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# THE DUTIES OF A CATHOLIC POLITICIAN WITH RESPECT TO BIO-LAWMAKING

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## INTRODUCTION

A politician and mother of seven girls has introduced a bill to ban female infanticide in her South Asian nation. While all homicide, at least after birth, is already technically illegal in her country, the law has long been ineffectual, being applied only to boy children; thousands of infant girls are killed with impunity each year. Mrs. Nightingale Singh's plan is to make it clear by legislation—followed by pressure upon the police and prosecuting authorities—that to kill a healthy child, simply for being a girl, is a crime. She realizes that this will leave unaffected the many hundreds of *handicapped* babies of both sexes who are smothered each year—a tragedy in her eyes, though possibly less cruel than the lethal neglect called “nursing care only” and “demand feeding” suffered by handicapped children in the more primitive hospitals of the Western world. Her own opposition to all infanticide is well-known, but she realizes that there is at present no realistic hope of getting an effective universal ban on the practice in her country.

The problem is that, quite apart from the anti-population lobby and certain other conservatives who predictably support infanticide on demand, one of the pro-life groups has become her vehement critic. This group, which claims to speak for all right-thinking pro-lifers, declares that, by seeking only to ban sex-selection infanticide, Mrs. Singh is implicitly conceding both the legality and the morality of killing infants on other grounds such as handicap. The group accuses her of thereby engaging in “intrinsically evil acts” herself, as well as formally cooperating in the evil acts of others: she is promoting or, at least, acquiescing in infanticide and willingly sacrificing some handicapped children's lives in order to save some healthy baby girls. But one may not do evil in the vain hope that good may come of it, her critics

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remind her. The law, as it presently stands, is quite clear: no infanticide, full-stop. Trying to limit the harm by appearing to concede a little infanticide would only further undermine the law and the pro-life message. And it would also leave her and her supporters excommunicated—an especially puzzling threat for Mrs. Singh given that she is a pious Hindu.

Meanwhile, Afro-MP Muhammed Ignatius Mboembe Le Vie is promoting an anti-cloning bill in the newly formed African Union. While cloning is being attempted for some extinct game animals and a low-cholesterol hippopotamus is being genetically engineered for the table, this science had not yet been applied to humans in the African Union. Le Vie is aware, however, that in America and Europe, where such practices with respect to human beings have been authoritatively declared to be contrary to human dignity by parliaments or presidents, they are increasingly common practices and often funded by those same authorities. Le Vie thinks there is a very good chance of getting an Africa-wide ban on so-called “reproductive” cloning (cloning intended to produce a live-born child), but is less confident of also achieving a ban on so-called “therapeutic” cloning (the even more unethical kind of cloning, where embryos are created in order to be cannibalized for experimental purposes). He thinks there is very little chance of a ban on destructive human embryo experimentation in general.

Dr. Le Vie plans to put up a bill banning all three practices, but is willing to fall back to a ban on cloning, or even to a ban on only reproductive cloning, as required by the vicissitudes of the political debate. He had considered going for a ban on all reproductive technologies that are profligate with early human life or that disintegrate life-making from love-making, but he realizes this would probably mean the bill would get no hearing at all because of the power of the in vitro fertilization (IVF) lobby in some member states of the African Union. Once again, however, he is opposed not only by those who favor *laissez-faire* in this area, but also by a group calling themselves the Defenders of the African Family Today (DAFT). DAFT declares that it cannot support any bill that does not at least go for a complete ban on condoms, artificial reproduction, sex education in schools, and the public dissemination of the theory of evolution.

Meanwhile, in the new leftist Spain, a physician-assisted suicide (PAS) bill has widespread popular support and is likely soon to be passed with majorities similar to those of the already-passed gay marriage and liberalized abortion bills. Provincial MP Don Miguel-Angel Vida thinks he will vote against the physician-assisted suicide bill in any case, but is toying with proposing an

amendment that would require that anyone who is to be assisted with suicide must first be given a pamphlet describing in graphic detail the last stages of death by poisoning and offering alternatives such as good palliative and pastoral care. He also plans to support an amendment by a pro-life colleague of another party which would require a one week “cooling off period” between the consent to assisted suicide and its implementation.

Don Vida is uncertain, however. He wonders about the prudence of amendments that might seem to lend some credibility to the PAS bill and the wicked practice it condones; the consciences of a few weaker MPs may be appeased by the thought that “at least there are safeguards” so that they will then vote in favor of the amended bill. Furthermore, Vida’s proposal might itself be amended by his opponents, so that the mandatory information sheet given prior to consent would end up tame at best, if not actually pro-suicide. He wonders whether it might be best to take an absolute stand against the bill or even just to let sleeping dogs lie and hope the bill will fail. Maybe this generation should just give up on pro-life lawmaking or simply refuse even the appearance of collaboration in laws that broaden the range of legal homicide. He asks his elderly parish priest what he should do. The monsignor suggests prayers to San Jose El Patron della Felice Morte and refers the question to a classmate who lectures at the seminary. The advice—that Don Vida should follow his conscience—arrives three days after the final vote on the bill.

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The complementary roles of priests and laity in the formulation of public policy were described by the Second Vatican Council in *Gaudium et Spes*:

Secular duties and activities belong properly although not exclusively to laymen. . . . Laymen should also know that it is generally the function of their well-formed Christian conscience to see that the divine law is inscribed in the life of the earthly city; from priests they may look for spiritual light and nourishment. Let the layman not imagine that his pastors are always such experts, that to every problem which arises, however complicated, they can readily give a concrete solution, or even that such is their mission. Rather, enlightened by Christian wisdom and giving close

attention to the teaching authority of the Church, let the layman take on his own distinctive role.<sup>1</sup>

Regarding what they called “the difficult but very noble art of politics,” the Fathers of Vatican II praised “the work of those who for the common good devote themselves to the service of the state and take on the burdens of office.”<sup>2</sup> Of politicians, they counseled that “[w]ith integrity and wisdom, they must take action against any form of injustice and tyranny.”<sup>3</sup> Lawmaking has an important role to play in such action against injustice: it formally recognizes the duty of protecting the rights of all persons, families, and groups in the community and proscribes any attacks upon those rights and persons.<sup>4</sup> In this context, the responsibility of lawmakers and those who influence them to protect the life of all members of the community from conception until natural death was reaffirmed by the Council<sup>5</sup> and has since been repeated very often by popes and bishops, as well as many other faithful Christians, clerical and lay.

But no politician can do everything, and good laws will only take us so far in building up a civilization of life and love. Morally sensitive lawmakers also face many dilemmas as to what kinds of laws to seek, what to oppose, what to seek to ameliorate by amendment, and what to do as a means to such ends. This essay will focus on a particular group of *causae conscientiae* often encountered in the conventional political struggle in defense of innocent human life: the duties of a politician with respect to laws in the area of abortion, infanticide, embryo destruction, euthanasia, and other crimes against life—especially in those situations where the laws are not presently, and are not likely in the near future to be, as “perfect”<sup>6</sup> as the pro-life politician<sup>7</sup> would desire. These questions are all the more important in the con-

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1. SECOND VATICAN ECUMENICAL COUNCIL, GAUDIUM ET SPES: PASTORAL CONSTITUTION ON THE CHURCH IN THE MODERN WORLD No. 43 (1965) [hereinafter GAUDIUM ET SPES].

2. *Id.* No. 75.

3. *Id.*

4. *Id.*

5. *Id.* Nos. 27, 51.

6. The language of “perfect” and “imperfect” bio-legislation has been common in ecclesiastical circles at least since the 1994 Congregation for the Doctrine of the Faith (CDF) Symposium. See I CATTOLICI E LA SOCIETÀ PLURALISTA: IL CASO DELLE ‘LEGGI IMPERFETTE’ [Catholics and the Pluralistic Society: The Case of Imperfect Laws] (1996).

7. I use the category “pro-life” to cover not only Catholic and like-minded Christian politicians, but all those who draw conclusions like those articulated in Part II of this paper. Much of what I say will apply *mutatis mutandis* to those who advise, lobby, and support them.

text of recent debates about whether and when a Catholic politician might be formally excommunicated for his position on laws in this area.

In considering such questions I cannot elaborate a full political ethic here, nor articulate all the principles to be followed or all the qualities to be cultivated in civic leaders. Nor can I describe the complex process of discernment appropriate in any political judgment. While relying upon the authoritative teachings of the Catholic Church, I cannot elaborate as fully as I would like all the theological presuppositions that underpin those teachings, the levels of authority with which they have been proposed, or the common ground such teachings have with the positions of many other Christians, pro-lifers, and persons of good will. While I will often refer to abortion legislation in particular to illustrate the principles I will elaborate in this essay, many of them will apply *ceteris paribus* to other areas of bio-legislation such as those I outlined in my opening (fictitious) examples.

#### I. WHAT POLITICIANS CANNOT RIGHTLY DO WITH RESPECT TO BIO-LEGISLATION

Since the Council, a series of documents have offered some counsel to Christian politicians on the positive course reasonably to be taken with respect to the protection of human life. These have included declarations of the Congregation for the Doctrine of the Faith,<sup>8</sup> speeches of Pope John Paul II,<sup>9</sup> interventions by the Holy See at U.N. meetings, statements by national bishops' conferences, responses of individual bishops to Catholic politicians—and much else besides—all culminating in the great encyclical *Evangelium Vitae*.<sup>10</sup> A number of positions, not uncommon in contemporary discourse and practice, have also been authoritatively refuted. Rather than rehash the substantial argumentation offered in those texts, or offered by theologians who

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8. CONGREGATION FOR THE DOCTRINE OF THE FAITH, *QUAESTIO DE ABORTU: DECLARATION ON ABORTION* (1974) [hereinafter *QUAESTIO DE ABORTU*]; CONGREGATION FOR THE DOCTRINE OF THE FAITH, *JURA ET BONA: DECLARATION ON EUTHANASIA* (1980) [hereinafter *JURA ET BONA*]; CONGREGATION FOR THE DOCTRINE OF THE FAITH, *DONUM VITAE: INSTRUCTION ON RESPECT FOR HUMAN LIFE IN ITS ORIGIN AND THE DIGNITY OF PROCREATION: REPLIES TO CERTAIN QUESTIONS OF THE DAY No. 3* (1987) [hereinafter *DONUM VITAE*]; CONGREGATION OF THE DOCTRINE OF THE FAITH, *DOCTRINAL NOTE ON SOME QUESTIONS REGARDING THE PARTICIPATION OF CATHOLICS IN POLITICAL LIFE* (2003) [hereinafter *DOCTRINAL NOTE*]; see also *CATECHISM OF THE CATHOLIC CHURCH* Nos. 898–99, 1923, 2246, 2273 (2d ed. 2000) [hereinafter *CATECHISM*].

9. These are yet to be definitively collected but are very numerous.

10. POPE JOHN PAUL II, *ENCYCLICAL LETTER EVANGELIUM VITAE* (1995) [hereinafter *EVANGELIUM VITAE*].

support those teachings, it must suffice for present purposes to summarize six positive conclusions regarding bio-politics:

- (1) It is the duty of politicians to ensure that civil law serves the common good and reflects fundamental moral norms (especially those regarding basic human rights), and that it protects from unjust attack the vulnerable (including the unborn, disabled, frail, elderly, sick, and dying).<sup>11</sup>
- (2) It is likewise the duty of politicians to lead rather than merely follow public opinion in such crucial matters, and to seek to ensure the widest possible consensus for the good on them.<sup>12</sup>
- (3) Far from being an imposition upon the consciences of others, laws that protect the vulnerable from the impositions of the strong reflect a healthy respect for human rights and fundamental moral norms, and they assist people to grow in virtue;<sup>13</sup> those whose religion part-motivates their political struggle in this area are thus

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11. St. Thomas Aquinas taught that not all immoral activities can or should be proscribed at law; thus the Church does not counsel politicians to enact laws against adultery or lying even though it regards such activities as wrong. But if the law should not seek to prohibit all vices, it should at least prohibit the more serious (e.g., lethal) ones: "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." THOMAS AQUINAS, *SUMMA THEOLOGICA* Pt. I-II, Q. 96, Art. 2 (Fathers of the English Dominican Province trans., Benziger Bros. 1915). Several recent magisterial documents have insisted that it is a primary function of the criminal law to ensure that all members of society enjoy respect for their fundamental rights, such as the right to life. See CATECHISM, *supra* note 8, No. 2273; DONUM VITAE, *supra* note 8, No. 3; EVANGELIUM VITAE, *supra* note 10, Nos. 4, 20, 68-72; POPE JOHN XXIII, ENCYCLICAL LETTER PACEM IN TERRIS (1963); QUÆSTIO DE ABORTU, *supra* note 8, No. 20.

12. DONUM VITAE, *supra* note 8, No. 3.

13. "It is true that it is not the task of the law to choose between points of view or to impose one rather than another. But the life of the child takes precedence over all opinions. One cannot invoke freedom of thought to destroy this life." QUÆSTIO DE ABORTU, *supra* note 8, No. 20. "Recourse to the conscience of each individual and to the self-regulation of researchers cannot be sufficient for ensuring respect for personal rights and public order . . . . 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." DONUM VITAE, *supra* note 8, No. 3. "The legal toleration of abortion . . . 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 abuses which can occur in the name of conscience and under the pretext of freedom." EVANGELIUM VITAE, *supra* note 10, No. 71.

not guilty of religious intolerance or imposition, but merely of assuming their proper role in a democratic polity.<sup>14</sup>

- (4) On the other hand, laws that deny protection to certain classes of human beings undermine the common good and expose even the supposedly democratic state as tyrannical;<sup>15</sup> such laws are not morally binding and must not be obeyed.<sup>16</sup>
- (5) Direct abortion and euthanasia are intrinsically and gravely evil, since they are the deliberate killing of innocent human beings, and no circumstance, purpose, or law can ever make them right;<sup>17</sup> they also attack family

14. Likewise, those whose faith supports their action with respect to abortion law are no more guilty of "imposing their beliefs" upon others than are their doctrinaire libertarian or secular opponents.

15. *EVANGELIUM VITAE*, *supra* note 10, No. 20 discusses the "tyrant State, which arrogates to itself the right to dispose of the life of the weakest and most defenceless members" (emphasis added). See also *id.* No. 70. Cf. *CATECHISM*, *supra* note 8, No. 2273 (citing *DONUM VITAE*, *supra* note 8, No. 3).

16. *EVANGELIUM VITAE*, *supra* note 10, Nos. 69, 72, 73, 90. In his important reflection upon the implications of grievously unjust laws, John Paul concludes that:

Laws which authorize and promote abortion and euthanasia are therefore radically opposed not only to the good of the individual but also to the common good; as such they are completely lacking in authentic juridical validity. Disregard for the right to life, precisely because it leads to the killing of the person whom society exists to serve, is what most directly conflicts with the possibility of achieving the common good. Consequently, a civil law authorizing abortion or euthanasia ceases by that very fact to be a true, morally binding civil law.

*Id.* No. 72. Here he is in the tradition of St. Thomas who taught that "a tyrannical law, through not being according to reason, is not a law, absolutely speaking, but rather a perversion of law." *AQUINAS*, *supra* note 11, Pt. I-II, Q. 92, Art. 1, Obj. 4 & Respondeo. Following St. Augustine, John Paul further concluded that unjust laws are "acts of violence rather than laws" because "a law that is not just, seems to be no law at all." *AQUINAS*, *supra* note 11, Pt. I-II, Q. 96, Art. 4, Obj. 3 (quoting *AUGUSTINE*, *DE LIBERO ARBITRIO: THE FREE CHOICE OF THE WILL* No. i, 5).

17. *E.g.*, *EVANGELIUM VITAE*, *supra* note 10, Nos. 57, 62, 65. John Paul II here echoes Vatican II, which had declared the following:

All offences against life itself, such as . . . abortion, euthanasia and willful self-destruction, are criminal. They poison civilization, they debase the perpetrators even more than the victims . . . they dishonour the Creator.

. . . .

. . . Life must be protected with the utmost care from the moment of conception: abortion and infanticide are abominable crimes.

*GAUDIUM ET SPES*, *supra* note 1, Nos. 27, 51; see also *CATECHISM*, *supra* note 8, Nos. 2268–79; *HOLY SEE*, *CHARTER ON THE RIGHTS OF THE FAMILY* No. 4 (1983); *POPE PAUL VI*, *ENCYCLICAL LETTER HUMANAE VITAE* No. 14 (1968) [hereinafter



and community.<sup>18</sup> This is a conclusion of well-informed natural reason, even unaided by faith, and therefore proper ground for political action even in an avowedly “secular” society.<sup>19</sup> Revelation mediated by the Church clarifies and confirms this conclusion<sup>20</sup> and gives additional grounds for political action in any self-consciously Christian society or any pluralist democratic society with some Christian voters and leaders.<sup>21</sup>

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HUMANAE VITAE]. The gravity with which the Church views the procurement of abortion is reflected in the *latae sententiae* excommunication under Canon 1398 of the CODE OF CANON LAW (1983).

18. EVANGELIUM VITAE, *supra* note 10, Nos. 42–45, 53–67.

19. On the basis of the teaching with respect to abortion in the Scriptures, the Christian tradition, natural law philosophy, and the *magisterium* of the Catholic Church, see EVANGELIUM VITAE, *supra* note 10; MICHAEL J. GORMAN, ABORTION AND THE EARLY CHURCH (1982); GERMAIN G. GRISEZ, ABORTION: THE MYTHS, THE REALITIES, AND THE ARGUMENTS (1970); DAVID A. JONES, THE SOUL OF THE EMBRYO: AN ENQUIRY INTO THE STATUS OF THE HUMAN EMBRYO IN THE CHRISTIAN TRADITION (2004); Ignacio Carrasco de Paula, *The Respect Due to the Human Embryo: A Historical and Doctrinal Perspective*, in IDENTITY AND STATUTE OF HUMAN EMBRYO 48–73 (Juan De Dios Vial Correa & Elio Sgreccia eds., 1997); John Finnis, *Abortion and Healthcare Ethics II*, in PRINCIPLES OF HEALTH CARE ETHICS 547–58 (Raanan Gillon ed., 1994). On the basis of the teaching with respect to euthanasia, see EVANGELIUM VITAE, *supra* note 10; THE DEPENDENT ELDERLY: AUTONOMY, JUSTICE AND QUALITY OF CARE (Luke Gormally ed., 1992); Anthony Fisher, *Theological Aspects of Euthanasia*, in EUTHANASIA EXAMINED: ETHICAL, CLINICAL AND LEGAL PERSPECTIVES 315 (John Keown ed., 1995).

20. There is some dispute about the status of the three definitions in *Evangelium Vitae*, and in particular whether they are proposed as an exercise of the “ordinary” or the “extraordinary” *magisterium* of the Church, whether of the papal or episcopal *magisterium* or the *sensus fidelium*. All of these kinds of authority seem to me to have been appealed to in *Evangelium Vitae* (and the tradition behind it), and for these reasons and others the present writer believes that Catholic teaching on the intrinsic evil of all direct abortion is proposed *infallibly*. The later publication of John Paul II’s Apostolic Letter, MOTU PROPRIO AD TUENDAM FIDEM (1998), and of the Congregation for the Doctrine of the Faith’s accompanying *Commentary* seemed to confirm that this teaching is an example of one “definitively proposed by the Church regarding teaching on faith and morals” and “necessary for faithfully keeping and expounding the deposit of faith, even if they have not been proposed by the Magisterium of the Church as formally revealed.” CONGREGATION FOR THE DOCTRINE OF THE FAITH, COMMENTARY ON THE CONCLUDING FORMULA OF THE ‘PROFESSIO FIDEL’ No. 6 (1998). Following Vatican II, these documents suggest that the Catholic faithful are required to give “firm and definitive assent to these truths,” and “[w]hoever denies these truths would be in a position of rejecting a truth of Catholic doctrine and would therefore no longer be in full communion with the Catholic Church.” *Id.*

21. Catholic teaching on abortion, euthanasia, etc., while amenable to reason unaided by faith, is *also* a matter of faith, since it is believed by Catholics not only on the basis of persuasive philosophical and sociological reasons but also on the authority of the Scriptures, the Christian tradition, and the living

- (6) Therefore, politicians must act individually or in concert to ensure that the law prohibits all homicide, including abortion, embryo destruction, infanticide, and euthanasia.<sup>22</sup>

The arguments that the Catholic Church (and others) present for these six claims are sophisticated, persuasive and, I believe, conclusive. Various things follow. Commonly heard counterproposals that are *incompatible* with Catholic teaching on bio-politics include:

- (1) Abortion, euthanasia, etc., are morally permissible.<sup>23</sup>
- (2) Attitudes to abortion, euthanasia, and the like are matters of “private morality” or “personal religion,” and therefore should not influence public policy.<sup>24</sup>

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*magisterium* of the Church. The gravity of the matter is all the greater when it is realized that such acts involve the killing of a being *made in the image of God*, that they are *contrary* not only to practical reason but also to *God's will*, and that they involve not only an attack upon a basic human value (life) but also *the renunciation of a sacred trust*. On the complex relationship between faith and reason in such matters, see POPE JOHN PAUL II, ENCYCLICAL LETTER *FIDES ET RATIO* (1998). For a fascinating work on the implications of a more self-conscious focus on building a Christian society, see AIDAN NICHOLS, *CHRISTENDOM AWAKE: ON RE-ENERGISING THE CHURCH IN CULTURE* (1999).

22. *EVANGELIUM VITAE*, *supra* note 10, Nos. 68–74, especially No. 72.

23. Some Catholics or other Christians openly declare themselves opposed to the Church's teaching on abortion or euthanasia and yet claim they are believing and practising members of their church. Holding that direct abortion or euthanasia is always wrong, it is asserted, is not a “core belief” for Christians in the way that, for instance, belief in Divine Revelation or the Trinity are, and conscience must have primacy in moral matters. The Catholic Church, however, makes a clear distinction between a well-formed conscience, on the one hand, and arbitrary preference or intuition on the other. *E.g.*, *DONUM VITAE*, *supra* note 8, Nos. 2–3; *GAUDIUM ET SPES*, *supra* note 1, Nos. 16–30. The moral character of actions is determined by *objective* criteria, not merely by the sincerity of intentions or the goodness of motives, and all people are called to form their consciences accordingly. *Id.* Nos. 27, 51; SECOND VATICAN ECUMENICAL COUNCIL, *LUMEN GENTIUM: DOGMATIC CONSTITUTION ON THE CHURCH IN THE MODERN WORLD* Nos. 12, 25 (1964); POPE JOHN PAUL II, ENCYCLICAL LETTER *VERITATIS SPLENDOR* ch. 2 (1993) [hereinafter *VERITATIS SPLENDOR*]. Given the consistency and gravity of Church teaching in this area, “(conscientiously) Catholic and pro-abortion” makes about as much sense as “(conscientiously) Catholic and anti-Eucharist” or “Catholic and pro-rape.”

24. Catholic teaching on human rights questions such as abortion is no more mysteriously religious or sectarian than its teaching against slavery, apartheid, or unjust wars. To characterize these matters as “private morality” or “personal religion” is an evasion amounting to ethical relativism. *See* *EVANGELIUM VITAE*, *supra* note 10, No. 70; *GAUDIUM ET SPES*, *supra* note 1, No. 43; ROBERT P. GEORGE, *POLITICAL ACTION AND LEGAL REFORM IN Evangelium Vitae* (1996), available at <http://www.nccbuscc.org/prolife/programs/rlp/96rlpgeo.htm>.

- (3) Respect for the consciences of constituents, including those who do not believe abortion or euthanasia is wrong, requires that their elected representatives make no laws that interfere with their right to exercise their conscientious beliefs in this area.<sup>25</sup>
- (4) Politicians must respect and enact majority opinion on such matters, whatever the majority opinion is.<sup>26</sup>
- (5) Therefore, a politician may initiate or should support (and a citizen may obey) a law that admits in principle the licitness of abortion or euthanasia.<sup>27</sup>

In addition to the range of things that a politician might not reasonably initiate, sponsor, or by his affirmative vote legislate, there are also those actions which have the effect of assisting others in the liberalization of abortion laws, and thus in the practice of abortion—this occasions concern about cooperation in another's evil. I do not need to rehearse the principles governing this kind of moral act here.<sup>28</sup> Suffice it to say that a legislator who favors permissive abortion, and therefore actively supports someone else's permissive bill or actively blocks someone else's restrictions to such a bill, engages in formal cooperation in the evil of the sponsor of the legislation. So too does one uninterested in the abortion issue who nonetheless supports such a bill or blocks such restrictions, hoping thereby to gain something else, such as appeasing certain opponents, keeping his or her seat, or horse-trading support for some other (possibly better) legislative objective. In such cases, politicians can be guilty of formal cooperation in evil even if they disapprove of abortion and say so publicly. The sad reality is that some of the worst collaborators in permissive abortion regimes in recent decades have been politicians ostensibly opposed to abortion.

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25. *Contra* QUAESTIO DE ABORTU, *supra* note 8, No. 20. See also DONUM VITAE, *supra* note 8, No. 3; EVANGELIUM VITAE, *supra* note 10, No. 71.

26. *Contra* EVANGELIUM VITAE, *supra* note 10, Nos. 20, 70.

27. *Contra* QUAESTIO DE ABORTU, *supra* note 8, No. 21. Cf. EVANGELIUM VITAE, *supra* note 10, Nos. 59, 72–74, 90.

28. See EVANGELIUM VITAE, *supra* note 10, Nos. 73–74; VERITATIS SPLENDOR, *supra* note 23, No. 78; 3 GERMAIN GRISEZ, *Difficult Moral Questions*, in THE WAY OF THE LORD JESUS: DIFFICULT MORAL QUESTIONS (1997), especially at 871–98; Anthony Fisher, *Co-Operation in Evil*, 44(3) CATHOLIC MED. Q., Feb. 1994, at 15–22; Anthony Fisher, *Cooperation in Evil: Understanding the Issues*, in COOPERATION, COMPLICITY & CONSCIENCE: PROBLEMS IN HEALTHCARE, SCIENCE, LAW AND PUBLIC POLICY (Helen Watt ed., 2006).

## II. WHAT POLITICIANS CAN RIGHTLY DO WITH RESPECT TO BIO-LEGISLATION: THE MORAL ACT OF INITIATING OR SUPPORTING AN "IMPERFECT" ABORTION OR EUTHANASIA LAW

Having reviewed very briefly some commonly heard positions which are, in my view, excluded for politicians, I come now to consider what they reasonably *can* do. The applicable moral principles in this area are those concerning the intended object of the moral act, and concerning formal and material cooperation in an evil instigated by another person; there are also several virtues at issue that I will treat at the end of this paper.

In situations where abortion, infanticide, embryo experimentation, euthanasia, and the like are already clearly illegal, leaders must remain vigilant lest such laws are flouted or diluted by permissive judgments in *causes célèbres*; they must seek to educate the public about the values underpinning and the benefits of maintaining such laws; they must counter those forces which will always be at work to undermine the civilization of life and love. Above all, perhaps, leaders must work to minimize not just the supply, but also the demand for abortion and the rest—to ensure that public education, financial and social support, counseling, and the like are more than adequate, so that unwanted pregnancy is rare and those who are troubled by their pregnancy are as fully supported as possible. Likewise, the frail, elderly, sick, and disabled must not only be protected by laws, but so loved and cared for by communities that killing them becomes unthinkable.

Would that most of us came from countries where the weakening of a well-nigh perfect legislative regime with respect to the protection of human life were the worry! The tragedy is that most of the Western world, at least, now operates under systems tolerant of thousands or millions of abortions per year and increasingly tolerant of embryo destruction and euthanasia (at least by neglect). The "culture of death," so tellingly identified by Pope John Paul II, is now predominant in the West and means that violence has become so commonplace that even practicing Christians rarely reflect on just how bloody are the supposedly enlightened institutions and practices of their community.

Here we might distinguish several kinds of unjust bio-legal situations:

- (1) Killing is presently *de jure legal* in some jurisdictions *due to constitutional law*. This is the case with respect to abortion in the United States according to a series of Supreme Court decisions supposedly interpreting the

- U.S. Constitution but actually unashamedly engaging in *eisogesis* and judicial legislation.
- (2) Killing is presently de jure legal in some jurisdictions *due to statutory law*. This was briefly the case with respect to euthanasia in Australia's Northern Territory, and is so today with respect to physician-assisted suicide in the U.S. state of Oregon, with respect to abortion in the U.K., much of Europe and the Western two-thirds of Australia, and with respect to destructive embryo experimentation in many jurisdictions.
  - (3) Killing is presently de jure legal in some jurisdictions *due to permissive interpretations by courts* of a prima facie restrictive statute. This was the case with respect to abortion in the U.K. before the 1967 Abortion Act,<sup>29</sup> is the case today with respect to abortion in the Eastern states of Australia, is increasingly the case in Ireland, and is the case with respect to active euthanasia in the Netherlands and euthanasia by neglect in several jurisdictions, most notably Britain since the *Bland* decision.<sup>30</sup>
  - (4) Killing is presently de jure illegal but de facto allowed in some jurisdictions, either because the law is not enforced by the police, the prosecuting authorities, and/or the courts, or because, while illegal according to the letter of the law, past experience and present realities indicate that a conviction is probably impossible under the present law. This is the case throughout much of the Western world today with respect to much bio-legislation.

In these situations the question immediately arises: are politicians bound to seek to change constitutions or to pass laws to make illegal practices such as abortion in all circumstances? And if the passage of such constitutional amendments or statutes is, for the time being, impossible without a miracle, are they bound, or at least permitted, to seek to pass laws that at least tighten up the situation in some way—so that at least some abortion, infanticide, embryo destruction, or euthanasia that might otherwise occur would not? (Such a course of action has in fact been tried, and has sometimes succeeded, in some places at some times.<sup>31</sup>) If such a restrictive yet still permissive bill is proposed, are pro-

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29. Abortion Act, 1967, c. 87 (Eng.).

30. *Airedale NHS Trust v. Bland*, [1993] A.C. 789 (H.L.) (appeal taken from Eng.).

31. For a thorough review of various attempts to ameliorate or enforce British abortion laws and the almost impenetrable obstacles to the passage of such laws, see JOHN KEOWN, *ABORTION, DOCTORS AND THE LAW* (1988).

life politicians bound to support it, oppose it, or take some middle course?

What happens if someone from the other side, as it were, proposes some new law to make access to abortion or euthanasia legal, more clearly legal, or more broadly legal than it presently is? Suppose that the passage of such a bill seems very likely. Should or may a pro-life politician oppose such a bill at all stages, or support the bill at certain stages of the legislative process but not at others, in the hope of gaining some concession? Should such an MP, while opposing the bill as a whole, propose or support amendments to the bill which would, at least, tighten up the regime envisaged by the bill so that at least some abortion or euthanasia that might otherwise occur would not?

In *Evangelium Vitae* No. 73, Pope John Paul II notes:

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 co-operation with an unjust law, but rather a legitimate and proper attempt to limit its evil aspects.<sup>32</sup>

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32. EVANGELIUM VITAE, *supra* note 10, No. 73. This is repeated in DOCTRINAL NOTE, *supra* note 8, at 4. Likewise the then-Cardinal Ratzinger wrote in May 1982 in response to a request from the U.S. Bishops regarding the Hatch amendment:

[A]ccording to the principles of Catholic morality, an action can be considered licit whose object and proximate effect consist in limiting an evil insofar as possible.

Thus, when one intervenes in a situation judged evil in order to correct it for the better, and when the action is not evil in itself, such an action should be considered not as the voluntary acceptance of the

Following this text, the Secretary of the Congregation for the Doctrine of the Faith, Archbishop Tarcisio Bertone, wrote:

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

(1) Prophetic resistance . . . may . . . be justified in the Church if a lay Christian prefers to opt for the value placed in question by the law [here: absolute respect for life] rather than opt for the lesser evil [here: a less “imperfect” abortion law, etc.].

(2) Collaboration. A less radical attitude, or one of greater collaboration, is permitted by the Church if it is possible to promote a lesser evil than that proposed by the law. . . . [H]ere . . . it is not the [lesser] evil as such that is at issue here, but the good, more specifically the good necessary to defuse or reduce the evil . . . [I]t is never permitted to do evil or use evil means to produce a good end; nonetheless each value, by the very fact that it belongs to what is good or what is true, asks to be respected. . . . [Because this strategy] may be difficult to understand for those not directly involved in the political experience and unfamiliar with its very complex ramifications . . . [it] must be publicly explained by those who take such a decision on grounds of conscience. Once this effort has been made with all the necessary seriousness, the legislator must not let himself be tormented, or [pressured into] chang[ing] attitude, as a result of the false interpretation that may be given to his gesture.

(3) Toleration . . . of the evil expressed through an unjust law . . . can only be possible if resistance to the evil would involve a yet greater evil.<sup>33</sup>

This important teaching has already occasioned considerable debate amongst faithful Catholics and their pro-life friends.<sup>34</sup>

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lesser evil but rather as the effective improvement of the existing situation, even though one remains aware that not all evil present is able to be eliminated for the moment.

R.G. Peters, *Stopping Abortion: The Pragmatist's View*, CATHOLIC TWIN CIRCLE, Sept. 17, 1989, at 14 (quoting Joseph Cardinal Ratzinger, Letter to the American Bishops (May 1982)).

33. Tarcisio Bertone, *Catholics and Pluralist Society: “Imperfect Laws” and the Responsibility of Legislators*, in *EVANGELIUM VITAE—FIVE YEARS OF CONFRONTATION WITH THE SOCIETY* 206 (Juan De Dios Vial Correa & Elio Sgreccia eds., 2001).

34. See Colin Harte, *Challenging a Consensus: Why Evangelium Vitae Does Not Permit Legislators to Vote for ‘Imperfect Legislation’*, in *CULTURE OF LIFE—CULTURE OF DEATH* (Luke Gormally ed., 2002); see also COLIN HARTE, *CHANGING*

To some it appears a contradiction: how can anyone who believes all abortion is wrong support “just a little abortion”? Is a spirit of appeasement or pragmatism being manifested in Vatican politics? Are we engaging in evil in the vain hope that good may come, trading some lives for others? Has despair of ever having sound laws and practices in this area resulted in a sell-out?<sup>35</sup>

I think not, but I recognize that understanding Catholic teaching in this area, like understanding the Christian Gospel on many topics, requires a certain amount of arduous and dispassionate thinking. And in the heat of political debate, in the face of urgency, amongst politicians and public not well versed in the nooks and crannies of ethical theory, all led by media either unhelpfully simplistic or plainly hostile, people may be inclined to dismiss such thinking as a luxury or unnecessarily convoluted. I believe this view is wrong, if understandable. A parallel might usefully be drawn, perhaps, with respect to Catholic teaching on the just war. It is complex and will not always deliver up a single clear answer on which wars are just ones and which ways of fighting them are just. Some will, however, be clearly unjust. And the complexities of the argument are no excuse for not doing the hard thinking. Too much is at stake to simply embrace “my country right or wrong” or a dogmatic pacifism. The same is true in our present discussion.

John Finnis has explained the application of these principles to abortion law reform as follows:

[According to *Evangelium Vitae*,] the always illicit vote is [the vote] for a law *as permitting*, precisely *to permit*, abortion. This is always illicit, even if one is personally opposed to abortion and is voting for it only to keep one’s seat and prevent euthanasia or genocide laws, or only to equalize the position of the poor and the rich. The kind of vote which . . . [*Evangelium Vitae*] judges can be licit has as its object not: *to permit* abortions now illegal but rather: *to prohibit* abortions now legal or imminently likely otherwise to become legal. (Say: the existing law or the threatened alternative bill says abortion is lawful up to 24 weeks, while the law or bill for which the Catholic legislator is voting for

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UNJUST LAWS JUSTLY (2005). Also consider the exchange between Harte and Finnis in COOPERATION, COMPLICITY & CONSCIENCE, *supra* note 28.

35. For an example of a commentator who, while not openly critical of “an incremental strategy, proposing or supporting laws that would limit abortion but allow it in some cases,” is clearly deeply uncomfortable with it and ultimately concludes that such laws, while not excluded in principle, are always imprudent, see CHARLES E. RICE, THE WINNING SIDE: QUESTIONS ON LIVING THE CULTURE OF LIFE 225–33 (1999).



says abortion is lawful up to 16 weeks.) Even though it is a vote for a law which does permit abortion, it is chosen by this legislator as a vote for a law which restricts abortion. That this restrictive law also permits abortion is only a side-effect—when we consider the act of voting in the perspective of the acting person—even though the side-effect of permission is as immediate as the object of restriction.<sup>36</sup>

The ink of these (and the surrounding) words of Professor Finnis was barely dry when lawmakers and pro-lifers in two different Australian jurisdictions were debating their implications for new laws. The sometimes bitter disputes during those legislative debates reflected confusion over some matters worth a little more and cooler attention from this distance because they are instructive about broader questions of conscience for bio-politics; there will no doubt be many echoes for those who have watched or participated more actively in efforts to reform bio-law here in Britain or across the various channels which separate her from the rest of us.

### III. SOME ISSUES RAISED BY TWO AUSTRALIAN ATTEMPTS TO APPLY *EVANGELIUM VITAE* NO. 73

For those unaccustomed to what happened in the antipodes in 1998–1999, I will summarize the background very briefly.<sup>37</sup> In Perth, Western Australia, bills were introduced to legalize abortion on demand after a *cause célèbre* in which a doctor was charged with criminal abortion; some pro-life MPs, while opposing the bill(s) as a whole, promoted amendments which would at least restrict abortion in some ways. In Canberra, on the other hand, it was the pro-life parliamentarians in the local Australian Capital Territory assembly who initiated change: in a situation of de facto abortion on demand, they sought to introduce at least some regulation, especially through requiring that certain minimum information be given to women about fetal development and alternatives to abortion. In both cases, the pro-life politicians achieved some limited success in a dreadfully hostile environment. And in both cases, the vilification came as much from their pro-life friends as from their pro-abortion enemies. What

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36. John Finnis, *The Catholic Church and Public Policy Debates in Western Liberal Societies: The Basis and Limits of Intellectual Engagement*, in ISSUES FOR A CATHOLIC BIOETHIC 261, 268–69 (Luke Gormally ed., 1999).

37. For fuller details, see Warwick Neville, *Realpolitik, Theology and the Culture of Death: Abortion, Politics and Law in the Australian Capital Territory*, 10 BIOETHICS RESEARCH NOTES 37, 37–39 (1998).

were the points of contention? Four are worth mentioning here because they have wider ramifications.

A. *Whether Evangelium Vitae No. 73 Applies to Existing Laws or to Bills Being Debated or Both*

First, there were some in Perth who asserted that *Evangelium Vitae* No. 73 applied only to the introduction by pro-life MPs of new laws aimed at restricting abortion in a permissive regime, not to attempts to ameliorate by amendment permissive bills introduced to a legislature by someone else. (On this view, Dr. La Vie, and possibly Mrs. Singh, might be justified in their actions but not Don Vida.) In Canberra, on the other hand, some people—sometimes the same people—asserted the opposite: *Evangelium Vitae* sanctioned attempts to ameliorate by amendment other people's pro-abortion bills, but did not allow the introduction of new laws in a permissive regime which would restrict but not prohibit abortion. Yet, in praising efforts "aimed at limiting the number of authorized abortions," the encyclical clearly refers *both* to promoting new, more restrictive laws in place of permissive ones already in place ("laws already passed") and to promoting restrictive amendments to other people's permissive bills ("laws ready to be voted on"). Either way, the Pope explains, when it is not possible to defeat a pro-abortion law or bill, a politician could in certain circumstances licitly support a proposal aimed at "limiting the harm done," without thereby being responsible for the far-from-perfect state of the law. Even had the Pope not been as clear as he was in fact, his principles clearly apply equally both to existing and to proposed laws.

B. *Where "Existing Law" Is To Be Found*

Another dispute in this context was over whether, in considering what *is* the present state of the law (the "law already passed"), one must refer only to a plain reading of existing statutes. The reason this was so important is that throughout much of Australia, abortion has never been legalized by statute as it was in Britain in 1967; rather, courts have given permissive interpretations of *prima facie* restrictive abortion statutes and law "enforcement" agencies have done little to enforce even those very liberal interpretations of the law. This has led to *de facto* abortion on demand; in fact, Australia has a significantly higher abortion rate than Britain despite the more permissive British laws—it is now estimated that one in three Australian women has had or will have an abortion. Of course, even those peoples not blessed with a common law system, who must labor instead under

codified criminal law, require authoritative interpretations and applications of their constitutions, statutes, and treaties like any other country. In common law jurisdictions with some legislation and some customary law of precedent, it is even more clearly the case that the courts in part make the law. Law is not self-interpreting; indeed, to the ordinary laity it often seems to mean something very different from its plain words. With respect to abortion, this is very much the case: activist courts in the United States, Britain, Canada, and Australia have discovered exceptions to the laws against abortion or rights to abortion hidden in words where no plain reader would have dreamed of finding them. The appalling U.S. rulings in *Casey*<sup>38</sup> and in *Stenberg v. Carhart*<sup>39</sup> are among a long string of like judgments throughout the common law world. The *Bland*, *Schiavo*,<sup>40</sup> and *BWV*<sup>41</sup> cases in Britain, the United States, and Australia, respectively, suggest that same thing is happening with respect to euthanasia by neglect, especially for those given the death sentence “permanent vegetative state.” Guiling as it is to those of us who are sure these are ideologically-driven misreadings of the law, until a superior court or legislature overrules these interpretations, they are for our present purposes the law.

Furthermore, even accepting a plain reading of the statutes forbidding abortion in Australia, such statutes are manifestly not enforced by the police, the prosecuting authorities, or the courts. It could well be argued that the statutes are therefore annulled by desuetude.<sup>42</sup> Several facts supported this view in West Australia and the Australian Capital Territory. First, “the average man on the street” thinks abortion is legal, and governments, police, and prosecuting authorities do nothing to disabuse him. Abortions are financed under national health schemes or by insurers, advertised in the media, approved by medical colleges, referred for and performed by doctors “in good standing,” and recom-

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38. *Planned Parenthood of Se. Pa. v. Casey*, 505 U.S. 833 (1992).

39. 530 U.S. 914 (2000).

40. *Schiavo ex rel. Schindler v. Schiavo*, 358 F. Supp. 2d 1161 (M.D. Fla. 2005), *aff'd*, 403 F.3d 1289 (11th Cir. 2005).

41. *Re BWV; Ex parte Gardner* (2003) 7 V.R. 487.

42. This raises the complex jurisprudential question of whether and when a law ceases to be such by virtue of desuetude. Such assessments are made on different bases in different jurisdictions and are provisional until an authoritative pronouncement of desuetude has been made by a superior court or the original law has been rescinded by the legislator. It might also be argued that some laws are ineffective for their primary purpose (in this case, protecting unborn human beings and their mothers from abortion) but effective for some other purpose (e.g., protecting the right of some institutions and individuals to refuse to provide such “services”).

mended by school counselors. Furthermore, the first attempt in many years to initiate a case against a doctor who flagrantly broke the West Australian abortion statute led to the prompt repeal of that technical prohibition.

So what are we to make of an ineffectual law, ineffectual indeed for several generations? Catholic theology going back at least to St. Thomas Aquinas has been well aware that black-letter laws are necessarily adapted “to time and place”; as Thomas observed, *consuetudo et habet vim legis, et legem abolet, et est legum interpretatrix*: custom makes, unmakes, and interprets laws.<sup>43</sup> Thus the Law, taken in the broad, capital “L” sense of that which a particular legal system brings about, is in some senses more and in some senses less than the sum total of lower-case “l” laws (statutes and precedents). And a lawmaker will properly take into account what the Law effectively achieves, or can be expected effectively to achieve, in making his decisions about what reforms of the Law and thus what particular laws he will support.

### C. *The Prudence of Ameliorative Measures*

A third point of dispute during the 1990s Australian debates was over the prudence of particular measures proposed in specific contexts—a matter about which morally and factually well-informed people may disagree even in ideal circumstances. There was entirely appropriate disquiet about the risk that the law would end up worse than it already was, or that a rare opportunity to make it better might be missed. There was further concern about causing scandal either by action or inaction in these circumstances, about the helpfulness of particular wordings and amendments to wordings, and about the political minutiae of when to move and in concert with whom and all the rest. Some of these matters were of interest only to those involved at the time. But the claim by some critics that these measures were so imprudent as to involve willfully wrong acts, negligence, or immoral material cooperation in evil deserves a little more attention.<sup>44</sup>

I have already dealt with immoral initiation and cooperation in the evil of legalizing or otherwise permitting offences against

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43. AQUINAS, *supra* note 11, Pt. I-II, Q. 97, Art. 3; cf. ROBERT GEORGE, MAKING MEN MORAL: CIVIL LIBERTIES AND PUBLIC MORALITY 19–47 (1993).

44. RICE, *supra* note 35, at 233, addressing the American scene, asks, “Although an incremental strategy of limiting abortion can be morally justified, does it make practical sense?” He responds, “No. Period, paragraph, next case.” This assertion seems to be based upon a disjunction between sound moral principle and virtuous practice. EVANGELIUM VITAE, *supra* note 10, No. 73 certainly does not declare imprudent behavior morally justified.

innocent life. *Evangelium Vitae* No. 73 makes it clear that support for imperfect laws is sometimes permissible, despite the material cooperation it might lend to offences against life. What are the reasons that might persuade a pro-life lawmaker to engage in such material cooperation? One must examine these carefully and honestly, taking them seriously without overstating them. The most important one will be any unborn, handicapped, or dying people the legislator believes might be saved, and any others (such as pregnant women) who might also benefit, even if not all can be saved or assisted. Politicians themselves can also have much at stake, as might those who rely upon them. And they might have various prior commitments and other responsibilities to take into account. So before supporting an imperfect bio-law, the politician must ask: how important are the benefits expected from this activity, how extensive, how certain, and for whom?

What are the relevant side-effects that would count against such material cooperation? Again, politicians must examine these carefully and honestly, not ignoring them simply because they are unintended or minimizing them because of their enthusiasm for the benefits they hope to achieve by pursuing this course of action. The most obvious ill-effect of material cooperation is that it assists in another's wrong-doing—in this case the passage of a law permitting abortion. Thus the legislator must ask: what kind of loss or harm will result from the liberalization of abortion with which I am unintentionally cooperating, or from any other side-effects of my own activities? How extensive will the harm be, how certain is it to occur, and who will suffer it? Will my refusing to cooperate prevent the wrong—or will it go ahead regardless? Am I in a position to stop it or at least reduce the harm done? In what ways can I at least express my disapproval and try to convert hearts and minds to my way of thinking?

Another bad side-effect of material cooperation is that it may corrupt the politician concerned. She may find her strength of will on these matters affected by having, even once, cooperated materially in the evil of liberalizing abortion. She may become blasé about it, dulled to the evil side-effects and happy enough to admit them as her own intention in the future. Or she may find herself trapped in the company and schemes of others she thought allies who do not in fact share her scruples; the desire for solidarity and success may then carry her along into formal cooperation with evil in the future, whether with respect to bad bio-law or some other moral "compromise."

A third ill-effect of such material cooperation can be that it corrupts others. Pro-life politicians who support imperfect bio-

legislation may be misunderstood by others to be abandoning their pro-life position; they might thereby “give scandal” to others who do not appreciate the distinctions between intentional ends and foreseen side-effects, formal cooperation and material cooperation, etc. This might seriously impair the witness they could and should be giving to others. And their example might encourage others not only to cooperate materially, but even to cooperate formally, i.e., to advance even more permissive abortion or to regard abortion less seriously. Pro-life politicians must be prepared at times to take a stance against an activity by privately or even fairly publicly refusing to cooperate even materially, and even at the risk of their political career; or, if they *are* cooperating materially, at least to take as active a part as is practicable in otherwise protesting against the evil practice they are unwillingly facilitating.

#### D. *Underlying Intentionality*

A fourth area of concern in the late 1990s Australian debates of enduring interest was over the conception of the moral act underlying the Pope’s argument, which some have impliedly rejected by accusing those who followed it of being intentionalists or subjectivists. Here we enter the deep waters of act analysis which *Veritatis Splendor* so helpfully plumbed for us, if not exhaustively, teaching among other things:

The morality of the human act depends primarily and fundamentally on the ‘object’ rationally chosen by the deliberate will . . . . 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 the act of willing is in fact a freely chosen kind of behavior . . . . 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 which determines the act of willing on the part of the acting person.<sup>45</sup>

Even within the camp of those who support traditional Catholic moral teaching and subscribe to the centrality of the object of the moral act, there are differences of accent.

To give three examples, some years ago the British Bishops taught that the victim of rape is entitled to defend herself against

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45. VERITATIS SPLENDOR, *supra* note 23, No. 78 (citation omitted).

the continuing effects of such an attack, including preventing the union of the rapist's sperm with her ovum, even by taking "the pill" to prevent ovulation.<sup>46</sup> Interventions aimed at causing abortion after rape were, of course, excluded.<sup>47</sup> This cautious and nuanced position did not satisfy everyone. Some "perfectionists" asserted that this episcopal teaching amounted to condoning the intrinsically evil act of contraception, at least in certain cases, and that it promoted the doing of evil that good may come of it. The Bishops explained that the object of taking the pill in such cases is *not* to sterilize the woman's chosen sexual acts in anticipation or retrospect (i.e., "contraception"), but to protect her from the continuing attack of the rapist as his sperm made its way up her reproductive system (i.e., "self-defense"); in this respect, taking the pill is no more an act of contraception than would be the woman pushing her rapist away just as he was about to ejaculate. The complainants were not appeased by this explanation. Their thought would seem to have been that the object of an act can be seen from the outside, as it were: taking the pill is obviously engaging in contraception, an act which cannot be ordered to the good; "subjective" intention is only relevant to ensuring that the act is free (and thus a genuinely human act at all), and may reduce responsibility or gravity, but it cannot affect the object which is "objectively" known.<sup>48</sup>

Another example also hails from Britain: the teaching, a few years ago, that the Rubella vaccine was licitly used despite the fact that it is grown upon a cell line derived from an aborted girl.<sup>49</sup> Despite careful explanation of the remoteness of the abortion

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46. See British Bishops' Joint Comm. in Bioethical Issues, *Use of the 'Morning After Pill' in Cases of Rape*, 15 ORIGINS 633 (1986); British Bishops' Joint Comm. in Bioethical Issues, *A Reply*, 16 ORIGINS 237 (1986); cf. CATHOLIC HEALTH AUSTRALIA, CODE OF ETHICAL STANDARDS FOR CATHOLIC HEALTH AND AGED CARE SERVICES IN AUSTRALIA §§ 3.8, 3.9 (2001); Pa. Catholic Conference, *Guidelines for Catholic Hospitals Treating Victims of Sexual Assault*, 22 ORIGINS 810 (1993).

47. It follows that measures such as the "morning-after pill" may only be used after rape when they involve no significant risk to the life of a developing embryo.

48. They referred especially to HUMANAE VITAE, *supra* note 17, No. 14 on the intrinsic evil of contraceptive agents whatever the motives. However, the very next paragraph of the encyclical notes, "The Church, on the contrary, does not at all consider illicit the use of those therapeutic means truly necessary to cure diseases of the organism, even if an impediment to procreation, which may be foreseen, should result therefrom, provided such impediment is not, for whatever motive, directly willed." This statement makes little sense if contraceptive agents are themselves (or their use always and everywhere) evil.

49. See *Parents Left to Decide Over Controversial Vaccine*, THE TABLET (London), Oct. 29, 1994, at 1391.

from the vaccinations, the difference of intended object, and the lack of any formal cooperation in the evil of abortion on the part of those giving or receiving the vaccine, there were those who thought it was intrinsically wrong to use the vaccine whenever it was cultured in this way. This question recurs periodically in the pro-life literature and comes to the surface amongst parents and schools.

A last example occurs at the other end of life. Advocates of euthanasia often suggest that intentionally killing a patient thought better off dead, withdrawing life-sustaining treatments because they are too burdensome, and giving high doses of pain-relieving agents to those in terrible pain, knowing that in the very frail this sometimes risks suppressing respiration, are all the same. But it is not only the pro-euthanasia advocates who associate these different kinds of act: some “perfectionists” from their opponent camp also fudge these things. The thought here is again: you just know, from the outside as it were, that removing a ventilator from someone who is ventilator-dependent, or giving a high dose of morphine, is killing. Full stop. While appeasing their consciences with double talk of double effect and good intentions, such health professionals are engaging in murder, even if as a means to some merciful end.<sup>50</sup>

My point in raising these controversial examples is that I think that what was at issue in the debates between pro-lifers in Australia in the late 1990s—something which has also dogged Catholic politicians and the pro-life movement in many countries over the past decade or so—is similar. On the face of it, it is a difference over how “hard-line” one is about principle and how willing to compromise in order to achieve results such as saving babies’ lives or relieving people’s misery. But my suggestion is that, unbeknownst to the disputants, there is often a major meta-ethical difference between them—a difference of most basic principles. This very difference over the characterization of human acts has been as hotly debated between orthodox theologians of the Neo-Thomist and New Natural Law varieties as it has been between orthodox Christians and their utilitarian opponents inside and outside the churches.<sup>51</sup>

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50. This is despite the clear teaching in the CATECHISM, *supra* note 8; EVANGELIUM VITAE, *supra* note 10; and JURA ET BONA, *supra* note 8. Cf. GERMAIN GRISEZ & JOSEPH M. BOYLE, JR., LIFE AND DEATH WITH LIBERTY AND JUSTICE (1979).

51. See, e.g., the writings of G.E.M. Anscombe, Joseph Boyle, Stephen Brock, John Finnis, Germain Grisez, Robert George, Pamela Hall, Russell Hittinger, James Keenan, Anthony Lisska, David Nelson, David Oderberg, Henry



I will not venture much further into that particular quagmire in this essay. Suffice it to say that I think one cannot make sense of the Church's teaching on withdrawal of treatment, palliative care, care of victims of sexual assault, the permissibility of using drugs with a contraceptive effect for some genuinely therapeutic purpose, and the acceptability of certain vaccinations—any more than one can understand the Pope's teaching on the permissibility of certain less-than-perfect abortion laws—unless one accepts an account of the object of the moral act something like that proposed by Finnis, Grisez, and associates. But one can also understand why, in a world where even the most unburdened kinds of care (such as feeding and hydration) are routinely withdrawn from people no longer wanted, where babies and the elderly are sedated to death, where victims of rape or even of a night of carelessness are customarily treated with abortifacients, and where some "Christian" politicians are unprincipled or plain cowards, such moral theorizing can seem to some of the pro-life troops to be a luxury almost designed to give comfort to the enemy.

One way of helping people to think about these things is to invite their thoughts on the complicity of God in the sins of the world and indeed the death of Christ, or the complicity of Jesus in the sickness of all those he did not cure, or the complicity of Jesus' disciples in the injustices of the Roman Imperium, which they helped finance by paying their taxes. Unsophisticated moralists, such as the great Lutheran theologian Jürgen Moltmann, suggest that, yes, God was to blame: we are all caught up in the tragedy of unavoidable evil and God is no less complicit—indeed given his power, he is perhaps more so. Since God sent Jesus into the world foreseeing he would be killed, and since God could have intervened to prevent it, we must say that *God killed Jesus*. So it is, Moltmann assures us, that on the cross we witness a breakdown of the relationship which constitutes the very life of the Trinity, the death of the Son, but also of the Son's sonship and the Father's fatherhood, the utmost degree of enmity between the persons of God.<sup>52</sup> Offensive as this is to pious ears, it reflects not so much the adolescent delight of the modern theologian in shocking as it does the failure of many contemporary minds to distinguish between what the scholastics called the *active* and *permissive* will of God, or between *intentionality* and *fore-*

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Veatch, and Daniel Westberg, and the contributions of several authors in various collections edited by George.

52. See JÜRGEN MOLTSMANN, *THE CRUCIFIED GOD* 149–52, 214, 243 (1974); JÜRGEN MOLTSMANN, *THE TRINITY AND THE KINGDOM: THE DOCTRINE OF GOD* 80–83 (1981).

*seeability* in agents. In a world increasingly lacking the intellectual equipment to think about these things, it is little wonder that politicians who support less-than-perfect legislation, doctors who administer the pill after rape, and nurses who remove ventilators, are all thrown together with abortionists and other murderers.

Only by recovering a clear sense of God's horror at the sins of the world and the death of his innocent Son (as indeed of all his innocent children), of Jesus' bowel-churning pity in the face of the sickness and confusion of his fellows, and of the disciples' physical cooperation but moral non-complicity with the Roman oppressor—despite their own actions and inactions—can we begin to make sense of these things without blasphemy. Then we will see more clearly that persons do not intend everything that they tolerate—that people “choose” that-which-they-foresee-but-do-not-purposely-bring-about in a morally very different sense from the sense in which they “choose” that-which-they-purposely-bring-about-as-their-end-or-means-to-their-end. One may honestly intend the good, such as it is in an imperfect bio-law, while foreseeing but not intending the imperfection(s) in it.<sup>53</sup>

#### IV. SOME EXAMPLES OF REASONABLE STANCES FOR A PRO-LIFE POLITICIAN *VIS-À-VIS* IMPERFECT BIO-LAWS

##### A. *Opposition to Permissive Bio-Laws at All Stages*

Should a pro-life lawmaker support an imperfect bio-law? In any particular instance of such a law, a legislator might well form the view that, whatever its terms, bio-law reform in our current circumstances is likely to have the net effect of making abortion even more freely available and more commonly practised, or at least of confirming and codifying an already shameful situation. Legislators might hold that the present (*prima facie*, relatively restrictive) statutes are the best that is politically possible at this time and that, if preserved, such statutes have the potential for stricter interpretation and/or enforcement in the future. They might be persuaded that any new restrictions will be ignored in practice, much as current bio-legislation is in many areas, or that new loopholes will emerge through which more people's lives would be put at risk. They might judge that a restrictive bill or restrictive amendments would be unlikely to be passed or would only be passed at the expense of some worse changes in other respects or in other areas. They might suspect that by giving sup-

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53. See Germain Grisez, *Human Free Choice and Divine Causality*, Edith Stein Lecture, Department of Philosophy, Franciscan University of Steubenville (Mar. 29, 2000).

port to an imperfect bio-law, their witness against abortion, etc. would be severely impaired and people would be scandalized. Or they might conclude that, by refusing to be party even to restrictive amendments to an imperfect bio-law, they will help to ensure the defeat of that law altogether. While recognizing that they have a *prima facie* duty to ensure (where no more is practicable) that at least some babies are saved, and also recognizing that one might support imperfect but restrictive bills or amendments with this in view without thereby intending any evil, some politicians may nonetheless judge that the likely or possible side-effects of even that degree of involvement by them would be so grave that the best course would be opposition to a particular imperfect bio-law from start to finish of its legislative progress.

Those pro-lifers who oppose restrictive but imperfect bills on these prudential grounds should be absolutely clear in their own minds (and possibly in their statements) that they are neither opposing all imperfect abortion legislation *per se*, nor accusing all pro-life supporters of such bills or amendments of intending permissive abortion, of formal cooperation in evil, of being willing to trade life for life, or even of imprudence. Rather, they make their own best judgment that by refusing to be party even to such efforts they will serve best the ultimate goals of creating a just and loving society, of saving babies and their mothers, of opposing the further corruption of our culture and our social fabric, and so on.

### B. *Support for Some (Restrictive) Bio-Law Reform in a Permissive Situation*

An alternative strategy for pro-life politicians, which also seems to me to fall within the terms of *Evangelium Vitae* No. 73, is to initiate or support a bill which, while continuing to allow some abortions, restricts it in some ways—thereby protecting at least some babies and their mothers. Leaders have a strong *prima facie* duty to seek to protect the most vulnerable members of their community, but sometimes that can only be achieved by the gradual erosion of a *de jure* or *de facto* permissive abortion régime through, among other things, imperfect abortion laws which at least introduce some restrictions not presently in practice.<sup>54</sup> While maintaining their ultimate goal of protecting the

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54. As St. Thomas observed, “[I]t seems natural to human reason to advance gradually from the imperfect to the perfect.” AQUINAS, *supra* note 11, at Pt. I-II, Q. 97, Art. 1. In an unpublished advice offered to some pro-life groups during the Western Australian controversy, John Finnis suggested that if a legislator judged that Western Australian law is already widely permissive of

lives of all and being careful not to conclude too hastily that this is presently impossible, pro-life MPs will sometimes conclude that protecting *some* babies is all that they can do.

There are many kinds of restrictions to permissive bio-laws that pro-life politicians may support if they have reason to believe such restrictions will, if passed, be effective. Some examples in the area of abortion laws (which would apply *ceteris paribus* to other areas of bio-lawmaking) include legislation that:

- Restricts *the stage* of fetal development beyond which no abortions are permitted (e.g., twelve weeks);
- Restricts *the reasons* for which abortion is permitted (e.g., excluding “social” abortion or abortion on demand) or specifically prohibiting abortion on certain other grounds (e.g., sex selection);
- Restricts *where* abortions may be performed (e.g., only in public hospitals), and *by whom* (e.g., only doctors), and licensing or otherwise restricting the number and activities of abortion providers;
- Restricts government *funding* or private insurance for abortion;
- Restricts access to particular *methods* of abortion (e.g., banning “partial-birth” abortion or RU-486);
- Requires that more than one doctor *certify* that the abortion is appropriate;
- Requires that adequate *counseling* of the women involved be undertaken;
- Institutes strict *information-giving* provisions, including requiring that women seeking abortion receive adequate information about the unborn child, the risks of abortion, and alternatives to abortion;
- Requires *parental or guardian consent*, or at least parental or guardian notification of abortions performed on

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abortion because it would be read as such by superior courts were it ever tested, the politician could in good conscience vote for a bill which, if enacted:

would accord real legal protection to some class of unborn babies who today are without that protection, even though the same Bill openly and plainly affirmed and ensured that some (perhaps many or most) other unborn babies remain unprotected (and are stripped of even ‘paper’ legal protection). That is to say, members holding the view I have described could cast such a vote (and agree in advance to do so) without immorally co-operating in the use of the legislative process to deprive human persons of their inalienable moral and human right to life.

Letter from John Finnis to Pro-Life Groups of Western Australia (1998) (on file with author).

under-aged girls, and judicial consent to abortion performed on mentally handicapped women;

- Requires a *cooling off period* between the time at which the doctor(s) certifies that an abortion may be performed and the actual abortion;
- Provides for *exemption* on conscientious grounds of doctors, nurses, pharmacists, and counselors from any requirement that they perform, refer for, prescribe, dispense, or otherwise cooperate in abortion;<sup>55</sup> and
- Provides that no Church or other private institution can be required to provide such procedures on its premises.

C. *Support for Restrictive Amendments to Permissive Bio-Legislation but Opposition to an Unjust Bill as a Whole*

A third strategy consistent with *Evangelium Vitae* No. 73 that a pro-life legislator may reasonably adopt—at least in the Westminster system with which I am best acquainted—would be publicly to oppose an unjust bill from the beginning on the basis that it is aimed, for instance, at permitting abortion on demand, then to vote *for* various amendments in the committee stage involving restrictions much like those proposed in the previous section, but to oppose the final bill as amended because it will, *in toto*, liberalize or confirm the *de jure* situation regarding abortion. Here the politician is facing a law “ready to be voted on” and does his or her best to improve that law.

As with the legislator who votes for a new, more restrictive but still imperfect law, MPs who support restrictive amendments must aim *neither* at permitting abortion in all other circumstances (even though this is a foreseen side-effect), *nor* at lending respectability to abortion performed within these restrictive circumstances; their goal must be to place some obstacles in the way of abortion on demand in the hope that some abortions will thereby be prevented and some babies saved. The elimination of *all* induced abortion remains their goal, but in the meantime, they propose or support amendments to a very permissive bill likely soon to be passed. Their goal is to “tighten up” that new law, hoping thereby to protect at least some, even if not all, unborn children who would not otherwise have the benefit of legal protection.

Of course, some supposedly pro-life politicians may disingenuously support such provisions with the real goal of permitting a “moderate” or “morally respectable” amount of abortion, as a way of evading taking an open stand for or against abortion,

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55. See *EVANGELIUM VITAE*, *supra* note 10, No. 74.

or because they are willing to trade some lives for others. Genuinely pro-life supporters of such moves, however, will only support them if they are convinced that they will amount to a real restriction on the availability of abortion. Here there are important judgments of prudence and wisdom to be made about what actions will actually save lives, who else will be affected,<sup>56</sup> what messages will be conveyed to a morally unsophisticated public by an unhelpful media, and what overall effect such moves will have upon culture and society.

The following things seem to me to follow both with respect to the introduction of additional but imperfect restrictions on abortion or restrictive amendments to permissive bills, and *ceteris paribus* to other areas of bio-legislation:

- To avoid “scandal,” those supporting such imperfect legislation must voice a clear and public opposition to all abortion, and make it clear that in supporting such a bill they are not retreating from their judgment that the present permissive situation with respect to abortion is a serious violation of human rights.
- This strategy should not be adopted unless one judges that the new law or the amendments would be interpreted more literally and enforced more rigorously than existing statutes, and that in supporting the law or amendments one is not wasting a real chance of persuading the authorities to interpret and enforce the present law more strictly.
- This strategy should not be adopted unless one judges that the net effect will be to increase, not diminish, the present protection of the lives of unborn children.
- This strategy should only be adopted where it is likely to contribute not only to better laws, but also to community education in respect for life.

I noted above that one matter of contention among pro-life lawmakers is the stage in the political process at which MPs should engage privately in canvassing amendments or announce publicly their willingness to discuss or support restrictive amendments. Sometimes, the earlier amendments are canvassed, the greater the likelihood that they will eventually be accepted, that other helpful amendments will be proposed, or that the promoters of a bill will be discouraged from persevering altogether. At

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56. For example, an undesired effect of such moves might be that doctors who at present can plead the *de jure* prohibition of abortion against claims in tort for failure to provide an opportunity for an abortion find themselves without such protection.

other times, the earlier such amendments are proposed, the more likely they are to generate organized opposition from the proponents of a more permissive regime and the more likely they are to grant some respectability to the bill as a whole. These are again matters of prudent judgment for the politicians concerned, taking into account their best assessments of the present and likely future situation, the principles enunciated so far, and the process of discernment sketched briefly below.

## V. SOME VIRTUES OF A CATHOLIC POLITICIAN

### A. *The Virtues of Faith and (Political) Prudence*

This paper has focused on very particular *causae conscientiae* of pro-life politicians in the area of imperfect bio-legislation and what the magisterium of the Catholic Church might say to or imply about such questions. But this is only one—admittedly especially contentious—range of problems amongst many others for those who see law and politics as a vocation and those who should. Hopefully the present volume has provided many other insights into other aspects of those especially important vocations. But the present cases, and the ways one goes about sorting them out, may however provide something of a “litmus test” for assessing a particular person’s likely reaction on many other questions. If, for instance, a politician adopts a minimalist pragmatism or a more high-sounding utilitarianism or proportionalism on these matters, he may very well do so on many others.<sup>57</sup> But it is also the case that many lawmakers are as inconsistent as anyone else in their moral reasoning. This makes recent debates about how to vote and whether to excommunicate all the more complex.

I have argued that in the present circumstances many commonly espoused positions are ruled out for the faithful and prudent political leader with respect to imperfect bio-laws, but that several remain as possible. Which of these is to be preferred will depend upon the fine detail of particular legal and political situations, the commitments and opportunities which present themselves to particular legislators in all the circumstances, and their best prudential judgment of what will work—without either on the one hand adopting a perfectionist position that regards as immoral ever supporting imperfect laws, or on the other hand being willing ever to engage in intrinsically immoral means even to achieve great goods. Whichever course is chosen, it should

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57. See 2 GERMAIN GRISEZ, *Patriotism, Politics, and Citizenship, in THE WAY OF THE LORD JESUS: LIVING A CHRISTIAN LIFE* 835–911 (1993).

follow upon discussion with pro-life friends and allies. One would not be surprised if people of “good faith, moral probity, and legal competence” honestly disagreed about the *status quo*, the net effect of the passage of such imperfect legislation, or other matters involving judgments of prudence.<sup>58</sup>

At several points in this paper I have appealed to that earthly wisdom that is the virtue of prudence and that supernatural wisdom that is faith and a gift of the Holy Spirit.<sup>59</sup> Only by these great virtues and gifts can a person quickly and reliably apply the various appropriate principles with sensitivity to the range of people and values at stake. I have outlined several important principles here that virtuous lawmakers must bear in mind in their noble task. Two more, which I have hinted at along the way, would be these: we must never be willing to do even a little evil in order to bring about even a very great good; and we must with imaginative impartiality apply the Golden Rule to our situation, asking ourselves, for instance: were I one of the babies at risk, or one of the mothers seeking an abortion, or one of the old people marked for euthanasia, or some of the other politicians engaged in this great debate, or some of the voters I represent or people I influence, would I regard my action or inaction as fair? Having tried one’s best to think these matters through and exclude thereby all unreasonable choices, politicians might conclude that there are still two or more paths open to them: then they must go for what seems best to them in the context of their particular temperament, gifts, opportunities, commitments, and vocation.

If we are to have faith and prudence ourselves, we must cultivate certain attitudes of heart and mind: prayerfulness above all, a willingness to take counsel, humility, docility to truth, respect for our allies and an eagerness to learn from, work with and console them, self-criticism, imaginative impartiality, and love for all. Of these habits of the heart St. James wrote:

Who among you thinks he is wise and understanding? Let him demonstrate this by a good life in the humility that comes from prudence. The wisdom which comes from above is first of all pure, then peaceable, gentle, compliant, full of mercy and good fruits, without inconstancy or insincerity. And the fruit of righteousness is sown in peace for those who cultivate peace.<sup>60</sup>

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58. See Finnis, *supra* note 54 (making this latter observation).

59. Cf. BENEDICT M. ASHLEY, *LIVING THE TRUTH IN LOVE: A BIBLICAL INTRODUCTION TO MORAL THEOLOGY* (1996); ROMANUS CESSARIO, *THE MORAL VIRTUES AND THEOLOGICAL ETHICS* (1991).

60. *James* 3:13–18.



### B. *The Virtue of (Political) Courage*

In addition to faith and prudence, the task of the Christian legislator requires a great deal of fortitude: whichever of the various reasonable positions outlined above politicians take, they will meet a great deal of hostility from foes and even from those they might have thought they could count on as allies—those who share many of their views and sympathies. Taking such a stance, like taking a conscientious stance on many other contentious issues, can come at great personal cost, including some cost to one's prospects in one's party or electorate.<sup>61</sup> This should not, perhaps, be overestimated: even political opponents and voters who hold a different view are likely to respect a stance taken out of conviction rather than political ambition. But a degree of heroism may nonetheless be called for, and Christians will naturally turn to God, their Church, their friends, and families for support in such situations; in the meantime, the politician must cultivate the virtue of courage.

Called to serve the people and the common good, they have a duty to make courageous choices in support of life, especially through legislative measures. In a democratic system, where laws and decisions are made on the basis of the consensus of many, the sense of personal responsibility in the consciences of individuals invested with authority may be weakened. But no one can ever renounce this responsibility, especially when they have a legislative or decision-making mandate, which calls that person to answer to God, to his or her own conscience and to the whole of society for choices which may be contrary to the common good.<sup>62</sup>

### C. *Unity of Purpose; Diversity in Strategies; Charity in Everything*

Vatican II taught that Christians "must recognize the legitimacy of different opinions" in political matters.<sup>63</sup>

Often enough the Christian view of things will itself suggest some specific solution in certain circumstances. Yet it happens rather frequently, and legitimately so, that with equal sincerity some of the faithful will disagree with others on a given matter. Even against the intentions of their proponents, however, solutions proposed on one side or another may be easily confused by many people with the

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61. Cf. *EVANGELIUM VITAE*, *supra* note 10, No. 74.

62. *Id.* No. 90.

63. *GAUDIUM ET SPES*, *supra* note 1, No. 75.

Gospel message. Hence it is necessary for people to remember that no one is allowed in the aforementioned situations to appropriate the Church's authority for his own opinion. They should always try to enlighten one another through honest discussion, preserving mutual charity and caring above all for the common good.<sup>64</sup>

Sadly, this recognition of legitimate diversity is not always evident in bio-politics. Down through the ages, even great saints have differed over what course was wisest in particular situations. We must therefore be loath to judge our confreres who differ from us on prudential matters in the battle against abortion and euthanasia. Nor can we rightly claim for ourselves a monopoly on prudence or on the authentic interpretation or application of principles about which there has as yet been no definitive clarification. Above all, we must avoid the tendency to consider a person or a group less good-willed or less committed to the pro-life effort because they have a different legislative strategy from our own.<sup>65</sup> In this context, the Vatican Congregation for the Doctrine of the Faith's Archbishop Bertone noted that collaborations with less-than-perfect but better laws are not idle compromises with evil, but different ways of affirming truth and goodness. He scolded those who too readily brand the supporters of imperfect bio-laws as persons of faint heart or weak character, and those who write off the opponents of less-than-perfect bio-laws as extremists or extraterrestrials.<sup>66</sup> He suggested that the Church

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64. *Id.* No. 43.

65. EVANGELIUM VITAE, *supra* note 10, No. 91.

66. Bertone noted that collaborations with less-than-perfect but better laws are not necessarily "idle compromises with evil," but rather:

different ways of affirming truth and goodness in the world, bearing in mind their concrete and often complex co-ordinates. In this respect, they are revealed as belonging to the same nature as the first attitude [of prophetic resistance], i.e. they form part of the dynamism intrinsic to the truth that tries to affirm itself in the world in order to redeem it and lead it definitively to trinitarian fullness. It follows from this that the person who tolerates *imperfect laus*, or the person who collaborates with them [in the particular sense discussed above], must not be judged by his fellow Christian, who actively resists them, as a person of faint heart or weak character, but as a brother who tries to bury in the infinitely diversified soil of the contemporary world 'a grain a mustard seed' (*cf. Matthew 13:31-32* and parallels) that could become . . . a great tree.

Contrariwise, the person who resists "unjust laws" must not be considered by his fellow Christian who tolerates them or collaborates with them, in the sense pointed out above, as a brother who has sprung from another planet or as an extremist cut off from reality, but rather as a true champion of truth in the world. Here the Pauline idea

and the pro-life movement ought to be capable of generating diverse approaches to these matters while remaining, despite all the differences, within the bond of communion.

#### D. *Humility and Hope*

I suggested earlier that humility is an important virtue for the politician in this area. Legislators must be aware that there is only so much they can do, especially with such blunt instruments as laws and social policies. As the Church's corrections of communism, fascism, and, in some of its forms, liberation theology have made clear, there is a kind of heresy in the Enlightenment's notion that salvation for society can be found by law and policy. Vices like disrespect for innocent life certainly require the best efforts of the state to "make men moral":<sup>67</sup> but in the end it will take more than this.

I suspect that for three decades now the Church and the pro-life movement around the world have over-estimated the power of bio-legislation. As the Psalmist warns us, "put not your trust in princes."<sup>68</sup> There are many countries with very strong laws against abortion—at least on the statute books—but where, for the reasons discussed earlier, such laws are of little or no effect. Pope John Paul II more than adequately identified the underlying ideological, economic, and political causes of this. His chilling conclusion is well known: there has emerged in the West "a culture which denies solidarity and in many cases takes the form of a veritable 'culture of death.' This culture is actively fostered by powerful cultural, economic and political currents . . . . In this way a kind of 'conspiracy against life' is unleashed."<sup>69</sup> In the midst of such a dramatic conflict between the culture of death and the culture of life there is only so much lawmakers can do. This does not mean that efforts to hold the line and gradually to improve the legal situation are irrelevant: they may save some individual lives; and they may have an educative effect on society. But it does mean that much greater efforts are needed

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of the different charisms in a single Body might apply (*cf.* 1 *Corinthians* 12:1 ff).

. . . [T]he Church ought to be capable of generating her own [diverse] heralds of truth and ensuring that they remain, despite all their differences, within the bond of communion.

Bertone, *supra* note 33, at 219–20.

67. "[L]awgivers make men good by habituating them to good works." AQUINAS, *supra* note 11, Pt. I-II, Q. 92, Art. 1, Obj. 1 & Respondeo (citing ARISTOTLE, *POLITICS* (ETHIC. ii)).

68. *Psalms* 146:3.

69. EVANGELIUM VITAE, *supra* note 10, No. 12 (emphasis added).

to get to the heart of why otherwise civilized societies have become so blind to the blood flowing in their streets. Without a massive re-evangelization of culture, such laws are likely to remain largely dead letters.

John Finnis has observed that at the root of the present disarray and demoralization in Western Church and society is the practical elimination of transcendent hope: "It is obviously a precondition of sustainable engagement in public policy debates that one keep bright one's hope, and keep clear and firm the presuppositions of that hope."<sup>70</sup> We must pray that, in living out the imperative to be "unconditionally pro-life" in a new century and millennium, politicians, pro-life activists, lobbyists, and their sympathizers will always hold fast to that hope, even when the political scene is difficult to negotiate and potentially demoralizing. For in the end we know that we side with Him who came so that we might have life, and have it to the full.<sup>71</sup>

The entire creation has been groaning till now in an act of giving birth, as it waits for the glory of the children of God to be revealed (*cf. Romans 8:22*). Let Christians therefore be convinced that they will yet find the fruits of their own nature and effort cleansed of all impurities in the new earth which God is now preparing for them, and in which there will be the kingdom of justice and love, a kingdom which will be fully perfected when the Lord will come himself.<sup>72</sup>

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70. Finnis, *supra* note 36, at 266.

71. See *John* 10:10.

72. SECOND ORDINARY GENERAL ASSEMBLY OF THE WORLD SYNOD OF CATHOLIC BISHOPS, *JUSTITIA IN MUNDO: JUSTICE IN THE WORLD* No. 75 (1971).

