living in community.

First of all, the personal self, which is always a concrete existing person, subsists and has a spiritual nature. This subject has the maximum dignity: that of being and of the mode of being. In this is rooted what is most noble in man, what is described as the *imago Dei*. One human person has more value than all the material world in which he lives. Neither his origin nor his destiny depend totally on another being or human institution. He only depends totally on God, Who created him and gave him his seal and destiny. From here arise the most fundamental rights, that of life from the first moment, the dignity inherent in each human subject which can never be left aside, the freedom of the relationship with God through its own constitutive tie, the vocation to transcendental values without which there is no development of the deepest part of the human being, whose vocation is

to truth, goodness and beauty. There cannot be rights which reduce man to a thing, that oppose life or personal dignity or which oppress other men.<sup>18</sup>

The second condition for the authenticity of rights is one which gives an absolute basis for his work and implies a conception of the whole man. The human being is singular. He is in the world and belongs to the world in all his dimensions, material, living, space-time, but at the same time he transcends the world due to his conditions of freedom and intelligence. There is in man an interior life. He not only knows and loves, can not only leave the world and transcend it, but he can enter into himself and reflect. There is in each man a kind of sanctuary, a place of transcendence and relationship with the Absolute. Intelligent and conscious, free and master of his actions and because of this of himself, he is obligated to follow the law of man: the imperative that resounds in his conscience, the discernment between good and evil which proclaims the obligation not to do evil. This interior norm is the absolute basis for action. Man, as Paul says, cannot act against his conscience without sinning (Rm 14,23), and it is not enough to allow ourselves to be guided by conscience, since we must conform our consciences to the objective order. Because of this, there are no authentic hu-

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17 THOMAS AQUINAS, *STh*, II-II, q. 47, a. 6; Cf. L. ELDERS, *Bonum animae humanae est secundum rationem esse*, in RTL 4 (1999), 75-90.

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18 Cf. J. CASTÁN TOBEÑAS, *Los derechos del hombre*, Madrid 1985, 38.

man rights where the moral law is excluded or violated. The moral law has value in both the public and private spheres. In this field, the problems of human rights are more acute in the sexual sphere. Freudian pansexualism tried to leap over all the moral law's dictates. Thus, extreme feminists have arisen who go against the division of the sexes, trying to reduce the differences to a mere cultural phenomenon, a "gender" with different species that can be changed according to the taste of the consumer. Against the rule of the Natural Law are those who lack a sound anthropology and claim that appealing to it is a kind of biological reductionism of man. The Kantian opposition between nature and freedom continues to have weight, but it is a false opposition because, although the concept of the physical nature has changed, the anthropology, which places the essence of man in the union of body and soul, with the soul having the primacy of form, has not changed. To speak rightly about human rights implies a conception of the whole human being. And the recourse to mutilated anthropologies is one of the great errors of contemporary culture. In the demand for "gay" rights, man is reduced to an undifferentiated sexual being.<sup>19</sup>

The third indication for discerning

authentic and false human rights is the one that involves the communitarian dimension of the human being. Already Aristotle rightly mentioned that man begins life in the community of the family, the most appropriate of all for his condition as a personal being. The person is realized in the exercise of his deep and constitutive relations, living together, loving and cooperating. Human rights begin from this family relationship and form the basis for the relations in social life. The modern temptation has been to understand man through what he can produce rather than for what he is. This has given rise to mistaken humanisms. The modern totalitarian systems grew from a false conception of the communitarian condition of man. They began with the Hegelian state as having absolute power over persons. Marxism only admitted the human character of the working class. Nazism only gave rights based on the privilege of one race. There is still a long road to travel in this field of the community of nations which is the UN. In fact it is a society of states and not of peoples. The participation of individuals in ruling is very poor and exploited by the media. Man is a family and a political animal who must cooperate for the common good of his community and the universal community.<sup>20</sup>

Applying these criteria to the new human rights, we can discern in each

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19 Cf. JOHN PAUL II, *Veritatis Splendor*, 42 and 50; Cf. J. DE FINANCE SJ, "La legge morale naturale", in *Veritatis splendor: Commento filosofico-teologico*, San Paolo, Milano 1994, 287-298.

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20 Cf. A. MILLÁN PUELLES, *El de la libertad*, Rialp, Madrid 1995, 280ss.

case if they are authentic or false. There can be no *numerus clausus* in the list of human rights, nor can rights without a proper basis be accepted. The legal and humanizing arena remains open to two complementary tasks that are both urgent and difficult: the elimination of false rights that have been formalized in unjust laws, and the search for and achievement of new fundamental rights for all men. In any case, the big problem of the third millennium is the same task as the one of the prophet Jeremiah, sent to uproot and to plant (Jr 1,10), or what Thomas Aquinas confided to the wise: look for truth and confute error. Human rights arise from an objective foundation, pass into just laws and develop the freedoms of the human subject. When rights have no basis, and even more so if they are new, they become enemies of man. In actuality, the threat of extinction, which was attributed to the *jus utendi y abutendi* of human being itself, more than in many species, is in reality man himself. Because of this, it is necessary to lift our voices with John Paul II and say "Let us save man! Let us save him together!"<sup>21</sup>

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21 JOHN PAUL II, Speech to the Diplomatic Corps, June 2001.

# A New Model for the Welfare State

José Tomás Raga

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*The question of solidarity is usually considered at the synchronic level. From this perspective, we think that we have to express our solidarity with the ones who, in today's society, are ill, weak, unemployed, poor, marginalized etc. In order to put this kind of solidarity into practice, they rely, of course, on the initiative of citizens and associations created by civil society. But today it is evident that the commitment that solidarity requires, not only justifies, but also it makes necessary an ever more decisive intervention by the State. In the name of this solidarity, laws have been promulgated and mutual aid institutions have been founded. In order to respond to these demands of social justice it is necessary, evidently, to have resources at one's disposal. Until a few years ago, these resources were provided by working citizens going through the active phase of their lives. The State intervened by granting tax exemptions and in collecting payments. A part of these were used for redistribution among needy persons: children in school age, the retired, sick persons, the unemployed etc. The institutionalized practice of solidarity was guaranteed by the regular contribution of workers who paid into pension services, insurance and unemployment assistance etc. The decline in fertility, especially in Europe, obliges the State and the public authorities in general to take into account a new dimension of solidarity. As a direct consequence of declining fertility, the ageing of the population leads to an increase in the proportion of elderly persons who are dependent on society. What will be the new face of solidarity in a society in which the population has a totally unbalanced ratio between the age groups? (↗ Birth Control and Demographic Implosion; Demography, Demographic Transition and Demographic policies; Domestic Economy; Family and the Principle of Subsidiarity; Family and Sustainable Development; Demographic Implosion in Europe?)*

Only five years before the publication of Keynes' "The General Theory of Employment, Interest and Money,"<sup>1</sup>

Pius XI warned that "[...] Free competition, however, though justified and quite useful within certain limits, cannot be an adequate controlling principle in economic affairs. This has been abundantly proved by the consequences that have followed from the free rein given to

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<sup>1</sup> See John M. Keynes, "The General Theory of Employment, Interest and Money". McMillan, London, February 1936 (first edition).

these dangerous individualistic ideals... More lofty and noble principles must therefore be sought in order to regulate this supremacy firmly and honestly: to wit, social justice and social charity."<sup>2</sup> With these words, and at a time when humanity was being particularly badly crippled by the Great Depression, Pius XI laid down the foundations for the construction some years later of what we now know as the welfare state.

The welfare state involves the state using its power to modify the free play of market forces, particularly in three areas. First, guaranteeing individuals and families a minimum level of income - one that would allow them to lead a decent life - regardless of the market rate for wages and the market value of their property. Secondly, insuring against those risks that exist throughout one's working and personal life; that is, limiting insecurity that is caused by uncertainty that, could otherwise cause families and individuals to suffer crises and depressions, both economic and psychological. Examples include making provision for the sick, the unemployed, the elderly, the disabled, the widowed or the orphaned. Finally, guaranteeing full access of all citizens, whatever their economic or social circumstances, to those services that are considered essential for a harmonious life in society, as is desirable for a developing community.<sup>3</sup>

The period of approximately one hundred years, between the mid-nineteenth and the mid-twentieth century, was notable for its relative intellectual stability although it was also not free of social upheaval. Throughout the industrialised world—with the exception of those countries that had fallen victim to the Marxist revolution—a balanced view of the economic system arose. While this view recognised the market's superiority in allocating scarce resources, it also saw that the market had defects. Thus, certain objectives did not come within the free market's scope, nor was the free market capable of achieving them. These objectives related to the common good, and they must be satisfied with the same guarantees with which the market provides goods and resources, channelling them towards the satisfaction of needs, in a free and competitive manner.

## **AN HISTORICAL OUTLINE**

Concern for those problems that would eventually lead to the establishment of the welfare state was not new at the end of the nineteenth century, and still less so during the years following the Second World War, as frequent theoretical references to these issues show. In addition, governments attempted occasionally to deal—albeit on a piecemeal basis—with such problems during particularly difficult times.

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2 PIUS XI, *Quadragesimo anno*. 88.

3 A. BRIGGS, "The Welfare State in Historical

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Perspective." *European Journal of Sociology (Archives Européennes de Sociologie)*, 1961 (11)2, p. 228.

In fact, two schools of thought laid down the philosophical foundations on which the welfare state was built. On the one hand there was the school of thought influenced by liberalism, with its roots in the individual materialism of Hobbes. This school would acquire, with important qualifications, the nature of an economic theory in the Classical School. On the other, there was the socialist school of thought, particularly that of Bernstein and Lasalle, that began to gain ground in political circles as well as have greater economic importance. In this context, it is worth mentioning the Fabian Society, Herman Heller or the creation of political parties concerned with social issues, such as the British Labour Party.

In the case of Bentham, much more than in the case of Smith, every subject's aspirations are manifested through the incessant search for personal pleasure and therefore the avoidance of everything that may involve sacrifice, dissatisfaction or pain. This hedonistic function of existence is an inherent part of all individuals and shapes their rational behaviour throughout their development. At the beginning of his first book, Bentham stated what he considers to be the ultimate goal in the shaping of the social and legal order "[...] it is the greatest happiness of the greatest number that is the measure of right and wrong [...]"<sup>4</sup>

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<sup>4</sup> J. BENTHAM, "Fragment on Government". T.

The happiness that Bentham referred to as a human objective, or, what is the same thing, that quantity of pleasure to be obtained or pain to be avoided, is capable of being estimated, calculated or measured, particularly because it is possible to deduce from the empirical evidence that there are different factors influencing such feelings of pleasure or dissatisfaction.<sup>5</sup>

This hedonism, satisfied through the consumption of useful goods, becomes utilitarianism: a formulation of an individual's rational action in making a choice, both as regards economic and political and social matters. These factors can still be identified today in those decisions taken according to pragmatic reasoning, whether on the basis of opportunity or convenience.

Indeed, John Stuart Mill himself was not free of that influence, although in his case we find it clothed in a certain degree of moral and social concern; the social concern that, within the limits of the overall liberalism in which it is set out, is present throughout his work. This social concern would lead him to intend the reform of society in the interests of a very rudimentary concept of what we could loosely call "social justice".

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Payne, London, 1776. Revised and Edited by J.H. BURNS and H.L.A. HART. London, Athlone Press, 1977, p. 393.

<sup>5</sup> Jeremy Bentham, "An Introduction to the Principle of Morals and Legislation". T. Payne & Son. London, 1789. reedited, by J.H. Burns & H.L.A. Hart; Athlone Press, London, 1970. See particularly ch 4 "Value of a lot of pleasure or pain: how to be measured," p. 38.

Three objectives are present in Mill's idea. First, he wished to defend ethical rationalism against intuitive theories of ethics. Secondly, he wished to defend utilitarianism from those attacks made against it because it does not allow an independent assessment of virtuous actions to be made, nor can it explain why each individual has to do what he has to do. Finally, he wished to show that utilitarianism can explain the reason for justice; in other words, that utilitarianism can justify our belief that the rules of justice take priority over any other rules, and can form the basis of moral laws.<sup>6</sup>

Mill's objectives would have a fundamental influence on later liberal thought, as regards his proposal for a free and egalitarian society and how it is possible to move from a calculation of individual happiness to one of collective happiness. This collective dimension was already present in Adam Smith: "Every individual is continually exerting himself to find out the most advantageous employment for whatever capital he can command. It is his own advantage, indeed, and not that of the society, which he has in view. But the study of his own advantage naturally, or rather necessarily leads him to prefer that employment which is most advantageous to the society."<sup>7</sup>

Adam Smith gave form to the liberal viewpoint. According to Smith, the state would have a role to play—see book V of *An Inquiry into the Nature and Causes of the Wealth of Nations*—but in general it should let the "invisible hand" of the market operate, with its supreme capacity to allocate scarce resources in the most efficient manner possible, in accordance with human intelligence. The state should do no more than offer a legal framework that provides economic agents with the necessary certainty to conduct their business.

However, certain liberals considered the state to be an essential element for the functioning of the economic model that they put forward. Bentham argued that the state was necessary for the administration of justice and to redistribute wealth and income between citizens. Mill went somewhat further, considering that in order to achieve maximum utility, the intervention of the state was necessary. Accordingly it is not unusual that even in periods dominated by liberal ideas, states start to intervene more and more in economic affairs, correcting, replacing and even competing with private operators, when in previous times, the free play of market forces had been preferred.

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6 J.S. MILL, "Utilitarianism". Parker, Son and Bourn, London 1863, published for the first time in *Fraser's Magazine*, Oct-Dec 1861, vol. 64, 383-4.

7 A. SMITH, "An Inquiry into the Nature and Causes of the Wealth of Nations." First Edition in

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W. Strahan and T. Cadell in the Strand. London 1776. The reference is from the edition of R.H. CAMPBELL and A.S. SKINNER. Liberty Classics, Indianapolis 198, as an exact photographic reproduction of the edition published by Oxford University Press in 1776; vol. I, book IV, chap. II, p. 454 [4].



At the same time as this process was taking place, the influence of socialism, the second school of thought, was gaining ground as regards economic, political and social affairs. If for liberalism the individual was the essential nucleus upon which society is constructed, society simply being the total of all the individuals that compose it, for early socialism, society is what gives sense to the individual, in such a way that the existence of the latter is secondary to the shape that the former takes.

While liberals saw the common good as the sum of individual good, there being no divergence of interests between the two, socialists believed that there was a natural divergence of interests; human beings, driven by their conflicting interests, would make their version of well-being prevail over those who attempted to stop them. It is society, embodied by the state, and not a union of the specific interests of individuals, that defines the objective good of the community. It is even possible that this objective good is not desired by any of the subjects that make up society. The possible divergence of interests between the individual and the collective good is, therefore, simply part of the natural state of things.

Putting the social nature of man before his existence as an individual subject, his needs are shaped in the context of the society in which he lives. Such rights can only be properly satisfied when they are recognised by society as a who-

le. Once they are so recognised, social rights of man will arise that guarantee the satisfaction of those needs in the context of assured equality, effective not only in the political field but also in the economic sphere. The existing inequalities would generate violence and lead to the class struggle as an expression of rebellion against social injustice.

Some of the revolutionary changes of a theoretical nature were put into practice, above all in the nineteenth century, for example, the revolutions of 1830 and 1838. Then, following a century of frequent upheaval, a different type of revolution would make its presence felt even more decisively: the Industrial Revolution.

The discovery of new productive procedures, technical advances, more efficient and sophisticated means of production, as well as certain very important raw materials, both in the USA and the most advanced parts of Europe, led to the development of industrialisation that would have an impact on practically all economic sectors of those countries.

Attracted by this new situation but also the prospect of - theoretically at least - greater remuneration of work, the commencement of industrialisation would be accompanied by internal migration from the countryside to urban or industrial communities. In the short term, these communities were unable to give a decent reception to those who came looking for work, housing and, in general, the means to survive.

In this way, initially the Industrial Revolution dashed many hopes, and meant misery for many human beings and despair for those who only wished for a decent life and a fair wage, capable of satisfying the most basic needs.

The labour issue had become the main social issue. At the end of the century, Pope Leo XIII would say that “But all agree, and there can be no question whatever, that some remedy must be found, and quickly found, for the misery and wretchedness which press so heavily at this moment on the large majority of the very poor... Hence by degrees it has come to pass that workingmen have been given over, isolated and defenceless, to callousness of employers and the greed of unrestrained competition.”<sup>8</sup>

Logically, such a scenario could only lead to situations of intense general discontent, a breeding ground for conflict: the violence of the needy was directed at the society that had failed to provide for them. As Leo XIII also said: “It is not surprising that the spirit of revolutionary change, which has long been predominant in the nations of the world, should have passed beyond politics and made its influence felt in the cognate field of practical economy. The elements of a conflict are unmistakable: the growth of industry, and the surprising discoveries of science; the changed relations of masters and workmen; the enormous fortunes of individuals and the poverty

of the masses; the increased self-reliance and the closer mutual combination of the working population; and, finally, a general moral deterioration.”<sup>9</sup>

Twenty years after Leo XIII’s pronouncements, in Germany a debate was beginning that called into question the liberal approach to meeting the needs that had been created as a result of the Industrial Revolution.

In 1872, in Eisenach, a small group of university intellectuals, sociologists and individuals active in economic affairs, published a *Manifesto* setting out the model of the state that they believed could resolve the urgent problems that were facing the German people. Rejecting liberal theories, they proposed the intervention of the state in order to protect the working-class, favouring its incorporation into the political and social establishment, and where possible, protecting workers from the abuses of capitalists or businessmen.

Two members of the historicism school, Adolph Wagner and Gustav von Schmoller, created an association called the *Verein für Sozialpolitik*, or Association in Favour of Social Policy. Its goal was to raise societal awareness of the idea of a strong interventionist state, capable of guaranteeing economic success and the well-being of the whole nation as well as its individual members, and of controlling the effects of industrialisation and attending to the needs of the poorest through aid.

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8 LEO XIII, *Rerum novarum*. 2.

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9 LEO XIII, *Rerum novarum*. Rome, 1.

From the outset, the Association gave particular attention to work in its social context. Wage levels and wage improvements, the training of employees (the improvement of human capital), the working day, social security and social services and so on were the areas where the Association, promoted by these two economists, was most active.

It should not be forgotten that social reform and justice are the fundamental issues addressed in Schmoller's thought. Schmoller supported a degree of paternalism in social policy in order to increase the education of the working-class, as well as to satisfy them materially as a means of achieving social peace. He considered this to be the best way, if not the only way, to avoid revolutionary uprisings and even contemplated the possibility of a degree of closeness—even an alliance—in the relationship between the monarchy and the working-class.<sup>10</sup>

The strong state advocated by the promoters of the *Verein*, which was present in the *Eisenach Manifesto*, would come to fruition in Chancellor Bismarck's government. It would be more difficult to claim that the objective of the state under Bismarck was the well-being of everyone, as Ludwig Erhard,<sup>11</sup> another Chancellor and former Minister of Germany, would claim some years

later. Nevertheless, Bismarck's efforts were appreciated by Kaiser Wilhelm I, who, on the 17 November 1881, made the following statement to the German Reichstag: "In February of this year, we expressed our conviction that the solution to the social problems is to be found not only in the repression of social democratic abuses, but more importantly in improving the welfare of the workers. We consider this to be our imperial duty and fervently urge once more that the Reichstag attends to this task."<sup>12</sup>

There were, without doubt, measures to protect workers and the least favoured classes. Nevertheless, it is difficult to be sure whether such measures came within the objective of the welfare state or, by contrast, they were simply a means by which a more satisfied working class would increase its contribution to the national economy. If the goal was simply to increase workers' productivity, the Iron Chancellor's forerunner of the welfare state was a poor one, even though social measures were implemented.

At that time, however, Bismarck was held in great esteem and his influence felt in other countries, such as the United Kingdom, where concern for the most needy—the poor—had existed since the beginning of the seventeenth century. Thus, the Poor Laws, under which the parishes of each area provided va-

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10 G. VON SCHMOLLER, "Die Soziale Frage: Klassenbildung, Arbeiterfrage, Klassenkampf". Ed. L. Schmoller, Duncker & Humblot, 1918, p. 648.

11 See L. ERHARD, "Wohlstand für alle". Econ-Verlag GMBH. Düsseldorf, 1957.

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12 WILHELM I, "Kaiser Wilhelms des Grossen, Briefe, Reden und Schriften. II Band: 1861-1888". Ernst Siegfried Mittler und Sohn. Berlin, 1906, 3<sup>rd</sup> ed., p. 383.

rious forms of public aid, had existed since 1601. Malthus' attacks on these measures aimed at providing relief for the destitute should not be forgotten. However, the Bismarckian approach flourished in Great Britain, resulting in a fruitful exchange of information about such measures and their results which undoubtedly brought the experience of the two countries closer together.

With the existence of such theories and the resulting introduction of public social measures, the end of the nineteenth century and the beginning of the twentieth century provided the setting for the development of what we now call the welfare state. If we contemplate what took place during the first half of the twentieth century, we could not find a better justification for the welfare state's existence: two world wars and, sandwiched between them, the Great Depression, which spread desolation, unemployment and hunger throughout a large part of humanity, perhaps with greatest intensity in the most industrialised countries.

The desire for a strong and interventionist state, capable of correcting the deficiencies of market economies and of allocating resources and achieving the well-being of the nation and its citizens, appeared to be more than justified.

A society was therefore contemplated in which the central role of the individual was absent. This model could be called a society without individuals, in contrast with the domination that indi-

viduals had enjoyed in previous times. So much so that, for a time, not only the liberal principles against which this reaction took place seemed to be forgotten but also the statements of the person who would become the architect of a new economic model: John Maynard Keynes. Keynes stated "Government is not to do things which individuals are doing already, and to do them a little better or a little worse; but to do those things which at the present are not done at all."<sup>13</sup>

State intervention, which eradicated the individual as solely responsible for his own acts, created as many problems as it solved. Therefore it is not surprising that at a time when the Great Depression of 1929-1930 was at its height and therefore when the way seemed clear for this model of the state as a substitute for the individual to triumph, the voice of Pope Pius XI was heard, arguing that the state should play a secondary role with respect to the individual in decision making.

"The State authorities should leave to other bodies the care and expediting of business and activities of lesser moment, which otherwise become for it a source of great distraction. It then will perform with greater freedom, vigour and effectiveness, the task belonging properly to it, and which it alone can

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13 John Maynard Keynes, "The End of Laissez-faire". In *Laissez-faire and Communism*. New Republic, Inc. New York, 1926, p. 67.

accomplish, directing, supervising, encouraging, restraining, as circumstances suggest or necessity demands. Let those in power, therefore, be convinced that the more faithfully this principle of "subsidiarity" is followed and a hierarchical order prevails among the various organizations, the more excellent will be the authority and efficiency of society, and the happier and more prosperous the condition of the commonwealth."<sup>14</sup>

## **STRUCTURE OF THE WELFARE STATE**

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On the basis of theories that, from very different sources and different geographic origins, led to the existence of a coherent body of theory, the welfare state came into being. This process, started in the second half of the nineteenth century, has been part of political, economic and social affairs to the present day, with the mutations and adaptations that have proved necessary at any given time, according to social requirements on the one hand and economic conditions on the other.

In its first phase, from 1870-1920, the welfare state tried to establish itself through defining its fundamental principles, including the specific shape of the state. Legal provisions aimed at organising the employment market, protecting the worker from possible abuses by employers and the introduction

of obligatory insurance, were the two main features during this initial period. Thus the substitution of UK-style "Poor Laws"<sup>15</sup> by obligatory insurance not only meant a quantitative difference but, particularly, a qualitative difference. The objective was to attempt to change from a charity-based system to one based on the recognition of the workers' rights to subsidies or other state benefits.

Between 1920-1950, that is, from after the First World War until after the Second World War, was a period of consolidation and coordination of the plans put into effect in the previous stage. What is perhaps more important, the social policy that had been developed through various initiatives, in which spontaneous mutual insurance activity played a fundamental role, became a state activity that would provide the basis for a social security system with wide coverage, as opposed to the system of unemployment insurance that existed in the previous period.

The two Reports published by William Beveridge during the Second World War in 1942 and 1944 were a decisive step in building on the experiences of the previous period. These reports set out the starting point of a welfare state model together with its means and ends.

The 1950s and 1960s were a period

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14 PIUS XI, *Quadragesimo Anno*. 80.

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15 See R.G. COWHERD, *Political Economist and the English Poor Laws: A Historical Study of the Influence of Classical Economics on the Formation of Social Welfare Policy*. Ohio State University. Athens, 1977.

of economic recovery. The rhythm and intensity of this recovery varied greatly from country to country, but the sustained economic and social growth during this period was capable of supporting a great expansion in the social security system and the provision of social goods.

This was a period in which, according to many, we were all Keynesians. As will be recalled, Keynes' General Theory, which appeared in 1936, was extraordinary influential throughout the whole of the Western world - with the obvious exception of those countries with Marxist economic systems. It was hoped that the model of the Keynesian state would guarantee economic growth, stability and redistribution of wealth; this latter objective to be achieved fundamentally through a social policies funded by fiscal policy.

In the 1970s, the world economy suffered severe crises, set off by the energy crisis at the end of 1973. These crises had two equally alarming effects, which, moreover, occurred at the same time: an increase in unemployment, at a rate not seen since 1929-30, coupled with inflationary pressures, that, in turn, caused interest rates to rise.

Given this situation, it was not surprising that there was a substantial increase in social spending, in order to meet the new needs that, without widening the coverage, caused by the economic recession that the developed world was experiencing. The level of public revenue at equal fiscal pressure fell

in absolute terms which led to the introduction of two new measures: on the one hand tax reforms that could lead to greater tax collection and on the other the public debt that, by being placed on the financial markets, encouraged interest rates to rise even more.<sup>16</sup>

## **THE CRISIS OF THE WELFARE STATE: UNFORESEEN DIFFICULTIES**

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The problem was complicated and public finance theorists and economists in general started to view the situation as a crisis in the model of the welfare state that had existed until that moment.<sup>17</sup>

The reason for this crisis was not only the scarcity of resources. While this was an important problem, it was not the only one, nor the most difficult. Together with the scarcity of financial resources at that time to deal with the problems caused by economic contraction, the very nature of the welfare state model was called into question. It was necessary to revise the model in order to

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16 See M. OLSON, *The Rise and Decline of Nations: Economic Growth, Stagflation, and Social Rigidities*. Yale University Press. New Haven, Conn. 1982.

17 See, *inter alia*, G.THERBORN, *Why Some People are more Unemployed than Others*. Ed. Verso. London, 1987; J.O'CONNOR, *The Fiscal Crisis of the State*. St Martin's Press, New York, 1973; P. TAYLOR-GOOBY, *Public Opinion, Ideology and Welfare State*. Routledge and Keagan, 1985; R. MISHRA, *The Welfare State in Crisis*. Harvester Press, 1984; W.J. MOMSEN (ed.), *The Emergence of the Welfare State in Britain and Germany*. Croom Helm, London, 1981.

evaluate its capacity to deal with the difficult moments that it would have to be able to deal with. At the same time, over the medium or long term its reform was necessary in order to, on the one hand, give it a new identity and legitimacy and, on the other, ensure that there was a balance in the income-social spending relationship in the public budget.

The reforms were soon noticeable. Their diverse nature and their wide ranging effect depended on the scale of the problem caused by the insufficiency, which, unsurprisingly, was different in each country. Most states rushed to rid themselves of their productive activities of goods and services. This task had little to do with the functions of welfare that normally meant market intervention and distortion and, in most cases, a significant public budget burden.

Thus the privatisation process was commenced, most aggressively in Great Britain, less so in France, Germany, Spain, Italy and so on; the USA hardly suffered from this problem. The result of this process was twofold. First, funds from the sale of assets provided the state with a financial injection and, secondly the ending of heavy losses, generally suffered by state-owned companies, meant the need for resources to finance them no longer existed.

In turn, a reform of the system of benefits began in many countries—perhaps practically all those with a system based on redistribution—mainly the pensions system - in the method of dis-

tribution as opposed to capitalisation. The effect of these reforms, whatever the technicalities, was clear: a reduction in the rights of future pensioners, with the consequent decrease in benefits and their move towards sufficiency at a time of budgetary constraint that did not appear to be transitory.

It was clear that the welfare state had become a mistaken application of Keynesian theory, characterised by a continuous increase in competences and activity that had led it into a serious financial crisis. Many academics agreed with this diagnosis and in the need for reform.

Pope John Paul II himself stated at the beginning of the 1990s that “[...] excesses and abuses, specially in recent years, have provoked very harsh criticisms of the welfare state, dubbed the “social assistance state”. Malfunctions and defects in the social assistance state are the result of an inadequate understanding of the task proper to the state. Here again the principle of subsidiarity must be respected: a community of higher order should not interfere in the internal life of a community of a lower order, depriving the latter of its functions [...]”<sup>18</sup>

Some began to question the *raison d'être* of the welfare state in the modern world. In fact, there was some movement back towards a micro-economic approach to the concept of welfare.

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18 JOHN PAUL II, *Centesimus annus*. 48.

In this approach, welfare is simply the result of an economic action based on the choice between alternatives in the context of freedom and diversity of choice, something that is not reflected in the structure of the welfare state.

From this perspective, man is seen as an actor, who, through his action, "[...] is eager to substitute a more satisfactory state of affairs for a less satisfactory."<sup>19</sup> Alternatively, "Strictly speaking the end, goal, or aim of any action is always the relief from a felt uneasiness."<sup>20</sup>

This involved a return to liberalism, with a clear reduction of the social functions of the state, reduced, at best, to the provision of welfare for cases of destitution; recalling, perhaps, the circumstances that gave rise to the Poor Laws in Great Britain.

In a very different context, the warnings of Pope Pius XI fifty years earlier were still relevant: "Just as the unity of human society cannot be built upon 'class' conflict, so the proper ordering of economic affairs cannot be left to the free play of rugged competition. From this source as from a polluted spring have proceeded all the errors of the 'individualistic' school. This school, forgetful or ignorant of the social and moral aspect of economic activities, regarded these as

completely free and immune from any intervention by public authority. They would have in the market place and in unregulated competition a principle of self-direction more suitable for guiding them than any created intellect which might intervene."<sup>21</sup> The State in 1931 was thought to be capable of providing for the common good of society and, at the height of the economic recession, was considered to be the only possible solution. It was seen as an instrument regulating the economy, capable of guaranteeing stability and full employment.

Pius XI was correct in his comments about the dangers of individualism, with its egoism and its exclusive utilitarianism. A society based upon such notions disintegrates, becoming a conglomerate of individuals incapable of living together, far removed from the idea of a community that shares in all forms of human activity, of which economic activity is only one, and not the most important, part.

Man is, by his very nature, a social being and therefore sociable. From this it can be deduced that he has a natural commitment towards other members of the community. This commitment is only endangered when man makes the mistake of feeling himself to be worth more than others, which leads to his desire to dominate others.

The community is simply an exten-

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19 L. VON MISES, *Human Action. A Treatise on Economics*. William Hodge and Company Limited. London-Edinburgh-Glasgow, 1949, p. 13.

20 L. VON MISES, *Human Action. A Treatise on Economics*. William Hodge and Company Limited. London-Edinburgh-Glasgow, 1949, p. 92.

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21 PIUS XI, *Quadragesimo anno*. 88.



sion of the most restricted unit: the family. In the same way that everybody is born, grows up and develops within the family, from which they receive and give up different talents, the family and its members are, in turn, simply units of a greater being that we call the *human family*. That family, as the smallest unit, is a living example of what society needs, of the type of person capable of uplifting himself and society, to which he sacrifices himself and from which he obtains great benefits.

The family is the mirror in which its members must examine themselves in order to be able to give social life a meaning and to give their full support to the welfare state. "In order to overcome today's widespread individualistic mentality, what is required is a concrete commitment to solidarity and charity, beginning in the family with the mutual support of husband and wife and the care which the different generations give to one another. In this sense the family too can be called a community of work and solidarity."<sup>22</sup>

The family is the school *par excellence* where the individual learns to distinguish the permanent from the temporary, the significant from the ephemeral, the important from the superfluous. The family is where the occasion exists to cultivate the spirit and to make the key distinction between material and spiritual, a distinction without which

man chooses the wrong path, wrapped up in a consumerist spiral.

Von Mises pointed out the importance for the individual as an economic agent of not only material possessions. "It is arbitrary to consider only the satisfaction of the body's physiological needs as "natural" and therefore "rational" and everything else as "artificial" and therefore "irrational". It is the characteristic feature of the human nature that man seeks not only food, shelter, and cohabitation like all other animals, but that he aims also at other kind of satisfaction. Man has specifically human desires and needs which we may call "higher" than those which he has in common with the other mammals."<sup>23</sup>

Following this statement, there is nothing unusual about the lament of the Pope John XXIII, in *Mater et magistra*, when he observed "... we note with sorrow that in some nations economic life indeed progresses, but that not a few men are there to be found who have no concern at all for the just ordering of goods. No doubt, these men either completely ignore spiritual values, or put these out of their minds, or else deny they exist. Nevertheless, while they pursue progress in science, technology, and economic life, they make so much of external benefits that for the most part they regard these as the highest goods of life."<sup>24</sup>

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23 L. VON MISES, *Human Action. A Treatise on Economics*. William Hodge and Company Limited. London-Edinburgh-Glasgow, 1949, p. 19-20

24 JOHN XXIII, *Mater et magistra*. 176.

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22 JOHN PAUL II, *Centesimus annus*. 49.

## FROM THE CRITICISM OF THE WELFARE STATE TO THE NEED FOR THE WELFARE STATE

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In the previous section reference has been made to the general criticisms of those theorists of public spending - some more radically than others - directed fundamentally at the welfare state as it existed at the end of the 1970s. In spite of the radical position adopted, always present in times of revision, it was clear that the solution to a possibly overstretched public sector could not be the ending of those functions that, for reasons of justice, equity and solidarity could and must be exercised by the state, without of course destroying similar functions that may be carried out by individuals.

One well-measured criticism was made by John Paul II, who said: "...in exceptional circumstances the state can also exercise a substitute function, when social sectors or business systems are too weak or are just getting under way, and are not equal to the task at hand. Such supplementary interventions, which are justified by urgent reasons touching the common good, must be as brief as possible, so as to avoid removing permanently from society and business systems the functions which are properly theirs, and so to avoid enlarging excessively the sphere of state intervention to the detriment of both economic and civil freedom.

In recent years the range of such intervention has vastly expanded, to the point of creating a new type of state, the so-called "welfare state".<sup>25</sup>

This is the basis of the criticism and of the correct degree of state intervention in the economy. Man is the focal point of economic activity, as with any social activity. Everything in the universe is at man's service. Technical instruments and advances, scientific knowledge and all the goods that nature, in conjunction with the work of man and the availability of capital, are capable of meeting a single objective: to serve man and the whole of mankind. Accordingly, state intervention must never stifle the potential of the community's members.

The warning is therefore appropriate, particularly when most recent events have shown how real this conflict is. "It should be noted that in today's world, among other rights, *the right of economic initiative* is often suppressed. Yet it is a right which is important not only for the individual but also for the common good. Experiences show us that the denial of this right, or its limitation in the name of an alleged <equality> of every one in society, diminishes, or in practice absolutely destroys the spirit of initiative, that is to say *the creative subjectivity of the citizen*."<sup>26</sup>

This right of economic initiative was not only repressed but actually des-

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25 JOHN PAUL II, *Centesimus annus*. 48.

26 JOHN PAUL II, *Sollicitudo Rei Socialis*. 15.

troyed in the past in countries with central planning systems. However, it must also be recognised that it has been notably restricted in those systems where, with the intention of guaranteeing welfare for all through the public sector, the state has competed with the private sector on unfair terms. In this way, it has restricted the creativity of individuals, which should be one of a community's main assets.

However, it is not only private creativity that is reduced, with the damage that this entails; personal solidarity is also diminished, as experience has clearly shown us, in favour of the "institutional solidarity" of the state. Avoiding calling solidarity a personal responsibility in society has been the general rule that has found favour and justification in the institutions established by the welfare state.

Faced with this phenomenon, it should not be forgotten that "Although in our day, the role assigned the State and public bodies has increased more and more... it is quite clear that there always be a wide range of difficult situations, as well as hidden and grave needs, which the manifold providence of the State leaves untouched, and of which it can in no way take account. Wherefore, there is always wide scope for humane action by private citizens and for Christian charity. Finally, it is evident that in stimulating efforts relating to spiritual welfare, the work done by individual men or by private civic groups has

more value than what is done by public authorities."<sup>27</sup>

The truth of this statement could not be clearer. The state cannot provide assistance in all situations, particularly if what is needed is proximity and acceptance. Yet at the beginning of the twenty-first century we cannot rely on the spontaneous reaction of individual solidarity to provide such assistance.

Nowadays, it must be recognised that "It is also quite clear that today the number of persons is increasing who, because of recent advances in insurance programs and various systems of social security, are able to look to the future with tranquility. This sort of tranquility once was rooted in the ownership of property, albeit modest."<sup>28</sup> And contemplating the future peacefully is an essential part of all welfare states.

Solidarity is the inspiration for and an essential part of the system, acting as a means of communication and transferral of wealth and goods between different subjects and families in a community. However, this point needs emphasising. Solidarity is based on commitment and in turn creates commitment. Otherwise, the bankruptcy of the system is guaranteed: whoever has most resources will avoid his obligations towards those who have least; he who has least and has his needs covered may opt for idleness. A warning to this effect was given by

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27 JOHN XXIII, *Mater et magistra*. 120.

28 JOHN XXIII, *Mater et magistra*. 105.

the Second Vatican Council: “[...] in highly developed nations a body of social institutions dealing with insurance and security can, for its part, make the common purpose of earthly goods effective. Family and social services, especially those which provide for culture and education, should be further promoted. Still, care must be taken lest, as a result of these provisions, the citizenry fall into a kind of sluggishness toward society, and reject the burdens of office and of public service.”<sup>29</sup>

These are all dangers of which the naivety of the public sector may make the system in which citizens have put their trust to cover their future needs into risky and insecure. A failure to appreciate the true situation or clumsy regulation should not be allowed, otherwise the system’s survival will be endangered.

## **TOWARDS A NEW WELFARE STATE**

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As has been said, the welfare state has evolved through history, taking on new dimensions, new objectives and new methods in accordance with the circumstances both as regards time and place. At the same time, it has adapted to the requirements of a society which largely accepts its existence and essential function, even though different views

may exist as regards its definitive shape.

In the twenty-first century that has just commenced, the welfare state will need to be equally capable of adapting and meeting the challenges that it will undoubtedly face. The social function, which constitutes the essence of state intervention to achieve what we call “welfare”, takes a very different form today than it did in the past. The welfare state is today built on the foundations of a free and efficient market, in other words one that is competitive, which should not be distorted by public action; in fact the opposite is true, the role of the state being to guarantee the exercise of freedom of choice within a legal context that is ordered and fair.

An ordered world, without which a free economy is impossible, was a requirement of Adam Smith’s economic model. It is the essential difference between freedom of action and chaos and forms part of the Church’s social doctrine. “Economic activity, specially the activity of a market economy, cannot be conducted in an institutional, juridical or political vacuum. On the contrary, it presupposes sure guarantees of individual freedom and private property, as well as stable currency and efficient public services. Hence, the principal task of the state is to guarantee this security [...]”<sup>30</sup>

The State has been deprived of its productive function, which it carried

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29 SECOND VATICAN ECUMENICAL COUNCIL, Pastoral Constitution on the Church in the Modern World *Gaudium et spes*. 69.

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30 JOHN PAUL II, *Centesimus Annus*. 48.

out under the erroneous presumption of encouraging employment in a society that, in all probability, needed to reduce levels of unemployment. As a result, state action has now been reduced on the one hand to the regulatory action guaranteeing the principal objectives of the human community and on the other to satisfying public needs, essential for co-existence in society on the basis of fraternity and solidarity, through instruments of fiscal policy, and both revenues and expenditures.

This function is not altered by the fact that the production of public goods is carried out by the public sector itself or such production is contracted out to the private sector where the public service is reserved for the task of assigning and distributing such goods.

These two instruments of regulation and social policy without doubt constitute specific areas within which the welfare state may operate. Through the first, the state tries to ensure that society progresses towards the goal of the common good; through the second, it remedies shortages and covers needs. However, analysing with a critical eye the present structure of the welfare state, certain tendencies exist. While these are obvious it is worth stating them expressly in order to consider the chances of the system surviving, and if so the chances of modifying its scope.

Recalling the title of the book written by L. Erhard, *Welfare for all* cited above, at the beginning of this third

millennium of Christianity we must ask ourselves the question: "to whom does the word *all* refer?" It is honest to recognise that *all* refers exclusively to those who live in a given place, a nation, at a given time. However, within this restriction it is necessary to break the information down further, differentiating between those who vote and those who do not, nationals and foreigners, old people and young people and so on.

In fact, the welfare state is a long way from having incorporated the meaning of interdependence and universal mutuality. "Every day human interdependence grows more tightly drawn and spreads by degrees over the whole world. As a result the common good, that is, the sum of those conditions of social life which allow social groups and their individual members relatively thorough and ready access to their own fulfilment, today takes on an increasingly universal complexion and consequently involves rights and duties with respect to the whole human race. Every social group must take account of the needs and legitimate aspirations of other groups, and even of the general welfare of the entire human family."<sup>31</sup>

Nevertheless, the model of the welfare state hardly takes into account the needs and the objective of the welfare of those who live outside a given territory. The UN objective was 0.7% of GDP

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<sup>31</sup> SECOND VATICAN COUNCIL, *Gaudium et spes*. 26.

going to foreign aid programs. It was reduced to 0.35 %, following the Barcelona Summit of March 2002.

In addition, the nature of welfare even in the most developed nations has become reduced to welfare in a material sense, based on comfort, the lack of worry and an easy life; in other words, what has come to be known erroneously as “quality of life”, robbing society of the values that make it grow in stature, make it more human and, above all, commit it to a common objective.

“... the confusing concept of “quality of life” in the context of a welfare state cannot be accepted without criticism as a valid point of reference for the promotion of the life of all. Its materialistic and utilitarian connotations make it difficult to understand and put into practice as a true stimulus for the development of man, and mankind, as a whole...

There will be no true quality of life if the religious and human dimension of new generations and also of the elder members of society is not looked after. There will be no true quality of life for anyone as long as there are families affected by poverty, young people without access to a decent home, old people alone, handicapped people badly cared for, immigrants discriminated against, the arms trade, drugs and “human flesh” available for prostitution.”<sup>32</sup> [Author’s translation]

However, it is not only the territorial jurisdiction that sets the limits of application of the welfare state; time is also a factor that defines its beneficiaries. Only those that live at the time in question can, in general, be considered subjects, contributors or beneficiaries *vis-à-vis* the programmes that make up the welfare state. Further, under the system of redistribution, the method most generally applied, the beneficiaries and more particularly the benefits, depend on the contributions made by those paying into the system at the time.

All of the above leads to the first question for the new shape of the welfare state: can it continue to be based on the same principles, that is, is it viable? If it is viable, should other considerations be incorporated? If not, how should it be amended?

## **A CHANGING SCENARIO: THE POPULATION**

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One of the presumptions on which the current model of the social security system –the most significant part of which is the welfare state– was based and a possible condition for its viability was that the population structure would remain largely the same. It is clear today, however, that the population structure has changed markedly and will change even further throughout the first half of this new century. This is so both as re-

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32 LXXVI Plenary Assembly of the Spanish Bishops Conference, “Instrucción Pastoral ‘La

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familia, santuario de la vida y esperanza de la sociedad.” Madrid, 2001. 119.

gards the growth of the total population and as regards the dependent population with respect to the total population. Even more importantly, the change in the proportions of those contributing to and benefiting from the system is substantial, which will only increase in the years to come.

The situation provides food for thought.<sup>33</sup> The first question that is a matter of concern is the survival of the population as such. The birth rates, which are currently extremely low in comparison to previous periods, cast doubt on the ability to sustain in the future the volume and composition of the existing population, or rather it ensures that such an objective is impossible.

The average birth rate in the European Union was 1.5 children per woman in 2000 and it is predicted that this figure may rise to 1.7 by 2050. At this rate, it is impossible to maintain the population level (see Table 1, Figure 1 in the annex hereto). These low birth rates reflect society's attitude towards procreation that involves a certain ordering of social values. The welfare state

itself may have some influence on the establishment and possible modification of such values, through the education system.

Comparing the demographic trends existing in countries in the north and south, John Paul II stated that, "One cannot deny the existence, especially in the southern hemisphere, of a demographic problem which creates difficulties for development. One must immediately add that in the northern hemisphere the nature of this problem is reversed: here, the cause for concern is the *drop in the birth rate*, with repercussions on the ageing of the population, unable even to renew itself biologically. In itself, this is a phenomenon capable of hindering development."<sup>34</sup> On this point the Second Vatican Council would have said that, "Within the limits of their own competence, government officials have rights and duties with regard to the population problems of their own nation, for instance, in the matter of the social legislation as it affects families... of information relative to the condition and needs of the nation..."

For in view of the inalienable human right to marry and beget children, the question of how many children should be born belongs to the honest judgement of parents. The question can in no way be committed to the decision of government. Now since the judgement of the parents supposes a rightly formed

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33 To consider this problem and in support of the arguments put forward, apologies are made for only using the statistical data published or to be published by the European Union. There are, however, two good reasons for this: first, the Member States of the EU have gone further in establishing universal welfare states more than anywhere else, and secondly, as regards the quality of the information, there is an advantage in using a single statistical, and therefore homogeneous, source.

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34 JOHN PAUL II, *Sollicitudo Rei Socialis*. 25.

Table 1: **Fertility rates**  
(Number of children born per woman)

E.U. Countries	1980	2000	2025	2050
B	1.7	1.5	1.8	1.8
DK	1.5	1.8	1.8	1.8
D	1.4	1.4	1.5	1.5
EL	2.2	1.3	1.6	1.6
E	2.2	1.2	1.5	1.5
F	1.9	1.7	1.8	1.8
IRL	3.2	1.9	1.8	1.8
I	1.6	1.2	1.5	1.5
L	*	1.7	1.8	1.8
NL	1.6	1.7	1.8	1.8
A	1.6	1.3	1.5	1.5
P	2.2	1.5	1.7	1.7
FIN	1.6	1.7	1.7	1.7
S	1.7	1.5	1.7	1.8
UK	1.9	1.7	1.8	1.8
EU	*	1.5	1.6	1.7

Source: José T. Raga on the data bases of "Informe sobre el Desarrollo Mundial 2000/2001. Lucha contra la pobreza". Banco Mundial. Washington, D.C. 2001, for year 1980; For other years, "Budgetary challenges posed by ageing populations..." European Community - Economic Policy Committee. Brussels, 24 October 2001.

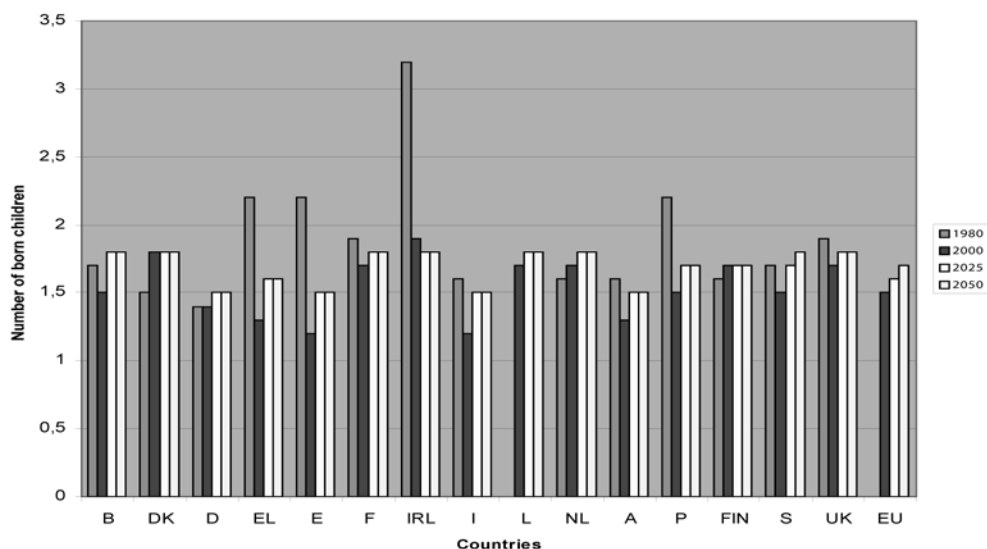
conscience, it is highly important that everyone be given the opportunity to practice upright and truly human responsibility. This responsibility respects the divine law and takes account of circumstances and the time."<sup>35</sup>

It is worth noting that while society is hypersensitive about the conservation of animal species that are in danger of extinction, which has led the State to produce a great deal of protective legislation on this point, there is no similar commitment to protect humanity from its tendency to reduce in size.

Having children has become a problem about which the Welfare State appears to take no action. "In the social

35 SECOND VATICAN COUNCIL, *Gaudium et spes*. 87.

FIGURE I.- FERTILITY RATES  
(number of born children per woman)





sphere, individualism also influences the value given to human life. It can be observed that when the subject of human life is discussed in a social context, the terms of reference are almost always *utilitarian*; the calculation of goods. Human life, in a consumerist society, is evaluated by the way in which it contributes to an increase in general welfare and not as a gift to develop in accordance with one's personal vocation.

The birth of a child is seen as a social problem, as an economic burden that will give rise to a series of difficulties in the future, particularly as regards education. The child is no longer seen as a source of hope for the rejuvenation of society and as a pre-

Table 2: **Total population**  
(millions of persons)

E.U. Countries	2000	2025	2050
B	10.2	10.5	10.1
DK	5.4	5.6	5.5
D	82.3	82.7	75.6
EL	10.5	10.8	10.2
E	39.4	39.1	35.1
F	59.2	63.3	62.2
IRL	3.8	4.5	4.8
I	57.6	55.1	48.1
L	0.4	0.5	0.6
NL	15.9	17.5	17.7
A	8.1	8.1	7.6
P	10.0	10.8	10.9
FIN	5.2	5.3	5.0
S	8.9	9.2	9.2
UK	59.5	62.8	61.8
EU	376.4	385.9	364.2

Source: José T. Raga, on the data bases of "Budgetary challenges posed by ageing populations..." European Union-Economic Policy Committee. Brussels, 24 October 2001.

FIGURE II.- TOTAL POPULATION  
(millions of persons)

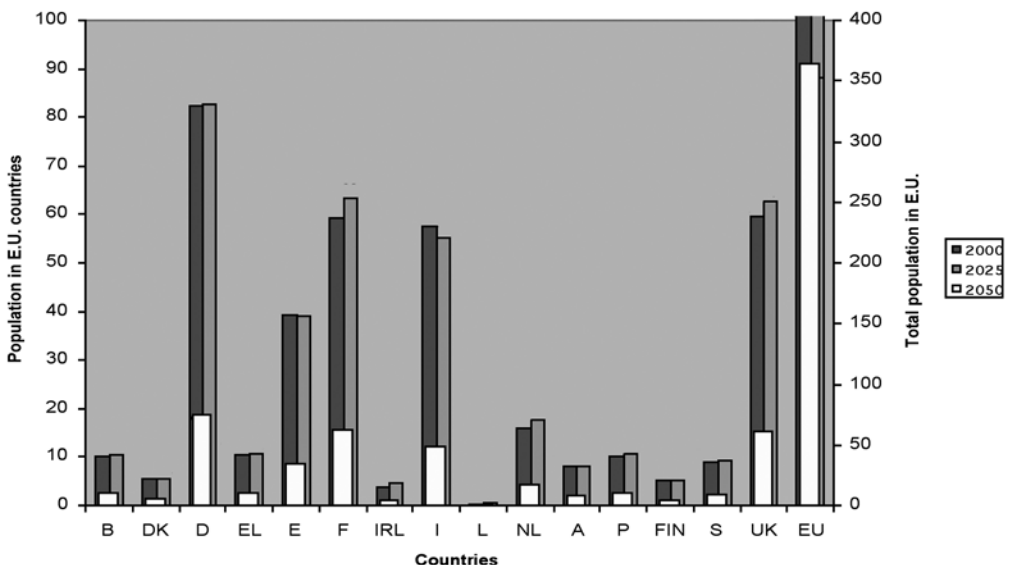


Table 3: Elderly (65+) and very elderly (80+) population (millions)

E.U. Countries	2000		2025		2050	
	65+	80+	65+	80+	65+	80+
B	1.7	0.4	2.4	0.6	2.7	1.0
DK	0.8	0.2	1.2	0.3	1.2	0.4
D	13.6	3.0	19.8	5.7	21.6	8.5
EL	1.8	0.4	2.4	0.7	3.1	1.0
E	6.6	1.5	8.6	2.4	11.6	3.9
F	9.4	2.1	14.1	3.7	16.6	6.2
IRL	0.4	0.1	0.7	0.2	1.1	0.3
I	10.3	2.2	13.8	4.2	16.1	6.3
L	0.1	0.0	0.1	0.0	0.1	0.0
NL	2.2	0.5	3.7	0.9	4.3	1.6
A	1.3	0.3	1.9	0.5	2.3	1.0
P	1.5	0.3	2.1	0.6	2.9	0.9
FIN	0.8	0.2	1.3	0.3	1.3	0.5
S	1.5	0.5	2.1	0.6	2.3	0.8
UK	9.3	2.3	12.7	3.3	15.4	5.7
EU	61.3	13.9	87.0	23.9	102.7	38.1

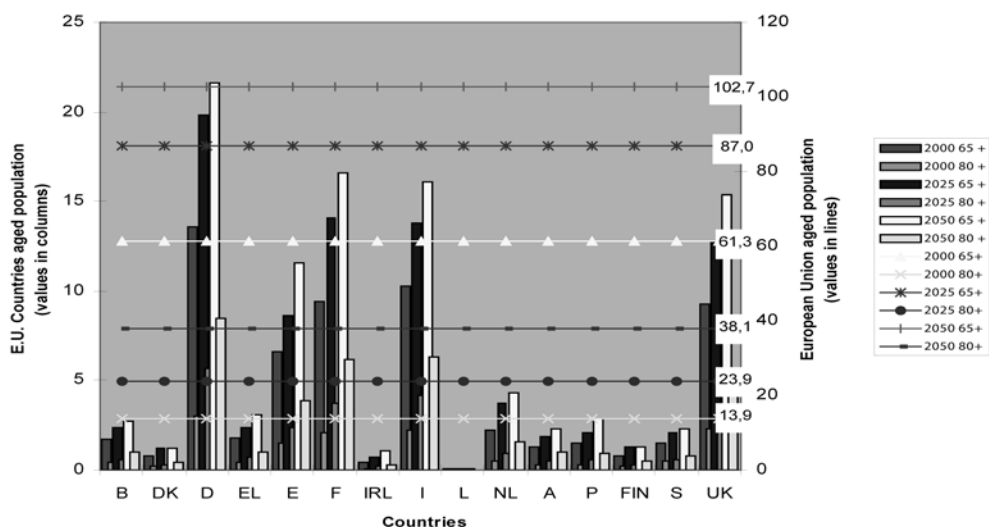
Source: José T. Raga, on the data bases of "Budgetary challenges posed by ageing populations...". European Union -Economic Policy Committee. Brussels, 24 October 2001.

cious gift for the family."<sup>36</sup> [Author's translation]

Faced with this justifiable desire to protect flora and fauna, above all plants and animals in danger of extinction, man (and the Welfare State) has overlooked the most important conservation project of all: the conservation of humanity itself. "The first and fundamental structure for "human ecology" is the family, in which man receives his first formative ideas about truth and goodness, end learns what it means to love and to be loved, and thus what it actually means to be a person. Here we mean the family founded on marriage,

36 LXXXVI Plenary Assembly of the Spanish Bishops Conference, "Instrucción Pastoral 'La familia, santuario de la vida y esperanza de la sociedad.'" Madrid, 2001. 40.

FIGURE III.- ELDERLY (65+) AND VERY ELDERLY (80+) POPULATION (millions of persons)



in which the mutual gift of self by husband and wife creates an environment in which children can be born and develop their potentialities, become aware of their dignity and prepare to face their unique and individual destiny.”<sup>37</sup>

This failure to attend to human ecology will result in the population of the European Union, which in 2000 totalled 375 million inhabitants, being reduced to 265 million inhabitants in 2050 (see Table II, Figure II of the annex). This will entail a reduction in the working population, those people that create income for the benefit of society, through their participation in the process of produc-

Table 4: **Old-age dependency ratio (aged 65+ / 15-64 per %)**

E.U. Countries	2000	2025	2050
B	26	37	45
DK	22	34	36
D	24	38	49
EL	26	35	54
E	25	34	60
F	24	36	46
IRL	17	25	40
I	27	40	61
L	21	32	38
NL	20	33	41
A	23	37	54
P	23	31	46
FIN	22	39	44
S	27	37	42
UK	24	32	42
EU	24	36	49

Source: José T. Raga on the data bases of “Budgetary challenges posed by ageing populations...” European Union-Economic Policy Committee Brussels, 24 October 2001.

37 JOHN PAUL II, *Centesimus Annus*. 39.

Figure IV.- OLD-AGE DEPENDENCY RATIO  
(aged 65+ / 15-64 per %)

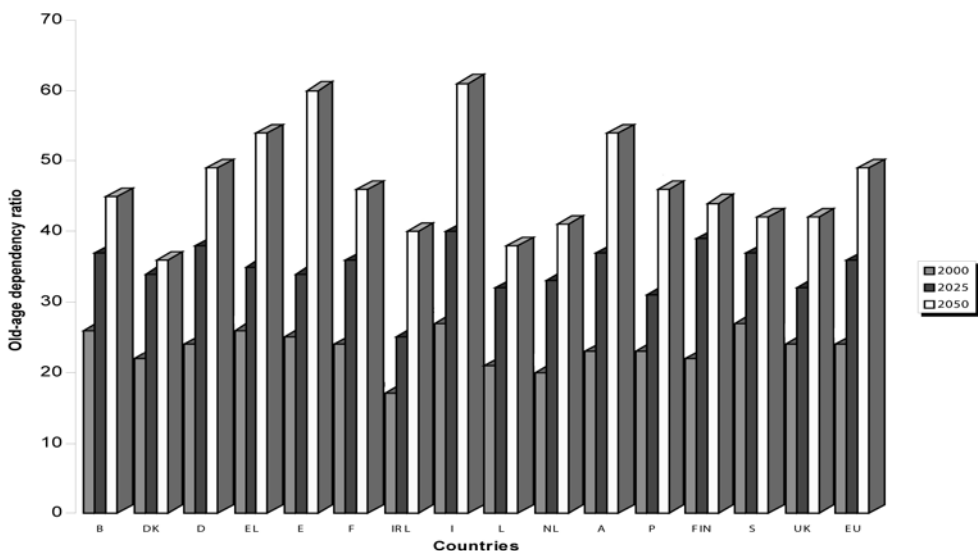


Table 5: **Effective economic dependency ratio**  
(% of persons aged 15+ not employed / persons employed)

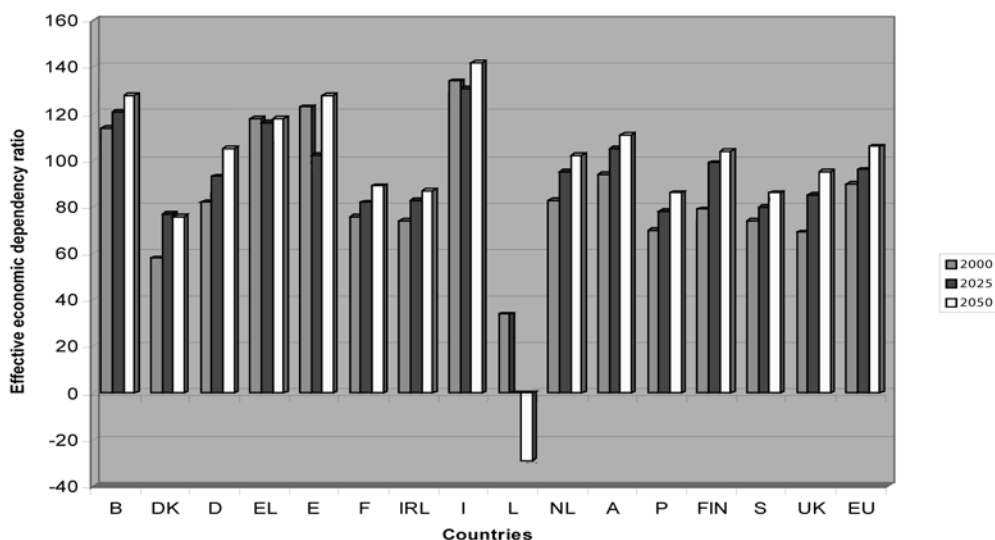
E.U. Countries	2000	2025	2050
B	114	121	128
DK	58	77	76
D	82	93	105
EL	118	116	118
E	123	102	128
F	76	82	89
IRL	74	83	87
I	134	131	142
L	34	0	-29
NL	83	95	102
A	94	105	111
P	70	78	86
FIN	79	99	104
S	74	80	86
UK	69	85	95
EU	90	96	106

Source: José T. Raga, on the data bases of "Budgetary challenges posed by ageing populations..." European Union-Economic Policy Committee. Brussels, 24 October 2001.

tion of goods and services. The working population, those aged between 15-64 years, which in the European Union is estimated at 251.7 million people, is expected to fall to 210.3 million by 2050; a fall of more than sixteen per cent in a period of fifty years.

At the same time as the birth rate and the working population are falling, the proportion of the population aged at least 65 years old will increase from 61.3 million in 2000 to 102.7 million in 2050 for the countries of the European Union. Among this number, it should be noted that the most spectacular growth is of people aged at least 80 years old, which will increase from 13.9 million in 2000 to 38.1 million in 2050 (see Table III and Figure III of the annex). This is a

**FIGURE V.- EFFECTIVE ECONOMIC DEPENDENCY RATIO**  
(% of persons aged 15+ not employed / persons employed)



consequence of the advances that have taken place in medicine and health, food, customs and general way of life whose overall effect will be to increase life expectancy to 85.5 years for women and 80 years for men in 2050.

It is very clear that what we have just described goes beyond mere statistics. The change in the nature of the population, the reduction in fertility and the consequent fall in the birth rate, together with increased life expectancy, will cause a complete transformation in the demographic pyramid. This will have clear effects on the possibility of sustaining the welfare state.

The change in the relationship existing between those contributing to and those directly or indirectly benefiting from the system underlines the need to readjust the balance between the two aspects of the programme so that the security that the system aims to give those relying on it does not become risk and insecurity. This is particularly so in those systems whose financial model is based on redistribution rather than capitalisation.

In this sense, the dependence of those aged 65 years old or more of the working population is a cause for concern. The situation in the European Union is worrying, where the proportion of those depending on the working population will rise from 24% in 2000 to 49% in 2050. This means that for each two people aged between 15 and 64 there will be one person aged 65 or more by the year 2050.

While the statistics are revealing, the situation is even more alarming if the figures are broken down on a country by country basis. Thus, in Spain the respective figures are 25% in 2000 and 60% in 2050. (For more information see Table IV and Figure IV in the annex hereto).

Even more enlightening is the relation of dependence if the unemployed are included within the dependent population and as beneficiaries of the social security system or welfare state. Table V and Figure V clearly shows this relationship of effective economic dependence; by 2050 the number of dependents will be greater than those in employment. The figures for Italy, Spain and Greece are particularly striking, since all three countries already have, and will continue to have throughout the next 50 years, more dependents than employed. In the case of Italy, this percentage will rise from 134% in 2000 to 142% in 2050.

## **INITIAL ECONOMIC CONSEQUENCES OF THESE CHANGES**

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As has been stated time and again, the figures that have been supplied, are more than just bare statistics. They represent a different world to that imagined at the time of the construction of the welfare systems that are now with us and that make up what we call the welfare state. These differences mean that we must revise concepts, objecti-

ves, categories and forms to restructure, where necessary, such systems.

From the above it is easy to reach certain economic conclusions that should be taken into account if and when the time comes to redesign this model.

It has been seen that a fall in the birth rate leads to a reduction in the youngest part of the population which, within the next ten to fifteen years, will result in a significant reduction in the working population. A lower working population will lead, *ceteris paribus*, to a reduction in economic growth and, also, a reduction in the GDP, unless the decrease in labour supply is compensated by an increase in the level of employment or occupation, or by an increase in levels of productivity, neither factor being mutually exclusive.

It is worth making an additional observation. As regards the reduction in the level of unemployment - equivalent to the increase in the level of employment or occupation, as we have just called it, may clearly be an objective, although there is little margin for its effects to be appreciable. With the exception of certain cases, such as Spain, where the level of unemployment is still very high (approximately 14 per cent), or Greece, Italy and Belgium, (around 11 per cent), the majority of the remaining countries in the European Union have levels of unemployment that, given the legal structure of the European labour market, could be considered as having natural unemployment.

In fact, it would not be surprising if total unemployment in the European Union increased slightly over the next 50 years. Breaking down the figures, we find that in certain countries it is more than likely that unemployment will increase, for example in the Netherlands, or remain stationary, for example, in the Republic of Ireland and Portugal.

As regards increases in productivity, these require improvements in either of the following two circumstances, or in both: the quality of human capital, since the quantity of this factor is greatly restricted, or technical progress.

It is difficult to improve significantly the level of human capital within developed countries and in particular within the European Union, even supposing that lifetime training became the general norm. This is because human capital is already highly educated and therefore, while improvements are possible, they are likely to be incremental rather than dramatic.

As regards technical progress, this is the result of research directed at productive efficiency and not simply at technological sophistication aimed at segmenting the market, thus facilitating the existence of monopolistic competition or, at best, imperfect competition. However, technical progress does not just mean research. Technical progress requires that the results of research be reflected in productive terms, either through transferral to capital equipment or changes in management struc-

tures and information procedures that improve the employment of resources used in the production of goods and services.

Improvements in production through research obviously require there to be a sufficient volume of savings to provide the necessary financial resources. Yet given the foreseeable reduction in the growth of the GDP, even in absolute terms, savings are likely to fall. This in turn will slow down the possibilities of increasing technical progress associated with the means of production.

These economic factors have an effect on public spending. The greater number of people of 65 years old or more results in a higher demand for pensions and all those goods and services associated with a prolonged life. This is the case with the greater need for medical assistance, particularly prolonged medical assistance, both at home and in hospitals, connected to the exponential growth of people aged 80 years old or more, as can be seen in Table III and the corresponding graph.

In addition, other goods which old people benefit from and which are present in many situations are not taken into consideration, such as central heating, public transport, telephones, even holidays, with transport and lodging included. In the first place, because of their relative importance compared with other spending patterns and also because, in the case of important budgetary constraints, the cost of supplying

them could be noticeably improved.

The financial needs arising from this situation, disregarding other alternatives, would show in the basic case the need to increase expenditure within the European Union from 10.4 per cent of GDP in 2000 to 13.3 per cent of GDP in 2050. The case of Greece is particularly striking, with 12.6 per cent of GDP being spent in 2000, rising to 24.8 per cent in 2050. See Table VI and Figure VI for more information.

It should be added that in 2000, the weighted average of spending on all types of health care within the European Union amounted to 6.6 per cent of GDP. This percentage will increase, as a result of the increased age of the beneficiaries, by 2.2 per cent over the next fifty years.

## **LOOKING TO THE FUTURE**

The objective of the foregoing is to highlight the possible conflict between ends and means and the similar conflict that can arise from the competition itself between ends to choose, subject to a greater restriction, as a result of the greater relative scarcity of available resources.

As a footnote to the above, it is worth mentioning that it is highly likely that the extraordinary increase in public spending that the pensions system will require in the next few years, as an immediate consequence of the increase in the beneficiary population, will make it necessary to carry out a revision of

the current system as a whole, to the extent that their structures are not viable. Reform of the system could take many forms. Thus, it could range from a change in the method of calculating the pension, by including all contributing years in the basis of the calculation, to putting back the age at which full rights to the maximum pension under the scheme are obtained. This second measure would undoubtedly be the most effective way of saving resources.

The first measure has been gradually introduced in most EU countries. The second measure has met with more resistance, on the one hand from the forces of tradition and on the other, and equally important, the trade unions.

This second possibility has started to appear in countries where the conflict is most critical. It has taken the form of a voluntary increase in the retirement age, through incentives to companies providing employment - by reducing their contributions - and to workers themselves by increasing by a certain number of percentage points the level of pension that would be paid if retirement took place at the age established to receive the full pension.

As has been said, there are no grounds for optimism that the system will establish and guarantee economic expansion, with increasing employment and a significant increase in employment productivity. If, in the best case scenario, these two variables do improve, this would help, although it would

not be sufficient to solve the financial problem facing us.

The impact of an ageing population will be felt on public spending, which will have to rise by between 4 and 8% of GDP in most countries within the European Union. This figure does not take into account other expenses, such as education, child care, which, as more women join the workforce, will become increasingly necessary, and expenses relating to the increased demand for conservation of the environment, which is not currently a major concern.

In turn, while public pressure for further tax reductions may not be successful, it will at least prevent tax increases, with an impossible increase in real terms of public revenue. In fact, some taxes, such as those on employment, will have to be reduced if the objective is to boost the labour market.

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## **ACTION ON THE BASIS OF SOLIDARITY AS PART OF THE HUMAN FAMILY**

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Appealing to the sense of responsibility of each and everyone, the first point that must be made clear is that we are not alone. Before us, at least one generation exists and we will be followed by many future generations. In addition to this inter-relationship of generations over time, there is the equally important spatial relationship: we form part of humanity as a whole, the human family, in whose life nobody can avoid their responsibilities. "In his



desire to have and to enjoy rather than to be and to grow, man consumes the resources of the earth and his own life in an excessive and disordered way [...] In this regard, humanity today must be conscious of its duties and obligations toward future generations.”<sup>38</sup> “Not only is the material environment becoming a permanent menace—pollution and refuse, new illnesses and absolute destructive capacity—but the human framework is no longer under man’s control, thus creating an environment for tomorrow which may well be intolerable.”<sup>39</sup>

What Paul VI called the human consortium is, as we have just said, simply the feeling of belonging to the human family, so that any problem that affects it affects us too and we must commit ourselves fully in order to find a solution. This is not only for reasons of justice or mutual correspondence but, above all, for reasons of solidarity. This is based on “... a question of *interdependence*, sensed as a *system determining* relationships in the contemporary world, in its economic, cultural, political, and religious elements, and accepted as a *moral category*. When interdependence becomes recognised in this way, the correlative response as a moral and social attitude, as a “virtue”, is *solidarity*. This then is not a feeling of vague compassion or shallow distress at the misfortunes of so many people, both near and far. On

the contrary, it is a *firm and persevering determination* to commit oneself to the *common good*; that is to say to the good of all and of each individual, because we are *all* really responsible for *all*.”<sup>40</sup>

For gifts received, not only of a physical or material nature, but fundamentally of an intellectual nature, we assume the responsibility for their correct administration, of their fruits and that these fruits are enjoyed by everybody, both in the present and in the future. “Thus the attempt to provide for the satisfaction of our needs is synonymous with the attempt to provide for our lives and well-being... But men in civilised societies alone among economising individuals plan for the satisfaction of their needs, not for a short period only, but for much longer periods of time... Indeed, they not only plan for their entire lives, but as a rule, extend their plans still further in their concern that even their descendants shall not lack means for the satisfaction of their needs.”<sup>41</sup>

This concern for future generations is what defines a committed society: one that uses the gifts that it has received in a responsible way and shares the common destiny of them.

This sense of mutual responsibility, of a task shared among generations, of the desire to share requires, above all, generosity and a clear vision of the hu-

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38 JOHN PAUL II, *Centesimus annus*. 37.

39 PAUL VI, apostolic letter *Octogesima adveniens*. 21.

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40 JOHN PAUL II, *Sollicitudo rei socialis*. 38.

41 C.MENGER, *Principles of Economics*. The Free Press. Glencoe, Illinois, 1950, p. 77-79.

man being and his function in society. The place where this solidarity is particularly evident is in the basic building blocks of society: the family. The family is the unit that provides the best defence against the temptations of individualism, accompanied by egoism. For this reason, being the mirror in which society sees itself, both at a personal and social level, both as regards the action of the individual economic agent and that of the state, the family, the cradle of the community, must be preserved and defended in its true nature, so that it can be seen as the image of a society based on greater solidarity.

"It is urgent therefore to promote not only family policies, but also those social policies which have the family as their principle object, policies which assist the family by providing adequate resources and efficient means of support, both for bringing up children and for looking after the elderly, so as to avoid distancing the latter from the family unit and in order to strengthen relations between generations."<sup>42</sup>

It is the breakdown of the family and of its social sense and responsibility which takes man down a blind alley. Robbed of his sense of dedication and solidarity, materialism and its various allies - economism, consumerism, hedonism and utilitarianism - take over the human being, filling him with egoism and blinkering his vision of existence so

that he can only see what is most comfortable or convenient over a very short period of time. Neither the future nor the present generation fit into his scheme of things.

The future generation—children—is seen as a problem, as an economic and personal burden. Children represent hope for society, they are necessary to sustain society, yet they are now seen in terms of a series of difficulties, of conditioning factors, of risks, of uncertainty, of lack of comfort, so much so that the idea of having children is abandoned in favour of living a comfortable existence.<sup>43</sup> Nevertheless, "No country on earth, no political system can think of its own future otherwise than through the image of these new generations that will receive from their parents the manifold heritage of values, duties and aspirations of the nation to which they belong and of the whole human family."<sup>44</sup>

At the same time, from a materialistic point of view an old person is of limited use and therefore fits with difficulty into family and social life. Old people, like handicapped people or tho-

43 See, *inter alia*, D.M. BLAU, *Child care subsidy programs*. NBER. Cambridge, Mass. 2000. Working Paper 7806; A.C. CASE, I.F. LIN and S. MACLANAHAN, *Understanding child support trends: economic, demographic and political contribution*. NBER. Cambridge, Mass. 2000. Working Paper 8056; R.I. LERMAN and E. SORENSEN, *Child support: interaction between private and public transfers*. NBER. Cambridge, Mass. 2001. Working Paper 8199.

44 JOHN PAUL II, apostolic exhortation *Familiaris consortio*. 26.

42 JOHN PAUL II, *Centesimus annus*. 49.

se that require more intense dedication and care, are seen as being a cost component. Far removed from the productive utility that they once represented, today they are considered to be a burden on both the family and society, on a personal and economic level, since caring for them requires time and money. Here also, in favour of an apparently freer and, naturally, easier life, they are confined to institutions to be looked after away from the family where they belong. In this way, the value of life in old age, at least as a rich reference point for the next generation, is given up.<sup>45</sup>

From an exclusively individualistic view of society in which each person lives by himself and for himself, without any social responsibility at all, such considerations are devoid of meaning. However, even from an egotistical perspective, a man who is only concerned about himself, without any commitment to society, sees, with alarm, that his very egoism is in fact his main enemy. It is this which makes him consider the insufficiency and lack of viability of

a world created by himself, based on the exclusion of the values of brotherhood and solidarity.

By acting in an exclusively egotistical manner man ends up creating a rod for his own back. It is the concern for and commitment to the common good that is capable of alleviating the problems facing humanity. "Individual citizens and intermediate groups are obliged to make their specific contribution to the common welfare. One of the chief consequences of this is that they must bring their own interests into harmony with the needs of the community [...]."<sup>46</sup>

The immediate task of a new welfare state is to inculcate into man and society the values of brotherhood and solidarity in order to foster a spirit of inter-generational commitment, in which everybody participates and is responsible for the welfare of each other. "There can be no progress toward the complete development of man without the simultaneous development of all humanity... we must... begin to work together to build the common future of the human race."<sup>47</sup>

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## MODERATION: AN INGREDIENT OF THE NEW WELFARE STATE

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In the Holy Scriptures, the idea of waste was considered to be contrary

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<sup>45</sup> See, *inter alia*, L.J. KOTLIKOFF and J. MORRIS, *How much care do the aged receive from their children?: a bimodal picture of contact and assistance*. NBER. Cambridge, Mass. 1987. Working Paper, 2391; L.J. KOTLIKOFF and J. MORRIS, *Why don't the elderly live with their children?: a new look*. NBER. Cambridge, Mass. 1988. Working Paper 2734; P.THANE, *Economic burden or benefit?: a positive view of old age*. Centre for Economic Policy Research. London 1987. Discussion Paper 197; N. WELLS (ed) and C. FREER (coed), *The ageing population: burden or challenge?*. McMillan. Hounmills, 1987.

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<sup>46</sup> JOHN XXIII, *Pacem in terris*. 53.

<sup>47</sup> PAUL VI, *Populorum progressio*. 43.

to the natural destiny of man. Abusive spending, the submission of the human being to the eager enjoyment of possessions, is a form of slavery we now call consumerism. Long before the general consumerist attitudes that are prevalent nowadays, the voice of Leo XIII sounded loud: "Christian morality, when it is adequately and completely practised, conduces of itself to temporal prosperity... it powerfully restrains the lust of possession and the lust of pleasure—twin plagues, which too often make a man without self-restraint miserable in the midst of abundance; it makes men supply by economy for the want of means, teaching them to be content with frugal living, and keeping them out of the reach of those vices which eat up not merely small incomes, but large fortunes, and dissipate many a goodly inheritance."<sup>48</sup>

In the Church's teachings saving has constantly been seen as the result of the virtues of austerity and generosity, and also as a guarantee of the ordered development of all the present and future needs of the human family, above all of the less fortunate members. "Every effort, therefore, must be made that at least in future only a fair share of the fruits of production be permitted to accumulate in the hands of the wealthy, and that an ample sufficiency be supplied to the workingmen. The purpose is not that these become slack at their

work... but by thrift they may increase their possessions and by the prudent management of the same may be enabled to bear the family burden with greater ease and security, being freed from that hand-to-mouth uncertainty which is the lot of the proletarian. Thus they will not only be in a position to support life's changing fortunes, but will also have the reassuring confidence that when their lives are ended, some little provisions will remain for those whom they leave behind them."<sup>49</sup>

This aspect of saving as a virtue must, in a universal welfare state, be added to the strictly economic aspect of saving as the means of financing investment. If the need to save has always been necessary, it becomes even more so before a period when hours worked will tend to fall because the working population has failed, *inter alia* to provide sufficient funds for investment. We need investment, not only for the present generation, but for future generations as well.

The Second Vatican Council stated that "The distribution of goods should be directed toward providing employment and sufficient income for the people of today and for the future. Whether individuals, groups, or public authorities make the decisions concerning this distribution and the planning of the economy, they are bound to keep these objectives in mind. They must realise their serious obligation of seeking to it

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48 LEO XIII, *Rerum novarum*. 23.

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49 PIUS XI, *Quadragesimo anno*. 61.

that provision is made for the necessities of a decent life on the part of individuals and of the whole community. They must also look out for the future and establish a proper balance between the needs of present-day consumption, both individual and collective, and the necessity of distributing goods on behalf of the coming generations.”<sup>50</sup>

Public and private savings, at the service of the present and future needs of humanity, in the right balance between the present and the future are recommended by the Council’s Apostolic Constitution. In the same way as the welfare state has justly been able to create the present culture of responsibility as regards the rational use of non-renewable resources as an attitude based on solidarity towards humanity and, particularly, towards future generations, the new welfare state should be drawn up with the capacity to introduce this same culture of solidarity, more widely applied. On the one hand, solidarity with the actual human existence manifested with the generosity and greatness of the family function of procreation and caring for children and old people. On the other hand, solidarity with future generations, manifested through moderation, austerity and the growth of productive resources, increases through savings, in order to ensure a future without anxiety and full of humanity.

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50 SECOND VATICAN COUNCIL, *Gaudium et spes*. 70.

There is an urgent need for straight thinking, to have clear in our minds the terms of reference and the concepts with which we are dealing. It is our obligation not to pass on to the next generation a world that is worse than the one we have received from the previous generation and, for better or worse, this means not only the provision of material goods but also spiritual matters, whose values are based on the capacity of survival of the universal community itself. This obligation is fair, given the previous generation’s commitment to us. In fact, we need to go beyond fairness, since solidarity with the next generation requires us to deliver to them a world that is better than the one that we received, offering them, as the good and faithful servant did, proof of our good administration.<sup>51</sup>

## **SOLIDARITY IN THE ADMINISTRATION OF PUBLIC RESOURCES**

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It is perhaps unnecessary to add that what has just been said relates both to the personal sphere of activities of the individual as member of society and the whole human family, and to institutions, both national and international, and in particular the state. Only the state has the capacity to meet certain social needs, both as regards present and future generations.

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51 See Mat. 25: 14-30

Nevertheless, it is worth establishing what specific action and which objectives need to be carried out. The principle of solidarity that is built into the concept of savings described above is crucial. Satisfying the needs of life, even with certain generosity, is an unavoidable obligation; consuming beyond this point has more to do with squandering than satisfaction.

The classic principles of public finance, whereby a balanced budget was a sign of good administration and practices that led to a deficit were condemned, are a distant memory. It is clear that a deficit, as an instrument of fiscal and economic policy in Keynesian economic theory, is a burden that is shifted from the present to the future generation. This is so except in those cases where the deficit is a simple financial result as a consequence of the investment in real assets of which future generations will benefit.

Apart from a deficit, financed immediately by the same generation that produces it by new money creation, and avoiding at this moment considering the inflationary consequences that it will produce, a public-sector budget that is in deficit will be financed through indebtedness - strictly speaking public debt, bonds or treasury bills. The generation that has to pay back this borrowing is saddled with an extra burden. Thus, overconsumption in the present, almost certainly of goods that are superfluous or petty, forces the reduced consump-

tion of future generations and, in this case, perhaps, of essential material or spiritual goods.<sup>52</sup>

Finally, the public pensions system, set up in a large number of countries on the basis of distributive "Pay As You Go" principle and not of capitalisation, provides a particularly acute example of the constitution of a pool of savings: The deficit created by such pensions system, passed from generation to generation, becomes particularly complicated when, as at present, the degree of dependence of the elder generation on the younger generation is increasing.

A different approach is necessary. For reasons of solidarity, the present generation must start to combine in a transitory fashion the move from a system based on distribution to one based on capitalisation. We must save in order to, on the one hand, cover the social obligations contracted with the generation that is no longer working or is on the point of retirement and on the other hand accumulate capital that will gua-

52 See, *inter alia*, W.G. BOWEN, R.G. DAVIS and D.H. KOPF, "The public debt: a burden of future generations?". *The American Economic Review*, v.50, n.4, Sept. 1960; T. IHORI, *Debt burden and intergeneration equity*. Osaka University. Tayonaka, Osaka 1986; D.H. JOINES, *How bad is the federal budget deficit?* Federal Reserve Bank. Kansas City 1989. Research Working Paper 89-12; P.G. PETERSON, *Deficits, debts, and demographics: three fundamentals affecting our long term economic future*. Institute of Southeast Asian Studies. Singapore 1986; N. ROSSI, *Demographic and debt service*. *Public Finance*, vol. 48 supplement, 1993.

rantee the payment of a pension when the time to give up productive activity is reached.

In addition, the generation which is about to retire must understand the need to postpone retirement in order to reduce the financial burden of pensions within the social security system.

These, and all the other spheres of activity, where the state enters into future obligations on the basis of present information, must be the object of accounting and provision must be made. If not, there is a great risk that the burden will be shifted from the present generation to future generations or, quite simply, the system will go bankrupt.

The need for generational accounting arises as a consequence of the budget restrictions established in values discounted to the base year, year ( $t$ ). The principle that the obligation assumed in year ( $t$ ), regardless of when it takes effect and its duration, must be equal to the net taxation effort - discounting positive transfers - that the beneficiaries of the payment will have to realise throughout their life, is a principle that cannot be challenged if the objective is not to shift the burden to future generations. A present debt, discounted as of today, is either financed through taxation that the present generation satisfies throughout its working life - discounted to the present value - or has to be covered by taxation raised from future generations that have yet to be born, in terms of actual value as well.

$$PD_t = \sum_{s=0}^{Gt} NT \cdot \frac{1}{(1+i)^s}$$

Where ( $PD_t$ ) is the public debt assumed by the state in year ( $t$ ) that, in order for there not to be any shift in the burden between generations, will have to equal total net revenue from taxation ( $NT$ ) - that is, net of transfers - for the generation that benefits from the payment, ( $Gt$ ), discounted to the year ( $t$ ) of reference.

If the present generation, which is the one that has caused this public debt to exist in the first place, is not capable of financing the total amount, this will have to be paid back, at least partially, by future generations. This can be represented in the following manner:

$$PD_t = \sum_{s=0}^{Gt} NT \cdot \frac{1}{(1+i)^s} + \sum_{Gt}^{G\infty} NT \cdot \frac{1}{(1+i)^s}$$

The second term on the right hand of the equation expresses the burden that future generations will have to debt through net taxation ( $NT$ ), discounted to year ( $t$ ), showing in this way the present generation's lack of solidarity, unless this burden was to finance investments of which the future generation would benefit.

## CONCLUSIONS

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The current demographic situation is of cause for concern and casts doubt on the ability to sustain the welfare sta-

te, of which a significant part is the social security system, in its present form. Health care, the care of old people and children, contributory and non-contributory pensions and a good number of other examples of social spending require a large number of contributors. Within the next fifty years it is not expected that such a large number of contributors will exist.

This means that less emphasis should be placed on legal obligations and more on solidarity and generosity between people, not only those living at a given moment and in a given place, but rather those that may form part of the human family over time.

The model of the welfare state is implicitly based on the presumption that the composition of the working and non-working population, of contributors and beneficiaries, would not change significantly. Social preferences have shown us that this is not the case. As a result, the welfare state that is needed is one that can meet the challenge of providing a new social, individual, family and community education, so that a plan for society's survival can be drawn up. Solidarity, in the form of a commitment towards future generations, is an element that must be taken into account when decisions are made. Future generations also have the right to share in the goods offered to humanity, goods that must be conserved and, if possible, increased by the previous generation.

The financial needs that will exist in

the very near future require the problem to be addressed now. The welfare state, to which society's hopes have been entrusted, has to introduce the necessary adjustments to ensure it can satisfy needs, while introducing procedures of generational accounting to ensure the maximum viability of the system by not shifting the present burden to future generations.

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# A New Paradigm of Health

Renzo Paccini

# N

*The word “paradigm” can evoke the sum total knowledge of a scientific discipline in a specific period of history. Today an equivocal use is made of the word, which is associated with a scale of values that would allow a specific paradigm to be declared obsolete and to replace it with another. According to the New Age, the move from the age of Pisces to that of Aquarius would include a paradigmatic change. After having long been tied to Hippocratic and Judeo-Christian traditions of medicine, the World Health Organization developed, over a few years, a new concept of health with a corresponding new model of medicine: a new paradigm. The slogan “health for all” in fact hides a project to provide health care according to the buying capacity of nations and individuals. The main objective consists in taking care of quality of life, which is evaluated starting from one dominant criterion: life expectancy without incapacitation. In a holistic perspective, that considers man as an ephemeral particle in material whole, one must also watch over the quality of the environment. One must first give priority to the health of the earth and then to public health, that is, society’s health, before being concerned with the health of individuals. The care that these receive must be in harmony with the environment. This is why there is an insistence on “reproductive health” in the new paradigm of health. (↗ Biotechnology: the State and Forms of Fundamentalism; Bioethics Committees; Informed Consent; Family Counseling Centers; Sexual and Reproductive Rights; Euthanasia; Quality of Life; Reproductive Health)*

## DEFINITION OF THE EXPRESSION

The profile of health care at the international level has undergone important qualitative and quantitative changes in recent years. This motivates our interest to research the ideas relating to health and health care<sup>1</sup> used by man to-

day—more or less consciously and more or less rationally—to get closer to the new challenges and look for solutions

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to actions that are properly medical and oriented towards the physical, psychological and spiritual well-being of the human person; health care is understood to be that which refers to policies, legislation and health care structures. Cf. PONTIFICAL COUNCIL FOR HEALTH PASTORAL CARE; *Charter for Health Care Workers*; Vatican City, 1995, 9.

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1 We understand health as everything referring

to them. Such changes should motivate man to undertake new challenges and search for new solutions.

Before speaking of the so-called *new paradigm of health*, it is necessary to see the definition of *paradigm* that constituted its conceptual context.

a) Definition of terms: the concepts of paradigm **and health paradigm**

In order to introduce the term *new paradigm of health*, the World Health Organization (WHO), citing Thomas Kuhn, presented the following definition of *paradigm*: "An ensemble of ideas, values, knowledge, and methods necessary to create a common context for understanding and treating principle problems and researching realistic and practical ways to resolve them."<sup>2</sup> From this we could derive the following definition of *paradigm of health*: the ensemble of ideas, values, knowledge, and methods relating to health that constitute the basis for coming closer to the problems in this field and finding satisfactory solutions.

From what was said, two observations can be deduced. First, it is deemed possible that many paradigms of health can be constructed on the basis of different values, ideas, knowledge, and methods. This means that the concept

of a paradigm of health carries within itself *a component of relativism*, which will create problems for any eventual proposal about its "correct use".<sup>3</sup> Second, it would require an eminently practical intention; that is, it needs to be oriented towards the management and the solution of health care system problems.

b) The new paradigm of health

In 1991, the General Director of the World Health Organization (WHO) stated that it was necessary to elaborate "a new health paradigm in light of the changing political, economic and social realities,"<sup>4</sup> because otherwise the goal "Health for All by 2000" would not be met.<sup>5</sup> The international changes referred

3 Kuhn's work, cited above, refers to scientific investigation but later the concepts of *paradigm shift* and "paradigm change", has extended to other disciplines such as politics or sociology, and as seen here, to health care. For scientific progress, Kuhn discards the exercise of reason as a guide for scientists to determine priorities, the resolution of arguments, and the type of experiments to be carried out. Instead, he proposes the application of a paradigm. The paradigm is a subjective emanation of the one who creates it. It is not an expression of objective reality, which in the end is considered unreachable.

4 Cf. *Statement of the Director General of the Executive Council at the 87<sup>th</sup> session*, Geneva, 14 January 1991. (Document A44/DIV/4); cf. also M. I. PÉREZ, *El Nuevo paradigma de salud de la OMS*, Institute of Biomedical Ethics, Pontifical Catholic University of Argentina, Santa María de los Buenos Aires, August 1998.

5 "Health for All by 2000" was mainly based on the idea that primary health care must be accessible to everyone. Cf. WORLD HEALTH

2 T. KUHN, *The Structure of Scientific Revolutions*; University of Chicago Press, Chicago 1970, cited in WORLD HEALTH ORGANIZATION, *Towards a Paradigm for Health*, 19 June 1991 (Discussion paper DGO/91.1).

to could most of all be traced back to a lack of resources to achieve these goals. At that same occasion, it was pointed out that those in charge of planning national health policies, and even the WHO, found themselves without a proper health paradigm that could define the priorities in health care programs and the way to distribute available resources. The very fact that a new health paradigm was declared to be necessary was equivalent to affirming that the paradigm of health applied until then – which was directly derived from the definition of health inscribed in the founding document of the organization – was considered no longer current.

The new health paradigm consisted in a worldwide perspective in which health was at the center of development and quality of life.<sup>6</sup> Beginning with a socio-economic and political analysis, a change was proposed aiming at a greater selection and concentration of resources in a few effective programs that offered visible results at a low cost, given the scarcity of resources.<sup>7</sup>

According to this paradigm, basic needs for development must be attended to in accordance with the resources of each country. In this manner, health care programs would assuredly be sustainable, that is to say, they could be financed with the resources of each country.<sup>8</sup> Thus, the organizational criteria for decision-making in health care economics were established.

Given that among the principal functions of the WHO is acting as an international guide in the area of health care and to cooperate with governments in order to strengthen the planning, administration and evaluation of national health programs,<sup>9</sup> we can say that the so-called new health paradigm was spread widely and was influential. Even though the term fell out of usage during the following years within the WHO,<sup>10</sup>

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PRGANIZATION, *Health for All in the 21<sup>st</sup> Century*; policy document; (A51/5); found at <http://www.who.int/wha-1998/pdf98/ea5.pdf>

6 Cf. *Statement of the Director General of the Executive Council to the 44<sup>th</sup> World Health Assembly*, Geneva, 7 May 1991 (document A44/DIV/4).

7 Lozano-Barragán observes that “the new paradigm of health appears to depend on two factors: the availability of economic resources and the probability of success” (Cf. J. LOZANO-BARRAGÁN, “Exigencias de

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la salud y moralidad. Paradigma de salud de la OMS,” in *Dolentium Hominum* (1997) 36, 36-42.

8 Cf. *Statement of the Director General of the Executive Council at the 87<sup>th</sup> session*.

9 Cf., summary, WORLD HEALTH ORGANIZATION, *Fact Sheet* No. 126, August 1996 located at <http://www.who.int/fs/en/fact126/html>

10 A search on the official website of the WHO <http://www.who.org> did not reveal any document that contains the term *paradigm of health*. In PÉREZ, *El Nuevo paradigma de salud de la OMS*, a reference is made to an interview with the then director general of the WHO in January 1996 in which he declared the use of the term had been complicated by the difficulty of people in understanding what a paradigm was and the lack of interest among

today one can find traces of the term in the alleged “new universality” proposed by the World Health Organization in recent years.<sup>11</sup> It has also been pointed out that the new health paradigm is equivalent to what is called today the “new ethics for equality, solidarity and health.”<sup>12</sup>

## **A CRITICAL FOCUS ON THE NEW PARADIGM OF HEALTH**

It is necessary to approach the new health paradigm with a critical spirit given the repercussions in the health care field, not only with regards to what sectors of health care (for example prevention or therapeutic interventions, contagious diseases or degenerative ones, maternal and child health care, medicine in the workplace, etc) will receive

resources and in what amounts,<sup>13</sup> but also for its more concrete effects such as determining which patients should receive the benefits of the resources assigned to a sector and what treatments should be given priority.<sup>14</sup> Clearly, this last aspect will have repercussions on clinical decisions and on the doctor/patient relationship itself. In a short time all the activities in the health field will be influenced by the paradigm that is applied. The implications, as we will see, could go beyond the arena of health care.

Let us look at some implicit elements in the new health paradigm.

### **a) A worldwide perspective with health at the center of development and quality of life**

*A vision of the world centered on health.* The preoccupation with health and the search for security in this field has been pointed out as a characteristic feature of contemporary culture;<sup>15</sup> the proposal of this new paradigm of a worldwide perspective centered on

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health care professionals to use “strange” words.

11 Cf. WORLD HEALTH

ORGANIZATION, *World Health*

*Report, 1999: making a difference* (Message from the Director General WHO/WHR/99.1);

G.H. BRUNTLAND, *Public Health for a New Era. Seminar at the King's Fund*, London, 14

January 1999 at [http://www.who.int/director-general/speeches/1999/english/19990114\\_london.html](http://www.who.int/director-general/speeches/1999/english/19990114_london.html). The “new universality” proposed

as a new model of managing universal coverage, establishes that governments have

the strategic leadership through determining health care priorities, but one must accept each country's financial limitations in health care initiatives (public financing for everyone implies that not everything can be paid for with public funds).

12 LOZANO-BARRAGÁN, “Exigencias de la salud,” 36-42.

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13 This is what is known as *macroallocation*; cf. T.L. BEAUCHAMP - J.F. CHILDRESS, *Principles of Biomedical Ethics*, New York, 1994, 361-366.

14 This is what is known as *microallocation*; cf. BEAUCHAMP - CHILDRESS, *Principles of Biomedical Ethics*, New York, 1994, 361-366.

15 Cf. T. ANATRELLA: “I modelli culturali della salute”; *Dolentium Hominum* 2000; 43:30-36. C. VIAFORA, “Las dimensiones antropológicas de la salud: un acercamiento filosófico centrado en la ‘crisis del sujeto’”, in *Dolentium Hominum* (1998) 37, 16-21.



health is a reflection of this.

The first element requiring attention when health becomes a central point is the danger that the preoccupation with health will turn into a real obsession about it,<sup>16</sup> with further possible negative consequences. Perhaps the centrality given to health was first manifested in the definition formulated by the World Health Organization,<sup>17</sup> which, even recognized that health has other dimensions beyond the biological, and has been criticized for defining health as “a state of complete well-being”, by implicitly asking medicine to give more than it can and hugely expanding the right to health care.<sup>18</sup> Inevitably, certain human conditions will be deemed “pathological” such as old age or handicaps, such that no one would ever reach the desired “complete state of well-being”;<sup>19</sup> and because health is confused with happiness.<sup>20</sup> On this last point—the

confusion of health with happiness – it must be said that such a confusion will lead to health being considered as a means to happiness, and will also lead to a growing medicalization of all aspects of life.

A second observation to be kept in mind is that the vision of the world centered on health will lead to a global understanding of man and society in terms of health, and no longer in terms of religion, or even in terms of politics or economics.<sup>21</sup> This new understanding of man will open the door to other dangers that should be closely considered.

*A new anthropology?* In making global assessments about man, there is the danger of finishing by elaborating *a new anthropology*, based on a partial and limited perspective, such as the one centered on health. This is especially true since the concept of health it is based on has evident limitations, as we noted. Perhaps the greatest risk one incurs in accepting a new paradigm of health is the pretension to know the answer to the question “what is man?”

*A new terminology.* The same “authority” with which the new paradigm of health attempts to provide global explanations about man and society, allows it to create its own terminology, neo-

16 Cf. VIAFORA, “Las dimensiones antropológicas”.

17 Cf. “Constitution de la organization mondiale de la santé,” in *Documents Fondamentaux*, Geneva, 381990, 1. In the preamble of the Constitution, health is defined as a “state of complete psychological, social and mental well-being, and not just the absence of illness.”

18 Cf. VIAFORA, “Las dimensiones antropológicas.”

19 L. CICCONE, “Educazione sanitaria ed educazione della persona. Etica e Salute”, in E. SGRECCIA (ed.) *Salute e Persona: presupposti bioetici dell'educazione sanitaria*, Bologna, 1990, 15-37.

20 Cf. D. GRACIA, “Historia del concepto de

*salud*”, in *Dolentium Hominum*, 1998 (37), 22-27; cf. also: ANATRELLA, “I modelli culturali della salute”; VIAFORA, “Las dimensiones antropológicas.”

21 VIAFORA, “Las dimensiones antropológicas.”

logisms adequate for its explanations, carriers of new ideas to be disseminated. As an example of these new terms, one can cite the term “reproductive health” (elevated to the rank of a human right), “safe sex”, “gender”, and so on.

*Medicine, knowledge par excellence.* If global explanations will be given from the perspective of health, medicine will become the most important field of knowledge, and thus can extend itself into other areas outside of biology, even becoming a new code of morality.<sup>22</sup> Among the areas to be encompassed could be economics, ethics, and even including spirituality.<sup>23</sup>

On the other hand, the new paradigm, by placing health at the center of quality of life, takes on the ambiguities of this expression. For the needed careful study of use of the expression *quality of life*, we refer the reader to the article in this Lexicon. In this chapter, we limit

ourselves to pointing out the contradictions that ensue when, on the one hand, one wants to put health at the center point of quality of life and, on the other hand, one attacks human life, for example, through different actions foreseen in “reproductive health” programs. In the same manner, it is contradictory to lament an increase in health care costs and the scarcity of resources to finance interventions in favor of health care—an argument used to justify the need for a “new” paradigm—and then to use what limited funds exist for anti-life activities.<sup>24</sup> The concept of health presupposes the concepts of life and of the human person. Therefore, one cannot speak of health if it is opposed to life.<sup>25</sup>

#### **b) The search for visible results at low cost.**

To affirm the need to concentrate resources in a few activities that promise results at low cost, with the intent of obtaining common health benefits, is to propose a calculated criteria of “cost/benefit” for the distribution of resources. The objective of the “new health care paradigm” is to search for the most effective “social use” to be given to resources; that is, the search is for maximum well-being and minimum pain and suffering, for the greatest number of individuals.<sup>26</sup>

22 VIAFORA, “Las dimensiones antropológicas”; GRACIA, “*Historia del concepto de salud*.”

23 Moving closer to the spiritual dimension would be a positive advance towards a more complete understanding of health. But PÉREZ, *El Nuevo paradigma de salud*, warns of a danger in the relationship observed between the new paradigm of health and the New Age. In its relativistic understanding, this spiritual group offers an anti-rational model of religion that denies the existence of a personal God and the individual personal reality of man. Regarding the New Age, cf. briefly J. RATZINGER, “La fede e la teologia ai giorni nostri”, *L'Osservatore Romano* (1 November 1996).

24 E. SGRECCIA, “Economia e Salute: considerazioni etiche”, in *Medicina e Morale* (1986) 1. 31-46.

25 E. SGRECCIA, *Manuale di Bioetica*, vol. I: Roma<sup>2</sup>, 1999, 491-523.

26 L. PALLAZZANI, “Teorie della giustizia e

Its methods shall be those that yield the best result at the lowest cost. It could be said that the “new health care paradigm” is an application of the health-economics method of social utilitarianism.<sup>27</sup>

*Social usefulness viewed as greater than the utility of the individual.* A perspective like the one pointed out leads to sacrificing one person for the collectivity, the majority, in order to obtain maximal well-being. Paradoxically, society—through those persons in charge of defining priorities and assigning resources for the application of the new paradigm—will be searching principally for “social utility”, but not for everyone who belongs to society. Therefore, we must clarify that social utilitarianism is not the common good, which is achieved when each person’s fundamental goods are recognized and defined, because the common good of society is realized in each person, who sums up in himself the good of society.<sup>28</sup>

*The new marginalized.* Social utilitarian measures typically have an obligatory character that can even be reinforced by law. Such is the case in the proposed new paradigm that seeks the concentration of resources in a few activities which promise visible results at low cost. This proposal would re-

quire that all other health conditions that require a comparatively higher cost of treatment be marginalized, which in fact would leave many people on the margins of medical attention. In addition, given that the social benefit that is sought has an economic focus<sup>29</sup>—in other words, what is sought is a financial reimbursement of the collective investment in health care by society, preferring to intervene on behalf of the patient who can best recover, in terms of productivity, benefits to society. Persons who do not yet produce or can no longer produce economically, like children and the elderly, therefore run the greatest risk of being marginalized. The model admits the possibility that, in order to maximize social utility, some people may be denied access to medical attention, and these are precisely those that are the most sick and in greatest need.<sup>30</sup>

One has to point out in such a situation that the right to medical attention is recognized, but in a weak manner subordinate to social utility.<sup>31</sup>

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allocazoine delle risorse sanitarie”, in *Medicina e Morale*, (1996) 5, 901-921.

27 For an exposition of social utilitarianism and its characteristics, cf. BEAUCHAMP - CHILDRESS, *Principles of Biomedical Ethics*, 47-55 and 334-340.

28 SGRECCIA, *Manuale de bioetica*.

29 In 1977 the world health assembly pointed out that the principal objective of governments and the WHO should be that all citizens of the world, by the year 2000, would reach a level of health that would permit them to have a *socially and economically productive* life. Cf. WORLD HEALTH ORGANIZATION, *Health for All*.

30 This is what has been called “involuntary social euthanasia”; Cf. PALLAZZANI, “Teorie della guistizia.”

31 PALLAZZANI, “Teorie della guistizia.”

*Reduction of the value of life to a cost-benefit calculation.* The restriction of the distribution of resources, ends up reducing the value of human life to the calculation of “cost/benefits” and putting economic costs on the same level as the life and health benefits of the subject. It is impossible to equate these values since they belong to two different planes.

The cost-benefit relationship is a valid economic principle, but it must be applied in a correct manner, and even more so when it is a basic criterion of health care economics. In order for this criterion to retain its value, it is necessary for the calculation of costs and benefits to be homologous,<sup>32</sup> for example economics or relating to health. If values are used that are not homologous, such as the economic value used to assess the cost and value of health in order to calculate benefit, conflicts of interest could arise, as happens today in practice.

### **c) According to the resources of each country**

For the new paradigm of health, the factor that is used to determine health priorities is cost required for the action in question: One must prioritize those programs that are sustainable, that is, those programs which can be paid for by the country. From this point of view, one must abandon or minimally invest in programs that are comparatively more expensive for society; such as cancer and pain treatment, or palliative

care.<sup>33</sup> Another interesting example of programs that would be abandoned are those providing milk for the children of mothers suffering from Acquired Immune Deficiency Syndrome (AIDS); it has been documented that the HIV virus can be transmitted from mother to baby through breast milk.<sup>34</sup> It has also been documented that there is a tripling in maternal mortality among mothers with the HIV virus who breast-feed their babies.<sup>35</sup> The WHO recommends that mothers suffering from AIDS should avoid breast-feeding “when there is a possibility of using other milk for the ba-

33 L. PALLAZZANI - V. MELE - E. SGRECCIA, “Allocazione delle risorse e qualità della vita in oncologia: considerazioni etiche,” *Medicina e Morale* (1992) 6, 1097-1104.

34 Among others, CF. P. VAN DER PERRE ET AL., “Postnatal Transmission of Human Immunodeficiency Virus Type 1 From Mother to Infant: A Prospective Cohort Study in Kigali, Rwanda,” in *New England Journal of Medicine*, (1991) 325, 593-598; D.T. DUNN ET AL., “Risk of Human Immunodeficiency Virus Type 1 Transmission Through Breast Feeding” in *Lancet*, (1992) 340, 585-588; R. NDUATI ET AL., “Effect of Breastfeeding and Formula Feeding on Transmission of HIV-1: a Randomized Clinical Trial,” in *JAMA* (2000) 283, 1167-1174; K DE COCK ET AL., “Prevention of Mother to Child HIV Transmission in Resource-Poor Countries: Translating Research into Policy and Practice,” in *JAMA* (2000) 283, 1175-1182.

35 R. NDUATI ET AL., “Effect of Breast Feeding on Mortality Among HIV-1 Infected Women: A Randomized Trial,” in *Lancet* (2001) 357, 1651-1655.

32 SGRECCIA, “Economia e Salute”, 31-46.

bies as a replacement, when it is possible (economically), is sustainable and safe”; and in the event these conditions are not met—frequently the case in developing countries—it continues that “exclusive maternal breast-feeding is recommended for the first months of life.”<sup>36</sup> Take note of the double moral standard on the basis of economic criteria.

For a correct administration of resources, it is necessary that the medical priority be demonstrated,<sup>37</sup> taking into account medical emergencies, the frequency of the medical problem, the ease of contagion, mortality rate, and possible complications from the illness, among other factors. Cost is not the only nor is it the most important determining factor that should be considered.

Furthermore, although it is good that the economies of the different nations will be able to manage their own health care costs independently, this should not lead to forgetting the responsibility for solidarity, which also ap-

plies to international policies, carrying with it the obligation for the international community to provide the most assistance possible to those countries in need.<sup>38</sup> This criterion appears radically opposed to the social utilitarianism on which the new paradigm is based.

#### **d) Changes in the doctor-patient relationship**

Health decisions at the program level—those which determine which patients will benefit from available resources and what treatments should be used when faced with the health problems selected as urgent—have a direct influence on the doctor-patient relationship. In fact, what is true for the doctor is also the case for all subjects working in the health field. According to the logic of the new paradigm of health, the social obligation to take health measures is justified by the necessity to reach the collective utility. The doctor consequently becomes a subject of this social obligation, and must, on the one hand, respond to the patient, and on the other hand, to society.<sup>39</sup> The emphasis placed on seeking

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36 WORLD HEALTH ORGANIZATION, *New Data on Prevention of Mother-to-Child Transmission of HIV and their Policy Implications: Conclusions and Recommendations. WHO Technical Consultation on behalf of the UNFPA/UNICEF/WHO/UNAIDS Inter-Agency Task Team on Mother-to-Child Transmission of HIV*, Geneva, 2001 (Report N.WHO/RHR/01.28); also cf. WORLD HEALTHASSEMBLY, *Infant and Young Child Nutrition*, Geneva, 2001 (Resolution WHA54.2).

37 BEAUCHAMP – CHILDRESS, *Principles of Biomedical Ethics*, 361-366.

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38 This is the principle of subsidiarity that personalistic bioethics takes from the social doctrine of the Catholic Church; cf. E. SGRECCIA, *Manuale di Bioetica*, 1, *Fondamenti ed etica biomedica*, Milan 1999, 166-168.

39 One can see a more critical view of the role of the doctor as the person responsible for deciding if it is worth the cost to society for the treatment needed by the patient in this article: M. ANGELL, “The Doctor as a Double Agent”, in *Kennedy Institute of Ethics Journal*

society utility makes the doctor run the risk of losing, or at least blurring, their sense of responsibility towards the patient, including the relationship they must maintain with them, resulting in a changed doctor-patient relationship. In order to avoid this risk, from no point of view can a doctor be confused with an economist.

Furthermore, in those concrete cases of medical attention for a specific patient, the doctor's personal answer to the patient runs the risk of being substituted by the response given by the paradigm that establishes the programs and way of carrying them out. The doctor-patient relationship, which should be "an encounter between having confidence and a conscience,"<sup>40</sup> loses its characteristic as an interpersonal relationship of mutual confidence and reciprocal responsibility, and passes on to a second plane with respect to the responsibility of the doctor towards society.

#### **e) A new ethics?**

Another of the other fields into which this new paradigm has extended, when it situated the worldwide perspective as centered on health, was the field of ethics. The *paradigm of health* is a concept that implies an ethical discourse,<sup>41</sup>

and somehow becomes a norm of human conduct.

Inside the World Health Organization, ethics received an important impulse until the middle of the last decade, with different initiatives.<sup>42</sup> They proposed ideas like the following: traditional ethical references cannot provide the answer to practices that are different today; one recognizes the plurality of points of view; in ethical debate, each person has the right to express their point of view, which should be listened to and evaluated; ethical values must be developed in conjunction with the individuals and communities directly affected by them. We must note that the proposal is for a new ethics lacking any objective truth and which must have recourse to a social pact, an accord, in order to exist and to carry out a common project,<sup>43</sup> it is an inter-subjective agreement stipulated between those that have the capacity and faculties for decision-making.<sup>44</sup>

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Bologna, 1994, 865-867. The author does not distinguish clearly between health and paradigm of health care.

42 From 20 - 22 May 1995, an ethics and health consultation was held at the global level; from 12-14 May 1998, the "Ethics, equity and renewal of the WHO health for all by the 21<sup>st</sup> century strategy" congress was held. There were also consultations on the teaching of ethics in medical schools.

43 Cf. LOZANO-BARRAGÁN, "Exigencias de la salud," 36-42.

44 This is what in bioethics is known as contractualism, whose principal exponent is H.T. ENGELHARDT, *The Foundations*

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(1993) 3, 279-286.

40 Cf. PONTIFICAL COUNCIL FOR HEALTH PASTORAL CARE, *Charter for health care workers*, 2.

41 S. SPINSANTI, "Salute", in S. LEONE - S. PRIVATERA (eds.), *Dizionario di Bioetica*,

## **CONCLUSIONS: FACING THE NEW CHALLENGES STARTING FROM THE PERSON**

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The relativism present in the concept of paradigm is also inescapably found in the new paradigm of health. This appears, not as an expression of objective reality, but as a developed structure which, by the way it is laid out, permits attacks against human life and dignity. For this reason, in approaching the challenges and problems that have arisen worldwide in the field of health and the health care system over the last few years, these ideas and values must find their basis in the reality about the human person and not in a constructed paradigm. In this way, health will find its just place as a value relative to human life and will be a reflection of the value of life; and the methods of distributing resources in public health care, based on the value-person, will respect the life and dignity of man, and will also serve to promote solidarity and subsidiarity among peoples.

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*of Bioethics*, New York, 1986; Regarding contractualism, cf. also, SGRECCIA, *Manuale di Bioetica, I: Fondamenti ed etica biomedical*, 57-58.





# Parenthood

Abelardo Lobato Casado

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*What does it mean to be parents? What are the main obligations and responsibilities of parents? What does it mean to become a parent? The new word “Genitorality” or “Parenthood” expresses the combined riches of human fatherhood and motherhood. The relationship between parents and children embraces a whole series of aspects from the biological to the educative that, in order to be correctly understood, requires an integral and unitary anthropology, one that sees man in all his ontological riches without falling into reductionism. It is through theology that we understand the true anthropological meaning of parenthood and human procreation in the light of Revelation: all parenthood has its origin in God the Father (↗ The Dignity of the Child; Family and Personalism; Gender; Motherhood and Feminism; Responsible Parenthood).*

Christian Anthropology has distinct characteristics that differentiate it from all other anthropologies. It looks for the entire truth about man as body and soul. Historically, the first anthropologies were Christian treatises on *De homine* that stemmed from the commentaries on the *Hexameron*. The work of Nemesius of Emesa already presents the view that the body, like the soul, is essential to man. It is incipient anthropology, aware that man is not only a problem, but also a mystery. Vatican Council II took this into account and states that it can be resolved only in the light of the mystery of Christ.<sup>1</sup>

The whole truth about man surpasses the horizon of what is human. One can find it only in the unity of multiplicity, in the integration of opposites, in the transcendence and openness to the infinite, in the conjunction of wisdoms flying with the two wings of reason and faith. The question of man is indeed a great question, as Augustine insisted,<sup>2</sup> but not the most radical, as Kant claimed,<sup>3</sup> nor is it confined to the investigations of the sciences of man, as contemporary culture claims. It is always an open question, connatural to man and difficult to answer, a question

<sup>1</sup> Cf. *Gaudium et spes*, 22.

<sup>2</sup> S. AUGUSTINE, *Conf.* IV, 4, 9: *PL*, 32, 697.

<sup>3</sup> I. KANT, *Logik*, 25

that the psalmist invites us to ask God and expect an answer: "*Lord, our God, what is man?*"<sup>4</sup>

Man must understand himself as a fragment of the totality of the real, but it is unjust to reduce him to a mere solitary individual, for he is a family and communal being as well. Christian anthropology develops from the encounter of two horizons that advance to the extent that we near the border between nature and grace, one accessible only through reason, the other only through faith in Revelation. In the first horizon, the human being exists always and only as man or woman in mutual relationship. In the second, man transcends the finite and appears as a being capable of God, open to infinity, *imago Dei*, fully realized initially in the first beings divinely created in justice and holiness, and in the fullness of time by the perfect man, Jesus of Nazareth. Anthropology cannot reduce itself to merely verifying the existence of the human being; it must say something about his being and for that, it has to refer to ontology. Man is a very special entity, and mere ontology by itself, even though it treats of personal being, does not really satisfy the hunger for truth about himself experienced by every man. Hence it is wise to follow Augustine's advice and turn to theology, which enjoys the privilege of seeing things through the eyes of God,<sup>5</sup>

and from that summit investigate man's origin, destiny, and dignity: "*Lord, that I may know myself and may know you! Noverim me, noverim te.*"<sup>6</sup> The truth about man reached by reason is transcended and completed in the light of Revelation.

Christian anthropology develops in these two distinct but complementary horizons: that of the world, the work of God for man, and that of the mystery of God who loves man infinitely. It must therefore use two methods or ways taking us, as in the poem of Parmenides, towards the heart of the truth:<sup>7</sup> that *coming from above* and that rising *to the above*. We know the truth of things well only when we have examined their constitutive principles, their external and internal causes. In this research, we encounter the being of man, on the one hand, with his limits, as has been done from Job to existentialism, and on the other, with the highest dignity of his personal being. It is a little thing, *parva res*, on one hand, but on the other, it encloses all the finite and transcends it. Using the image of a river in his commentary on a text of *Qohelet*, Thomas Aquinas says that the rivers of goodness coming from the open hands of the Creator meet in man, in the human being in plenitude, and from him it all returns to the be-

4 Ps 8, 1.

5 Cf. THOMAS AQUINAS, *STh*, I, q. 1, a. 7.

6 S. AUGUSTINE, *Solil.* 2, 1.

7 PARMENIDES, *Frag.* 8: DIELS, *Frag. Der Vorsokratiker*.

ginning.<sup>8</sup> A human being is not only in the world coexisting with others but has the privilege of being the central link in the whole range of beings, one that admirably connects the spiritual and the material spheres, concentrating the disseminated, and realizing the levels of being with greater intensity. Man can rightly be called a micro-world, a *microcosmos*, in two senses: *intensively and collectively*.<sup>9</sup>

Only in this context can we obtain the full answer to human questions. The whole exists in the fragment: the entire genetic information about the individual is inscribed in each of his cells. Here we search for the meaning of the wonder hidden within the fact of transmitting life, of engendering, of being a father or a mother. Already, Aristotle was surprised that Socrates did not engender another Socrates but another man.<sup>10</sup> This human capacity of giving being to another man, of being the parent can be considered in its becoming or *feri*, and is called “genitoriality” or “parenthood”, or it can be considered in its substantial reality, and is called

“fatherhood or motherhood”.<sup>11</sup> Giving being, transmitting life to another man, being a father or a mother, engendering a new individual of the human species, is a participation in the creative work of God. Human beings have this privilege. Fray Luis de Granada, so sensitive to the wonders of the world, to the miracle of man, says that he is a being in which an angel and a horse meet: as an angel, he has the ability to think; as a horse, he has the ability to procreate a new and authentic centaur.<sup>12</sup>

The essential elements of things make them to be what they are, and distinguish them from other beings. The human being is what he is according to his form, from which comes the species and unity of the compound. Therefore the key to understanding this human reality- the power of man to engender another man, however disconcerting at first glance, is in the “soul,” and belongs more to the spirit than to matter. Because the human soul is the bond

8 THOMAS AQUINAS, *In III Sent.* Prol.: “Ad locum unde exeunt, flumina revertuntur, ut iterum fluant” (Qo, 1,7).

9 THOMAS AQUINAS, *STh*, I, q. 93, a.2 ad 3: “Intensive et collective similitudo divinae perfectionis magis invenitur in intellectuali natura, quae est capax summi boni.” The world surpasses man *extensive et diffusive*.

10 ARISTOTLE, *Metaph.*, VII, 8, 1033 b 25.

11 THOMAS AQUINAS, *STh*, I, q. 33, a. 2 ad 2. “Generatio significat ut in fieri, sed paternitas significat complementum, generationis.”

12 L. DE GRANADA, *Introducción al símbolo de la fe*, ed. Cuervo, Works, V 272-273: “One of the greatest wonders of God is the gift of virtue and faculty to our soul, which on one side understands the divine things as an angel, and on the other procreates like a horse. It is as if God had created a creature that is a horse and at the same time an angel; It is the soul that has in itself the ability and the power over these two distinctive creatures.”

linking the two spheres of reality, the bodily and the spiritual; the soul gives being to the human body, the principle of being and of activity.

The soul, however, has suddenly become problematic. The present-day culture stands out not only for its accomplishments in the fields of science and technology, but also for its gaps in the horizon of being and for the profundity of what it overlooks. Heidegger rightly stressed the “forgetting of being,” but he is not the only one. Today, there is a scandalous forgetting of the soul, which is looked upon as a hindrance to understanding, and there is a desire to reduce it to a myth. Thomas Aquinas anticipated this cultural deviation and wrote extensively on it in the 21 articles of his *“Disputed Questions on the Soul.”*<sup>13</sup> The “forgetting of the soul” makes it very difficult today to answer the problem and mystery of man. One must return to Christian anthropology. The fact that man can be a progenitor of man, be a father or a mother implies cooperation with God in His creative work. The Greek adage, *“the sun and man engender man,”*<sup>14</sup> is now clearly inadequate; God and man engender man, with God reserving to himself the main part, the creation and infusion of the soul in the organized

matter.

From these presuppositions, we could try to “read” Christian anthropology and respond to the question of “parenthood” and to man’s fatherhood and motherhood. All parenthood comes originally from God the Father. The path *“from above”* presents it as participating in the original parenthood of God, of whom man is a living image in the world. The path *“from below”* has a certain affinity to the generation of new individuals of higher animal species, but cannot be reduced to them. There is a human way of engendering, of becoming a father or a mother. In the conjunction of these two paths, something of the mystery of the cooperation of man with God is revealed, as well as the deep meaning of human generation. The family is the site of the realization of the new being called to life in the human species.

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## IN THE BEGINNING WAS... GOD THE FATHER

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Saint Paul states that all parenthood comes from this absolute principle, from the divine parenthood (*Eph 3, 14*). God is the principle and cause of everything that exists. Revelation takes us to the fontal mystery of everything that exists in time and eternity. Everything called from nothing to being has its cause in God. But God himself does not have a cause. The being or substance of the deity is uncaused, non-engendered. There is only one God, but

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13 Cf. THOMAS AQUINAS, *QQ. DD, De anima*, ESD, Bologna 2001; A. LOBATO, *L'anima nell'antropologia di San Tommaso*, PUST, Rome 1987.

14 ARISTOTLE, *II Phys.* 2, 194 b 13.

He is not alone. From the beginning, he is a Father because he always engenders his Son. In God, there is an eternal generation and a family. God is the Father because He engenders his Son and both unite in the Bond of love, which is the Holy Spirit. This first divine generation is originating, fontal, the root of every other divine action, of what we understand as an expansion towards the outside in the creative work of God. Everything that comes from God will be according to the model of the first generation, everything through the Word and in the Word, from the power of the Holy Spirit. Thomas emphasizes that God is Father because He engenders the Son, and in this first "procession" is the model and cause of all other things. Not only the divine essence but also the personal processions are the origin of the rest of the "processions."<sup>15</sup> An image in the portal of the Cathedral of Chartres shows the Father creating the world while contemplating His Son. Thus God created the world, and man in the world, in view of his Son. He is the perfect *imago Dei* and everything has been created from Him and like Him (Rom 8, 26).<sup>16</sup>

15 THOMAS AQUINAS, *In I Sent.* D. 27, a. 3 ad 6: "Non tantum essentia [divina] habet ordinem ad creaturam, sed etiam processionem personalis, quae est ratio processionis creaturarum."

16 Cf. R. M. CARLES, "El hombre y el misterio de Cristo," in *Actas del IV Congreso SITA*, Cajasur 1999, I, 29-37.

During this original, descending process, in which the work of creating the world is understood as the fruit of the parenthood of God, the word describing the sixth day takes on its full weight: *Let us make man*, (*Gen 1, 26*). This creating action makes the first human being out of nothing; he is made out of mud from the earth and animated by the breathing out of His breath. God the Father created the human being and created him in His own image. *Man and Woman, He created them* (*Gen 1, 27*). The primitive narration sets these two human beings in the same dimension of image and dignity. The second narration differentiates the moment of the creation of man and woman, and gives us the key to understanding the text when He sets them in the world face to face, in their sexual difference and equality as image of God.<sup>17</sup>

In the beginning, when the human being received the gift of sexually differentiated existence, that difference constituted rather than broke down the unity of the species. From the beginning, human beings were divided into the two sexes and have the responsibility of cooperating with God in transmitting life: "*Be fruitful, multiply*" (*Gen 1, 28*). Man can exercise this mandate because God the Father collaborates with him. Through creation,

17 Cf. JOHN PAUL II, *Letter to families*, 6-7.

man has God as his father and is in His image. His destiny is to be a son of God through his union with Jesus Christ, through whom he receives a new communion with God and ascends to the category of son. Because of this, he is destined to cooperate with God as father and mother of their children in the family, by matrimonial instinct and love.

God is present in human paternity and maternity. Every woman who gives birth, and every man informed by his wife that he is a father must cry out as Eve did: *"I have acquired a man with the help of Yahweh"* (*Gen 4, 1*).<sup>18</sup> Seen from above, parenthood, like the fatherhood of man and the motherhood of woman, is a gift and a destiny. God created man in his/her personal condition, sexual and reciprocal, male and female, capable of mutual self-giving. Created for love, attracted by love, they form a family and engender in love. God does not leave them alone, but helps them and keeps the best part: He creates and infuses a soul into each new human being who comes into the world. The soul is the bond of union between God and man, between husband wife, between parents and children. No one can take away this great dignity of human parenthood.

## **IN THE BEGINNING THERE WERE...THE FIRST PARENTS**

18 Cf. JOHN PAUL II, *Familiaris consortio*, 14.

The way of revealed truth is a privilege: in a moment, with maximum certainty and within reach of all men, we can through faith reach the definitive truth about man as well as the basis of our parenthood<sup>19</sup>. On the other hand, the normal road of human knowledge about man and his parenthood or fatherhood is very different. We do not naturally have innate ideas or intuitions of the real; we have only the experiential capacity of the body and sensory data to make the jump towards being and essence. The existence and parenthood of man are facts, but it is not easy to say in what they consist. The existence of the human soul is evident, but as Aristotle admitted and Thomas Aquinas commented, it is very difficult to know what the soul is.<sup>20</sup>

The knowledge that man has of himself comes from experience and develops slowly in history; during which there are both successes and failures. Man's self-reflection appears late in history. The Delphic statement, "know thyself", was a novelty to Socrates. A still greater cultural novelty is to be found in the works of Saint Augustine

19 These expressions about the truth of the faith were given by the Jewish thinker Moses ben Maimon, the Maimonides of the Latins, in his book, known in the Latin translation *MOSES BEN MAIMON, Dux Perplexorum*, I, c. 33. Cf. R. IMBACH, *Thomas d' Aquin et Maïmonide, Un dialogue exemplaire*, Paris 1988.

20 ST. THOMAS AQUINAS, *De Veritate*, 10, 8, ad 8.

who wrote about himself *confessing and praising* God for what he found inside himself. Man found himself in the connatural experience as a being in the world of bodies. Man is a living being: like other living beings, he receives life rather than giving it to himself. He defines himself by the similarities he has with the other living beings and, above all, by the differences. Compared to animals, only he has hands, can laugh, talk, only he has *logos*. As a human being, he is in the world as male and female, face to face. Man is born only from man. Moreover, from the beginning he differs in body from the rest of the animals because he is born naked, barefoot and defenseless.<sup>21</sup> He is the neediest and most helpless of all animals. He is born into a human community, a tribe, a family; he identifies with each and from each receives help for his development. The origin of man, his principle and process has always been an open question.

To answer this, man has had three resources in the past: myth, nature, as well as chance and necessity. In a certain way, these continue into our own times.

Nature has been the most solid fulcrum point. Nature means birth, life; it is a kind of original force whose impulse is present in instincts. Like the animals, man has instincts which favor the origin of a new life. Life tends to

engender another living being. Nature pushes all animals to the propagation of their species. Until the 20th century man did not have a scientific explanation of the transmission of human life, of parenthood. Man could not give any solid reason either for life or for its root components, which are acids and proteins. He could not explain why always and only males or females are born. The role of the two sexes in the generation of life was unknown. Since Hippocrates, the father of medicine in whose school the first book about woman was written, the woman was thought to be only a recipient of life, which originates in the male: *tota mulier in utero*. Contemporary biology has revealed this secret; not only did it discover the long-lasting error on this matter, but it also gave women primacy in parenthood. Nevertheless, science still did not reveal the secret of the human being. Current investigation about the origin of life encounters insurmountable obstacles both in the individual and in the species. There is a great desire to know the first human couple, those who engendered all human beings. But this desire exceeds the possibilities of human sciences. The difficulty with phylogenesis is in the ontogenesis of every human being. There is always a limit. It is true that life is born from life, man from man, either by nature or by scientific manipulation, but man surpasses man. The very many

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21 PLATO, *Protagoras*, 322.

valuable human sciences overlook the most important aspect of the human being: the soul. They recognize only a one-dimensional man.

On this lower path, we are on the same level that Aristotle observed when he questioned where and how the *nous*, or spiritual element pertaining to man, originates. He had to say that it *came from outside, as if through a window*.<sup>22</sup> The book of Monod is an authentic testimony of the limits of our knowledge and the *impasse* which we are in: he confesses that there are two barriers for science, one from below, the origin of life, and from above, the presence of consciousness and spirit.<sup>23</sup>

Truthfully, in the beginning, there was a human couple that began the transmission of life in the world, but, unfortunately, knowledge of them has not been given to us. Anthropology from below is very rich. It always opens new horizons, but does not explain the most human part of man, the origin of the soul and is forced to confess humbly that, for it, we are all children of "unknown parents".

The nature of man manifests itself through the natural law, which is the deepest law of human beings because of his singular participation in the eternal law. This law reveals itself in instincts,

in our most profound inclinations. One of them is the attraction of the sexes, and the impulse toward the propagation of the species. This law, on the one hand, brings us closer to the world of animal life, which is transmitted by generation. Thus, the definition of this inherent inclination of the sexes by Ulpian has been widely accepted: *quae omnia animalia natura docuit*.<sup>24</sup> But on the other hand, this inclination is present in man in a peculiar way, because it enters into the domain of human acts.

Men and women feel this inclination, but they are masters of their acts, of the choice of persons; they know the implications and consequences that their acts bear with them. The union of man and woman in matrimony with an instinctive view of engendering children, is in every culture one of the most important acts of human life, one that begins a family. The love between man and woman is the foundation of their union and of their family unity. This union should be open to life in a human, responsible way. When the union is fertile, we have the beginning of a new life, which imposes of nutrition and human formation on parents. A child needs parents, both of them, and not for a short time, but permanently, thus forming the family with its duties and rights.<sup>25</sup>

22 Cf. ARISTOTLE, *De gener. Animal*, II 3, 736 b 27-28.

23 J. MONOD, *Il caso e la necessità*, Mondadori, Milan 1970.

24 Cf. THOMAS AQUINAS, *STh*, I-II, q. 94, a. 2; ULPIANO, *Dig.*, I, 1.

25 Cf. JOHN PAUL II, *Familiaris consortio*, 32.



The natural law opens the way to the humanity of man.<sup>26</sup> However, since anthropology has changed its course, and with Kant, refuses to follow the dictates of nature, in order to follow the decisions based on freedom alone, the natural law is systematically ignored or rejected.<sup>27</sup> That is why in this fluctuating perspective *from below*, marriage and the family, lacking a solid foundation, are left oscillating above the quick sands of opinions, positive laws, and deviated customs. This is dramatic, for that home, without a foundation on the rock of the absolute, cannot withstand the constant turbulences of a relativistic culture.

## THE COMPLETE PERSPECTIVE

The thorough understanding of human parenthood requires the union of two paths: reason and faith, the ascending and the descending. Man is capable of knowing himself and is capable by reason alone of knowing God as the beginning and end of everything. However, his current situation, after the original fall, is that of the limping and disabled individual who cannot run speedily along these ways. Man is a being

open to totality, but needs light to see the world and presence to know being. Where matter abounds and potentiality prevails, he becomes confused. Joined to a world open to the light of intelligence, where we seem to be in daylight, man discovers an irrational world, a certain night where all these profiles are blurred. This takes place in the world of the instincts, of the Freudian unconscious, of sexuality. In this world, the animal side rules over the rational. Instinct and sexuality, as Aristotle said, are not open to reason; instead, they oppose reason and leave it "tied", bound in a way.<sup>28</sup> Saint Paul complains about this situation of reason in a world of obscurity, of darkness in which man lives who needs the light that Christ brings. He seems to be talking to the men of today when he introduces his Letter to the Romans.<sup>29</sup>

The problem of human parenthood and paternity can be newly enlightened by the union of both perspectives. From below, the role of human sexuality is unveiled and that of the love between man and woman. From above, the presence of the divine action infusing the rational soul through which man is a living, sentient, willing person.<sup>30</sup>

It is important to consider human corporality seriously. We are not speaking correctly when we say that man *has*

26 Cf. THOMAS AQUINAS, *In IV Sent.*, d. 26, q. 2, a. 2.

27 Cf. I. KANT, *Anthropologie in pragmatischer Hinsicht* (Königsberg 1798): "Anthropology does not want to know what nature has done with man, but what man has done with his freedom" (Prol.).

28 Cf. ARISTOTLE, *Ethics.*, III, 5, 1147, a34.

29 Rom. 1, 21-32.

30 Cf. LOBATO, "Anima quasi horizon et confinium," in ID., *L'anima nell'antropologia di S. Tommaso*, 53-80.

a body. It is important to be aware that man *is*, essentially a body, that without a body we do not have a man. The body could be the limit of man, but above all, it is constituent and perfecting. What has to be avoided at all cost is duality in man. The Platonism present in western Christian culture was a way of reducing man to the soul; just as materialism today is an excuse to escape from man's spirituality. Man is made up of different and complementary principles. Christianity begins with belief in the Word clothed in human flesh, and concludes with the truth of the resurrection of the flesh. The dualism is overcome when one understands that the soul, as a substantial form, is that which constitutes corporeality. "The form of the human body is the substantial soul, in which is verified the image of God."<sup>31</sup> Everything in the body from head to toe is human, not merely animal, and participates in the dignity of the soul. Because it is body, and carries matter with it, the human being is always a sexed individual, that is to say, male or female.

Sexuality encompasses all that is human, but is made up of matter itself, which is always this and no other. Current biology has found the key to the distinction of the sexes, which in the past was a reality and an enigma. Sexuality does not consist only in the different external or internal organs that differen-

tiate a male from a female. It is deeper; it affects the composition of each and every cell. The chromosomes of each cell carry the inscription of the sex of the individual to whom they pertain. In the woman, the genetic code is inscribed in the pairs of chromosomes XX, whereas in the male, the pair is XY. With this genetic base, we have the principle of the constitutive, indelible difference between male and female. In the past, the difference was interpreted as superiority or inferiority. A woman, by the mere fact of being a woman, was considered inferior. It is time to erase this discrimination and admit the truth of the difference. Feminism on the march has reason for existing when it demands the dignity denied to women, but is mistaken when it pretends to eliminate the differences. The difference is in the being, in the richness of the world, with the inexhaustible participation of being in other entities.

The difference is ordered towards reciprocity: because they are different, men and women are called to *be two in one flesh* (*Gen 2, 24*). Equal in origin, dignity and destiny, but different in the body and soul proportioned to it, they feel connatural face to face, capable of loving and living with each other. Together they feel called to transmit life by engendering new human beings. They are responsible for transmitting life.<sup>32</sup> Vatican II, in its message to wo-

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31 ST. THOMAS AQUINAS, *In III Sent.*, 2.1 3 ad 2.

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32 Cf. JOHN PAUL II, *Familiaris consortio*, 28.

men, assured them that the time for recovering their dignity and taking a position in the world had arrived.<sup>33</sup> John Paul II in *Mulieris dignitatem* has clearly emphasized the great value of femininity and the diverse roles of women. Parenthood, like fatherhood and motherhood, requires mutual correlation and reciprocity.<sup>34</sup>

All human corporeality is permeated by the passion for life and by the goal of being the seat of the spirit in the world. Man is "the tree with the roots upward",<sup>35</sup> a family being before a political one. His sexual instinct has a somewhat like that of the animals, but there is a radical difference: animals feel themselves dominated by passion; whereas human beings feel enticed, but can use their freedom and control their acts. A man needs a woman and she needs a man. Different kinds of love can arise between them. Love is the strongest and most radical passion, the one that moves all the others. Men and women are born to love. In love is rooted the capacity for communion,

for dedication, for the gift of self to the other, for uniting two into one flesh and giving life to a new being. Human love in its different forms is only a reflection of the infinite love that is God. There are different degrees of love. In his *Symposium*, Plato described them as the different degrees of a scale with *eros*, which is the love of beautiful bodies, going on to friendship, *philia*, which is the spiritual communion of two souls that share values and ideals. From there, we can leap to the Love and infinite Beauty of which man is capable.<sup>36</sup> Love between man and woman as a sincere and mutual gift of both is the basis of the family. Fatherhood and motherhood acquire their full meaning in the mutual self-giving of the spouses, which brings about the *communio personarum*.<sup>37</sup>

Sexuality and love in their highest forms are not enough for the miracle of parenthood and the emergence of a new man to take place. The spouses, fused by love into one flesh, are not powerful enough to create the human soul of their children. They transmit the corporeality of organized matter. The human soul cannot be the fruit of matter, because the soul transcends matter. In human fatherhood and motherhood there is always a cooperation of God. He is the one who infuses the soul when

33 Cf. VATICAN COUNCIL II, Message to Women.

34 Cf. JOHN PAUL II, *Mulieris dignitatem*, 17-20.

35 This beautiful image comes from the middle ages, from commentaries on the text of Aristotle which compares plants to animals, by their mode of feeding from the roots or with the mouth: *De anima*, I, 1. Albert the Great, transforms this image into a prayer: "*Doce me, radices arboris mei coelo et non terra infigere*" (in the office of his feast).

36 PLATO, *Symposium*, 211. Cf. JOHN PAUL II, *Catechism on human love*.

37 JOHN PAUL II, *Letter to Families*, 7.

creating it and creates it when infusing it. The parents receive their child from the hands of creative omnipotence that unceasingly continues His work of creating the world and, in a special way, that of creating the human being. The human soul has a dual dimension: it is the form of the body, to which it gives unity, life, a specific being, and it is spiritual, the last of the spiritual substances and the noblest being in the cosmos. The conjunction of these two levels is the secret of Christian anthropology, which unites three elements: body, soul, and spirit. The human being is made up of two substantive principles, but is not dual.

# Personalization

Abelardo Lobato Casado

P

*Man lives his individuality in a unique way, in the way proper to a person. His personality is created with the passage of time, above all, because becoming aware of his dignity, man discovers his capacity of growing in the discovery of truth and in the living of the good. But his personality also is constructed from contact with others. The concept of man prevailing today in national and international political organizations is characterized by an individualism, which undervalues the innate capacity of man to develop himself and to open himself to others. That conception tends to reduce man to his mere biological dimension. It forgets that man continually makes himself into a person from the instant of his conception until his death. In other words, human experience lives a process of continual education, which begins with motherhood. (7 Children and Labor; Dignity of the Child; Children's Rights, Children's Rights and Sexual Violence; Family and the Rights of Minors; Parenthood; Person and Integral Procreation).*

A person is; personality is developed. Apparently, in our culture, forgetting about the person has shifted our attention to personality. One could say that we meet ourselves in a process that is the inverse of the original discovery of the concept of personhood. The use and the meaning of the word person are given in a first leap from the mask to the character, from theater to life, from appearing to being. This was an ascending process culminating in the divine persons. No other word has risen so high; going from a word unused by the Bible to speak about God, theology preferred it to all others. In this luminous and

ascending process, we can perceive the resonating splendors of our culture. We all feel ourselves to be flattered when we are treated as persons, when we use the personal words I and thou.

Person designates a being in its dignity and nobility. In social life, it plays a role which fits the use of a mask. We speak of personalities making their appearances in the different theaters of the world, in cultural and social life. Hence the interest in personalization - through the cultural and concrete profile of each of the persons.<sup>1</sup>

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<sup>1</sup> Cf. A. LOBATO, "La persona en santo

Personalization indicates the concrete profile that a subject acquires in the way it orients its own existence. For *homo viator* (man as wayfarer or pilgrim) at the same time is and is made. Man quickly perceives his limitations: *non omnia possumus omnes!* (We all can't do everything). We must live and let live. Each person possesses different concrete aptitudes that can be successfully developed. There are also obstacles, immovable limits, potential "demons" that must be controlled. Education is a process of leading out or developing the potential and possibilities of a person. Man is an apt subject for virtue and for vice, a receptive wax that can be shaped into values and counter-values, virtues and vices. The possibility of forming the personality is a task confided to the family. Following nature and its capacities, which are manifested in the profound inclinations and aptitudes of each person, there are two complementary fields of developing personality, one objective, the other subjective. Every man must develop himself in three areas: the objective, the subjective and the planned.

Since the ancient Greeks, it is customary to distinguish three great areas of human development: knowledge, work and making.<sup>2</sup> In these three fields one finds the conditions for attaining

and developing personality on three very different levels. The individuals called personalities are those subjects who have formed their profile in a splendid way, and like Saul in the midst of his people, stand out in height and are converted into excellent models of humanity fostering the dreams which every human being interiorly embraces: to be wise, to be nothing less than everything a man can be, to be a great artist. We see the possible ways of realizing this in human exemplars as well as in the "monsters" that periodically appear in history. Many personal beings can reach their development so as to become notable personalities, but, in fact, the majority do not. There are many reasons for this, for all that is human is complex and subject not only to hazard and fortune, but to the flexibility of freedom. Virtues, even in their heroic dimension, can be lived by all, but in fact are lived by few. Geniuses are rare. Cicero said that several centuries are needed to produce a genius - one who leaves his mark on and in some way changes history. Today there is an entire pedagogy ordered to the formation of leaders capable of educating the personalities of the future.

Since human beings can imitate and enjoy imitating, human culture is born to a great extent through imitating, and art can be defined as an imitation of nature.<sup>3</sup> That imitation, to which

Tomás de Aquino," in *Familia et vita* 5 (2000), 107-127.

2 Cf. A. LOBATO, *Dignidad y aventura humana*, Editorial San Esteban, Salamanca 1997.

3 Cf. THOMAS AQUINAS, *In Polit.*

Jesus Christ also invites us, is not limited to being a copy of something external, which is always the opposite of the living, but takes place inside of us as a certain prolongation in us of the life and internal forms of others. This immersion and appropriation of the form given by being is how new forms of art are created, how the artistic miracles of new men are realized. No artist works with prime matter as excellent as does the educator. That prime matter is the concrete individual who is so singular that, however dependent on his fathers and masters, is the only one forming himself, becoming the father of himself, not juxtaposing the exterior, but assimilating it to the point of making it his own flesh and substance. Education is openness to values and bringing out potentialities. The master resembles a doctor: he is a helper of the person, not a manipulator or an assembly-line worker.<sup>4</sup>

In this order, one should observe the significant difference between the virtues which go from self to the object, and those that return to the subject. Virtue is a habit or permanent disposition enabling a person to work or act well. Through virtues, one attains science, enjoys wisdom, or applies an art to real life. It is a conquest and a field of

development of personalities. In each human being sleeps a wise person, an artist, a genius. It is only necessary that someone awaken him. Culture lives off of the conquests of man through the intellectual virtues.

But there is a more profound field of formation of the human person, the field of work in which one not only acts well and produces a good work, but through exercising the acts of that virtue, becomes good oneself. This is the miracle hoped for in education for virtue. There is an itinerary to become man, and another to become Christian. And the family's role is indispensable in the formation of that personality; it is the forge, with example and word, that parents use. The ideal of man is a good man, nothing less than everything that a man should be. The Christian ideal is the saint. We are all called to be saints. That way is possible because it is not the achievement of men alone, but of the Spirit guiding us, for He is infused into the baptized. The personalization of family members situates each of the new members of the family on the path of Christian and human plenitude. The progress of the individual and of humanity is not attained except to the extent that human persons rise up in conquest of the seven theological and cardinal virtues proposed for our time and for the future with such great style and Thomistic excellence by Josef Pieper.<sup>5</sup>

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*Aristotelis*, prologue.

4 Cf. THOMAS AQUINAS, *QD De veritate*, XI: *De magistro*; Cf. A. MILLAN PUELLES, *La formación de la personalidad*, Rialp, Madrid 1963.

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5 Cf. J. PIEPER, *Las virtudes fundamentales*,

Each Christian home can imitate the home of Nazareth in which Jesus grew in age, in holiness and in grace before God and men in the *communio personarum* with Joseph and Mary. Each person coming into the world is invited to follow the path that Bonaventure called *Itinerarium mentis in Deum* and that Thomas Aquinas, with greater precision and as a pioneer ahead of his time, called *de motu rationalis creaturae in Deum*. One could say that this path is the nucleus of his work, the imprint of all his fruitful life and the secret of his magisterial teaching. The forge of the personalization of man in order to enter the different fields of life: cultural, social, political, economic, is done in the family and in the school which prolongs what the family alone cannot give. Personalization requiring the care of each subject has its origins in the family, whose lessons depend more on example than words. Life requires authenticity in all of its situations and circumstances; the only way it can be brought to successful fulfillment is through the integral truth about man.



# Partial Birth Abortion

Jacques Suaudeau

P

*The right to life of every human being is less and less protected by law. The universal scope of this right which was solemnly declared in 1948 and reaffirmed in 1989 in the International Convention on the Rights of the Child is whittled away more and more. This is notably illustrated by the tendency to legalize abortion and euthanasia. The particularly horrible technique of Partial Birth Abortion, to which President Clinton attached his name by vetoing bans against it, calls our attention to a new stage in the current anti-life escalation. The abortion termed "partial" is in fact an infanticide. It is the earliest kind of infanticide, because once the child has left the mother's womb other techniques are used to eliminate the child. (↗ Dignity of the Human Embryo; Medical Interruption of Pregnancy; Voluntary Interruption of Pregnancy; Safe Motherhood; The Legal Status of the Human Embryo; Pro Choice)*

The term *Partial Birth Abortion* refers to an abortion technique used in the last months of pregnancy in which an interrupted intra-vaginal delivery of a live fetus is performed, followed by an "aspiration of the cerebral contents" or sucking out the brains of the fetus before completing the delivery of a dead baby. Doctors call this procedure intact "dilation and extraction" or D&X, to distinguish it from the less controversial "dilatation and evacuation" or D&E, which is the most common method of second-trimester abortion.<sup>1</sup>

Despite the recent passage of a Federal Law prohibiting this gruesome technique, and its signing by the US President, the procedure is still performed legally in the United States, because the law has been blocked in the courts by those who defend abortion by all means and in all conditions. The relentlessness of the efforts of the groups who have protected this unjust and ruthless operation from being prohibited, during more than eight years of struggle, against public opinion and against the expression of democracy in Congress, is impressive. Since this issue is not necessarily well-known, it seems good to give a summary of its main points. This may help one to better understand the tactics, scope and politics of the minority that sustain a "right to

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<sup>1</sup> An estimated 2,200 to 5,000 D&X procedures take place in the United States annually, compared to an estimated 140,000 D&E. *Associated Press*, September 9, 2004, AP Online.

abortion for all women”, without the slightest consideration for the rights of the voluntarily destroyed baby.

### **THE LEGAL CONTEXT OF THIS TECHNIQUE**

This technique became legal in the United States ever since the Supreme Court’s 1973 *Roe v. Wade* decision forced all the different states to allow induced abortions. It seems to have first been used in 1979 as an alternative to the more customary technique in late abortions, which consisted in injecting the fetus with a lethal drug, followed by dismemberment and extraction. The new technique was presented to the public in 1993 by Dr. Martin Haskell of Dayton, Ohio. It is impossible to know how many abortions have been practiced to date by this method. Out of over 1,400,000 induced abortions per year in the US in recent years, somewhere between 500 and 1,000 per year have been by this technique. Only three physicians in America have admitted to having done this type of abortion. Dr. Haskell claims to have done about 700 of them; questioned by the press, his wife put the number at 200 per year. The other two physicians are Dr. James MacMahon of Los Angeles (who declared to the *Los Angeles Times Magazine* in 1990 that he did 400 of this type of late abortions per year, for a total of 2,000) and Dr. William Rashbaum of New York City (who declared in a letter to Rep Charles Canady that he had perfor-

med 19,000 late abortions and had habitually used the *Partial Birth Abortion* procedure since 1979). An obstetrician from a university hospital in New York City, who wishes to remain anonymous, said that he taught his method to obstetrical residents for the last 10 years. To date, no scientific journal has recognized the technique. According to the American Medical Association’s Council on Legislation, it is not a recognized medical technique.

There is a dominating legal reason for the development of this method: the Supreme Court, having ruled that the term “person,” as it is used in the 14<sup>th</sup> Amendment of the Constitution, does not apply to the unborn child, it is therefore possible to kill that child until the moment of birth without incurring legal prosecution. On the other hand, all the different state laws stipulate that when in the course of birth, a child has completely left the maternal uterus and manifests even the smallest sign of life, that child then becomes a person in the eyes of the law, and deliberately killing him/her becomes legal murder. It is however legally permitted to kill the child being born so long as the child is still partially in the uterus. This is why the technique is called *Partial Birth Abortion*.

This technique is proposed when problems arise late in pregnancy, generally after the 20<sup>th</sup> week, leading the mother to ask for an abortion. The fetus is then about 5 & ½ inches, or 15 centimeters, long. However, abortions

of this kind are often performed at 5 & ½ and 6 months, some even later. Dr. James MacMahon of Los Angeles has even performed them in the ninth month. The technique was developed especially for the hydrocephalic baby, where it “solves” the problem of the passage of the head.

According to its promoters, it can be performed so quickly that it does not require either hospitalization or local anesthesia. The process is preceded by a three day mechanical dilatation of the cervix. The operation has five stages: Guided by ultrasound, the abortionist grasps the fetal legs with a pliers. Next he pulls the legs out of the uterus and performs a partial breech delivery, delivering all of the fetus’ body except the head. He then makes an incision at the base of the child’s head large enough to insert the point of a scissors with which he perforates the skull. He then pushes a suction tube through the hole and sucks out the child’s brains. Finally, he extracts the empty head to terminate the abortion.

Some have tried to defend this procedure by saying that since it is neither a birth nor a spontaneous abortion and hence the cervix is not normally dilated, the abortionist must somehow reduce the size of the head or risk complications. In fact, however, it is the abortionist who carefully avoids dilating the cervix so as to prevent the head’s delivery and give him time to suck out its contents. It would not, in fact, be

very difficult to dilate the cervix enough to allow easy passage of the head - but that would “ruin” the procedure by automatically making the child a person. In an interview with the *American Medical News*, Dr. Martin Haskell said “The point here is that you are performing an abortion [...] I make sure that there is no birth of a living child”. The same physician added that he began to use this method because those that were used previously - abortion by saline injection or by prostaglandins - too often resulted in the birth of living babies.

The partisans of this method insist that “it is not harmful”. That is not entirely true even for the aborting female, for the maneuver is traumatizing, as most of the consulted experts indicated in the debate on the proposed law in Congress: a three day forced dilation of the cervix tends to generate future cervical incompetence; rotating the fetus so as to force him or her into a breech position, pulling him by his feet across the cervix and vagina (entailing the possibility of rupturing the uterus) are maneuvers which can also endanger the gynecological and obstetrical future of the mother. In the case of hydrocephaly, the customary technique of cephalosyn-thesis (removing excess liquid by a needle puncture while the child is still in utero) is safer. It does however result in the birth of a live child.

## THE LEGISLATIVE REACTION TO THE PRESIDENT'S VETO

In 1995, the State of Ohio passed legislation to ban this procedure. An appeal against this law was filed, thus blocking its immediate legal enforcement. Other states followed Ohio in the following months.

Proposed legislation aimed at banning the procedure, except where it is "necessary to save the life of the mother," (none has ever been substantiated) was presented on June 14, 1995 to the United States House of Representatives. This legislation, called *Partial Birth Abortion Ban Act* (H.R.-1833)<sup>2</sup>, proposed by Congressman Charles Canady (Republican, Florida) and Senator Robert Smith, (Republican, New Hampshire) was passed by both chambers of Congress on January 3, 1996. In his letter of February 28<sup>th</sup> to Sena-

tor Orrin Hatch, President Clinton expressed his opposition to H.R.-1833. He demanded that the proposed law be amended to allow the possibility of performing this kind of abortion "if the health of the mother required it on medical advice".<sup>3</sup> The proposed law was presented to President Clinton on April 5<sup>th</sup> and vetoed on April 10<sup>th</sup>. In order to override a presidential veto, a two-thirds majority vote of Congress is required

2 HR-1833.Sec.1531 Partial birth abortion prohibited. A) Any physician who, in or affecting interstate or foreign commerce, knowingly performs a partial-birth abortion and therefore kills a human fetus shall be fined under this title or imprisoned not more than two years, or both. This paragraph shall not apply to a partial-birth abortion that is necessary to save the life of a mother whose life is endangered by a physical disorder, illness, or injury, *provided*, that no other medical procedure would suffice for that purpose [...]. B) (1) As used in this section, the term "partial-birth abortion" means an abortion in which the person performing the abortion vaginally delivers a living fetus before killing the fetus and completing the delivery [...].

3 In this letter President Clinton recognizes the shocking nature of the procedure. He writes: "The procedure described in H.R. 1833 is very disturbing, and I cannot support its use on an elective basis, where the abortion is being performed for non-health related reasons and there are equally safe medical procedures available". Nonetheless, the president adds that there are rare cases in which, with medical advice, the procedure may be necessary "to save a woman's life or to preserve her health". The president knew that H.R. 1833 included the exception of a danger to the life of the mother. His difference with the US Congress came from his wish to have H.R. 1833 modified so as to include an exception, not only in cases where the life of the mother appears threatened, but also in cases in which the health of the mother is threatened. The difference between the "life of the mother" and the "health of the mother" is considerable on the practical level since, in the second case, it is possible to allow practically all abortions as being for "psychological help". When the Medicaid federal program paid for abortions done for "health" of the mother reasons, they covered 300,000 abortions each year. In 1976 the Hyde Amendment limited coverage to cases of the "life" of the mother. The number of abortions paid for fell to less than 200 each year.

—which was impossible at that time. To justify his veto, President Clinton held a press conference on April 10<sup>th</sup> during which he presented to the press four witnesses who had had Partial Birth Abortions. The cases presented were less than convincing.<sup>4</sup>

The United States Senate on September 20, 1998 failed in its second attempt to override the presidential veto. Whereas 64 senators voted in favor of the proposed law, three more (67 out of 100) were needed to override the veto. However, 24 States had already passed legislation banning the procedure in their States.

In October 1999, the proposed ban on Partial Birth Abortion was again presented to the Houses of Congress, but it failed again by two votes in the Senate for an eventual override of President Clinton's veto.

Then on June 29, 2000, the United States Supreme Court ruled in the Nebraska case, *Stenberg v. Carhart*, and, in a

5-4 decision, decreed that the proposed law of the State of Nebraska aiming to ban the procedure was not legally acceptable, which dealt a major blow to all the similar laws already passed by 30 other states, including Virginia. Following this decision, Federal judges on April 26, 2001 struck down the laws banning *Partial Birth Abortion* in the States of Michigan, Illinois and Wisconsin. In September 2001, it was Ohio's turn to see its law blocked by another federal judge.

## **“PARTIAL BIRTH” ABORTION IS OUTLAWD BY CONGRESS**

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With the change of administration in the White House, one could have counted on a reversal of the situation. But this reversal could not be hoped for while the Republican Party was in a minority in Congress. Moreover, since September 11, 2001 American political leaders had other problems on their mind. Meanwhile, the number of Partial Birth Abortions performed in the United States was increasing: it went from 650 in 1996 to 2,200 in the year 2000 (0.17% of the abortions in the US).

On February 6, 2002, the “Partial-birth” debate resurfaced: first, the Department of Justice filed a brief in the US Court of Appeals for the Sixth Circuit in support of Ohio's ban on this technique, claiming that it differed from the Nebraska's ban which had

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<sup>4</sup> Mary Dorothy Line invoked the case of a hydrocephalus child-but the condition of hydrocephalus can be treated today *in utero* and the child can be saved with the appropriate neurosurgical technique. Hydrocephalus is only dangerous for the health of the mother if it is not diagnosed before delivery. Coreen Costello invoked a case of *polyhydramnios* with the death of the fetus *in utero* that did not necessitate or relate to this procedure. Tammy Watts did not seem to have a precise reason for having this kind of abortion. Vickie Stella invoked serious fetal malformations but none that would affect her health.

been overturned by the Supreme Court. On March 7, 2002, Virginia lawmakers approved a bill that would revive the “partial-birth abortion ban”, defeated by the Senate, but the governor of that state vetoed the ban on April 4, 2002. An Attempt to override Governor Mark R. Warner’s veto failed in April by just three votes in the Virginia Senate.

On June 19, 2002, Rep. Steve Cabot, Ohio Republican and chairman of the House Judiciary Constitution subcommittee, presented to the House of Representatives new bipartisan legislation, H.R.4965, which would ban Partial Birth Abortions except when necessary to save the life of the mother, and would also provide a more precise definition of the procedure in order to address Supreme Court concerns. It was immediately sharply criticized by the National Abortion Federation in the name of women’s rights. The new federal bill was approved by a subcommittee of the House of Representatives on July 11, 2002. On July 25, the US House of Representatives approved the bill by a vote of 274-151. The bill received bipartisan support, with 65 Democrats voting in favor. This was the first vote on the question since 2000, when the Supreme Court overturned the Nebraska law. It was also the fourth time the House had passed a bill banning Partial Birth Abortions.

The bill, which passed the House of Representatives and had the full support of President Bush, was held

up in the Senate by the former Democratic majority leader, Tom Daschle. With the change of the majority leader, in November 2002, the Bill could be presented to the Senate by the former surgeon and now Senate majority leader, Senator Bill Frist (Republican-Tennessee). President Georges Bush, in an address via telephone to the 30<sup>th</sup> annual March for Life in Washington DC, on January 22, 2003, called Partial Birth Abortion an “abhorrent procedure that offends human dignity”, and vigorously urged Congress to vote on the new Bill. In his State of the Union address of January 28, 2003, the President reiterated this request, as well as a request to ban human cloning for all purposes. H.R. 4965 successfully passed the scrutiny of the Senate Committee on January 31, 2003. Keeping their promise, and without losing time, Republican senators introduced the bill, that had become “S. 3”, in the debate of the Senate. It was sponsored by Senator Rick Santorum (Republican-Pennsylvania). The Senate began debating the bill on March 10<sup>th</sup>. President Bush issued on March 11<sup>th</sup> a declaration strongly supporting enactment of S. 3. After three days of debate, on March 13, 2003, the US Senate voted overwhelmingly in favor of the bill, by a huge bipartisan majority of 64-33. The bill distinguished clearly the procedure it would ban from other procedures.<sup>5</sup> It

5 The legislation defines Partial Birth Abortion (chapter 74, n1531, bA) as “an abortion in which the person performing

was the first legislative restriction to the right to abortion since the US Supreme Court declared a constitutional right to abortion in 1973. President Bush welcomed the Senate action, promising to sign a measure he called “an important step toward building a culture of life in America.”

The House Judiciary Committee easily approved the ban on Partial Birth Abortion by a party-line 19-11 vote on March 26, 2003, preparing the way for a vote in the full House. This House version was similar to that passed in the Senate, two weeks before, but it did not include an amendment inserted in the Senate version by Democrats and passed by the Senate in a 52-46 vote. That amendment reaffirmed the Supreme Court’s *Roe v. Wade* decision legalizing abortion and urged that it not be overturned. The measure also did not have a health exception. Steve Chabot, Republican-Ohio, said in a comment that it did not need such an exception, because it included a “finding of fact”, demonstrating that “a partial-birth abortion is never necessary to preserve the health of the woman”. On June 4<sup>th</sup> the House

of Representatives easily approved the ban on Partial Birth Abortions, with a 282-139 vote, a 20 vote larger margin than the previous vote of the House on that matter. President Bush immediately hailed passage of the decision, and urged Congress to quickly resolve the matter of the difference between the Senate text and the House text. The White House, in a statement, declared the bill to be “both morally imperative and constitutionally permissible.”<sup>6</sup>

However, Senate Democrats refused to appoint their conferees to the conference committee which had to iron out the differences between the two texts of the legislature, stalling the ban in that way. On September 15, 2003, the Senate took up the debate, for eight hours, with only pro-abortion speakers coming to the floor. Sixty four senators voted for the ban, although 17 members voted both for the ban and for the pro-*Roe* amendment. By a vote of 93-0, the Senate decided to send its version of a partial-birth abortion ban to the conference committee. The conference committee could then meet and approve by 6-4 a final version of the Partial Birth Abortion ban that removed the pro-*Roe v. Wade* amendment included on the Senate side. The House of Representatives voted overwhelmingly for this legislation, 281-142, on October 1, 2003. Three weeks

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the abortion deliberately and intentionally vaginally delivers a living fetus until, in the case of a head-first presentation, the entire fetal head is outside the body of the mother, or, in the case of breech presentation, any part of the fetal trunk past the navel is outside the body of the mother for the purpose of performing an overt act that the person knows will kill the partially delivered fetus”.

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6 “Partial birth” abortion ban passes House, CNN.com, June 5, 2003, <http://cpt?action=cpt&expire=07%2F04%2F2003&curlID=6507243&fb=Y&partnerID=200>.

later, on October 21, 2003, culminating an eight-year effort by opponents of abortion, after a one day debate, the US Senate approved the legislation, stripped of the resolution supporting the *Roe v. Wade* decision, by a 64-34 vote. This final version, the "Partial-Birth Abortion Act of 2003", designated as the "enrolled bill" S.E. ENR - was the fifth version of S. 3 since S. 3. IS was introduced in Senate.

On November 5, 2003, before a crowd of more than 400 persons, lawmakers and pro-life activists, President Georges Bush made U.S. history, signing into law what was to be the first federal ban on an abortion procedure since the *Roe v. Wade* Supreme Court decision in 1973. The President declared at the signing event: "For years, a terrible form of violence has been directed against children who are inches from birth, while the law looked the other way. Today, at last, the American people and our government have confronted the violence and come to the defense of the innocent child". A Gallup-CNN-USA today conducted in late October 2003 showed that among young adults (age 18-29) the ban was favored 77% to 19%, while older groups supported it 68% to 25% .

## THE FIGHT CONTINUES IN FEDERAL COURTS AND IN THE STATES

Even though President Bush had yet to sign it into law, immediately after the

vote of the US Senate, three abortion-rights groups had already filed lawsuits in federal district courts in Nebraska, San Francisco and the Southern District of New York, in an unusual pre-emptive strike against President Bush, in order to block the bill.<sup>7</sup> They sought to overturn the imminent ban on the grounds that it would be judged to be too broad and therefore unconstitutional. Less than an hour after President Bush had sign the partial-birth abortion ban into law, on November 5<sup>th</sup>, U.S. District Judge Richard Kopf, a federal judge in Nebraska, declared the law unconstitutional because it did not contain a health exception, and issued a temporary injunction against it.<sup>8</sup> On November 6<sup>th</sup>, the New York U.S. District Judge Richard Conway Casey granted a request by the National Abortion Federation and seven doctors to prevent Attorney General John Ashcroft from enforcing the ban. On November 7, 2003, the California U.S. District Judge, Phyllis Hamilton of San Francisco, granted a similar request filed in San Francisco, on the same grounds. The Justice Department was meanwhile pursuing abortion records to defend the law against the

7 Sheryl Gay Stolberg, "3 Suits Filed to Block an Abortion Bill That Bush Intends to Sign," *The New York Times*, November 1, 2003, <http://www.nytimes.com/2003/11/01/politics/01ABOR.html?pagewanted=print&posit...>

8 *Bush signs ban on late-term abortion*, CNN.Com, November 6, 2003, <http://www.cnn.com/2003/ALLPOLITICS/11/05/abortion.ap/index.html>.



lawsuits brought by abortion providers in New York and Lincoln, Nebraska. In June 2004, Judge Phyllis Hamilton declared the Partial Birth Abortion ban unconstitutional, thereby blocking the efforts of the Bush administration to enforce the ban. Hamilton's ruling only applies to Planned Parenthood facilities and the city of San Francisco. As a result, Attorney General John Ashcroft would be prevented from enforcing the law in Planned Parenthood's clinics across the United States, which number more than 900.<sup>9</sup> On August 26, 2004, even though he called the procedure "gruesome, brutal, barbaric and uncivilized," Judge Richard Conway Casey in New York ruled that the federal law banning late abortions was unconstitutional because it did not exempt cases where the procedure might be necessary to protect a woman's health.<sup>10</sup> Judge Casey said that it was the same unconstitutionality that struck down the state law in Nebraska. Finally, and as expected, the third federal judge involved in the lawsuits against the ban, U.S. District Judge Richard Kopf of Lincoln, Nebraska, ruled, on September 8, 2004, that the Partial Birth Abortion Ban was

unconstitutional because it did not have a health exception. The three rulings are expected to be appealed to the Supreme Court. The U.S. government has already appealed the San Francisco ruling.

Meanwhile, the struggle has continued at the level of the various legislations that had been passed by the states. In February 2004, U.S. District Judge Richard L. Williams ruled that Virginia's ban on this type of late-term abortions was unconstitutional. On July 10, 2004, U.S. District Judge Scott Wright overturned Missouri's ban on Partial Birth Abortion on the grounds that it lacked an exception for cases to protect a woman's health. On July 24, 2004, U.S. District Judge Tom S. Lee blocked Mississippi's law banning late-term abortions, stating that it did nothing to protect women. The only positive events that took place in 2004 in favor of the local, state bans of Partial Birth Abortion, happened in June, in Ohio and in Michigan. In Ohio, Martin Haskell, who is credited with inventing the Partial Birth Abortion procedure, dropped his challenge to the Ohio state law banning Partial Birth Abortions. As a result of this decision, the Partial Birth Abortion ban could take effect in this State. On June 10, 2004, Michigan lawmakers, for the fourth time, passed a ban on Partial Birth Abortion. This time, the legislation, called the Legal Birth Definition Act, was approved by registered voters across the state, a measure that overrode the governor's veto

<sup>9</sup> *US judge blocks late abortion law*, BBC News/Americas, June 1, 2004, 23.47 GMT, <http://news.bbc.co.uk/1/low/world/americas/3768331.stm>.

<sup>10</sup> Julia Preston, U.S. Court in New York Rejects Partial-Birth Abortion Plan, *The New York Times*, August 27, 2004, <http://www.nytimes.com/2004/08/27/&national/27abort.html?pagewanted=print&position=>

(Governor Jennifer Granholm) to bring the bill back to the legislature. This way, the Legal Birth Definition Act became law without Governor's Granholm's approval, but cannot be enforced until March 2005.<sup>11</sup>

## COMMENTARY

Practically speaking, the *Partial Birth Abortion* method seems to have been mainly used by its partisans to end unwanted pregnancies among very young women who failed to detect their pregnancy or hid it from others.<sup>12</sup> In his declaration to the *American Medical News*, Dr. Haskell was not afraid to say that 80% of the abortions that he had performed between 4 & ½ and 5 & ½ months were "purely elective" (at the request of the pregnant woman, without a medical reason).<sup>13</sup> In his deposition befo-

re the subcommittee of the House of Representatives, Dr. MacMahon declared that he performed these procedures even in the third trimester of pregnancies "for psychological and pediatric reasons" (i.e., because of the youth of the mother).

The largest category of maternal reasons for aborting listed by this abortionist was "depression" (22% of cases). As far as abortions performed for fetal reasons, nine were for a simple cleft palate. Dr. Martin Haskell himself, who is credited with having invented the procedure, admitted at a trial in Wisconsin that "the D&X procedure is never medically necessary to save the life or to preserve the health of a woman."<sup>14</sup> Despite all these evidences, despite weeks of testimony in courts, committees, Congress, despite the fact that the entire Congress has repeatedly examined the ban on Partial Birth Abortion and approved it, and, finally, despite the support for this ban of a clear majority of U.S. citizens, espe-

11 P. Nowak, *Michigan Partial-Birth Abortion Ban Gets Final Approval*, Lawsuit expected, Lifefews.com,

12 June 10, 2003, <http://www.Lifefews.com/state/606.html>.

A letter from the National Abortion Federation to the US House of Representatives indicated that these late abortions are requested by "very young teenagers... who have not recognized the signs of their pregnancies until too late" and by "women in poverty, who have tried desperately to act responsibly and to end an unplanned pregnancy in the early stages, only to face insurmountable financial barriers".

13 Dr. Haskell said in the interview: "And I'll be quite frank: most of my abortions are elective in that 20-24 week range. In my particular case, probably 20% (of this procedure) is for genetic reasons... and the

other 80% are purely elective". Dr. Nancy Romer, an Obstetrician from Dayton, Ohio, testified that three of her patients had requested abortions in Dr. Haskell's clinic for pregnancies well beyond 24 weeks, that none of them were ill and that the three had normal fetuses. Nurse Brenda Pratt Shafer testified that in the three *Partial Birth Abortions* she assisted at in the clinic of Dr. Haskell one child had Down's Syndrome (Trisomy 21) and the other two were normal.

14 Cf. Jan LaRue, CWA's chief counsel, in *CWA Denounces New York Ruling on Partial Birth Abortion Ban*, Concerned Women for America, August 26, 2004, <http://www.cwfa.org/articles/6260/MEDIA/life/index.htm>.

cially younger ones, the battle is still raging, at a judicial level, on this sad topic of late abortion. For a foreign observer, this is quite puzzling.

What is even more puzzling is the fact that the main actors who oppose so vigourously the legislative ban know perfectly well that Partial Birth Abortion is a ruthless, inhumane method, unworthy of a civilized country, which nothing on earth can justify. Was it not the same Judge Richard Conway Casey, in New York, who, curiously, called the procedure “gruesome, brutal, barbaric and uncivilized”, and who, on August 26, 2004, blocked the federal law banning this procedure, on the grounds that it had no provision for a woman’s health? This judge knew perfectly well that the only one who is actually in danger in the procedure is the baby, not the mother. This obstinacy in defending an indefensible practice, not in the name of Truth, not in the name of Justice, not in the name of Compassion, but in the name of a legalistic interpretation of the U.S. Constitution, says a great deal about the degradation of the moral sense, if not of common sense, that is the price payed in “civilized countries”, for the acceptance of the crime of abortion. With *Partial Birth Abortion*, we have passed from legal abortion to legal infanticide under the cover of abortion, and what is dramatic is that such a shift seems to be quietly accepted by persons who are responsible for laws and justice.



# Patriarchy and Matriarchy

Vittorio Mathieu

P

*When considering the vocations of generations, human societies have placed the emphasis on the paternal or a maternal line. Men have defined themselves at times with reference to their mother, and at other times referring to their father. Although in some societies matriarchy is still being followed, one can clearly see that the contemporary world prefers to refer to the father. Analyses of patriarchy have often fueled denunciations of male arrogance and “machismo”, and the corresponding oppression of women. Feminist movements have not failed to take these accusations to their extreme limit. It is necessary for these two terms to be delivered from the ideological manipulations to which they have often been subjected. One should not forget that equality does not imply identity. That men and women have an equal dignity does not at all imply that they are identical. On the contrary, the equal dignity of men and women requires respect for the specificity of both. By wanting to react against the real abuses of a patriarchy reduced to male chauvinism, too many women have let themselves be deprived of a comparative privilege that had been theirs ever since the beginning of time: that of making a loving relationship prevail over force, and especially that of being the first in welcoming life. (7 An Ideology of Gender: Dangers and Scope; Sexual and Reproductive Rights; Discrimination Against Women and CEDAW; Gender, Motherhood and Feminism; New Definitions of Gender; Equal Rights for Men and Women).*

## FROM THE BIBLE TO BUSINESS

Patriarch is the word used by the translators in the Septuagint Greek translation of the Bible to indicate extraordinarily long-lived heads of lineages, especially before the Flood. The ecclesiastical language of the East began to use the word to indicate the bishops that have territorial primacy over other bishops (it is still being used to indica-

te the Patriarch of Venice). In politics, the word found favor after the posthumous issue (1680) of sir Robert Filmer's (1589-1653) work, with this title. In this book, Robert Filmer, a supporter of Charles I Stuart, held that the power of kings conferred by God to Adam was transmitted through the fathers of families. Leibniz objected to the principle according to which “it is the prerogative of the king to be above the laws.” This principle had already been rejected by Ja-

mes Tyrrell in *Patriarcha non monarcha* (1681) and by Locke (1690). Moving along different considerations, the Roman Law historians, especially Pietro Bonfante, recognized that the authority of the *paterfamilias* had the characteristics of true sovereignty: the family embraces not only the wife and children, but also the slaves, together (as in a State) with territory or real estate and its animals. This can also explain the *ius vitae et necis*.

The persistence in agriculture of a “patriarchal” type of family can be explained by considering the function, which the “boss” of a business has when the duties of the workers are fixed by means that depend on the judgment of the head of the family and not by regular contracts. When the agricultural firm grows in size and becomes more complex, many families can become involved, under the authority of one single family. Subordination can reduce people to the status of “serf”, or “bound to the land”, a rule from which nobody can be freed except for just cause (military service, for instance). This binds the patriarchal society to feudal society, in which mutual obligations are established by personal ties rather than by agreements.

The persistence in modern families of relationships inspired by such customs has given rise to unilateral criticism of the patriarchal family, abbreviated by the formula “*padre-padrone*” “father-boss”. The same kind of

criticism is being made against business relationships that are inspired by “paternalism” (a term that penetrated into English around 1880).

## **WOMEN IN THE FAMILY AND IN SOCIETY**

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However, more than patriarchy, the word “matriarchy” lends itself to ironical/ideological use; it has quite equivocal overtones. It can almost signify a sociopolitical prevalence of women, which, technically, would be better labeled as “gynecracy”. This ambiguity goes back to the brilliant and ingenious proto-history of Johann Jakob Bachofen (1815-1887), a Swiss professor of Roman Law in Basle. In various writings, culminating in his *Das Mutterrecht* (*Matriarchal law*, 1861), Bachofen describes a primitive society in which the children follow their mother according to a natural bond. Thus, in Rome’s early Etruscan period, instead of *patres conscripti*, *matres conscriptae* (they too would have worn togas during the ceremonies) would have dominated. In reality, Roman women slowly gained legal parity with men during the late Republican period, while for men it was easier to become *suis iuris* because of their military or civil functions.

When a *paterfamilias* no longer resides in the countryside and becomes a businessman, he often entrusts the management of the estate to a *villicus*, who can also be a slave gifted with outstanding skills, but more often he will be a

freedman. In the Gallo-Roman area such managers took the name of *maior* (later to become lord mayor in English, *maire* in French) of the village, from which a town would develop. The domestic manager, instead, is the *maior domus*, who, starting with the Capetians will usurp the kingly function.

In Medieval times, during the good season men were often away and at war, and women would become their representatives. Although they did not reach a position of dominance, this gave women a high position in the feudal milieu, while in the villages, and especially in the countryside, they were totally on a lower level. In the modern age, direct control of the family and society by women became more rare—and was badly considered—even at the level of lords, but an indirect control could occur through the feminine influence on men (a rather French phenomenon that would reach its peak in the eighteenth century).

However, over and above being quite rare, this phenomenon does not give rise to matriarchy. Their superiority can occur within the family milieu, where *agnates* and *cognati* rule over the elderly foundress of the family. According to Hegel's famous analysis of Sophocles' *Antigone*, women are the incarnation of family religion, while men are the incarnation of State religion. In this view, Christian customs remained more true to the polytheistic tradition than to the Old Testament customs.

## **FEMINISM IN POLITICS**

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The situation changes thoroughly with the coming of feminism, understood as a demand for equality not only in law but also in fact. The French Revolution appeared to be the right occasion for this and in 1791 the author Olympe de Gouges (supported by Sieyès and by Condorcet) presented a *Declaration of the Rights of Woman and the Female Citizen*, which, with a parallel title to the Declaration of the "Rights of Man", was also a precursor for linguistic equality to which we will return. As a matter of fact, Robespierre condemned Olympe de Gouges to the guillotine on November 4, 1793; he also had Hebert, who had introduced the cult of the goddess Reason (physically represented by an *Opera* dancer), guillotined thus marking the separation of the Jacobins from Enlightenment rationalism, which the French Revolution had pretended to bring about.

Noteworthy also is the episode in Goethe's *Meister* where a company of actors, that Wilhelm joined, decide to give themselves a "republican" constitution, with an elected rotating leader, where women not only could vote, but also had the right to sit in its "senate".

## **ECONOMIC CONTROL**

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However, to have equal rights in law and fact is not equivalent to "matriarchy", which is represented ironically in the twentieth century, once R. Briffault

sociologically shook the dust off it (*The Mothers*, New York 1931). As in the myth, female dominance can assume two different forms, only one of which deserves to be termed matriarchy. One form is that of the Amazons, among whom (as happens with some insects) the male is accepted only for reproduction. Today new technical possibilities of reproduction using parthenogenesis would deprive the male of even this function. The other form is a matriarchy in which society remains bisexual, but favors in a host of circumstances the primacy of women. This is occurring in North American society in particular. First of all, men are immersed in their commitment to earn money and women are left with the task of spending it: at this stage the “consumer’s sovereignty” does the rest. In Japan, women control spending more than in the West, and management is still more in male hands than here, where good examples can be found of women managers that prove to be professionally superior to family males, as is true, for instance, with Anna Bonomi Bolchini.

## **THE SEXUAL REVOLUTION**

Secondly, the Sexual Revolution gives a weapon to the stronger sex—in this arena, the female — to dominate the male, which women rarely allow to pass. In ancient times the tradition was for women to repress their sexuality because liberating it, would not only have created problems concerning cer-

tain knowledge of paternity, but would have intimidated males, reducing the latter’s performance even more. As birth control expanded sexual activity was transformed in ways that made the differences between sexes become secondary. The female sex is more akin to that “ideal”. The *unisex*, of ancient gnostic inspiration, is in fact a feminization of the relationship, which within itself diminishes the difference between the Amazon myth (of the Valkyries, etc.) and matriarchy. In fact, women become independent from the family. At the same time they have caused the family to be no longer dependent on them, so that matriarchy no longer consists in control of the family but of society.

## **NON-COMPARABLE FUNCTIONS**

Thus, to create “quotas” so that both sexes may have equal access to jobs in every field appears counterproductive. The very fact that equality would be the result of legal imposition would be a recognition of impotence, which is something well-informed women (as well as ethnic minorities) reject. However,—in spite of the delicate circumstances—it is most unlikely that the privileges which women naturally enjoy in the family milieu may extend to society. Motherhood is already a prerogative, as much as it is a burden, which no man can take upon himself. Because of this function, in Christianity it happened that a woman “humble and exalted like no other crea-



ture” took upon herself a supernatural dignity, which a man could not think of, with the exceptional qualification of “mother of God” (which encountered some resistance in the theology of Greek speakers). However, this dignity did not endow Mary of Nazareth with any “matriarchal” function.

### **EQUAL OPPORTUNITY**

Competition between both sexes is now open in all jobs (in earlier times, not only military careers, but also judicial careers were closed to women). The fact that statistically men are still prevailing, is usually attributed to physical strength or to prevailing prejudices; but this explanation is inadequate. In the world of sports competition is impossible because the sexes are almost always kept separate. In some specializations a female superiority can be recognized, as in hurdles and swimming, for instance. Usually the different results are attributed to a difference in musculature. But in one case confrontation is possible. For some years now the Italian Bridge Federation has become a member of CONI. Although some competitions are still open only to female or mixed teams, the major ones are open to both sexes. Here muscles are irrelevant, yet over the past 50 years only three women champions are recorded, when competition included *open* teams with men: the Englishwomen Rixi Marcus and Nico Gardener, and the American Helen Sobel. This enormous statistical disparity

should be analyzed, because it cannot be explained by social discrimination or different levels of intelligence, but probably has to do with character issues.

### **LINGUISTIC “SEXISM”**

A strange application of “quota” politics occurs in language usage, with the idea, (more easily achieved in the English language) of eliminating gender-specific words by using the neutral form, or to equalize the occurrences of the two genders. Instead of *chairman*, for instance, *chairperson* is being used; or an “s” between parentheses is put before “he”, written as (s)he. Philologically this request is baseless. The first meaning of *man* (for example in the *Oxford Dictionary*) is *homo* in the sense of “man” which (sometimes humorously considered) embraces woman, not the “*vir*” (Dante still uses the word “*viro*”, *Par. X*, 129), in opposition to the archaic Latin word *vir*a. In this phobia, which is widespread in the Anglo-Saxon culture, one can easily recognize a typically “matriarchal” influx. In a recent article in the journal of the Italian Department of the University of Melbourne, under the title of “I belati di quella donna,” Dino Bressan makes a tearful “analysis of the sexist elements” in the 1999 edition of the Zingarelli dictionary.

### **THE NATURAL FAMILY**

To conclude, one can say that only a minority of women would want a true matriarchy. They are characterized by

what psychoanalysts improperly call a “Diana complex”. Almost all women, instead, want to be delivered from a subjection that has put them at a disadvantage in all civilizations: including the Western Christian civilization, although the injustice here is less than anywhere else. The reaction inevitably gave rise to disorientation, and women were the first to feel it. With time things will smooth out, except if, for the sake of equal rights, efforts will persist to force nature, which (as Horace said) “expelled by force, makes itself felt just the same.” In the patriarchal family, *Life with Father* (an American film comedy starring Elizabeth Taylor, 1947) can become difficult for everybody. But outside the institutional family—which the Christian tradition interpreted in a way that remains an example for other civilizations—it is quite difficult for a woman to find self-fulfillment according to her wishes. “Transgressions” (literally: trespassing) are themselves physiological; but if they would result in wiping away the boundaries of the institution of the family, they would have negative effects on all the members of the family, and particularly on women.

# Pre-Implantation And Emergency Contraception

John Wilks

P

*The term “emergency contraception” has entered in our language in relatively recent times, but nevertheless everyone is using it. Today, the content of the expression is at the center of a controversy where opposite positions are defended, based on contradictory evaluations of what this particular form of birth control is. Professor Wilks helps us to understand, explaining how in these last years a semantic transfer has happened in the very definition of conception, that is to say, the beginning of the human life. In fact it has been separated from its natural tie with fertilization, and placed later, at the moment in which the embryo implants in the mucous membrane of the mother’s womb. This change of meaning is part of a legal strategy which seeks to justify the techniques of in vitro fertilization. This change also corresponded, always in the arena of words, to the creation of the term “pre-embryo” designating the embryo between the moment of his formation (fertilization) and the moment in which it implants in the womb. According to this new terminology, destroying this “pre-embryo” - that is to say the human embryo before the fourteenth day of her development - would fall into the arena of simple contraception, while it really is an abortion. Thanks to this linguistic conjuring trick, today the “morning-after pill” is presented as a form of contraception, and they talk about “emergency contraception” in order to define its effect. The reality is that the effectiveness of this “emergency contraception” depends to a large extent on its abortive action, insofar as it can prevent the implantation of the fertilized egg. (↗ Contraception; Dignity of the Human Embryo; Safe Motherhood; Embryo Selection and Reduction; Legal Status of the Human Embryo)*

## INTRODUCTION

The terms “pre-implantation contraception” [PIC] and “emergency contraception” [EC] as well as ‘post-coital contraception’ [PCC] are synonymous expressions inaccurately used to describe the administration of a drug or use of a device *post* intercourse, with the explicit intention of stopping implantation of

a newly created human embryo. These three terms are also collectively referred to, in both the lay and medical literature, as the ‘morning-after’ pill. [MAP]

Procedures included in the post-coital method of birth control are the administration of high (supra-physiological) oral doses of either synthetic female hormones in combination (ethi-

nyl estradiol and levonorgestrel), or the solitary use of synthetic progesterone (levonorgestrel). The copper-bearing intra-uterine device [IUD] is also promoted as emergency “contraception”<sup>1</sup> as is the use of mifepristone (RU-486).<sup>2</sup> Via a multitude of attack points, these drugs or devices can obstruct the complex and highly sophisticated process of implantation of the human embryo in the maternal endometrium (womb).<sup>3</sup> The expression “attack points” describes the many interdependent events during the delicate process of implantation and attachment of the embryo which are vulnerable to interference.

Associated with these medical procedures are many definitions and concepts that are intermingled, interchanged or redefined either out of genuine ignorance, or for ideological, political, or tactical reasons. Immediately one can cite the almost universal misuse of the term *contraception*. This semantic error is not an isolated occurrence. Were it so, correction to this

solitary term would be both brief in length and wide-ranging in impact.

Rather, the term *contraception* is extensively underpinned by a foundation of erroneously defined terms from both embryology and pharmacology. In scientific and lay publications, the terms *conception*, *pregnancy*, *pregnant*, *abortion* and *abortifacient* are misused by authors and consequently misunderstood by readers. Furthermore, definitional errors become the bedrock of poorly informed and framed social laws.

With these problems in mind, this lexicon entry will set out the definitions of the aforementioned terms, and will also incorporate examples of how these terms have been altered so that they now deviate from an authentic scientific appreciation of their origins and meaning. This will be followed by an overview of the *modus operandi* of pre-implantation/emergency/post-coital “contraception”. Discussion will also cover the use of RU-486 (mifepristone) as pre-implantation/emergency ‘contraception’ and briefly, the copper-bearing intra-uterine device (IUD). Linked to each topic will be a review of how the respective methods act as a post-coital abortifacient. Complementing this discussion will be a summary of newer research findings on the complexity of the process of attachment and implantation of the human embryo, and the adverse impact artificial levels of hormones can have on this process.

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1 Rosenfield A. Emergency contraception: a modality whose time has come. *J Amer Med Women's Assoc* [http://jamwa.amwa-doc.org/vol53/53\\_5\\_ed.htm](http://jamwa.amwa-doc.org/vol53/53_5_ed.htm)

2 Cameron ST, Critchley H, Buckley CH, Kelly RW, Baird DT. Effect of two antiprogesterins (mifepristone and onapristone) on endometrial factors of potential importance for implantation. *Fert Steril* 1997; 67 (6): 1046-1053

3 Bowen JA, Hunt JS. The role of integrins in reproduction. *P.S.E.B.M.* 2000; 233:331-343

## THE DEFINITION OF KEY TERMS

As a result of an ideological redefinition of *contraception*,<sup>4 5 6</sup> *conception*<sup>7</sup> and *pregnancy*,<sup>8 9 10</sup> remedial action is required to re-anchor these reproductive terms within an authentic scientific framework.

**Contraception** (L, *contra*, against; *concipere*, to take in) is a process, device or intervention whose action is solely to prevent the unification of sperm and the secondary oocyte, commonly referred to as an *ovum*.<sup>11</sup> Condoms, spermicides,

cervical diaphragms and male or female sterilization are contraceptive practices because their only action is to impede the sperm and the secondary oocyte from unifying. Note the term *ovum* is a colloquial expression that has no true relationship with any stage of female sex cell generation, development or involvement in human embryonic conception. Key embryologists recommend against its use.<sup>12</sup> Note also, in many instances, I have placed the word "contraception" in apostrophes, to indicate that its use, whilst ubiquitous, is descriptively incorrect.

**Zygote** a single cell formed by the fusion of the male and female genetic material. The full human chromosomal number of 46 is restored and as a consequence, a new human life has begun.<sup>13</sup><sup>14 15</sup> "A zygote is the beginning of a new human being (i.e., an embryo)."<sup>16</sup> The zygote is formed within the Fallopian tube.

**Conception** is the beginning of a pregnancy, taken to be the precise moment that a spermatozoon enters the fe-

4 "Emergency contraception is not abortion."

*Lancet* 1995; 345: 1381-1382 (Editorial)

5 Ellertson C, Winikoff B, Armstrong E, Camp S, Senanayake P. Expanding access to emergency contraception in developing countries. *Stud Fam Plan* 1995; 26, (5) pp. 251-263

6 Weisberg E, Fraser IS, Carrick SE, Wilde FM. Emergency contraception-general practitioner knowledge, attitude and practices in New South Wales. *Med J Aust* 1995; 162:136-138.

7 Harper C, Ellertson C. Knowledge and perceptions of emergency contraceptive pills among a college-age population: a qualitative approach. *Fam Plan Perspectives* 1995; 27:149-154.

8 *Ibid*, p.149

9 Ellertson C, Winikoff B, Armstrong E, *et al. op.cit.*, p.251

10 Grou F, Rodrigues I. The morning-after pill- How long after? *Am J Obstet Gynecol* 1994; 171:6:p.1529.

11 Rahwan RG. Chemical contraceptives, interceptives and abortifacients. Division of Pharmacology, College of Pharmacy, The Ohio State University, Columbus, Ohio 43210 USA. 1998

12 O'Rahilly R, Muller F. *Human Embryology and Teratology*. (Wiley-Liss, New York, 1994), p.16

13 Larsen WJ. *Human Embryology*. (New York: Churchill Livingstone, 1997), p.1

14 O'Rahilly, *op.cit.*, p.19

15 Carlson BM. *Human Embryology and Developmental Biology*. (New York: Wiley-Liss 1994), p.31

16 Moore KL, Persaud TVN. *The Developing Human: Clinically Orientated Embryology* (6<sup>th</sup> edition. Philadelphia: W.B. Saunders Company 1998), p.2

male secondary oocyte, resulting in the formation of a viable human zygote.<sup>17</sup> Reputable educationalists concur on this critical point. Moore and Persaud state that: "Human development begins at fertilization, the process during which a male gamete or sperm [...] unites with a female gamete or oocyte [...] to form a single cell called a zygote. This highly specialized, totipotent cell marks the beginning of each of us as a unique individual."<sup>18</sup>

Prof. R. Rahwan, Emeritus Professor of Pharmacology and Toxicology, Ohio State University, concurs with this definition: "[...] fertilization marks the point of conception in that a new diploid [full chromosomal number] organism (the zygote) is formed which will develop, mature, and undergo senescence at a predictable rate."<sup>19</sup> O'Rahilly and Muller, authors of *Human Embryology and Teratology*, reflect the same thinking: "Fertilization is an important landmark because, under ordinary circumstances, a new genetically distinct human organism is thereby formed."<sup>20</sup>

**Fertilization** is the process that begins when a sperm makes contact with a secondary oocyte and concludes with the intermingling of the male and fe-

male chromosomes.<sup>21</sup> This process takes approximately 24 hours to complete.<sup>22</sup>

**Abortifacient** drugs or devices are defined as those whose action is operative *after* conception has occurred.<sup>23 24</sup> The pre-eminent embryologists Keith L. Moore and T.V.N. Persaud concur with this description:

"*Postcoital birth control pills* ("morning after pills") may be prescribed in an emergency (e.g., following sexual abuse). Ovarian hormones (estrogen) taken in large doses within 72 hours after sexual intercourse usually prevent implantation of the blastocyst, probably by altering tubal motility, interfering with *corpus luteum* function, or causing abnormal changes in the endometrium. *These hormones prevent implantation, not fertilization.* Consequently, they should not be called contraceptive pills. Conception occurs but the blastocyst does not implant. It would be more appropriate to call them "contraimplantation pills." Because the term *abortion* refers to a premature stoppage of a pregnancy, the term *abortion* could be applied to such an early termination of pregnancy."<sup>25</sup>

**Blastocyst** is the precise description of the multicellular human embryo four days after fertilization. The blastocyst moves across the uterus for *two days* be-

17 Mosby's Medical, Nursing and Allied Health Dictionary (5th ed. KN Anderson [ed] St.

Louis, Missouri, USA 1998). p.379

18 Moore, *op.cit.*, p.18

19 Rahwan, *op.cit.*

20 O'Rahilly, *op.cit.*, p.5

21 *Ibid*, p.19

22 Moore, *op.cit.*, p.34

23 Mosby's, p.393

24 Rahwan, *op.cit.*, p.7

25 Moore, *op.cit.*, p.532

fore it begins the process of implantation. *Implantation* of the human blastocyst takes place about *six days* after fertilization, when the blastocyst anchors itself to the surface lining (epithelium) of the endometrium.<sup>26</sup>

## THE RE-DEFINING OF KEY REPRODUCTIVE TERMINOLOGY

A substantial range of the world's most respected medical textbooks use definitions which are close to identical when it comes to defining *conception*, *pregnant* and *pregnancy*. Seven of these are cited in the footnotes.<sup>27 28 29 30 31 32</sup> To break from these definitions is to move outside the accepted linguistic norms of embryology. Ideology supplants universal, objective scientific facts.

From the preceding quotes it is evident that conception and fertilization

are synonymous. Conception of a new human person is a result of the *process* of fertilization and marks the beginning of a pregnancy. The need to note this point is primarily a 'political' one—some scientists misuse the term *conception*. They disassociate *conception*, and hence the beginning of *pregnancy*, from *fertilization* and re-associate it with *implantation*.<sup>34</sup> The origins of this linguistic misdemeanour can be traced back to the text *Obstetric-Gynecologic Terminology*, published by the American College of Obstetrics and Gynecology (ACOG) in 1972.

In this text, *conception* was specified to be "the implantation of the blastocyst." Conception was *not*, according to this revised definition, synonymous with fertilization. Consequently, pregnancy was re-defined as "the state of a female after conception and until termination of the gestation."<sup>35</sup> As a consequence of this new definition, any interference with the viability of the human embryo, from the time of its creation until the time of implantation, was no longer an abortifacient action. According to this "new" definition, no pregnancy (apparently) existed; hence no abortifacient actions are possible.

26 *Ibid*, pp. 41-42

27 Butterworths Medical Dictionary 2nd Ed 1978 MacDonald Critchley (ed).

28 Gould Medical Dictionary 4th Ed.1979. McGraw-Hill Book Co

29 Stedman's Medical Dictionary 26th Ed 1995. Williams and Wilkins (Pub).

30 Harrup's Dictionary of Medicine and Health 1st Ed. 1988. London

31 Mellon's Illustrated Medical Dictionary 3rd Ed (1993) New York.

32 Oxford Concise Medical Dictionary 4th Ed 1994.

33 Pearce's Medical and Nursing Dictionary and Encyclopedia. 15th Ed. 1983. p. 99 Faber and Faber.

34 Grimes DA. Emergency contraception – expanding opportunities for primary prevention. *NEJM* 1997; 337:1078-1079

35 Tatum HJ, Connell EB. A decade of intrauterine contraception : 1976 to 1986. *Fertil Steril* 1986; 46(2): 173-192

Having re-defined *conception*, which began the process of dismantling the continuum of *fertilization*, *conception* and *pregnancy*, a further reworking of *pregnancy* was initiated and approved at a meeting of the International Federation of Gynecology and Obstetrics (FIGO) in 1985. The Committee on Medical Aspects of Human Reproduction was asked by FIGO to “develop an accurate definition of pregnancy.” One might question whether “develop” is Orwellian “Newspeak” for the creation of a definition which would accommodate expanding methods of abortifacient birth control. The following citation is instructive.

“The Committee agreed on the following: ‘Pregnancy is only established with the implantation of the fertilized ovum.’ Based upon the above definitions of ‘conception’ and ‘pregnancy’, an abortifacient acts to interrupt a pregnancy only following implantation.”<sup>36</sup>

Consistent with the 1972 actions of the ACOG, many proponents of the ‘pregnancy begins at implantation’ doctrine now regularly reference back to this text to justify their position.<sup>37</sup>

<sup>38</sup> <sup>39</sup> This is the *only* reference used to

support their alteration to the factual embryological meaning of *conception*. It is clearly an example of “Newspeak”, where re-defining of words occurs to suit a pro-abortion agenda. Obviously, when the meaning of a word is changed, the truth is changed. The social and moral ramifications of such actions are wide-ranging and, as those involved in this field of bio-ethics can testify, it is an arduous task to re-orientate words back to their true, scientific foundation. Why? Because over the last three decades the intention to influence key opinion makers in society, such as those cited below, has been well targeted and highly successful.

“It is to be hoped that these official definitions [from the American College of Obstetrics and Gynecology –1972] and the new scientific data will provide a realistic and scientific foundation for a clearer understanding of the mechanism(s) of action of IUDs among the *lay public, theologians, politicians, and health care providers in general.*”<sup>40</sup> (Emphasis added).

As a consequence of the ACOG action in 1972, and the subsequent redefining of *pregnancy* in 1985, there has been an increasing trend in the deviations from definitional orthodoxy. Some examples of the re-defining of pregnancy are:

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36 *Ibid*, p.186

37 Grimes, *op.cit.*, p.1079

38 Trussell J, Rodriguez G, Ellertson C. New Estimates of the effectiveness of the Yuzpe regimen of emergency contraception. *Contraception* 1998; 57:363-369

39 Trussell J, Raymond EG. Statistical evidence about the mechanism of action of the Yuzpe regimen of emergency contraception.

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*Obstet Gynecol* 1999; 93: 872-876

40 Tatum, *op.cit.*, p.186



"The prevention of pregnancy before implantation is contraception and not abortion."<sup>41</sup> (Glasier 1997)

"Predictably, some opponents of abortion allege that emergency contraception is tantamount to abortion... even if emergency contraception worked solely by prevention the implantation of a zygote, it would still not be abortifacient ... Pregnancy begins with implantation, not fertilization ... fertilization is a necessary but insufficient step toward pregnancy."<sup>42</sup> (Grimes 1997)

"Emergency contraception works by inhibiting or delaying ovulation or by preventing implantation. Despite some assertions to the contrary, it is not itself a form of abortion."<sup>43</sup> (Guillebaud 1998)

"[...] conception is used synonymously with implantation, not fertilization."<sup>44</sup> (Trussell 1999)

These statements are, in the strictest sense of the word, nonsense. A woman is pregnant because fertilization has been completed and conception has occurred, not because implantation has taken place. Implantation is, from both a time and developmental perspective, separate to conception/fertilization. Im-

plantation of the human embryo takes place around the sixth day *after* fertilization<sup>45</sup> with the human embryo now a multi-cellular structure known as a blastocyst. As *Mosby's* correctly states: "Pregnancy—the gestational process, comprising the growth and development within a woman of a new individual from conception through the embryonic and fetal periods to birth."<sup>46</sup>

One final semantic deception needs mentioning. Those who seek to promote postcoital birth control re-name the human embryo a "pre-embryo",<sup>47</sup> a "fertilized ovum"<sup>48</sup> or a "fertilized egg."<sup>49</sup> These are nonsense terms without any basis in science. They are ideological definitions only, fully in conflict with contemporary embryology. To recall: "*Human development begins with fertilization*, a process during which a sperm unites with an oocyte (ovum)." (their emphasis).<sup>50</sup> This distinction in terminology is critical. The full range of bioethical issues linked to the MAP is centred upon this point.

41 Glasier A. Emergency postcoital contraception. *NEJM* 1997; 337:1058-1064

42 Grimes, *op.cit.*, p.1078

43 Guillebaud J. Time for emergency contraception with levonorgestrel alone. *Lancet* 1998; 385:416

44 Trussell T, Rodriguez G, Ellertson C. *op.cit.*, 1999, p.147

45 Larsen, *op.cit.*, p.19.

46 *Mosby's*, *op.cit.*, p.1309

47 Grimes, *loc. cit.*

48 Harper C, Ellerston C. Knowledge and perceptions of emergency contraceptive pills among a college-age population: A qualitative approach. *Family Planning Perspectives*. 1995; 27:149-154

49 Ashraf H, McCarthy M. UK improves access to "morning after pill". *Lancet* 2000;356:2071

50 Moore, *op.cit.*, pp. 14 & 531

## THE YUZPE METHOD OF THE PRE-IMPLANTATION/ EMERGENCY “CONTRACEPTION”

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The Yuzpe method of postcoital birth control was developed in the late 1970's. This treatment consists of two doses of an artificial “estrogen” plus an artificial “progesterone” tablet. The first dose is taken within 72 hours of ‘unprotected’ intercourse, and another dose 12 hours later. Each dose contains 100mg of ethinyl estradiol (the artificial estrogen) and 0.5mg of levonorgestrel (the artificial progesterone).<sup>51</sup> Unprotected intercourse can include an act of rape, or a failed barrier method i.e., condom, spermicide, or a voluntary act of intercourse with the woman not wishing to present with a detected pregnancy. Note, to avoid unnecessary longhand, I will henceforth refer to levonorgestrel as a *progestin*, its proper pharmaceutical classification, rather than the secular term “artificial progesterone”.

### How the yuzpe method acts as an abortifacient

The mechanism(s) of action of the Yuzpe method of pre-implantation birth regulation have been the subject of research since the mid-1980s. A review of published papers indicates a consistent reference to a direct inhibi-

tory effect on the proper development of the endometrium. As a consequence, implantation of the 5-6 day old human embryo is frequently blocked.

Illustrating this point was work by Kubba and co-workers (1986), who observed that the correct levels of natural, ovarian produced estrogen and progesterone are indispensable to the proper development of the endometrium to a stage that is compatible with blastocyst implantation. They further noted that the endometrium must be at the secretory phase of development for proper implantation, and theorised that a high dose of a progestin may disrupt this necessary development. Importantly, they named levonorgestrel as responsible for the retardation in endometrial growth.<sup>52</sup>

Supportive research was also reported by Rowlands and co-workers (1986), who found that the Yuzpe method works “at the endometrial level and operates before implantation.”<sup>53</sup> More precisely, Rabone (1990) determined that ‘Yuzpe’ caused a “desynchronisation” in the development of the endometrium, render-

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51 Trussell J, Rodriguez G, Ellertson C. *op.cit.*, p.147

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52 Kubba AA, White JO, Guillebaud J, Elder M. The biochemistry of human endometrium after two regimens of postcoital contraception: a dl-norgestrel/ethinylestradiol combination or danazol. *Fertil Steril* 1986; 45:512-516

53 Rowlands S, Kubba AA, Guillebaud J, Bounds W. A possible mechanism of danazol and ethinyl estradiol/norgestrel combination used as postcoital contraceptive agents. *Contraception*. 1986; 33; 539-545

ing implantation improbable.<sup>54</sup> Grou (1994), Harper (1995), the American Food and Drug Administration (1997), Trussell (1999), and Wellbery (2000) have all reported similarly.<sup>55</sup>

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54 Rabone D. Postcoital contraception—coping with the morning after. *Current Therapeutics* 1990 January pp 45-49

55 Grou F, Rodrigues I. The morning-after pill—how long after? *Amer J Obstet Gynecol* 1994; 171:1529-1534

“[...] the modification of the endometrium is probably the main mechanism of action of the morning-after pill. Most of the researchers attempting to understand how the morning-after pill works support this view.”

Harper C, Ellerston C. Knowledge and perceptions of emergency contraceptive pills among a college-age population: a qualitative approach. *Fam Plan Perspectives* 1995; 27:149-154. “Emergency contraceptive pills, also known as morning-after pills, are a postcoital hormonal treatment that appears to inhibit implantation of the fertilized ovum.”

Kessler DA. Commissioner of Food and Drugs. [www.fda.gov](http://www.fda.gov) pp.8609-8612

“Emergency contraceptive pills are not effective if the woman is pregnant; they act by delaying or inhibiting ovulation, and/or altering tubal transport of sperm and/or ova (thereby inhibiting fertilization), and/or altering the endometrium (thereby inhibiting implantation).”

Trussell J, Raymond E. Statistical effectiveness about the mechanism of action of the Yuzpe regimen of emergency contraception. *Obstet Gynecol* 1999; 93:872-876 “[...] the best information currently available indicates that the Yuzpe regimen could not be as effective as it appears to be if it only worked by preventing or delaying ovulation.”

Wellbery C. Emergency Contraception.

The American Food and Drug Administration’s (FDA) product information for Preven<sup>™</sup>, a branded version of the Yuzpe method, lists three ways this product could work: delayed or prevented ovulation, changes to the viscosity of cervical mucus, or it “may produce changes in the lining of the womb (uterus).”<sup>56</sup>

These studies consistently agree on the *modus operandi* of the Yuzpe method of postcoital birth pre-implantation/emergency birth control. They acknowledge that this drug regimen has the capacity to impede or stop implantation of a newly created human embryo by causing alterations to the cellular structure and cyclical development of the endometrium.

Joined to this anti-implantation action is a further, more delicate molecular aspect to the processes of implantation which is also an attack point for post-coital drug regimens. Precisely how this action is effected is an emerging field of research. This nascent scientific discipline has shown that implantation of the human embryo is a complex, sophisticated process, involving a cascade of interdependent, hormonally controlled ‘implantation factors’,<sup>57</sup> with

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*Arch Fam Med* 2000; 9:642-64: “Thus, numerous factors, including prevention of implantation, may play a role [in the Yuzpe method].

56 <http://www.fda.gov> Do search for Preven.

57 Kimber SJ, Spanswick C. Blastocyst

the embryo a dynamic participant. As Horne *et al* have noted: "The embryo is not passive but is an active orchestrator of its attachment and fate."<sup>58</sup>

Vital to this discussion is the overarching fact that these implantation factors are, *in-vivo*, regulated either directly or tangentially by ovarian-derived estrogen and progesterone. Therefore, it is biologically plausible to expect that synthetic estrogens and progestins, such as those found in contemporary formulation of the daily birth control pill, and administered at higher doses as a "morning-after" treatment, would also adversely influence various implantation factors. This is a reasonable expectation for two reasons.

First, the synthetic hormones present in the once-a-day birth control pill bind to and interact with the same receptors that natural estrogen and progesterone attach to. The receptors have the task of receiving the respective hormones, rather like a lock (the receptor) receives a key (the hormone), resulting in a biological effect. This hormone/receptor interaction is one of the foundations upon which the birth control pill was developed. Because of this mutual affinity for the same receptors, it is not surprising to find that the artificial female hormones can mimic, or even dis-

rupt, the normal cyclical patterns within the endometrial environment.

Second, when a woman takes the dosage regimen according to the Yuzpe method, she is ingesting a dose seven-fold greater than she would ingest when taking the once a day birth control pill.<sup>59</sup>

Given that research has revealed how the *daily* pill format negatively interferes with the complex array of events necessary for implantation of the human embryo, it is pharmaceutically logical to conclude that a sudden, *seven-fold* intake of the same hormones would likewise impact adversely the delicate process of implantation. The following discussion will review newer research findings which highlight the possible attack points at which the Yuzpe method of pre-implantation/emergency "contraception" could be operative.

Initially, these hormones could interfere with the mandatory bio-chemical communication between the embryo and the maternal endometrium prior to implantation. This precise, structured maternal/embryo communication has been variously referred to as "a signalling system",<sup>60</sup>

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implantation: the adhesion cascade. *Cell & Devel Biol* 2000; 11: 77-92

58 Horne AW, White JO, Lalani E-N. The endometrium and embryo implantation. *BMJ* 2000; 321:1301-1302

59 In the space of 12 hours, The Yuzpe method requires a woman to take 0.2mg of ethinyl estradiol (the synthetic estrogen) and 1 mg of levonorgestrel (the progestin). By comparison, Microgynon 30 contains 0.03mg of ethinyl estradiol and 0.15mg of levonorgestrel. This latter dose is ingested once every 24 hours.

60 Simon C, Mercader A., *et al.*, Hormonal

embryonic “dialogue”,<sup>61</sup> “molecular communication”<sup>62</sup> and “cross-talk.”<sup>63</sup> Piccinni has summarised the complexities of the pre-implantation process as requiring “exquisite dialogue”<sup>64</sup> between the human embryo (at the blastocyst stage), and the maternal endometrium. Analogously, this process could be likened to the communication between a spacecraft and mothercraft prior to docking.

The interleukin system is an indispensable component of pre-implantation embryo/endometrial communication. Inappropriate levels of female

hormones, or the ratio between the two, has been shown to have a detrimental affect upon this implantation factor at the critical stage of alignment of the human embryo with the receptive cells of the endometrium prior to implantation, a “docking” style operation known as apposition.<sup>65</sup> As previously discussed, the Yuzpe method obviously meets the criteria of “inappropriate levels”.

Sequentially associated with embryo/maternal cell-talk is the requirement for holding structures to be adequately present on the surface of the endometrium. These structures will maintain proper embryo/endometrial cellular contact whilst the embryo completes the implantation process. This life sustaining attachment/implantation process is, in part, dependent upon the adequate expression of cell adhesion molecules known as integrins. Integrins are maximally present on the surface of the endometrium on the *sixth day* after ovulation. This day marks the “opening of the implantation window.”<sup>66</sup> Integrins could be considered to have the task of operating as docking clamps. Regular

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Regulation of Serum and Endometrial IL-1 $\alpha$ , IL-1 $\beta$  and IL-1ra: IL-1 Endometrial Micro Environment of the Human Embryo at the Apposition Phase Under Physiological and Supraphysiological Steroid Level Conditions. *J Reprod Immun* 1996; 31: 165-84.

61 Simon C, Velasco J, *et al.* Increasing Uterine Receptivity by Decreasing Estradiol Levels During the Preimplantation Period in High Responders with the Use of Follicle-Stimulating Step-Down Regimen. *Fertil Steril* 1998; 70(2): 234-239

62 Huang HY, Krussel JS, *et al.* Use of reverse transcription-polymerase chain reaction to detect embryonic interleukin-1 system messenger RNA in individual preimplantation mouse embryos co-cultured with Veto cells. *Human Reprod* 1997; (12): 7: 1537-1544

63 Simon C, Gimeno MJ, *et al.* Embryonic regulation of integrins beta 3, alpha 4, and alpha 1 in human endometrial epithelial cells *in vitro*. *J Clin Endocrinol Metab* 1997;(82) 8:2607-2616

64 Piccinni M.-P., Maggi E, Romagnani S. Role of hormone-controlled T-cell cytokines in the maintenance of pregnancy. *Biochemical Society Transactions*. 2000; 28:212-215

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65 Simon C, Velasco JJ *et al.* Increasing uterine receptivity by decreasing estradiol levels during the preimplantation period in high responders with the use of a follicle-stimulating hormone step-down regimen. *Fert Steril* 1998; 70 (2): 234-239

66 Castelbaum AJ, Ying L, Somkuti S *et al.* Characterization of integrin expression in a well differentiated endometrial adenocarcinoma cell line (Ishikawa). *J Clin Endocrinol Metab* 1997; 82: 136-142

use of the daily pill has been shown to down-regulate the activity of integrins, notably the  $\alpha v \beta 3$  class, thereby minimising the possibility of successful implantation.<sup>67</sup> It is reasonable to hypothesize that a substantially higher dose of the pill, as a post-coital pre-implantation/emergency regimen, would be even more deleterious to the levels of integrin expression. Consequently, implantation would be imperilled.

Evidence is also emerging that other endometrial structures, such as pinopodes and osteopontin, also play a vital role in implantation. These attachment factors are present to an adequate level only during the "window of implantation" days.<sup>68</sup> <sup>69</sup> Pinopode levels are increased by natural progesterone, and decrease under the influence of natural estrogens.<sup>70</sup> Leukemia inhibitory factor [LIF] has also been confirmed as vital to embryo attachment and implanta-

tion.<sup>71</sup> An excessive plasma level of progesterone has been shown to decrease LIF levels 2.3 fold, thereby impeding implantation. An excessive level of estrogen has also been shown, in mice, to significantly stimulate LIF production. Paradoxically, too high a level of LIF is also disadvantageous to implantation, due to LIF-induced endometrial underdevelopment.<sup>72</sup> Excessive levels of synthetic female hormones are a trademark of the Yuzpe method, hence interference with implantation, via damage to the proper levels of pinopodes, osteopontin and LIF is biologically plausible.

Insulin-like glucose factor-1 [IGF-1], insulin-like glucose factor-II and their related binding protein also have a confirmed, vital role in implantation,<sup>73</sup> and their influence on fetal development begins prior to implantation.<sup>74</sup> These implantation factors are under hormonal control<sup>75</sup> and daily use of the birth control pill has been shown to increase the levels of the binding protein

67 Somkuti SC, Fritz MA *et al.* The effects of oral contraceptive pills on markers of endometrial receptivity. *Fert Steril* 1996; 65(3): 484-488

68 Giudice L. Potential biochemical markers of uterine receptivity. *Human Reproduction* 1999; 14 (Suppl 2): 3-16

69 Benton-Ley U, Sjogren A, Nilsson L. Presence of uterine pinopodes at the embryo-endometrial interface during human implantation *in vitro*. *Human Reproduction* 1999; 14 (2): 515-520

70 Acosta AA, Elberger L, Borghi M, *et al.* Endometrial dating and determination of the window of implantation in healthy fertile women. *Fert Steril* 2000; 73(4): 788-798

71 Hambartsoumian E. Leukemia inhibitory factor (LIF) production by human deciduas and its relationship with pregnancy hormones. *Gynecol Endocrinol* 1998; 12(1): 17-22

72 *Ibid*, p.20

73 Giudice LC, Mark SP, Irwin JC. Paracrine actions of insulin-like growth factors and IGF binding protein-I in non-pregnant human endometrium and at the decidual-trophoblast interface. *J Reprod Immun* 1998; 38:133-148

74 Han VK. The ontogeny of growth hormone, insulin-like growth factors and sex steroids: molecular aspects. *Horm Res* 1996; 45:1-2,61-66

75 Giudice, *op.cit.*, p.135

(IGFBP-I)<sup>76 77</sup> and decrease the levels of IGF-I.<sup>78</sup> Research indicates that *excess* levels of IGFBP are possibly implicated in shallow implantation and subsequent premature pregnancy loss.<sup>79</sup> The Yuzpe method of supra-physiological synthetic hormones ingestion would be expected to have an adverse impact on IGFBP similar to, if not greater than, that seen with the daily pill. Clearly, as this research indicates, implantation is *not* akin to two pieces of sticky Velcro randomly touching and adhering to each other.

One final aspect of the Yuzpe method's mechanism of action requires consideration – does this method alter the time of ovulation, and if so, what relevance does this hold from a bio-ethical perspective? Research has shown that when taken before ovulation, Yuzpe can cause a delay in ovulation of 1-10 days duration. A delay of one day would still

permit fertilization. But implantation in these instances is unlikely because in these same women, a premature period was induced.<sup>80</sup>

Irrespective of *how* the Yuzpe method works at a molecular level, there is little debate that it greatly reduces the number of expected pregnancies. *Ipsso facto*, this drug regimen cannot be classified as a contraceptive. It is a pre-implantation/emergency abortifacient.

### **THE LEVONORGESTREL-ONLY METHOD OF PRE-IMPLANTATION/EMERGENCY 'CONTRACEPTION'**

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Whilst the Yuzpe method was the primary method of post-coital birth control from its inception in the 1970s, during the late 1990s researchers began investigations with the exclusive use of levonorgestrel, a progestin. This approach to pre-implantation birth control involves the ingestion of 0.75mg of levonorgestrel within 72 hours of unprotected intercourse, and an equivalent dose 12 hours later.<sup>81</sup>

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76 Westwood M, Gibson JM, William JC, Clayton PE, *et al.* Hormonal regulation of circulating insulin-like growth factor-binding protein-I phosphorylation status. *J Clin Endocrinol Metab* 1995; 80(12): 3520-3527

77 Suikkari AM, Tiitinen A, Stenman UH, Sepp M *et al.* Oral contraceptives increase insulin-like growth factor binding protein concentration in women with polycystic ovarian disease. *Fertil Steril* 1991;55(5):895-899

78 Westwood M, Gibson JM, Pennells LA, White A. Modification of plasma insulin-like growth factors and binding proteins during oral contraceptive use and the normal menstrual cycle. *Am J Obstet Gynecol* 1999; 180:560-536

79 Giudice, *Human Reprod*, p.11

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80 Swahn ML, Westlund P, Johannisson E, Bygdeman M. Effect of post-coital contraceptive methods on the endometrium and the menstrual cycle. *Acta Obstet Gynecol Scand* 1996; 75:738-744

81 Task Force on Postovulatory Methods of Fertility Regulation. Randomised controlled trial of levonorgestrel versus the Yuzpe regimen of combined oral contraceptives for emergency contraception. *Lancet* 1998; 352:428-433

Compared to the Yuzpe method, the major “advantages” of this newer method are a reduced incidence of side effects, notably nausea, vomiting and breast tenderness, and a higher pregnancy abortion rate.

### **How levonorgestrel-only acts as an abortifacient**

The medical literature makes it clear that levonorgestrel has a high pre-implantation/emergency abortifacient action.

Work by Kubba *et al* (1986) specifically referred to levonorgestrel, noting its ability to change “the nature” of the hormonal receptors within the endometrium.<sup>82</sup> Dr Rabone (1990) reported that levonorgestrel caused a reduction in the number of estrogen and progesterone receptors within the endometrium. As Dr Rabone reported: “The concentration of these receptors is critical for the normal development of the endometrium to a stage that will support implantation.”<sup>83</sup>

More specifically, the manufacturers of Plan B™, a proprietary brand containing 0.75mg of levonorgestrel, have stated that:

“Oral levonorgestrel acts as an emergency contraceptive principally by preventing ovulation or fertilization (by altering tubal transport of sperm and/or ova). In addition, it may inhibit implantation (by alter-

ing the endometrium). It is not effective once the process of implantation has begun (Prod Info Plan B(TM), 1999)”<sup>84</sup>

Thus, in common with the Yuzpe method the levonorgestrel [LNG] approach clearly has an anti-developmental impact on the endometrium. Similarly, at a molecular level, LNG also shares some common attack points, notably its potential impact on osteopontin<sup>85</sup> and leukemia inhibitory factor [LIF] levels.<sup>86</sup> It is known that there is an inverse association between the levels of LIF and progesterone, with excess levels of progesterone having an “inhibitor” action of LIF production during a normal pregnancy, resulting in the “failure of implantation” of the human embryo.<sup>87</sup>

Amongst the many other implantation factors referenced in the medical literature, at least three are possible points of subtle implantation interference. They are tumour necro-

84 Micromedex Vol.106 Levonorgestrel monograph

85 Johnson GA, Spencer TE, Burghardt RC *et al*. Progesterone modulation of osteopontin gene expression in the ovine uterus. *Biology of Reprod.* 2000; 62: 1315-1321

86 Laird SM, Tuckerman EM, Dalton CF *et al*. The production of leukemia inhibitory factor by human endometrium: presence in uterine flushings and production by cells in culture. *Human Reprod* 1997; 12(3): 569-574

87 Hambartsoumian, *op.cit.*, p.20

82 Kubba, *op.cit.*, p.515

83 Rabone, *op.cit.*, p.46



sis factor [TNF],<sup>88</sup> platelet-activating factor [PAF]<sup>89</sup> and the mucins.<sup>90</sup>

It is biologically plausible to suggest that one or more of these implantation factors could be an attack point for the supra-physiological doses seen in this format of the 'morning-after' pill. The levonorgestrel-only post-coital dose is equal to taking 40 to 50 standard once-a-daily progesterone-only birth control pills.<sup>91</sup> <sup>92</sup> Supporting this claim are the opinions expressed by researchers who have noted that knowledge acquired about the molecular basis of implantation will be used in two arenas of "reproductive" health; positively in the treatment of infertility as well as, regrettably, "preventing implantation for contraceptive purposes."<sup>93</sup>

### **Relative efficacy of the yuzpe and levonorgestrel-only methods of post-coital birth control**

Based upon well-proven fertility data, the probability of conception can be calculated in relationship to the day of intercourse.<sup>94</sup> Using these and other data, researchers have tested the Yuzpe method of postcoital birth control alone, and against the levonorgestrel-only method.

For the Yuzpe method only, Ellertson and co-workers (1995) have reported that there was a 75% reduction in the expected pregnancy rate.<sup>95</sup> Trussell (1998) reported effectiveness estimates from seven separate studies ranging from 44.2% to 88.7%.<sup>96</sup> Similar figures were published the following year.<sup>97</sup>

In 1998, the World Health Organization published the results of the Task Force on Postovulatory Methods of Fertility Regulation, which, importantly, compared the Yuzpe method with the levonorgestrel-only method (previously described). The foremost finding from this study was that the levonorgestrel regimen prevented 85% of the expected pregnancies, whereas

88 Tabibzadeh S. Molecular control of the implantation window. *Hum Reprod Update* 1998; 4(5): 465-471

89 Sato S, Kume K, *et al.* Up-regulating of the intracellular Ca<sup>2+</sup> signalling and m-RNA expression of platelet activating factor receptor by estradiol in human endometrial cells. *Adv Exo Med Biol* 1997; 416:95-910

90 Horne, *op.cit.*, p.1301

91 Guillebaud, *op.cit.*, p.416

92 MIMS 2001. Havas MediMedia Leve 2, 1 Chandos Street, St.Leonards, NSW 2065 Australia [Editorial@mims.com.au](mailto:Editorial@mims.com.au) See levonorgestrel-only birth control monograph

93 Giudice, *op.cit.*, p.12

94 Wilcox AJ, Weinberg CR, Baird DD. Timing of sexual intercourse in relation to ovulation. Effects on the probability of conception, survival of the pregnancy and sex of the baby. *NEJM* 1995; 333(23): 517-521

95 Ellertson C, Winikoff B, Armstrong E *et al.* Expanding access to emergency contraception in developing countries. *Stud Fam Planning* 1995; 26,5:251-263

96 Trussell J, Rodriquez G, Ellertson C. *op.cit.*, 1998, p.363

97 Trussell J, Raymond E. *op.cit.*, 1999, p.147

the Yuzpe regimen prevented 57% of expected pregnancies.<sup>98</sup>

This evidence makes the abortifacient action of either drug regime of post-intercourse birth control conspicuous, and is confirmed by Dr Caroline Wellbery. "It is estimated that if 100 women have a single episode of unprotected intercourse without particular attention to the timing of the menstrual cycle, 8 of them will become pregnant. With EC (in the form of combination pills), only two women will become pregnant. Progestin-only pills [i.e., levonorgestrel] regimens are estimated to be even more effective."<sup>99</sup> Note the erroneous use of the terms "pregnant" and EC (i.e., emergency "contraception") in this citation.

This high abortion rate is not unexpected given the extraordinary doses of levonorgestrel ingested—the levonorgestrel-only EC dose is equal to taking 40 to 50 standard once-a-daily progesterone-only birth control pills. Joined to this supra-physiological dose is emerging evidence indicating that leukemia inhibitory factor [LIF]—a critical factor in implantation—is regulated by the endometrial levels of progesterone. By logical pharmaceutical extension, if inappropriate levels of naturally produced progesterone interferes with the pre-requisite implantation levels of LIF, so too, will synthetic copies, i.e., levo-

norgestrel, as both interact in the same manner with endometrial receptors.

Ironically, Gy. Thaler of Gedeon Richer Ltd (Hungry), the manufacturer of Postinor™ (levonorgestrel 0.75mg) has unwittingly acknowledged the seriousness of this debate, by noting that the promotion and use of the morning-after pill "involves ethical and moral questions."<sup>100</sup>

## **MIFEPRISTONE (RU-486) USE AS PRE-IMPLANTATION/ EMERGENCY BIRTH CONTROL**

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The post-implantation use of RU-486 is well documented. The subsequent extension of this drug's use to the pre-implantation stage of human embryonic life is a further regrettable pharmaceutical development.

When deployed as yet another variant in the 'morning-after' pharmaceutical armamentarium, mifepristone can be administered within 120 hours of unprotected intercourse. One international study reported that irrespective of the dose administered, i.e., 600mg, 50mg or 10mg 120 hours *post* intercourse, an average of 85% of otherwise expected pregnancies were aborted.<sup>101</sup>

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100 Thaler Gy. Collaboration with academia in the development of post ovulatory methods. *Int J Gynec Obstet* 1999; 67:S77-S83

101 von Hertzen H, Van Look PFA. Comparison of three single doses of

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98 Task Force on Postovulatory Methods of Fertility Regulation. *op.cit.*, 1998; 352:428-433

99 Wellbery, *op.cit.*, p.643

This abortifacient rate is comparable to that seen with the levonorgestrel-only version of the MAP.

### **How RU-486 (mifepristone) acts as an abortifacient**

Work by Cameron *et al* (1997) has revealed at least four attack points of mifepristone.<sup>102</sup>

*First*, mifepristone administered as a single 200mg or 400mg dose two days after the surge of luteinizing hormone (LH) was found to appreciably reduce the endometrial levels of leukemia inhibitory factor (LIF). The LH surge is responsible for stimulating ovulation. Significantly, the reduction in LIF caused by RU-486 was most evident on the first day of the opening of the window of implantation (6 days after the LH surge).

*Second*, mifepristone caused the levels of a critical enzyme known as 15-hydroxyprostaglandin dehydrogenase (15-PGDH) to be “markedly reduced or absent.” In a normal cycle, 15-PGDH acts to retard premature endometrial breakdown i.e., menstrual bleeding. By reducing the levels of this enzyme, RU-486 could indirectly induce menstruation by removing the ‘brake’ on the

too-early onset of this monthly event. Indeed, in one RU-486 treatment cycle, pre-menstrual break-through bleeding occurred during the time when the embryo would be endeavouring to implant. Obviously a deteriorating, sloughing endometrium is disadvantageous to sustaining a 5-6 day old pregnancy.

*Third*, RU-486 reduced the levels of glycodeclin, produced by the endometrium. Glycodeclin is believed to “play an immunosuppressive role in implantation by protecting the embryo from rejection by the maternal immune system.”

*Fourth*, RU-486 retarded the development of a secretory endometrium. The formation of a secretory endometrium is “a prerequisite for implantation.”

When these four factors are combined with a 100% rate of ovulation in all cycles in this study and a resultant 85% reduction in the expected pregnancy rate it is self-evident that RU-486, as a pre-implantation drug regimen, has a potent abortifacient capacity.

A *fifth* attack point has been reported by Bygdeman (1999). When given after ovulation, RU-486 affected the development of the endometrium, including the levels of pro-implantation factors such as leukemia inhibitory factor and integrins.<sup>103</sup> Not surprisingly, RU-486 was a “highly effective” postco-

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mifepristone as emergency contraception: a randomized trial. *Lancet*. 1999; 353:697-702

102 Cameron ST, Critchley H, Buckley CH, *et al*. Effects of two anti progestins (mifepristone and onapristone) on endometrial factors of potential importance for implantation. 1997;67(6):1046-1053

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103 Bygdeman M, Danielsson KG, Marions L, Swahn ML. Contraceptive use of antiprogesterone. *Eur J Contracep Reproduct Health Care* 1999; 4(2): 103-7

ital emergency abortifacient, reducing the probability of a detected pregnancy 60-fold.

## **THE COPPER-BEARING INTRA-UTERINE DEVICE**

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The copper IUD can be inserted within 7 days of unprotected intercourse and is reported to have reduced the observed pregnancy rate by 100%.<sup>104</sup> The principle method of action of the IUD is through the generation of a state of uterine inflammation. This effect will have a deleterious impact on the endometrium, and hence on implantation. Associated with, and augmenting this anti-implantation action, is the possibility that bacteria have been introduced into the otherwise sterile environment of the uterine cavity.<sup>105</sup>

## **DOES THE ‘MORNING-AFTER’ PILL OR I.U.D ALWAYS ABORT?**

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Having set out the scientific facts regarding the various methods of post-coital abortifacient drug use, one final critical question must be addressed. Is there any stage during a woman's cycle when she can reasonably take the MAP or use an IUD without risking the loss

of a human embryo? To fully appreciate this discussion it is critical to note the following interconnected events: (a) ovulation determines the opening of the “fertile window” of implantation, (b) this window is open for 6 days, being the first five days prior to ovulation and the day of ovulation itself,<sup>106</sup> and (c) the day of ovulation, and hence the fertile window, is not inflexibly fixed to the middle of a cycle, either in regular or irregular cycles.

Research by Wilcox, Dunson and Baird (2000) has reported that the only days with close to a zero probability of ovulation (i.e., less than 1%) and hence conception, were the first two days of the menstrual cycle. Ovulation was reported to have occurred as early as the eighth day and as late as the 60<sup>th</sup> day (in prolonged cycles.) Statistically, “an estimated 2% of women were in their fertile window by the fourth day of their cycle and 17% by the seventh day (based on 213 women). This percentage peaked on days 12 and 13, when 54% of women were in their fertile window. Among women who reached the fifth week of their cycle, 4-6% were in the fertile window.” Also of significance was the finding that even women with regular cycles had a 1- 6% probability of being within their window of fertility *on the day the next period was due*. Between

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104 Tatum, *op.cit.*, p.185

105 Spinnato JA, Mechanism of action of intrauterine contraceptive devices and its relation to informed consent. *Am J Obstet Gynecol* 1997; 176(3) 503-506

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106 Wilcox AJ, Dunson D, Baird DD. The timing of the “fertile window” in the menstrual cycle: day specific estimates from a prospective study. *BMJ* 2000; 321:1259-1262

days 6 to 21 of a regular cycle, at least 10% of women were in their fertile window. Highlighting the large measure of variation in the probability of ovulation was the finding that 20% of pregnancies occurred with ovulation being before day 13 and 22% of pregnancies were due to ovulation after day 21.<sup>107</sup>

Based upon these data, and reports indicating that “most women do not keep a record of their menstrual periods,”<sup>108</sup> leading to a high level of uncertainty of cycle status, there is very little scope for the licit use of the various forms of post-coital pre-implantation drug use, other than during the first few days of menstruation. Only under the most stringent of circumstance could an exception be envisaged. If a woman were able to have an ovarian ultrasound performed to determine the state of development of an emerging follicle, *plus* have blood and/or FSH and LH levels determined since these act as ovulation inducers and stimulates, *plus* have oestrone-3-glucuronide and pregnanediol-3-glucuronide levels determined since these are post-ovulation markers, then a woman might establish the precise point she is at in her cycle, and hence, provide a possible exception to the otherwise general prohibition against the MAP. Yet, for many women this stringent qualification is a moot point; many countries have now made the MAP available as a

non-prescription product, requiring no supervision by a physician.

One further biological factor greatly limits the use of various formats of post-coital emergency birth control. Research has shown that, in a laboratory setting, sperm can migrate into the Fallopian tube, the site of fertilization, within *five* minutes of intercourse.<sup>109</sup> Thus, the use of any form of emergency birth control ‘the next morning’ would be many hours too late for any purported anti-sperm activity.<sup>110</sup> Research that is more recent has demonstrated that, under the influence of uterine contractions, rapid transport of sperm-sized spheres to the Fallopian tube can take only *one* minute.<sup>111</sup>

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## CONCLUSIONS

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The various forms of pharmaceutical intervention *post*-intercourse all have an abortifacient intervention capacity as their principle mechanism of action. Many well-conducted studies have affirmed this point. Hence their use au-

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109 Settlage DS, Motoshima M, Tredway DR. Sperm transport from the external cervical os to the fallopian tube. *Fertil Steril* 1973; 24(9) 655-661

110 Ashraf H, McCarthy M. UK improves access to “morning after pill”. *Lancet* 2000; 356:2071

111 Kunz G, Beil D, Deininger H, Wildt L, Leyendecker G. The dynamics of rapid sperm transport through the female genital tract: evidence from vaginal sonograph of uterine peristalsis and hyperosalpingoscintigraphy. *Hum Reprod* 1996; 11(3): 627-632

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107 Wilcox AJ, Dunson D, Baird DD. *op.cit*

108 Glasier, *op.cit.*, p.1043

tomatically carries with it the possibility that an established pregnancy may be terminated. Therefore, *none* of these procedures should be tagged with the term “contraceptive”. It is a grave misnomer. Rather, all forms of post-coital intervention are frequently abortifacient. Recent research has greatly extended the timeframe during which various forms of the “morning-after” pill can cause an abortion. Word manipulation is probably the area of greatest threat to embryonic human life. It is being defined out of existence.

# Pro-Choice

Joseph & Michael Meaney



*The pro-choice ideology was born at the end of the sixties through pro abortion groups progressively using twisted semantics to hide what being in favor of abortion meant. An important step in this propaganda came in the seventies and eighties, when there was an attempt to argue in favor of abortion in the sense of negating that the fetus is an individual or even human. The pro choice arguments do not stand up to a calm study of the scientific facts. It is a prisoner of certain restrictive concepts of freedom, truth, moral choice, love. It favors pleasure-seeking and personal self-affirmation over love as a gift and at the service of life. It thus is against the fundamental Judeo-Christian value of the special and non-substitutable mother-child relationship. This position is secular humanist and has recourse to propaganda, technology and coercive means to promote unlimited choices that contribute to the spreading of the culture of death. Rather than “pro choice” it would be better to call this position “pro death” or “anti-life”. (↗ Dignity of the Human Embryo; The Right to Abortion; Voluntary Interruption of Pregnancy; Legal Status of the Human Embryo)*

The pro-choice position is sometimes seen as merely an isolated option, or a controversial effort to legalize abortion and euthanasia. It has become in fact an all-comprehensive ideology or world-view waging a life and death struggle for our minds, our lives and our hearts. By its skillful and shameless use of massive campaigns of deception and propaganda, by its abusive domination of the mass media, which endlessly communicates pro-choice views as it deforms and censors Pro-Life views, it is effectively changing our way of learning and of thinking, changing our perception of what and who we are, changing

our experience and understanding of wisdom, life and love, changing our relationships to each other and to God.

In order to appreciate exactly the pro-choice mentality, one must begin with its history. In the late 1960s and early 1970s, American leaders in the effort to legalize abortion first created organizations like the “National Association for the Repeal of Abortion Laws.” After the U. S. Supreme Court legalized abortion in 1993, pro-abortion leaders vigorously continued to promote abortion while carefully tending to remove all reference to it in their self-characterization. Drawing attention away from

their wholesale legalized killing of the innocent, they created the term “Pro-Choice” rather than “Pro-Choice to Abort or not to Abort” in order to try to identify themselves with the entirely positive, most recent example of many admirable forms of human liberation. Cardinal López Trujillo described this cultural manipulation well:

“The elimination of the weaker appears as a noble exercise of freedom, an “achievement” of civilization, above all for women. All this is skillfully hidden by the formula “Pro-Choice”! This ideology of death is not only “tolerated” but imposes itself, is exported and transformed into an “imperialistic discourse” that destroys all that comes before it”.<sup>1</sup>

Aided by their media and abortion industry allies, the pro-abortion movement went on to stigmatize its Pro-Life opponents with such negative terms as “Anti-Abortion” or even “Anti-Choice.” If their semantics had been based on facts, they would have characterized the opposing groups as either “Pro-Legalized-Abortion” or “Pro-Life”. They would have called their own movement “Pro-Legalized-Choice to Kill or not to Kill Innocent Human Beings” and their opponents “Pro-Choice but Anti-Unlimited-Choice.”

These semantic distortions of reality have continued to characterize the pro-abortion movement: an abortuary

became a “reproductive health center,” a “Parents’ Aid Society,” or a “Planned Parenthood center”. The pre-born baby became an “it,” a “product of conception” or “contents of the womb.” Killing the pre-born baby became a “medical procedure,” “medical intervention,” “D&C,” “D&E,” “termination of pregnancy,” or “voluntary interruption of pregnancy”. The fetus became a “non-individual,” a “parasitic part” of the mother - who has the “right to control her own body”. Finally, the embryo and fetus were declared “non-members of the human race”. About this, two eminent scientists commented: “In this Orwellian situation where so much semantic effort and logical gymnastics are expended in making a developing human life into an ‘unperson’, modern anatomical, genetic, immunological, endocrinological and physiological facts are a persistent embarrassment.”<sup>2</sup>

2 A. L. LILEY, *The Tiniest Humans*, text by J. LEJEUNE and A. W. LILEY, ed. by R. SASSONE, Sun Life, Thaxton Virginia, 1977, p. 13. The medical journal *California Medicine* concluded “Since the old ethic has not yet 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 rationalize abortion as anything but taking a human life would be ludicrous if they were not put forth under socially impeccable

1 A. LÓPEZ TRUJILLO, *Familia, Vida y Nueva Evangelización*, Eud, 2000, 228.



Arguing that “some will always have abortions” and that safe, legal ones are better than illegal ones, pro-abortion leaders like Dr. Bernard Nathanson promoted legal abortions by endlessly repeating that in America alone, illegal abortions caused “‘5,000 to 10,000 deaths a year.’ I confess that I knew the figures were totally false, and I suppose the others did too if they stopped to think of it. But in the “morality” of our revolution, it was a useful figure, widely accepted, so why go out of our way to correct it with honest statistics? The overriding concern was to get the laws eliminated, and everything within reason that had to be done was permissible ... (in 1972, the actual figure was) ‘only 39 deaths’.”<sup>3</sup>

pro-abortion semantics became the most powerful tool of a coalition of forces effectively changing the popular perception of abortion, infanticide and the killing of the innocent as the Holy Father said: “Choices once unanimously considered criminal and rejected by the common moral sense are gradually becoming socially acceptable”.<sup>4</sup> One could even add that “The prevailing view of abortion in our contemporary

society is that of a minor surgical procedure carried out by upstanding physicians in the antiseptic setting of clinics and hospitals. It is this highly positive image—concocted by members of the medical establishment, legitimized by the legal structure, buttressed by linguistic technicians, implemented by advanced technologies, and disseminated by a media elite—which helps sustain the assembly-line massacre of over one and one half million unborn children annually in America alone.”<sup>5</sup>

One of the Pro-Choice movement’s most fundamental and most characteristic distortions of reality lies in its “notion of freedom which exalts the isolated individual in an absolute way, and gives no place to solidarity, to openness to others and service of them” (*Evangelium vitae*, 19). This failure to see that freedom “possesses an inherently relational dimension” (*Evangelium vitae*, 19) assumes that it is an absolute, unlimited and autonomous good. Some goods are unlimited: we cannot have too much justice, truth or goodness. Others are real goods but good for us only when limited: we can have too much wealth or power, too much food or drink, for example. Especially since the French Revolution’s “Liberty, Equality and Fraternity,” many pursue freedom as their greatest and therefore unlimited

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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 [...].” “Eroding the Old Ethic,” *California Medicine*, 113[1970]3.

3 B. NATHANSON, *Aborting America*, Toronto: Life Cycle Books, 1979, 193.

4 JOHN PAUL II, *Evangelium Vitae*, 4.

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5 W. BRENNAN, *The Abortion Holocaust*, Landmark Press, St. Louis 1983, 3.

good. Others relate freedom to justice, saying that we should have only as much freedom as we can exercise justly. No sane individual proposes that we should be perfectly free to rob a bank or steal our neighbor's goods. These are clearly legitimate limitations on our freedom. In all the legal systems of the non-tyrannical world, citizens are free to choose except when the exercise of that choice infringes on the rights of others.<sup>6</sup>

## **HOW THEN CAN THERE BE A LEGAL FREEDOM TO ABORT?**

In the 1970s and 1980s, pro-abortion propagandists attempted to solve this insoluble problem as well as to improve their public image by denying that mothers were killing their babies since the fetus is "neither alive nor a new individual nor a member of the human race". Legalization as well as more ongoing semantics, propaganda and support from medical, judicial, legal, educational and even religious leaders gave at least popular respectability to those lies in the United States of America and the world throughout the 1970s and 1980s.

Nevertheless, pro-choice arguments did not long survive confrontation with scientific facts. That the fetus is alive is not a "sectarian belief" but a clear scientific fact based on observation of fetal

growth, movement and other imminent activities. That the fetus is a new individual is not an "opinion" but a scientific fact based on such things as his or her new heart beat and brain waves, new and unique physical and genetic fingerprints, new blood-stream and organ system. That the fetus is a member of the human species is not "philosophical or theological speculation" but a scientific fact based on observation of the 46 chromosomes distinctive to the human species. From this one extrapolates a definition of the fetus as a living, individual member of the human species, which everyone understands to be a human being.<sup>7</sup> The only thing in fact that "does develop is the morphological structure, the earthly home of life, the physiological performance of that structure, behavioral traits and personality. And as we increasingly expand into a community of like individuals, we can speak of development of social responsibilities, of ethical awareness and legal status."<sup>8</sup>

Confronted with scientific falsification of their key assumptions and viewpoints, many American Pro-Choice

<sup>7</sup> For an excellent, comprehensive analysis to date of the extensive scientific and philosophical studies of the humanity of the fetus, cf. P. Ide, M.D., Ph.D., "Le zygote, est-il une personne humaine?," in *Nova et Vetera* (2001)1, 45-89; *Nova et Vetera* (2001)2, 53-88. One of the simplest definitions is that of Professor Jerome Lejeune, "A human being is a member of our species."

<sup>8</sup> LILEY, *The Tiniest Humans*, 7.

<sup>6</sup> Cf. M. ADLER, *Six Great Ideas*, Macmillan, New York 1981, cc. 18 & 19.

leaders of the past decade have quietly accepted the fact that abortion is the legalized killing of innocent human beings. They continue to maintain, however, that such “legal murder” is justified by the greater value of the innocent mother’s “freedom of choice” (i.e., her well-being or career) compared to the (physical) life of her “aggressive intruder”.

Pro-Choice leaders argue that the unlimited exercise of freedom will make us masters of life and death. They announce to all “tyrants” who try to limit their freedom that “our greater understanding of freedom and our will to power inspire us to reject your oppressive domination: we will become masters, not remain servants.” However, authentic power over life and death belongs to God alone: “It is I who bring both death and life” (Dt 32, 39 as cited in *Evangelium vitae* 66). When their power finally made them tyrants of the life and death of the innocent and the defenseless, they created the greatest ongoing slaughter of human lives in history, which is easily measured by the tens of millions of surgical abortions around the world every year.

The Pro-Choice world-view, aside from its lethal practical application, also challenges some of the most basic principles of Christianity, Western culture and perennial wisdom:

1. Instead of accepting the priority of reality over subjective judgment, Pro-Choice leaders subordinate extra-mental

reality to their judgment. Rather than defining truth as the correspondence of our mental judgments with objective reality, they define it as the agreement of reality to their own view of it. Pro-Choice leaders eagerly entered this Alice in Wonderland world in which “words mean what I say that they mean.” The campaign to legalize abortion in America created the most varied comprehensive and effective campaign of falsification since Nazi propaganda. Current Pro-Choice authors lament that recent “medical and scientific advances” and “medical technology increased the concern and attention on the fetus—the fetus became more real.”<sup>9</sup> Faced with such strong scientific evidence as sonograms that show the humanity of the preborn child, they nonetheless refuse to admit their error because this would be to “give up our values”.<sup>10</sup> The essential mistake here is that “When freedom, out of a desire to emancipate itself from all forms of tradition and authority, shuts out even the most obvious evidence of an objective and universal truth, which is the foundation of personal and social life, then the person ends up by no longer taking as the sole and indisputable point of reference for his own choices the truth about good and evil, but only his subjective and changeable opinion or, indeed, his selfish interest and whim” (*Evangelium vitae*, 19).

9 Cf. F. KISSLING “The ethics of pro-choice advocacy.” in *Choices*, 28(2000)2 8-9.

10 Ibid, 8.

Instead of “You will know the truth and the truth will set you free”, (Jn 8, 32) the pro-choice source of freedom becomes “You will know propaganda and propaganda will set you legally free to kill or not to kill innocent human beings.” Thus “freedom negates and destroys itself, and becomes a factor leading to the destruction of others, when it no longer recognizes and respects its essential link with the truth” (*Evangelium vitae*, 19).

2. For a moral act, we need of course to be free to choose whether or not to act, and free to choose between alternative goods, but above all we need to will or orient ourselves towards goods which lead towards our fulfillment or perfection through love. Because of having identified will and freedom of choice, Pro-Choice idealists tend to leave goods and love out of consideration: to will, for them, does not mean to love the good, but to be willing, voluntary, or free. Choice becomes a subjective or self-centered, autonomous act.

But in the exercise of freedom of choice, our initial freedom to act or not to act naturally leads to our second freedom, our ability to choose this or that good - which links us to objective reality. Only if one gratuitously identifies freedom with our initial *choosing to act or not to act* does our freedom become subjective, i.e., without any inherent relation to others, to truth or goodness, justice or any other objective reality. When we choose this or that good, we are in the objective order and

soon discover that we depend on reality and are not always independent and autonomous.

3. Instead of accepting the primacy of the love of God and of neighbor over self-love, the Pro-Choice view prefers the individualistic autonomy of self-love. Drawing attention away from the altruistic love and goodness towards which our freedom is primarily and naturally oriented, the Pro-Choice side concentrates on the self-centered exercise of our freedom to choose.

The greatest moral principle, on the other hand, is not self or freedom but altruistic love. When asked “What is the greatest commandment?” Jesus answered “You must love the Lord your God with all your heart, with all your soul, and with all your mind. This is the greatest and the first commandment. The second resembles it: You must love your neighbor as yourself. On these two commandments hang the whole Law, and the Prophets too” (Mt 22, 37-40).

Love of God and of neighbor is so important in Christian life that to the extent that anything else—freedom, power, pleasure, wealth, prestige or self—takes precedence over love, we are abandoning Christ and the whole Christian Tradition for some ideological alternative. Ultimately, God is primarily loving rather than primarily free, infinite or unlimited, omnipotent, happy or supreme. Since we are images of God called to become increasingly like Him, our perfection follows that same priority.

4. Instead of accepting the primacy of love over pleasure, pro-choicers prefer self-fulfilling pleasure over altruistic and sacrificial love. They describe unwanted pregnancies as above all “inconvenient” or unpleasant. The Pro-Choice side responds to the fact that most unwelcome pregnancies arise from pleasure-oriented pre-marital, extra-marital and often promiscuous sexual relations, not by proposing greater responsibility and respect for human beings as well as more authentic morality, goodness and love, but by advocating contraceptives, sterilization and abortion. Far from solving the problem of unwanted pregnancies, contraceptives and abortion exacerbate and magnify that problem.

5. Instead of accepting the objective priority of life over death, the Pro-Choice view substitutes a priority of death over life. It rejects life before conception through contraception and sterilization, rejects life after conception through abortion, rejects painful and handicapped life through “assisted suicide” and “mercy killing,” rejects “useless” or “terminal” life through euthanasia, rejects “inferior life” and “lower classes” (Margaret Sanger) through proposals of murder and genocide, rejects “over-population” by creating the myth of “population explosion,” to which it has responded by attempting near-genocidal mass sterilizations and population control. Through blackmail and coercion, First World UN delegations tyrannically led by Pro-Choice leaders

have attempted to force the most radical anti-life measures on Third World countries in flagrant violation of their cultural and religious beliefs and national sovereignty. To the exhortation “I am offering you life or death, blessing or curse. Choose life, then so that you and your descendants may live, in the love of Yahweh your God, obeying his voice, holding fast to him, for in this your life consists” (Dt 30, 19-20), they consistently choose death. The Pro-Choice movement has done its best to substitute a “Culture of Death for a Culture of Life.”<sup>11</sup>

6. Instead of accepting the perennial view of human beings as rational, political, social and conjugal animals living in societies under positive laws based on natural law, Pro-Choice activists substitute a view of man as a pleasure-seeking, self-centered individual who has come of age by creating positive laws based on precedents rather than on natural laws and rights.

The U.S. Supreme Court in its 1973 *Roe v. Wade* decision totally reversed United States legal tradition and contradicted 2,500 years of Western legal tradition by legalizing abortion. Explaining its revolutionary decision by its assumptions that the fetus is “potential life,” and that there then existed no scientific, religious or philosophical

<sup>11</sup> The original source and most profound developer of the theme “Culture of Life and Culture of Death” is of course Pope John Paul II. Cf. especially *Evangelium vitae*.

consensus concerning the humanity of the fetus, it went on to assume its non-humanity. Although explicitly admitting that all these assumptions and their consequences would obviously be invalidated by scientific proof of the humanity of the fetus, to the present day it has refused to examine that clear, ever-growing scientific proof. Instead, having first gone contrary to all precedents in establishing *Roe v. Wade*, it now uses precedents alone to legitimize it. And of course, not long after the US decision, the legislatures and supreme judicial courts of major nations all over the world used similar arguments to legalize abortion.

Soon also, medical authority and practice were impacted: the ancient Hippocratic Oath in all of its beautiful integrity remained a condition required for all medical practice for 2,500 years –until 20th Century Pro-Choice leaders managed to eliminate one of its key elements: “I will give no deadly medicine to anyone if asked, nor suggest any such counsel, and in like manner, I will not give to a woman a pessary to produce abortion.”

7. Instead of accepting the Christian view of human beings as coming from God through creation and returning to him through our divine Savior and his law of love, many Pro-Choice thinkers have followed the fundamental thrust of their world-view towards a secular humanism in which man comes from the earth and returns to it. During our

purely terrestrial life on the only world in which secular humanism is sure, man is the supreme being and sole master of all he surveys. In a world liberated from both God and his laws and in no need of a Savior, “man is his own savior.” John-Paul II calls this the “meta-temptation,” one that goes beyond all previous temptations, one that reveals the deepest roots of all temptations.<sup>12</sup>

8. Extreme secularism rejects God, the supernatural and revelation, as well as the family, the Chosen People and the Church, the two societies revealed as directly and uniquely founded and sanctified by God. In striking contrast to the countless societies created by humans to promote human values, God founded these three communities as special instruments of what he alone could give: His supernatural

12 Cf. *Réaliser le Concile tel qu'il est. Discours de Jean-Paul II aux évêques de France au Grand Séminaire d'Issy-les-Moulineaux*, 1 June 1980.

“La tentation actuelle cependant va plus loin (on pourrait presque dire que c'est une “meta-temptation”) ; elle va au-delà de tout ce qui, au cours de l'histoire, a constitué le thème de la tentation de l'homme, et elle manifeste en même temps, pourrait-on dire, le fond même de toute tentation. L'homme contemporain est soumis à la tentation du rebus de Dieu au nom de sa propre humanité. C'est une tentation particulièrement profonde et particulièrement menaçant du point de vue anthropologique, si l'on considère que l'homme n'a lui-même un sens que comme image et ressemblance de Dieu.” Ibid ; as cited in Jean-Paul II, *France, que fais-tu de ton baptême?*, Paris, Editions du Centurion, 1980, 155.

gifts of wisdom, life and love. In the 20th century, each suffered a horrific martyrdom at the hands of extreme secularism, which set out to eliminate them in favor of the individual and the State. This naturally degenerated into individualism and State tyranny through absolutized laws claiming to be the only morality, the only social and therefore moral imperative (*Evan-gelium vitae*, 69).

Jesus transcendently surpassed all possible natural and human gifts and institutions through founding the Church and its Christian family or “domestic church” as “a people made one with the unity of the Father, the Son and the Holy Spirit”.<sup>13</sup> Through them Jesus brings us our greatest possible share in divine wisdom, life and love. The Pro-Choice world-view, on the other hand, reduces human communities to the entirely natural, temporal and terrestrial level of a purely political and social set of individuals living a utilitarian and hedonistic pragmatism in which sexual love is reduced to sterilized pleasure-seeking unrelated to life in general and religious or family life in particular.

9. Judeo-Christian revelation presents a unique view of the child. The first reaction of the first mother towards her first child points to the divine as well as human roles of creating and procreating new human life: “I have acquired a man

with the help of Yahweh” (Gen 4, 1). That new human life is a marvel, that child one of the greatest gifts of God: “It was you who created my inmost self, and put me together in my mother’s womb; for all these mysteries, I thank you: for the wonder of myself, for the wonder of your works” (Ps 139, 13-14).

On the other hand, because of regarding the child as an impediment to independence, sexual pleasure and career, Pro-Choice activists have initiated an impressively large number of aggressively anti-child measures. Pro-Lifers react to each initiative, often with great self-sacrifice. However necessary these reactions are, such tactical defense is inherently subordinate to taking the strategic initiative by joining together to build a Culture of Life based on respect for and love of all human beings from conception to natural death.

10. Whereas secular humanism attempts to exalt but actually reduces man to the role of supreme being of the physical universe, Judeo-Christian revelation places a transcendently unique value on human life. The first statement of God about human beings, “God said, ‘Let us make man in our own image, in the likeness of ourselves,’” (Gen 1, 26) is the most profound observation ever made, the most profound praise ever given to human beings. It was only in the 20th century that we first came to know that from the first moments of our conception, we are personal chromosomal words: living, essential and

13 ST. CYPRIAN, *De vat. Dom.* 23:PL 4, 553 (Hartel, IIIA, p. 285) .

existential words, all-knowing our entire genetic potential and all-powerful in bringing it about. From the beginning, we are images of the eminently living, the all-knowing and all-powerful Word of God: "In the beginning was the Word: the Word was with God and the Word was God. He was with God in the beginning. Through him all things came into being, not one thing came into being except through him. What has come into being in him was life; life that was the light of men, and light shines in darkness, and darkness could not overpower it" (Jn 1, 1-5).

Not only did the three divine Persons create us in Their own image and likeness, but They called us to lifelong supernatural growth and even transforming union with Them by sharing through grace in Their divine nature and personal relationships.

When God the Son became the incarnate Son of God and Mary, and identified himself with us (Mt 25, 31-46), he conferred the greatest possible dignity on us and called us to be incarnate spirits in His own exemplary Image: Jesus "shows us the human face of God and the divine face of man."<sup>14</sup> Jesus calls us to become and to foster in His Image a whole universe of natural and supernatural incarnations of the

Spirit. These endlessly beautiful forms of inspired understanding and creativity, heroic life and sacrificial love both meet our greatest needs and lead to our highest perfection: personally and communally sharing through faith, hope and charity in the wisdom, life and love of God the Father, Son and Holy Spirit. There is no challenge, no vocation, no dignity, no perfection, no desire or choice more perfect than that.

## CONCLUSION

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The Pro-Choice movement is a form of secular humanism which uses propaganda, technology, coercion and law to insure unlimited choice in preserving or destroying innocent human life, especially in its earliest and last stages. In the Pro-Choice world view, we exercise our freedom in the pursuit of wealth, pleasure and power as the greatest of goods. In following Christ, God and God-related goods transcend and transform these and all other goods through a spirit of poverty, sacrifice and docility to the Holy Spirit (cf. Mt 5, 3-5).

The 20th century was by far the bloodiest of all centuries. Not ordinarily *even counted* among those killed are the greatest numbers of all: the victims of surgical abortion as well as abortifacient pills and devices. From 1973 through 2000, surgical abortion in America alone took over 40 million human vic-

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14 JOHN PAUL II, Post Synodal Apostolic Exhortation *Ecclesia in America*, 67; Cf. "Origins" in *CNS Documentary Service*, 4 February 1999, or *Documentation Catholique*, 7 February 1999, 132.



tims.<sup>15</sup> Since 1973, worldwide abortions have killed an average of about 50 million preborn babies a year, soon to be a 30 year total of 1.5 billion human victims.<sup>16</sup> The direct cause of this most horrific slaughter in history, the Pro-Choice ideology, is clearly one of the greatest evils ever unleashed upon humanity.

St. Paul's well-known warning is clear, eloquent and urgent: "It is not against human enemies that we have to struggle, but against the principalities and the ruling forces who are masters of the darkness in this world, the spirits of evil in the heavens. That is why you must take up all God's armor, or you will not be able to put up any resistance on the evil day, or stand your ground even though you exert yourselves to the

full" (Eph 6, 12-13).

Jesus incarnates His divine Spirit of Light, Life and Love in a Culture of Life; Lucifer incarnates his diabolical spirit of lies, death and hatred in a Culture of Death. Since there is no neutral ground either in our salvation or in this terrible, all-pervasive spiritual war between the Culture of Life and the Culture of Death, it is absolutely urgent for us to be decisively *with* God rather than against Him.

God wills and plans to save us, and He loves us incomparably more than we realize. He leaves us free to choose whether or not to follow Him. The Pro-Choice ideology misses this essential point. One can choose to go against God, but instead of liberation, one finds death and Satan. The other option is to "Love one another as I have loved you" (Jn 15, 12). Loving others in an inspired, heroic, divine way is both the way we are sanctified and the way we achieve a Culture of Life. Everything depends on our fully choosing Jesus, who is authentic freedom, and His law of love as our Way, our Truth and our Life (Jn 14, 6).

15 This is based on the Alan Guttmacher Institutes' official 1973-1996 figure of 34,171,820 abortions and an additional 1,328,000 per year for the years 1997-2000 (which probably undercounts the actual numbers) Cf. "Over 40 million Unborn Babies killed Since Roe" <http://www.nrlc.org/news/2001/NRL01/roe.html>.

16 This is based on official statistics for legal surgical abortions in 57 countries, estimates from two countries, studies of ten countries with highly restrictive abortion laws as well as worldwide Alan Guttmacher Institute and World Health Organization estimates, cf. S. K. HENSHAW, S. SINGH and T. HASS, "the Incidence of abortion worldwide" in *International Family Planning Perspectives*, (1999)25 (Supplement): S30-S-38; cf. <http://www.guttmacher.org/pubs/journals/25s3099.html>



# Quality of Life

Renzo Paccini



*The term “quality of life” entered the medical vocabulary beginning in the 1950s. It gained ever greater importance in this field as time passed with improvements in medical resuscitation that could lead to overzealous or burdensome medical treatments and progress in the field of prenatal testing for fetal abnormalities. The ambiguousness of this expression poses many concrete problems to the extent that doctors tend to judge the “value” of their patients using a very subjective notion of “wellbeing”. Some have even advanced the proposal of a numerical scale of quality of life whose multiple interpretations are a clear sign of the inadequacy of any such measuring system. The worst result of these medical judgments on “quality of life” of current or future patients lies in the horrible expression “a life not worth living.” This eugenic expression was created to characterize the existence of “possible” future children whose prenatal testing revealed handicaps or genetic problems and who are quickly eliminated before birth. “Quality of life” is an expression of our times which can be valid when used taking into consideration the totality of the aspects of human life and preventing unnecessary burdensome medical treatments, but it can also be used to justify abuses against human life. It must be constantly reviewed in the light of the whole truth about man and his vocation. (7 Biotechnology: The State and forms of Fundamentalism; Bioethics Committees; Informed Consent; Euthanasia; A New Paradigm of Health Care; Reproductive Health)*

## THE DEFINITION OF THE TERM

The term “quality of life” appeared during the 1950s, acquiring greater popular use during the 1970s, especially in Anglo-Saxon countries.<sup>1</sup> Historically, the appearance and development of the

term are due principally to the socio-economic development of the post-war period, along with a better standard of living available to the western societies, in addition to the technological-scientific progress in medicine.<sup>2</sup> In addition, as a concept, it was given a further boost by the definition of the term “health” by

1 S. LEONE, “Qualità della vita”, in S. Leone Privatera (ed.) *Dizionario di Bioetica*, Bologna 1994, 811-5.

2 cfr. G. HERRANZ, Scienze Biomediche e qualità della vita, “Vita e Pensiero” 1986, 6: 415-424.

the World Health Organization in 1946, whereby "health" is no longer understood as the absence of illness, and at the same time, "wellbeing" is understood as a requirement for healthy living.<sup>3</sup>

Its use is frequent in the political sphere, although without giving it a conceptual context, that is, remaining mostly as a non-defined term. Actually, the term is widely used in the bio-medical context. It is mostly applied in all the specialties and sub-specialties of medicine. It is particularly seen in the area of treatment decisions (especially in cases of patients with chronic or terminal illnesses, during the prenatal or neonatal stages, in assistance given to the aged and in palliative care). It is also seen in state health measures and in the design of public policies related to health.

In modern usage there is no single way of understanding the term "quality of life". Thus, the use of the term is ambiguous. There are three different connotations in the use of the term:<sup>4</sup> as an affirmation of "quality" over "quantity" in development, in consumerism, and so on; as emphasizing the environ-

mental aspect, so that the term "quality of life" is synonymous with quality in the environment; and as a term synonymous with happiness, with engagement, with participation, and with collective tranquility.

In addition, the term "quality of life" is also understood to mean the accumulation of economic goods that are deemed necessary for livelihood. The term can be given a collective meaning and is measured using different parameters, such as productivity, environment, working conditions, use of free time, family and society. The end result of "quality of life" is a sense of well-being, a term also related to the concept of health.<sup>5</sup>

To summarize, as a concept, the term "quality of life" implies not only to be guaranteed access to the minimum goods necessary for adequate living, or even to the economic growth in society; it is also a term that emphasizes a relationship between needs and desires: a society that wants to develop and progress, once its basic needs are met. It is then that the society will seek to satisfy its desires and aspirations, ever in search of attaining a greater degree of comfort. In short, it is a continuous search for a

3 cfr. "Constitution de la Organisation Mondiale de la Santé," en *Documents Fondamentaux*, Trente-huitième édition Genève 1990, 1. In the preamble of the Constitution, health is defined as "a state of complete physical, mental and social well-being and not merely the absence of disease or infirmity."

4 L. DE CARLINI, "Per una educazione alla qualità della vita" *Aggiornamenti sociali* (1986)1, 23-34.

5 J. LOZANO BARRAGAN, *Teología y Medicina*. Lima 2000, 21-34; see also: S. LEONE, "La riflessione bioetica sulla qualità della vita," in *Bioetica e Cultura* (1992)2, 137-148, where the author sustains that a careful reflection on the quality of life must pass through an analysis of the concept of health in its widest sense.

better “quality of life”. Therefore, at present, in common usage, “The so-called “quality of life” is interpreted primarily or exclusively as economic efficiency, inordinate consumerism, physical beauty and pleasure, to the neglect of the more profound dimensions-interpersonal, spiritual and religious-of existence.”<sup>6</sup>

## SOME CRITICAL CONSIDERATIONS

“The first right of the human person is his life. He has other goods, and some are more precious, but this one is fundamental –the condition of all the others.”<sup>7</sup> The respect, defense and promotion of the right to life is mandatory and fundamental because it is an inherent right that belongs to every human being.<sup>8</sup> To apply, ambiguously, the term “quality of life” carries the risk of attacking the dignity of the human person and his very life. Therefore, it is necessary to approach the term with a critical eye. An analysis of the term is also necessary given that global economic cost-benefit analysis studies (which apply the concept of “quality of life”), when

correctly understood, can make an important contributions to Public Health and the economics of health care, but they must keep in mind that economics is always an instrument subordinated to human beings, and not the other way around.<sup>9</sup>

1. The first observation regarding the expression “quality of life” is that, placing the word “quality” next to the word “life” implies *that there are lives of greater or lesser quality*. This already establishes a criterion of differentiation or discrimination. In this subtle way, the intrinsic value of every human life is rejected or at least relegated to the background. The premise that there are different qualities of human lives makes it possible to affirm – as happens today – that life is not worth living or it is not worthwhile to defend or protect a life that does not meet a sufficient level of “quality”.<sup>10</sup>

2. The ambiguity of the term “quality of life” is easily seen from the moment in which a definition or a concept is sought for it, which is very difficult to do, and can be understood to include three different levels.<sup>11</sup>

6 JOHN PAUL II, Encyclical Letter *Evangelium Vitae*, note 23

7 CONGREGATION FOR THE DOCTRINE OF THE FAITH, *Declaration on Procured Abortion* (18.11.1974) 11

8 Such a right is recognized, for example, in the *Universal Declaration of Human Rights*, article 3.

9 The Lexicon chapter on a “New Paradigm of Health” covers some of these considerations on the principle of costs/benefits can be seen as part of the economics of health care.

10 D. VOLTAS, “Algunas consideraciones éticas en torno al concepto “calidad de vida” como criterio para la asignación de recursos sanitarios,” *Medicina e Morale* (1996)4, 656-668.

11 E. SGRECCIA, “Rispetto della vita e

In the first place, there exists a difficulty in determining the constitutive elements of "quality of life". There is certainly a risk in choosing inadequate indicators of "quality of life"; for example: a minimal intelligence quotient (IQ), self-awareness, concern for others, curiosity, and a balance between rationality and feeling.<sup>12</sup> According to these criteria a severely mentally disabled person would be considered to have no quality of life. In choosing the indicators of quality, one cannot set aside the subjective factor, that is, those elements that allow us to identify whether the person—beyond the objective elements of "quality of life"—is in good health. In the second place, it is hard to determine who should establish and rank the parameters of quality of life. There are ob-

jective parameters that can be evaluated by a physician; but the psychological aspect, such as the perception of one's own wellbeing or the expectations regarding, for example, a medical treatment, can only be evaluated by the person in question. In the third place, how should the parameters be evaluated? In most cases, measuring the objective elements and the subjective factors of quality of life is done by using quantitative instruments. The many existing scales, questionnaires, and indicators are used to numerically measure different components of the quality of life according to the diverse types of sicknesses.<sup>13</sup> This great number of quantitative instruments serves to highlight the approximative character of the different measures of the quality of life. It is precisely worth noting that an important weakness regarding the validity of the information obtained from the use of these instruments is the fact that it tends not to correspond to the self-perception of the patient: almost invariably, patients who, according to objective or numerical measures, have a "limited" quality of life, feel better than the level assigned to them.<sup>14</sup>

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ricerca qualità della vita in medicina. Aspetti etici." *Dolentium Hominum* (1995)28, 154-160.

12 Such are some of the parameters of humanity defined in J. FLETCHER, "Indicators of Humanhood: a Tentative Profile of Man" *Hastings Center Report* 1972, 2: 1-4. The most extreme example is that of R. McCORMICK, who points out that the only attribute to keep in mind is the capacity of relating to other human beings (cf. R. McCormick cited in Walters J., "Life, Quality of: Quality of Life in Clinical Decisions," in W.T. REICH *Encyclopedia of Bioethics*, New York, 1995: III, 1352-1358) according to which, for example, the newborn who suffers from encephalitis will not reach a minimum quality of life. Being the fruit of human fertilization, there is no doubt that this newborn is a human being, and therefore must be respected as a person.

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13 In the already cited article, Sgreccia offers a list of nearly 40 mechanisms to evaluate the quality of life presented in the scientific literature. Today a long list of over 800 mechanisms can be found on the internet, according to their diverse medical situations. There are also about 5,300 websites that specifically address this argument. For example, see <http://www.glaam.com/ql/index.html>

14 D. HADORN, "The Oregon Priority-

3. The term, as it is commonly understood, possibly presents an erroneous principle, *a false opposition between quality of life and sanctity of life*.<sup>15</sup> "The movement in favor of quality of life began full of beneficial promises, inspired by qualitative improvements in medical treatment; yet paradoxically, "quality of life" raised by some as a supreme normative criteria, introduces, as a Trojan horse, not an ethical theory, but rather a clinical practice, an unnatural and dangerous opposition between quality and sanctity of life."<sup>16</sup> This false and unnatural opposition has its roots in the moral relativism of utilitarian philosophy, and also in pragmatism and evolutionism, which are two additional trends characteristic of the past century.<sup>17</sup> As a consequence, the principle of the sanc-

tity of life is no longer presented as the foundation for ethical values but rather quality of life. In other words, one takes into account only the life ethically calculated to be *qualitatively* acceptable; and so a human life that does not reach those required levels of quality is left with no defense or protection. A criterion of this nature justifies the wrongful use of a prenatal diagnosis or the wide use of genetic screening for the purpose of abortion or eugenics. The excessive importance given to *quality* leads one to mistakenly understand it as essential to life, in fact, as a constitutive element of life itself. It is in this ideological context, that the phrase: "a life that is not worth living" was coined and used to justify euthanasia, assisted suicide, abortion, infanticide, and other attacks on life, even in public health measures at the national and international level. It must be clarified that, in clinical practice, the understanding and measure of quality of life is just one additional factor to bear in mind, and not the predominant factor.

4. Following the utilitarian ideology—that seeks to maximize pleasure and minimize pain for the greatest number of persons possible—the concept of "quality of life" has led to *a notable identification between suffering and morality*.<sup>18</sup> erroneously, suffering is considered absurd and immoral. As a consequence,

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Setting Exercise: Quality of Life and Public Policy," in Hastings Center Report (1991)3, 11-16.

15 Such false opposition is evidenced, for example, in J. WALTERS, "Life, Quality of: Quality of Life in Clinical Decisions", in Reich W.T. Encyclopedia of Bioethics, New York, 1995: III, 1352-1358. This false opposition is denounced by nearly all the authors that treat this matter who take, as a starting point, an anthropological vision open to transcendence.

16 G. HERRANZ, "La ética médica ante la vida humana: entre el respeto y el cálculo", in *Biogenética, Aspectos culturales, científicos y éticos*, Santa Fe de Bogotá 1992, 139-156.

17 A simple and brief explanation of these intellectual currents of thought behind the common concept of "quality of life" is given by John Cardinal O'Connor in his article "AIDS: scienza e conoscenza," *Dolentium Hominum* (1990) 13, 14-23.

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18 HERRANZ, "Scienze Biomediche e qualità della vita", *Vita e Pensiero* (1986)6, 415-424.

there is an effort to eliminate all medical situations marked with the experience of suffering.

With this point in mind, it must be clarified that there is no illness that does not have a dimension of suffering, and that the possibility of falling ill "is a constitutive element of man, a manifestation of his fragility and mortality."<sup>19</sup> In addition, one must understand that, besides physical suffering—more tied to "the pain of the body"—there is moral suffering, more tied to the spiritual dimension of the human being. This suffering goes beyond simple illness and belongs so deeply to the nature of man that it touches his transcendent dimension and his mystery.<sup>20</sup> Therefore, it is comprehensible that an immanent ideology, limited or material, as the one behind the term "quality of life", as commonly used, does not know how to answer the question of the meaning of suffering. Consequently, this ideology tries in a utopian way to eradicate suffering from the life of man.

5. The affirmation made by utilitarian philosophy that wellbeing and, by extension pleasure, is something good or something that must be obtained, leads to a widespread error in the current hedonistic culture: what is good in terms of "desirable" is confused with what is good in terms of morality.<sup>21</sup> The current use of the

expression "quality of life" can lead one to identify what is sensibly pleasurable with what is morally correct. It is a fact of common sense that not all that is pleasurable is morally correct, or that acting correctly sometimes can be pleasurable and other times can be painful or demanding. Blurring the distinction between a moral good and a pleasurable good within the conscience of man consequently makes it difficult to accept that suffering and happiness are not necessarily mutually exclusive. It also tends to shut out the reasonable conclusion that suffering—as stated earlier—is an inevitable part of human experience and in the life of man.

6. The same ideological utilitarian view leads wrongly to the absolute *exaltation of the principle of autonomy* in the patient.<sup>22</sup> As was previously stated, there exists a licit use of subjectivity when drawing up the parameters of quality of life when dealing with such psychological aspects as the perception of oneself or the wellbeing that one enjoys. But one must keep in mind the objective component as well as the subjective component, that is, a slate of moral values that serve as a point of reference and link personal autonomy to a responsible exercise of personal freedom. Otherwise, one can fall into the relativism of making different decisions according to each particular case.<sup>23</sup>

19 cfr. LOZANO BARRAGAN *Teología y Medicina*.

20 cfr. JOHN PAUL II, *Salvificis Dolores*, 2-5.

21 VOLTAS, "Algunas consideraciones

éticas en torno al concepto 'calidad de vida.'"

22 SGRECCIA, "Rispetto della vita e ricerca della qualità della vita in medicina. Aspetti etici," 154-160.

23 On the exaltation of the principle of



If the fundamental ethical principle is the unrestricted respect for the will of the patient, the latter would be the only person who could judge and decide to continue or suspend treatment or even request euthanasia or assisted suicide, according to the analysis made by the patient of his quality of life.

7. From the moment that one wants to define and measure the quality of life of another human being by means of the different empirical instruments available, there is another risk that can lead to error. Implicitly, *one is taking quality of life as an empirical fact that is ethically neutral* as if human life itself was only a biological fact.<sup>24</sup> It is clear that quality of life cannot be evaluated with instruments that disregard a reflection about life itself since quality is, in essence, an attribute of life.

The relative ease of applying an instrument that measures the quality of life leads erroneously to *confuse quality of life with the quality or qualities about life*.<sup>25</sup> It is worth clarifying that it is one thing to identify some of the qualitative elements present in a corporeal life (that is, to distinguish qualities or attributes). This can be done in a fairly objective

way. It is another thing to make an evaluation in a global qualitative sense of a living being, subjectively making a judgment assigning to him a value. If one considers one or more particular qualities as the quality of the whole living being, this is invalid and a mistake of generalization, which ends by assuming a partial vision of the life of man.

### CONCLUSION: TOWARDS A CORRECT UNDERSTANDING OF "QUALITY OF LIFE"

Despite its ambiguities, the term "quality of life" should not be eliminated. The Holy Father considers it positive to pay greater attention to "quality of life."<sup>26</sup> Nonetheless, it is necessary to base the term on an anthropology that is faithful to the truth about man. In this way the needs and desires to be satisfied are determined in a way that respects and seeks to promote authentic human values; that is, values that are not only biological and psychological, but also moral and spiritual. Such an understanding would eliminate ambiguities that stem from the ideological use of the term; it would also give recognition to the dignity of the human being, independent of the circumstances of life. The dignity of human life is a value that cannot be subject to conditions, and respect for human life must be held up as a fundamental ethical principle.

autonomy, see A. SPAGNOLO, "Principios de la bioética norteamericana y crítica del principalismo." *Bioética y Ciencias de la Salud* 1 (1998)3, 102-110.

24 VOLTAS, "Algunas consideraciones éticas en torno al concepto "calidad de vida".

25 LEONE, "La riflessione bioetica sulla qualità della vita," 137-148.

26 JOHN PAUL II, *Evangelium vitae*, 27.



# Recomposed Families

Anna Kwak

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*Today the heterosexual and monogamous family is contested in every possible way, for example through the well known theories that following the trail of Engels' destructive criticism and the gender ideology. We are dealing with concepts that are widespread in international gatherings and in the means of communication. The word "family" seems to have become polysemous: it would have numerous meanings, and so it would be equivocal. There would exist, then, numerous family "models", and, among them, the recomposed family. On the basis of this reasoning, the heterosexual and monogamous family should be abolished. In order to reach this goal, they sow confusion, declaring that numerous "models" of the family exist, and in particular, different models of "recomposed families". The attitude that States and international organizations have towards the family increases the confusion on this subject. Both of them tend to act to the detriment of the family, and only recognize the individual, who is lionized. For this reason, the State and international organizations create a series of problems that they are incapable of solving. The lack of interest of governments and of the means of communication regarding the family, is one of the main causes of a lack of equality, of exclusion, of failure in school, and of delinquency. The recomposed family has been considered the "normal" situation. There are other family situations, for example in adoption, in which the two spouses were already united before the arrival of the new child, situations that are not here considered and that will be discussed elsewhere. It is an example of the miracle of generosity and love in protecting and educating children in difficult situations. (↗ Enlarged Family; Single Parent Family; Family, Nature and Person; Traditional Family; New Family Models)*

## CONCEPTS AND DEFINITIONS

Both sociological and psychological literature use terms such as *reconstituted families*, *stepfamilies*, *remarried families* and *blended families* to define recomposed families. C. Currier (1982) accompanies the set of conceptions with

fairly rarely used ones: *reorganized*, *synergistic*, *combined* or even "second class" families. However, families based on a first marriage are described as *nuclear*, *biological*, *real*, *natural*, *intact families*. The *Dictionary of Family Psychology and Family Therapy* defines recomposed families as follows:

**Blended family** “A family in which at least one partner of the new couple has had children from a previous union or a household made up of a husband and his children from a previous marriage, a wife and her children from a previous marriage, and younger children born into the present union” (p. 36).

**Remarried family** “A blended or reconstructed family or a stepfamily that is formed by the marriage or living together of two adults – one or both widowed or divorced – with their custodial visiting children” (p. 334).

**Reconstituted family** “A family in which the spouses have custody of their children from previous marriages. (...) Family is influenced by a network of people and relationships created through the prior divorce (s) and the formalization of the remarriage” (pp. 328-329).

**Stepfamily** “(1) A family in which children live with a remarried parent and a stepparent. (2) A family in which children from a previous marriage visit with their remarried parent and stepparent. (3) A family in which the couple is not married, and children from a previous marriage either live with or visit the couple” (p. 379).

These concepts are used interchangeably in the bibliography. Stepfamilies are families that form after the dissolution of a previous family unit. It is always the situation when the structural change in family causes the introduction of a new adult who is not biologically related to a child. Although the indicators

of the situation preceding their rise have changed, reconstituted families are not a new occurrence. This form of family used to be preceded in the past by the death of one biological parent. Nowadays however, they form most often after a divorce of one or both of the partners. Recent years have also brought an increase of reconstituted families whose rise has been preceded by a cohabitation stage. This constitutes an intermediary phase between divorce and legalization of new relationships (M. Coleman, L. H. Ganong 1994). Stepfamilies do not constitute a homogeneous group. Many different types of these families can be mentioned, though each one is formed by its own unique structure.

Stepfamilies resemble first intact families as they are based on a legal marriage and a household led by two opposite sex adults. Nevertheless, all other features besides the ones mentioned above indicate that reconstituted families are a different category of families. The analysis suggests that they are most unlike natural, biological families. In stepfamilies a new member, not related biologically, always adult, joins the present, biologically related family system. This adult can sometimes introduce her or his child(ren). Stepfamilies create new roles—a stepparent, a stepchild, stepsiblings, half siblings.

## FEATURES OF A STEPFAMILY

The characteristics of a stepfamily (E.B. Visher, J.S. Visher 1979) are connected with the following structure elements:

- one of the biological parents of a child is outside the family—deceased or living separately. As the deceased, she or he may exist in a psychological sense— in the memory of the child and the living spouse. The divorced parent living separately from the child shares the responsibility and the influence over the child unless denied parental rights,

- all members of the previous family experienced the disruption of original ties they had before the leaving of the spouse and parent,

- a remarried family consists of an adult couple of opposite sex formally related by marriage,

- the stepparent is not blood related to the stepchild,

- the biological parent (mother or father)—child relation is prior to the present marriage. That means partners do not begin their contacts with children at the same time. The stepparent performs an acquired role which is not distinctly described in social models,

- children may be members of more than one household.

Stepfamilies do not constitute a homogeneous group as a result of the situations preceding their rise, personal compositions, different experiences or life stories. They may be the families in which members have lost their nuclear family and have experienced traumatic moments connected with the death of one of the child's parents or with a divorce. They may be families in which a stepfather or stepmother is a new mem-

ber, families in which children of one or both partners are brought up. Combinations of those features create different arrangements of stepfamilies: ones with a stepfather when the remarriage follows divorce of a woman who had a child from previous union, ones with a stepmother where a new union was preceded by the death of the first wife, ones with children of both present spouses, etc. The majority of mothers retain custody of their children following divorce, so the majority of stepfamily households are those with stepfathers. Common features of stepfamilies are: complexity of family structure and flexible boundaries, stress, loyalty conflicts and ambiguity of roles.

*Complexity of structure* in stepfamilies relates to a wide family network with which connections need to be forged. The composition of these families may include a considerable number of members such as biological parents, stepparents, biological siblings, half siblings, stepsiblings, a large number of grandparents, aunts, uncles or cousins. Stepfamilies may consist of not only one household but also two or more which could mean—especially for children—instability of family boundaries and difficulty in defining its composition. There are some couples who define their reconstituted family as themselves and children from the previous relationships. Others define it as those children who live together with parents while the visiting ones are treated as

guests and not members of the stepfamily. Like their parents, some children in stepfamilies include such combinations as: a new partner of their biological parent, who left, stepfather, natural one with whom they live, biological siblings, stepsiblings - also the ones from a new relationship of the parent who left. Others, however, clearly divide the family group and include neither step-parent nor stepsiblings. Indistinctness means also involvement in decision making and managing by family members of two households.

*Family boundaries* are of a physical character such as the walls of the house, fencing from neighbors and providing privacy of some kind. There is also the second type, namely psychological boundaries. These relate to authority and emotions and indicate the degree of familiarity and physical intimacy among family members or people who do not compose the family. Stepfamily differs indeed from intact family in both physical and psychological boundaries as they are more "permeable". The interhousehold boundary emerging from previous, long-term intimacy relations which were disrupted is a specific element here because children of former spouses remain a part of the life of the new family. M. McGoldrick, E.A. Carter (1980) understand the following issues as the main difficulties when describing stepfamily boundaries:

- composition determining—meaning who the real family member is

- space defining—dealing with what belongs to whom, which is my space and where I really belong

- authority acceptance- declaring the right of making decisions about discipline, money, etc.

- time estimation—that spent on others and that received from others.

An additional boundary problem arises with 'incest taboo'. Sexuality within stepfamily units can be a greater source of tension than in a natural family group. Previously unrelated children are suddenly supposed to view each other as siblings. Sexual attractiveness may appear between stepfathers and stepdaughters. Repressed impulses are perhaps less rigidly controlled on account of a weakened "incest taboo" which applies to blood relationships (E.B. Visher, J.S. Visher 1979; M. McGoldrick, E.A. Carter 1980; M. Robinson 1993).

There is a certain indistinctness in defining the boundaries in stepfamilies. In this category of families boundaries are more "permeable". They lack elements connected with the first marriage: parents and their biological children do not live together, and there is no common parental authority nor common means of subsistence. In stepfamilies with children from the former relationship, parental authority and means of subsistence may be shared with the former partner of one or both present spouses. Emotions and loyalty tend to be separated or even "torn" between the two houses. Reconstituted families lack

many common experiences, symbols and customs which help to keep boundaries in the family based on the first marriage (K.N. Walker, L. Messinger 1979; E.B. Visser, J.S. Visser 1979). Structural change caused by the leaving of a parent leads to a change in mutual relations. Previously, contacts with one's own children inside the family system could take place at any time. There is a serious change after a parent leaves—contacts have to be planned and are not as spontaneous as they used to be in the past. The death of one of the parents brings an irreversible disruption of contacts.

*Stress* accompanying stepfamilies is partly connected with the indistinctness of the entire family situation caused by: a) presence or absence of children from former relationships, b) arrangements dealing with child-care or visits of children from the former relationship, c) number of people included directly and indirectly in the new family and d) lack of clearly defined proper relations between the present and the former family.

Stress may also result from unsolved problems from the divorce phase or the death of the biological parent. Financial problems may also bring out stress because of the stepparent's financial obligations towards his or her former family arrangement. Financial background of stress may refer to different aspects such as decisions about having a child in the new relationship, the former partner's expectations about the financial

contribution in upbringing of the children from the previous relationship, the present partner's unfavorable attitude towards the financial obligations in the former union and the new member's conflict as to supporting biologically unrelated stepchildren instead of his or her own. There are some stepfamilies in which spouses sign a special contract separating possessions and expenses. This arrangement creates a stressful situation especially when there are children from both parents' former relationships as unequal financial conditions for children follow (E.B. Visser, J.S. Visser 1979; C. Currier 1982; M. Coleman, L.H. Ganong 1994).

*Loyalty conflict* is examined mainly from the child's perspective. It arises from the fact that the child feels she/he should be loyal to the parent who left and at the same time cannot reveal such an attitude towards the biological parent with whom he/she lives or the stepparent. Parents may forbid the child to express negative emotions against the deceased parent or positive ones towards the parent who left. Sometimes parents demand absolute faithfulness from the child. When a child loves the parent who left, she or he feels that this hurts the one they live with. If not nursing positive feelings for the stepparent the child may feel that makes the parent with whom he/she lives hostile. When the child loves the stepparent feels disloyal to the one who left (M. McGoldrick, E.A. Carter 1980; M. Robinson 1993).

Loyalty conflicts may appear among adults whose former relationship broke up because of the death of the spouse. The loyalty to the deceased partner allows neither to find the present relationship as an equal one nor a satisfying one.

## **FORMING STEPFAMILY**

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The way a stepfamily is formed indicates the difference between this category of families and the first intact ones. It is impossible to pass gradually from marriage to parenthood in stepfamilies. A new adult enters an already existing family arrangement and has to take upon him/herself many roles. Working out marital or parental roles does not take place in this type of families. The spouses are at different stages of fulfilling the parental role, i.e. one of the spouses has not performed it before and has to take it up immediately or when the partners' own children are of different ages. Even if a new partner fulfilled the parental role previously, it was performed in respect to another child. It may happen that the new partner did not perform the parental role but also he/she may be just a little older than a stepchild.

Unsolved emotional problems from families of origin are brought into the first marriage. These are unsolved emotions towards parents and siblings. In stepfamilies there are already three sources of emotional baggage: from the family of origin, the first marriage,

separation and divorce stage and the period of time between the marriages. M. McGoldrick, E.A. Carter (1980) assume that remarriage in a family is a part of an emotional process beginning with the disintegration of the first marriage. For some people emotional problems connected with divorce do not entirely end before a new relationship starts. Emotions connected with the disruption of the first marriage return and reach extreme intensity particularly in the following situations: making the decision about separation, the actual separation, legal divorce, remarriage of any of the former spouses, death of any of them, and changes in the life stages of their children.

Remarriage for the adults means a gain of important adult relationships. For the children it frequently means a loss of a close parent-child relationship. The child begins to share the parent with one or more new individuals. The remarriage of either parent reduces contact between non-residential parents and children. For these reasons the reactions of adults and children at the time of remarriage may be different.

## **PARENTAL ROLES IN STEPFAMILIES**

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Many research workers ( i.e. A. Cherlin 1978; T.F. Perkins and J.P. Kahan 1979; E.B. Visher, J.S. Visher 1979; R. Garfield 1980; W. Clingempeel 1981; N.A. Burrell 1995; T. Arendell 1997) have written about the indistinctness of



parental roles in stepfamilies. They are, however, precisely defined in nuclear families. They include the duty of love, help and care and result in an automatic right to expect the very same in return. The parental roles in stepfamilies are not defined so accurately in the categories of rights and obligations. The duty of love and care for the partner's children who are not one's own may be contradictory to the new spouse's feelings. The inverse may follow: children could experience the inappropriateness of having feelings for the new parent, who is biologically a stranger. An advantageous situation is the one when these roles form gradually.

Taking up the stepparent role is quite complicated in stepfamilies. People who did not take up parental roles in the past, or did in different family arrangements or towards a different child or children, are in a difficult position. The stepparent's good will should accompany the acceptance of the role by him/herself and by the members of the family arrangement hitherto existing: the spouse and the child. It is not possible for the stepparent to take up the parental role entirely. This may be contributed to by some reasons: a) although the biological parent may be deceased, he/she does still exist in the child's consciousness and the stepparent can only share the role with the deceased one, b) all members of the family realize that there are no blood ties, c) the natural parent still has the right to influence over the child. Therefore, the

stepparent motivated to be a parent is a 'nonparent' at the same time. There are three ways of performing parental roles by a stepparent mentioned in the bibliography (I. Fast and A.C. Cain 1966; M. Draughton 1975): as a true parent, as a second parent and as a 'nonparent'. Taking up '*the true parent*' role means treating the stepchild as one's own. The characteristic thing though, is a tendency to emphasize being "the true daddy" or "the true mummy", a demand to be recognized as one usually supported by the biological parent. A "*second parent*" behavior is distinguished by the indisposition towards the stepchild and the ostentatious way of performing the role of the stepparent. A "*nonparent*" role involves: a) avoiding to deal with upbringing matters, b) keeping the stepchild at quite a distance, c) fulfilling a role resembling more a colleague and playmate than a parent. Many stepparents do not have a clear idea of the role they wish to play in their new family. They always face the question of "how much to be a parent." Most of them try one role after another, seeking to establish a pattern acceptable to themselves and to the rest of the family.

The main difficulties with taking up parental roles in stepfamilies come from the uncertainty as to whether the role is performed properly or not as there is no model to relate to. Both the fear of being judged by the partner - the biological parent - and the attitude of the children are difficult factors. The biological

parent may be excessively sensitive to the attitude of the stepparent towards the stepchild. It may result from an anxiety about contact and a bond with one's own child, desire of possession of exclusive control of the child, a sense of guilt of depriving the child the possibility to be brought up in a natural family. Another reason could be directing an ambivalent will at the new parent to fulfill his/her parental role. The studies prove that it is more difficult to fulfill the stepmother role than the stepfather one.

## **CHILDREN IN STEPFAMILIES**

There is no worked out model of stepfamily in society. There also follows lack of descriptions of the parental role which a new adult member has to perform. The introduction of the new parent into the already existing arrangement does not always mean accepting him or her automatically. This new person does not always have to bring an emotional compensation to the child of the biological parent. One cannot expect the child to cancel the bonds it had with the parent who left no matter the emotional quality of that previous relation. On the contrary, some kind of idealization of bonds the child had with the biological parent may occur leading to rejection of the stepfather. The stepparent may have to face a whole spectrum of behaviors from the stepchildren (P. Bohannon and R. Erickson 1978):

- they are inflexibly malevolent towards the stepfather or the stepmother

- they do not like him/her as a person, are emotionally tied to the biological parent, are afraid to lose this parent's love and attention if having ties with the stepparent, and believe that the stepparent cannot compete with the natural one

- are ready to accept the new parent (especially young children who do not remember the biological parent)

- find the stepfather as the mother's husband not a father (generally older children).

The experiences of disruption of the biological family influences the children's behavior. The child has lost one of the parents and therefore the consciousness of safety is destroyed by the change in the hitherto existing arrangement. The new person in the family creates a new threat to the biological parent-child arrangement which occurred in the incomplete family phase. The stronger these bonds were, the bigger the threat is (C. Currier 1982). Not always are the children ready to accept the remarriage of the biological parents. Sometimes such an attitude comes from unrealistic expectations of reunion of the biological parents. The irreversibility of this decision confirmed by the new marriage makes the children grieve and mourn and experience the loss of the biological family. According to M. Robinson (1993) each family member is individually engaged in a process of mourning. She sees three strands of unresolved mourning issues from the original nuclear family. The first one is related to children as a

form of emotional difficulty in accepting the fact of irreversible loss of the original family. The second strand is related to the natural parent and comes from unresolved problems from the first family. A third strand involves the attitudes of stepparent, who cannot avoid being caught up in the mourning processes. The research workers point out the importance of positive contacts the child has with both parents after their breakup in terms of the quality of contacts with the stepparent. Here, the biological parent keeps his/her special place and therefore the stepparent is not treated as an intruder who tries to take over both the place and the role of the biological parent.

Another problem for the children in stepfamilies is calling the stepparent: by his/her first name, by "father/mother", by "stepmother/stepfather" or "aunt" / "uncle". Sometimes the stepparent tries to perform the role of "the true father", and he demands to be called "father". This attitude however, may result in deepened indisposition towards him, especially when the child really does not have friendly feelings towards the stepparent and believes that only the biological father can be called "father".

## **MYTHS ABOUT STEPFAMILIES**

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The bibliography describes many myths which make it hard for stepfamilies to exist and which reflect how deep-rooted the beliefs about those families are. The myths are so common

they should be considered by the couple composing such a union: the biological parent and the stepparent. Some of these so-called traditional myths arise from literature where the child's situation in stepfamilies is portrayed in an exaggerated way: the child has a cruel stepmother (e.g. fairy-tales such as 'Cinderella' or "Snow White") or a cruel stepfather (e.g. C. Dickens' "David Copperfield"). The research workers (E.B. Visher, J.S. Visher 1979; D. Brown 1982; M. Robinson 1993) include the following myths as contemporary ones concerning the matter:

- the myth of "instant love"—involves immediate and automatic love expectations which are supposed to appear in a stepfamily. It is assumed that the stepparent will immediately love the spouse's children from the former relationship and that the children will return the same feeling and entirely accept his/her presence in the family. The remarried parents expect this immediate love as they believe the children and the stepparent should love each other and make this feeling mutual as it is between adults who decided to get married. However, the rise of mutual feelings takes time and involves everyday contacts. Therefore, realistically speaking, these feelings should be awaited rather than be expected at once. Unrealistic expectations for instant love are often connected with the need to show that one is a great parent and the wish to deny the negative stepparent stereotype. Another

aspect here is the so-called 'protection of the child' from the previous spouse- the biological parent.

- the myth of the recreated nuclear family—understands the fact of two adults' presence in the reconstituted family as leading to recreation of the biological family. Nevertheless, the changes in the inside structure and upbringing situation of the child indicate the rise of a completely new family. This one has its own characteristic set of roles and composition of the members. The bonds the children have with the custodial parent are prior in time to the relationship between spouses that became a new union.

- the myth claiming that the relations with the stepchildren are less complicated when they are not at home anymore, whereas the lack of everyday contacts does not allow the working out mutual feelings between the stepparent and the stepchild. What is more, the stepchildren's visits demand time to organize and may disorganize family life.

- the myth claiming that the death of the biological parent makes stepparenthood easier. One should remember that after the death of the biological parent, children tend to hold tightly to the memories of him or her. Often both the parent and children start to idealize the deceased. When the living parent tries to come in a close contact with someone else, the children perceive it as disloyal to the deceased parent. When it comes to remarriage of widows and widowers, loyalty problems could become more

serious for the children than it would be in case of divorce. The study results of (C.E. Bowerman, D.P. Irish 1962; E.B. Visser, J.S. Visser 1979) show that the stepchildren had better relations with the stepfathers when the stepfamily rose after a divorce and not after the death of the biological parent. Nevertheless, L. Duberman (1974) indicates that better stepparent-stepchild relations could be achieved when the biological parent is deceased as he or she cannot compete with the new one. L. Duberman seems not to take into consideration competition in the psychological sense—the idealization of the deceased.

- The myth about the existence of "the one and only love" could make it difficult to form reconstituted families preceded by the death. Widows and widowers experience certain inhibitions and contradictory emotions. They also often distinguish the two marriages, describe the second spouse as "a different one" and the present marriage itself as "a more mature one". The term "romantic love" is to be used only in the sense of the first marriage (L. Duberman 1974). The reason might lie in the following behaviors:

- the idealization of the first marriage or unrealistic comparisons of both,

- the new partner's consciousness about the fact that the first marriage was not broken up voluntarily and that he or she is indeed the second choice,

- friends and relatives may treat the new partner as an intruder or usurper.

The myths about stepfamilies described above make it difficult for the members to perform in them. There is no possibility that between the stepparent and the stepchild instant feelings will arise, these families will never be the biological/natural ones, the death of the biological parent will not make it easier to fulfill the role of stepparent, and the stepchildren will not be easier "partners" in family life when living separately. Entering this kind of a family does not mean taking over the place of the person who left. The new parent has to join the hitherto existing family unit and find a place for oneself there.

## **GOALS AND TASKS OF STEPFAMILIES**

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A reconstituted family is always a family, even if it cannot perform as an intact family. The members of a stepfamily have to accept this difference. The situation however is more of a positive challenge than a negative one. Gradually there comes an inner system of fulfilling, proper for the members of the stepfamily. The members find their place. Yet the boundaries of stepfamily have to be "permeable", as this allows both the children and the adults to keep relations from the former family while integrating the new one. (M. Robinson 1993). This specific feature does not cancel the possibility of proper functioning. When discussing positive aspects of living in these families, the child may have both sexes as models, and may be

emotionally supported and influenced by the new parent. Attention is also given to the fact that the child has a positive model of life by the new married couple, and can have more interactions in which she or he could learn additional things from the stepparent and stepsiblings. What is more, the children may experience tolerance, compromise and negotiations as a result of the presence of people not tied to them biologically. They may gain some new experiences by having contacts with different values, attitudes and lifestyles (C. Currier 1982). Whether the family provides the child with a positive model or not does not depend on the family type but on the way it performs (N.A. Burrell 1995). The stepparent-stepchild relations are of a lesser intensity in interpersonal contact. There is a stronger tendency to create coalitions between the biological parent and the child (Z.J. Anderson, G.D. White 1986; A. Kwak 1990; T. Arendell 1997). Expecting the same quality of mutual relations and bonds in stepfamilies as in natural ones may be difficult to fulfill as there might appear different cultural, legal, biological and psychological factors. The stepparent-stepchild union is not as strong as in natural families. That, however, does not mean bad or dysfunctional relations. The remarried family is a unique familial type. This is not only different from a first marriage family but also more complicated.

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# Reproductive Health

Lino Ciccone

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*Starting with the sixties, the expression “reproductive health” has begun to find its way into the vocabulary used by the international institutions and the organizations that are fighting for birth control and the liberalization of abortion. Born and used at first in a neo-malthusian ideological milieu, the expression was immediately used with a different meaning from what the words suggested. As a matter of fact, one cannot but be preoccupied when noting the conditions in which women in the developing countries, and especially in Africa, conduct their pregnancies, give birth to their children and afterwards suffer the consequences of difficult deliveries. The absence of any assistance, particularly of gynecologists and qualified obstetricians, explains the unbearably high number of puerperal deaths and the acute and chronic complications, both of deliveries and post partum, in these countries. But the absence of prenatal assistance, infections post partum, vesicovaginal or rectovaginal fistulae left untreated making young women handicapped for life, does not seem to interest those that have placed the term “reproductive health” on the top of the agenda of the international conferences, organized especially by the UNFPA. All their attention is in fact concentrated on expanding the different kinds of contraception and of “safe” abortion, since they are encouraged to do so by the sanction of the laws. It would be good for women to make their voices heard, so as to remember that there is a real problem with “reproductive health”, which, up to now, has been too much neglected. (↗ Informed Consent; Sexual and Reproductive Rights; Fertility and Continence; Motherhood and Feminism; The Contraceptive Mentality; A New Paradigm of Health; Responsible Parenthood; Quality of Life).*

The term can already be found in articles published in the 1960s in scientific, especially gynecological magazines or in journals interested in promoting or spreading information about family planning. It would even seem that it was starting from the problem of family planning that they also spoke about reproductive health with specific reference to women.

This shift has a connection with the evolution of the concept of *birth control*. At first it was considered only as a way to face the problem of rapid demographic growth. But when the idea of connecting fertility reduction with socio-economic development found credit, it became easy enough to give credit also to the affirmation of a connection

between the distribution of contraception and women's health, since development concretely occurs wherever living conditions are better and health services are better organized. It went as far as to make the reproductive health approach become a preferential choice to promote both the reduction of fertility and the person's—especially the woman's—wellbeing, since her health would obviously be served by a lower number of pregnancies and by the ability to avoid adolescent pregnancy. This is how the possibility to avoid unwanted or undesirable pregnancies through contraception became an integral part of women's reproductive health.

The path for establishing a connection between reproductive health and abortion was different. It derived principally from research on the importance and gravity of the health consequences for the very lives of women coming from so-called “unsafe” or illegal abortion. Based on an accepted presupposition that a woman's recourse to abortion is legitimate, it is easy to understand that a woman's right to a “safe abortion” performed by qualified health care personnel in medical facilities would be seen as an integral part of women's reproductive health.

All this, again in the same periodicals, did not remain on the purely theoretical and conceptual level, but went to the operative level with specific proposals about services that should be created and implemented, about pro-

grams and strategies to be followed for the sake of reproductive health, starting with adolescent youth. Included in education for teenagers should be appropriate knowledge about contraception, the prevention of sexually transmissible diseases and material concerning pregnancy, childbirth and “safe” abortion.

It is easy enough to follow the thread that establishes a strong connection between the contraceptive culture and a conception of reproductive health that includes among its components, not only the good functioning of the reproductive apparatus, but also free access to the different contraceptive methods and medically performed abortion. This is the background of ideas and concepts one has to keep in mind for a correct understanding of the term “reproductive health”, when it went from the *milieu* of more or less scientific publications to the world of public discussion and public documents.

This shift clamorously occurred during the international conference organized by the United Nations on “Population and Development” held in Cairo from 5 to 13 September 1994. It will suffice here to concentrate our attention on the conference's final document, its *Program of Action*. It is known how such documents from the UN can influence public opinion and national and international legislation. A quick look at this text is sufficient to notice how the term “reproductive health” occurs incessantly, often combined in various ways with



“reproductive rights”, “sexual health” and “family planning”. An entire chapter (chapter 7) is dedicated to “Reproductive rights and reproductive health”. Lengthy sections in other chapters refer to the same theme: in chapter 12, dedicated to “Technology, research and development”, section B refers to “reproductive health research”; in chapter 13, “national action”, section C, “Resource mobilization and allocation,” mainly refers to reproductive health.

As we said already, the document frequently and in different ways couples reproductive health with other realities. There has been no need for the authors of this *Program of Action* to invent these combinations; it was easy enough for them to draw it from the already existing literature mentioned above; however, they sharply ideologized the idea with the kind of individualism and libertarianism that is quite typical for much of the dominant culture of the western countries, and put it at the service of worldwide political strategies coming from the great power centers, especially the United States. Thus, increased production and distribution of contraceptive methods became part of the program of reproductive health starting with adolescents. It clearly legitimized early sexual activity, the only preoccupation being to provide knowledge of, and means to prevent pregnancies and sexually transmitted diseases. Less evident, but not at all absent, was the connection between reproductive health and abortion, with the already

mentioned distinction between “safe” and “unsafe” abortion.

The toning down of the place assigned to abortion is one of the modifications to the text brought about thanks to a series of interventions by the Holy See after the publication of the first draft by the secretariat, and already modified after examination by the conference’s preparatory commission. John Paul II expressed what he clearly and cordially approved and what he was forced to disapprove of, directly to the conference’s general secretary, Mrs Nafis Sadik, receiving her in an audience on 18 March 1994. During the conference, the intervention of the Holy See’s delegation obtained other important modifications with proposals which were substantially supported by many other delegations, especially from the countries of Africa, Asia and Latin America, as well as Islamic countries.<sup>1</sup>

But the original draft remains precious, because it shows more clearly the real thought and objectives of the principal promoters of the conference, under the *leadership* of the United States. Its thoughts and objectives were clearly perceived by one among the most “secular” Italian reporters, who did not

1 For documented information on the Holy See’s role in this preparatory phase of the Cairo Conference, see: “La Santa Sede e la Conferenza del Cairo su ‘Popolazione e sviluppo’, 1: La preparazione: la Bozza del *Programma d’azione*,” by *La Civiltà Cattolica* 146 (1995) 2, 221-232.

hesitate to see in the terminology adopted, “reproductive health”, “reproductive rights” a skillful mask, hiding the plan to impose drastic control over the demographic growth of the developing countries, a goal to be achieved at any cost. Pope Wojtyla was able to tear this mask to pieces, upsetting the plans of the powerful.<sup>2</sup>

However, in spite of some remarkable improvements, the final draft of the *Program of Action* still remains quite ambiguous about the meaning and the concrete weight of its key-words, starting with “reproductive health” and “reproductive rights”. Ambiguities that have not been fully clarified regarding the inclusion of abortion among the constitutive elements of health and demographic policies. This is why, in his explanation of vote, after declaring which chapters would be excluded from the Holy See’s consent, the Holy See’s head of delegation Archbishop Renato R. Martino added: “This does not exclude the fact that the Holy See supports a concept of *reproductive health* as a holistic concept for the promotion of the health of men and women, and will continue to work, along with others, toward the evolution of a more precise definition of this and other terms”. Thus, he was not expressing a refusal, but only affirming that a more accurate definition of “reproduc-

tive health” was needed.

And in the “Note” that was added to the explanation of vote for further clarity, the first remark is about these terms referred to above: “The Holy See considers the terms “sexual health” and “sexual rights”, “reproductive health” and “reproductive rights”, as components of a holistic concept of health, as they embrace, each in their proper realm, the person in the entirety of his or her personality, mind and body, and which fosters the achievement of personal maturity in sexuality, and in the mutual love and decision-making that characterizes the conjugal relationship in accordance with moral norms. The Holy See does not consider abortion or access to abortion as a dimension of these terms”. This is a first and temporary contribution, which the delegation has wanted to give to that “precise definition” of terms which the Holy See has committed itself to offer, an engagement that will be attended to in collaboration with others.

In this attempt to offer here a very modest contribution as a step forward towards the definition of “reproductive health”, attention should be given also to some specific elements, keeping in mind the many aspects or components that the transmission of human life presents.

First of all, almost as a premise, we should be aware that we are paying a heavy in terms of human degradation by accepting to talk about human ge-

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2 The reporter is Sandro Magister, writing for the weekly periodical *L'Espresso*: S. MAGISTER, *Chiesa extraparlamentare*, L'Ancora del Mediterraneo, Milan 2001.

neration in terms of “reproduction” instead of “procreation”. This clearly stresses a reductive concept, as something purely biological, with an implied presupposition that man is nothing more than an animal. It also opens the way to the complete exclusion of God from the event that makes a new human person appear in the world. This premise would surely deserve a more thorough development, which, unfortunately, does not fit into the limitations of a simple *Lexicon*. It will have to be enough for us to have mentioned it. For a good development of this theme, allow me to refer readers to a great exposition by cardinal Ratzinger in front of a qualified audience.<sup>3</sup> Since I have to speak about the Cairo document, I will continue to use its terminology, but remaining conscious of its incorrectness and of its insidiousness.

Adapting the concept of general health proposed by the World Health Organization (WHO) to the realm of reproduction, the Cairo *Program of Action* gives the definition of reproductive health thus: “Reproductive health is a state of complete physical, mental and social well-being and not merely the absence of disease or infirmity, in all matters relating to the reproductive system and to its functions and processes”

(§ 7,2). After receiving unconditional praise at first, the WHO’s general definition was given more careful evaluations, in which opportune criticisms of its limits were added to the recognition of its merits. These criticisms remain fully valid here as well. We must add that it is ridiculous to attribute “mental” and “social” dimensions to the purely biological reality of a “reproductive system and its functions and processes.” Leaving this poor definition aside, one can at least mention some components that are essential for reproductive health.

On the biological plane it first of all implies the absence of any pathology that could deprive the complex human reproductive apparatus, be it male or female, of any of the elements that are essential for its ability to make its specific and efficacious contribution to the generation of another human being.

Since what is at stake is the generation of a person and not simply of a new exemplar of the human species or of a simple living organism –and of a person that will only gradually reach the effective capacity for self-management with the adequate help of their parents–human reproduction is not limited to generating but implies the education of the generated child as well. Therefore, on the biological level, there is reproductive health when all the organic components of the reproductive apparatus are present and whole. On the educational level there will be reproductive health when all the conditions and

3 This was a lecture given at the University of Bologna on May 3, 1988, entitled “Uno sguardo teologico sulla procreazione umana.” The text can be found in the review *Medicina e morale* 38 (1988) 507-521.

necessary requirements will be present for healthy care of the newborn. These conditions and capacities are needed in both the man and woman that are generating, both in their mutual relationship and in the relationship of both of them with the child being generated. The following elements are therefore required as part of reproductive health: a substantial maturity of both parents, especially at the affective level, capable of mutual altruistic love; a reciprocal love between a man and a woman that can found a complete and stable sharing of their lives; a relationship of love with the child, sincerely aiming at the true good of the child.

Thus, psychological and spiritual elements are delineated as components of reproductive health and the surprising discovery is made that quite a few of the expressly ethical requirements in the matter of reproduction also arise from a medical perspective. What is ethically good proves to be also healthy, and what is bad is also damaging to health.

What has been exposed here is nothing more than a draft, like opening a window to let our eyes catch, as it were, new horizons to be explored with attention and love.

# Responsible Parenthood

Carlo Caffara

R

*The term “responsible parenthood” refers to conduct that has reflected on, evaluated and displayed moral dimensions. It suggests the idea that such conduct is one of the clearest expressions of the moral agent’s liberty, of man’s relational nature, and of the procreative and unitive meaning of his sexuality. Responsible procreation renders ethically good the act of creating the conditions necessary for the conception of a person. The decision to procreate ought to take account of the concrete circumstances of the spouses, especially of the wife, of the circumstances necessary for the education of children, of society and of the Church (the ethics of decisionmaking). Implementation is a secondary dimension of the ethics of responsible parenthood which, in contraception, gives expression to and realizes an antiprocreative will impeding conception and always objectively illicit which, from an ethical point of view, is completely distinct from the determination not to procreate which, in the presence of sufficient reasons, can be licitly realized by means of natural methods. True responsible parenthood, moreover, implies an education in virtue because there is always the risk that natural methods can be employed in the context of a contraceptive mentality. (↗ Sexual and Reproductive Rights; Fertility and Continence; Motherhood and Feminism; The Contraceptive Mentality; Reproductive Health).*

By the term “responsible parenthood” (hereafter RP) is intended an ensemble of conditions which renders ethically good the act of creating the necessary conditions for the conception of a new human person. These conditions touch on the dual constitutive dimensions of all human conduct: the interior dimension (technically called the *actus interior*) and the exterior dimension (technically called the *actus exterior*).

By the term “interior dimension” of procreative behavior is intended the decision to procreate or not to procreate. By

the term “exterior dimension” of procreative behavior is intended the execution of the decision to procreate or not to procreate. Both the interior and exterior dimensions of procreative behaviour ought to conform to fundamental moral values.

## THE ETHICS OF DECISIONMAKING

Let us presuppose that only a man and a woman united in lawful matrimony have the right and duty to create those conditions necessary for the

conception of a new human person. Since the decision to procreate or not to procreate fundamentally involves two created persons (the person of a future parent and the person to be conceived in the future), the criteria to be used in distinguishing a correct procreative decision from an incorrect procreative decision must be deduced from both such persons.

The person to be conceived demands to be born into a context which can prudently be presumed to be able to afford him the basic human necessities, in the first place that of education. On the basis of this general ethical consideration, a decision to procreate another person can be regarded as responsible if, taking into account all the relevant circumstances, it can be prudently presumed that that person will be assured at least a basic education, and that it can be prudently presumed that that person will have those things which are necessary and sufficient to secure human dignity in life. When such prudent considerations are lacking, the decision to procreate a new human person is ethically imprudent.

The following considerations have to be taken into account with regard to the spouses. The decision to procreate could be rendered unjust by grave considerations of health on the part of one or other of the spouses, but especially of the woman. The ability of the spouses to rear their children is another element to be duly evaluated: clearly it is more

difficult to rear an only child, but the educative capacity of parents could encounter insuperable difficulties were they to have too many children. Here, I am not speaking only of an economic capacity to rear children.

A further important consideration must be added. Nobody lives outside of a civil society and all have the duty to promote the common good. The decision to procreate or not to procreate must also be taken in the light of the demographic context of the society in which the two spouses live. This criterion of the common good, however, should not be understood only as an indication not to procreate. Indeed, in some societies, especially in the west, it should be taken clearly as an invitation to give life with great generosity. In summary: the justice of the decision to procreate or not to procreate depends on the good of the person to be conceived, on the good of the future parents, and on the general conditions of the society in which both parents live.

One further observation needs to be made which I regard as essential for a correct understanding of the concept of RP. In addressing the problem of whether to procreate or not to procreate, both spouses should begin with a conviction that grave reasons must exist before they decide not to procreate. A decision to procreate, however, does not require the existence of grave reasons. In other words, both parents should regard themselves as called to give life until the

contrary is evident, and not *vice versa*. The same is also implied by the profound link between the conjugal bond and the gift of life.

## **ETHICS OF IMPLEMENTATION**

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The concept of RP connotes not only the sufficient and necessary conditions for a right decision to procreate or not to procreate, but also the ethical means by which that decision is implemented. This is not ethically indifferent, nor does only receive its moral qualification from the internal decision. Two factors serve to illustrate the contemporary manner in which this question has posed itself to the consciences of Christians. The first derives from the theological understanding that the Catholic Church has acquired in recent years, especially since the Second Vatican Council, on the meaning of conjugal sexuality. It is not to be understood exclusively in terms of procreation, but more profoundly in terms of the expression-realization of the total and reciprocal gift of the persons of the spouses. The other factor has been the discovery of chemical contraceptives, in the sense that such are not invasive of the physical constitution of the conjugal act.

The real question touching on the implementation of a morally right decision not to procreate is if recourse to contraception of any kind is to be regarded objectively as morally wrong. Paul VI's encyclical letter *Humanae vitae* was

intended as a response to this precise question, and taught that the contraceptive act, used in the execution of a decision, either ethically just or unjust, not to procreate, is always objectively illicit.

A clear ethical definition of the contraceptive act is necessary in order to arrive at a correct understanding of the concept of RP. By a contraceptive act we mean any action taken before, during or immediately after the conjugal act which aims at impeding the conception which the conjugal act itself is capable of. The encyclical *Humanae vitae* refers exclusively to this act. To affirm therefore that to impede conception during, before or immediately after a sexual assault, which is certainly ethically justified, is an exception to the moral norm taught by *Humanae vitae* is a grave confusion of two absolutely ethically disparate concepts (*in genere morum*) even if descriptively they represent two similar acts *in genere naturae*.

In the wake of these terminological and conceptual clarifications, we can say that the decision not to procreate can only have legitimate ethical execution by engaging in the conjugal act during the wife's infertile periods.

This, however, should not lead to confusing the so called natural methods of birth control with the concept of RP. The first are simply methods by which the wife can ascertain when she is fertile and when she is infertile: nothing more. As such, they appertain to the realm of

scientific research. This information can be placed at the service of either a procreative decision or a non procreative decision by the spouses.

At this point we can proceed to a more rigorous definition of RP by saying that it denotes the implementation of a decision to procreate or not to procreate. RP excludes the use of contraceptives from every fertile conjugal act; it signifies knowledge, primarily on the wife's part, of her own cycle of fertility/infertility. In the case of an ethically justified decision not to procreate, it means abstinence from conjugal relations during the wife's fertile period and the restriction of conjugal relations to the wife's infertile period. It means exercising control over one's sexual impulse so as to render it truly and exclusively expressive of conjugal love and of the self-giving of persons.

Having made these definitions and with conceptual rigor, it is not difficult to see that RP, as defined above in all its constitutive elements, poses two fundamental problems. The first arises from demonstrating that each and every contraceptive act is by its very nature ethically gravely illicit (only the Lord can judge the degree of subjective guilt); the second problem touches on how the spouses can live conjugal sexuality in this manner.

1) There are basically two reasons to explain why the contraceptive act is always ethically gravely illicit. The first derives from the truth and meaning of

conjugal sexuality. The substance of the argument is this: the contraceptive act is gravely illicit because it is contradictory to conjugal love. This is deduced from the fact that conjugal sexuality, or better the act by which both spouses become one flesh, is by its very nature an expression-realization of the total gift of self. This is the intimate truth of conjugal love which finds its highest and most profound realization in the conjugal sexual act. The interference of the contraceptive act excludes from the very act of the gift of one's person one of its dimensions. In simpler words, when spouses engage in a fertile sexual act they respectively give onto each other the capacity to become father/mother. This capacity is not a merely biological fact from the moment that the merely biological does not exist in man, given the substantial unity of the person. It is not the body that is fertile but the person. It is the person that is rendered capable of becoming respectively father/mother. The contraceptive intervention objectively makes the conjugal sexual act a lie: it affirms a totality that is negated in reality.

The second reason encountered in the Christian tradition is the anti-life character which is necessarily implied by contraception. In this matter, it is necessary to apply a strict definition of the concept so as to avoid falling into crass errors. Our point of departure in understanding this second argument must be the distinction between a contra-



conceptive will and a non-conceptive will. From an ethical perspective this distinction connotes two human acts rendered essentially distinct by reference to their objectives. If we suppose in fact that creating the conditions necessary for the conception of a new person is a good act, it does not follow that it is always obligatory to take such an action: while it is always obligatory to avoid every evil act, it is not always obligatory to do every good act. The aforementioned supposition, however, implies that the will of the spouses should always have the attitude of not being against the act of conception. This is what the Magisterium describes as “openness to life”. Let me use an example to explain. The act by which a person is consecrated to God in holy virginity does not, and should not, imply an attitude contrary to the good of conjugal communion: the will to be a virgin is not anti-conjugal. It is simply non-conjugal since it is chosen not from a good and an evil, but from two goods. Abstinence from sexual relations during the fertile period because one has a right-duty not to procreate, does not express a will contrary to conception. Rather, it expresses one which is simply non-procreative. From an ethical perspective, and I wish to repeat the point, this is not hair splitting but a fundamental ethical distinction. Contra-conception, however, manifests a positive rejection of the good encompassed by posing the conditions necessary for the conception of a human per-

son since conjugal sexual relations take place during the wife’s fertile period.

2) The concept of RP also gives expression to an entire ethical theory of virtue and a pedagogy of virtue itself, that I would maintain is fundamental. It is a reply to the question of how two spouses can concretely be responsible procreators.

Let me give you an example. The perfect execution of one of Chopin’s *Mazurkas* demands high professional qualities in a pianist. These can be reduced to three. Clearly, he must know how to read music correctly; he must possess a high degree of technical-manual competence for which all pianists are trained and which demands daily practice; but above all the pianist must have arrived at so profound a spiritual communion with Chopin as to play the piece as though he were composing it at that very moment. In summary: knowledge of musical language; technical execution, artistic inspiration.

The three fundamental demands or better, permanent qualities, of the person of the spouses correspond analogously to these three qualities if they wish to procreate responsibly. In the first place, they must always know how to read the language of their person, the language of the body: knowledge of and instruction in the so called natural methods come under this demand. They must also have the ability to realize the language of the body in such a way as to be able to express their love which makes

of the person a total gift to the other: this capability is the virtue of conjugal chastity. Above all else, it is conjugal love that allows spouses to responsibly live their vocation to procreate and to be reciprocal in the gift of self.

Some qualifications must be added at this point. Conjugal chastity indicates and realizes the integration of the exercise of sexuality with conjugal love. The highest expression of conjugal chastity is not abstinence: a virtue cannot be eminently expressed by the non accomplishment of an act but in acting.

The highest expression of conjugal chastity is the act in which both spouses become one flesh.

Conjugal love is a most precious quality and needs chastity to be able to express itself. Chastity is therefore at the service of love and draws its meaning from love. Therefore Christian education proposes not a negation of anything that is truly human, but every constitutive dimension of the human person integrated with a charity which, as St. Paul says, is that link uniting every dimension of the person. St. Thomas teaches that charity is the form of every moral virtue, and in the Christian, the moral virtues, without losing their proper nature, are infused with the grace of Christ.

In this perspective, RP means a lifestyle that integrates in a single unity the triple dimension of conjugal sexuality (physical, psychological and spiritual) in which the unity of the person of the spouses reaches perfection.

## CONCLUSION

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It has been rightly said that hypocrisy is the ultimate tribute that vice pays to virtue and that deception is the ultimate recognition that error pays to truth. All of this has happened to the term and concept of RP. This fact is one of the greatest deceptions constructed by contemporary culture.

The deception consists in presenting RP as the right that women have to decide whatever they like with regard to their fertility. The deception is subtle and in no other case, except this one, has an incorrect use of a term, derived from the great anthropological and ethical tradition of Christianity, been used against man. Understood as the woman's right to self-determination, RP would not appear to present any particular difficulties. Indeed, it would seem to promote the freedom of the person. In reality, however, it conceals the idea that the sexual faculty and its exercise, in itself and by itself, have no meaning other than that which is attributed to it by each person. Contained in such an idea of RP is also a legitimization of abortion and sterilization. Thus it becomes connected with terms such as (7) "reproductive health" and the relative right to "reproductive health". Such a term is often used in reality to impose the ideology of contraception, sterilization and abortion on poor populations.

The term and concept of RP are therefore fundamentally important in

determining whether an anthropological theory and an educational proposal are respectful or not of the truth and good of the human person.

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# Right to Abortion

Alicja Grzeskowiak

R

*Which right prevails: the right to life of the unborn child, or the woman's right to control her own body and her child's body as if it were the mother's property? The debate on the right to induced abortion turns around these two poles. The right to life of the child has been attacked by the exceptions that limit the legal protection of the nasciturus and has been misinterpreted by those derogations that state cases where the principle of the protection of life is not applied. The same derogation leads to the partial or total depenalization of abortion. Since abortion is considered a personal right of the woman, the legal definition of this act is subjected to some modifications. One speaks of the liberalization of abortion: therefore some people want to justify abortion without introducing any legislation. In the following stage, abortion is presented as a "right" of the woman and is demanded as such. From the moment it is recognized as a "right" according to the law, any refusal to perform one or the poor execution of an abortion, can lead to complaints and punitive damages enforced by the law. In this way, the "right to abortion" can be transformed into disciplinary judgements against those doctors who refuse to perform abortions or those who oppose this "right", by appealing to the right of conscientious objection. (↗ Dignity of the Human Embryo; Medical Interruption of Pregnancy; Voluntary Interruption of Pregnancy; Safe Motherhood; "Partial Birth Abortion"; Assisted Procreation and IVF; The Legal Status of the Human Embryo; "Pro Choice")*

The right to abortion was for the first time defined and acknowledged in the ruling of the United States Supreme Court in the *Roe vs. Wade* case (410 US 113 1973) in order to indicate the free choice to interrupt pregnancy by asserting that it is a woman's "right" and is a fundamental element of the right to *privacy*. This sentence contributed to the consolidation of the conviction that a woman's personal decision

about pregnancy must be treated as her own personal right.

Until then, the decision to interrupt pregnancy was not treated as a woman's right, but it was only an exception to the norm on the defense of human life. After that ruling the point of view changed; the law, which previously was interested in the victim, that is the conceived child eliminated by abortion, shifted its interest to the mother. The woman has been

allowed the opportunity to ask for the killing of her own conceived child, because interruption of pregnancy became a right.

In the American ruling, the right to abortion was recognized as a part of the right to *privacy*; but later, the evolution of this right aimed at recognizing it as a woman's autonomous right and including it among the fundamental human rights. The international human rights organizations have tended for years to pursue this purpose, especially those within the United Nations, some groups of the Council of Europe and even the European Union.

Today abortion has not only become a common practice, but it has also been recognized as a woman's right in some legal systems. The right to abortion is called by different names, mainly out of a desire to hide the truth about the nature of abortion itself. This truth is brutally simple: although this right is called by different terms, but it always concerns the killing of the conceived child and the destroying of his/her life.

In different international documents, this right is often defined as "the right to the freedom of choice", the right to "the free choice of pregnancy", the right to "the interruption of pregnancy", the right "to interrupt pregnancy", the right to "the free choice of the interruption of pregnancy", the right to "the choice to terminate pregnancy", or in general, it is called the right to "make personal decisions", the right to "integrity of the

person", by including the period of pregnancy in it, the right to "make decisions and to physical integrity", the right to "control one's own body", the right to "freedom from motherhood". So many names for the same reality only mean that abortion rights supporters want to disguise the truth about its essence.

The pro-abortion tendency hides itself under different expressions. They continue to manipulate language in order to achieve a sole purpose; such manipulation has already occurred when they tried to hide the truth of the killing of the conceived child by abortion. Then, in order to hide the true nature of abortion, words such as "operation" or "interruption of pregnancy" were used. This distortion not only had to hide the truth of abortion and remove the atrocity of the evil, which is inherent to the act, but it had to attenuate the severity of the judgment of similar behavior.

All of this occurred in order to get society used to abortion, hidden behind apparently neutral concepts. The term "interruption of pregnancy" sounds different from the "killing of the conceived child". But no word has the power to change the reality of and the truth about the right to abortion or of abortion itself, which is the deliberate and direct killing of a human being in the initial phase of his/her existence, extending from conception to birth.<sup>1</sup> On the other hand, those who support abortion and the right to abortion, declare that language

<sup>1</sup> Cf. JOHN PAUL II, *Evangelium vitae*, 58.

is misused by defining abortion as “infanticide”. According to them, abortion is not infanticide, because they affirm that the conceived child is not a child yet, so he/she is not a human being but only a fetus. They do not accept arguments based on the inclusion in some human rights instruments or national laws of terms like the “conceived child”, or “unborn child”. In their opinion, the law goes in only one direction, that is, the legalization of the right to abortion.

According to abortion rights supporters, this right must be recognized as a fundamental right of every woman and must be placed among the universal human rights, by creating in this way the so-called new human rights, which should naturally include the right to abortion and even sexual rights, reproductive rights, the right to homosexuality, the right to euthanasia and the right to different models of families.

One immediately notes what kind of ideology forms the basis for the so-called “new human rights”. Inserting the right to abortion in the list of human rights would mean contradicting the natural right to life, one of the fundamental rights which holds one of the most important places in this list.

The international community, by recognizing the right to life and defining it as a natural right, has the obligation to defend it and forbid the legalization of its violation.

By accepting the right to abortion, the situation is reversed: it creates a

woman’s right to kill her conceived child and protects the performance of this act. In this way an exception to the natural right to life is made, and it is accepted that some categories of human beings exist whose right to life may be denied by the State.

Naturally the one who is killed is not protected, but rather the one who kills. Thanks to these actions, the crime of killing, above all in the people’s mindset, loses its characteristic as a crime; it is legalized, acquiring the characteristics of the law. The right to abortion not only would deprive human beings before their birth of the right to life, but, by defining it as a fundamental right, it would force countries to make it legal, to perform and protect it.

The increasing activity of the United Nations, of the Council of Europe and of the European Parliament, whose purpose is to make international society recognize the right to abortion as a fundamental women’s right and to include it among human rights, is mainly due to the fear on the part of abortion rights supporters that legal protection for the conceived child may be increased because of the development of biomedicine and the constantly increasing ability to treat the conceived child in his/her mother’s womb. This research offers biological proof of what every mother, lovingly expecting her baby, already knows better than anyone else: that, since his/her conception, the unborn child is already a human being and every mother knows

that the unborn is a child. Research also increases the chances for survival and healing of the child who is conceived with an illness.

Abortion rights supporters, fearing that the development of biomedicine and the possibility of medical treatments for the conceived child could restrict the reasons for abortion (actually, some countries legally allow the killing of a very sick child), and fearing that a woman's right to abortion could be limited, energetically demand the universal recognition of this right by the international community. The problem is raised in all international conferences on human rights or women's rights, and it is presented as a matter of vital importance, in order to put an end to discrimination against women and to grant women the rights that will eliminate inequality between the sexes.

Every right supposes an adequate pre-text for its achievement. In the case of the right to abortion, one notes a remarkable tendency to increase requests related to the "intervention" of the interruption of pregnancy. It is proposed that this right not only means the right to kill the conceived child, but also its performance under suitable conditions, guaranteed by the State and subsidized by it. We have arrived at the point where the right of women to safe abortion, where it is legal, has entered into international standards. This statement hides a trap and a paradox because the right to safe abortion means that there must first exist a right to abortion and then

it must be performed in such a way as not to harm the woman. By acknowledging the right to safe abortion, the existence of the right to abortion is acknowledged at the same time.

Knowing the content of this right, the killing of the child, the right to safe abortion means the safe killing of the conceived child: it is safe for the woman but certainly not for the child, who is killed in a cruel way. Furthermore, raising such a problem also becomes dangerous, because abortion rights supporters have started to look for ways to kill the child without making him/her suffer. Actually, this kind of behavior is pure hypocrisy, dressed up with great cynicism, because these pseudo humanitarian actions aim at the unnatural death of the conceived child.

In order to demonstrate that the right to abortion does not inevitably lead to the death of the conceived child, some ways are being found to interrupt pregnancy without causing death in the mother's womb by delivering the child alive. In this way they try eliminate the mother's loathing for the immoral act of killing her own child. The child's death would not weigh on the mother and abortion would be the artificial act which puts an end to pregnancy, as if it were possible to separate the pregnancy from the child.

According to permissive abortion laws, it would not matter what subsequently befell the child, after being uprooted from the natural environment



of his/her prenatal development. These proposals are a refined form of cruelty.

At first, the right to abortion always had a strict and unique interpretation. It used to be limited to those cases indicated by the law. Over time, the interpretation of the law has inflated in such a way as to guarantee the complete right to abortion, without taking time or circumstances into consideration. The right to abortion now includes the right to abortion according to every desire of the woman. It is included in the list of women's rights as one of the reproductive rights.

These must be set among the rights of the person: human rights are classified in this way so that they may not be considered only as men's rights. There was even an attempt to add to the so-called "new human rights" the right of a woman to her own body and to pregnancy.

Abortion rights advocates affirm that abortion belongs to the standard of what comprises a democratic State as an irreplaceable element. In their opinion, this theory must affirm the value of pluralistic democracy, based on human rights and on fundamental values, among which the principle and most significant one is the inviolable norm of equal rights between men and women. This law must be in force in private relationships as well as in the family and above all in the area of sexuality and procreation.

According to its supporters, the right to abortion is considered the element necessary for equality between men and

women, especially in the area of reproduction, as this sphere of intimate human relations is called. According to this way of thinking, men have the free choice to procreate whereas women do not. This is proof that women are discriminated against by the dominant free choice of men. They say women should be given the chance to change this "procreative determination" of men, by recognizing the right to abortion of women. These are the reasons why, regarding procreation, women's freedom of choice must be introduced into human rights standards, under the form of the right to abortion or the right to the free choice of motherhood: only in this way can the value of democracy can be guaranteed.

Justifying the right to abortion indicates that motherhood is a social relationship and not a personal relationship between the mother and child from the moment of conception. Those in favor of this theory argue that motherhood only begins at the moment when the mother accepts the child living in her and she does not avail herself of the right to abortion. Until that point, the relationship between the mother and the child growing in her womb cannot be recognized as motherhood. The closest relationship existing in the human world is denied: the one between a mother and child and between the child and mother. Motherhood is not a one-sided relationship. It unites two persons; it is a reciprocal relationship, which has as its spiritual and physical

dimension the common orientation of the mother and the child growing in her womb.

Abortion rights supporters want to insert the right to abortion in global family policy, so that in its sphere there is always the possibility of voluntary abortion, since no contraceptive method offers an absolute guarantee of preventing an unwanted pregnancy. In family policy, the right to abortion would be a safety-valve guaranteeing that families would have no unwanted children. Children could be killed before their birth any and every time the mother decides to do so. In addition, the right to abortion must be carried out with respect for the rights and dignity of women.

Some see the family and family policy in this way, not as a community of life and love, but rather as the area of the struggle between the sexes and persons, a place of conflicts, of selfishness and fighting for the rights of the persons who make up the family. Globalization, on the other hand, means that this standard is no longer the standard of the rights of the family as a whole anymore, but it is women's rights which should become the universal standard.

The right to abortion is promoted in opposition to the defense of the embryo, the fetus, and the conceived child. The issue is presented as if it there were an utter contradiction and an insoluble conflict between the conceived child's right to life and the rights of women. It is currently said that women's rights

are just an exception to the rule of the defense of the conceived child and that only the right to abortion can balance the overly strong and unilateral rights of the child, especially his/her right to life.

The introduction of the right to abortion has another clear purpose: the destruction of the natural and organic community between mother and child and to redefine it with a dominant role for the woman, who immediately after conception might accept or refuse the role of mother. The mother is the stronger and more decisive one in the relationship between the mother and child, because the life or death of the conceived child depends on her decision. The child is the weaker one in this relationship.

All these attempts are clearly manifest mainly in the actions against the family of the United Nations and a few countries. The purpose is to destroy the family, to change the model of the family and its natural functions; in addition, there is an attempt to deprive the family, a community of persons founded upon the marriage between a man and a woman with their children, of its rights. The family is presented as an institution which limits its members' freedom. These attempts aim to atomize the family and its rights in society. They would like to divide the family into a group of subjects who remain in conflict with competing interests. In this relationship, the woman should have the predominant position and her rights should prevail over those of others in situations of

conflicting rights and interests. The right to abortion, that is the right to the free choice of killing the conceived child, should be included among the most important of women's rights.

The child naturally is the subject who counts less, because his/her natural right to life from the moment of his/her conception, from the moment they begin to exist, is not recognized. The rights of men as spouses and fathers should be limited, even though procreation means motherhood and fatherhood at the same time and is realized through the other. These aspects of human procreation cannot be artificially separated without upsetting the basis of human existence and the essence of the family. Such behavior would inevitably lead to the degradation of the family and its social roles, and it also would limit the rights of the family as a whole.

The family is something greater than the sum of its individual members and its rights are not the simple addition of those of its component members. It is a community of life and not of death, of parents and children. That is why its subjectivity requires its own proper and specific rights.<sup>2</sup> The rights of the family cannot be atomized into individual rights, especially in a way that allows the destroying of the child called into existence by his/her parents. By changing the concept of family – in such a way that it includes *de facto* unions, even those of homosexuals, who are going to

be given the right to adopt and to use artificial means of procreation (this has already been allowed in some countries) – by rejecting traditional roles in the family and legalizing the right to abortion, the greatest attack against human society has occurred.

The natural basis of society is formed by the family community founded upon the marriage between a man and a woman, whose child is recognized as a legal subject and whose procreation is the fulfillment of motherhood and fatherhood.

Unfortunately, one sees some acts of the United Nations and influential pressure groups that are devastating to the family. All these attempts, actions and pro-abortion propaganda, have one object: they request that the killing of the conceived child become a right of women, and that it should be legalized. No manipulation of language by sociology and the law is able to change the content of such a cruel reality; it just disguises this content. The right to abortion turns the child into an object dependent on his/her mother's will in their right to life; the child becomes the woman's property and the mother becomes the mistress of her own child's life or death. The child is thus not only deprived of his/her autonomous right to life – which would become secondary and dependent on the mother's decision, but also of his/her subjectivity. Thus, the child would also be deprived of his/her other rights which he/she possesses in virtue of some rules

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2 JOHN PAUL II, *Gratissimam sane*, 17.

still in force. The right to life, whose origin derives from the human nature of the child, would be deprived of the value of its natural character, even if it is clear that no one can deprive any human being of his/her natural rights: but the human being can be killed.

Such killing will always be illicit in the light of natural law. The right to life of the child would become a debatable right that depends every time on the will of the mother and only on her will. The father of the child in this phase of development would be deprived of the right to the child. The Court of Human Rights in Strasbourg followed this line of reasoning in denying the father the right to oppose a mother's decision to abort. It has been demonstrated that pregnancy and the conceived child are questions which only concern the woman: this decision dealt a blow to the close relationship between the mother and the father, which is expressed in their mutual act of generation as well as to fatherhood—the link between the father and the child. Instead of the very necessary reinforcement of the relationship for the good of the child and the family, fatherhood is degraded.

The right to abortion has not yet been included in the list of human rights, even though attempts in this direction by international organizations are very strong. Let us hope it does not happen. Unfortunately, this right is in force in many countries, even if it is not always defined *expressis verbis* as a "right to abortion". The introduction of

the right to abortion in the legal system clearly contradicts the essence of human rights and the essence of the law as well. This right violates the natural dignity of man that every law must defend.

The law must have as its finality the good of man, of every human being. Man and his good should be the measure, the standard and the purpose of every law. The law must be in accord with moral values and at the service of man. If there is a lack of affirmation of man and of his natural rights in the law, it ceases to be a law and becomes *corruptio legis*. All the law, and particularly human rights, are made to guarantee the defense of man and not his destruction. Human rights, and among these the right to life is the most important, must always have as their object the good of man and must not be the cause of death. This characteristic of the law does not change even when man, whose protection must be guaranteed, is in the initial or in the final phase of his existence.

The right to abortion aims at destroying man in the initial phase of his life, the weakest human being whose existence is dependent on the nearest person, his/her mother. This right is not a good and never becomes one, independently of the ideology which is used. Nothing and no one can change the malice that is in abortion and convert it into a good, which, on the contrary, should always be the basis of human rights and of the law in general. Might the killing of the conceived child be something

different from evil in itself? Something whose content is doing harm to another human being cannot be recognized as a human right. The mother's consent to abortion does not change the negative moral evaluation of abortion and cannot change the judgment of the right to kill the conceived child.

The right to abortion will never be a good, because abortion, which is at its root, is an evil in itself. The one and the other will always be illicit. No right can be accepted if it presupposes the killing of another human being. Could the international community, which is so conscious of every human being's right to life, make the right to kill another human being a human right? The answer is obvious if one wants to found the world on the dignity of man, the principle of equality, and above all on the moral order.

Despite strong pressures, the right to abortion has until now not found official confirmation in any human right proclaimed by the international community. These rights are based on the natural law. When every human being's natural right to life is denied from the moment of conception to natural death, the other fundamental human rights, which the person only has when alive, are also denied.

Women's rights should not only avoid creating moral disorder in human rights by creating new contents, or changing their spirit. They must not deny the most important right, the right to life. The law is forbidden to do so. The

law cannot arrogate to itself the power to decide who will live and who must be killed. It also cannot claim to delegate this power to women with regard to the conceived child.

The life of each person is sacred and must be respected by the law in all circumstances and every condition. The most important task of the law is to serve life; and is at the same time, the proof of its quality and legitimacy.

Furthermore, democracy does not give the power to make the right to abortion legal. Democracy is not a value in itself. It is a value if based on the moral order and respect for human dignity and the rights of man. Among these rights, the most important is the right to life of every human being, from the moment of conception to natural death. The value of democracy arises from and disappears with the values it expresses and defends. The dignity of every human being and respect for his/her inalienable rights are fundamental and necessary values. Democracy does not exist when human rights are not defended, and there is no democracy, if the human right to life, which constitutes the essence of its being in democracy, is not protected.

The State that organizes attacks against this right is not democratic. Man cannot be deprived of this right either by the State where he lives, or by the international community, for the simple reason that it does not belong to the State or to another subject, but only to man. This right has an immanent relationship

with him/her. The State that makes the right to abortion legal claims to have the right to dispose of human life and to transfer this right to the mother of the conceived child who has begun his/her existence. Such a State is no longer democratic, because its standard of democracy consists in the right to kill certain groups of people. This kind of democracy, which rejects the dignity of every man, is nothing other than discrimination against some persons and the acceptance of the erroneous vision of human freedom, which becomes absolute power over others.<sup>3</sup>

No law in the world and no political system can ever make abortion or the right to abortion licit since it is illicit in itself.<sup>4</sup>

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3 Cf. JOHN PAUL II, *Evangelium vitae*, 20.

4 JOHN PAUL II, *Evangelium vitae*, 62.

# The Rights of the Child

Marie-Thérèse Hermange

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*That human rights are recognized for children in the same way as for other human beings is not in doubt, unless one disputes the universal scope of the Declaration of 1948. Furthermore, the Convention on the Rights of the Child (1989) recognizes for children a special protection both before and after birth because of their weakness. Respecting the rights of children is above all the duty of the parents. They are the first ones called to respect the life of their children to feed them, care for them and educate them. Today, however, one observes a tendency to deprive parents of the protection they must guarantee to children. That is to say children would have an individual freedom that would have to be protected against the right and duty parents have to care for their education. This exaltation of the freedom of human beings in the course of being educated would translate itself, in particular, as access to contraception, the morning after pill and even abortion starting from the age of ten (!), and shielded from the parent's right to control this. Therefore, two concepts of the rights of children confront each other. One recognizes in the parents the first and natural guarantors of these rights; the other tends to strip the parents of their responsibility and aims at transferring it to public institutions or to those delegated by them. (↗ Children and Labor; Dignity of the Child; Children's Rights and Sexual Violence; Family and the Rights of Minors; Parenthood; Person and Integral Procreation; Personalization)*

The United Nations General Assembly on November 20<sup>th</sup>, 1989 unanimously adopted its Resolution 44/25 establishing the rights of the child. This was one end result of an unprecedented world-wide trend towards recognition of those rights. The International Year of the Child (1979) began a 10-year process which culminated in the United Nations' Convention guaranteeing those rights. The international community has been perennially concerned for chil-

dren but had not yet formulated their rights in a comprehensive and forceful way. The League of Nations in 1924 and the United Nations in 1959 did adopt declarations of the rights of children, and their various legal recognitions of the rights of man did contain clauses recognizing the rights of children. But there was no explicit and comprehensive declaration of the rights of the child or of society's obligation in justice to respect them. An exceptionally rapid

movement of all nations except for two –the most powerful (United States) and the poorest (Somalia) - soon ratified that Convention. In 1991, just after the first World Summit of the Child, the signatory States established a 10 person Committee on the Rights of the Child in order to ensure that the Convention is honored in practice.

Everyone should rejoice in these necessary efforts to persuade and inform public opinion since this international legal text recognizes children to be individual subjects with their inherent rights to life, an identity, a family, rights to free expression, to receive care and to protection against every kind of economic or sexual exploitation - rights which also confer duties and responsibilities.

But at this beginning of the century, the very real evils afflicting children are many and profound: they are called AIDS, drugs, poverty, malnutrition, wars, exploitation—the list is endless. Such evils are expressions of our own adult flaws, weaknesses and failures. It is we who are sick: through rejecting the life of the most helpless human beings, we are causing the greatest massacre of the innocents in history. We adults are sick, sick through the absence of love, as Elie Wiesel says: “Since we love them so much, how is it that we don’t know what hurts them?”<sup>1</sup>

Within the confines of this article, after having outlined the essential elements of the 54 articles of the International Convention on the Rights of the Child (ICRC), we encourage a double attitude of realism and vigilance, showing, on the one hand, that today’s child, openly cherished and officially protected, is also, sometimes at the same time, wounded and broken, and on the other hand, while the text of the ICRC contains the essentials, it can be ambiguous and raise legitimate questions if it is analyzed independently of a pedagogical understanding of childhood. Finally, this view of children, symbols of the generosity of life and signs of the future of humanity, will call us to a much-needed reform of our thinking, and will challenge us in our duty to love and to reaffirm the role of the family in our societies.

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## **THE RIGHTS OF THE CHILD, COMING TO A UNIVERSAL AWARENESS**

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The XX Century discovered that children were all too often left behind in economic and social progress as well as in medical and educational benefits, that they are always—because they are the most vulnerable and dependant—the first victims of epidemics, famines and wars. This launched the great

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1 Preface to the report presented by Marie-Thérèse Hermange, representative of the President of the French Republic for the preparation of the extraordinary session of

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the General Assembly of the United Nations dedicated to children, September 2001. cf. *Documentation française*.



movement of validating and defending their rights—about which we have every reason to be pleased. The adoption in 1924 of the first Declaration of the Rights of the Child was due to Eglantyne Webb, foundress of the *Union internationale de secours des enfants*. It was recalled on September 20, 1959, as we have seen. This essential document was a remarkable initiative conveying political will, but unfortunately it was only a simple declaration of principles without any coercive power. After ten years of preparatory work, “The passage from a declared right to a binding right”<sup>2</sup> came about promoted by Poland, and the International Convention on the Rights of the Child was adopted on November 20, 1989. It was a Convention, i.e., not merely a declaration of intent, but for all the adhering countries ratifying it in their parliaments, a law as well as a text bearing hope for two billion children living on earth.<sup>3</sup> The declaration affirms that every child merits respect, attention and consideration, “that there are no small or minor rights having little importance; from the vital rights to food or to health or to democratic rights—all rights are mutually connected and complete each other.”<sup>4</sup>

## **The international convention on the rights of the child, a reference text...**

The Convention is important for more than one reason.<sup>5</sup> First, it contributes to spreading knowledge and understanding of problems relating to children. It is for each of us a “point of reference” in conducting and supporting actions to be taken to encourage national authorities to better protect the rights of children. Seen from that point of view, each of us, children and adults, must understand well that the text is not only a legal instrument, but represents a universal political and moral awareness of the problems of childhood.

Furthermore, this Convention is a reference point: by attributing to the child the fundamental rights of man, both civil, political, economic, social and cultural, it recognizes the child to have the same equality and dignity as man<sup>6</sup>, and “deliberately manifests that he is ‘a person’, (and continuing the statement of Françoise Dolto) “not a miniature adult, as one too often hears, certainly not a completely ma-

2 C. NEIRENCK, *Le droit de l'enfance après la convention des Nations-Unies*, Éditions encyclopédiques Delmas pour la vie des affaires, Paris 1993, 10.

3 N. CARTWELL, “La convention: Analyse, satisfaisants du contenu? Un examen du contenu et des objectifs de la convention,” in *L'enfance dans le monde* 3 (1989) 16, 18-20.

4 A. SERRES, *Le Grand Livre des droits de*

*l'enfant*, Éditions Rue du Monde, Paris 1996, 9.

5 Cf. F.Z. KZENTINI, “La Convention sur les droits de l'enfant: des norms de protection et un instrument de coopération pour la suivre, le développement et le bien-être de l'enfant,” in *Bulletin de Droits de l'homme* 2 (1991), 46-69.

6 M. BOSSUYT, “La Convention des Nations Unies sur les droits de l'enfant,” in *Revue universelle des droits de l'homme* 4 (1990) 2, 141-144.

ture being, but one already capable of a certain discernment.”<sup>7</sup>

The only legal text which defines the child- “a child means every human being below the age of eighteen years unless under the law applicable to the child, majority is attained earlier.”<sup>8</sup> The Convention contains a nucleus of far-reaching general clauses directing the interpretation of subsequently stated rights. It is fitting to mention the principle of non-discrimination, which exercises two functions. The first, and in some ways most important, is to make it clear that the rights recognized by the Convention constitute only minimal protection for the child: if the national laws are more favorable to the child, they take precedence. The second function of this principle is to guarantee respect for the stated rights and their exercise “to each child within their jurisdiction without discrimination of any kind.”

The Convention also states the principle of “the best interests of the child.”<sup>9</sup> This is the only criterion which should inspire parents, administrative institutions and legal proceedings in judging

measures to take with regard to minors. On the international level, that principle common to all States parties should allow for easier resolution of eventual contradictions resulting from the application of different laws.

Finally, the United Nation’s text imposes on States the obligation to respect the rights and duties of parents or other responsible persons “to provide... appropriate direction and guidance in the exercise by the child of the rights recognized in the present Convention”. This clause states the principle of the primacy of the role of the family in relation to social, political or judicial authorities. Rejecting the domination of the community over children does not remove, however, anything of the duty of the State to assure their protection in the case of absent or inadequate families.

The child enjoys all the rights of every human being: the right to life, to survival and development;<sup>10</sup> the right to have a name, a nationality and an identity; right to be registered at birth and to have a nationality which links him to a State so that he will benefit from the protection due to the citizens of that State. The rights of a child include good health and social conditions, and especially the right to a quality of life permitting his physical, mental, spiritual and social well-being. Like all thinking

7 J.P. ROSENCZVEIG – P. VERDIER, *La Parole de l'enfant*, Éditions Dunod, Paris 1999, 20.

8 C. ALSTON, “The Unborn Child and Abortion Under the Draft Convention on the Rights of the Child” in *Human Rights Quarterly* 12 (1990), 156-178.

9 R. JOYAL, “La notion d’intérêt supérieur de l’enfant, sa place dans la Convention des Nations Unies sur les droits de l’enfant,” in *Revue internationale de droit pénal* (1991), 3rd and 4th trimesters, 785-791.

10 G. RAYMOND, “La Convention des Nations Unies sur les droits de l’enfant et le droit français de l’enfance,” in *La semaine juridique*, Édition générale 24 (13 June 1990), Doctrine (1990).

beings, he has the right to speak, “to express those views freely in all matters affecting the child”. In view of reinforcing this clause, the Convention affirms that the child, in so far as possible, must be heard in all judicial and administrative procedures which concern him either directly or by way of a representative or an appropriate organization. He also is seen to have “freedom of expression, freedom of thought, conscience, religion, freedom of association and of peaceful assembly.”<sup>11</sup> In the same way, the child cannot be subjected to “arbitrary or unlawful interference with his or her privacy,” while torture, capital punishment or life imprisonment are prohibited.

### **...that cares for the specificity of the child**

At the same time, the Convention is aware of the specific characteristics of the *child*, distinguishes them from adults, and recognizes the particular rights due to the child's immaturity, need for protection and appropriate care within the family.

So as to “prepare him fully for individual life in society”,<sup>12</sup> the Convention opportunely stresses the importance of the family, and specifies that the child grow up in a climate of understanding,

love and happiness. Similarly, D. Winnicott thinks: “It is wise to remember that the health of a country depends on its family units being in good health, having parents who are really mature.”<sup>13</sup> Also, it obliges States to respect the responsibility, right and duty of parents or other responsible persons to give “appropriate direction and guidance in the exercise by the child of the rights recognized in the present Convention.” The normal place of the child in the family must be not only to assure an affective climate apt to assure normal development but also as a means of rooting him in his country, ethnic group, language and culture. Despite the opinion spread by its detractors, the Convention recognizes that the child cannot normally be separated from the family. How many mistakes have been made in the education of our children because of having ideologically and dogmatically denied that common sense reality! Presenting the family as the fundamental group unit of society and the natural milieu for the growth and blossoming of children, the Convention begins with the principle that democracy is born in the family and therefore the family must be protected and given the help it needs to be able to fully play its role in the community.

The International Convention on the Rights of the Child “reminds us that social bonds grow out of parental

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11 M. ZAMI, “La Convention Internationale des droits de l'enfant : portée et limites”, Éditions Publi-sud, Paris 1996, 23.

12 M. BENNOUNA, “La Convention des Nations Unies relative aux droits de l'enfant,” in *Annuaire française de droit international* (1989) 35, 433-445.

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13 D. WINNICOTT, *L'enfant et le monde extérieur*, Éditions Payot Paris, 18.

and societal bonds.” Educational and political authorities must therefore take note of this fact. It is their responsibility to conceive a politics of childhood which does not limit itself to purely defensive measures safeguarding children but which rises to the challenge of the future of our society. Following that inspiration means creating “a politics of childhood which is not only a coherent and ambitious vision of the family but of humanity as well.” Our societies are suffering today because of having forgotten the fact that the essentials of social, national, even international bonds are born in and grow out of childhood, that period naturally respectful of the becoming, the future, the capacities, the potentialities of the new-born.

## **THE RIGHTS OF THE CHILD: DUTIES OF REALISM AND VIGILANCE**

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We have a double reason for being realistic and vigilant. First of all, because if the child has recently become a central figure in our societies, he is also the bulls-eye of the worst kinds of violence. Furthermore, in a necessarily and constantly renewed and ever more profound way, the child is at the very heart of our educational requirements.

### **The Child at the Heart of Violence**

Whatever our religious beliefs, the approach of Christmas unites us around children and reminds us that “infans” is

both weakness and hope: weakness of the small child who must wait to walk and to talk, and hope, because, like a seed called to grow, he has his whole future in front of him. Before that weakness and vulnerability, that hope and that promise, all our lack of confidence should cease. And yet, from the beginning of time, how many disasters, how many massacres of the innocent have come from the heart of man?

I remember the words of Yves Buanic, founder of the *Enfants du monde, droits de l'homme* association “In every latitude and in all civilizations, a gigantic combat has been continuously waging in the heart of the night against the forces of light and hope. Our memory of the newly completed 20<sup>th</sup> century leaves our contemporary consciences with cruel images: the fratricidal war of the trenches in 1914-18, the war of 1939-45 with its millions of deaths, its crimes scientifically organized against humanity, the Soviet Empire muzzling hundreds of millions of human beings under a cruel yoke, the dictatorships of Pinochet and other monsters of Latin America, Asia and Africa, and Pol Pot’s genocide in Cambodia. Now still further slaughters happen in Afghanistan, Kosovo, the Israel of yesterdays Nativity and the wounded Palestine of today.” He continues, “I am ashamed and revolted; I weep, I groan before the lies that institutionalize the massacre of the innocents. But where is Christmas in this world?”

Like Fr. Buannic regarding human rights we should voice our indignation at the 40 million children in the world who each year are anonymously killed, who enter and pass away without any declaration of birth or death. Having no legal existence, they are not part of society, do not receive official papers or passports to establish their nationality, do not receive medical care, do not vote or own things they might want. We should be indignant at the 250 million children less than 15 years old working in industries, mines and the streets; indignant at the fact that 140 million children in the world are deprived of the right to an education, to a formation, to the elementary knowledge of being able to read and write in their mother tongue; indignant at the fact that millions of children are marked for life by wars or the two million children killed in wars decided upon by adults, those enlisted by force or wounded by the 110 million anti-personnel mines that daily perform their work of death. We should be indignant at the fact that so many children fall into sexual exploitation every year, and that thousands of children left to themselves in big cities are abandoned orphans without a family and find listed as homeless. But even worse, they are *without a family home*, as the sociologist, Evelyne Sullerat, so aptly puts it. We should be indignant at other, equally important forms of mistreatment not covered by our media-oriented world which seeks the wicked,

the sensational and the emotional - unless the guilt is not imputable to specific culprits but reflects our entire civilization and mores. But finally, aren't we all accomplices? For when we buy the products of child-labor, children forced to work from early childhood, buy them without questioning their origins, must not one speak of mistreatment/abuse? And when unemployment plunges thousands of children into a most precarious state, children who without the support of their family are delivered defenselessly into a cold and difficult urban world, suspended in a social and affective vacuum - isn't our powerlessness to help them itself a form of mistreatment?

How do we avoid making our children victims of life? That is the disaster warning given by the Nobel Prize winner Adolfo Perez Esquivel: "In a few years, our children will be adolescents and then the citizens of our societies. They will demand a reckoning from their governments and from the States of the North. They will revolt. A time-bomb of an explosive force is being prepared against which promises and empty words will be powerless".<sup>14</sup> UNICEF forewarns us in a similar way: "Time is running out. Our generation will be justly judged on the way we protected the life, the growth, the education and the rights of our children."<sup>15</sup> Yes, time is

<sup>14</sup> Quoted in J. -P. VÉLIS, *Fleurs de poussière*, Éditions UNESCO, Paris, 154

<sup>15</sup> *La situation des enfants dans le monde*,

running out, for our children are waiting for us to change direction and to pass from words to acts. At the Second World Summit on Children, the men and women of tomorrow must remind the highest authorities about their commitment when they put the principle “Children Come First” at the center of public action, thereby witnessing to the attention and consideration they have for the most vulnerable and fragile among us.

### **The Child at the Heart of the Educational Imperative**

In addition to being generally realistic and vigilant, we must also be so in fulfilling our adult and parental responsibilities, for simply giving rights to children or recognizing their rights never relieves us of working towards the understanding and implementing of those rights at the heart of the philosophy of the Rights of the Child.

For the first time in history, Janus Korczak asked the United Nations to create a kind of *Magna Carta for the Protection of Children*, and initiated the concept of a document specifying the Rights of the Child, showing thereby that there is something specific to childhood. The latter implies a re-thinking of two not very easily reconcilable factors: the necessity of recognizing the unique fragility of the child and therefore pro-

tecting him,<sup>16</sup> and recognizing his right to freedom of speech and of choice in his opinions and affiliations<sup>17</sup> thereby recognizing him as a responsible adult which he is precisely not yet. Thus, between affirming the duty of adults to work for the development of the child,<sup>18</sup> and the right to education<sup>19</sup> which specifies that this education must try to inculcate in the child respect for his parents, for his own identity and cultural values, the Convention somewhat rhetorically states in its article 12.1 that “States Parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child.” Thus the ICRC leads us to the heart of the conciliation between the necessary authority of the adult and the taking into consideration of the child’s freedom and his freedom of speech.

But as Hannah Arendt explains, “The line separating children from adults should clearly mean that one can neither educate nor treat children as if they were adults.”<sup>20</sup> Hence it is indispensable for the transmitting institutions, namely the family and the school, to set the boundaries which permit one, as Philippe Meirieu says “to

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16 See the preamble of the ICRC

17 See article 13,1 of the ICRC

18 See article 5 and 6 of the ICRC

19 See articles 28 and 29 of the ICRC

20 H. ARENDT, *La crise de la culture*, Folio Essais, Paris 1972-1989, 223.

see the positive reasons for prohibitions and help the child understand that they are made because of what they authorize: they guarantee each one's integrity, as well as the possibility of exchange, reciprocal enrichment and development of all."<sup>21</sup> The debate is very actual since the weakening of the symbolic role assigned to the family and the school often leaves children not only disoriented, but also mistrustful of normative institutions that are supposed to set symbolic boundary lines. It is within this context that we are experiencing today not only the blurring of boundaries, but also a questioning of those institutions that are supposed to "play the role of the father" –the family, the school, the justice system and the police–since they failed to contribute to the socialization of the child at the right moment which would have allowed him later to be part of society. Thus the limits in early childhood that the traditional institutions failed to clearly set, combined with a non-directive ideology lead to profound deficiencies, namely to a great vulnerability and a strong sense of insecurity, for "if the law imposes itself on adults, it progressively introduces itself to the small child thanks to the apprenticeship of living together".<sup>22</sup>

We know all too well the educational mistakes of parents who do not dare assume an authoritative role for fear of creating too much distance between

themselves and their children, or because they desire prematurely to introduce them to the autonomy of decision-making or acting: "You are big enough now, do your best." But the child is precisely not always "big enough," while educators and psychologists more and more unanimously recognize the child's need for boundaries and rules in order to develop in an harmonious way.<sup>23</sup> These observations encourage one to look prudently and sometimes to reject completely the aggressive insistence on the "new rights" of children presented under the seductive formula of the "right to choose," rights whose exercise is not adapted to the age of the child, and therefore overwhelming. This is the reason for legal minority which forbids minors the right to make independent choices in certain areas, not in a discriminatory fashion but with a view to protecting society from the consequences of im-

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23 For example, a child is of course "free" to play the violin, if no physical force prevents him from seizing the instrument. But this is an unrefined autonomy that still has to be formed through a long apprenticeship of the rules of music before the child can truly exercise his liberty to play the violin. Similarly, a child enjoys certainly the "freedom of expression", but the latter needs other conditions than the mere absence of censure in front of a blank page in order to be exercised: one will need hours of study to learn the laws of writing, of reading and of expression. To accede to such an autonomy presupposes a period during which the child submits temporarily his freedom to teachers who will show him how to constructively exercise his liberty.

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21 P. MEIRIEU – M. GUIRAUD, *L'école ou la guerre civile*, Plon, Paris 1997.

22 B. DEFRANC, *Le droit à l'école*, Labor, Paris & Brussels, 2000, 21.

mature choices, as well as protecting children from those who would profit from their vulnerability. How could we fail to refer to the incredible concept of “sexual rights”, strongly demanded for children at recent large international conferences, supported especially by powerful pedophilia networks who see that as a way of reducing penal pursuit of the sexual crime they commit, as well as by relatively small but aggressive, all-permissive pressure groups.<sup>24</sup>

How can one not say that for years we have been witnessing with incredulity and indignation the incessant and increasingly strident demands for “free love” for children<sup>25</sup> by a few well-organized and well-financed groups? Or the liberation from “traditional taboos” or “social taboos” in the inexhaustible rhetoric of the IPPF,<sup>26</sup> or the liberation from “value judgments” in the tireless propaganda of the UNFPA.<sup>27</sup> One day, history will judge the ideological impostures and manipulations of every description by which the United Nations try to impose their individua-

listic, Malthusian and hedonistic vision of human life through international and regional conferences. Thus the declaration of the “Youth Forum” of the five year review conference of Cairo in June 1999 included the following demands:

- “Sexual and reproductive health services, including emergency contraceptives, must be furnished to all youth, and those services must be confidential, accessible, free, non-judgmental, with most of the services designed, composed of and evaluated by young people in collaboration with trained professionals;<sup>28</sup>
- Comprehensive sex education should be mandatory in school programs at all levels. Teachers must receive an adequate education in this domain.”

Facing these incessant totalitarian demands (which one could multiply indefinitely), one would do well to recall the words of Jules Ferry who was the supporter of a secular, free and obligatory school-system in the French Republic and by which he defines the mission of the teacher:

“If sometimes you do not know how far you can go in your moral teaching, here is a practical rule you can follow.

24 Among many examples, one could pick that of the *Third World Meeting of Youth* in Braga (Portugal) in August 1998. The president of the *World Association of Muslim Youth* was led to openly tell the most vocal protagonists: “Your attitude is fundamentally that of a liberal, European minority, and you are imposing it on others.”

25 “Children” understood in the ICRC definition of minors under the age of eighteen.

26 International Planned Parenthood Federation.

27 United Nations Population Fund.

28 In October of 2001 the UNFPA acted in accord with their pronouncements by launching an Internet website providing sexual information with some participation from young adolescents and with the ostensible objective to stick to facts and “tell it like it is”, but in actuality only presenting a very partial vision on the question oriented towards simply inciting sexual activity.



When presenting any precept or principle to school children, ask yourself if there is to your knowledge a single good man who would be scandalized by what you will say. Ask yourself if a family father present in your class-room and listening to you, could in good faith dissent from what you intend to say. If yes, then don't say it: otherwise speak frankly; for what you are going to communicate to the children is not your own wisdom, but the wisdom of the human race."<sup>29</sup>

In contrast to this common sense, one can only deplore today's widespread ideological reversal that purely and simply scorns the "assent" of the "good man," of the "family father" evoked above. Just as the respect due to parents is in harmony with the respect due to children, there is no reason to oppose the rights of children to the rights of their parents: they are mutually compatible. Parental rights, duties and responsibilities do not inherently menace the rights and freedom of children, but are positive, complementary elements by which parents provide orientation and security to their children, guiding them towards maturity. For rights convey duties: the right to liberty also includes the duty to respect the rights of others; the right to expression also includes the duty to allow the other to express himself; the right to be educated also includes the duty to listen to the teacher and to respect one's parents; the right to be protected against

violence also includes the commitment not to use violence. That is why the International Convention on the Rights of the Child confers a certain autonomy to the child, guaranteeing rights but also giving responsibilities.

From this perspective, the equilibrium between children and parents will be all the more assured by the guarantee of a fundamental right of the child: that of being considered a child, with real expectations and profound vulnerabilities, with immense potential and sensitivity, with insatiable thirst to love and to be loved. Thus the most perfect Charta of the Rights of the Child will not change the very nature of the child, which is to be a child, i.e., a human being who is in the process of becoming an adult, one who in order to grow needs the ongoing commitment of adults helping him day by day to build and shape his own life.<sup>30</sup>

## **THE RIGHTS OF THE CHILD: AN URGENTLY NEEDED REFORM OF THOUGHT**

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In order to maintain realism and vigilance, we urgently need to reform

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30 However, this has serious consequences which explains mainly why the US refused to ratify the *International Convention on the Rights of the Child*: the fear of a too exclusively autonomist vision of the child; an individualistic vision which would bestow quasi-absolute rights to the child, thus leading to or justifying conflicts of interests between parents and their children, or between the administration and parents regarding the children.

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29 J. FERRY, Circular letter from April 7, 1883.

our thinking so as to bring about the existential, ethical and civic consequences of a new culture of life. Therefore I would like to plead for a sacred territorial sanctuary for childhood, the only way I see to solve the following paradox: how does one build a safer future in a society that is more uncertain, more interested in immediate consumption than in future realizations? We should first inscribe a right in our hearts and spirits - the only right that is not explicitly taken into account in our declarations and conventions on the Rights of the Child: the right to be loved. Next, we need to give or recognize four treasures which are essential to children's development: 1) *the gift of time*, 2) *the thirst for peace*, 3) *the need to speak* and 4) *the vocation to joy*. Finally, we must *reaffirm the specific contributions and natural missions of the family* that no other society as such can fulfill.

## Right and Duty of Love

At a colloquium on the Rights of the Child organized in November 2000 at Nancy,<sup>31</sup> France, a poster made for it by children had a drawing whose inscription was "the Right to Love." No doubt one glance of love given to a child is worth more than all our declarations and conventions, above all if it is capable of inspiring them. "When your child grows up, consider him like a brother"

says an African proverb, evoking the real place of the child: to be my personal likeness. Thus every child deserves to be welcomed for what he is, with what he is and with what he is not - exactly as each one of us wants to be welcomed by those around us.

Isn't that the message conveyed by some young people at a child social service agency I visited recently in a text they gave me:

"Develop other virtualities, other potentialities,  
Have confidence, become aware,  
So as not to split yourself into pieces,  
Reason, master, get involved,  
Understand the meaning, enthrone coherence,  
Leave for elsewhere and become the actor of your destiny.  
In Summary,  
STOP FAILURE  
CREATE SUCCESS."

Or the message given to us regularly by hundreds of thousands of young during the World Youth Days witnessing to their thirst for hope, their desire for brotherhood and their need for love.

On the other hand, don't adolescents also tell us the same thing through the frightening statistics of their suicides, by their growing attraction for the adulterated ideals of sects, by their trivializing of the consumption of drugs and mind-altering substances? People often pretend dogmatically that young people have no values. I am not so sure. I would rather say that it is precisely be-

31 "Deuxièmes journées européennes du Droit" in Nancy on November 24-25, 2000.

cause children, adolescents, and youths have strong values which they do not find expressed in our hedonistic and individualistic society that they react here and there with violence and in ways sometimes incomprehensible to adults.

Who today would be able to stand up and say NO to everything that wounds, degrades, or kills the child? Who dares to remind people clearly and forcefully that taking care of children is listening to their need for meaning and communion? Acceding to that demand implies not only creating adequate procedures and institutions but also rejecting lukewarm compromises and uniting around the inseparable ideals of love and truth, justice and peace. It calls for the mobilization of men and women who from the dawn of society - from the newborn to the adolescent - at the borderline of family and social bonds will know how to welcome, question and accompany with an open spirit so as to listen to "the little things that are nearly nothing and yet not nothing, but which cause us problems if we don't take account of them."<sup>32</sup> To reform thought is to reconstruct everything in the service of all human beings, to build the civilization of love that Paul VI called for and to promote the Gospel of Life whose tireless and admirable prophet John Paul II made himself.

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32 V. JANKÉLÉVITCH, *Ouvrage collectif*, Flammarion – Sciences humaines, Paris 1978 ; quoted in B. IMBERT-VIER, *Une philosophie hérétique*, 25.

That affirmation, which in the eyes of some might seem very little, would gain by being considered as the first principle of our actions, thus reminding us of our duty to love out children. Love alone permits us to see the child underneath the traits of one reduced to being simply a case, who is provided for by the law: love allows one to see the child and not the trisomic, the child and not the delinquent or the illiterate, that allows us to give to all the children of the world the fundamental conditions to live a life leading to their well-being, especially in sharing with those who live in the shadow of poverty and the denial of their rights, resources, knowledge and competence. It is love alone that allows us to go beyond the "purely instrumental" conception of the child denounced by Tony Anatrella, a conception affirmed or re-affirmed by "a thought-process which refuses to question the value of current eugenic practices,"<sup>33</sup> which refuses to recognize the right to be born of our little ones.

That is why the dream of a perfect child, even though legitimate on the part of parents who want the best for their child is quite often perverse and always destined to deception and resentment. In reflecting about the rights of children, it is essential to see that the child doesn't have "the right" to be the

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33 T. ANATRELLA, *La différence interdite, Sexualité, éducation, violence, Trente ans après Mai 1968*, Flammarion, Paris 1998, 13.

best, but his parents have the duty and quite often the desire to give him the best of themselves. Or, in another sector, the child doesn't enjoy the "right to health," but has the right to fitting health care provided by his family and community. The programmed and selected child whose life is merely due to a continuing "parental project" is nothing more than the sad, mirrored symbol in which the adult sees himself but rejects the other's radical, always unexpected differences. But, whatever the child is "his life is priceless"<sup>34</sup> and society must give his parents the means to welcome him unconditionally, even in the most critical stages of his existence, such as during the period preceding his birth. Yet the maternal womb is no longer considered a sanctuary but more and more as a place where the pre-born child's life hangs in the balance of the good will of

his parents. The trouble-filled period of adolescence is another "challenge to unconditional love."<sup>35</sup>

If, in this spirit, we are accustomed to say that by their extraordinary capacity to conceive and give birth women bear in themselves the future of the world, it is correspondingly difficult not to recognize in turn the "right to be born"<sup>36</sup> of their little ones. This is not an uncertain and arbitrary concession accorded by human laws and customs, but the first of human rights and the first of the Rights of the Child as the Preamble of the ICRC states: "[...] *Bearing in mind* that, as indicated in the Declaration of the Rights of the Child, '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.'"

Anyone who, like me, has been struck by the witness to humanity and love of Mother Teresa of Calcutta must take seriously her prophetic declaration which is at the same time an encouragement and a warning: "Abortion is the greatest obstacle to peace in the world." If human beings are capable of destroying even their littlest and most

34 As José Davin, among other witnesses, affirms with force not only through his book, but also through his own life: the supreme value is not freedom, nor dignity or health (in terms of rights), but one's own good (in terms of relations): "The essential arises not primarily through one's capacities or deficiencies, but through their intimate greatness, namely that of being a human being, desiring love, ready to give and to receive. 'The essential is invisible for the eyes,' said Saint-Exupéry's little Prince 3000 years after the judge Samuel wrote in his first book: (16, 7): "God does not see as human beings see; they look at appearances but Yahweh looks at the heart" (J. DAVIN, "L'aire fe famille", in ID., *Sa vie n'a pas de prix. Accompagner une personne handicapée*, Éditions Saint Augustin, Saint Maurice, 2001.

35 According to the title of a well-known book by the doctor Ross Campbell which appeared in 1982 under the title *How to really love your teenager* and has been translated since then into 16 languages.

36 J. TOULAT, *Le droit de naître*, Pygmalion/Gérard Watelet, Paris 1979.

vulnerable fellow human beings is there anything they are not capable of doing? If they are allowed to do that, nothing can be forbidden to them.

Will we be able to listen to another prophet of our time, Alexander Solzhenitsyn: "The Western world has lost its civil courage [...]. Destructive and irresponsible freedom has been granted boundless space [...]. The West has lost the will to live [...]. If the world has not come to its end, it has approached a major turn in history [...]. It will exact from us a spiritual upsurge [...]. No one on earth has any other way left but upward".<sup>37</sup> Even Mikhail Gorbachev, who long exercised the power that persecuted Solzhenitsyn, was capable of saying to several thousand world politicians and statesmen gathered in Rome for the November 2000 Jubilee of world leaders: "The first of the rights of man is the right to life; when we have resolved that problem, we can solve all the others!"

Thus everyone calls us to our duty to love. Will we understand how to listen to them? Will we realize that love alone can save our children? Even one saved child, one who is protected and prospering is worth all our commitments, all our efforts, all the gold in the world. Isn't this a way of promoting the culture of life which John Paul II wants so much? Isn't this a way of taking seriously the

Gospel text "Everything you do to the least of these brothers of mine, you do to me." (Mt 25) To better welcome and love "the least of these" confided to us, we must give or re-give to children four treasures which characterize them and which lead truly to their "higher good": the gift of time, the thirst for peace, the need to speak and the call to joy.

### **Safeguarding time for children**

In our so-called "advanced" societies today, time has become a rare resource. So is it also for children at least for all those whose most precious time is endangered, that time that they should be able to share with those who naturally care for them: their parents, brothers and sisters, extended family and all those who take care of them. They need time to live, to build their own affective and mental life, time to play and to dream. That is what is needed when the child is torn between too many institutions or when the parents cannot consecrate all the time they would like to them. For such shared quality time is indispensable to their welfare, to their growth and their blossoming.

### **Safeguarding peace for children**

We also need to provide a haven of peace for children - one that they lose in the whirlwind of adult life, in the spectacle of wars and hatreds, in viewing television whose unending violence aggressively and directly wounds their growth, falsifies their image of the

<sup>37</sup> Harvard commencement address. Cf. A. SOLZHENITSYN, *Le déclin du courage*, Le Seuil, Paris 1978.

world and undermines their dreams of happiness. They lose their peace and sense of security when their parents are at war with each other. To exert all our energy in working for world peace but also to protect the family - that natural milieu of growth and well-being - will safeguard the peace and future prospects of our children.

### Listening to children

The child needs to express himself: the exercise of that capacity to express himself is indispensable to his personal development, his understanding of the world, and his entering society. Turning that need into a right is certainly necessary but should not be done in an absolutist way, i.e. in regarding the child's word as sacred. Article 12.1 of the ICRC states: "States Parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child."

Is not the infant in the etymological sense of the term (*in-fans*), "*the one who cannot speak*"? A child can be mistaken in his affirmations and choices; becoming aware of his own limits and mistakes teach him the very salutary "reality principle" that his desires do not necessarily become reality. But affirming a child's right to expression is also and perhaps above all a way of insisting on the symmetrical duty of parents and educa-

tors to listen respectfully. They need to elicit responses without projecting their own answers (the opposite of manipulation), reply truthfully to questions asked (though refusing demagoguery), welcome confidences with discretion (the condition for sustaining confidence), and also create a place for silence, for hesitation for the maturing of thought to take place. Those are the workplaces in which adults could facilitate the child's freedom of speech.

### Giving joy back to children

We must harness ourselves to the difficult but exalting task of restoring to the child what naturally characterizes him at his best: his innocence and joy, his completely new vision of the world and his capacity for enjoying its beauty. However, there is a subtle exploitation of children through advertisements or through fashion out of purely commercial interest, thereby making them the slaves of artificial desires. The exaggerated public evaluation of certain lifestyles lead to the abandonment of the real world, to flight from the rules of life in society, to mistrust of others and disgust with self. Can our western society hear the age-old cry persistently addressed to it by a large part of its children: "I live with a full heart in an empty world and without having used anything, am disabused of everything."<sup>38</sup> Since suicide is our children's perpetual disavowal, we

38 F.-R. CHATEAUBRIAND, *René*

must with all our strength imagine and support the collective projects that offer our children the best that life offers, proposing to them ideals without lies to which they can give the best of themselves. They have so much to offer us!

## Reaffirm the role of the family

As we have previously said, all these needs call for the re-affirmation of the role of the family and its specific contribution to both the child and society. Now as the apostolic exhortation *Familiaris consortio* underlines, “The historical situation in which the family lives therefore appears as an interplay of light and darkness”.<sup>39</sup> In fact, after the educational questions we have just addressed, seeing that the rules of family life are no longer codified, we have the right to ask ourselves today if the family, one of whose missions is to transmit the two heritages of a society - its biological heritage and its historic and cultural heritage - is capable of giving the elementary apprenticeships and of being a school of stimulating structural solidarity. In reality, the family today, having confided its mission to the “State Midwife” is no longer the socially privileged place for educational competence.

For this is a competence in seven major indispensable functions which contribute to the development and education of the child:

1) the *relationship of identity*: in a more and more anonymous society, identity is essential, for it allows the child to be named and inscribed in a genealogical line.

2) the *relationship of origin*: in a more and more depersonalized society, one which favors the individuation of rights, a child’s right to be born and to be is basic.

3) the *relationship of listening*: in a society which muddles or misconstrues it, listening is an inherent function which the family provides the child and, because of that, prepares the child for membership in society.

4) the *relationship to space and time*: in a society in which space is functional and time is more and more chopped up, the family offers the child a symbolic space and divides time by the events of his own life and rhythm on a generational or transgenerational level.

5) the *relationship of separation*: in a society of the identical and of confusion, the relation of separation allows the child through the father/mother relation not to enclose himself in an exclusively dual relationship especially with his or her mother. This indispensable function of “defusing” will later offer to the child a way of circumventing the power of the mother by pointing to another - the father - who symbolically indicates the meaning of limits.

6) the *relationship of brotherhood*: in a society of competence and competition, brotherhood in the family opens

<sup>39</sup> Apostolic Exhortation *Familiaris consortio*, 6.

its members up to compassion and service of the other.

7) the *relationship of fruitfulness*: in an individualistic and hedonistic society, the family's fruitfulness expresses the gift of love and shows the meaning of responsibility.

All these relations show us that the family is the unique institution in which each person weaves a symphony of interpersonal relations—conjugal, maternal, paternal, filial and fraternal—which introduces each of the members of the human family to the heart of sharing and the respect for others. These relations also show us that the familial dimension inscribes each one of us in a filial relationship: that of being the son or daughter of a father and a mother, the visible sign of the love of God “from whom every fatherhood, in heaven or on earth, takes its name.”<sup>40</sup> This shows how much the family needs to be supported and reinforced in this world of hatred and violence, for the family has the mission to reveal and to communicate love. It witnesses thus to the smallest among us, namely the child, that it is the living image of peace, gentleness, communication and respect. Therefore, society through the intermediary of national, local and international authorities has to offer families an adequate legal, material, economic and social environment that is also educational, emotional and effective.

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## CONCLUSION

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Today, all of society needs to renew itself in order to better welcome the child, not just materially, but also considering the whole of his needs and aspirations; not just by protecting him against the dangers surrounding him, but also by illuminating his future by a common ideal of justice and peace, by proposing him to strive for what is beautiful, good and true, by opening truly to him the doors of “a world fit for children,” according to the beautiful expression proposed by UNICEF for the next World Summit.

Let us rest assured that the attention we give to the smallest and most vulnerable will be given back to us hundredfold, for it will reveal in return that what is best in us, the immense capacity to be generous, patient, and inventive. It will renew our own hope and joy of life—often dulled by the vagaries and disappointments of adult life—by turning our gaze toward a future where “everything is always possible” according to the dream of every child and by carrying our attention towards the gratuity and savor of the present time.

So, in conclusion, how can we not quote these words of Pope John Paul II addressed to the General Assembly of the United Nations on October 2, 1979 that invite everyone to turn resolutely and with confidence towards the future: “I wish to express the joy that we all find in children, the springtime of life,

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<sup>40</sup> Eph 3:15.



the anticipation of the future history of each of our present earthly homelands. No country on earth, no political system can think of its own future otherwise than through the image of these new generations that will receive from their parents the manifold heritage of values, duties and aspirations of the nations to which they belong and of the whole human family. Concern for the child, even before birth, from the first moment of conception and then throughout the years of infancy and youth, is the primary and fundamental test of the relationship of one human being to another. And so, what better wish can I express for every nation and the whole of mankind, and for all the children of the world than a better future in which respect for human rights will become a complete reality...?"<sup>41</sup>

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41 JOHN PAUL II, Address to the General Assembly of the United Nations, 2 October 1979, n.21, in AAS 71 (1979), 1159. [http://www.saint-mike.org/Library/Papal\\_Library/John\\_PaulII/Addresses/UN1979.html](http://www.saint-mike.org/Library/Papal_Library/John_PaulII/Addresses/UN1979.html)



# Safe Motherhood

José-Román Flecha



*Pregnancy and childbirth have always posed risks for the mother. One should not imagine that such risks can disappear completely. Nonetheless, one observes that maternal mortality rates around the world are going down. The rates are calculated per 100,000 mothers and are frequently below 100 today. Safe Motherhood is therefore a goal towards which we must work thanks to better treatments and equipment adapted for and available to an ever larger number of mothers all over the world. To this one must add that motherhood should not involve risks for the mother or the child. This last added statement must be expanded upon. The concept of "Safe Motherhood" is actually loaded with unmentioned elements making it a dangerous expression. It can be used to describe a pregnancy where abortion is not legal. The idea would be that there is no Safe Motherhood without granting the mother the right to abort freely. In this vein, in order to incite the authorities to liberalize abortion, it happens that the whole of maternal mortality rates are suggested to result from illegal abortions performed in "unsafe conditions". They conclude that in order to reduce the risks inherent in motherhood it would be necessary to liberalize abortion. It is therefore important to restore to the expression "Safe Motherhood" its exact meaning. This must include all the medical care that the mother and her child, before and after birth, need. (↗ Dignity of the Human Embryo; the Right to Abortion; Medical Interruption of Pregnancy; Voluntary Interruption of Pregnancy; Legal Status of the Human Embryo; Pro-Choice)*

The expression, "Safe Motherhood", is being used in many circles to designate a set of health requirements for pregnant mothers. "Safe Motherhood" is usually defined by the same promoting agencies as "the ability of a woman to have a safe and healthy pregnancy and delivery."

They claim this goal is met by providing highly qualified maternal health services to women, such as:

- health care before, during and after the pregnancy from professional personnel.
- emergency health care in the case of obstetric complications that could endanger the life of the woman.
- services to prevent and treat the complications of an unsafe abortion.
- family planning that enables women to plan their pregnancies and avoid unwanted pregnancies.

- health education and services for adolescents.
- community education for women, their families and decision makers.

Since a woman's poor health is often connected to her low status in society, lack of education and state of poverty, efforts to reduce maternal mortality and physical problems must also address these social problems.

The "Safe Motherhood Initiative" is a global effort to attempt to reduce the mortality and illness of mothers and children, especially in developing countries. These goals are part of a wider agenda relating to human reproduction.

The initiative was launched at the 1987 Nairobi International Conference with the purpose of improving maternal health care and attempting to reduce by half maternal mortality by the year 2000. The initiative has the support of an association of agencies such as the United Nations Children's Fund (UNICEF), the United Nations Population Fund (UNFPA), the World Bank, the World Health Organization (WHO), the International Planned Parenthood Federation (IPPF) and the Population Council.

The initiative has several objectives: to raise public awareness, establish priorities, stimulate investigation, mobilize resources, obtain technical assistance, and share information regarding the goals of the project. Their collaboration and commitment have assisted several governmental and non-governmental

organizations in over one hundred countries to take steps towards achieving a greater level of safety for motherhood.<sup>1</sup>

In principle, the initiative deserves praise. Yet, already in exposing the motives of its objectives, one can observe allusions to practices that are ethically highly questionable. In fact, since the beginning of this initiative, the term "safe motherhood" has been used to justify surgical and chemical abortions, which to a greater or lesser degree are sometimes called therapeutic abortions.

Already at the International Conference on Population and Development held in Cairo, Egypt in 1994, several ambiguous terms were used, such as: "reproductive health", "sexual health", and "reproductive rights".

The same terminology was used in the Platform of Action presented the next year at the Fourth World Conference on Women held in Beijing, China in 1995. Among the "strategic objectives and measures", the topic of "women and health" was found in chapter IV, section C of the document. As is known, The Holy See wrote an objection to this section, which reads: "The Holy See reiterates that no one can consider abortion or related services as a dimension of reproductive health or as reproductive health services. The Holy See does not support any form of legislation that gives legal recognition to abortion."

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<sup>1</sup> This and much more information can be found on the Internet at <http://www.safemotherhood.org>

## 1. Family Planning

One of the means proposed by the Safe Motherhood Initiative to promote “Safe Motherhood” is a greater ability to control fertility and plan pregnancies.

Within this context, the informational media campaigns on fertility control deserve approval as long as they are accompanied by education regarding basic ethical criteria.

Of course, family planning should not include the possibility of coercive sterilization of men or women, the indiscriminate offering of contraceptive or abortifacient methods, or the practice of abortion.

The Safe Motherhood Initiative has placed a special emphasis on offering women sufficient information and means to avoid infection with HIV and AIDS.<sup>2</sup>

## 2. “Safe Motherhood” and Abortion

The Safe Motherhood Initiative programs take in consideration the grave problem of pregnancies terminated clandestinely and without minimal hygienic conditions. It is estimated that close to 20 million abortions are done in inadequate conditions, which are the cause of close to 80,000 maternal deaths and a large number of maternal morbidity cases.<sup>3</sup> To counteract this si-

tuation, an attempt is made to set up legal and sanitary structures that will assure a “safe and legal abortion”. It is understandable that there is concern for the deplorable situation in which abortions are practiced in certain countries, such that abortion frequently becomes dangerous to the woman.<sup>4</sup> The ethical alternative, however, cannot consist of doing abortion surgery under better health conditions.

## 3. Therapeutic Abortion

In some cases, the Safe Motherhood Initiative has taken on the task of creating public awareness in favor of so-called “therapeutic abortion”.<sup>5</sup> In many

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Conference on Reducing the Need and Improving the Quality of Abortion Services, Stimezo Nederland, Utrecht, Netherlands, 1997. More information and bibliography found at [http://222.safemotherhood.org/facts\\_and\\_figures](http://222.safemotherhood.org/facts_and_figures).

4 The Platform of Action at the Fourth World Conference on Women, celebrated in Beijing in 1995, offers this definition: “A dangerous abortion is defined as a procedure performed by persons who do not possess the necessary qualifications, or in an environment in without the minimum medical requirements, or both, with the purpose of putting an end to an unwanted pregnancy.” Such a definition is based on the publication of the World Health Organization titled *The Prevention and Management of Unsafe Abortion*; Report of a technical working group, Geneva, Switzerland, April 1992 (WHO/MSM 92.5).

5 Regarding the term “therapeutic abortion”, see the book published by the Committee on the Defense of Life by the Spanish Bishops Conference, titled: *El aborto, 100 cuestiones y*

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2 For more information, see <http://undp.org/popin/unpopcom/31stssess/concis/concis>

3 Proceedings: Abortion Matters, International

countries, the legal system decriminalizes these alleged kinds of abortions; that is, in those cases in which it is presumed that the pregnancy could place the life of the mother in danger, or even affect her physical or psychological health.

In the rare cases in which both the lives of the mother and unborn child are in danger, there is a choice for the life of the mother. But what is forgotten is that one life is being eliminated in favor of another life. The classic justifiable self-defense argumentation against an aggressor is not applicable here. It is more than that, in this case; it is discrimination between persons. One has a tendency to forget in these cases that such discrimination is prohibited by all medical and health codes.

Sometimes there is an attempt to establish a conflict between the life of the unborn child and the “physical or psychological” health of the mother. It is evident that there is an asymmetry between the values in conflict in this situation.

#### **4. “Safe Motherhood” and Eugenic Abortion**

Appealing to the ideal of “Safe Motherhood” is occasionally used to justify eugenic practices, when it is foreseen that the child could be born with certain physical or psychological handicaps. In

these cases, the desire to avoid this ‘risk’ appears to justify the elimination of this life that has already begun.

In reality, so-called “eugenic abortion” does not constitute a preventive measure but a direct killing. It does not avoid the risk of dangerous pregnancies, but rather ends a human life that is discriminated against because it does not possess certain qualities.

So-called “eugenic abortion” is contrary to the Declaration of the Rights of the Child, proclaimed by the United Nations General Assembly on 20 November 1959. In the third part of the preamble, this document states that “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”. As a consequence, even prior to birth, the child has human rights, and, first of all, the right to life.

In the fourth part of the Declaration, it states: “The child shall enjoy the benefits of social security. He shall be entitled to grow and develop in health; to this end, special care and protection shall be provided both to him and to his mother, including adequate pre-natal and post-natal care. The child shall have the right to adequate nutrition, housing, recreation and medical services” (Principle 4).

The State Supreme Court of New Jersey made a famous ruling in a 1967 lawsuit brought by a couple against a doctor who refused to perform an abor-

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respuestas sobre la defense de la vida humana y la actitud de los católicos, (*Abortion: 100 questions and answers on the defense of human life and the attitude of Catholics*) nn.41-47, Madrid, Spain, 1991.

tion on a mother who contracted German measles during her pregnancy and whose child was subsequently born with birth defects. It reads in part: "It may have been easier for the mother and less expensive for the father to have terminated the life of their child while he was an embryo, but these alleged detriments cannot stand against the preciousness of a single human life..."<sup>6</sup>

In addition, in the Convention on Human Rights and Biomedicine, discrimination is prohibited against persons on grounds of their genetic heritage. Evidently, the possibility of negative discrimination is not limited to the time after the birth, but also takes place during the prenatal period.<sup>7</sup>

## 5. Embryo Selection and Reduction

The modern techniques of assisted human reproduction have made it possible for many couples to overcome the problem of sterility and achieve their desire to have a child.

Nonetheless, a consequence of this goal, which in the abstract could be considered a notable technological advance, almost always entails circumstan-

ces that make it questionable or unacceptable from an ethical standpoint.

When fertilization takes place outside the womb, there appears to be a "need" to fertilize a number of eggs and thus to produce more embryos than the number of births that are desired.<sup>8</sup> In certain cases, a selection process of embryos takes place, having in mind particular characteristics that are desired to be present in the child.

Once the embryos are transferred to the uterus, it is possible that several of these embryos will implant in the uterine wall. In this case, the desire of the parents, the decision to minimize pregnancy risks, and other indications, are the reasons given to sometimes go forward with the "reduction" of embryos already transferred or implanted.

## 6. Prenatal Diagnosis

The viewpoint of the Safe Motherhood Initiative would appear to justify prenatal diagnosis in a timely and adequate manner.

"If prenatal diagnosis respects the life and integrity of the embryo and the human fetus and is directed towards its safeguarding or healing as an individual, then the answer is affirmative. ... Such diagnosis is permissible, with the consent of the parents after they have been adequately informed, if the methods employed safeguard the life

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6 *Gleitman vs Cosgrove*, 1967, New Jersey Supreme Court cited in <http://www.michbar.org/opinions/appeals/1999/062599/4486.html>

7 Council of Europe, *Convention for the Protection of Human Rights and Dignity of the Human Being with regard to the Application of Biology and Medicine: Convention on Human Rights and Biomedicine*, Article 11.

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8 cf. D. Vaccaro, *Procreazione assistita*, S.Leone – S.Privitera (eds.), *Dizionario di Bioetica*, Acireale-Bologna, 1994, 755

and integrity of the embryo and the mother, without subjecting them to disproportionate risks. (27) But this diagnosis is gravely opposed to the moral law when it is done with the thought of possibly inducing an abortion depending upon the results: a diagnosis which shows the existence of a malformation or a hereditary illness must not be the equivalent of a death-sentence. Thus a woman would be committing a gravely illicit act if she were to request such a diagnosis with the deliberate intention of having an abortion should the results confirm the existence of a malformation or abnormality. The spouse or relatives or anyone else would similarly be acting in a manner contrary to the moral law if they were to counsel or impose such a diagnostic procedure on the expectant mother with the same intention of possibly proceeding to an abortion. So too the specialist would be guilty of illicit collaboration if, in conducting the diagnosis and in communicating its results, he were deliberately to contribute to establishing or favoring a link between prenatal diagnosis and abortion. In conclusion, any directive or program of the civil and health authorities or of scientific organizations which in any way were to favor a link between prenatal diagnosis and abortion, or which were to go as far as directly to induce expectant mothers to submit to prenatal diagnosis planned for the purpose of eliminating fetuses which are affected by malformations or which are carriers of

hereditary illness, is to be condemned as a violation of the unborn child's right to life and as an abuse of the prior rights and duties of the spouses."<sup>9</sup>

## 7. Conclusion

To conclude, let us remember again that the United Nations held the Fourth World Conference on Women in Beijing, China from 4-15 September 1995.

This conference was well received by Pope John Paul II, in the letter which he addressed to women around the world.

In the message which the Pope gave to Gertrudis Mongella, the secretary general of the conference, there were some fundamental points from the teaching of the Church on the topic.

The Pope reminded that there can be no legitimate defense of women which overlooks her role in the family or which ignores the fact that all new life is carried in her womb and is totally entrusted to her protection and care. He clearly denounced any idea which implies that the role of mothers is oppressive for women, or that a woman's commitment to her family and children impedes her personal self-realization or capacity to influence society.

Within this context, it is seen that "a radical solidarity with women requires that the causes that lead women not to want children must be confronted."

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<sup>9</sup> *Donum vitae*, I, 2.



The message concludes by wishing that the Beijing conference avoid the stumbling blocks of exaggerated individualism, moral relativism, and social and cultural conditioning that do not permit women to become aware of their own dignity.

During the same Beijing conference, Mary Ann Glendon, the head of the Holy See's delegation, tried to explain the doctrine of the Church regarding responsible procreation so as to address and correct objections and misunderstandings. She asked that couples be given clear information on all possible health risks regarding family planning methods, especially those that are still at an experimental stage.

Regarding abortion, while reminding everyone that there is an international consensus that abortion should not be promoted as a method of family planning, she affirmed the necessity of finding a better alternative that does not involve the destruction of the unborn child.

As a consequence, one could then say that the term "Safe Motherhood" can be properly understood. Nevertheless, there are times when it is used in a sense where the health of the pregnant mother could be used to justify immoral and even abortive practices.



# Safe Sex

Jacques Suaudeau



*The Media hype concerning safe sex or “sex without risk” conceals some recognized scientific evidence. In the best of hypotheses the reliability of the condom is so low that the risk of contamination is estimated by some authors to be around 10 %. This is even acknowledged by journals which regularly publish tests comparing the resistance, the impermeability and the reliability of condoms. Behind the promotion of condoms which further a false sense of “sexual security” they are supposed to offer, financial interests are concealed. Encouraging hetero- and homosexual use of the condom, because of its high failure rate, increases in reality the probability of an infection. There remains, however, the well-known position of the Church contradicting this trend for moral reasons. (↗ Sexual and Reproductive Rights; Sex Education; Sexual Identity and Difference; New Paradigm of Health Care; Homosexuality and Homophobia; Reproductive Health)*

HIV or the infection by the virus of human immunodeficiency which is responsible for the acquired immunodeficiency syndrome or “AIDS” has challenged modern medicine, health and public hygiene services, and international organizations since 1981. No truly curative vaccination or therapy has been found until now. To prevent the transmission of HIV and most particularly its sexual transmission is therefore essential.

Twenty years ago a term was created in California and New York – the hotbed of HIV/AIDS – to designate the best method against contamination by HIV during sexual activity:

namely “safe sex”.<sup>1</sup> It later was called

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1 R. Stall, L. McKusick, J. Wiley, T.J. Coates, D.G. Ostrow, Alcohol and drug use during sexual activity and compliance with safe sex guidelines for AIDS: the AIDS Behavioral Research Project, Health Education Quarterly, Winter 1986, vol. 13, n°4, pp. 359-371; J.J. Goedert, What is Safe Sex? Suggested Standards Linked to Testing for Human Immunodeficiency Virus, The New England Journal of Medicine, May 21 1987, vol. 316, n°21, pp. 1339-1342; S. Kippax, J. Crawford, M. Davis, P. Rodden, G. Dowsett, Sustaining safe sex: a longitudinal study of a sample of homosexual men, AIDS, February 1993, vol.7, n°2, pp. 257-263; Safe sex triumphs, New Scientist, 27 June 1998, vol.158, n°2140, p.23; A. Troth, C.C. Peterson, Factors predicting safe-sex talk and condom use in early sexual relationships, Health Communication, 2000, vol. 12, n°2, pp. 195-218; A. Mitchell, A. Smith, Safe sex messages for adolescents. Do they work?,

more modestly “*safer sex*”<sup>2</sup>. This expres-

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Australian Family Physician, January 2000, vol. 29, n°1, pp. 31-34; M. Berer, Safe sex, women's reproductive rights and the need for a feminist movement in the 21<sup>st</sup> century, *Reproductive Health Matters*, May 2000, vol. 8, n°15, pp. 7-11; C. White, Government announces “safe sex” campaign for England, *British Medical Journal*, 4 August 2001, vol. 323, n°3707, p. 250; J. Stephenson, Evaluating Safe Sex Efforts, *JAMA*, July 11 2001, vol. 286, n°2, p. 159.

2 M.L. Ekstrand, Safer sex maintenance among gay men: are we making progress?, *AIDS*, August 1992, vol. 6, n°8, pp. 875-877; A.A. Ehrhardt, Trends in Sexual Behavior and the HIV Pandemic, *American Journal of Public Health*, November 1992, vol. 82, n°11, pp. 1459-1461, see p. 1460; S. Katz Miller, How to sell safer sex, *New Scientist*, 27 February 1993, vol. 137, n°1862, pp. 12-13; A. Messiah, D. Bucquet, J.-F. Mettetal, B. Larroque, Chr. Rouzioux, and the Alain Brugeat physician group, Factors Correlated With Homosexually Acquired Human Immunodeficiency Virus Infection in the Era of “Safer Sex”. Was the Prevention Message Clear and Well Understood?, *Sexually Transmitted diseases*, January/February 1993, vol. 20, n°1, pp. 51-59; P. Aggleton, K. O'Reilly, G. Slutkin, P. Davies, Risking Everything? Risk Behavior, Behavior Change, and AIDS, *Science*, 15 July 1994, vol. 265, n° 5170, pp. 341-345, see p. 344; M. Larkin, Easing the way to safer sex, *The Lancet*, March 28 1998, vol. 351, n°9107, p. 964; J.B. Jemmott III, L.S. Jemmott, G.T. Fong, Abstinence and Safer Sex HIV Risk-Reduction Interventions for African American Adolescents. A Randomized Controlled Trial, *JAMA*, May 20 1998, vol. 279, n°19, pp. 1529-1536; K.L. Parish, D. Cotton, H.C. Huszti, J.T. Parsons, Hemophilia Behavioral Intervention Study Group, Safer sex decisions-making among men with haemophilia and their female partners, *Haemophilia*, January 2001, vol. 7, n°1, pp. 72-81; L.A. Shrier, R. Ancheta, E. Goodman, V.M.

sion refers to all precautionary measures taken to diminish the risk of transmitting or acquiring a sexually transmitted disease (such as HIV/AIDS) in the course of sexual activity<sup>3</sup>. “Safer sex” therefore demands prudence in the choice of one's partners and in the frequency of sexual activity, as well as the constant use of the condom.

The latter presupposes high confidence in the efficacy of the condom. The manner in which militant activists, public authorities, the media and publicity have presented the condom and still do, seems to indicate that it is almost completely fool-proof. The “protection” of the obelisk of the Place de la Concorde in Paris by a condom in the presence of “all” of Paris as the culminating point of a fervent campaign in favor of the condom in 1994 has, as D. Folscheid says “heightened its image” to a “mystical” level<sup>4</sup>. “To dare to ask the least question, to raise the smallest objection, meant that one had an impious soul and the putrid mouth of the iconoclast,” explains Folscheid.

The massive, undisputed and undisputable promotion of the condom relies on one argument: namely that this

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Chiou, M.R. Lyden, Randomized Controlled Trial of as Safer Sex Intervention for High-risk Adolescent Medicine, January 2001, vol. 155, n° 1, pp. 73-79.

3 MEDLINE plus Health Information, MEDLINE Medical Encyclopedia, Safer sex behaviors.

4 D. Folscheid, Billet d'humeur. Faut-il se préserver de la condomania?, *Ethique, La Vie en Question*

latex shell is at present the only means available to health services to prevent the sexual transmission of the AIDS virus and its diffusion. However, since the beginning of the AIDS/HIV epidemic and until today numerous authors have often stressed the fact that—as statistics show - this device is far from deserving this confidence.<sup>5</sup> Considering that the “safe sex” policy has not caught up with the epidemic in countries where it has been promoted for 20 years and that it is proposed to countries where the epi-

demic is in full expansion, it seems justified to adopt a critical approach regarding its value for HIV prevention.

In view of this we will first examine the physical and mechanical qualities of the condom such as they appear in the laboratory and in practice. Then we will look at the results of employing the condom as contraceptive barrier or as prophylactic. We will end by examining the performance of the condom in preventing sexual contamination by HIV.

## **I THE PHYSICAL AND MECHANICAL QUALITIES OF CONDOMS**

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For a long time condoms have been suspected of having a certain percentage of micro-defects which would explain their failures in the area of contraception. One then tried to verify this hypothesis through studies using an electron microscope as well as through passage tests of micro particles.

### 1. Electron Microscope Studies

The few studies of latex membranes using the electron microscope that have been published raise some questions. The suspicion that certain pores may subsist in the membranes after an imperfect coalescence of the latex particles during vulcanization has been reinforced by observations made on chirurgial latex gloves by S.G. Arnold and associates (1988)<sup>6</sup>. These authors found that

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5 B. Voeller, M.Potts, letter, British Medical Journal, 26 October 1985, vol. 291, n°6503, p. 1196; J.A. Kelly, J.S. StLawrence, Cautions about condoms in prevention of AIDS, The Lancet, February 7 1987, vol. 1, n°8258, p. 323; P.S. Gøtzsche, M. Hørding, Condoms to Prevent HIV Transmission Do Not Imply Truly Safe Sex, Scandinavian Journal of Infectious Diseases, 1988, vol. 20, n°2, pp. 233-234; R. Kirkman, Condom use and failure, The Lancet, Saturday 20 October 1990, vol. 336, n°8721, p. 1009; J.T. Vessey, D.B. Larson, J.S. Lyons, J.L. Rogers, K.I. Howard, Condom Safety and HIV, Sexually Transmitted Diseases, January-February 1994, vol. 21, n°1, pp. 59-60; H. Lestradet, Réflexions sur le SIDA et sa prevention, Médecine de l'homme, Mai-Août 1994. n°211/212, pp.3-6; S.H. Vermund, Editorial: Casual sex and HIV Transmission, American Journal of Public Health, November 1995, vol. 85, n°11, pp. 1488-1489; R. Küss, H. Lestradet, SIDA: communication, information et prevention, in “Le SIDA, propagation et prevention, Rapports de la commission VII de l'Académie Nationale de Médecine”, Editions de Paris, 1996, pp. 12-55; J. Kelly, Using condoms to prevent transmission of HIV. Condoms have an appreciable failure rate, British Medical Journal, 8 June 1996, vol. 312, n°7044, p. 1478.

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6 S.G. Arnold, J.E. Whitman Jr., C.H. Fox, M.H. Cottler-Fox, Latex gloves not enough

all examined gloves originating from four different manufacturers presented hollow parts of 3-15µm in width and of up to 30 µm in depth; this was the case along the exterior and internal surface of the glove. The test made on the edge of these membranes (broken by freezing) showed the presence of cavities and winding fissures (5µm) covering the entire thickness of the glove.

Irregularities of such importance concerning the surface and thickness of the latex membrane have not been signaled in the few available studies on condoms. These studies simply show that the surface of the condom's membranes is not uniform: one finds areas with a soft profile separated by folded areas; furthermore the surface of the specimen seems dotted with hollow parts<sup>7</sup>. Other studies mention a general irregularity of the surface of the membrane, with irregular cauliflower-like projections, and dense and irregular inclusions, yet without any evidence of rupture or of holes.<sup>8</sup> Rosenzweig and

associates (1997)<sup>9</sup> examined thirty samples of membranes coming from fifteen Trojan condoms, none of which were lubricated. They found in fact that a great proportion of these samples presented visible anomalies on the surface, and that only 30% of the condoms tested were absolutely faultless. 50% of the samples showed anomalies on the surface of the membrane, fissures (10%), pleating (37%), as well as pleating and hollowness (38%).

## 2. In Vitro Studies concerning Resistance and Permeability

The integrity of latex condoms is tested by means of a leak test. But the accuracy of this test is not very high. It detects holes of a diameter of 20 microns<sup>10</sup>. However, for the HIV virus any hole bigger than 0,10µ would have to be considered a possible cause for leakage and the passage of the virus. The limited accuracy of this test means that the defects in the condom's membranes are significant.

In 1977 Dr. Barlow<sup>11</sup> had made the hypothesis that some "pores" exist in latex membrane condoms which explains

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to exclude viruses, *Nature*, 1 September 1988, vol.335, n°6185, p.19.

7 G.D. Jay, F. Drummond, B.Lane, Altered Surface Character of Stretched Condom Latex, *Contraception*, February 1992, vol.45, n°2, pp.105-110.

8 L.S. Kish, J.T. McMahon, W.F. Bergfeld, J.M. Pelachyk, An ancient method and a modern scourge: the condom as a barrier against herpes, *Journal of the American Academy of Dermatology*, November 1983, vol.9, n.5, pp.769-770.

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9 B.A. Rozenzweig, A. Even, L.E. Budnick, Observations of Scanning Electron Microscopy Detected Abnormalities of Non-lubricated Latex Condoms, *Contraception*, January 1996, vol. 53, n.1, pp.49-53.

10 R.F. Carey, D. Lytle, W.H. Cyr, Implications of Laboratory Tests of Condom Integrity, *Sexually Transmitted Diseases*, April 1999, vol. 26, pp. 216-220.

11 D. Barlow, The Condom and Gonorrhea, *The Lancet*, October 15 1977, vol.II, n.8042, pp.812-812, seep.812.

why they apparently do not protect against non-gonococcal urethritis and genital *condylomata acuminata* infections. This hypothesis was highly disputed. Different *in vitro* laboratory studies contradicted it by showing that the latex membranes efficiently stopped the agents of sexually transmitted diseases (STD)<sup>12</sup> such as: *Neisseria gonorrhoea*, simplex herpes type 2 virus<sup>13</sup>, cytomegalovirus<sup>14</sup>, Hepatitis B virus<sup>15</sup>, *Chlamy-*

*dia trachomatis*<sup>16</sup>, and retroviruses such as HIV and HIV itself<sup>17</sup>.

However, these reassuring results have been questioned: for just a few studies were done, these were limited to a few tests and performed without submitting the membrane to pressure or traction. For S.C. Weller<sup>18</sup> they are not statistically significant. More recent studies made with microspheres have, in effect, put in doubt the vali-

12 Center for Disease Control, Center for Infectious Diseases, Condoms for Prevention of Sexually Transmitted Diseases, JAMA, April 1 1988, vol.259, n.13, pp.1925-1927; F.N. Judson, J.M.Ehret, G.F. Bodin, M.J. Levin, C.A. Rietmeijer, In Vitro Evaluations of Condoms with and without Nonoxynol 9 as Physical and Chemical Barriers Against Chlamydia Trachomatis, Herpes Simplex virus type 2, and Human Immunodeficiency Virus, Sexually Transmitted Diseases, April-June 1989, vol. 16, n.2, pp.51-56; L. Smith Jr., J. Oleske, R. Cooper, et al., Efficacy of Condoms as barriers to HSV-2 and gonorrhea; an in vitro model (Abstract 77), In Program and Abstracts of the first Sexually Transmitted Diseases World Congress, San Juan, Puerto Rico, November 15-21 1981.

13 M.A. Conant, D.W. Spicer, C.D. Smith, Herpes Simplex Virus Transmission: Condom Studies, Sexually Transmitted Diseases, April-June 1984, vol. 11, n.2, pp.94-95.

14 S. Katznelson, W. Lawrence Drew, L.Mintz, Efficacy of the Condom as a Barrier to the Transmission of Cytomegalovirus, The Journal of Infectious Diseases, July 1994, vol. 150, n.1, pp.155-157.

15 G.Y. Minuk, C.E. Bohme, T.J. Bowen, Condoms and Hepatitis B Virus Infection, Annals of Internal Medicine, April 1986, vol. 104, n.4, p.584; G.Y. Minuk, C.E. Bohme, T.J. Bowen, D.I. Hoar, S.Cassol, M.J. Gill,

H. de C. Clarke, Efficacy of Commercial Condoms in the Prevention of Hepatitis B Virus Infection, Gastroenterology, October 1987, vol. 93, n.4, pp.710-714.

16 F.N. Judson, G.F. Bodin, M.J. Levin, J.M. Ehret, H.B. Masters, In Vitro tests demonstrate condoms provide an effective barrier against Chlamydia trachomatis and herpes simplex virus (Abstract 176) In: Program and abstracts of the fifth international meeting of the International Society for STD Research, Seattle, Washington, August 1-3 1983; F.M. Judson, J.M. Ehret, G.F. Bodin, M.J. Levin, C.A. Rietmeijer, In vitro evaluations of condoms with and without Nonxynol 9 as physical and chemical barriers against Chlamydia Trachomatis, Herpes Simplex virus type 2, and Human Immunodeficiency Virus, op. cit.

17 M. Conant, D. Hardy, J. Sernatinger, D. Spicer, J.A. Levy, Condoms Prevent Transmission of AIDS-Associated Retrovirus, JAMA, April 4 1986, vol.255, n.13, p.1706; C.A.M. Rietmeijer, J.W. Krebs, P.M. Feorino, F.N. Judson, Condoms as Physical Chemical Barrier Against Human Immunodeficiency Virus, JAMA, March 25 1988. vol.259, n.12, pp.1851-1853.

18 S.C. Keller, A meta-analysis of condom effectiveness in reducing sexually transmitted HIV. Social Science Medicine, June 1993, vol.36, n.12, pp.1635-1644, see p.1635.

dity of these *in vitro* tests. During the *Vth International Conference on AIDS* in Montreal it was first reported that well tested condoms, issued by known manufacturers, had been permeable to microspheres of bigger size than that of HIV (6 condoms out of 69)(1989)<sup>19</sup>. Carey and associates (1992)<sup>20</sup> observed the passage of polystyrene microspheres of 110nm in diameter (therefore similar to the size of HIV which is between 90nm and 130nm) through 33% of the analyzed latex condom membranes (29 out of 80 latex non lubricated condoms). More recently, C.D. Lytle and associates (1997)<sup>21</sup> found that 2.6% (12 out of 470) of latex condoms they used permitted the passage of a virus, whether they were lubricated or non lubricated condoms.

In consequence these results allow for some doubts concerning the capacity of condoms to stop HIV for certain. HIV measures between 90 to 120 nm,

approximately 0,1 micron<sup>22</sup>. It is 60 times smaller than the syphilis bacteria, and 450 times smaller than spermatozoa. If microspheres of a 120nm diameter can pass through the membranes of some latex condoms which had, however, been found sufficient in the leak tests, it would therefore not be surprising for HIV to pass through these same membranes during mechanical distension—even if there is no actual “hole” in the membrane.

### 3. The Degradation of Latex

Another reason for the failure of condoms is due to the degradation of the latex, leading to leaks or ruptures of the membrane. In fact latex deteriorates with time, loses its flexibility and becomes more fragile. This deterioration is accelerated through exposition to the sun, to heat and humidity (M.J. Free and associates, 1986; M.F. Goldsmith, 1987; M. Steiner and associates, 1992; J. Kettering, 1993; M.J. Free and associates, 1996).<sup>23</sup> Less known perhaps

19 B.A. Hermann, S.M. Retta, I.E. Rinaldi, A simulated physiologic test of latex condoms, Vth Internat. Conf. on AIDS, 1989, Abstracts WAP 101.

20 R.F. Carey, W.A. Herman, S.M. Retta, J.E. Rinaldi, B.A. Herman, T.W. Athey, Effectiveness of Latex Condoms as Barrier to Human Immunodeficiency Virus-sized Particles Under Conditions of Simulated Use, Sexually Transmitted Diseases, July-August 1992, vol.19, pp.230-234.

21 C.D. Lytle, L.B. Rouston, G.B. Seaborn, L.G. Dixon, H.F. Bushar, W.H. Cyr, An in vitro Evaluation of Condoms as Barriers to Small Virus, Sexually Transmitted Diseases, March 1997, vol 24, n.3, pp.161-164.

22 R.C. Gallo, S.Z. Salahuddin, M. Popovic, G.M. Shearer, M. Kaplan, B.F. Haynes, Th.J. Palker, R. Redfield, J. Oleske, B. Safai, G. White, P. Foster, Ph.D. Markham, Frequent Detection and Isolation of Cytopathic Retroviruses (HTLV-III) from Patients with AIDS and at Risk for AIDS, Science, 4 May 1984, vol.224, n°4648, pp.500-503, see p. 502; J.P. Cassuto, A. Pesce, J.F. Quaranta, “AIDS and HIV Infection”, Masson, 2<sup>e</sup>ed., Paris, 1992, p.27.

23 M.J. Free, J. Hutchings, S. Lubis, An assessment of burst strength distribution data from monitoring quality of condom stocks in developing countries, Contraception, March



is its degradation due to atmospheric ozone: the prolonged exposition of latex condoms to partial ozone pressure identical to the one found in fog brings up in electronic microscopy the apparition of images reminiscent of the "holes" described elsewhere on latex gloves and "natural" membrane condoms (R.F. Baker and associates, 1988; L.J. Clark and associates, 1989)<sup>24</sup>.

4. *The Possibility of Rupture and Slip-page In Vivo* (Table 1)

Most of the condom's failures are due to its breaking or slipping off during use. Different studies have found

that the rate of ruptures is between 1% and 13%, with an average of 5%.<sup>25</sup>

1986, vol.33, n°3, pp.285-299; M.F. Goldsmith, Some Advice on Using Condoms Against STDs: What Every Man (and Woman) Should Know, JAMA, May 1 1987, vol. 257, n°17, p.2266; M. Steiner, R. Foldes, D.Cole, E. Carter, Study to determine the correlation between condom breakage in human use and laboratory test results, Contraception, September 1992, vol.46, n°3, pp.279-288; J. Kettering, Efficacy of thermoplastic elastomer and latex condoms as viral barriers, Contraception, June 1993, vol.47, n°6, pp. 559-567; M.J. Free, V. Srisamang, J. Vail, D. Mercer, R. Kotz, D.E. Marlowe, Latex Rubber Condoms: Predicting and Extending Shelf Life, Contraception, April 1996, vol.53, n°4, pp.221-229.

24 R.F. Baker, R.P. Sherwin, G.S. Bernstein, R.M. Nakamura, Precautions When Lightning Strikes During the Monsoon: The Effect of Ozone on Condoms, Journal of American Medical Association, September 9 1988, vol.260, n°10, pp.1404-1405; L.J. Clark, R.P. Sherwin, R.F. Baker, Latex condom deterioration accelerated by environmental factors: I Ozone, Contraception, March 1989, vol.39, n°3, pp.245-251.

25 P.C. Gøtzche, M. Hørding, Condoms to Prevent HIV Transmission Do Not Imply Truly Safe Sex. Scandinavian Journal of Infectious Diseases, 1988, vol.20, n°2, pp.233-234; C. Sonnex, G.J. Hart, P. Williams, M.W. Adler, Condom use by heterosexuals attending a department of GUM: attitudes and behaviors in the light of HIV infection, Genitourinary Medicine, August 1989, vol.65, n°4, p.248-251; T. Karlsmark, E. Segest, J. Grinstead, H. Bay, AIDS prevention: free condoms from an STD clinic in Copenhagen, Letter, Genitourinary Medicine, June 1989, vol.65, n°3, p.196; G. Ahmed, E.C. Liner, N.E. Williamson, W.P. Shellstade, Characteristics of condom use and associated problems: experience in Bangladesh, Contraception, November 1990, vol.42, n°5, pp.523-533; P. Russel-Brown, C. Piedrahita, R. Foldes, M. Steiner, J. Townsend, Comparison of condom breakage during human use with performance in laboratory testing, Contraception, May 1992, vol.45, n°5, pp.429-437; E.A. Wright, M.M. Kapu, I. Wada, Use of condoms as contraceptive and diseases preventive measures among residents of Jos, Northern Nigeria, Contraception, December 1990, vol.42, n°6, pp.621-627; C. Lindan, S. Kegeles, N. Hearst, P. Grant, D. Johnson, G. Bolan, G.W. Rutherford, California Dept. of Health Svcs, Div. of Sexually Transmitted Diseases and HIV prevention, CDC, Heterosexual Behaviors and Factors that Influence Condom Use Among Patients Attending a Sexually Transmitted Disease Clinic – San Francisco, Center for Disease Control, Morbidity and Mortality Weekly Report, October 5 1990, vol.39, n°39, pp.685-689; R. Kirkman, Condom use and failure, The Lancet, 20 October 1990, vol.336, n°8721, p.1009; A.E. Albert, R.A. Hatcher, W. Graves, Condom use and breakage among women in a municipal hospital family planning clinic, Contraception, February 1991, vol.43, n°2, pp.167-176;

TABLE I: INCIDENCE OF RUPTURE AND SLIPPAGE OF CONDOMS IN THE GENERAL POPULACE

	Rupture		Slippage		Type of Sexual Relationship	Type and Number of Subjects	Place of Study
	rate †	%users*	rate †	%users*			
P.C. Gatzsche et al. (1988)	5%	-	-	-	Vaginal	46 persons (30 prostitutes)	Rigshospitalet, Copenhagen, Denmark
C. Sonnex et al. (1989)	-	40%	-	-	Heterosex	222 men and women	Genitourinary Medicine, London
T. Karlsmark et al. (1989)	-	75%	-	-	Heterosex	47 men and women	Rigshospitalet, Copenhagen
G. Ahmad et al. (1990)	3.1% 5.1%	30%w 43%w	-	-	-	4915 men and women	Bangladesh
Russell-Brown et al. (1992)	12.9%	74%	-	-	-	50 men	Pop. Council, Barbados
Russell-Brown et al. (1992)	10.1%	44%	-	-	-	50 men	Pop. Council, Santa Lucia
Russell-Brown et al. (1992)	6.7%	35%				50 men	Pop. Council North Carolina
E. A. Wright et al. (1990)	11.9%	-	10.7%	-	-	168 men	Family Planning Clinic, Jos, Nigeria
C. Lindan et al. (1990)	4.2%-4.3%	27%w 31%w	-	-	vaginal or anal intercourse	162 men 179 women	STD Clinic, San Francisco
R. Kirkman (1990)	-	52%	-	52	-	-	Family Planning Clinic, Manchester, U.K.
A.E. Albert (1991)	1%	36%	-	-	Heterosexual	106 women	Family Planning Clinic, Atlanta, USA
C. Chan Chee et al. (1991)	4.5%	¼	-	-	Homobisexual	46 men	EuroHIV, Paris
	1.5%				Heterosexual	145m, 63w	
	0.6%				-	7 prostitutes	
J. Trussell et al. (1992)	7.9%	-	7.2%	-	-	405 condoms	Office of Pop. Res. Princeton Univ.
M. Steiner et al. (1992)	3.5%					262 voluntary participants	Family Health International, US
H.S. Weinstock et al (1993)	4.2%-4.3%	29%	-	-	vaginal and anal	136 men 164 women	STD Clinic, San Francisco, USA
S. Tovey ? et al. (199?)	-	22%	-	48	-	281 men	Genitourinary Medicine, South London
J. Richters et al. (1993)	7.3%	-	4.4%	-	-	544 men	Consult. MST, Sydney, Australia
M.J. Sparrow et al.	5.6%	40.2	6.5%	40.2%	-	540 consultants	Family Planning Clinic, New Zealand
M. Gabbey et al. (1996)	-	66%	-	66	-	481 students 64% w	Manchester Health Centre, U.K.

†Rate: rate of condom ruptures per sexual relations (number of condoms broken per 100 relations)

\* % users: percentage of users having noticed at least one condom breakage during the time of the study

The risk of rupture or slippage diminishes with practice (couples using the condom as a contraceptive during long periods: 1,46% for Trussell and associates, 1992, 1,04% for Rosenberg and associates, 1977),<sup>26</sup> or

professional practice (prostitution: 0,5% for Richters and associates in Australia, 1988; 0% for A.E. Albert and associates in Nevada, 1995; 0,5% for C.Chang-Chee and associates in Paris, 1991<sup>27</sup>).

The risk of rupturing the condom appears to be particularly high in homosexual relations. A. Messiah and associates (1993)<sup>28</sup> have observed that the rate of condom rupture in this group goes from 4.5% to 7.3% and even as high as 22%. The failure rate of the condom during homosexual activity is on average 5% (0% to 22%)

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Chr. Chan-Chee, I. De Vincenzi, M-A Sole-Pla, R. Ancelle-Park, J.-B. Brunet, Use and misuse of condoms, *Genitourinary Medicine*, April 1991, vol.67, n°2, p.173; J. Trussell, D.L. Warner, R.A. Hatcher, Condom slippage and breakage rates, *Family Planning Perspectives*, January-February 1992, vol.24, n°1, pp.20-23; M. Steiner, R. Foldes, D. Cole, E. Carter, Study to determine the correlation between condom breakage in human use and laboratory test results, *Contraception*, September 1992, vol.46, n°3, pp.279-288; H.S. Weinstock, Chr. Lindan, G. Bolan, S.M. Kegeles, N. Hearst, Factors Associated with Condom Use in a High-Risk Heterosexual Population, *Sexually Transmitted Diseases*, January-February 1993, vol.20, n°1, pp.14-20; S.J. Tovey, Chr. P. Bonell, Condoms: a wider range needed, *British Medical Journal*, 16 October 1993, vol.307, n°6910, p.987; J. Richters, B. Donovan, J. Gero, How often do condoms break or slip off in use?, *International Journal of STD and AIDS*, March-April 1993, vol.4, n°2, pp. 90-94 ; M.J. Sparrow, K. Lavill, Breakage and slippage of condoms in family planning clients, *Contraception*, August 1994, vol. 50, n°2, pp. 117-129; M. Gabbay, A. Gibbs, Does Additional Lubrication Reduce Condom Failure?, *Contraception*, vol. 53, n°3, March 1996, pp. 155-158.

26 J. Trussell, D.L. Warner, R. Hatcher, Condom performance during vaginal intercourse: Comparison of Trojan-Enz® and Tactylon® condoms, *Contraception*, January 1992, vol. 45, n°1, pp. 11-19; J. Trussell, D.L. Warner, R.A. Hatcher, Condom slippage and breakage rates, *Family Planning Perspectives*, January/February 1992, vol. 24,

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n°1, pp. 20-23; M.J. Rosenberg, M.S. Waugh, Latex Condom Breakage and Slippage in a Controlled Clinical Trial, *Contraception*, July 1997, vol.56, n°1, pp. 17-21.

27 J. Richters, B. Donovan, J. Gero, L. Watson, Low Condom Breakage Rate in Commercial Sex, *The Lancet*, December 24/31 1988, vol. II, n°8626-8627, pp. 1487-1488; A.E. Albert, D.I. Warner, R.A. Hatcher, J. Trussell, Ch. Bennett, Condom use among Female Commercial Sex Workers in Nevada's Legal Brothels, *American Journal of Public Health*, November 1995, vol. 85, n°11, pp. 1514-1520. See in particular table 2.; Chr. Chan-Chee, I. De Vincenzi, M-A. Sole-Pla, R. Ancelle-Park, J.-B. Brunet, Use and misuse of condoms, *Genitourinary Medicine*, April 1991, vol. 67, n°2, p.173.

28 A. Messiah, D. Bucquet, J.-F. Meitetal, B. Larroque, Chr. Rouzioux, and the Alain Brugeat physician group, Factors Correlated With Homosexually Acquired Human Immunodeficiency Virus Infection in the Era of "Safer Sex". Was the Prevention Message Clear and Well Understood?, *Sexually Transmitted diseases*, January/February 1993, vol. 20, n°1, pp.51-59, see p. 57.

and the rate of slippage is on average 6% (0% to 15%) (Table II)<sup>29</sup>.

## II THE PERFORMANCE OF THE CONDOM WHEN USED AS A CONTRACEPTIVE AND AS A PROPHYLACTIC

### *1. The Performance of the Condom when Used as a Contraceptive*

The Pearl index concerning the condom when used as barrier contraceptive (i.e. the number of pregnancies among 100 women using this form of contraception for 1 year, based on the theoretical possibility that a woman could conceive 12 times every year) is relatively high, between 8 and 15 (in extreme cases going up to 28).<sup>30</sup> The

failure rate of the condom used for the prevention of pregnancy (defined as the probability of pregnancy during one year for a woman using the condom as sole means of contraception) is situated around 15%.<sup>31</sup> After examining the

29 K. Wellings, AIDS and the Condom, *British Medical Journal*, 15 November 1986, vol.293, n°6557, pp. 1259-1260, see p.1259; W. Ross, Problems associated with condom use in heterosexual men, *American Journal of Public Health*, July 1987, vol.77, n°7, 1987, p.877; J. Richters, B. Donovan, J. Gerofi, How often do condoms break or slip off in use?, *International Journal of Sexually Transmitted Diseases and AIDS*, March/April 1993, vol.4, n°2, pp.90-94.

30 D.M. Potts, G.I.M. Swyer, Effectiveness and risks of birth-control methods, *British Medical Bulletin*, January 1970, vol.26, n°1, pp.26-32, see Table III, p.29; W.R. Grady, M.D. Hayward, J. Yaagi, Contraceptive Failure in the United States: Estimates from 1982 National Survey of Family Growth, *Family Planning Perspectives*, September/October 1986, vol.18, n°5, pp.200-209; E.F. Jones, J.D. Forrest, Contraceptive Failure in the United States:

Revised Estimates from the 1982 National survey of Family Growth, *Family Planning Perspectives*, May/June 1989, vol.21, n°3, pp.103-107; E.F. Jones, J.D. Forrest, Contraceptive Failure Rates Based on the 1988 NSFG, *Family Planning Perspectives*, January/February 1992, vol.24, n°1, pp.12-19; S. Jejeebhoy, Measuring contraceptive use-failure and continuation: an overview of new approaches, in "Measuring the Dynamics of Contraceptive Use", United Nations, New York, 1991, pp.21-51, tables 3, 5.

31 Failure rate of the condom used as barrier contraceptive: 14,1% in the USA in the statistic of W.R. Grady and associates from 1986; 15,7% in the USA in that of E.F. Jones and J.D. Forrest from 1989, concerning the same data; 15,8% in the USA in the 1992 statistic made by the same authors; 9,8% to 18,5% in the USA in the statistic of S. Harlap from 1991 for the Alan Guttmacher Institute; 11% in Great Britain, 14,1% in the USA, 20% in Panama, 21,6% in Indonesia and 24% in Bangladesh in the international statistic of S. Jejeebhoy, 1991, presented in a reunion of experts from the UN; W.R. Grady, M.D. Hayward, J. Yaagi, Contraceptive Failure in the United States: Estimates from 1982 National Survey of Family Growth, *Family Planning Perspectives*, September/October 1986, vol.18, n°5, pp.200-209; E.F. Jones, J.D. Forrest, Contraceptive Failure in the United States: Revised Estimates from the 1982 National survey of Family Growth, *Family Planning Perspectives*, May/June 1989, vol.21, n°3, pp.103-107, see table 2 p.107; E.F. Jones, J.D. Forrest, Contraceptive Failure Rates Based on the 1988 NSFG, *Family Planning Perspectives*, January/February 1992,

TABLE II: FREQUENCY OF RUPTURE AND SLIPPAGE OF CONDOMS IN HOMOSEXUAL RELATIONSHIPS WITH ANAL PENETRATION

	Rupture		Non-Use		Number of Subjects	Place of Study
	rate †	%users*	rate †	%users*		
M.W.Ross (1987)	-	27%	-	-	70 homosexual men	South Australian Health Comm.
L.Wigersma et al. (1987)	11%	-	15%	-	17 homosexual couples	Amsterdam, Netherlands
G.J.P. Van Grievansen et al. (1988)	5%	-	5%	-	277 homosexual men	Ámsterdam, Netherlands
S. Golombok et al. (1989)	5.27%	31%	3.8%	28%	262 homosexual men	London
B. Tindall et al.(1989)	6%	12%	-	-	420 homosexual men	Sydney, Australia
Chr. Chan Chee et al. (1991)	4.5%	-	-	-	46 homosexual men	Paris
J.L. Thomson et al. (1993)	3.3%	15%	-	-	741 homosexual men	Columbia University, New York City
J. Richters et al. (1993)	2.8%	-	3.4%	-	36 homosexual men	Clinique MST, Sydney, Australia
A.Messiah et al. (1993)	4.5%-7.3%	-	1/3	-	246 homosexual men	Enquête INSERM, Paris
B.G. Silverman et al. (1997)	0.5%-6	-	3.8%-5%	-		Revue de la littérature

†Rate: rate of condom ruptures per sexual relation (anal penetration)(number of condoms broken per 100 relations)

\* % users: percentage of users having noticed at least one condom breakage during the time of the study

American studies on the question, S.C. Weller situates the failure rate of contraception of the condom between 9% and

14% in the USA.<sup>32</sup>

The failure rate diminishes the higher the competence, cultural level, the practice and motivation of a married couple is. This explains the incredibly high failure rates reported by S. Jejeebhoy (1991) in certain third world countries (20% in Panama, 21,6% in Indonesia

vol.24, n°1, pp.12-19, see table 1, p.15; S. Harlap and associates, Pregnancies Occurring During Contraceptive Use, in "Preventing Pregnancy, Protecting Health: A New Look at Birth Control Choices in the United States", the Alan Guttmacher Institute, 1991, p.35; S. Jejeebhoy, Measuring contraceptive use-failure and continuation: an overview of new approaches, in "Measuring the Dynamics of Contraceptive Use", United Nations, New York, 1991, pp.21-51, tables 3, 5.

<sup>32</sup> S.C. Weller, A meta-analysis of condom effectiveness in reducing sexually transmitted HIV, Social Science Medicine, June 1993, vol.36, n°12, pp.1635-1644, see p.1636.

and 24% in Bangladesh)<sup>33</sup>. Inversely, the failure rate of the condom as a contraceptive was only 4% among very motivated couples enrolled in the *Oxford/Family Planning Association contraceptive study* (1974) according to M.P. Vessey and associates<sup>34</sup>. However, if the failure rate of the condom used as a contraceptive is evaluated at 3% for couples using the condom<sup>35</sup> “perfectly” (at every occasion of sexual activity and in a correct way), this rather theoretical rate goes up to 12% when used by “typical couples.”<sup>36</sup>

The noticeable failure rate of the condom partly explains the statistical link

found between the use of condoms and the appearance of undesired pregnancies among adolescents - given the fact that the advertisement of the condom to adolescents incites them to engage in greater sexual promiscuity (E.S. Williams, 1995, in the USA)<sup>37</sup>. 11% of women with undesired pregnancies in the Grady Memorial Hospital in Atlanta (USA) attributed their pregnancy to the failure of the condom<sup>38</sup>. 27% of abortions performed in the Saint Louis Hospital in Paris are supposedly requested because of condom failure.<sup>39</sup> Out of the 4666 women who came to abort at the Mary Stopes Center in Leeds between 1989 and 1993, 40% of them made the failure of the condom responsible for their pregnancy<sup>40</sup>. In the investigation reported by M. Gabbay and A. Gibbs (1996), 83% of the

female students who went to get emergency contraception at the Rusholme Health Center in Manchester (UK) declared they were victims of condom failure.<sup>41</sup>

33 S. Jejeebhoy, Measuring contraceptive use-failure and continuation: an overview of new approaches, in “Measuring the Dynamics of Contraceptive Use”, United Nations, New York, 1991, pp.21-51, tables 3, 5.

34 R. Glass, M. Vessey, P. Wiggins, Use-effectiveness of the condom in a selected family planning clinic population in the United Kingdom, *Contraception*, 1974, vol.10, pp.591-598; M. Vessey, M. Lawless, D. Yeates, Efficacy of different contraceptive methods, *The Lancet*, April 10, 1982, vol.I, n°8276, pp.841-842; M.P. Vessey, L. Villard Mackintosh, Condoms and AIDS prevention, letter, *The Lancet*, March 7 1987, vol.I, n°8532, p.568.

35 A. Spruyt, M.J. Steiner, C. Joanis, L. H. Glover, C. Piedrahita, G. Alvarado, R. Ramos, C. Maglaya, M. Cordero, Identifying Condom Users at Risk for Breakage and Slippage: Findings from Three International sites, *American Journal of Public Health*, February 1998, vol.88, n°2, pp. 239-244. See p. 239.

36 A. Albert, R.A. Hatcher, W. Graves, Condom use and breakage among women in a municipal hospital family planning clinic, *Contraception*, February 1991, vol. 43, n°2, pp. 167-176. See p. 168.

37 E. S. Williams, Contraceptive failure may be a major fact in teenage pregnancy, *British Medical Journal*, Saturday 23 September 1995, vol. 311, n°7008, pp. 806-807.

38 A. Albert, R.A. Hatcher, W. Graves, Condom use and breakage among women in a municipal hospital family planning clinic, *Contraception*, February 1991, vol. 43, n°2, pp. 167-176. See table VI, p. 172.

39 *Le Monde*, 28/5/1996

40 D. Carnall, Condom failure is on the increase, *British Medical Journal*, 27 April 1996, vol. 312, n°7038, p. 1059.

41 M. Gabbay, A. Gibbs, Does Additional Lubrication Reduce Condom Failure?,

2. The Performance of the Condom when Used as a Prophylactic (Table III)

The condom generally diminishes the risk of infection by STDs, but does not eliminate it.<sup>42</sup> It effectively protects

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Contraception, March 12, 1996, vol. 53, n°3, pp. 155-158.

42 J. Pemberton, J.S. McCann, J.D.H. Mahony, G. Mackenzie, H. Dougan, I. Hay, Socio-medical characteristics of patients attending a V.D. clinic and the circumstances of infection, *British Journal of Venereal Diseases*, October 1972, vol. 48, n°5, pp. 391-396. See table VIII, p. 394; W.M. McCormack, Yhu-Hshang Lee, S.H. Zinner, Sexual Experience and Urethral Colonization with Genital Mycoplasmas, *Annals of Internal Medicine*, May 1973, vol. 78, n°5, p.696-698. See table 2, p. 698; D. Barlow, The condom and Gonorrhea, *The Lancet*, October 13, 1977, vol. II, n°8042, pp. 811-812; M.J. Rosenberg, A.J. Davidson, J.H. Chen, F.N. Judson, J.M. Douglas, Barrier Contraceptives and Sexually Transmitted Diseases in Women: A Comparison of Female-Dependent Methods and Condoms, *American Journal of Public Health*, May 1992, vol. 82, n°5, pp. 669-674. See p. 670; D.A. Cohen, C. Dent, D. MacKinnon, G. Hahn, Condoms for Men, not Women, Results of Brief Promotion Campaign, Sexually Transmitted Diseases, September-October 1992, vol. 19, n°5, pp. 245-251; B.A. Evans, S.M. McCormack, P.D. Kell, J.V. Parry, R.A. Bond, K.D. MacRae, Trends in female sexual behavior and sexually transmitted diseases in London, 1982-1992, *Genitourinary Medicine*, October 1995, vol. 71, n°5, pp. 286-290; J.M. Zenilman, C.S. Weisman, A.M. Rompalo, N. Elish, D.M. Upchurch, E.W. Hook III, D. Celentano, Condom Use to Prevent Incident STDs: The Validity of Self-Reported Condom Use, *Sexually Transmitted Diseases*, January-February 1995, vol. 22, n°1, pp. 15-21; M. Shaw, G.J. Remafedi, L.H. Bearinger, P.L. Faulkner, B.A. Taylor, S.J. Potthoff, M.D. Resnick, The

against syphilis (J. Pemberton and associates, 1972; D. Barlow, 1977; J. Sanchez and associates, 1998) (average rate of infection 0,65% with condom, compared to 1,86% among subjects never using condoms during sexual activity), and against gonorrhea (average rate of gonorrheal infection 8% with condom, compared to 15% in subjects never using the condom; J. Pemberton and associates, 1972; D. Barlow, 1977; M.J. Rosenberg and associates, 1992; B.A. Evans and associates, 1995, J. Sanchez and associates, 1998; reduction of risk by 39%, Rosenberg and associates, 1992).

However, the condom seems less efficient against infections of *chlamydia* (infection rate 3,9% with condom, compared to 7,2% without condom, Evans and associates, 1995; risk of 0,8 with condom against 1,2 without condom, J. Sanchez and associates, 1998) or even totally inefficient (M.J. Rosenberg and associates, 1992, risk relative to 0,99). J.M. Zenilman and associates (1995) have nevertheless reported a significantly protective effect of the condom against chlamydia (0/72 infected with condom versus 16/251 without condom).<sup>43</sup>

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Validity of Self-Reported Condom Use Among Adolescents, *Sexually Transmitted Diseases*, October 1997, vol. 24, n°9, pp. 503-510; J. Sanchez, E. Gotuzzo, J. Escamilla, C. Carrillo, L. Moreyra, W. Stamm, R. Ashley, P. Swenson, K.K. Holmes, Sexually Transmitted Infections in Female Sex-Workers, *Sexually Transmitted Diseases*, February 1998, vol. 25, n°2, pp. 82-89.

43 J.M. Zenilman, C.S. Weisman, A.M.

TABLE III: EFFECTIVENESS OF CONDOMS IN PREVENTING STDs

	Reported STDs	percentage contagion user condom	percentage contagion user condom	Type and number of subjects, length of study	Place of study
J. Pemberton et coll. (1972)	syphilis gonorrhea non gon. urethritis other STDs	0.9% 13.4% 34.8% 19.6%	2.7% 26.2% 29.1% 17.3%	1,351 cases of STDs 1,173 male patients, one year	Royal Victoria Hospi- tal, Belfast
W. M. McCor- mack et coll. (1973)	T-Mycoplasmas	14.3%	42.9%	191 male students, college, one urethr. culture	Boston, MA and Provi- dence, Rhode Island
D. Barlow (1977)	syphilis gonorrhea non gon. urethritis genital herpes genital warts	0.39% 9.27% 46.72% 0.37%(?) 5.02%	1.02% 14.39% 47.42% 1.67% 4.60%	3,543 STDs 3,300 male patients, six months	Genito-Urinary Medi- cine, St. Thomas Hos- pital, London
M.J. Rosenberg et coll. (1992)	gonorrhea vag. trichomonas chlamydia	R.R.0.7 R.R.0.86 R.R.0.99	-	4,162 women, one year	Denver (Colorado), STD Clinic
D.A. Cohen et coll. (1992)	STDs (gonorrhea, chla- mydia, syphilis, tricho- monas)	19.9% m 12.6% f	-	552 men, 350 women, 9 months	STD clinics, Los Angeles
B.A. Evans et coll. (1995)	gonorrhea, chlamydia, n.g urethritis, trichomoniasis, candidosis, genital herpes, genitals warts, vaginities bact. inflam. pelvienne	0.6% 3.9% 10.5% 1.7% 36.5% 3.9% 13.8% 7.2% 1.1%	3.6% 7.2% 9.6% 3.6% 31.3% 4.8% 3.6% 12% 1.2%	416 women, without regular part- ner, questionnaire	Department of Genito- urinary Medicine, London, U.K.
J.M. Zenilman et al. (1995)	male STDs female STDs	15.3% 23.5%	15.3% 26.8%	323 men, 275 women, population study, two years	Baltimore City Health Department, STD clinics
M.L. Shaw et coll. (1997)	STDs	9%	10%	77 men, 321 women, adolescents, one year	schools, community-based clin- ics, St. Paul, Minnesota
J. Sanchez et coll. (1998)	gonorrhea, syphilis, infect. chlamydia	R.0.3 R.0.3 R.0.8	R.1.7 R.0.4 R.1.2	435 female prostitutes, one year survey	Centro antivenereo, Lima, Peru
A. Wald et coll. (2001)	Herpes Simplex Type 2	R.0.085 woman R.2.02 man	R.1.16	528 couples, 18 months	Seattle, WA 18 clinics



The condom is practically ineffective against non-specific urethritis (infection rate 30,6% with condom compared to 28,7% without condom)(J. Pemberton, 1072; D. Barlow, 1077; B.A. Evans, 1995).

It is equally inefficient against STDs transmitted through cutaneous or mucous membrane contact, such as the simplex Herpes virus infection (infection rate 0,77% with condom, versus 1,67% without condom, D. Barlow, 1977; infection rate 3,9% with condom versus 4,8% without condom, B.A. Evans and associates, 1995). A recent report on type 2 simplex Herpes virus infections (A. Wald and associates, 2001)<sup>44</sup> shows that the regular use of the condom during sexual activity reduces the risk of contamination by this virus among women, but has no effect against the contamination of men.

The condom generally does not protect against infections of *Condylomata acuminata* (genital condylomes –“genital warts”)(infection rate 5,02%

with condom, versus 4,6% without condom. D. Barlow, 1977; infection rate 13,8% with condom versus 3,6% without condom, B.A. Evans and associates, 1995). L.M. Wen and associates (1999) have nevertheless shown that the use of the condom could reduce the risk of papillomavirus genital infections.<sup>45</sup>

While the frequency and gravity of pelvic inflammatory diseases (PID) (high gonococcal or chlamydic genital infections) seemed to be reduced due to the use of the condom (J. Kelaghan and associates, 1982)<sup>46</sup>, a recent report (R. Ness, 2001)<sup>47</sup> has in fact demonstrated the inefficacy of the condom against these STDs.

The recent review of the question<sup>48</sup> made at the request of the National Institutes of Health and of the Center for

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Rompalo, N. Ellish, D.M. Upchurch, E.W. Hock III, D. Celentano, Condom Use to Prevent Incident STDs: The Validity of Self-Reported Condom Use, Sexually Transmitted Diseases, January-February, 1995, vol.22, n°1, pp.15-21, see p.18.

44 A.Wald, A.G. Langenberg, K. Link, A.E. Izu, R. Ashley, T. Warren, S. Tyring, J.M. Douglas J., L. Corey, Effect of Condoms on Reducing the Transmission of Herpes Simplex Virus Type 2 from Men to Women, JAMA, 27 June 2001, vol.285, n°24, pp.3100-3106, see p.3104.

45 L.M. Wen, C.S. Estcourt, J.M. Simpson, A. Mindel, Risk factors for the acquisition of genital warts: are condoms protective?, Sexually Transmitted Infections, October 1999, vol.75, n°5, pp.312-316.

46 J. Kelaghan, G.L. Rubin, H.W. Ory, P.M. Layde, Barrier-Method Contraceptive and Pelvic Inflammatory Disease, Journal of the American Medical Association, July 9 1982, vol.248, n°2, pp.184-187.

47 M. Larkin, Contraceptives do not protect against pelvic inflammatory, Lancet, 21 April 2001, vol.357, n°9264, p.1270.

48 Scientific Evidence of Condom Effectiveness for Sexually Transmitted Disease (STD) Prevention, June 12-13, 2000, Hyatt Dulles Airport, Herndon, Virginia, Summary Report, National Institute of Allergy and Infectious Diseases, National Institutes of Health, July 20 2001, <http://www.niaid.nih.gov/dmid/stds/condomreport.pdf>.

TABLE IV: EFFECTIVENESS OF CONDOMS IN PREVENTING GENITAL CONTAMINATION BY HIV RATE OF SEROCONVERSION TO HIV

	Condom Users		Non-Users	Type of sexual relation	Type of study	Type and number of subjects	Place of study
	rate †	reduction*	rate †				
J. Mann et coll. (1987)	25% (0-32%)	-	26%	heterosexual	questionnaire	376 prostitutes	Kinshasa, Zaire
E.N. Ngugi et coll. (1988)	46% (23/50)	3 times	71% (20/28)	heterosexual	population, 18 months	595 prostitutes	Nairobi, Kenya
M. Tuliza et coll. (1991)	70/531	-	-	heterosexual	population, 23 months	431 prostitutes	Kinshasa, Zaire
M. Laga et coll. (1994)	70/531 (13%)(8/100 women/year)	-	11.7/100 women/year	heterosexual	population, 3 years	531 prostitutes	Kinshasa, Zaire
R.S. Hanenberg (1994)	29.5%	-	-	heterosexual	-	Direct prostitution	Thailand HIV control program, 4 years
	7.7%	-	-	heterosexual	-	Indirect prostitution	
	1.5%	-	-	heterosexual	-	Pregnant women	
	4%	-	-	heterosexual	-	Army recruits	
R. Detels et. coll. (1989) (?)	3.32%	-	3.3%	homosexual	-	< 2 partners 457 men	Population 2,915 men, Baltimore
	4.4%	-	9.5%	homosexual	-	3-5 partners, 1,132 men	
L.I. Levin et coll. (1995)	insignificant increase of seroconversion with condom usage			13% homo., 59% hetero.	questionnaire	140 men in active duty HIV+	22 centers, US Army
M.A. Fischl (1987)	10%	-	12/14 (85%)	heterosexual	population, three years	45 couples, serodiscordant	Miami School of Medicine
N.Padian et coll. (1987)	risk x 4.6 if > 100 sexual acts no influence of condoms			heterosexual	population, two years	97 couples, serodiscordant	California
P.J.Feldblum (1991)	3.5/100 couples/year	-	10.1/100 couples/year	heterosexual	population, 13 months	98 couples, serodiscordant	Zambia
M. Kamenga et coll. (1991)	4% (3.1/100 couples/year)		-	heterosexual	followed 6 months	149 couples, serodiscordant	Kinshasa, Zaire
I.de Vincenzi et coll. (1991)	0%-4.8%	-	4.8%	heterosexual	followed 20 months	256 couples, serodiscordant	European Study Group
A. Nicolosi et al. (1994)	0.1 OR	-	1 OR	heterosexual	-	730 couples, serodiscordant	Italy
M.D.C. Guimaraes et coll. (1995)	1 OR	-	3.91 OR	heterosexual	-	204 couples, serodiscordant	Rio de Janeiro

†Rate: rate of seroconversion to HIV

\* Reduction: reduction of risk of seroconversion to HIV

Disease Control and Prevention by a study group in June 2000 corroborates these results.

### III THE PERFORMANCE OF THE CONDOM IN THE PROTECTION AGAINST HIV (TABLE IV)

Concerning the condom's prevention of the sexual transmission of HIV, it is appropriate to examine separately the statistics concerning subjects who are at "high risk"- homosexuals and prostitutes in particular - and the statistics concerning monogamous couples who are HIV positive/negative and where the risk of transmission of HIV is lessened.

#### 1. "High Risk" Behavior

African and Thai prostitutes demand of their clients to use the condom; this precaution in general diminishes the incidence of HIV infection, but does not eliminate it; sexual HIV contamination remains in fact important, despite the condom (13% of women in Laga and associates, 1994; 29,5% of women in Hanenberg and associates, 1994)<sup>49</sup>.

Concerning masculine homosexuals, the few available statistics show that the regular use of the condom diminishes the incidence of genital homosexual contamination by HIV (by a factor of 3,3, in Detels and associates, 1989), but that the rate of seroconversion<sup>50</sup> depends more on the lifestyle (number of partners, changing of

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Rh.L. Ashley, P. Piot, R.W. Ryder, HIV and other sexually transmitted diseases among female prostitutes in Kinshasa, AIDS, June 1991, vol. 5, n°6, pp. 715-721; A. Johnson, Feedback from the Six International AIDS Conference, San Francisco 1990, Genitourinary Medicine, April 1991, vol. 67, n°2, pp. 162-171. See pp. 162-163; M. Laga, M. Alary, N. Nzila, A.T. Manoka, M. Tuliza, F. Behets, J. Goeman, M. StLouis, P. Piot, Condom promotion, sexually transmitted diseases treatment, and declining incidence of HIV-1 infection in female Zairian sex workers, The Lancet, 23 July 1994, vol. 344, n°8917, pp. 246-248; E.N. Ngugi, J.N. Simonsen, M. Bosire, A.R. Ronald, F.A. Plummer, D.W. Cameron, P. Waiyaki, J.O. Ndinya-Achola, Prevention of transmission of Human Immunodeficiency Virus in Africa: effectiveness of condom promotion and health education among prostitutes, The Lancet, October 15 1988, vol. II, n°8616, pp. 887-890; R.S. Hannenberg, W. Rojanapithayakorn, P. Kunasol, D.C. Sokal, Impact of Thailand's HIV control programme as indicated by the decline of sexually transmitted diseases, The Lancet, 23 July 1994, vol. 344, n°8917, pp. 243-245.

50 Seroconversion: in the blood of HIV contaminated persons apparition of composites objectifying the reaction of the organism to the presence of the virus. "Seroconversion" which leads to "seropositivity" is in a sense the signature of the viral contamination. In the case of the HIV, several months can go by between the moment of contamination and the apparition of "seropositivity".

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49 J. Mann, Th.C. Quinn, P. Piot, N. Bosenge, N. Nzilambi, M. Kalala, H. Francis, R. L. Coleblunders, R. Byers, P. Kasa Azila, N. Kabeya, J.W. Curran, Condom Use and HIV Infection among Prostitutes in Zaire, The New England Journal of Medicine, February 5, 1987, vol. 316, n°6, p. 325; N. Nzila, M. Laga, M.A. Thiam, K. Mayimona, B. Edidi, E. Van Dyck, F. Beheta, S. Hassig, A. Nelson, K. Mokwa,

partners) than on the use of the condom<sup>51</sup>. In some cases (L.I. Levin and associates, 1995), the rate of seroconversion paradoxically appears proportional to the subject's use of the condom, because persons with sexual behavior involving greater risk more willingly use the condom.<sup>52</sup>

## 2. *Monogamous Serodiscordant-Couples*<sup>53</sup>

The efficacy of the condom in the context of the prevention of HIV infection in "HIV-serodiscordant" couples (where one of the spouses is HIV-seropositive and the other still HIV-seronegative) is not so much related to the condom itself than to the sexual behavior of the partners. Even in the cases where the

risk of contamination without condom is already very low (4,8%), the condom does not offer absolute protection, since the rate of contamination despite the use of the condom has been found to be according to statistics 0% (De Vincenzi, 1994), 2% (Nicolasi, 1994), 3,5% (Feldblum, 1991), 4% (Kamenga, 1991), 10% (Fischl, 1987). In these cases the condom diminishes the risk of genital contamination of HIV by a factor of 3,91 (Guimaraes, 1995).<sup>54</sup>

51 R. Detels, P. English, B.R. Visscher, L. Jacobson, L.A. Kingsley, J.S. Chmiel, J.P. Dudley, L.J. Eldred, H.M. Ginzburg, Seroconversion, Sexual activity, and Condom Use Among 2915 HIV seronegative Men Followed for up to 2 Years", *Journal of Acquired Immune Deficiency*, 1989, vol. 2, n°1, pp. 77-83.

52 L.I. Levin, Th.A. Peterman, P.O. Renzullo, V. Lasley-Bibbs, Xiao-ou Shu, J.F. Brundage, J.G. MacNeil, HIV-1 Seroconversion and Risk Behaviors among Young Men in the US Army, *American Journal of Public Health*, November 1995, vol. 85, n°11, pp. 1500-1506.

53 serodiscordant couples: couples where one partner has not been contaminated by HIV, and therefore remains "seronegative", while the other has been contaminated and is "seropositive". If the partners have sexual relations, the still unharmed partner will be contaminated by HIV within a shorter or a longer period, and will also become "seropositive", thus ending the "serodiscordance" between the partners.

54 M.A. Fischl, G.M. Dickinson, G.B. Scott, N. Klimas, M.A. Fletcher, W. Parks, Evaluation of Heterosexual Partners, Children and Household Contacts of Adults with AIDS, *Journal of the American Medical Association*, February 6 1987, vol.257, n°5, pp.640-644; P.J. Feldblum, Results from prospective studies of HIV-discordant people, *AIDS*, October 1991, vol.5, n°10, pp.1265-1266; M. Kamenga, R.W. Ryder, M. Jingu, N. Nbuyi, L. Mbu, F. Behets, Chr. Brown, W.L. Heyward, Evidence of marked sexual behavior change associated with low HIV-I seroconversion in 149 married couples with discordant HIV-I serostatus: experience at an HIV counseling center in Zaire, *AIDS*, January 1991, vol.5, n°1, pp.61-67; I. de Vincenzi, for The European Study Group on Heterosexual Transmission of HIV, a longitudinal Study of Human immunodeficiency virus transmission by heterosexual partners, the *New England Journal of Medicine*, Aug.1 1994, vol.331, n°6, pp.341-346; A. Nicolasi, M.L. Corrêa Leite, M. Musicco, Cl. Arici, G. Gavazzeni, A. Lazzarin, for the Italian Study Group on HIV Heterosexual Transmission, the Efficiency of Male-to-Female and Female-to-Male Sexual Transmission of the Human Immunodeficiency Virus: A Study of 730 Stable Couples, *Epidemiology*, November 1994, vol.5, n°6, pp.570-575; M.D.C. Guimaraes, A. Muñoz, C. Boschi-Pinto, E.A.

It has been observed, furthermore, that among HIV-serodiscordant couples who use the condom irregularly, the rate of seroconversion for the seronegative partner is low (4,8%)(cumulative index of seroconversion 7,8%)(P.J. Feldblum, I. De Vincenzi) when the seropositive partner is asymptomatic, and is identical to the one found in couples who never use the condom.

However, once the infected partner has reached the symptomatic stage or when this partner engages in risky sexual behavior, the risk of seroconversion for the negative partner becomes serious (cumulative index of seroconversion 48,7%) and the use of the condom does not change this (N. Padian, I. De Vincenzi). This is shown by Feldblum's statistic (1991) and much more by the disastrous numbers delivered by N. Padian and associates (1987) with up to 35% failures.<sup>55</sup>

Among all these statistics the constant and correct use of the condom ("perfect use") seems to be the excep-

tion rather than the rule.<sup>56</sup> The best do-

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56 In the evaluation of condom failures one must also take into account that these condoms are used more or less correctly. For Hawkins and Elder, "the most common reason for failure" when using the condom as a contraceptive "is its incorrect use". A first way in which the condom can be used incorrectly is in what A. Quirk and associates call "unsafe protected sex", that is the practice of a "protected" sexual relation but which does not belong to the category of "safe sex", because its use does not cover the entire period of the relation. In consequence warnings have been issued (G. Ilaria, J. Pudney) about the presence of HIV in pre-ejaculatory secretions. A second reason for condom failure is tied to the contamination of the external surface of the condom. A third source of condom failure is found in the use of inappropriate lubricants, in particular oily ones (White, Voeller, Chan-Chee, Messiah, Gabbay), which weaken the latex and render it permeable; D.F. Hawkins, M.G. Elder, Condoms, Diaphragms and Caps, in "Human Fertility Control, Theory and Practice", Butterworth & co, London, 1979, p.138; A. Quirk, T. Rhodes, G.V. Stimson, "Unsafe protected sex": qualitative insights on measures of sexual risk, AIDS care, February 1988, vol.10, n°1, pp.105-114; G. Ilaria, J.L. Jacobs, B. Poisky, B. Koll, P. Baron, Cl. MacLow, D. Armstrong, Detection of HIV-1 DNA sequences in pre-ejaculatory fluid, The Lancet, December 12 1992, vol.340, n°8833, p.1469; J. Pudney, M. Oneta, K. Mayer, G. Seage III, D. Anderson, Pre-ejaculatory fluid as potential vector for sexual transmission of HIV-1, the Lancet, December 12 1992, vol.340, n°8833, p.1470; N. White, K. Taylor, A. Lyszkowski, J. Tullett, C. Morris, Dangers of lubricants used with condoms, Nature, 1 September 1988, vol.335, n°6185, p.19; B. Voeller, A.H. Coulson, G.S. Bernstein, R.M. Nakamura, Mineral oil lubricants cause rapid deterioration of latex condoms, Contraception, January 1989, vol.39,

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Castilho, from the Rio de Janeiro Heterosexual Study Group, HIV infection among Female Partners of Seropositive Men in Brazil, American Journal of Epidemiology, September 1 1995, vol.142, n°5, pp.538-547.

55 N. Padian, L. Marquis, D.P. Francis, R.E. Anderson, G.W. Rutherford, P.M. O'Malley, W. Winkelstein, Male-to-Female Transmission of Human Immunodeficiency Virus, JAMA, August 14 1987, vol.258, n°6, pp.788-790; P.J. Feldblum, Results from prospective studies of HIV-discordant people, AIDS, October 1991, vol.5, n°10, pp.1265-1266.

cumented publication on the matter by the European Group of Study on heterosexual transmission of HIV (De Vincenzi) indicates that only 32% of all monitored couples were capable of it, while 34% opted for abstinence, and 34% for the irregular use of the condom (non-use in 16% of the cases).

### 3. *Meta-Analysis*

R. Gordon (1989)<sup>57</sup> estimates that the rate of condom failure in the prevention of the sexual transmission of HIV (5 to 23%) is higher than the one observed during the use of the condom as a contraceptive.

In a meta-analysis based on 11 publications S.C. Weller (1993) situates the rate of the protection by the condom against sexual contamination by HIV at only 69% (failure in 31% of the cases).<sup>58</sup>

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n°1, pp. 95-102; Chr. Chan-Chee, I. De Vincenzi, M-A. Sole-Pia, R. Ancelle-Park, J.-B. Brunet, Use and misuse of condoms, *Genitourinary Medicine*, April 1991, vol. 67, n°2, p. 173; A. Messiah, D. Buquet, J.-F. Mettetal, B. Larroque, Chr. Rouzioux, and the Alain Brugeat physician group, Factors Correlated With Homosexually Acquired Human Immunodeficiency Virus Infection in the Era of "Safer Sex", Was the Prevention Message Clear and Well Understood?, *Sexually Transmitted Diseases*, January-February 1993, vol. 20, n°1, pp. 51-59. See p. 56; M. Gabbay, A. Gibbs, Does Additional Lubrication Reduce Condom Failure?, *Contraception*, March 1996, vol. 53, n°3, pp. 155-158. See p. 157.

57 R. Gordon, A critical Review of the physics and statistics of condoms and their role in individual versus societal survival of the AIDS epidemic, *Journal of Sex and Marital Therapy*, Spring 1989, vol. 15, n°1, pp. 5-30.

58 S.C. Weller, A Meta-analysis of condom

K. April, W. Schreiner and associates (1994),<sup>59</sup> analyzing 14 studies focused on serodiscordant couples for observation periods between six months and three years, find that 8% was the average percentage of seroconversion among couples always using the condom compared to 35% as the average percentage of seroconversion among couples never using it.

K.R. Davis and S.C. Weller<sup>60</sup> (1999) analyzing results from 25 studies concerning serodiscordant couples find an average condom failure rate of 13%.

In conclusion, the efficacy of the condom in the prevention of the sexual transmission of HIV seems similar to when it is used as a barrier contracep-

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effectiveness in reducing sexually transmitted HIV, *Social Science Medicine*, June 1993, vol. 36, n°12, pp. 1635-1644.

59 K. April, R. Köster, G. Fantacci, W. Schreiner, Quale è il grado effettivo di protezione dall'HIV del profilattico?, *Medicina e Morale*, October 1994, vol. XLIV, n°5, pp. 903-924.

60 12 population studies showed an incidence of HIV transmission despite the constant use of the condom of 0,9 for 100 persons per year. The same incidence was 5,9 per 100 persons per year (transmission from woman to man) and of 6,8 for 100 persons per year (transmission from man to woman) in the 11 studied populations where no one ever used the condom. The efficacy of the condom was in general estimated at 87%, but it could be as low as 60% and as high as 96%; K.R. Davis, S.C. Weller, The effectiveness of Condoms in Reducing Heterosexual Transmission of HIV, *Family Planning Perspectives*, November-December 1999, vol.31, n°6, pp.272-279.

tive or even slightly lower than that (R. Gordon, C. Weller, P.J. Feldblum, K.R. Davis).

#### 4. *Discussion*

##### a-The Defects of the Condom and Mistaken Beliefs Concerning Safe Sex.

The first conclusion to be drawn from this analysis is that the condom is in and of itself only relatively reliable, even though manufacturers have tried to improve its mechanical qualities and though latex still remains the best material for the condom. The error is to have thought that to "accurately use the condom" would be the same as to prevent the sexual transmission of HIV; for it was well known that such "accurate use" was an exception and that no condom could ever be guaranteed to be 100% efficient.

Knowing the limits of the condom as a contraceptive and as barrier to STD bacterial and viral agents, one should have expected the same type of result concerning the prevention of the passage of HIV; statistics in fact show that its average failure rate is 13%. The statistic of the European group (De Vincenzi)—0% of sexual contamination by HIV among the 124 HIV serodiscordant couples (out of 378) who always used a condom during their relations — is, from this standpoint, the exception rather than the rule.

However, the failure rates of the condom are variable from one statistic to another, depending upon which part of the population is studied. It is in fact

the more or less risky sexual "lifestyle" of the subject which is of greater importance than the simple use or non-use of the condom. It is therefore not so much the use of the condom which makes "sex" "safe", but rather refraining from sexual promiscuity, limiting the number of partners and abstaining from homosexual practices. There is no true "*safe sex*" except in conjugal fidelity which renders the condom useless.

##### b-The Possible Negative Effects of safe sex Campaigns.

Not only is the expression "safe sex" inaccurate, but it also fosters dangerous illusions and leads to the very consequences it tries to prevent. Publicity made for the condom against HIV/AIDS could in fact have an effect contrary to the one desired. This has recently been heard from researchers at the *University College Medical School* in London,<sup>61</sup> who were basing themselves on the results concerning the publicity made for safety belts in cars. In Great Britain this publicity has in fact had the opposite effect, causing a higher number of victims in traffic accidents, because of the feeling of security people associated with the use of safety belts. It could be the same with the publicity for condoms, as mentioned by N. Hearst and S.B. Hulley<sup>62</sup> of the *Center*

61 J. Richens, J. Inrie, a. Copas, Condoms and seat belts: the parallels and the lessons, the *Lancet*, 2000, vol. 355, n°9201, pp. 400-403.

62 N. Hearst, S.B. Hulley, Preventing the Heterosexual Spread of AIDS: Are We Giving

for *AIDS Prevention Studies* at the University of California in San Francisco. This paradoxical effect has in fact been observed by I. Levin and associates<sup>63</sup> in their report of 1995 on HIV infections in the military: the condom, used by these military in their homosexual encounters, not only did not prevent HIV infection, but appeared to facilitate it, because the users—thinking they were protected - multiplied their partners and their sexual experiences of all types.

#### c-Safe Sex or Sexual Health?

In the prevention of any type of calamity, we can distinguish between the means of “containment” which aim at limiting the expansion of the calamity from the actual means of prevention which aim at eliminating the roots of the disorder. Malaria for example is comparable to HIV/AIDS in terms of the number of contaminated persons in the world, in terms of the mortality it causes and the difficulty of its treatment, and in terms of the preventive measures developed over the years—and which particularly concern the battle against the anopheles; the measures taken have been measures of “contain-

ment” rather than being truly preventive, because they have not been able to get to the root of the problem. Though theoretically effective, these measures have revealed themselves to be not very effective, because it is impossible to destroy all the larvae and to eliminate all stagnant water. In the case of typhoid fever, in contrast, prevention has been effective because one has been able to get the population to take care of its drinking water. True prevention has occurred in this case, because human behavior which had favored contamination was changed.

The condom is presented as a means by which to “contain” the sexual transmission of HIV/AIDS, to limit its transmission by reducing its incidence by a factor of 3 or 4. It does not provide a true prevention of the epidemic, since it leaves its roots intact, namely the human behavior responsible for the transmission of HIV. True prevention of sexually transmitted HIV/AIDS aims to bring to an end risky sexual behavior and to guide the young toward a balanced and fulfilling sexuality by embracing pre-marital and marital chastity. We cannot hope to stop the HIV/AIDS epidemic by simply advertising the condom, no more than we can hope to stop a flooding river with a few bags of sand once the dykes have broken. People should be encouraged to be truly sexually healthy rather than believing in an illusory “safe sex”. As long as serious efforts will not be made in this direction, the AIDS epidemic will persist as one can see in rich countries where sexual contamination of

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Our Patients the Best Advice?, *JAMA*, April 22/29 1988, vol. 259, n°16, pp. 2428-2432; see p. 2431.

63 L.I. Levin, Th.A. Peterman, P.O. Renzullo, V. Lasley-Bibbs, Xiao-ou Shu, J.F. Brundage, J.G. MacNeil, HIV-1 Seroconversion and Risk Behaviors among Young Men in the US Army, *American Journal of Public Health*, November 1995, vol. 85, n°11, pp. 1500-1506.



HIV continues at the same pace, despite years of massive advertisement for the condom.

The encouragement towards conjugal chastity and to sexual abstinence outside of marriage have been excluded *a priori* from AIDS prevention programs with the pretext that such ideals were utopist and do not correspond to concrete, daily life. Yet, what does one notice in daily life? Particularly in countries where AIDS has been rampant for several years already one can observe a salutary reaction of the population, marked by the diminishing of extra-marital sexual relations and a delay of first sexual relations among the young. One can observe this today in Uganda, for example, where the AIDS epidemic has slowed down,<sup>64</sup> with a lessening of HIV prevalence from 45% to 35% among masculine subjects examined in STD clinics in Kampala and from 21% to 5% among pregnant women examined in Jinja from 1990 to 1996. Though sexually active men and women report a more frequent use of the condom in their answers to surveys, the most important factor seems to be the noticeable change observed in the sexual behavior of the young which is characterized by a markedly later age of first sexual relations (56% of boys aged 15 to 19 declared in 1995 not to have had any

sexual relations yet, versus 31% in 1989, and 46% young girls in 1995 versus 26% in 1989). It is also characterized by a later marriage age and by a lessening of extra-marital relations (from 22,6% in 1989 to 18,1% in 1995 for men).<sup>65</sup>

In the particular case of monogamous serodiscordant couples, the use of the condom has been presented as quasi obligatory, because of the serious threat of contamination of the HIV-seronegative spouse by the seropositive one. The very idea of sexual abstinence was set *aside*. But the statistics mentioned above show that a significant number of these couples (11 to 25%)(M.A. Fischl, 1987, I. De Vincenzi, 1994) choose of their own accord to no longer have any sexual relations nor to separate.

By reducing the effort at preventing HIV/AIDS to the simple promotion of the condom, we have dealt with what was

<sup>65</sup> These data are in accord with a recent study concerning the differences in sexual behavior of the population in four African cities which present different HIV prevalence rates (from 3,3% in Cotonou, Benin, to 31,9% in Ndola, Zambia). This study shows, among other things, that there is a link between the earliness of first sexual relations in young girls and the prevalence of the HIV in their group. Female adolescents from Kisumu and Ndola were having particularly early sexual relations with older men, and the prevalence of STDs among these adolescents was higher than in the other studied cities; J. Cohen, AIDS Researchers Look to Africa for New Insights, Science, 11 February 2000, vol.287, n°5455, pp.942-943: Differences in HIV Spread in four sub-Saharan African cities, UNAIDS, Lusaka, 14 September 1999.

<sup>64</sup> G. Asjimwe-Okiror, A.A. Opiro, J. Musinguzi, E. Madraa, G. Tembo, M. Cars l, Changes in sexual behavior and decline in HIV infection among young pregnant women in urban Uganda, AIDS, 15 November 1997, vol. 11, n°14, pp. 1757-1764.

most urgent in those milieus most favorable to the development of the epidemic because of the sexual habits which characterized them. But a real prevention for the population in general has not been put into place, in particular with regard to the young. Some have said we must not scare people. Some have also said that sexual choices are a private matter and that it is not the task of the authorities to preach to people. Epidemiological measures required by the gravity of the situation were not taken. We have been satisfied merely to propose the condom. The result is that the HIV/AIDS epidemic which could have been easily stopped at the beginning of its expansion, has spread throughout the entire world causing the millions of victims we now know about.

#### 4. *Conclusion*

The official discourse on the prevention of sexual contamination by HIV/AIDS has been limited for the past 20 to the promotion of the condom in the context of "safe sex". "Behavior changing" campaigns have only aimed at its promotion. However, one should not speak of real "prevention", but of protection or of a prophylaxis, since the root of the problem, namely risky behavior, remains.

Using a condom as protection against HIV is like playing at Russian roulette: the more sexual experiences one engages in - convinced of the safety offered by the prophylactic - the higher the probability of contamination will be. In the end, HIV is the winner. Regarding HIV/AIDS, the risk - even though it is reduced to 10% - of

contracting an infection believing oneself to be protected by the condom is excessively high. There is no such thing as "safe sex". This leaves a probability curve hanging like the sword of Damocles over the heads of all those who wrongly feel safe because they use the condom. What would one say of a plane model with 10% of its flights ending up in a crash?

All authors interested in the prevention of the HIV infection agree in one point: only a radical change in sexual behavior can guarantee complete protection which the condom alone cannot do. The advocates of a greater publicity for the condom admit it themselves: "*Clearly the dangers of relying solely on barrier methods to prevent AIDS must be emphasized*," wrote K. Wellings<sup>66</sup> in 1986, and the subsequent history of the epidemic has proven this to have been a well-founded fear. The only strategy that is completely efficient concerning HIV is abstinence, or sexual relations within a monogamous marriage as well as fidelity, according to the formula given by *Centers for Disease Control* in Atlanta (USA): "*Abstinence and sexual intercourse with one mutually faithful uninfected partner are the only totally effective prevention strategies*."<sup>67</sup>

66 K. Wellings, AIDS and the condom, *British Medical Journal*, 15 November 1986, vol. 293, N°6557, p. 1259.

67 Centers for Disease Control, *Condoms for Prevention of Sexually Transmitted Diseases*, op. cit., p. 133.

# Sex Education

Aquilino Polaino-Lorente

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*“Sex education” is often discussed today, but mainly in order to include under this expression programs of information on human sexuality that are generally presented to children and adolescents in the context of schools. These programs would have as their objective furnishing enough biological information for children to avoid the heavy consequences of contracting sexually transmitted diseases, HIV/AIDS and unwanted pregnancies. This kind of sexual education is necessarily incomplete because it leaves to one side the relational, affective and spiritual aspects of human love. It further runs the risk, depending on the program and the philosophy of the teacher, of being excessively explicit and constituting merely an introduction to the practice of contraception and “safe sex”. Finally, the programs of sex education proposed in the schools do not always take into account the immaturity of the students receiving it and can cause harm and upset them. There is also another aspect of sex education that is not often looked at and which is of capital importance, as Dr. Polaino-Lorente explains: sex education in the family. The Pontifical Council for the Family dedicated the document The Truth and Meaning of Human Sexuality: Guidelines for Education within the Family (8 December 1995) to this most important topic. The parents are the first persons responsible for the sexual education of their children. They can help them to better acquire the virtue of self-discipline and the importance of the other, which are essential for the human exercise of sexuality. They are the ones who can best introduce the child to the “beautiful love” that comes first from the heart and the mind before being expressed in the body. (↗ Sexual and Reproductive Rights; Family Nature and the Person; Sexual Identity and Difference; Homosexuality and Homophobia; The Person and Integral Procreation; Personalization; Safe Sex)*

It is an undeniable fact that there is a relationship between life and sexuality, to the point that the origin of any living human being is always with reference to, in one way or another, the sexual conduct of the ancestors who preceded them. Therefore it would not be thorough to try and speak here about sex education

without an explicit reference to the being whose sexuality is discussed.

As Ruiz-Retegui<sup>1</sup> explains, “Sexuality affects all the wide variety of the parts

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1 A. RUIZ RETEGUI, “La sexualidad humana”, in M. LÓPEZ MORATALLA ET AL., *Deontología biológica*, University of Navarre 1987.

and dimensions that constitute the human person. The human person is man or woman, and has this condition written into its entire being". Besides the fact that it marks a way of being, sexuality is that human dimension which "makes the person capable of a specific interpersonal gift of self."

Human sexuality also indicates the psycho-biological capacity that is manifested through sexual conduct, a gesture that means that two persons, man and woman, give themselves to each other and bind themselves to each other in a reciprocal manner. In the same way, sexual conduct, given its elasticity – as well as its possibility to deviate into strange, conflictive or damaging behaviors, shows that the person possesses sufficient freedom to carry out his personal behavior in this area.

Thus, it does not follow that one can enclose a person within any *determinism*: neither *biological* (which reduces human behavior to pure biology or to instinct, as far as sexuality goes), nor *historical* (which neglects the biological aspects and considers that human sexual behavior is at the mercy of what every person wants to choose).<sup>2</sup>

But the human person, at any stage of his life, is never totally completed,

nor totally in progress: he is a free being –although his freedom is not absolute and it is conditioned by corporality and many other circumstances. Thus, he is unfinished and he only builds himself in accordance with the manner in which he conducts his life. Yet the greatness of freedom is counterbalanced with the possibility of making bad use of that freedom, with the misery of choosing wrongly, with the possibility of losing one's way in life, and eventually losing oneself. And precisely for all these reasons, education in sexuality is something that is very necessary. It is demanded of the parents by the children, and the parents must meet this demand in a satisfactory manner.

At the core of this learning and molding process of human sexual behavior lies the mystery of freedom. Through freedom, man opens himself to all things, and is able to submit himself to the truth about what ought to be his sexual conduct, in accord with his natural being. Yet on the other hand, man can err, become vulnerable, and not make a correct decision while searching for the truth about his personal conduct.

Freedom makes possible the opening of man towards truth, but that same truth also makes it possible for man to hermetically close himself inwardly, and with his own errors. The misuse of freedom –and the error which is its cause and/or consequence –in an absolute way can be understood as a sign of freedom,

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2 A.POLAINO-LORENTE, "Dimensao da sexualidade humana". in *Cenaculo*, 61 (1976), 21-24; ID., "Psicofisiología y sentido de la sexualidad humana. Estudio psicológico"; in J. CHOZA, *Analítica de la sexualidad*. Ed. Eunsal. Pamplona. 1978, 41-96.

but not as freedom itself. That is the reason that the person who errs the most is not the person with the most freedom. On the contrary, the person who errs the most is least free and has fewer chances to achieve happiness. Precisely because of that freedom which man possesses, and which he can use in a disordered or mistaken manner, he can then err in most of his decisions, including in his sexual behavior.

Sexuality is one of those faculties badly used in a widespread manner today. This generalized error makes manifest the lack of formation of contemporary man and his entrenchment in ignorance, which most of the time is vincible, as long as it is reached in time. Ignorance buries man in obscurity and makes him more and more dependent, each time, on his own errors. It is thus necessary to offer important points of reference that will enable him to re-orient his human conduct where sexuality is concerned, in such a manner that these behavioral errors can be avoided.<sup>3</sup>

To offer the person these points of reference is nothing else but to provide him with those objectives that are so necessary for his personal identity. Through them, he can be helped in guiding and orienting his future sexual conduct, in such a manner that it is reaffirmed and

reaches its completion during his lifetime.

## **FOUR CARDINAL POINTS OF REFERENCE TO ORIENT HUMAN SEXUAL CONDUCT**

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There are four cardinal points or dimensions in the education of human sexual conduct: generative, affective, cognitive, and religious.

The *generative dimension* studies the way that sexuality is implicated in reproduction and the generation of new human beings. In this dimension, procreation and genitalia are studied. Actually, it is very common that the procreative dimension of sexual behavior is suppressed or frustrated.

The *affective dimension* shows that man and woman are, before all else, persons and for that reason, sexual behavior cannot be used only for pleasure. Sexuality and affectivity are necessary for each other.<sup>4</sup>

The *cognitive dimension* highlights that the carnal union between man and woman demands an awareness and knowledge of each other, a commitment to give oneself, the link of mutual donation. The more you love someone, the more you want to know them.

The *religious dimension*, finally, shows that the generative human capac-

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3 A. POLAINO-LORENTE, *Sexo y cultura. Análisis del comportamiento sexual*, (Biblioteca Instituto de Ciencias para la Familia de la Universidad de Navarra), Rialp, Madrid 1993.

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4 A. POLAINO-LORENTE, "¿Cómo saber si se está enamorado o no?", in *Letras de Deusto* 27(1997) 75, 13-42.

ity would not be possible where it not for the intervention of the Being who makes it possible, and to whom it must be ordained.<sup>5</sup>

## **CAN SEXUALITY BE TAUGHT? WHO SHOULD DO IT?**

Before going on, it is necessary to answer a pertinent question: Can sexuality be taught as a psycho-biological function of the human person? In light of what has been learned in the past years, that question can be answered with a resounding yes. In effect, if sexuality is a human function that is complex and mysterious – which is developed over a space of time – and it is a matter about which a child has little information, it is logical that a child's education must include this subject matter. This is even more so when, in some way, individual and social happiness of the future youth can be threatened if formation in this area is absent.

Now, sex education cannot be reduced to mere information about sexuality. That is because sexuality, as a dignified and important function of the human person, is not limited to merely genital physiology. Because it is freely exercised and requires the involvement of another person, there needs to be an inherent set of attitudes and values that

logically go beyond the restricted sphere of simple information. Hence, sex education cannot be considered as an apprenticeship in techniques, useful only for the achievement of personal sexual satisfaction.<sup>6</sup>

There are other values involved in this matter which are non-negotiable and which mold in part, not only human sexual behavior, but also the whole human personality. Hence, formation in this area justifiably demands the title of a real and true education.

For many years, sex education has been the “pending assignment” of society, and more concretely, of parents. Still today, parents are hesitant to deal with their children's education in this matter because they do not consider themselves sufficiently prepared to do so. Under these circumstances, what happens most often is that they delegate to others (teachers, doctors, priests, or anyone else) their children's sex education. This is the situation, despite the fact that it is natural and advisable for parents to teach their children about sex.

There has been an absence of parents in this field because of ignorance, laxity, or lack of competence. During the 1970s professors and educational institutions took charge of instructing children in this matter. It is hard—given the differ-

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5 A. POLAINO-LORENTE, “Los cuatro puntos cardinales de la sexualidad humana,” in *Cuestiones fundamentales sobre matrimonio y familia*. Eunsa. Pamplona. 1980, 465-470.

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6 A. POLAINO-LORENTE, *Sexo y cultura*; ID., *Amore conjugale maturità personale*, San Paolo, Milan 1994; ID., “Para entender la actual liberalización sexual,” in *Documentos pro-vida*, Barcelona 1995.

ences in programs and idiosyncrasies of the different institutions –to evaluate the sex education that has gone on since then. In some cases, sex education has lacked scientific rigor and sufficient information, having in practice restricted itself to one hour of classroom teaching, tied to classes in science or biology.

In other cases, sex education programs have proved counter-productive, having become a collection or inventory of sexual deviations that, with the aid of slides, was explained to adolescents by a psychologist. Paradoxically, at the end of the sex education program, the student barely knew anything about sexuality, and instead had received more information about “sexual deviations” than the average medical student.

There have been different types of experiences—especially with those involving community or institutional programs—which not only resulted in not helping to resolve the problem of sex education, but acted in favor of sexual deformation. Some of these programs were a matter of public scandal themselves because of pornographic content and because the information in them was destructive of modesty. As a consequence, this effort was lacking in pedagogy because it incited students to abuse sexuality, to use contraceptives and even to have abortions.

In most educational institutions there was no sex education program, despite the fact that many had both boys and girls in their classrooms as co-edu-

cational institutions. In several institutions, we have seen recently the explosion of small in-class sexual rebellions. Lamentably, the responsibility for these classroom incidents should be distributed between the parents, teachers and students, since sexual rebellion in class is usually related to the permissiveness of the parents at home and of the teachers at school.<sup>7</sup>

All of this means that parents have the inalienable duty to educate their children in sexuality. The references supporting this affirmation could be multiplied indefinitely. For the sake of brevity, the following few will suffice:

“It is imperative to give suitable and timely instruction to young people, above all in the heart of their own families, about the dignity of married love, its role and its exercise.”<sup>8</sup>

“When this love is exercised inside marriage, the gift of self expresses, through the human body, the complementarity and totality of the gift; conjugal love becomes then a force that enriches and makes persons grow and, at the same time, contributes to the growth of the civilization of love; when, on the contrary, the meaning and significance of the gift in sexuality is lacking, then a civilization of ‘things’ and not of ‘persons’ is introduced; it becomes a civilization in which persons are used as if

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7 A. POLAINO-LORENTE – P. MARTÍNEZ, *Embarazo y maternidad en la adolescencia*. Rialp, Madrid 1995.

8 *Catechism of the Catholic Church*, 1632.

they were things. In this context of the civilization of pleasure, the woman can become an object for the man, and the children an obstacle for the parents.”

“Utilitarianism is a civilization of production and of use, a civilization of ‘things’ and not of ‘persons’, a civilization in which persons are used in the same way as things are used [...] To be convinced that this is the case, one need only look at certain sexual education programmes introduced into the schools, often notwithstanding the disagreement and even the protests of many parents.”<sup>9</sup>

“Sex education, which is a basic right and duty of parents, must always be carried out under their attentive guidance, whether at home or in educational centers chosen and controlled by them. In this regard, the Church reaffirms the law of subsidiarity, which the school is bound to observe when it cooperates in sex education, by entering into the same spirit that animates the parents.”<sup>10</sup>

“The right and duty of parents to give education is essential, since it is connected with the transmission of human life; it is original and primary with regard to the educational role of others, on account of the uniqueness of the loving relationship between parents and children; and it is irreplaceable and inalienable, and therefore incapable of being entirely delegated to others or usurped by others.”<sup>11</sup>

“Beginning with the changes which their sons and daughters experience in their bodies, parents are thus bound to give *more detailed explanations about sexuality* (in an on-going relationship of trust and friendship) each time girls confide in their mothers and boys in their fathers. This relationship of trust and friendship should have already started in the first years of life.”<sup>12</sup>

“In answering *children’s questions*, parents should offer well-reasoned arguments about the great value of chastity and show the intellectual and human weakness of theories that inspire permissive and hedonistic behavior. They will answer clearly, without giving excessive importance to pathological sexual problems. Nor will they give the false impression that sex is something shameful or dirty, because it is a great gift of God who placed the ability to generate life in the human body, thereby sharing his creative power with us.”<sup>13</sup>

“Young people should be aptly and seasonably instructed in the dignity, duty and work of married love. Trained thus in the cultivation of chastity, they will be able at a suitable age to enter a marriage of their own after an honorable courtship.”<sup>14</sup>

“Through this remote formation for chastity in the family, adolescents and young people learn to live sexual-

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12 PONTIFICAL COUNCIL FOR THE FAMILY, *The Truth and Meaning of Human Sexuality*, 89.

13 *ibid*

14 *Gaudium et spes*, 49.

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9 JOHN PAUL II, *Gratissimam sane*, 13.

10 JOHN PAUL II, *Familiaris consortio*, 37.

11 JOHN PAUL II, *Familiaris consortio*, 36.



ity in its personal dimension, rejecting any kind of separation of sexuality from love—understood as self-giving—and any separation of the love between husband and wife from the family”.<sup>15</sup> “The family is, in fact, the best environment to accomplish the obligation of securing a gradual education in sexual life”.<sup>16</sup>

Here is a summary of the four principles that parents should keep in mind before beginning to give the necessary information to their children with respect to human sexuality: 1) “Every child is a unique and irreplaceable person and ought to receive an individualized formation”; 2) “The moral dimension must always be part of the explanations”; 3) “Chastity education and opportune information about human sexuality must be offered in the widest context of education human love”; 4) Parents must provide information on sexuality with extreme delicacy, but nonetheless in a clear way and at an opportune time.”<sup>17</sup>

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15 PONTIFICAL COUNCIL FOR THE FAMILY, *The Truth and Meaning of Human Sexuality*, 32.

16 SACRED CONGREGATION FOR CATHOLIC EDUCATION, *Educational Guidance in Human Love*, 48.

17 PONTIFICAL COUNCIL FOR THE FAMILY, *The Truth and Meaning of Human Sexuality*, 65; 68; 70; 75.

## CONTENT AND OBJECTIVES OF SEXUAL EDUCATION

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True sexual education must logically address many different subjects. Some of them must touch on morphological, anatomical and psycho-biological aspects of sexuality: from individual differences to affection, from psycho-biological differentiation to interpersonal communication, from the roles assumed within the couple to the ethics of sexual behavior.

The disciplines brought together here are many (psychology, anthropology, physiology, psychiatry, religion, etc.), which makes it especially difficult to form educators who are competent in this interdisciplinary area. In any case, the contents that are imparted must be useful so that the child develops in the future a well-adjusted healthy sexual behavior that is acceptable from an ethical perspective.

The contents must be imparted progressively following the specific characteristics and needs of each child as they develop over time. It is important not to forget that sexual education should not be oriented only to satisfy an instinct, but rather is oriented towards the happiness of the person.<sup>18</sup>

Among the principle objectives that must be found in any sex education program, one must cite the following

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18 M. GOTZÓN SANTAMARÍA GARAI, *Saber amar con el cuerpo* Libros MC, Madrid 1996, A. POLAINO-LORENTE, *Amore conjugale maturità personale*; ID., “Para entender la actual liberalización sexual.”

important ones: 1) Provide ample information on this subject matter from an interdisciplinary perspective (biology, psychology, anthropology, religion, etc.). 2) Show the finality, meaning and significance of human sexuality within the perspective of a realistic anthropology (the generative, affective, cognitive, and religious dimensions). 3) Inform about the psycho-biological differences between men and women. 4) Explain to children sexual relations in a proportionate and adequate manner as a natural part of marriage, in accordance with the age and circumstances of the children. 5) Contribute to reducing or eliminating fears and anxieties that normally arise because of fear regarding sexual problems or failures. 6) Encourage the necessary discernment regarding stereotypes, compromises, prejudices, and sexual errors that are present in contemporary society. 7) Offer the necessary information to prevent sexually transmitted diseases and AIDS. 8) Present a coherent code of ethics, including the principles on which it is based, in order that the student can satisfy, develop and realize those moral values that lead to a unitive and procreative sexuality within the context of conjugality.<sup>19</sup>

In order to reach these goals, it is necessary to insist on several fundamental ideas. The first one is that love is more important than sex. No person in love would renounce their love for a

“dose” of sex. Sex is an important part, but it is not the most important component of love. Love, on the other hand, is everything. To love is to discover that personal happiness depends on the fact that the beloved is happy; it is to subordinate one’s personal happiness for the happiness of the other person; or better yet, it is to discover that the existence of one and another person coexist, needing and tending towards happiness together. As Lewis (1960) wrote about this matter, “eros creates a mysterious desire for one particular woman... the lover, loves the beloved for themselves, and not for the pleasure she can give to him [...]”.<sup>20</sup>

Sexuality finds its meaning precisely in the form of an interpersonal relationship, whereby the love of the lover is realized in giving of themselves to the beloved satisfying the need to give oneself to make the other person happy, which is truly the only way to bring happiness to the person in love. It is in this context where the sexual gift of self—a mutual self-giving—acquires its full meaning: to see themselves as a reciprocal gift, undeserved, and often not sought. When this happens, the beloved is the source that gives meaning to all that is done, felt and thought. Thus it is understood that to be in love “makes us prefer to share unhappy situations with the beloved, rather than to be happy in

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19 A. POLAINO-LORENTE, *Sexo y cultura*.

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20 C. S. LEWIS, *The Four Loves* (Harcourt Brace, New York 1960).

any other way.”<sup>21</sup> And that is because the “human sexual dimension”—as Ruiz-Regtegui (1987) states—establishes a form of self-giving that is open to giving one’s life as an expansion of its own dynamics.”<sup>22</sup>

It is as if the sexual union were not by itself sufficient and would need to go beyond itself, generating another person—a different “*novum*”: the child—who, independently from those who love each other, would transcend them. Transcendence (in space, time, and personal being) of this new human being has a foundation, which is the union of the sexual act of those who love each other. The child is the living and independent witness of that union. He is an exceptional witness, inextinguishable and irrevocable of that act of human love. Moreover, the union which brings forth the child is self-constitutive of the child’s own being.<sup>23</sup>

It is therefore logical to understand that among the ways to empty human sexuality of any meaning, two are particularly frequent today: to deprive it of fertility (sexuality without procreation) and to disassociate it from affectivity (sexuality without a personal commitment, a depersonalized sexuality without self-giving). “Physical self-giving that is not at the same time personal would be a lie in itself, because it would consider the body as something simply

external, as a disposable object and not as one’s own personal reality.”<sup>24</sup> In such a case, self-giving would not exist, because neither would give to the other, both would be partially and reciprocally using each other (referring here only to their bodies), while the subjectivity of this act vanishes from their encounter, which is generative and transcendent.

An encounter of this nature, designed only for the satisfaction of fleeting physical pleasure, would be an impersonal ghost-like encounter that empties of meaning the unitive act. And between ghosts, there is only place for a fictitious union. Of what use is it to a man or a woman to share each other’s bodies if the other is completely detached and uncommitted, given that their most intimate thoughts, desires, feelings, and *dreams* are silenced and ignored? Why resign oneself only to bodily satisfaction, which only lasts a few moments, renouncing having another give themselves freely and totally to become the lord of the will and beloved ruler of the other’s heart? How and why can one try to be satisfied with so little?<sup>25</sup>

The answer can be found in the words of John Paul II: “Sexuality, by means of which man and woman give themselves to one another through the acts which are proper and exclusive to spouses, is by no means something purely biological, but concerns the in-

21 C. S. LEWIS, *The Four Loves*.

22 RUIZ RETEGUI, “La sexualidad humana”.

23 A. POLAINO-LORENTE, *Sexo y cultura*.

24 RUIZ RETEGUI, “La sexualidad humana”.

25 A. POLAINO-LORENTE, *Sexo y cultura*.

nermost being of the human person as such. It is realized in a truly human way only if it is an integral part of the love by which a man and a woman commit themselves totally to one another until death. The total physical self-giving would be a lie if it were not the sign and fruit of a total personal self-giving.”<sup>26</sup>

## **SEXUALITY AND PSYCHOLOGICAL MATURITY**

Sexuality has much to do with “psychological maturity”, understood as the capacity to subordinate all our impulses, desires and emotions to ordered reason or to the light of our understanding and the decision of our will. A person is psychologically mature, with respect to sexual behavior, if he is capable of committing himself, in a stable and continued manner, to a union with another person (unity), only with that person (exclusivity) and forever (fidelity).<sup>27</sup>

Sexual behavior must be understood as a capacity for commitment, which cannot be taken out of the personal life project that has been chosen. Sexual behavior is not a mere result, the consequence of one person being attracted by this or that quality that the other “has”, rather it is for an irreducible unity that the other “is” and union with them to constitute “one flesh”. This “you” cannot be changed and is

untouchable and the relationship is indissoluble and stronger than death.”<sup>28</sup>

Human sexuality participates in the properties of the transcendent power of love, from which it cannot be differentiated. Love itself is transcendent since, in order to love, one must go out of oneself and meet the other. Thanks to this going beyond oneself, this deep contemplation of the other at the same time that one is denying and forgetting oneself, the human person is affirmed. In the same way, human sexual behavior inevitably must pass through a self-denial in order to achieve personal re-affirmation.

*Infidelity* consists, precisely, in wanting to withdraw what was given, so that it will no longer belong to the other person. Infidelity is nothing else but opting exclusively for oneself, renouncing what cannot be renounced: the other person with whom the commitment was made.

*Religious formation* of sexuality today is the best way to rectify, rescue and dignify human sexual conduct and in this way reach personal maturity. Sexual behavior is desired by God according to a certain order, one which is identified with and most fully dignifies and satisfies the natural being of the person. The sexual union of persons, when in conformity with this order, constitutes an extraordinary occasion to find God.

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26 JOHN PAUL II, *Familiaris Consortio*, 11.

27 A. POLAINO-LORENTE, ¿Cómo saber si se está o no enamorado?”.

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28 J. B. TORRELLÓ, *Psicología abierta*, Rialp, Madrid <sup>2</sup>1999.

*Psychological immaturity* is very common in contemporary society. It can be affirmed that young people mature later in life today than they used to in former times. Adults also imitate young people in much of their behavior and attitudes, as today's society idolizes youth. We have heard so many times the slogan "it is great to be young" that adults have finally begun to believe it. Some adults today even confuse a youthful spirit with a lack of commitment, spontaneity with authenticity, trivialization of responsibility with conviviality, time with the present moment, duty with pleasure."<sup>29</sup>

Those who behave in this manner seem to have forgotten that when the self of the other person that is given to us is disassociated from the components that make up that person, we are inevitably substituting the love of the object for the love of a person. That is, we are "objectifying" the person who gives themselves to us making of them a "person-object". The impoverishing reductionism of the other person ends up also ruining the person who accepts that kind of a relationship. Having accepted only a part of that person, instead of that person's entire self, the full giving/receiving of the other person is rejected, and that person is also impoverished by accepting only a fragment or part of the other person.

In this polarity of transcendence-egotism, *the immature person* appears as a being who sells himself at a low price, who has substituted who he is for someone he is not. By having only in mind oneself, he is self-absorbed and forgetful of the other person. By closing himself from transcendence, he will despair in his own enclosed narcissism, in the hermetical selfishness dealing only with his sexual pleasure, in infidelity to their promise, which while seeking self-affirmation progressively isolates and impoverishes them.

## THE WHAT, HOW AND WHEN OF FAMILY SEX EDUCATION

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Sex education is a necessary process in the formation of children, which cannot be limited only to giving them some information, despite the fact that this constitutes the *what*, which is the content of this education. Even if this information is necessary, nonetheless, in itself it does not replace the much more deep and complex task *to educate in sexuality*. Since this information cannot be avoided, we must therefore address it.

The information that is transmitted to children must be complete and well-balanced. It will be complete if it satisfies the different dimensions that are part of human sexual conduct. Children must be informed of the biological aspects without which they cannot understand human sexual conduct and

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29 A. POLAINO-LORENTE, *Madurez personal y amor conyugal. Factores psicológicos y psicopatológicos*, Rialp, Madrid 41996.

the reproductive function to which it is directed, as well as the psychobiological differences that characterize man and woman.

In addition, it is necessary to attend to the psychological aspect of, for example, the pleasure that comes from such acts and the subordination of that pleasure to other more relevant psychological finalities such as the love between persons, personal and reciprocal knowledge, communication, a stable and lasting commitment, sharing a common goal, and the possibility of fatherhood and motherhood, etc. Among these contents which must be taught, it is very necessary to attend to the meaning and finality of sexual behavior, that is, to the anthropological, social, cultural, and religious dimensions which come together and must be distinguished.

Regarding the *how* to educate in sexuality, it is necessary to keep in mind that, as far as possible, this education must be individualized, even personalized, which does not prevent questions being raised by the children at any moment, even within a public or private context.

The information that is imparted must be truthful, unambiguous, clear, and precise without falling into crudeness or artificiality. One can be very clear without being crude. In a word, the information must be imparted and grounded in naturalness.

Regarding the *when* to teach sex education, it is necessary to inform opportunely, keeping in mind the context

in which sex education is imparted, as well as the age of the learner adapting to the age and development of the child.

At this point it is more important to inform more than less; to arrive earlier is better than to arrive after. Many times, one will have to take advantage of the circumstances which ordinarily happen in the life of the child. This is the case, for example, when the child begins to discover sex as something which is part of themselves, either because of the changes and development of their reproductive organs, or because of the manifestations that accompany the emergence of the first sexual impulses. All this presupposes bewilderment, the discovery of pleasure, and the related internal turmoil that accompanies it.

In other circumstances one must take advantage of the natural curiosity of children, by comparing themselves to their siblings in aspects which differentiate them. And in other occasions, it would be opportune to intensify this educational process, taking advantage of the moments when boys and girls begin to be attracted to their classmates and friends of the opposite sex.

In any case, one should never wait for these circumstances to arise; instead, parents must act ahead of time and speak of the matter opportunely and independently of those circumstances. But of course, if these circumstances do arise, then they must take advantage of them.

At no time should parents leave unanswered a question posed by the child. Neither should parents begin to educate in sexuality in an incomplete or only partial way. That is, it is not proper to speak only of sexual physiology or anatomy, excluding the most substantive aspect of this behavior: the interpersonal encounter and loving self-giving.

It is necessary to educate on other relevant aspects as well, such as *modesty*, since it is indispensable in comprehending human sexuality. *Education in modesty* is what allows children to recognize the value of their intimacy and self-respect they should have for themselves and their body. Without it, it is very difficult in practice to respect others. As Choza writes, “modesty in covering one’s body means that one is in possession of our body, that one is not willing to share it with the whole world, and consequently, one is capable of giving it to a person or not to give it to anyone. This is the meaning behind the concern that the husband or boyfriend has that their wife or girlfriend dresses in a chaste manner.”<sup>30</sup>

Education in modesty thus contributes to the child learning to defend himself from strangers, both as to his bodily integrity and his personal interior self, and thus can reveal himself only under those circumstances and before such persons before whom he must, since it

contributes to the perfection of their being and their personal self-realization.

Any manifestation of sexual behavior constitutes a sign that the person is manifesting his most intimate self, as regards the body, that is the me-body, which almost always means that the person is willing to give his interior self to the other person.

If a person only gives his me-body, while refusing to give his interior self, in a sense he is not giving himself to the other person, but only a part of himself, his body, configured as to the other person as a man-object or a woman-object.

The very nature of this teaching also demands a needed characteristic of family sex education, *education in chastity*. It is natural for children to experiment with the attraction to those of the opposite sex, as well as with their sexual tendencies. But it is no less true that it is also natural to demand that the person have dominion over himself and his instinctive tendencies. He must be someone who possesses a necessary rational self-control, in such a manner so that he is not at the mercy of them. It is only then that a person can control his sexual conduct and voluntarily direct it to where it is personally desired, free of any type of slavery. Education in chastity will be very difficult if there is no appeal to the religious dimension of human sexual conduct.

From a natural perspective, what is proper to the well-balanced person is to act out his will freely and not to be

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30 J. CHOZA, *La supresión del pudor*, Eunsa. Pamplona 1980.

ruled by what his appetites, stimulated under certain circumstances, impose. In fact, sexual behavior, when ordered, reaches its fullest expression in a loving gift of self. But this is not always clear. In any circumstance, human sensibility can demand sexual satisfaction with the urgency proper to the needs of the appetites. This is a case of a *selfish appetite*, which, aroused by the senses, hardly looks for anything but immediate pleasure. But this way of proceeding does not satisfy the fullest sense of the loving commitment and the happiness that accompanies it.<sup>31</sup>

In other circumstances, sexual attraction which is channeled through sentimentality also seeks its own satisfaction. This is a case of a *selfish sentimentality*, which seeks the psychological satisfaction of the self, whereby the person seeks an affective satisfaction more than a sexual satisfaction. Again, it is rooted in the self. In neither of these two previous circumstances are the conditions met for a loving gift of self. In the first, because the person sets up a mere subjective animal sensibility; in the second, because the person falls into an emotional subjectivity of their own self.

Sexual behavior finds its goal in the loving gift of self, when, oriented by reason, the desire of the will is directed to the other person, seeking that person's

integral good. Human sexual conduct achieves its goal when it seeks the happiness of the other person—as well as one's own happiness—which takes place in the encounter and gift/acceptance of the other person in their totality, which is, in a relationship founded on commitment, which by its nature must be *forever*. And so, it is not parts of the other person that are accepted, such as that person's body, affection, social position, etc. What is sought is a commitment to and with the entire person.

Without that radical commitment, sexual behavior would appear not to have a finality because by means of it, the other person would be used without accepting their totality, that is, the other person is manipulated and submitted to the selfish interest of obtaining mere satisfaction or some pleasure. But, by manipulating the other, the sexual manipulator remains a captive in this sexual manipulative game, and thus an unsatisfactory, incomplete and therefore frustrating sexual conduct is made manifest.

And that is how, as García-Hoz writes, “the young man must clearly understand that everything sexual is above his own essence, ordained to the ultimate goal of marriage and family; that all sexual impulses must be subordinated to love. The youth must understand the greatness of the gift placed in the sexual power, both in himself and in the other person, and which can only be developed correctly and fully through

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31 POLAINO-LORENTE – P. MARTÍNEZ,  
*Embarazo y maternidad en la adolescencia*.



chastity. It is only then that the intimate self will have true satisfaction and peace. Only thus will man be whole, only then will his life be satisfied in truth, already as a single person, as a spouse or a mother or father. Only thus also will he achieve maturity.”<sup>32</sup>

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32 V. GARCÍA HOZ, *La educación de la sexualidad*, Rialp. Madrid 1981.



# Sexual and Reproductive Rights

José Alfredo Peris Cancio



*A series of vague and imprecise expressions made headway following a precise strategy during the Cairo and Beijing international conferences. The basis of this was a skewed interpretation of the 1948 International Declaration of Human Rights of the United Nations grounded in a different vision of man than the one which inspired this fundamental historical text. One of the most important among these expressions is “sexual and reproductive rights” which is closely tied to an individualistic and statist conception of man and of society. The pretension is to change the interpretation of Article 2 of the Declaration of Human Rights. Today the strategy linked to “sexual and reproductive rights” is to pass from a vague and diffuse concept (which was very useful in the international forums to those who share a certain conception of man), to a precise definition that permits its introduction in the various legal systems. Therefore, it is better to describe its “demands”, based on an anthropology that sees sexuality as disassociated from procreation, than to give it a definition. “Sexual rights” are often used to defend the “right” to homosexuality. The use of the expression “reproductive rights” is also related to a presumed “right” to contraception, sterilization, abortion and the modern techniques of artificial reproduction. (↗ Gender; Sexual Identity and Difference; An Ideology of Gender: Dangers and Scope; Motherhood and Feminism; Safe Motherhood; New Definitions of Gender; Responsible Parenthood; Patriarchy and Matriarchy; Reproductive Health; Safe Sex; Equal Rights for Men and Women)*

## DEFINITION

The term *reproductive rights* (RR) is frequently used by those who ideologically defend these rights. But since the term lacks a proper definition regarding its scope and content, its supporters consider that a precise definition is necessary to achieve a more efficient vindication of these rights and to guarantee the protection of the practices involved

in them. Along with this ambiguity, the term is always connected to *sexual rights*, so in most cases we refer to them as “*sexual and reproductive rights*” (SRR). SRR are defined in terms of power and resources: the power to have access to the necessary information and make sound decisions about fertility, procreation and child care, gynecological health and sexual activity, as well as the resources to

proceed in a safe and efficient manner.<sup>1</sup> Two important concepts go along with these rights: choice, understood as the essence of freedom, which verges on the ideological liberal-radical context, and women's health and well-being, which relate to the feminist logic.

## DESCRIPTION OF ITS CONTENT

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The list of rights that tend to be included in the category of SRR turns out to be more illustrative than a mere definition. The compilation of three 1996 texts *The Declaration of Sexual and Reproductive Rights* by the International Planned Parenthood Federation (IPPF), Mari Ladi Londoño's *Sexual and Reproductive Rights*, and the *Open Forum for Sexual and Reproductive Rights* in Chile has made it possible to identify the following rights, which is also open to new inclusions:

- The right to exercise and enjoy sexual independence, according to one's preferences as well as the right to due legal protection.
- Pleasant and recreational sex, independent of reproduction.
- Appropriate knowledge and information on sex and reproduction.
- Love, sensuality and eroticism in sexual relations.

- Sexual education should be appropriate, comprehensive, secular, scientific and sensitive to gender.

- Rejection of all external interventions in sexual activities.

- Freedom from fear, embarrassment, guilt and other imposed beliefs that inhibit the sexuality of a person and diminish his/her relationships.

- Selection of a partner to have sex without coercion or violence.

- Proper nutrition since childhood, for an adequate growth and balanced development of the body and of the potential for procreation in the future.

- Voluntary and free decision for motherhood without obligations.

- Complete information on the benefits, risks and effects related to contraceptives.

- Open and free contraceptives with information on contraceptive methods, follow up and responsibility of the users.

- Marriage and family and the right not to have one.

- Parenthood and the right to decide when to have children.

- Good quality of services for prenatal, birth and post-birth care, guaranteed by the law.

- Equal participation of women and men in child rearing, building creatively on traditional gender roles.

- Effective legal protection against sexual violence.

- Adoption and the right to complete and accessible infertility treatments.

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1 S. Y. CORREA-PETCHESKY, R., "Reproductive and Sexual Rights. A Feminist Perspective", in G. SEN-A. GERMAIN-L. Chen (eds.), *Population Policies Reconsidered: Health, Empowerment and Rights*, Harvard University Press, Cambridge, (MA) 1994.

- Prevention of and treatment for infertility in the reproductive tract and the right to decide on interventions in any related matter.

From the above set of rights we can easily deduce that SRR are really a program to transform the morality of sexuality and life, a political agenda to change the sexual and family customs of people, especially of those in the South, focusing on the traditionally Catholic Latin-American countries. There is a deep cultural and political movement to change the meaning of the constitutions and the sex education programs in these countries. In fact, there are quite a few web pages dedicated to the spreading of reproductive rights in Latin America (Mexico, Argentina, Bolivia, Colombia...).

## **HISTORY**

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Those who promote SRR say they have a long history starting with the United Nations' *Declaration of Human Rights* of 1948. These promoters interpret Article 2 of the *Declaration* as giving every person rights and freedoms regardless of race, color, sex, language, religion, political or other opinions, national or social origin, property, birth or any other condition. It is, therefore, a matter of understanding that the *Declaration* of 1948, more than establishing a set of concrete rights, introduces the generic "right to have rights", whose content will be the result of the democratic political activity of nations.

Furthermore, these supporters consider that subsequent United Nations conferences reinforced the idea that the right to make decisions about reproduction and the right of access to health services were fundamental human rights. Women's rights—those approved by the United Nations—include "the thorough development and progress of women." This means that both men and women must have equal access to health services, including those related to family planning, and the right to decide the number of children to have as well as the spacing of children. They consider that all this illustrates clearly the need for access to information, education and the necessary resources in order to exercise these rights.

In this line of reasoning, SRR promoters deem that the International Conference on Population and Development held in Cairo (1994) recognized some SRR as basic human rights. Thus, paragraph 7.3 of the final declaration states that "these rights rest on the recognition of the basic right of all couples and individuals to decide freely and responsibly the number, spacing and timing of their children and to have the information and means to do so, and the right to attain the highest standard of sexual and reproductive health. It also includes their right to make decisions concerning reproduction free of discrimination, coercion and violence, as expressed in human rights documents." The Fourth World Conference on Women held in Beijing (1995) is seen as confirming the consensus on the need to eradicate

all forms of violence and discrimination against women and to guarantee the right to decide freely and responsibly about sexual and reproductive matters. The plan of action of this Conference reads similarly to that of the Cairo Conference: "In the exercise of this right, they should take into account the needs of their living and future children and their responsibilities towards the community. The promotion of the responsible exercise of these rights for all people should be the fundamental basis for government- and community-supported policies and programmes in the area of reproductive health, including family planning."

## **REPRODUCTIVE RIGHTS ACCORDING TO IPPF**

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Despite these interpretations, no international text on human rights mentions reproductive rights explicitly. National and international juridical mechanisms merely recognize those functions related to human procreation, family and life. However, those who promote SRR do not unanimously recognize these functions as SRR. In order to fill the gap the International Planned Parenthood Federation (IPPF) has prepared a charter of so-called "sexual and reproductive rights" and intends to apply the conclusive documents of the UN Conferences of Cairo (1994) and Beijing (1995) mentioned above.<sup>2</sup>

This same document contains a list of twelve rights, interpreted, developed and established by the corresponding texts of the documents of Cairo and Beijing. Even if IPPF presents its interpretation of human rights and reproductive rights as the United Nations would, it actually responds to a very concrete political vision, whose general outline will be shown later in this document. For the moment we will show some of its significant elements.

Only those who are born have the right to life. The mother's life must not be placed at risk by pregnancy and pregnancies that are too early, too late, too close or too many are considered to constitute a risk. Infanticide is condemned, but prenatal sex selection is passed over in silence. Freedom includes the right to enjoy and control one's sexuality, with due respect for the rights of others, the right to be free from sexual and reproductive health related medical intervention without informed consent, and the rejection of genital mutilation, rape and sexual harassment.

Particularly significant is Article 2.5, which deals with antireligious bias typical of the IPPF project: "All persons have the right to be free from externally imposed fear, shame, guilt, beliefs based on myths and other psychological factors inhibiting their sexual response or impairing their sexual relations." It is

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reproductivos, según la IPPF. Una interpretación que quiere pasar por única", *Aciprensa-Vida familiar*)

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2 Cf. J. DOMÍNGUEZ, "Los derechos

not out of place to see here a certain contempt towards religious freedom regarding sexuality, family and life. Next, the article mentions the right to not continue a pregnancy, to be sterilized or to have an abortion unless consented to.

The right to equality includes non-discrimination at work because of pregnancy, motherhood or sexual preference, but the latter was not accepted in the Beijing document for lack of consensus. It is established that women must have access to family planning centers without needing the consent of anyone else.

Included in the right to privacy is the right to absolute freedom regarding sexual reproduction, which comprises everything concerning so-called "safe abortion". Thus, confidentiality for young people is protected in order to avoid parents' involvement in all that relates to information on sexuality, access to contraceptives and abortion.

The right to freedom of thought and speech regarding sexual and reproductive life acts as a shield against the restrictions caused by ideas, awareness or religion if these prevent access to education and information on sexuality. In a contradiction, this right also restricts healthcare personnel's objection to contraception and abortion in two ways: The professional is entitled to object only if the patient can be transferred to healthcare professionals willing to provide the service immediately and he is obliged to provide the service in cases of emergency.

The right to information on sexual matters means that the information will be presented in an objective, critical and pluralistic way including the benefits, risks and effectiveness of methods of fertility regulation and the prevention of unplanned pregnancy.

The right to family planning and the right to the benefits derived from scientific progress would include access to infertility treatment, to contraception, to abortion, and to methods of assisted reproduction. Considering abortion as a right is in contradiction with the Beijing and Cairo documents.

The right to health protection includes the following aspects: methods to regulate fertility, treatment for infertility and sexually transmitted diseases, especially AIDS, and respect for confidentiality.

IPPF, whose head office is in London, was created in 1952 and has affiliate organizations—Family Planning Associations (FPA's)—in one hundred and forty countries. IPPF is the most powerful and influential non-governmental organization that promotes population control. Its budget is over a hundred million dollars, and its sources of income are mainly states, principally the United Kingdom and private institutions such as The Ford, Rockefeller, Hewlett and MacArthur Foundations in the USA. Its actions follow a "radical" or "absolute" liberal ideology, and with this charter IPPF seeks to have an instrument for the promotion of some

liberties, but not as mere negative liberties—ones where the State does not intervene—but as positive rights and demands directed to the State by people who follow the logic of “clients”, not of “patients”.

## **SOCIAL AND LEGAL PENETRATION OF SRR.**

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Those who promote these rights have three methods of social and *legal* action with the end of including them in government ordinances as well as in the social life of nations.

### **The Political Discourse on Rights**

Reproductive rights are justified from a liberal individualistic logic, whose ideological connection is spreading what is known as “political liberalism”. Taking John Rawls as a representative figure of this ideology, we can say that the economic legitimization of the market is being extended to the political and social worlds; centering all values on the desire for freedom of the individual and on the commitment of public institutions to guarantee the effectiveness and equality of this freedom. Human rights interpreted in individualistic terms justify the internal policy of states as well as their presence in the international sphere. Conceptualizing rights in these terms is considered a politically correct demand on democracies considered to be ‘decent’. From this point of view, states are obliged to

provide reproductive health services as a way to protect human lives regardless of sex; a view that guards the right of individuals to self determine their sexual and reproductive options based on the right to establish their own families, to be free from any kind of interference in their decisions to reproduce, and to be free from all types of violence and coercion that may affect the sexual and reproductive lives of women.

### **The Social Discourse on the Equality of Rights.**

In poor or marginalized zones; the discourse about SRR is presented as a commitment for the marginalized woman and her freedom. *Reproductive Rights and Health of Women of Color* by the NARAL Foundation in its *Reproductive Freedom & Choice* project is a representative example of this kind of action. The ethical goal is to have the woman of color enjoy her right to choose, and to do so it is necessary to pinpoint the discrimination, past and present, which is focused on the difficulties in having safe and legal abortions. These difficulties are the result of racial and socio-economic discrimination, and the only way to overcome them is by disbursing public funds to give low income women the possibility of having abortions and not being forced to have undesired children. This is why the work of NARAL proposes ideas in three areas to improve the reproductive health of the woman of color: research, training for repro-



ductive health promoters, and greater access to complete reproductive health services, including family planning programs and medical services for abortion. This analytical framework of the situation of the woman of color is identical to the one done on other indigenous or impoverished groups in Latin America. The objective is to identify the social support provided to women with their role as women, not only as mothers together with just and necessary measures to improve the sanitary and social conditions of women, there is an obsessive tendency to consider recourse to abortion as the key to liberating women.

### **The Legal Discourse about Reproductive Rights**

The SRR discourse enters formal and stable democracies through interpretations of constitutions. Although not recognized as rights in international documents, the practice of artificial insemination, *in vitro* fecundation, embryo transfer, the possibility of cloning, and in general, everything that is known as “assisted reproduction techniques” force discussion on the existence of a right to procreate. Proponents try to base this right on human freedom, on the dignity of the person, on his/her inherent rights and the free development of his/her personality, on the personal and familial right to privacy, on the right to marry, and on the right to form a family and to protect it. The right to procreate is not usually taken as an absolute right, but

one whose precise boundaries must be established. But since this right is characterized a moral freedom, it is affected by criteria that favor freedom, that is to say, a person can do everything the law allows him/her to do and everything that the law does not explicitly prohibit. Thus, a sort of “union” forms, supported by a constitutional justification between the individual and the public authority, through which a person expresses his/her desire to have a child, and the public authority is obliged, as much as possible, to provide the necessary medical resources to facilitate this wish. Therefore, it is important that limitations in the use of these resources must be justified so as not to be regarded as discriminatory, stressing the fact that no one should be excluded because of her/his sexual orientation. As might be expected, conscientious objection by health workers is not viewed with approval, and tends to be interpreted in a reductive manner. As in the case of social penetration, the key is abortion as a right. The key to legal penetration of SRR in constitutional states is in depriving the human embryo of its personhood. As a matter of fact, the methods of assisted reproductive depend on the creation of extra embryos, which opens the debate on what to do with the frozen gametes and embryos stored for a long time. Another result is forcing decisions on so-called “embryonic reduction”, which is nothing less than selective abortion in the case of multiple pregnancies.

Added to this, jurists see new problems appearing, the most serious of which is the dissolution of the social functioning of the family surname and the presumptions of filiation. Anonymous donors open the possibility that their biological stepsiblings will be unknown to each other and could even get married. This eliminates the content of some aspects of the ancestral taboo against incest.

## **MORAL JUDGEMENT OF SEXUAL AND REPRODUCTIVE RIGHTS**

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Undoubtedly, there is a moral premise behind these political, legal and social proposals that must be dealt with because they affect the relationship between the human being with his/her sexuality, and the condition of women. Certainly, we have to appreciate and support the advances in medicine that make motherhood and the life of the newborn much safer as an undoubted human good. We also must commit to fighting to eradicate sexual violence and we must see sexism as a serious social dysfunction that must be fought, as well as seeing that women cease to experience the most severe social exclusion if we want to achieve the construction of an authentically human common good. From a political, social and legal point of view, there are many things that need to be reflected upon and corrected regarding the lived experiences of sexuality and family among peoples. The emphases that surround the defense of SRR, however, are not adequate.

## **Confronting the Logic of Splitting up with the Logic of the “Nuptial Mystery”**

For SRR supporters, the radical separation between sexuality, procreation and the connection between men and women is completely positive. They say that human freedom is strengthened if the ultimate goal of sexuality is pleasure, if procreation is a function of the health care system, and if the only bonds between men and women are those that result from temporary and modifiable agreements. The religious thought that supports the opposite view encounters stiff resistance for it is thought to place guilt on the experience of pleasure, to reduce the freedom to procreate, and to inhibit the real desires of persons. Such a position forgets that “marriage, more than a question, is an answer,” and that the nuptial mystery is one of the most important nuclei of personal life. Those who live a free and responsible sexuality open to procreation reach a state of plenitude that those who engage in furtive, fearful, and occasional encounters will never enjoy. Procreation open to education helps to found the family as a community of values, growth, development, life and love. When sexuality is open to life and procreation and committed to education, it allows men and women to enjoy marriage: a human, legal and social asset. Marriage allows us to integrate what tends to be frustrating and lived separately, and to enjoy a hap-

pier way of life. Liberating women from the sufferings of an unjust experience of sexuality does not proceed from denying what is an authentic good for them, but by educating women intensely so that this good is produced.

### **Confronting the logic of statism, and the sovereignty of the family**

SRR have the clear risk of emptying the family of its richness to make the individual more dependent on the machinery of the State. Far from fostering the personal freedom to create a family, they encourage State intervention, reducing the sphere of the personal world. The adventure of loving as a husband and as a wife, as parents and as children is persecuted and substituted by the apparent ease of destroying procreation and life. The sovereignty of the family demands recognition that these functions are proper to a human context, founded upon marriage, that develop in a responsible and socially efficient way the task of the most intimate and profound formation of the human personality. The “reproductive union” between the State and the individual can only bring about an ever greater latent dependency of the public on the collectivity. The best antidote for a radically individualistic interpretation of human rights is a defense of the rights of the family, which proposes a complete program of public action in favor of the vocation to love of men and women.

### **Confronting the Logic of Individualism, and the Logic of Communion**

The rights of the family, as conceived by the Holy See in its 1983 *Charter*, try to correct the individualistic interpretation of human rights. A society of free and intelligent monads does not present the authentic face of humanity. Sharing one's life with another is an exercise of mutual recognition through the sincere gift of oneself. Human rights are not spheres of compatible, abstract liberty, but understandings of the common good, of the personal responsibilities to build it. When the “right to procreate” is claimed, the rights of the other person, the future child, are being forgotten, and contradict the very logic of those rights. One does not have the right to a child, but the duty to educate him/her who was conceived in a manner respectful of his/her personal/human condition. One does not have the duty to respect abortion as an choice belonging to the individual freedom of women, or a need to respect the mistreatment of children in the future by the techniques of assisted reproduction. Rather, one has the duty to ask the public authorities to protect the rights of persons of the unborn and to correct any existing inconsistencies in a way compatible with this good. Rights are not liberties without duties. They perfectly articulate the duties to achieve human coexistence, the common good.

## **Confronting Secular Orthodoxy and Religious Freedom**

SRR often seem to be based on a kind of agnostic vision of the world, whose content is wished to be imposed in public life as well as private life. Authors like Robert Paul George, with insight, warn that more than finding ourselves in a clash of civilizations (as Samuel Huntington wrote), we are faced with a clash of orthodoxies, a secular orthodoxy that seeks to exclude religion and revealed faith from the public sphere and an experience of Christianity, Judaism or Islam as vertebral axes of the lives of a great number of people in our world. The areas of sexuality and human life are affected by the experience of religion because these are far from trivial phenomena in people's lives and decisively affect their life's orientation. The only adequate context for this experience is the development of a true religious freedom that will permit faith to come to the aid of reason in order to protect the complete image of the human being. A religious freedom restricted to the private sphere, as a kind of sentimental fantasy irrelevant to the making of human decisions, is a deformation of such faith. The experience of guilt is not religiously adequate if it does not grasp the compassion and forgiveness of God, the Father who loves His children. Therefore, it is not necessary to abandon religious language to understand this.

## **Confronting the Manipulation of Sexuality and the Education of the Person**

Finally SRR propose a perspective of the experience of sexuality that tends to be disembodied, calculating, and hallucinatory. Sexuality, life and family co-exist inside the logic of the body which is never as malleable as the mental or the imaginary, but have an imperative realism before the human being. Sexuality is a dimension of the person whose real possibilities of attaining happiness derive from his/her education or the lack thereof. Family life or the generous gift of one's family life to God or to great human causes are the only scenarios for a happy human life. Only by the constant practice of sincere giving of oneself can one know true happiness, a gift that includes one's sexuality and one's heart. Away from this, there is a tendency for skepticism to a greater or lesser degree. Young people will not be able to educate themselves if they do not have this wisdom, or worse, if public campaigns are dedicated to building fantasy worlds of sexual happiness, so appealing to those who traffic in pornography or prostitution. Being a man or a woman implies educating oneself for a concrete and effective happiness: which proceeds from putting your own life at the service of a good that goes beyond oneself. The search for this will not mislead, and is able to generate the best in life of every individual.

## CONCLUSIONS

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In gathering the information on reproductive rights and the moral judgment of them, it is important to highlight the following points.

1. From a scientific point of view, the expression SRR must be eliminated because it is an ambiguous and vague category whose contents are implemented at random. Reducing the same provisions to SRR does not increase precision.

2. From a political point of view, it is part of a strategy of radical liberal groups to impose their ideas in matters of sexuality and human life, emptying the contents of the well being of the family.

3. From a legal point of view, it lacks any anthropological support as an expression of what is due in justice to others for the construction of the common good. Up until now, the expression SRR is not established in any positive norm, national or international, so it is incorporated under a wide interpretation of rights, that is, the right to have rights, or from the systematic interpretation of the constitutional principles, personal freedom, the free development of one's personality, the right to health care services or the like.

4. Philosophically, it comes from an agnostic vision in which religious thought is distrusted, seen as synonymous with guilt and antagonistic to

sexual pleasure. This leads to attacks on effective religious freedom for persons and families.

5. The 1983 *Charter of the Rights of the Family* of the Holy See is capable of integrating some of the claims of SRR that deal with human well-being, but also maintaining the protection of the well-being of the person, the family and the society. It can inspire adequate principles for interpreting the harmonization of the human rights implied in sexuality, family and human life. Other initiatives like the *Declaration of Rights of the Embryo*, and of the unborn fetus, could help correct the excesses provoked by invoking SRR.

6. The situation of the woman does not improve by invoking her SRR but with the protection of the good of marriage, of sexual education and of the conditions that will make motherhood possible, as well as the health of children during pregnancy, during and after birth. Only in this way can a woman have the freedom and dignity to be a woman without surrendering her right to be a mother.

7. Only by overcoming the nihilistic and mentalist visions of sexuality proposed by SRR can we obtain a true sexuality education and promote the true well-being of both human communion and the concrete happiness of people.

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# Sexual Identity And Difference



Angelo Scola

*A great deal of confusion currently reigns about the “masculine” and the “feminine”, about the “other” and “oneself”. This confusion has been strongly fostered both by the ideology of gender and by a widespread scientific popularization of cloning. It is not sufficient to say that what makes the richness of the human community are the differences that characterize human persons. One has to take the best possible advantage of what existential phenomenology, personalistic anthropology, psychology, sexology, and biblical and theological teachings have to offer in order to know that each person, in his unique essence, displays some of God’s fullness. (↗ Discrimination Against Women and CEDAW; Homosexual “Marriage”; Homosexuality and Homophobia; Equal Rights for Men and Women).*

## INTRODUCTION

Within the context of the so-called sexual revolution, the *identity* and *difference* theme<sup>1</sup> has led to a radical questioning of the meaning of the terms designating *man-woman*. Today’s dominant mentality tends to mix up the concepts of *difference* and *diversity*. Nowadays the two nouns are being considered as almost interchangeable, with a marked tendency to favor the qualification ac-

cording to which the notion of *diversity* specifically refers to sexuality. It is therefore extremely urgent to eliminate one misunderstanding: *difference*, especially when referring to sexuality, is not synonymous with *diversity*, neither at the cultural or philosophical level, nor, certainly, at the theological level.

## ANALYSING THE MEANING OF DIVERSITY AND DIFFERENCE

To obtain an adequate anthropological idea of *man-woman*, let us compare the two word-pairs *identity-difference* and *equality-diversity* in order to demonstrate that the word-pair *identity-difference* seems to be more appropriate to indicate the essential meaning of sexuality.

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<sup>1</sup> We expressly intend to limit our proposal to the “theoretical” kernel of the theme. In spite of its technical asperities – which require the fatigue of penetrating the “idea” – our choice will offer the reader the opportunity to discover that, if many aspects connected with “sexuality” seem to be problematic, it is only because they have not been considered *in radice*.

Unity is the starting point: identity and difference are found within the unity of the I. Emmanuel Lévinas' affirmation: "The I is different because of its uniqueness and is not unique because of its difference" allows us to understand how difference occurs within the unity of the I. Indeed, the very etymological root of the word *difference*, deriving from the verbal form *dif-ferre*, suggests the idea of "placing the same thing elsewhere", changing its location. Difference is therefore structurally related to identity, and it implies that aspects that are unsurpassably distinct remain in a unity, which they are unable to break. Therefore, difference is *intra-personal*.

Diversity, instead, refers, by its very nature, to multiplicity and plurality. Its etymological root derives from *diversus*, past participle of the Latin verb *di-vertere*, meaning "to turn towards the opposite direction." Therefore, the category of *diversity*—containing the meaning of *separate*, *divided*—can only refer to *interpersonal* (not intrapersonal) relations; as such, it is totally extraneous to the identity-difference relationship.

The identity-difference approach has the capacity not to annul the content of mystery contained in *sexual difference*, picturing it not simply as a biophysical or bio-psychological diversity between man and woman, but as a constitutive aspect of the *humanum*, indissolubly connected with the aspects of the *gift of self* and of *life* (*nuptial mystery*). When today's culture tries to

avoid the original element of sexual difference, equating it with diversities of a different nature (ethnic, religious, professional etc.) which man normally experiences, it urges one to define the man-woman concept according to what the word pair *equality-diversity* imposes, thereby inexorably carrying out an "ideological reduction" of the way things really are.

To flatten the notion of *difference* into *diversity* is an incorrect operation, because the two concepts cannot be reduced to one another. The notion of *diversity*, by relating two realities which are in themselves separate and extrinsic, is characterized as being opposed to that of *identity*, while the notion of *difference*, which has nothing immediately to do with multiplicity and plurality, can be traced to what is *identical*. In the case of difference, the locus of unity, in its proper sense, is not being abandoned.

However, the category of difference always refers to a unity in which there remains a polarity, a duality, not as a dialectical opposition, but rather as an openness to the *other*. Thus, the I's inherent sexual difference constitutes a *relationship*, the man-woman relationship, for which the *other* is not purely extrinsic to the I, but, precisely because of the identity-difference relationship, it is somehow also within it. Sexual difference documents the constitutive receptivity and openness of the I in its spiritual-corporeal nature.



The same demystification procedure used regarding the progressive substitution of the term *difference* with the term *diversity*, should be applied to today's fashionable habit of substituting *identity* with *equality*. The etymological root of the word *equality* is the Latin adjective *aequus*, deriving from *sequor*, and suggesting the idea of a sequence, of an ordered and progressive succession. To characterize the sphere of sexuality—whose semantic ambit, as we have seen, preserves the unrestrainable dynamism of an openness to the *other* (difference)—with this notion, instead of that of identity, would lead to reducing that unity to a leveled-out and sterile uniformity.

At the end of this short *excursus*, one can more evidently see that only the word pair identity-difference can adequately describe the physiognomy of human sexuality. In fact, only by using these terms is it possible to think of *man-woman* in an adequately personal way, which—according to the Judeo-Christian tradition—finds its roots in the logic of the *imago Dei*, which preserves the fullness of its meaning.

## **SEXUAL IDENTITY-DIFFERENCE**

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The choice of describing man-woman with the categories of the *identity-difference* word pair emerges quite obviously in the Magisterium's most recent thoughts which identify the contents of the affective-loving dimension of the I. Sexual difference is proposed as an orig-

inal datum in the ambit of the doctrine of the *imago Dei*, which is an inalienable foundation of the entire Christian anthropology (cf. *Mulieris dignitatem*, 6). This is what John Paul II says in his famous catechesis about conjugal love (theology of the body): “the ‘definitive’ creation of man consists in the creation of the unity of two beings. Their unity denotes above all the identity of human nature; their duality, on the other hand, manifests what, on the basis of this identity, constitutes the masculinity and femininity of created man” (Catechesis, IX). Indeed, each person comes into life as a sexed being (man-woman), within a constitutive relationship that is objectively tied to the conjugal act, which implies the relationship of a man and a woman. The *biology* of a child always implies a *genealogy* (cf. *Letter to families*, 9). No person can possess his own origin, nor can he decide about his own sexual identity. The *I* is born structurally with reference to an *other*. In other terms, we can also say that the *I* stands within a *difference*. The unity-identity of the *I* is always in relationship to the *other*. Even in the aberrant case of possible human cloning, it will not be possible to overcome this element of difference.

## **THE ANTHROPOLOGICAL MEANING OF MAN-WOMAN**

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Within the sphere of human sexuality, to define the exact weight of the notion of *difference* with respect to that of *diversity*, one has to make the essential traits of the anthropological mean-

ing of man-woman plain. *Mulieris dignitatem* n. 7 declares that: “man cannot exist “alone” (cf. Gen 2:18); he can exist only as a ‘unity of the two’, and therefore in relation to another human person. It is a question here of a mutual relationship: man to woman and woman to man. Being a person in the image and likeness of God thus also involves existing in a relationship, in relation to the other ‘I.’” Thus, at the anthropological level, man-woman appears as the expression of the so-called ontological principle of *dual unity*, according to which unity (within contingent reality) always occurs within a polarity. So, as far as the human being is concerned, the same principle holds for man-woman as for the other two constitutive polarities, that of *soul* and *body*, and of *individual* and *community*.

There are four constitutive traits of man-woman. After investigating them briefly, we will be able to conclude that sexuality is an original dimension, not a derived one. And, therefore, that sexual difference is no purely accidental and surmountable fact; rather, it belongs to the constitutive physiognomy of man and is insurmountable.

The *first* trait refers to an elementary datum: man exists, always and only, as a man or as a woman. No man (or no woman) can uniquely exhaust the whole of man by him/herself: in front of either of them there is always the other mode of being that remains inaccessible to him/her. The duality of the sexes, by manifesting a contingent character, in-

dividuates for man at the same time a limit and a resource. It expresses man’s need-capacity to transcend himself in his encounter with what is other than him, in order to fulfill himself. And this creates an opening towards the discovery of the I as a *being in relation* to the other I, not only as an individual, but as a person (cf. *Letter to Women*, 7). It can also be observed that man, because of his own sexed nature, is located within the cycle of human generations that implacably succeed one another. Through this cycle, the species is preserved, but in a certain sense it also exposes the individual to death. This is another, not at all secondary, aspect linked to sexual *difference*, which obliges man to become more self-conscious of his contingency.

The *second* trait manifests how the relationship between male and female characterizes itself in fact as a relation of identity and difference. If the question of identity—which lies at the origin of the absolute equal dignity and rights of the personal being of both man and woman (cf. *Gaudium et spes*, 24), founded on their common humanity (cf. *Mulieris dignitatem*, 6)—is nowadays, at least in principle and in Western society, quite consolidated, the question of difference, instead, appears to be quite complex, as we have already noted. In the context of sexuality it cannot be confused with the problem of roles, nor should it be reduced to the clear evidence of a biopsychological difference; rather, it must be understood ontologically.

A more properly theological point of view—and this is the *third* aspect—allows us to affirm that sexual difference belongs to the original nature of man created in the image of God (“in the image of God he created him, male and female he created them,” Gen 1.27). The inclusion of sexual difference in the *imago Dei*, under specific conditions, permits us to grasp a certain analogy between the man-woman relationship and the relations in the Trinity. Given that *communio* (as a non-eliminable openness to the other) is a constitutive dimension of the person, which comes from being made in the image of God, one can see a faint analogy between the dual unity of man-woman and the Trinitarian communion (cf. *Mulieris dignitatem*, 7). This is an essential datum. Indeed, if, from the very origin, there were not a difference that did not alter identity—as happens in the full sense in the life of God, one and three-fold, from whose plan man emerges as a sexed being from his origin—any difference that successively arose would only be either the result of a fall, or the fruit of some violence.

Finally, basing ourselves on the three elements we have briefly analyzed, in the indissoluble interweaving of sexual difference, gift of self and fertility (life), one can recognize an essential dimension of man’s nature: *the nuptial mystery*. This is the *last of the four* constitutive traits that delineate the meaning of man-woman. Present in the I in a dynamic, complex unity, they allow us to grasp the no-

tion of sexuality in all its fullness, and, among other things, to discover that the nuptial language of love is a privileged “metaphor” for describing man’s relationship with the real.

### **THE PRINCIPLE OF DIFFERENCE AT ITS PHILOSOPHICAL- THEOLOGICAL LEVEL**

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To ponder *sexual difference* with reference to the *principle of difference* means moving into the realm of philosophy and theology. This, in fact, is where the meaning of difference blossoms, with reference to the reality of things in themselves and to the plan, which the one-and-triune God has given and in which He keeps everything in being. Since it is impossible, here, to use technically defined terms to tackle the theme of difference, we shall be satisfied with sketching out a few synthetic notes necessary for establishing the fact of sexual difference.

We have already said that sexual difference, in its constitutive nexus with love and fertility, is an original and not a “deducible” fact. Therefore, it appears to be an essential dimension of *elementary human experience*. It might be useful here to recall, as many depth psychologists confirm, that it is impossible for any theory to “capture” sexual difference. In fact, in so far as it is a concrete and privileged *experience* that allows one to have access to the real, sexual difference is ultimately concerned with

fulfilling one's freedom because it introduces one to the discovery of *need* and *satisfaction*; of *desire* and *task*; of *pleasure* and *renunciation*; of *enjoyment* and *sacrifice*. These are the terms required for human freedom to realize itself and discover its *specific difference*: man is not only a *being-in-se* and *per-se*, he is above all a *being-for-the-other*.

Thus, sexual difference marks a path along which the I, while progressively learning to know itself in the other, opens itself to its ethical-ascetical task. The dual unity format, constitutive of man-woman, is a reflection, at the anthropological level, of what—maintaining all due distinctions—the Thomistic school would define as *real distinction* (*distinctio realis*) and Heidegger would call *ontological difference*. Man's reason, by grasping, at the heart of its being, a *difference* between the concrete "thing" and the total being, makes an indisputable datum emerge: being occurs always and only as subsistent in each single ens, which, in any case, can never exhaust it. The ontological relationship between being and ens enlightens the coexistence of a two-fold property: between the two (being-ens) there is *difference* and *indivisibility*. In each ens, being, its transcendent basis, gives itself without exhausting itself in that gift, because in this giving it *reveals* itself as a promise and an anticipation, yet remaining at an insurmountable distance. Therefore, the ens is a real sign of being. In their original structure, being and ens simultaneously

offer themselves, and the evidence of their presence, as a sign-promise, always maintains a *symbolic* character.

Precisely because it is not an accidental property of man, rather it is one of his essential, original and constitutive dimensions, the anthropological man-woman polarity—related on the one hand to the soul-body polarity, and on the other, to the individual-society polarity (of which it is somehow an anticipation—cannot but reverberate with this ontological difference. And again, sexual difference, which can be defined in terms of reciprocity—that is, as a dual unity—at the level of this unity's transcendence, concretely shows the full weight of this ontological difference.

The principle of sexual difference through the ontological difference calls for space to be given to the theological discourse. In fact, only in the man-God relationship can the ontological difference find its explanation. The truth about the relationship between man and God is based precisely on their difference. As the doctrine of the Trinity teaches us, difference is the condition for safeguarding both the absolute free gift of God's self-gift in Christ, and the fact that no act of human freedom is "deducible" (the act is always historically determined and so can never *a priori* be contained in a theory). Thus the pertinence of the nuptial mystery—the indissoluble interweaving of sexual difference, gift of self and fertility (life)—is also made clear for the field of theology. For the nup-

tial mystery is a dimension of love. And the intimate structure of each act of love is Trinitarian, because—as Augustine said—the Trinity is the ultimate face of everything.<sup>2</sup> The man and the woman who, because of their sexual difference, unite in *una caro*—going beyond the degree of awareness of it (which of course has its decisive importance!) wherewith they are living it — are caught by a dynamism that opens them up to the procreation of a child, the fruit of love itself, according to the classical vision of *amor diffusivus sui*. This is why Hans Urs von Balthasar can affirm that “the act of union of two persons in one flesh and the fruit of this union should be considered together jumping over the distance of time.”<sup>3</sup>

### **SEXUAL DIFFERENCE AS ASYMMETRIC RECIPROCITY**

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At this stage, our remarks would not be complete if we were to ignore *how* sexual difference, as an insuppressible openness to the other, essentially qualifies man-woman’s reciprocity. It is important here to clarify the terms in order to definitively explain why, in the case of sexuality, one cannot speak simply of diversity, but rather one must speak of difference.

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2 Augustine, distinguishing between *res* and *signa*, affirms that only the Trinity deserves the denomination of *res* (reality). All the other beings are *signa* of the Trinity itself.

3 H. U. VON BALTHASAR, *La preghiera contemplativa*, Jaca Book, Milan 1982, 89.

It will be enough to simply observe elementary experience to discover that dual unity, which is proper to sexual difference, does not characterize that peaceful symmetrical reciprocity defended by Aristophanes in Plato’s *Symposium*, nor does it specify it in terms of simple complementarity. That is to say: man and woman are not two halves that are destined to melt together so as to recompose a lost original unity. To persist in wanting to reach this objective would lead to a deadly utopia. If there is no doubt that one should speak of reciprocity, this reciprocity should immediately be qualified as *asymmetric*. And this precisely to express the weight of that insurmountable difference that emerges at all levels from the experience of man-woman’s dual unity—even in the two spouses’ *una caro*—keeping it in a permanent tension. To conclude, one can say that sexual difference imposes itself as a constitutive and insurmountable datum; while founding a relationship of asymmetrical reciprocity, in no way does it break the unity of the I itself.

### **“THOUGHT” AND SEXUAL DIFFERENCE**

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Considering the unavoidable complexity and the objective difficulty of “thinking” about difference—a difficulty that we have been insisting upon—one can easily understand why normally one tends to refer to it only in the instrumental sense, in an effort to abolish it, perhaps even with the illusion that this will favor the emancipation of women.

This is why—as we have said above—nowadays one can often notice an attempt to have the meaning of sexual *difference* simply slide towards that of *diversity*.

Instead, in that eminent form of impact with the other that occurs in man-woman, the original dynamism of the I's self-consciousness is in action, making the fundamental question arise: "[...] and who am I?"<sup>4</sup> Sexual difference, being coessential to human nature—through a polarity expressing an *asymmetrical* reciprocity—concretely drives every person—consciously or unconsciously—to trace out his own personal answer to such a constitutive question. But to say this, as we have already observed, means to affirm that sexual difference is no *superadditum*, that is, it is not something external that adds itself to the I, rather, it is a constitutive dimension of man's experience, which influences man's entire approach to the real. Therefore, it never ceases to question man throughout all of life. Each man is bound to "think" the *difference*, while trying to become ever more himself and therefore ever more expressing himself as a person, in relationship with others and with God.

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<sup>4</sup> G. LEOPARDI, *Canto notturno di un pastore errante dell'Asia*, v. 89.

# The Single-Parent Family

Christa Meves

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*The concept of the single-parent family is rather vast since it extends from the widow or the widower with their children to the case of a single mother who has deliberately chosen to raise her child or children born of a previous relationship without trying to create another union. The claiming of a "right" to found a "single-parent family" has become commonplace in feminist circles where some voluntarily unwed women claim to have the right to have children through a sexual relationship or by adoption. The claim may also be found in homosexual circles. This claim is frequently influenced by the ideology of gender and the different currents of thought which disassociate the unitive and procreative dimensions of human sexuality. Even more often, the single parent family is the result of circumstances rather than a choice: the abandoned spouse finds him or herself with the child born of their broken union. These contrasting situations raise particularly concerning moral problems. Recent studies suggest similar conclusions regarding the education of children. Children not only need a mother and father but also a stable family unit to develop their personality. When a child suffers from deficits in upbringing or affection because of something lacking in the family, one sees that they are at risk to a greater or lesser extent to a crisis of identity-including their sexual identity and have difficulties with socialization. The child is subject to failures in school and can even be pulled into delinquency. One also observes that the child born from a single-parent family is more at risk, once they reach adulthood, to be tempted by divorce. Finally, one must highlight the fact that, whatever the sociological causes of single-parenthood, the members of these "families" must receive appropriate assistance. This is particularly true of mothers or fathers who have been widowed or unjustly abandoned and who remain faithful to their commitments. In these cases the parents need to be helped, especially regarding the Christian education of their children. (↗ Enlarged Families; Family Nature and the Person; Recomposed Family; Traditional Family; New Models of the Family)*

The single-parent-family is a feature of highly developed industrial societies and the result of social change. It is characterized by the fact that one

of the parents lives alone with the child or children, and thus carries the main burden of education and family activities.

In industrial societies the percentage of SFs (single parent-family) has risen continuously in the last 3 decades; for example in the federal state of Hessen in Germany already one fifth of families consists of SFs. At the same time the number of SFs has risen since 1990 by about half, while spouses with children have only increased by one percent. Two thirds of single parents have to take care of just one child, one fourth of two children, and eight percent of three or more children.

The forms and causes of the SF have changed dramatically in the last decades. Until the middle of the 20<sup>th</sup> century the SF was caused mainly through the death of one parent (the decrease of fathers during the second World War). But the real SF was still very rare, since the lack of a father or of a mother developed generally through crisis situations, i.e. was experienced as such and was supported by the larger family network. Furthermore, much less women had received professional training and were working as single parents in the middle of the 20<sup>th</sup> century. They were therefore much more in need of the protection of the original family which would help most of the time.

The increase of the SF was the consequence of the liberalized divorce laws as well as of the liberalization of the societal attitude towards single parenting and children born out of wedlock. Furthermore, family bonds weakened continuously, specifically the bonds within

the three-generation-family.

Because the number of divorces has drastically augmented since the liberalization of the divorce laws in Germany (and continues to do so - in Germany every third marriage is divorced), a major part of the SFs consists now of one divorced or separated single parent with child/ren. Thereby the majority of the children live with the mother who is, in most cases, working. This is also the case in those SFs in which the mother has remained unmarried. The reasons for the increase of SFs are the following: the illegitimate child is now widely tolerated by society; often the relationship between the parents has already failed before the birth of the child; and the professional possibilities of the woman have improved. Some women consciously reject marriage, and prefer to be a SF. The children of some single mothers are therefore planned children.

The children of SFs often share both parents in common, but not by any means as a rule. Frequently they come from different relationships their mothers had. Mostly, these relationships have failed, but sometimes marital status is consciously rejected.

In some industrial nations there exists for mothers and their newly born a year of maternity leave or of educational time. This means that following upon the subvention of the state, the employer is obliged to re-employ the mothers after this leave of absence. Some mothers from SFs do not take ad-



vantage of this out of fear to miss the boat or to lose their jobs. The children of these SFs are therefore mostly put in cribs and day-care. Many women in SFs try to work part-time and not a few live more or less from welfare or from federal child-support. In more rare cases the original families continue to help, so that the young, single parenting mother can work while the grandmother takes care of the children, but mostly without living together with the SF.

A low percentage of SFs consists of a single-parenting father living with the child (or children). But since it consists statistically of 20% of the SF, the number of real single-parenting fathers is much less. Most of the time this is a fake-SF anyway, since the children are taken care of by their father's new partner, the grandparents or some employees while the father continues to work. Single-parent families with fathers as housemen are much courted, but are nonetheless rare, especially as a continuous life-style.

## **EVALUATION:**

Though it is desirable that the SF and illegitimate children should no longer be ostracized, many children from SF - after an apparent adaptation in their childhood - develop many more difficulties in their teens than children from stable families with married and united parents who both educate their children. Often the single-parent loses all influence on the teenager from pu-

berty onwards. The cohesion between parent and child frequently reveals itself to be insufficient. The children drop out of school or their training. Some become addicted. Others show signs of neurotic neglect with the threefold symptoms of rebellion against order, aggressiveness, and passivity. Often the adolescents break off from their mother or father after some severe conflicts. Many start early with sexual relationships and behave promiscuously. A majority of criminal and addicted young people come from incomplete families.

Negative consequences appear especially in SFs with divorce-orphans, particularly when they come in between the battle lines of their separated parents who burden their children with their respective aggressions; for in most SFs there is still some contact to the separated parent. Custody, which is mostly given to both parents, includes the right of the separated parent to visit. Since in innumerable cases the tensions between the parents continue after the divorce, the children are forced all too often to take the side of one or the other parent (parental alienation syndrome). Frequently both parents try to influence the child to take their side. This vicious circle overburdens the soul of the child and has long term effects, for it encourages the loss of roots and leads to a spiritual lack disorientation. By looking at the SFs and their negative consequences, one can see that one has underestimated the value of the complete family in

which there is support and in which the common education of the children by both parents is ascertained. This is particularly pertinent in the case of those single mothers who were not driven by necessity, yet who have freely decided to choose this form of life due to the feminist concept of autonomy which ideologically rejects the traditional family structure.

# Traditional Family

Sergio Belardinelli



*The expression «traditional family» is frequently used today in contexts where different forms of unions, particularly homosexual ones, are presented for public approval. Indeed, this expression really states a pleonasm, because, according to what the most eminent anthropologists believe, the institution of the family established on monogamy and heterosexual marriage is seen in all human societies. It is true that the models of family organization present a real diversity; but beyond such diversity we always find a stable nucleus. The family is always reduced to the stable union of a man and a woman who love each other and plan to transmit life. The term family is unequivocal then, it has only one acceptable meaning, because it refers to a natural institution universally present before and outside Christianity. This institution seems to be debated today: the family would belong to an outdated paradigm, to an episteme of another age. It might be even a historical curiosity or a cultural product destined to be superseded. The expression «traditional family» is to be used cautiously then, because it contributes to undervaluing the natural institution that is being pointed out. With a specious semantic transfer, it can be used to make other kinds of unions benefit from the status that must continue to be reserved to the family which is monogamous and heterosexual. (↗ Enlarged family; Family and Personalism; Single-parent Family; Recomposed Family; Motherhood and Feminism; New models of the Family; Patriarchy and Matriarchy)*

The expression “traditional family” has in itself a substantial ambiguity. At least at first glance, in fact, the adjective “traditional” recalls the past, the family of yesterday, a type of family that in many ways no longer exists: the so called “extended” family with many children, grandparents that live under the same roof, a rigid distribution of roles, a more or less marked subordination of women, quite linear intergenera-

tional relationships and social functions taken for granted, developed by a sort of automatism. But if it is true that “the more or less lasting union, with social approval, of a man, a woman and their children, is a universal phenomenon, present in every kind of society,”<sup>1</sup> then the adjective “traditional” could also

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1 C.LÉVI-STRAUSS, *Razza e storia e altri studi di antropologia*, Einaudi, Torino 1967.

refer to what constitutes a sort of constitutive element of the family, a permanent description that will not be eroded by the wear and tear of time and which is indispensable to continue speaking about the family.

In other words, besides the many transformations that, especially in these last years, have been registered about the family either in terms of structure or also in terms of functions, besides the proclamations of the pluralization of familiar forms as a characteristic and liberating feature of modern society, I believe it is still possible, even necessary, to establish criteria capable of distinguishing the family, we could even say the "traditional family", from other forms of social aggregations. Such criteria could be formulated as follows: a family truly exists only where at least a heterosexual couple exists, or a parent-child relationship, that is socially recognized, that is sanctioned by a public, religious or civil pact.

To speak about the "traditional family" implies that we have to take into account the past, that is to say what's inevitably changed or had a crisis, and also the present and future as authentic dimensions of the explanation of every authentically "traditional" reality, which is therefore living and vital. As Marcello Veneziani<sup>2</sup> wrote in a striking way, "tradition is what remains after the disaster,

not what used to shine before the disaster and then was extinguished." We should not consider the past of the institution of the family neither in a nostalgic way, nor in a vandalistic way, as if the "traditional family" is exclusively reducible to certain historical forms in which it was manifested and of which we have now definitely taken leave. In both cases in fact there is the risk of not grasping completely an essential aspect of each truly traditional institution: the fact that it is the red thread that unites the past and the future through the present, "the ancestors to their grandchildren through us," as Veneziani<sup>3</sup> would say; in short, an intrinsically "relational" reality, which, just for this reason, does not suffer sclerosis in any of its forms, but it is also not indifferent to the forms that it takes from time to time.

As Pierpaolo Donati says, "in spite of the great changes in familiar forms, the criteria for the definition of the family remain distinctive as regards the ones used to identify other primary social units. They are connected by the fact that, in continuity with the past, but differently from the past: 1) the family still remains the place in which the prohibition to invert sexual roles (male and female) and generational roles (between parents and children) is enforced, including the prohibition of incest, even if the sexes and different generations are not segregated anymore, but inter-

2 M. VENEZIANI, *Di padre in figlio. Elogio della tradizione*, Laterza, Bari 2001, 9.

3 VENEZIANI, *Di padre in figlio*, 9.

act profoundly together; 2) the family has become that specific social relationship to which is increasingly entrusted the irreplaceable task of personalizing the person, through specific processes of socialization that are essential for the maturation of the child and the adult, if and insofar as “making family” means to steer communication to the totality of the person according to a norm of solidarity and total reciprocity.”<sup>4</sup>

The society we live in seems to have lost all interest in the family; sometimes we would even say that it wants to weaken its functions, banishing it to the completely private arena of emotions and of intimate satisfactions. And yet today, as never before, the quality of family relationships is decisive for the well being and happiness of individuals and for society itself. The more society becomes individualistic, pluralistic, ethically neutral, allowing persons to decide for themselves about their own “good” and their own “happiness”, the more demanding the need becomes for a “place” where human relationships are characterized by freedom, gift of self, and by a love that involves precisely the “totality of the person.”

After all, the question becomes one of taking seriously the problem of “socialization” in which the family has always exercised a key role. The ten-

dency to reduce the family to an eminently private fact, to a sort of primary cell of individual life, rather than of society, seems to weaken its socializing function. The same process of socialization, instead of becoming a process of “formation”, tends to become a mere process of “communication”, where “informing” is much more important than “forming”. There is a lot of talk about autonomy, freedom, responsibility, tolerance and trust as indispensable resources in a pluralistic society like ours. This inevitably re-proposes the family in its formative and socializing role.<sup>5</sup> It is in the family that these resources, which are so important for society, begin to be acquired. They are also acquired much better when the family is a family in the real sense of the word, that is to say a place of reciprocity between the sexes and generations whose primary “good” is represented by the capacity to build relationships geared above all to the “totality of the person.”

In this sense it seems to me that we can continue to talk about the “traditional family” without falling into the reductionism of those who make it a simple archaeological form, definitely overtaken by the events that have marked and continue to mark our complex society. One name is a reference for all: Anthony Giddens,

4 P. DONATI, “La famiglia nell’orizzonte del suo essere,” in *La Famiglia. Bimestrale di problemi familiari* (2000) 200, 64-65.

5 Cf. S. BELARDINELLI, *Il gioco delle parti. Identità e funzioni della famiglia in una società complessa*, Ave, Roma 1996.

certainly one of the most authoritative contemporary sociologists.

The traditional family is, according to Giddens, the kind of family that developed during the period of time from approximately the Middle Ages to some fifty years ago. Its principal characteristics are summarized as follows:<sup>6</sup> first of all it was “an economic unit”—people used to get married and to start a family for economic reasons, without any regard for love or physical attraction. It was the place of “inequality between men and women”—women were considered legally as a kind of property belonging to their husband or father; it was the place where not even children were considered “for themselves”, but only “for the contribution they could give to the common economic commitment”; moreover, “except in some elite groups, in the traditional family, sexuality was always directed towards reproduction.”

Giddens lists the characteristics of the “traditional family” in the above mentioned terms, and insists on the unbridgeable abyss that separates it from our sensibility and culture. He feels the duty to point out something, that I consider very important in order to understand not only the way he reasons, but also a widespread way of thinking today: “What its supporters among the western countries call the traditional family represents, in reality, a late phase of transition in family develop-

ment from the 1950s: in that period the percentage of working women was still relatively low and it was still difficult to divorce, especially for women, without this becoming a mark of shame. Nevertheless, men and women in that period were much more equal than they had ever been before, in practice and in law: the family had ceased to be an economic unit and the idea of romantic love as a basis for marriage had substituted the concept of marriage as an economic agreement.”<sup>7</sup>

Unfortunately it is not clear who Giddens is referring to, when he talks about “supporters” of the traditional family. In any case, I seriously doubt the sense of defending the traditional family thinking that its model could be the one from “the 1950s”. In fact, it would be a battle lost in advance, a rearguard battle, led only with weapons of nostalgia, which would have the effect of confusing the substance of something, the idea of the family, with its concrete historical forms. Indirectly, in this battle one would end by agreeing with people like Giddens who are convinced that the family is nothing other than the forms that it assumed historically. They have no other argument against the family except for historical facts; they use *phenomenology* against *ontology* and try to strengthen their own confidence with the simple observation that «since then—the 1950s—the family has changed even more.”<sup>8</sup>

6 A. GIDDENS, *Runaway World: How Globalization is Reshaping Our Lives*, Routledge, New York 2000.

7 GIDDENS, *Runaway World*.

8 GIDDENS, *Runaway World*.

Everyone knows the direction that, especially in the West, this change has taken: the upsetting of family roles, increases in the number of working women, an increase in divorces, fewer marriages, an increase in single people and in those living together in so-called “de facto couples”, less children, claims of a right to get married and have children even by homosexual couples, and more that Giddens does not fail to carefully point out. What is nevertheless striking in this long *excursus* from the medieval family to the present day is the non-chalance with which all these changes, without exception, are positively valued as a sort of necessary result of that “movement toward individuality” which Simmel talked about at the beginning of the XX century. It is almost as if, for example, the end of women’s subjection to men and the development of family relationships more and more marked by reciprocal responsibility and reciprocal respect have the same positive significance as giving an equal status to de facto couples living together and the family built on marriage.

In this context it becomes nearly impossible to talk about the family because the concept is ambiguous and slippery; it becomes even more difficult to subordinate the recognition of a true family to the presence of at least of one of the two conditions we were talking about at the beginning: the existence of a heterosexual couple or of a parent-child relationship that is socially recognized,

that is to say sanctioned by a religious or civil public pact. There is nothing left to do but to observe a fact: the current pluralization of family forms and the definitive fading of the traditional family. Giddens reduces it, not coincidentally, to be like other institutions of our society, a simple “shell-institution”. It is an institution “that is still called the same, but its interior is fundamentally changed.”<sup>9</sup>

Compared to the radically historicist strategy followed by Giddens, our attempt to define the family relationship “ontologically” presents at least one advantage. It offers criteria in the light of which to read and even evaluate the various forms that this relationship has historically taken. In fact, when the family is simply seen as “making a couple” or a “shell” in which to place everything, it is easy to risk losing a sense of its social meaning and functions. As Pierpaolo Donati observed, “it remains more convenient to start from the general concept of “family”, and then distinguish later the different kinds of “families”, instead of doing the opposite. In fact, if we start from the mere observation of a plurality of “domestic situations” (simply of the many different ways of living together), it becomes impossible to reach a sociologically adequate concept of the family. Mere cohabitation must never be confused with that specific relationship that we call, not by analogy or

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9 GIDDENS, *Runaway World*.

in an undifferentiated way, the family in the proper sense. It exists only if among those living together there is a specific relationship of objective and reciprocal belonging as a stable couple linked by a generative agreement and/or as a relationship of generational descent.”<sup>10</sup>

I would say above all that this strategy allows one to see the ambivalence of certain developments, without any nostalgia for “yesterday’s family”, but not on the other hand accepting supinely everything that is happening to the institution of the family today. “The situation in which the family finds itself—writes John Paul II in *Familiaris consortio*—presents positive and negative aspects: the first are a sign of the salvation of Christ operating in the world; the second, a sign of the refusal that man gives to the love of God. On the one hand, in fact, there is a more lively awareness of personal freedom and greater attention to the quality of interpersonal relationships in marriage, to promoting the dignity of women, to responsible procreation, to the education of children. There is also an awareness of the need for the development of interfamily relationships, for reciprocal spiritual and material assistance, the re-discovery of the ecclesial mission proper to the family and its responsibility for the building of a more just society. On the other hand, however, signs are not

lacking of a disturbing degradation of some fundamental values: a mistaken theoretical and practical concept of the independence of the spouses in relation to each other; serious misconceptions regarding the relationship of authority between parents and children; the concrete difficulties that the family itself experiences in the transmission of values; the growing number of divorces; the scourge of abortion; the ever more frequent recourse to sterilization; the appearance of a truly contraceptive mentality.”

To speak of “the traditional family” must have, among other things, a sense of encouragement to discover this weaving of “light and shadow” that is typical of today’s family. It is necessary to be able to see both the risks and the opportunities that are offered in our times to the institution of the family. Our conviction is that, in spite of the changes that characterize it, criteria exist that allow us to distinguish “what makes up a family, from what does not make a family.”<sup>11</sup> The concrete ways to articulate this “relational good” have certainly changed; certain rigidities and automatisms of the past no longer exist; but the family has not become for this reason a simple “shell of an institution” in the sense Giddens means. The family, that is to say a place of reciprocity between the sexes and generations fol-

10 DONATI, “La famiglia nell’orizzonte del suo essere”, 63-64.

11 DONATI, “La famiglia nell’orizzonte del suo essere”, 62.



lowing the meaning we used before, has become a goal to conquer day by day for the good of individuals and of society; “a task and a challenge,” that can be read in the *Letter to families* of John Paul II.



# Verbal Engineering

Ignacio Barreiro



*The whole history of philosophy is permeated by reflection on language. The use of language by the sophists had already attracted Plato's attention. What relationship exists between man and reality and what is the role of language in this relationship? The enlightenment shift from "traditional" values to "new" ones, with the myth of progress, philosophical relativism and radical subjectivism, offers an ideological justification for the manipulation of language with the purpose of manipulating and upsetting the "reality" of the received culture and objective truth. Contemporary ideology remains largely characterized by the manipulative use of language as a resource. They use words to indicate things that are foreign to their natural meaning. They practice "semantic transfers", they have recourse to "anti-phrases". In this way they build perverse discourses on life, family, development, always with the purpose of dominating and changing public opinion. The purpose is to deprive persons of their capacity for judgment and of free will. It entails the destruction of the critical ability of the mind, with the objective of later reprogramming them. Such linguistic humbug abounds in anti-life and anti-family speeches. It has also slipped into international gatherings and influences decision makers and those who propose programs of action. (↗ Manipulation of Language; Principle and Argument of the Lesser Evil; What Bioethics?; Free Choice)*

There are two main ways of compelling people to act against their Natural Law convictions. The first is the use of force, but when a tyrannical and violent regime is established, it must continually oppress the population to stop them from revolting. A more effective solution to coerce people into accepting new attitudes is through systematic propaganda that uses verbal engineering as its main operative tool. This type of propaganda seeks to internalize new convictions in its victims. When new attitudes are suc-

cessfully implanted persons think that they have arrived through their own volition to accept these new forms of acting and take them on as their own.<sup>1</sup> Therefore all social engineering begins with verbal engineering. The object of verbal engineering is to carefully manipulate public opinion to produce behavioral changes. It is in violation of the

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<sup>1</sup> Cf. Brian Clowes, PhD, *The Facts of Life – An Authoritative Guide To Life and Family Issues*, Second Edition, Human Life International, Front Royal, Virginia, 2001, 304.

most basic human dignity, because the members of society against whom this procedure is used are no longer treated as human beings, but as objects to be manipulated, to be dominated afterwards, to be “handled” and controlled. Also, it is profoundly immoral because it is planned deception.

Verbal engineering is the conscious effort to change the way in which reality is perceived through the way in which reality is depicted and as a consequence introduces changes in the ways persons behave. It is a phenomenon which probably is as old as the fallen condition of men. The seduction by the serpent of Adam and Eve could well be described in terms of verbal and social engineering. At present, due to the increasing power of the state, the influence of the media and the liberal teaching establishment, this type of social engineering is becoming more frequent. This manner of insidious manipulation of reality, however, also has clear antecedents in the past. We can see it in “Plato’s lifelong battle with the Sophists, those highly paid and popularly applauded experts in the art of twisting words, who were able to sweet-talk something bad into something good and to turn white into black.”<sup>2</sup> Plato

describes the Sophists, asking a rhetorical question, as those who: “making it possible to impose upon the young who are still far removed from the reality of things, by means of words that cheat the ear, exhibiting images of all things in shadow play of discourse, so as to make them believe that they are hearing the truth and that the speaker is in all matters the wisest of men?”<sup>3</sup> It can also become in certain cases the semantics of oppression, a procedure through which the group that is targeted to be destroyed or exploited is described with traits that go from having human deficiencies to even denying their humanity.<sup>4</sup>

Verbal engineering is profoundly at odds with tradition, understood as a living continuity that shapes life and culture.<sup>5</sup> Not only does it try to change

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2 Josef Pieper, *Abuse of Language – Abuse of Power*, Ignatius Press, San Francisco, 1992, 7. The problematic history of Sophism and its contemporary implications are put in evidence by Barbara Cassin, *L’Effetto Sofistico per un’altra Storia della Filosofia*, Jaca Book, Milan, 2002, p. 11. Originally published as *L’effet Sophistique*, Gallimard, Paris, 1995.

3 Plato, *Sophist*, 234c.

4 William Brennan, *Dehumanizing the Vulnerable*, Loyola University Press, Chicago, 1995, pp. 6-7. Brennan gives examples that show how Native Americans, African Americans, those considered by the Soviet state as their enemies, European Jews have been described as deficient humans, nonhumans, being like animals, parasites, or compared to diseases, inanimate objects, waste products and non-persons.

5 “The appeal to tradition is not a mere remembrance of the past; it involves rather the recognition of a cultural heritage which belongs to all of humanity. Indeed it may be said that it is we who belong to the tradition and that it is not ours to dispose of at will. Precisely by being rooted in the tradition will we be able today to develop for the future an original, new and constructive mode of thinking.” John Paul II, *Fides et ratio*, September 14th, 1998, n. 85.

reality by falsifying cognition, but verbal engineering is a tool for non-organic and unnatural changes in society. This idea of effecting non-organic change in society can be traced to the Enlightenment, which defined the social changes it proposed as progress when really in many ways they were a regress. To facilitate their task one of the tools that Enlightenment thinkers used was the myth of progress, so that the persons and institutions that opposed their agenda were labeled “enemies” of progress.

It is well known that when a lie is repeated often enough and with persuasive argumentation it can obtain in the mind of many listeners the status of a truth, even if what is affirmed is absurd. If it is stated in insistent terms it can even take on the status of common knowledge, especially if the message is repeated in a planned and intensive way by the media.<sup>6</sup> This technique to manipulate reality was already denounced with prophetic clarity by George Orwell in his book *1984*, in what he calls Newspeak.<sup>7</sup> The place of authentic reality is

taken over by a fictitious reality; my perception is indeed still directed toward an object, but now it is a pseudo-reality, deceptively real, so that it becomes almost impossible to discern the truth.<sup>8</sup> A lie that denies the objective truth of reality goes against a basic trait of man which is to seek the truth, as John Paul II states, ““I have always considered the search for “the truth of things” as the defining human quality.”<sup>9</sup> Man is capable of knowing objective truth, since truth is in the mind, as the mind is conformed to the things that it understands.<sup>10</sup> This manipulation of reality through the idea that changing perceptions can change what exists is based in Philosophical Relativism and a form of reductionism that sees in unlimited liberty the defini-

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literally unthinkable, at least so far as thought is dependent on words.” George Orwell, “*The Principles of Newspeak*” in 1984, New American Library Times Mirror, New York, 1981, p. 246

8 Pieper, *Abuse of Language – Abuse of Power*, op. cit., 34.

9 John Paul II, Il Discorso all’apertura dei Lavori del Colloquio di Castel Gandolfo Dedicato al Tema: “Alla Fine del Millennio: Tempi E Modernità.” August 17th, 1998, Insegnamenti di Giovanni Paolo II, XXI, 2, 1998, Libreria Editrice Vaticana, 2000

10 Thomas Aquinas, S.T., I, q. 16, a. 1. “This prompts a second requirement: that philosophy verify the human capacity to know the truth, to come to a knowledge which can reach objective truth by means of that *adaequatio rei et intellectus* to which the Scholastic Doctors referred.” John Paul II, *Fides et ratio*, September 14th, 1998, n. 82.

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6 Maria Bettetini, *Breve Storia della Bugia, - Da Ulisse a Pinocchio*, Raffaello Cortina Editore, Milano, 2001, 111.

7 “The purpose of Newspeak was not only to provide a medium of expression for the worldview and mental habits proper to the devotees of Ingsoc, (English Socialism), but to make all other modes of thought impossible. It was intended that when Newspeak had been adopted once and for all and Oldspeak forgotten, a heretical thought – that is, a thought diverging from the principles of Ingsoc – should be

tion of being fully human.<sup>11</sup> Such radical subjectivism and the desire of power groups to change reality by their will is sadly and amusingly presented in Humpty Dumpty's famous oration on linguistic corruption presented to Alice in Wonderland.<sup>12</sup> Also it is based in a fundamental gnosological skepticism, which is completely alien to *philosophia perennis*. The idea behind these efforts is to build a new consensus on the wrong assumption that truth comes out of consensus. The relativistic tool of "consensus building" which serves to build an apparent acceptance in society is an irenic methodology which papers over the differences and over-emphasizes the points of agreement. The United Nations, in its world conferences, seems to have wholeheartedly adopted this procedure.

As John Paul II indicates: "In brief, there are signs of a widespread distrust of universal and absolute statements, especially among those who think that

truth is born of consensus and not of a consonance between intellect and objective reality."<sup>13</sup> The fact remains that changing perceptions and changing the social consensus cannot change reality in itself, but it can change the behavior of people, because men are obviously influenced by the cultures in which they live.<sup>14</sup> This change of perceptions can even be enshrined in a positive law that regulates and commands the way people should act. Here it is important to consider the educational value which positive law has. Traditionally people have acted on the presumption that if something is legal it necessarily must be both just and good.

What methods does Verbal Engineering use?

Verbal Engineering normally is achieved through a subtle manipulation of words. Words that traditionally had a positive meaning are given other meanings or shades of meanings. The underlying idea is that people will accept the new meaning because they are accustomed to the word therefore they cannot discern that the old meaning serves as a Trojan horse to introduce a new deleterious meaning. It happened in the case of euthanasia.

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11 John Paul II, "The saving power of the truth is contested, and freedom alone, uprooted from any objectivity, is left to decide by itself what is good and what is evil." *Veritatis splendor*, August 6<sup>th</sup>, 1993, n. 84.

12 "When I use a word," Humpty said.... "it means just what I choose it to mean – neither more nor less." "The question is," said Alice, "whether you can make words to mean so many different things." "The question is," said Humpty Dumpty, "which is to be master – that's all." Lewis Carroll, *Through the Looking Glass and What Alice Found There*, Macmillan, London, 1872, p. 124. Bettetini, *Breve Storia della Bugia*, cit. 23-24

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13 John Paul II, *Fides et Ratio*, September 14<sup>th</sup>, 1998, 56.

14 "All people are part of a culture, depend upon it and shape it. Human beings are both child and parent of the culture in which they are immersed." John Paul II, *Fides et ratio*, September 14<sup>th</sup>, 1998, n. 71.

“Etymologically speaking, in ancient times euthanasia meant an easy death without severe suffering.”<sup>15</sup>

To change social attitudes, frequently euphemistic language is used that tries to obscure reality. This is blatant in the case of abortion when the words, “kill” or “destroy” are never used. Instead it is called the “voluntary termination of pregnancy.” An abortion clinic is frequently described as a “reproductive health center.” When a mother has a multiple pregnancy, some medical doctors will advise an “embryonic reduction” to assure that the embryos which remain have a better chance of survival. Really what the doctors are advising is abortion, the selective killing of some of the babies this mother is carrying in her womb. In many areas of sexual morality these name changes try to justify or dignify immoral conduct like calling prostitutes “sexual professionals” or “sex workers”. A permissive and promiscuous life style is called “serial monogamy”. Pedophilia or child molestation is now called “intergenerational love”. Bestiality is described as “interspecies love”. What used to be called sexual perversion is now labeled an “alternative life style”. Pornography is now called “adult” material or “sexually explicit” material. What used to be called euthanasia is now called “death with dignity.” What used to be

called personal self-discipline is now called “unhealthy repression.” The list is almost endless and constantly growing.

The predominance of verbal engineering in totalitarian societies should not cause any surprise. It is a form of thought control used in both Communism and Nazism. What is initially perplexing is to find this type of behavior in democratic societies. To explain how this can happen, we have to take into consideration the totalitarian tendencies of democratic societies as demonstrated by Msgr. Michel Schooyans.<sup>16</sup> In a speech that the Holy Father delivered to representatives of NGOs and International Organizations on November 12, 1996, he expressed his serious concern, pointing out that “As we come to the end of a century unprecedented for its destruction of life, most often in the name of totalitarian ideologies, are we to conclude that democracy too has become the sponsor of unparalleled attacks on human life? On the one hand, the advance of democratic freedoms has given rise to a new affirmation of human rights, codified in important international declarations and agreements. On the other hand, when freedom is detached from the moral principles which govern justice and disclose what is the common good, democracy itself is undermined and becomes the instrument by which

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15 Congregation for the Doctrine of the Faith, *Declaration on Euthanasia*, May 5th, 1980, II.

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16 Michel Schooyans, *The Totalitarian Trends of Liberalism*, Central Bureau, St. Louis, U.S.A., 1997.

the strong impose their will on the weak, as we increasingly see happening around us.”<sup>17</sup>

It is part of the democratic ethos of current Western societies to lack references to substantial values and to emphasize procedural means. This leads to the acceptance of the free market place of ideas, and so the “right” to propose the most bizarre or deleterious ideas is protected. At the same time this marketplace is less than free because it is dominated by groups that impose their own ideas.

## **ABUSED AND DISTORTED CONCEPTS**

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There are in contemporary worldwide society many concepts that are abused and distorted for the purpose of verbal engineering by persons or groups with an agenda to change society. Even a good principle can be used to achieve perverse ends, as I will try to show below.

### **Equality**

Rightly understood this concept means that all men are created equal in substance and as such they have certain inalienable rights given to them by their Creator. Without entering into an extensive catalogue of those rights we have

to mention the rights to life, liberty, pursuit of the truth and the concomitant vocation that all human persons have to know and love their Creator. After stressing the substantial equality of human persons, however, we must be on guard against a false leveling of all persons. This leads to the creation of Procrustean beds, which are unjust to individual persons and the common good. A simple look at the world shows that all human persons are different accidentally and they have different talents and virtues, different vocations and different roles in the overall plan of salvation. As a consequence, true justice requires that humans should be treated in accordance with their accidental differences. With regards to the family, even though men and women are equal by their essence, their fundamental accidental differences lead to a clear differentiation of roles. A frequent addition to the unnatural emphasis on equality is a misguided contemporary definition of diversity. So-called rights to be diverse tend many times to give legitimacy to unnatural social behavior, like homosexuality.

### **Non-judgementalism**

To always be non-judgmental of the behavior of others is to make absolute a gospel counsel that applies to some circumstances and not to others. There is always the obligation to pass a judgment on the moral nature of one’s own actions before performing them and afterwards. If we are going to act with conscience and knowledge, all of our actions have to

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17 John Paul II, “Even from democracy we find menaces to peace”, speech delivered to representatives of NGOs and international agencies, November 12, 1996, *Insegnamenti di Giovanni Paolo II*, v. XIX, 2, *Libreria Editrice Vaticana*, 1998, 693.



be preceded by a judgment even if it takes only a second. If we are going to treat our fellowman with justice we have to be able to discern with precision and prudence what is due to them. We have to be able to discriminate in the old sense of the word, which traditionally meant to distinguish.<sup>18</sup> In many cases there is an obligation to pass a judgment on the moral nature of a situation, or the talents and abilities of a person. The members of a general chapter of a religious order have an obligation of state, to pass a judgment on what member of the order has the necessary virtues and talents to be elected Superior General. A member of that given chapter who refuses to cast his vote because he decides to be non-judgmental would be delinquent in his obligations. To confront the relativism behind this push to be non-judgmental, we have to keep in mind the teachings of John Paul II. In *Veritatis splendor*, he states that "It is urgent then that Christians should rediscover 'the newness of the faith and its power to judge' a prevalent and all-intrusive culture."<sup>19</sup>

### **Double standards of morality**

The persons behind the social change agenda ask for tolerance and understanding regarding the persons who

espouse their agenda and accuse of intolerance the ones who oppose it. As a consequence, in the name of liberty they destroy the liberties of those who do not think like them. In the moral realm, the promoters of this agenda have two basic commandments: "All lifestyles are equal," and "Thou shall not be judgmental," since all voluntary sexual relations should be permissible and morally equal, these relations are part and parcel for them of the "inalienable" right to choose that any person has. The backers of this agenda demand that no one should judge, but they are ready to pass the most severe judgments on those who disagree with them. For these persons, discriminating against those who adopt an "alternative life style" is a crime that the state should prosecute with the utmost severity.

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## **CODE WORDS**

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Verbal engineering leads to a process of thought control and uses many words to attack those who reject this form of control. Below are some interesting examples.

**Openness**, as a door to relativism. To be open to new realities might be positive in the sense that in our current imperfect condition as pilgrims on the earth our perfection comes through change. It also might lead to a better understanding between persons belonging to different cultures. But the openness that is requested by the ones who are behind a social engineering process is the openness that would consider all

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18 In our times the word discriminate has taken a negative content. It normally means to treat unjustly a person due to his race or sex. For instance, to prefer a person of one race to another for a work position where the person rejected was as well or better qualified than the person who received the appointment.

19 John Paul II, *Veritatis splendor*, n. 88.

ideas as having the same value, all cultures to be on the same footing and last but not least all religions to be different but equally valid paths to the Absolute.

**Divisiveness or being divisive.** A person that does not accept the consensus that is more or less imposed by the ones in control will be accused of being divisive. The use of this epithet is dear to groups intent on creating totalitarian forms of democracy.

**Elitism.** Is used as an insult word by those in favor of a radical egalitarianism. To deny the existence of elites is to deny a basic datum of the social sciences. Every society has elites even if ideologies sometimes reject this obvious fact. There are always some persons in societies who are more equal than the rank and file members. Certain forms of anti-elitism are clearly connected with the capital vice of envy.

**Gender.** Many feminists use this word as substitute for the word "sex." In their opinion gender refers to the socially defined roles and responsibilities of men and women or boys and girls. Male and female gender roles are learned from families and communities and vary by culture and generation.<sup>20</sup>

**Homophobia** is a word coined by homosexual activists to describe those who oppose their pretensions to be recognized as minority groups whose rights have to receive a special protection. It is a word

put together to give the impression that those who oppose the claims of homosexuals suffer from some sort of pathology.

**Political Correctness.** This term was coined to expose verbal engineering in American higher education. Political correctness is denounced as the search for control over society through diverse forms of power, in particular the media and the academic world, which determines in a more or less totalitarian fashion, what topics should be excluded from debate and what opinions should be debarred from civil dialogue. Because of these artificial barriers, we reach a limiting or closing of culture to many permanent or new ideas, or what is worse, the expulsion from civil dialogue of ideas that until recently were part of the backbone of Western culture. This cultural dictatorship goes against the self-evident truth that "Cultures are fed by the communication of values, and they survive and flourish insofar as they remain open to assimilating new experiences."<sup>21</sup> When a culture becomes closed to the permanent and at the same time always-vital values of the Christian message, it is clear that a cultural decay has set in.

**The Rights Industry, which constantly mints new rights that are non-rights.**

Tragically, modern verbal engineering has led to the taking of millions of human lives and to deep confusions in modern society. A mother does not have

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20 « Gender and HIV/AIDS », UNAIDS Technical Update, UNAIDS, Geneva September 1998.

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21 John Paul II, *Fides et ratio*, n. 71

the right to choose to kill the baby she is carrying in her womb. A person does not have the moral right to exercise his sexuality outside marriage. A promiscuous single parent doesn't have the unconditional right to be supported by society. Homosexuals do not have any right that their sexual inclination should be protected by the state. We have new definitions of women's rights that without saying so explicitly "enshrine" a "right" to abortion. The Platform for Action of the Fourth World Conference on Women states: "The human rights of women include their right to have control over and decide freely and responsibly on matters related to their sexuality, including sexual and reproductive health, free of coercion, discrimination and violence."<sup>22</sup> Clearly they are declaring new sexual and reproductive "rights" which they hope will be enforced through legislative coercion.

Many times through this process the so-called "alternative life styles" become legitimized and they claim to have equal rights or even superior rights to natural life styles. Often the title "alternative life styles" serves to defend the so-called "right" to lead a life that is immoral like *de-facto* unions, or anti-natural like in the case of the homosexuals; or anti-hygienic like the ones led by some sects, (i.e. Rastafarians) and consequently against the common good of society.

Many of those so-called rights end up being placed as a burden on society and on the individual taxpayer who is obliged to finance directly or indirectly the immoral behavior of his fellow citizens.

Connected with this explosion of so-called rights we can see the change in meaning of the word censorship. It used to mean the right that a political authority had in verifying if the publication of certain materials was or not in accordance with the common good. Today some people claim to be censored by the government if their views or what they consider their artistic production is not offered to the public at the taxpayers' expense. There is a real form of censorship done by "mainline" publications that refuse to publish anything that does not meet a standard of political correctness. It can also be seen with regards to the expression of religious views. If those views are watered down by the secular environment of society they are fit to be published. If instead they represent with precision and accuracy the magisterial teachings of the Church, frequently they are refused space under the pretext that they are too fundamentalist.

Very much united with the inflation of so-called "rights" is the demand that needs should be fulfilled. Human beings do have some basic needs like food, shelter and a reasonable amount of companionship. The problem is that new "needs" are coined and immediately a demand is presented that society should assist in their fulfillment.

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<sup>22</sup> Platform for Action of the Fourth World Conference on Women, Beijing, paragraph 96

## CONCLUSION

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In this work I tried to present the remote origins and the contemporary nature of verbal engineering and its ideological foundations awareness of this form of thought control should allow us to resist it through a constant process of presenting the eternal truth in a clear and organic fashion.

# Voluntary Interruption of Pregnancy

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*Respect for human life is a fundamental precept of all the great moral traditions of humanity. To deprive a child of legal protection goes against the universal aspiration to the safeguard of the fundamental rights of every human being. A law that legalizes abortion is in contradiction with this moral and legal patrimony so, to make it pass, it is necessary to resort to anti-language. The “voluntary interruption of pregnancy” is one of the most devastating euphemisms propagated by the promoters of abortion. It also implies a clear lie: normally the verb to interrupt refers to a brief stop, to the suspension of a process under way that can be reestablished. We talk about the interruption of an electrical current, interruption of a match because of an injury. In the expression mentioned, pregnancy is not interrupted, but terminated, the life of the child is put to an end.* (↗ Dignity of the Human Embryo; The Right to Abortion; Medical Interruption of Pregnancy; Safe Motherhood; Partial Birth Abortion; Assisted Procreation and IVF; The Legal Status of the Human Embryo; Free Choice; Pro Choice)

1. Within the debate on bioethics the word “anti-language has been coined in order to indicate the use of a language that changes the meaning of words. A typical example of this is the substitution of the expression “voluntary interruption of pregnancy” for the word “abortion”. The term “abortion” in fact, evokes negative feelings of death, while “voluntary interruption of pregnancy” expresses some neutrality and removes from mind the image the lost child. On the contrary, thinking it over, before the proliferation of permissive laws the last century, the expression “voluntary interruption of pregnancy”, or as they say in English, *termination of pregnancy*,

can even arouse positive emotions of life. When pregnancy terminates, generally a child is born. When a mother, fifty years ago, used to say that she was about to terminate her pregnancy, she received well wishes even for herself and her child: may he be lovely and healthy. Interruption of pregnancy brought to mind a premature childbirth, chosen in order to avoid greater risks, but performed in many cases to save the child.

In short, the word “abortion” implies a direct look at the dead body of the child, while the expression “voluntary interruption of pregnancy” ignores it. The proof is that even today the involuntary loss of an unborn is called a

“spontaneous abortion” and not a “spontaneous interruption of pregnancy.” The word “abortion” is mentioned only with reference to the deliberate killing of the conceived child that is not yet born. This constitutes the proof that the change of language has the function of shifting attention from the child to the woman (who is not called the “mother” anymore) in order to cancel as much as possible the judgement of disvalue connected to an act of killing. This fact further demonstrates that the ultimate aim of the *antilife* mentality and activism is not only the depenalization of abortion, but also removing guilt from consciences. This aspect is even more evident when the voluntary interruption of pregnancy becomes an anonymous acronym, completely aseptic: IVG in Italian and French, VIP in English.

In substance, voluntary interruption of pregnancy is synonymous rather with voluntary abortion, this is to say killing the child within the body of the mother, any time during the gestational process. Jurists have always seen in the death of the conceived child the substance of induced abortion at any moment of pregnancy. Infanticide is different, such that some legal systems treat it as a distinct crime both from murder and from abortion in cases where death is caused immediately after birth or during it, once labor has begun. What is certain is that no one would tolerate a law written in a way that would not hide the truth, for example, if it was said that the mo-

ther is allowed to kill her child within the first three months of pregnancy as long as the operation is executed by a medical doctor. From here the change of language, and partially, of the meaning of the words themselves is seen. In effect today “voluntary interruption of pregnancy” describes legal abortion and the word “abortion” indicates illegal ones, so the law seems to cancel the disvalue, even to cancel the child.

2. Permissive legislation with regards to abortion is a phenomenon of the twentieth century. At the beginning of the century, the legislative panorama was uniform. In each State voluntary abortion was punished as a crime, with penalties of a certain severity, even if less than what was prescribed for murder. The penal prohibition to kill the fruit of conception was a constant fact since the age of the Roman Emperors Septimius Severus and Antoninus Caracalla. In reality the preceding Roman jurisprudence had oscillated between a vision of the conceived child as a part of the mother’s body (*partus antequam edatur portio est matris vel viscerum*) and an affirmation that recognized his autonomous value (*conceptus pro iam natus habetur quotiens de eius commodis agitur*). But since then, the intuition that abortion was a grave offense against human dignity, even though the processes of procreation were not known, has been expressed in the legal systems with a steadiness that has arrived at times to put abortion and murder on an equal footing.

The reason for such incrimination has to be searched for certainly in the intention to defend human life, which constituted the protected good, as it explicitly appears by the arrangement in many penal codes of induced abortion in the field of crimes against human life. It could be that indirectly they also wanted to defend other goods. In times when infant mortality was very high, in agricultural societies where children were source of wealth because they were hands to work the land, when interruption of pregnancy used to present considerable risks also for the mother, it is possible that the repulsion for voluntary abortion also found other motivations besides the intention and conviction that an individual human life was at stake. It is less probable that the idea that a larger population increased the power, even military might, of a nation had an influence. It is nevertheless sure that the principle reason for the legal defense was the good of the incipient human life.

As the great discoveries of the mechanism of conception and of the genetic identity of the "product of conception" together with instruments that allow one literally to see and even to treat the conceived child in the mother's womb (ultrasound, fiber optics) came in the XX century, it seems strange that just in this period laws legitimizing abortion have been introduced in a large part of the world. In reality, even before there were cases in which the suppression of the conceived child was

not punished. They were cases in which the legal institute of the "state of necessity" was applicable. Each penal precept, in any field and whatever good that it protects, finds a limit in civil codes under certain extreme situations, such as legitimate self defense and the state of necessity. As the conceived child cannot be, of course, considered an aggressor, the only applicable exculpating hypothesis was the "state of necessity". This occurs when the action, *per se* constituting a crime, is done to defend oneself or others from an offense to the person not caused by one's own conduct, as long as there is proportionality between the good offended and the good defended and provided that the agent does not have a particular legal duty to expose himself to danger. In practice, in the laws of different countries, abortion was not punished when it was done to save the mother's life. In certain laws and in some jurisprudential interpretations it was affirmed that abortion was also not punishable if the pregnancy placed the mother's health (and not just her life) in danger, but proof of the absolute seriousness of the danger was required with the greatest severity, in such a way that the mental framework tolerating abortion did not go beyond the extreme limits of the state of necessity.

In order to understand the reasons for the change during the XX century, it is worthwhile to recall the dates in which permissive laws were introduced in different countries. In the world

the first legalization of voluntary abortion took place at the beginning of the 1920s in the Soviet Union. We have to wait until the 1950s for the example of the Soviet Union to be followed by the other countries of Eastern Europe, following almost immediately, it should be noted, after their inclusion in the Communist world (1956: Poland, Hungary, Bulgaria; 1957: Czechoslovakia).

In Western Europe we have to wait until 1967 when Great Britain promulgated the *Abortion Act*. The push to legalize it grew stronger when, on the other side of the Atlantic, in the United States of America, on the 22<sup>nd</sup> of January 1973 the Supreme Court made two rulings in the cases *Roe vs. Wade* and *Doe vs. Bolton* liberalizing abortion. Apparently, the English law still moved within the logic of the "state of necessity", because recourse to the interruption of pregnancy was declared legitimate, when it proved to be necessary in order to preserve the physical or mental health of the woman. But to evaluate the danger for health, the law introduced such wide and flexible parameters (the social environment of the woman, if the pregnancy was prejudicial for the other children, the greater gravity for the woman of carrying the pregnancy forward as compared to interrupting it) that they went beyond any limit from the state of necessity, moreover this situation was evaluated by medical workers chosen by the woman herself.

The American rulings of 1973,

however, abandoned any residual effort to mask reality: they introduce the division of pregnancy into trimesters that in the following years will be taken up by almost all European legislations. It is grounded in considerations that do not take into any account the interests of the child. The reasoning starts from the concept of *privacy*, understood as the right of the woman not to be disturbed in her private choices. The term of the first three months is based on statistical data: during the first ninety days, abortion is less dangerous than birth for the woman. As a consequence, during this period the states of the Union cannot limit the right to choose. In the second trimester it is considered constitutionally allowed to impose limits (not compulsory!), but only because of the greater danger of the operation for the woman. Finally, during the third trimester, when the birth of a new citizen is imminent, the state can (but it is not obligated to do so!) set more severe restrictions in view of the prevailing interests of the state itself to have a renewal of the population.

The American decisions had their echo in Europe where, in the 1970s, permissive laws were approved in the most important countries (France 1975, Germany 1976, Italy 1978, but also Austria and Sweden 1974, Denmark 1973, Luxembourg 1978).

During the 1980s this process continued with the approval of permissive laws in Holland (1981), Portugal (1984), Spain (1985), Greece (1986).



The last country to surrender was Belgium, where the 1990 law saw the act of the temporary resignation of King Baudouin to signal the dramatic importance of the decision adopted by the Parliament. It can be said that the general prohibition of abortion remains in Europe only in Ireland (where a popular referendum in 1981 led to art. 40 of the Constitution of that country guaranteeing defense of the right to life from conception), in Malta and in Switzerland (where, what's more, repeated attempts to legalize abortion, make the penal prohibition of abortion very fragile).

But it has to be reported, that after the fall of the Berlin Wall (1989), there have been attempts to reexamine the widely permissive laws of the Communist regimes in the former satellite countries of the USSR.

These attempts have been generally ineffective, except in Poland, where a difficult process led to a 1993 law affirming the right to life of the conceived child from the moment of fertilization. It restricted unpunished abortion to the three classic cases of danger for the health of the mother, rape and where there is a risk of fetal malformations, which are verified by a serious medical checkup. A subsequent, much more permissive law, that abrogated the previous norms has been blocked by a ruling (1997) of the Polish Constitutional Court that has grounded the right of the conceived child in the concept of the "democratic state of rights."

It is not possible in this article to examine in more detail the various laws. But we can make two culturally important observations. The first is that among the various laws there are notable differences, the most important of which is the acceptance of abortion simply on demand of the woman during the first period of pregnancy, or the provision of some indications submitted to the evaluation of a third party that can decide not to authorize the operation. Portugal, Spain, and in a certain sense Germany, belong to this second group. We have to insert in the first group, almost all the other countries of Western Europe. It is true, that only a few laws authorize abortion on demand in an explicit way (for example, in Austria, Denmark, Greece, Norway), but more often during the first period of gestation the free decision of the woman is disguised both with the indication of numerous and wide reasons, and with entrusting to the woman herself the verification of the causes (in France, Italy, Great Britain, Belgium, Finland). We arrive at this result above all through the changing the meaning of another word, which is "health", no longer understood as a lack of "illness", but as a "complete state of physical and psychological wellbeing," such that even situations of concerns and problems due to an unwanted pregnancy are considered as a state of "psychological illness", whose existence can be ascertained only by the woman.

It is necessary to add that quite a few laws provide procedures (counseling and consultations) whose aim is to avoid - if possible - abortion or in some way to make the woman's decision more considered and informed. One can understand this arrangement of legal filters as a manifestation of a "preference for birth", even if a very weak one.

In order to complete the legislative survey, it is necessary to recall that in some large countries of the Far East, such as China and India, the anti-natalist politics have imposed the interruption of pregnancy as a real instrument of population control, to the point that frequently people have recourse to abortion to avoid different kinds of penalties for those who have children beyond the limits established by the civil power.

It can be affirmed then, that legal abortion nowadays finds different justifications: a) at times the principle of legitimization continues to be searched in the "state of necessity", but it is extended and deformed enormously so as to lose the typical characteristics of this legal institute provided for in a general way by penal codes. But the idea remains of a conflict between the rights and the interests of the mother and those of the conceived child, which the code tries to resolve, both by enlarging the legal sphere of the woman and by reducing that of the child; b) often the right to choose of the woman is placed as a foundation for the voluntary interruption of pregnancy (*privacy*, according to

the language of the American Supreme Court). In this case the idea of a conflict between the mother and child is completely abandoned: the legal system differentiating three trimesters into which pregnancy is subdivided, presumes the consideration of a contrast between the rights and interests of the woman herself (second trimester) or between the interests of the woman and of the State (third trimester); c) finally, legal abortion is at times considered a duty of the citizen in view of the realization of the general interests of the State to avoid overpopulation. One passes from the idea of abortion as a remedy, to that of abortion as a right of liberty, to the idea of abortion as a duty.

3. This very rapid survey which we have done, demonstrates that legal abortion provides evidence of a materialistic conception of existence. It is not by chance that legal abortion appears for the first time in the Soviet Union, that is to say in a place where theoretical materialism is the official doctrine that is taught at the universities and that transforms churches into museums of atheism. It has not been by chance, that with the establishment of Communism in the countries of Eastern Europe permissive regulations were adopted. Romania was not an exception, where first there were widely permissive laws followed by very restrictive laws, certainly not in view of the dignity of the unborn child, but rather considering the power objectives pursued by the dictatorial re-

gime of Ceausescu. The legalization of abortion in the Soviet Union precedes by 47 years the *Abortion Act* of Great Britain. We can deduce from this that in the West, abortion faced greater resistance in achieving a legal status. This process in the West has happened gradually as a practical materialism established itself that does not dare to deny God, or the possibility of a mysterious transcendence present in man, but that pretends and imposes practical behaviors which neither God, nor the transcendence present in man can affect. What seems to confirm this datum is the fact that legalization took place first in the countries of Anglo-Saxon culture which were strongly influenced by pragmatism and utilitarian models of thought. We could even affirm that during the period in which the world was divided into two opposing blocs, apparently very different from each other, a homogenization was taking place as consistent as it was invisible that found in materialism the common denominator of which legal abortion is an indication.

We can find a confirmation of this in the evolution of the legal situation in Germany. At the moment of the unification of the two Germanys two different regulations regarding abortion were in force: the law in the east was much more permissive. On other matters no one dared to question the superior civilization of the Western laws, which had been extended to the territory of the former German Democratic Republic.

Only regarding abortion was this superiority denied, so that the difficulties in reaching a common law in this matter seemed to put into difficulty, at certain moments, even the treaty of union. Finally a deadline for the elaboration of a new law was established. After an uneven path in which even the German Constitutional Court intervened, it was only conclusively approved in 1996 and decisively enlarges the space for lawful abortion.

John Paul II wrote in the encyclical *Evangelium vitae* in paragraph 21 that the main contemporary cause of laws against life is, the "eclipse of the sense of God". Even a superficial examination of the new laws that have been approved during the twentieth century confirms this.

4. The commentary on the expression "interruption of pregnancy" with the immediate recalling of the laws on the subject should not astonish. We have already noted, in fact, the semantic mutation for which "voluntary interruption of pregnancy" (VIP) is synonym for legal abortion. To the point where it happens to hear people saying, when an intervention takes place in a hospital according to rules of the law: "That is not an abortion, but a VIP". So we have a terrible distinction: the word "abortion" is cast aside to refer to illegal abortions, while the expression "interruption of pregnancy" is reserved for the legal interventions. But, since in both cases the substance is that the child is killed, the

perverse function attributed to the law appears evident: the attempt to change the very nature of an act.

Recalling the legislation is also justified by the thought of John Paul II. In the encyclical *Evangelium vitae*, he indicates (n. 18) “the sinister and disturbing aspect” of the current attacks against life in interpreting the rights against life as legitimate expressions of individual liberty, to be recognized and protected as real and true rights. We can say that the novelty of our times is not the killing of the innocent, but rather the legalization of this event. For this reason the Holy Father - in particular from paragraph 68 onwards of the encyclical mentioned - faces clearly the theme of the relationship between civil law and moral law until reaching the strong conclusion that “laws which authorize and promote abortion and euthanasia [...] are completely lacking in authentic juridical validity” (n. 72).

In fact, the interruption of pregnancy raises the very serious problem itself of the very basis of legality. We have already noted the paradox that, just during the century that has been able to literally “see” the baby before his birth, substituting the demonstration to the intuition, just then has the voluntary interruption of pregnancy become widespread. But we have to note as well another paradox. Legal thought has always been troubled with two disquieting questions: “What distinguishes law from the rule of the stronger?” and

“What distinguishes the State from a well organized criminal association?”. The tragic experiences caused by totalitarianism of every stripe have made the need to give an answer more urgent. Finally an answer would seem to be given by the words placed almost at the beginning of the Universal Declaration of Human Rights adopted by the UN General Assembly on the 10<sup>th</sup> of December 1948. It is affirmed there, that the foundation of liberty, justice and peace in the world consists in recognizing the dignity of each member of the human family and of his equal and inalienable rights. It seems then, that the human thought has arrived, in one of the most dramatic and high moments of history, to place the basis of legality (justice, freedom, peace: all aims which give a sense to men living in communities organized around law) in the equal dignity of each human being as such.

The Universal Declaration of Human Rights has been incorporated into many international and national laws. It is sufficient to think to the Covenant on Civil and Political Rights of 1966, to the European Convention on Human Rights and Fundamental Freedoms, to the 1997 European convention on Bioethics, to many constitutions of the second half of the Twentieth century that indicate the promotion and defense of human dignity is the goal and foundation of the State. When we state that human dignity is equal for everyone we are also affirming that the right to life

for all human beings is the same thing, because equality in dignity cannot have another reason but the same value of existence, independently of any further attribute (wealth, intelligence, health, visibility, etc.)

The paradox is that legalized abortion causes a crisis the very self-evident things that would seem to have been obtained when the words “dignity” and “equality” are universally accepted - at least at the mental level—as an irrevocable achievement.

For this reason John Paul II, addressing the Council of the Episcopal Conferences of Europe on October 11, 1985, spoke of the voluntary interruption of pregnancy as a “defeat of the State”. It is worthwhile to quote the entire passage: “The introduction of permissive legislation regarding abortion has been regarded as the affirmation of a principle of freedom. Let us rather ask ourselves if it is not the triumph of the principle of material well-being and selfishness over the most sacred value, that of human life. It has been said that the Church was defeated because it did not succeed in bringing about the acceptance of its moral norm. But I think that this very sad and regressive phenomenon it was man, it was woman, who was really defeated. Doctors are defeated, who have renounced the noblest oath and claim of medicine, that of defending and saving human life; the secularized State has truly been defeated, renouncing the protection of the fundamental and sacro-

sanct right to life in order to become the instrument of a supposed collective interest, and sometimes showing itself incapable of safeguarding the observance of its own permissive laws. Europe will have to reflect upon this defeat”.

In reality, voluntary interruption of pregnancy—as it is intended in this work—casts doubt on the modern State in its characteristics of democracy, religious neutrality and being subject to the rule of law. The fundamental value of democracy is equality. Now VIP, especially if structured as an expression of a right and freedom of women, necessarily must deny the equality of human beings and have recourse to artful mechanisms of discrimination. This happens when “quality of life” is opposed to the “value of life” and when a distinction is made between the human individual and the person. The struggle against discrimination has (with great difficulty) already freed slaves, black people, women, foreigners, but is completely abandoned when it is affirmed that only a life which is “rich and full” deserves the recognition of value.

Analogously, it seems impossible to assert that the State is “secular” if it remains indifferent with regards to matters of life or death of human beings. On the contrary: the very reason for being of the complex governmental organization is the protection of the lives of each and every person. This is what its secular character consists in, that the constitutive value is not religious faith, but the value of man.

5. As the expression “voluntary interruption of pregnancy” is tied to permissive civil laws, we have made reference to them. The judgment concerning abortion from the Christian vision is clearly expressed in the great encyclical *Evangelium vitae*, particularly at paragraph 57, and before that in the Vatican Council II, where abortion is defined as an “unspeakable crime”. But those who think that only the religious vision opposes to abortion would be mistaken. All the modern doctrine of human rights cannot avoid also perceiving abortion as a foreign body. So even from a strictly rational and secular point of view, it is opportune to denounce the insincerity of the expression “voluntary interruption of pregnancy.” In so far as it is directed to erase the reality of the already existing child and condemn him/her to death, it offends not only against life, but also against truth. For this reason the antidote that cannot be forsaken is to prevent the negative effects produced by the “anti-language” and to reaffirm in the civil laws the existence of man as a subject from the first moment of conception. No one can deny the very particular situation of pregnancy, in which a very weak and fragile subject lives in the body of a woman to whose mind and heart this life is totally entrusted. This fact is demonstrated not only by the enormous quantity of abortions, but also, and most of all, the everyday experience of a greater number of mothers capable of facing any sacri-

fice and in any case a heavy change in their very existence in order for their child to live. Therefore the concrete legal instruments to guarantee the right to life of the conceived child can take into account this situation and look for different ways from the ones used to defend the right to life of children who are already born. But, in any case, the first duty, even for the law, is to speak the truth about man, on his right to life, on his character as a subject and never as an object, as a person and never as a thing. The definition of the legal status of human embryo, and the consequent recognition of his legal subjectivity from conception and of his equality with regards to the already born child, is the most urgent answer to the ambiguity of the expression “voluntary interruption of pregnancy.”