

**No-One Has Given Pro-Lifers Permission to  
Bargain Away the Inalienable Right to Life of  
Some Unborn Children**

*In the case of an intrinsically unjust law, such as a law permitting abortion or euthanasia, it is therefore never licit to obey it, or to take part in a propaganda campaign in favour of such a law, or vote for it.*

Pope John Paul II  
*Evangelium Vitae*  
(the “Gospel of Life” or “EV”),  
section 73.2 (citing  
section 22, CDF  
*Declaration on Abortion* (1974)) (the “No  
Exceptions Statement”)

***Introduction***

In its March/April 2009 edition, LifeCanada News published an article by Peter Ryan (“Save As Many Babies as We Can”). I will argue here that Mr. Ryan’s expressed views are not consistent with the teachings of the Magisterium<sup>1</sup> of the Roman Catholic Church with respect to Christian ethics. Mr. Ryan argues: “In Canada’s legal context, there is no moral reason why various legislative initiatives.....e.g. a ban on abortion with some exceptions, funding limits with some exceptions, or regulations on informed consent before an abortion, could not be advanced by pro-life supporters” (my emphasis). He also argues that there is no “fundamental moral difference between gestational limits [e.g. a ban after 12 weeks] and other types of restrictions that render an unjust law less harmful for (sic) life.”

Unfortunately, the Church condemns as “intrinsically unjust” most of the initiatives that Mr. Ryan supports. His article does not reflect an understanding that when the Church uses the expression “intrinsically unjust” to describe a legislative initiative, she means that she considers the initiative to be always so, regardless of the circumstances and the intent of those proposing it. In other words, any circumstances external to the language of the initiative (e.g. the “historical and legal context”) don’t matter. The same goes for behavior that it describes as “intrinsically illicit”. The article also does not adequately explore the full moral implications of the Biblical prohibition against doing evil to accomplish good.

Even if the “legal context” mattered, Mr. Ryan mischaracterizes Canada’s current “legal context” when he says that Canada has a “law” that permits abortion on demand, and this, in part, leads him to misapply Church teaching. Finally, he fails to recognize that the Church’s “special” moral instructions to elected Catholic officials are not meant for pro-life activists.

The Church sees a big moral difference between initiatives that are “intrinsically unjust laws” and others that are aimed at reducing the harm caused by existing explicit legislation but which, in and of themselves, are not “intrinsically unjust laws”. Therefore, if pro-lifers were to freely choose to propose or support an initiative that would discriminate against unborn children based

on the circumstances of their conception (rape, incest) or length of gestation (e.g. under 12 weeks), that very act would also be intrinsically illicit, and therefore not morally permissible.

Mr. Ryan says that this view “tend[s] to an excess rigidity”, and stops just short of calling Colin Harte’s views (which are much closer to the Magisterium’s position than those of Mr. Ryan), “heretical”. This is quite a daring statement from a writer whose article contains no references to the *Catechism of the Catholic Church* (the “*Catechism*” or “*CCC*”), Pope John Paul II’s Encyclical Letter *Veritatis Splendor* (“The Splendour of Truth” or “*VS*”), or any other Magisterial source other than EV itself.

Mr. Ryan has implicitly called into question the binding force of the No Exceptions Statement. He does so, not by facing the language of the Statement “head on”, but instead by adopting an implausible interpretation of a passage of EV that directly follows the No Exceptions Statement, a passage that I will call the “Politician’s Rule” (EV, section 73.3).<sup>2</sup> A scholarly examination of the meaning of the Politician’s Rule demands a close examination and discussion of Magisterial authorities on the subjects of abortion, law and morality, and moral decision making in general.<sup>3</sup> This is missing from Mr. Ryan’s article. He restates the Politician’s Rule in his article, but he does not restate the No Exceptions Statement, which immediately precedes it. I do not understand this omission. I also find it odd that he addresses neither the passage from the CDF’s 1974 *Declaration on Abortion*, on which the No Exceptions Statement is based, nor what the *Catechism* has to say about *Rom. 3:8* (see CCC #1750 to 1761).

Pope John Paul II perhaps best explained what the Church means when it describes a legislative initiative or behavior as “intrinsically” unjust or illicit when he wrote: “Reason attests that there are objects of the human act which are by their nature ‘incapable of being ordered’ to God because they radically contradict the good of the person made in his image. These are the acts which, in the Church’s moral tradition, have been termed ‘intrinsically evil’ (*intrinsece malum*): they are such *always and per se*, in other words, on account of their very object, and quite apart from the ulterior intentions of the one acting and the circumstances.” (VS, 80). To the contrary, Mr. Ryan says: “Ethically, the context and intention of a particular proposal make all the difference”. Early in his analysis, Mr. Ryan admits: “The end, of course, does not justify the means... As St. Paul said, we cannot do evil just so that good may come of it (*Rom 3:8*).” In light of Mr. Ryan’s ultimate proposition, which, on its face, violates this principle, a principle Michael Baker calls the “supreme principle of morals”, I kept looking for a satisfactory explanation of his use of the words “of course”, but it never came.

Ultimately, his “of course” comment seems to give this “supreme principle of morals” mere lip service. In the main body of his article and in footnote #20, Mr. Ryan admits that all the allegedly “pro-life measures” he personally favours would be “unjust laws” if proposed in a legal environment in which abortion is already absolutely illegal. But then he continues with the following personal observation (an observation unsupported by Magisterial authorities): “On the other hand, if all abortions were *permitted* [by existing “law”], and a proposal is then made to ban abortions with the same exceptions (rape, incest and the life of the mother), voting for *that* proposal is an entirely different ethical decision and is supportable – even though the resulting legislation may be word for word identical!”

Mr. Ryan must believe that, with this personal observation, he has “explained away” the contradiction that is the 800 pound gorilla in the room. But to believe this explanation one would also have to believe that Pope John Paul II, in proclaiming the Politician’s Rule, embraced the very kind of moral thinking (the teleological ethical theories (proportionalism, consequentialism)) he roundly condemned in VS only two years previously as being not within the Catholic moral tradition.<sup>4</sup> That would be doubly absurd, as he referenced VS in EV (see, for example, 57.6), and applied its conclusions to the question of abortion at section 62, when he said: “No circumstance, no purpose, no law whatsoever can ever make licit an act which is intrinsically illicit, since it is contrary to the law of God which is written in every human heart, knowable by reason itself, and proclaimed by the Church.” (EV, 62.4). Previously, in VS, he said: “[H]uman activity cannot be judged as morally good merely because it is a means for attaining one or another of its goals, or simply because the subject’s intention is good” (VS, 72.2).

Consider also that this same man also said, in 1988, that “[t]he existence of particular norms regarding man’s way of acting in the world [descriptions of actions or thing as “intrinsically unjust” or “intrinsically evil”], which are endowed with a binding force that excludes always and in whatever situation the possibility of exceptions, is a constant teaching of Tradition and of the Church’s Magisterium which cannot be called in question by the Catholic theologian.”<sup>5</sup> He reaffirmed this same teaching in VS and EV.

Magisterial teaching that builds on the teaching of Pope John Paul II in EV also draws a clear distinction between a legal environment in which there is “*de facto* tolerance” or societal acceptance of evils like abortion, but no explicit legislation recognizing the evil conduct, and the case where there is explicit legislation that recognizes the conduct. “*De facto* tolerance” is the situation we now have in Canada with respect to abortion, as we have no explicit “*legislation*” that recognizes abortion, and no current pro-abortion proposal “on the table”.<sup>6</sup> Mr. Ryan therefore mischaracterizes Canada’s current “legal context” when he says that Canada has a “law” that permits abortion on demand, and this, in part, leads him to misapply Church teaching. In such a “legal context”, the No Exceptions Statement, not the Politician’s Rule, applies -----all Catholics, including pro-life activists and politicians, are required to “witness to the *whole* moral truth”. If someone else proposes legislation that, for the first time, admits in principle the liceity of abortion, everyone is required to “refrain from any kind of formal cooperation in the enactment or application of such gravely unjust laws”. In particular, “the Catholic law-maker has a moral duty to express his opposition clearly and publicly and to vote against it. To vote in favour of a law so harmful to the common good is gravely immoral.”<sup>7</sup>

In such a “legal context”, no Catholic is relieved of his duty to do everything humanly possible to persuade the politicians (and in the case of a Catholic politician, to persuade his colleagues) to pass legislation that upholds the inalienable right to life of *every* unborn child. He is never permitted, under any circumstances, to *propose* legislation that would authorize the killing of *some* unborn children, even if it prohibits the killing of other unborn children. He is not permitted to “bargain away” the right to life of *some* unborn children, in favour of the right to life of others. Indeed, the word “inalienable”<sup>8</sup> is robbed of its very meaning if someone is permitted to “bargain” the right away. Any legislative proposal that is the result of any such bargaining would “admit in principle the liceity of abortion”. With respect to other kinds of

proposals, such an assessment might not be so obvious. Whether or not any particular proposal would “admit in principle the liceity of abortion” or could be judged “intrinsically unjust” for other reasons can only be determined by a close or precise examination of the language used by the legislative draftsman.<sup>9</sup>

Mr. Ryan is wrong in his assessment of Canada’s current “legal context”, but the most glaring problem with his analysis of the Politician’s Rule is his failure to recognize that it is *exclusively directed to elected Catholic officials*. This should be plain to anyone who reads the very words of the Politician’s Rule, but even if he overlooked these words, he might still have avoided this error had he included in his “study” of the question other relevant Magisterial documents. Consider the CDF’s *Considerations re Homosexual Unions (2003)*.<sup>10</sup> In that statement, the Politician’s Rule was mentioned only in a Part with the following heading: “IV. Positions of Catholic Politicians With Regard to Legislation In Favour of Homosexual Unions”. Moreover, the instructions to Catholics in general fall into line with the moral requirements of the No Exceptions Statement. Consider also the CDF document entitled *Doctrinal Note on Some Questions regarding the Participation of Catholics in Political Life (2002)* (“*Doctrinal Note*”).<sup>11</sup> These Magisterial documents exclude any interpretation of the Politician’s Rule that would give unelected pro-life activists the “green light” to “advance” the kinds of “legislative initiatives” he supports, at least to the extent that any such initiative is an intrinsically unjust law, as defined by the Magisterium.

In my view, this misreading of the Politician’s Rule alone absolutely destroys his argument. However, even if it did not, there are several other weaknesses in the methodology of his analysis and his reasoning that need to be exposed because his article may confuse Roman Catholics, especially elected Roman Catholic politicians, and other Christian pro-lifers.

As I have argued elsewhere at meetings of pro-life activists, Catholic moral teaching does permit us to *propose* a legislative initiative that we can reasonably expect to “incrementally” move us toward full protection for all unborn children, but *only if that legislative initiative, in and of itself, is not an intrinsically unjust law*. This means that the initiative cannot explicitly or implicitly acknowledge or declare or concede that abortion is a licit procedure, or discriminate against unborn children on the basis of gestational age, circumstances of conception, or on criteria based on health or capacity for normal development.<sup>12</sup> Furthermore, it is not relevant whether or not any existing legislation already does so. This position is not excessively rigid, or a modern example of Donatism or Puritanism, as Mr. Ryan suggests. To the contrary, it is simply the teaching of the Roman Catholic Church.

The No Exceptions Statement does not prohibit efforts that satisfy this condition, an approach that I have called “Principled Incrementalism”.<sup>13</sup> Mr. Ryan chooses not to subject any of his favoured initiatives, in any meaningful way, to this moral test. Implicit in his position is the suggestion that such a moral test is too demanding in *all* “circumstances”, and, at best, should be invoked only if the legislative proposal would permit abortions that the current legal environment would not explicitly or tacitly acknowledge as permissible. The problem with this “suggestion” is that, again, it runs into the intellectual brick wall of the Magisterial teaching that, when the Church says a particular behaviour is “never licit” or “intrinsically evil”, one is not permitted to take into consideration *any* “circumstances” that are *external* to the very terms of

the prohibition. The No Exceptions Statement never refers to the “historical or legal context” of the “intrinsically unjust law” that some might seek to support or vote for. Moreover, it is not plausible to suggest that the words “permitting abortion” implicitly incorporates these “circumstances”.

Ultimately, a cursory review of relevant provisions of the *Catechism* would lead a Catholic to believe that Mr. Ryan proposes that pro-lifers engage in intrinsically evil behaviour in order to “accomplish good”. If I understand him correctly, if Canadian pro-lifers proposed a “gestational” law, for example, it would be with the deliberate intention of “buying” the votes of legislators who are not inclined to offer *any* legal protection to the unborn. In other words, we would be deliberately attempting to bargain away the supposedly “inalienable and inviolable right” to life of some unborn children, in the hope of getting the other legislators to agree to extend legal protection to other unborn children. We would be “directly willing” others to “take the bargain” that we offer.

For the pro-lifers who share my support for a different approach to the problem, Principled Incrementalism is certainly NOT a “do nothing” approach. As Professor Charles Rice wrote in 1990: “The no-exception approach does not prescribe inaction: It does involve refusing to support or vote for any law that would tolerate the intentional killing of innocent human beings. But, more important, it requires promoting positive measures to restore protection to innocent life and to build a social and moral climate in which that protection can endure. The no-exception way is a constructive approach.”<sup>14</sup> And, I might add, it uses “means” that honour the “supreme principle of morals” of doing good and avoiding evil, and its corollary, refraining from doing evil in the hope of accomplishing good. We are heeding Pope John Paul II’s words in VS, 72.2. We are heading Mother Theresa’s famous maxim that Christians are called to be *faithful*, not necessarily *successful* (on the world’s terms). We are heeding the words of Charles Colson, who said: “[We should be] faithful...[because] we are motivated not by a desire to make an impact on society but by obedience to God’s Word and a desire to please him. When our goal becomes success rather than faithfulness, we lose the single-minded focus of obedience and any real power to be successful.”<sup>15</sup> Mr. Ryan’s statement---- “If we must await a perfect ban on abortion we can easily wait years, even decades, and forego the saving of countless lives in the meantime”<sup>16</sup>-----is therefore based on a false premise and a false choice -----between doing nothing and “doing evil to accomplish good”.

As a Roman Catholic lawyer, and a pro-life activist of 31 years, I am prepared to submit my mind and will to the moral demands of the No Exceptions Statement, as understood by the Magisterium. When Pope John Paul II said, on September 17, 1983, in the context of the Church’s definition of the use by married couples of unnatural forms of contraception as an “intrinsic evil”, that to continue to clamour for “exceptions”, as if God’s grace were not sufficient to assist us in complying with this doctrine, was a form of atheism,<sup>17</sup> I took him seriously. That comment applies equally in this context.

I therefore accept that the Roman Catholic Church teaches that one may never vote in favour of an intrinsically unjust law or take part in a propaganda campaign in favour of such a law. Mr. Ryan is in error when he suggests that the Church not only permits elected Catholic officials to

sometimes support and vote in favour of such a law; she also authorizes pro-life activists and elected Catholic officials to actually *initiate* the enactment of such laws.

Setting aside the question of the behavior of pro-life activists, Mr. Ryan's article does raise important questions. I am of the view that a satisfactory explication of the nature, meaning, and scope of the Politician's Rule, insofar as it gives guidance to elected Catholic officials, has yet to be written.<sup>18</sup> When the Politician's Rule refers to proposals involving "a more restrictive [legislative measure], aimed at limiting the number of authorized abortion...or limiting the harm done by [the existing legislation]...or lessening its negative consequences", does the Church mean to include proposed legislative measures that are "intrinsically unjust"? In my opinion, if the answer to this question is "yes", as Mr. Ryan and his cadre of supporting theologians argue, we have a dilemma, unless, of course, one doesn't particularly care if his church's moral teaching is an incoherent mess. On the other hand, if the Politician's Rule is interpreted as *excluding* such measures, as I think it does, then the Politician's Rule and the No Exceptions Rule can be logically reconciled to each other through the application of moral principles found in the *Catechism*.

My interpretation of the limited scope of the discretion permitted to elected Catholic officials appears to have been confirmed by not only the *Considerations re Homosexual Unions* (2003) document, but also the earlier *Doctrinal Note*, and is consistent with the relevant provisions of the *Catechism*. Mr. Ryan cites the opinions of individual moral theologians to the contrary, but, of course, he must know that Pope John Paul II himself said the following: "[I]t cannot be said that the faithful have embarked on a diligent search for truth if they do not take into account what the Magisterium teaches, or if, by putting it on the same level as any other source of knowledge, one makes oneself judge, or if in doubt, one follows one's own opinion or that of theologians, preferring it to the sure teaching of the Magisterium (n. 4).<sup>19</sup>

In my opinion, the Politician's Rule says that, in a very narrowly defined set of circumstances, a Catholic politician is excused from moral responsibility if his support for or vote in favour of remedial legislation presented to him by others does not completely abrogate existing man-made legislation that is "intrinsically unjust". The "evil effect" that remains is not imputable to him, and his material co-operation with that evil is justified. However, this judgment is conditioned on the remedial legislation not being, in and of itself, an "intrinsically unjust law"; otherwise, he commits an intrinsically evil act, the bad effects of which are directly imputable to him, both as a principal actor and as a formal co-operator in the evil of others (the ones who presented the measure for enactment). Indeed, in EV, paragraph 2 of section 74, Pope John Paul II explicitly confirms: "[F]rom the moral standpoint, it is **never** (my emphasis) licit to cooperate formally in evil." The moral principles of "double effect" and "material co-operation" have no application if the politician's actions, in and of themselves, are not "good" or "morally indifferent".

The question of the precise scope of the Politician's Rule is a very important one. However, I repeat that the answer to this question has no bearing on Mr. Ryan's central thesis --- that the Politician's Rule is the source of a pro-lifer's authority to propose legislative measures, irrespective of whether or not the measures themselves would be, in the Church's assessment, intrinsically unjust. From a Roman Catholic perspective, this is a plainly untenable position.

Ultimately, if I am wrong, and Mr. Ryan is correct, Roman Catholics may have to reluctantly accept that the words “every”, “never”, “intrinsically”, “inviolable” and “inalienable” have been radically redefined in the English language, and that the principle of non-contradiction, which we once thought was a “first and firm principle” of Western thought, is now not so firm. To borrow the words of Msgr. Vincent Foy, we might have to accept that Pope John Paul II was “guilty of the ultimate dissent – dissent from himself.”<sup>20</sup> We would also have to now call into doubt the Church’s constant teaching that it is gravely immoral for anyone to put himself in the place of God, arbitrarily choosing which people will live, and which will die.

If Mr. Ryan is correct, we could see the day when the Church excommunicates Catholic doctors who formally cooperate in the application of a law crafted and promoted by Catholic pro-life activists, and enacted by Catholic politicians, with the apparent “blessing” of the Church. Dare I say that no “church” that would, in one breath, insist that health practitioners conscientiously refuse, at great personal sacrifice, “*no matter what*”<sup>21</sup> the circumstances, to formally cooperate in the administration of such a law, and, in a second breath, give a “free pass” to those persons who wilfully and purposefully initiated and sought the passage of that very same law, is worthy of respect, let alone obedience.

Fortunately, through a proper appeal to both faith and reason, we can discern that the Roman Catholic Church is no such “church”, and that Pope John Paul II was not guilty of dissenting from himself.

### *The Detailed Analysis*

Mr. Ryan starts off on the right foot by introducing his article as one “dealing with the question of the ‘imperfect law’.” He quite correctly qualifies that term by saying “I mean not a law that authorizes abortion, which is an *unjust* law, but pro-life legal measures that render that law less harmful to life, yet which do not entirely overcome the authorization of abortion and which thus imperfectly protect the unborn.” Unfortunately, the balance of the article does not remain faithful to this initially stated premise and the distinction he drew. Some of the “pro-life measures” he supports are, according to official Roman Catholic Church teaching, “intrinsically” unjust laws. After an apparent good start, Mr. Ryan’s train ride quickly slides off the rails, ultimately ending with the proclamation that pro-life activists can, on their own initiative and without compulsion or duress, ethically propose and promote a law that would, by necessary implication, authorize medical practitioners to perform abortions on unborn children of less than 12 weeks gestation. This is all done without laying a proper intellectual foundation for the trip from point A to point Z, supported with direct references to all relevant primary sources --- i.e. Magisterial documents. The central problem with his analysis is exposed in the last panel on page 8 of the Newsletter and in footnote #20.

My “law school intuition” also tells me that, after he initially correctly stated the question, Mr. Ryan attacked the “question” in a “backwards” fashion.<sup>22</sup> He starts from the perspective that the Politician’s Rule must allow the initiatives he favours, and then embraces a strained interpretation of it to support his position. A more rational and scholarly approach would have been to presume that the Pope would not knowingly contradict the fundamental moral principle of the Roman Catholic Church that he restated in the No Exceptions Statement, and then make a

good faith attempt to interpret the Politician’s Rule in a manner that retains the internal coherence of the document as a whole.

Early in his analysis, Mr. Ryan admits: “The end, of course, does not justify the means... As St. Paul said, we cannot do evil just so that good may come of it (*Rom 3:8*).” But then we never hear from him again on what implications this teaching has for his thesis. I find it curious that he failed to give his readers the full sense of the verse, which has Paul “justly condemning” the “slandorous report some people are spreading” that “we teach that one should do evil that good may come of it”. Ultimately, he “adopts” an interpretation of the Politician’s Rule that logically contradicts St. Paul’s teaching, a principle that Michael Baker calls the “supreme principle of morals”.

In the main body of his article and in footnote #20, Mr. Ryan admits that all the allegedly “pro-life measures” he personally favours would be “unjust laws” if proposed in a legal environment in which abortion is already absolutely illegal. He then he continues with the following personal observation: “On the other hand, if all abortions were *permitted* [by existing “law”], and a proposal is then made to ban abortions with the same exceptions (rape, incest and the life of the mother), voting for *that* proposal is an entirely different ethical decision and is supportable – even though the resulting legislation may be word for word identical!” This personal observation is rejected by the Magisterium.

A scholarly examination of the meaning of the Politician’s Rule demands a close examination and discussion of Magisterial authorities on the subjects of abortion, law and morality, and moral decision making in general. Mr. Ryan would have made a much more significant contribution to the debate, therefore, had he offered reasoned answers, with references to supporting Magisterial authorities, to the following important questions:

1. What exactly did St. Paul mean in Romans 3:8?
2. What is an intrinsically unjust law?
3. When does a law explicitly or implicitly admit in principle the liceity of abortion, or otherwise qualify as an intrinsically unjust law?
4. What kinds of legislative proposals explicitly or implicitly admit in principle the liceity of abortion, or otherwise qualify as “intrinsically unjust laws”?
5. Does the Magisterium define the act of proposing, supporting, or voting for a legislative measure that is an intrinsically unjust law to be an intrinsically evil act?
6. Can the Politician’s Rule be Logically Reconciled With the No Exceptions Statement?

***What exactly did St. Paul mean in Romans 3:8?***

***“Intrinsic evil”*: it is not licit to do evil that good may come of it (cf. Rom 3:8): VS, heading to section 79**

The Church understands the reference to “evil” in *Romans* 3:8 to mean acts that are “intrinsically evil”.

In my opinion, Mr. Ryan’s “of course” comment pays only “lip service” to this principle; he fails to give sufficient recognition to the status of the Magisterium’s teaching against doing evil to accomplish good as the “supreme principle of morals”, or, if you will, a “prime directive”. I am inclined to believe that when the Church says something is “intrinsically evil”, she really means it.

Mr. Ryan restates the Politician’s Rule in his article, but he does not restate the No Exceptions Statement, which immediately precedes it. This is very puzzling. It is also difficult to understand why he addresses neither the passage from the CDF’s 1974 *Declaration on Abortion*, on which the No Exceptions Statement is based, nor what the *Catechism* has to say about *Rom.* 3:8.

The *Catechism* now succinctly explains what St. Paul meant: “It is therefore an error to judge the morality of human acts by considering only the intention that inspires them or the circumstances (environment, social pressure, duress or emergency, etc.) which supply their context. There are acts which, in and of themselves, independently of circumstances and intentions, are always gravely illicit by reason of their object; such as blasphemy and perjury, murder and adultery. One may not do evil so that good may result from it”: #1756. In #1753, it also says: “A good intention (for example, that of helping one’s neighbor) does not make behavior that is intrinsically disordered.....good or just. The end does not justify the means. Thus the condemnation of an innocent person cannot be justified as a legitimate means of saving the nation.....”

Pope Paul VI applied this teaching of St. Paul to the practice of artificial contraception in his controversial Encyclical Letter *Humanae Vitae* (25 July 1968) (“HV”) [paragraph 14]:

Though it is true that sometimes it is lawful to tolerate a lesser moral evil in order to avoid a greater evil or in order to promote a greater good, it is never lawful, even for the gravest reasons, to do evil that good may come of it (cf. *Romans* 3:8)—in other words, to intend directly something which of its very nature contradicts the moral order, and which must therefore be judged unworthy of man, even though the intention is to protect or promote the welfare of an individual, of a family or of society in general. [my emphasis]

In VS, Pope John Paul II relied upon *Romans* 3:8, the *Catechism*, the writings of St. Thomas Aquinas and St. Alphonsus Maria De’Liguori, and paragraph 14 of HV in reconfirming the Catholic moral teaching that it is not licit to do something intrinsically evil that good may come of it (VS, sections 71-83).

Pope John Paul II reinforced (re-established?) traditional Catholic moral teaching that the “morality of the human act depends primarily and fundamentally on the ‘object’ rationally chosen by the deliberate will.” (VS, 78). The “object of the act of willing is in fact a freely chosen kind of behavior” (VS, 78). An act is “therefore good” only if it is “capable of being ordered to the good and to the ultimate end, which is God.” (VS, 79.2). He also said: “[H]uman activity cannot be judged as morally good merely because it is a means for attaining one or another of its goals, or simply because the subject’s intention is good” (VS, 72.2).

Acts that are “intrinsically evil” are those that are incapable of being “ordered to God”. “Reason attests that there are objects of the human act which are by their nature ‘incapable of being ordered’ to God because they radically contradict the good of the person made in his image. These are the acts which, in the Church’s moral tradition, have been termed ‘intrinsically evil’ (*intrinsece malum*): they are such ***always and per se***, in other words, on account of their very object, and quite apart from the ulterior intentions of the one acting and the circumstances.” (VS, 80). In a footnote to section 80 [fn 131], he quotes the following 1962 statement from Pope Paul VI: “Far be it from Christians to be led to embrace another opinion, as if the [Second Vatican] Council taught that nowadays some things are permitted which the Church had previously declared intrinsically evil. Who does not see in this the rise of a depraved *moral relativism*, one that clearly endangers the Church’s entire doctrinal heritage?”

John Paul II therefore unequivocally rejected “the thesis, characteristic of teleological and proportionalist theories, which holds that it is impossible to qualify as morally evil according to its species – its ‘object’—the deliberate choice of certain kinds of behavior or specific acts, apart from a consideration of the intention for which the choice is made or the totality of the foreseeable consequences of that act for all persons concerned.” (VS, 79). Earlier in the document, he said:

Such theories...are not faithful to the Church’s teaching, when they believe they can justify, as morally good, deliberate choices of kinds of behavior contrary to the commandments of the divine and natural law. These theories cannot claim to be grounded in the Catholic moral tradition. Although the latter did witness the development of a casuistry which tried to assess the best ways to achieve the good in certain concrete situations, it is nonetheless true that this casuistry concerned only cases in which the law was uncertain, and thus the absolute validity of negative moral precepts, which oblige without exception, was not called into question. The faithful are obliged to acknowledge and respect the specific moral precepts declared and taught by the Church in the name of God, the Creator and Lord. (VS, 76.2).

In EV, John Paul II applied the conclusions of VS to the question of abortion: “No circumstance, no purpose, no law whatsoever can ever make licit an act which is intrinsically illicit, since it is contrary to the law of God which is written in every human heart, knowable by reason itself, and proclaimed by the Church.” (EV, 62.4).

### ***What is an Intrinsically Unjust Law?***

One fairly recent Magisterial document has set out somewhat general criteria for discerning legislative provisions that are “intrinsically unjust”. In *Considerations re Homosexual Unions* (2003), the CDF, building upon, in part, the teaching in EV, said: “...[C]ivil law cannot contradict right reason without losing its binding force on conscience. Every humanly-created law is legitimate insofar as it is consistent with the natural moral law, recognized by right reason, and insofar as it respects the inalienable rights of every person.” (III, 6). In the *Doctrinal Note* (2002), the CDF described as intrinsically unjust a law that “contradicts the fundamental content of faith and morals.”

In EV, Pope John Paul II asserted that “[t]he doctrine on the necessary conformity of civil law with the moral law is in continuity with the whole tradition of the Church.” He quotes St. Thomas Aquinas, who wrote that “human law is inasmuch as it is in conformity with right reason and thus derives from the eternal law. But when a law is contrary to reason, it is called an unjust law; but in this case it ceases to be a law and becomes instead an act of violence”. St. Thomas goes on to say: “Every law made by man can be called a law insofar as it derives from the natural law. But if it is somehow opposed to the natural law, then it is not really a law but rather a corruption of the law.” (EV, 72.1)

### ***When does a law explicitly or implicitly admit in principle the liceity of abortion, or otherwise qualify as an intrinsically unjust law?***

In the specific context of the abortion issue, other Magisterial sources have used, over the years, many different phrases to describe legislative measures that are “intrinsically unjust”. When it does so at any particular point in the text, it seems to me that the Church does not intend to exclude other descriptions, but rather only to present a further illustrative example of how the more general criteria described above are satisfied. Without excluding the potential relevance of other descriptions, it seems to me that the most comprehensive and meaningful descriptive phrase is the one used in section 22 of the CDF’s *1974 Declaration on Abortion* ----- “a law that admits in principle the liceity of abortion”. It is appropriate to assign primary importance to this particular descriptive phrase because it was used in the very passage Pope John Paul II referenced, by way of footnote, in his No Exceptions Statement.

We see the Pope apply the more “general criteria” to the life issues in EV: “Now the first and most immediate application of this teaching concerns a human law which disregards the fundamental right and source of all other rights which is the right to life, a right belonging to every individual. Consequently, laws which legitimize the direct killing of innocent human beings through abortion or euthanasia are in complete opposition to the inviolable right to life proper to every individual; they thus deny the equality of everyone before the law.” (EV, 72.2). He then goes on to say: “Abortion and euthanasia are thus crimes which no human law can claim to legitimize. There is no obligation in conscience to obey such laws; instead there is a grave and clear obligation to oppose them by conscientious objection.” (EV, 73.1). Finally, he says: “I repeat once more that a law which violates an innocent person’s natural right to life is unjust and, as such, is not valid as a law. For this reason I urgently appeal once more to all

political leaders not to pass laws which, by disregarding the dignity of the person, undermine the very fabric of society” (EV, 90.3).

It might be useful to simply list the many different descriptive phrases that the Church has used to illustrate examples of “intrinsically unjust laws” in relation to abortion:

- (1) a law that “admits in principle the liceity of abortion” (*Declaration on Abortion*, 22);
- (2) a law “which is in itself immoral” (*Declaration on Abortion*, 22);
- (3) a law that “permits” abortion (EV, 73.2);
- (4) a law that “legitimizes the direct killing of innocent human beings through abortion” (EV, 72.2);
- (5) a law that “declares to be right what would be opposed to the natural law” (*Declaration on Abortion*, 21);
- (6) a law that purports to discriminate between the unborn children on the basis of their stage of development, health-related criteria, or circumstances of conception (*Declaration on Abortion*, 11, 12, 14); and
- (7) a law that purports to assign to other individuals the right to be the arbiter over which unborn children should live and which should die (*Donum vitae*, Introduction, section 5; *Catechism*, section 2258).<sup>23</sup>

With respect to descriptions (1) to (5), consider that the commentary of Pope John Paul II excerpted in the immediately preceding section is located in passages of EV that lead right up to the No Exceptions Statement, in which he explicitly says that a “law permitting abortion” is an *example* of an “intrinsically unjust law”. Recall that this statement follows his use of the alternative descriptive words “laws which legitimize the direct killing of innocent human beings.” The No Exceptions Statement explicitly, by reference, builds on the previous teaching of the Church in section 22 of the CDF’s 1974 *Declaration on Abortion*, in which it is unequivocally stated that man can never “take part in part in a propaganda campaign in favour of” or “vote for” a “law which is in itself immoral”. The *example* given of a “law which is in itself immoral” is a “law which would admit in principle the liceity of abortion.” Description (5) is another, yet more general, description, found in section 21. I believe that descriptions (6) and (7) are simply further, more specific, illustrations of the other, more general, descriptions or criteria we see restated in *Considerations re Homosexual Unions* (III, 6).

Recall what the CDF said in section 21 of the *Declaration on Abortion*: “Human law can abstain from punishment, but it cannot declare to be right what would be opposed to the natural law, for this opposition suffices to give the assurance that a law is not a law at all.” Recall what it said in sections 11, 12, and 14: “It does not belong to society, nor does it belong to public authority in any form to recognize this right for some and not for others: all discrimination is evil, whether it be founded on race, sex, color or religion. It is not recognition by another that constitutes this

right. This right is antecedent to its recognition; it demands recognition and *it is strictly unjust to refuse it*....Any discrimination based on the various stages of life is not more justified than any other discrimination.....In reality, respect for human life is called for from the time that the process of generation begins.... Divine law and natural reason, therefore, exclude all right to the direct killing of an innocent man..... We proclaim only that none of these reasons [serious questions of health, of life or death, for the mother; fetal deformity, consideration of honour or dishonor, loss of social standing, economic burden, “and so forth”] can ever objectively confer the right to dispose of another’s life, even when that life is only beginning....”

The Church has consistently taught that “God alone is the Lord of life from its beginning until its end: no one can, in any circumstance, claim for himself the right to destroy directly an innocent human being.”<sup>24</sup> This statement is now codified in #2258 of the *Catechism*.

Finally, in its December 2008 Instruction titled *Dignitas Personae*, the CDF said:

8.....By taking the interrelationship of these two dimensions, *the human and the divine*, as the starting point, one understands better why it is that man has unassailable value: he possesses an eternal vocation and is called to share in the trinitarian love of the living God.

This value belongs to all without distinction. By virtue of the simple fact of existing, every human being must be fully respected. The introduction of discrimination with regard to human dignity based on biological, psychological, or educational development, or based on health-related criteria, must be excluded. At every stage of his existence, man, created in the image and likeness of God, reflects “the face of his Only-begotten Son... This boundless and almost incomprehensible love of God for the human being reveals the degree to which the human person deserves to be loved in himself, independently of any other consideration – intelligence, beauty, health, youth, integrity, and so forth. In short, human life is always a good, for it ‘*is a manifestation of God in the world, a sign of his presence, a trace of his glory*’ (*Evangelium vitae*, 34).

I trust that Mr. Ryan does not dispute the very authority of the Magisterium to define certain concrete actions or laws to be “intrinsically” unjust or evil. In my opinion, the evidence is overwhelming and conclusive that the Magisterium has definitively defined any law that falls within any one of the descriptions enumerated above (1-7) to be an “intrinsically unjust law”. Yet, Mr. Ryan’s article seems to imply that there is really no such thing as an “intrinsically” unjust law, at least in the case of abortion. But if I am wrong, then he is confused either about the meaning of the word “intrinsic”, or about what makes an evil act or an “unjust” law “intrinsically” so. If a particular legislative proposal measure is “unjust” when all abortions are currently prohibited in the law, but the same measure is “just” if all abortions are currently allowed in the law, then the proposal cannot logically be “intrinsically” unjust. “Intrinsic” means circumstances external to the nature of thing being described don’t matter. Mr. Ryan says: “Ethically, the context and intention of a particular proposal make all the difference”.

I note that Mr. Ryan avoids the use of the words “intrinsically evil” or “intrinsically unjust” in his article. He is prepared to describe a law as “unjust” in an “abstract” sense; but he will go no further than this. Mr. Ryan seems to rely on the “reasoning” of commentators such as Finnis and Luno to support his argument, but doesn’t explain how, if this reasoning is accepted, *any* law can be logically assessed to be “intrinsically unjust”. Finnis and Luno focus narrowly (wrongly, in my view) on two descriptions used in EV--- “a law permitting abortion” and “laws which legitimize the direct killing of innocent human beings” ---- and have concluded that Pope John Paul II meant to restrict the description “intrinsically unjust laws” in the No Exceptions Statement to those that permit abortions that are currently prohibited by human law. The “result” of their analysis is that a proposed legislative measure that incorporates part (but not all) of current legislation that admits in principle the liceity of abortion is not an “intrinsically unjust law”, and an elected Catholic official may vote for it under the conditions specified by the Politician’s Rule.

Finnis and others therefore take the position that the liceity of a proposed legislative measure cannot be judged by looking at it “in an abstract sense” but only by examining it within its legal and historical context.<sup>25</sup> The reader should obviously sense that this is not really a plausible argument explaining what the Pope meant by an “intrinsically unjust law”, but rather a conclusion that there is no such thing as a law that is “intrinsically” unjust --- it all depends on the “circumstances”.

There are several problems with this interpretation put forward by Finnis and others. First of all, it makes nonsense out of the Pope’s use of the words “never” and “intrinsically unjust”. It ignores the fact that the Pope did not explicitly recognize the distinction they have put forward. It ignores the fact that the Pope bases the No Exceptions Statement on section 22 of the CDF’s 1974 *Declaration on Abortion*, which uses several additional alternative descriptions for “laws permitting abortion”, including “laws which admit in principle the liceity of abortion”. The context of his words suggest an attempt to cite *an example*; not to state a limiting or restrictive definition.

I have already identified the other alternative illustrative descriptions used elsewhere in the *Declaration* and other Magisterial documents. These alternative descriptions help us to understand the natural sense of *each* of them. The natural sense of “admitting” in principle the liceity of abortion is “*voluntarily acknowledging* that abortion is a valid practice”. The natural sense of “*declaring*” to be right something that is wrong speaks for itself. In my opinion, no amount of ruminating over the latin translations of the words “permitting” or “legitimize” can rationally limit the natural sense of *any* of these descriptions to laws “permitting” something that is currently prohibited by human legislation. The better view, then, in my opinion, is that the prohibition in both the No Exceptions Statement and the *Declaration* against supporting or voting for an “intrinsically unjust law” encompasses even those proposed legislative measures that would merely “acknowledge” or “declare” to be “right” a “wrong” that is already declared to be so by current legislation.

The “better view” is also supported by the *Declaration*’s specific warning to legislators to be “attentive to what a change in legislation can represent. Many will take as authorization what is perhaps the abstention from punishment.” It went on to concede that “human law can abstain

from punishment”, while nevertheless holding firm to the principle that it is *always wrong* for such human law to contradict the natural law (sections 20-21). The *Declaration* never qualifies this absolute statement by conceding any ground to the idea that the liceity of the human law must be judged according to its “legal and historical context”.

Michael Baker answers a priest’s support of the contrary interpretation of Finnis and others with the following comment: “In other words, the Pope’s condemnation in [the No Exceptions Statement] of an intrinsically unjust law does not extend to laws permitting abortion already in force because these laws are already valid and, to quote you, *you don’t make valid what is already valid*. This ignores the Pope’s specific endorsement in *EV 72* of teaching of Pope John XXIII and of St Thomas to this effect: a law which is contrary to reason is not in fact a law but rather a corruption of law—*iam non erit lex, sed legis corruptio*. Put in words of one syllable, *such laws are not valid*. Accordingly, your interpretation fails at its source.”<sup>26</sup>

It seems to me that Finnis and others, including Mr. Ryan, also waste far too much time and effort focusing on the question of legislative proposals that magically change their moral nature, depending on the circumstances. This line of argument runs into the intellectual “brick wall” of the *Catechism*, VS, and other Magisterial documents. Their efforts would have better served the Church had they focused more narrowly on the following question: What kinds of legislative proposals explicitly or implicitly admit in principle the liceity of abortion, or otherwise qualify as “intrinsically unjust laws”?

Mr. Ryan never really addresses this question in his article. I have to question whether he grasps the difference between legislative proposals that admit in principle the liceity of abortion, and those that do not. He unnecessarily lumps them all in the same category --- unjust, but never “intrinsically” so. If he understood this distinction, he perhaps wouldn’t have felt the need to embrace the theological fiction that an intrinsically unjust law can become “just” if the surrounding circumstances --- the historical and legal context ---are different.

This lack of understanding is betrayed by his citation of Cardinal Ratzinger’s (now Pope Benedict XVI) statement in response to questions posed by the American bishops regarding the morality of supporting the “Hatch Amendment” to the U.S. Constitution, which was proposed in the wake of the *Roe v. Wade* decision of the U.S. Supreme Court. He offers this statement in *support* of his interpretation of the Politician’s Rule; but the statement actually *rejects* his interpretation and supports mine. He mentions, but never comments on, the Cardinal’s qualifying condition for licit “intervention” in a “situation judged evil to correct if for the better”----- the intervening “action” must not be “evil in itself”. More important, he never tells us what exactly the “Hatch Amendment” was all about. Applying the teachings of the Magisterium, the Hatch Amendment was NOT an “intrinsically unjust” law, and this was already well understood by American bishops who were obviously well-versed in Catholic moral theology and the demands of the 1974 CDF *Declaration on Abortion*. The Amendment did not explicitly or implicitly admit in principle the liceity of abortion. In 1981, the Florida Catholic Conference of Bishops published a Commentary<sup>27</sup> explaining why the Hatch Amendment could be licitly supported, and distinguished it from other kinds of initiatives that could not be licitly supported.

***What kinds of legislative proposals explicitly or implicitly admit in principle the liceity of abortion, or otherwise qualify as “intrinsically unjust laws”?***

I have already addressed this question in the abstract; now it is time to put Mr. Ryan’s proposed legislative initiatives to the test. Although I disagree with Michael Baker on some of his evaluations of similar initiatives, I concur with his insistence on a close examination of the very words used by the draftspersons of such initiatives. Mr. Ryan did not present in his article any specific legislative language, so the following analysis remains somewhat “high level”.

*“A ban on abortion, with some exceptions”*

Such a legislative proposal would admit the liceity of abortion in the circumstances of the exceptions. It would also “declare” to be right that which is wrong, since the Church has unequivocally rejected all the reasons typically offered as justifications for abortions. In section 14 of the *Declaration on Abortion*, the Church said: “We proclaim only that none of these reasons [serious questions of health, of life or death, for the mother; fetal deformity, consideration of honour or dishonor, loss of social standing, economic burden, “and so forth”] can ever objectively confer the right to dispose of another’s life, even when that life is only beginning....” Canadian pro-lifers have consistently and publicly proclaimed, for example, that women who become pregnant as a result of rape or incest are not justified in seeking abortion. We have also said that, from a scientific perspective, abortion cures no “medically classifiable illness” and that no physical problem that could arise during pregnancy cannot be adequately managed until birth. A ban that includes exceptions for these reasons and others would therefore be “contrary to right reason”. It also follows that it would be “contrary to right reason” for people who believe that certain circumstances do NOT justify abortion to themselves propose a law that acknowledges that such circumstances DO justify abortion.

Where there is currently no explicit legislative recognition of abortion but abortion has *de facto* societal acceptance, as is the current case in Canada, the Church has reaffirmed that “[m]oral conscience requires that, in every occasion, Christians give witness to the **whole** moral truth, which is contradicted” by societal approval of abortion (*Considerations re Homosexual Unions*, II, 5 ). It therefore follows that a Catholic may not ethically put forward or even support such a proposal.

In other countries, if current legislation permits abortion on demand, the No Exceptions Statement would similarly prohibit all Catholics from freely and voluntarily choosing to propose, support, and/or vote for a legislative measure that would replace the current law with a ban on abortion, subject to one or more exceptions. The Church teaches that all Catholics, even in this scenario, have a duty to model “clear and emphatic opposition” to abortion. Accordingly, “[one] must refrain from any kind of formal cooperation in the enactment....of such gravely unjust laws” (Ibid.). The proposal would admit in principle the liceity of abortion because, as indicated above, it would, by its terms, voluntarily acknowledge that some reasons for an abortion are legitimate. The Church is merely confirming that the differing circumstances do not alter the moral quality of the legislative proposal. If it is “intrinsically unjust”, it always remains “unjust”.

On the other hand, if (again, in a country other than Canada) an existing statute already embodies a general ban, with a series of exceptions that permit abortion, and someone else has crafted a proposal to *repeal* some, but not all, of those exceptions, it would arguably be licit for a Catholic politician to support, and vote for such a proposal, as the amendments would not, in and of themselves, admit in principle the liceity of abortion, provided that all the other pre-conditions in the Politician's Rule are satisfied. Actually *proposing* it himself, however, would not be permitted, as he would not be able to satisfy all of the pre-conditions in the Politician's Rule. How can a politician establish that it is impossible to repeal all of the exceptions unless he has first attempted the repeal of ALL of them?

Assuming the Catholic politician is responding to a proposal made by others and all reasonable efforts to persuade his colleagues to repeal all of the exceptions have failed, he may be able to support and vote for the ultimate proposal, as the proposal to repeal a particular exception to the ban would be silent on the issue of whether or not the exceptions that remain are legitimate.<sup>28</sup> However, any Catholic would still be well-advised to carefully consider whether he could support and vote for such a proposal without "giving scandal" (*Catechism*, #2284-2287). In another context, a proposed amendment to withdraw punishment from an offence (probably a reference to the German abortion law), the CDF cautioned legislators, in 1974, to be "attentive" to how the public might interpret their support of such an amendment, as some people might reasonably interpret it as an admission that they no longer consider abortion a crime against human life, since murder is still always severely punished." (*Declaration on Abortion*, section 20).<sup>29</sup>

*"Funding limits with some exceptions"*

The same considerations applicable to partial bans of the abortion procedure apply to legislative proposals relating to funding of abortions. Mr. Ryan has not offered any suggested text for such a proposal. However, it seems to me that any measure that would specifically approve funding for *any* abortion procedure would *prima facie* admit in principle the liceity of abortion, and therefore any voluntary act of support for such a measure would be illicit.

*"Regulations on informed consent before an abortion"*

In Canada, this area of concern is a provincial matter. We know that the German law, whereby an abortion is rendered "non-punishable" if the pregnant woman presents a Counselling Certificate, is considered to be an "intrinsically unjust law" by the Church, as evidenced by Pope John Paul II's intervention with the German Bishops in 1998. He rebuked them for allowing Catholic agencies to co-operate in the administration of this law. But let's look at other possible measures. Assuming a scenario where the subject of informed consent is dealt with by a statute of general application, without specific reference to abortion, a proper assessment of the liceity of such regulations will depend on the approach taken by the draftsman.

For example, one proposed law might say that an abortionist commits an offence in performing an abortion *unless* he advises the pregnant woman that an abortion would increase her risks of getting breast cancer. This may or may not discourage women from choosing abortion. A second proposed law might simply "beef up" the general law of informed consent applicable to

*all* medical procedures, including abortion (without mentioning abortion), compelling abortionists, by necessary implication, to disclose this enhanced risk, or face criminal penalties. The second proposal might have the same beneficial effect as the first in “limiting the harm done” by an existing abortion on demand legal environment.

Notwithstanding the above, it is important to recognize that the first proposal implicitly “admits in principle the liceity of abortion” --- it indicates how an abortion may be performed lawfully (disclose the risk); the second does not ---- it is a law of general application in respect of all medical procedures. If an elected Catholic politician voluntarily proposes the first kind of law, he will be “doing evil”, in contravention of the “supreme principle of morals” reconfirmed by Pope John Paul II in the No Exceptions Statement. If the same kind of law is proposed by someone else, and he votes for it, he will be guilty of both doing an evil act and formal cooperating in the evil committed by the person proposing the legislation; something that, again, is not permissible, under any circumstances. He would also, by this very act, unquestionably “scandalize” the faithful, in contravention of #2287 of the *Catechism*.<sup>30</sup> If he was truly unwilling to support abortion he would not have voted for it.

That said, politicians and pro-life activists could both licitly propose and support, and politicians, vote for, legislative measures of the second kind (provided that the person’s intent is not immoral – e.g. to prevent a better proposal from having a chance of becoming law). Absent any ulterior or bad intent, such actions are either good or morally indifferent actions.

I have drafted for the political wing of the pro-life movement in Ontario (Campaign Life Coalition) a comprehensive set of amendments to the Province’s *Health Care Consent Act* (the “HCCA”), *Substitute Decisions Act*, *Family Law Act*, and the *Child and Family Services Act*. These are statutes of general application, and the amendments I have in mind do not explicitly mention or single out abortion procedures in any way whatsoever. I have indirectly “aimed” many of these amendments at “limiting the harm done by” Canada’s *de facto* abortion on demand legal environment, and reducing the number of abortions performed.

In particular, the HCCA regulates what is effective informed consent for all medical procedures in general. They generally codify the common law. However, one of the problems with the statute is that it does not distinguish between elective procedures and medically necessary procedures. The common law does recognize this distinction, imposing a higher standard of care upon the health practitioner in providing the information necessary to obtain informed consent for elective procedures. Without mentioning abortion or chemical contraceptives or abortifacients at all, I have crafted definitions of “elective” and “medically necessary” “treatment” that will cover all of these “treatments” and then enhanced the requirements for informed consent for elective treatments.

A real weakness of the common law is that a patient who sues a health practitioner for damages for failing to obtain truly informed consent is not entitled to collect damages unless he or she can prove that they would have refused consent to the treatment had they received all the information to which they were entitled. I have crafted amendments that would add specific public and private legal remedies (rights of action) for breaches of this law, and also minimum damages clauses. As we all know, abused abortion patients face significant obstacles when considering

whether or not to sue abortionists for misconduct. These amendments seek to remove these obstacles and make a decision to assume the risks of legal action a financially viable one. If these obstacles are removed, it is hoped that the abortionists' "costs of doing business" (e.g. malpractice insurance premiums) will increase and therefore deter many from getting into the business in the first place. If they also have the effect of curbing the systemic abuse of the concept of "informed consent" in the abortion industry, then the hope is that many patients, after having been given all the information that the enhanced law would require them to receive, will actually refuse to have abortions.

*"Gestational restrictions – e.g. a ban on late-term abortions, or a ban after 12 weeks"*

All laws that prohibit abortion of some unborn children, but either explicitly or by necessary implication admit the liceity of abortion for other unborn children, based on their stage of development alone, are "intrinsically unjust laws", on multiple grounds. I do not accept the fine distinction argued by Michael Baker, and perhaps others, that this judgment depends on how the particular legislative measure is worded. Any such law, in my view, in substance, "permits abortion". With respect, the distinction he makes unduly emphasizes form over substance. Finally, such proposals offend significant other moral principles definitively defined by the Magisterium. If additional grounds are required to render such laws "intrinsically unjust", then these principles provide them. Michael Baker says:

*If the amending bill was to say—No woman who undergoes an abortion is guilty of an offence unless her pregnancy is proved to have exceeded sixteen weeks and no doctor who performs an abortion is guilty of an offence unless the pregnancy of the woman on whom he performs the abortion is proved to have exceeded sixteen weeks—he could not licitly vote for it. Why not? Because the words in this formulation allow explicitly that some abortion is lawful. What abortion? Abortion which takes place prior to sixteen weeks of pregnancy.*

However, if the amending bill was to say—*Notwithstanding the other provisions of this Act, a woman whose pregnancy is proved to have exceeded sixteen weeks and who undergoes an abortion is guilty of an offence and a doctor who performs an abortion on a woman whose pregnancy is proved to have exceeded sixteen weeks is guilty of an offence—the lawmaker could licitly vote in favour of it. Why? Because there are no words in this formulation which state that any abortion is lawful. It asserts that some abortion will be prosecuted, namely, abortion occurring after sixteen weeks of pregnancy. It is an improvement on the status quo which allows abortion to twenty weeks of pregnancy. If it is silent on the evils of other abortion that cannot be laid at the feet of our lawmaker. But lest it be thought that by supporting this bill he is somehow supporting abortion, that is, to avoid scandal, he has to ensure that his position of absolute personal opposition to abortion is well known.*<sup>31</sup>

Such laws, in substance, "discriminate" against unborn children on the basis of stage of development. At the risk of repeating myself, the Magisterium describes as illegitimate all laws that are not "consistent with the natural moral law", not "recognized by right reason", and do not

respect the “inalienable rights of every person.” (*Considerations re Homosexual Unions*, III,6). Recall what the CDF said in section 21 of the *Declaration on Abortion*: “Human law can abstain from punishment, but it cannot declare to be right what would be opposed to the natural law, for this opposition suffices to give the assurance that a law is not a law at all.” Recall what it said in sections 11, 12, and 14: “It does not belong to society, nor does it belong to public authority in any form to recognize this right for some and not for others: all discrimination is evil, whether it be founded on race, sex, color or religion. It is not recognition by another that constitutes this right. This right is antecedent to its recognition; it demands recognition and *it is strictly unjust to refuse it*...Any discrimination based on the various stages of life is not more justified than any other discrimination.....

I also repeat the Church’s proclamation, in #2258 of the *Catechism*, that “God alone is the Lord of life from its beginning until its end: no one can under any circumstances claim for himself the right directly to destroy an innocent human being.” The late father John Hardon puts it well when he says our role “is not mastery but only ministry, of our own lives as of the lives of others. We may not, without grave injustice to God, deliberately terminate innocent human life.”<sup>32</sup> A “gestational law” inherently usurps God’s role and therefore may be rightly said to be inconsistent with the natural moral law and not recognized by right reason.

Mr. Ryan claims to be unable to discern any “fundamental moral difference” between gestational limits and other kinds of legislative initiatives, such as my proposed informed consent initiatives, which would only amend laws of general application.

***Does the Magisterium define the act of proposing, supporting, or voting for a legislative measure that Church says is an intrinsically unjust law to be an intrinsically evil act?***

In my view, in light of the Church’s clear and unequivocal statements in section 22 of the 1974 *Declaration on Abortion* and the No Exceptions Statement, the most reasonable answer to this question is “yes”, for the following reasons:

1. The words “never licit” are used, and in EV 62.5, Pope John Paul II, reaffirms: “No circumstance, no purpose, no law whatsoever can ever make licit an act which is intrinsically illicit, since it is contrary to the Law of God which is written in every human heart, knowable by reason itself, and proclaimed by the Church”;
2. Nowhere in EV does Pope John Paul II indicate that the No Exceptions Statement should be read “subject to” the provisions of the Politician’s Rule;
3. Nowhere in EV does he describe the Politician’s Rule as a true exception to the No Exceptions Statement;
4. If one may never propose, support, or vote for a law that is “intrinsically evil”, then, logically, those behaviours must themselves be “intrinsically” evil;

5. The Church has consistently condemned, in the strongest terms possible, those who would claim for themselves the right to arbitrarily decide which innocent persons should live, and which should die. That right is reserved to God alone;
6. The Church has consistently condemned, in the strongest terms possible, any form of “discrimination” in the law based on stage of development, health-related criteria, or the circumstances of a person’s conception;
7. The Church has consistently described the right to life of every single human being, from conception to natural death, as “inalienable” and “inviolable”;
8. The *Catechism* explicitly states that “[a] good intention (for example, that of helping one’s neighbor) does not make behavior that is intrinsically disordered....good or just. The end does not justify the means. Thus the condemnation of an innocent person cannot be justified as a legitimate means of saving the nation.” (#1753).<sup>33</sup> In VS, Pope John Paul II said: “[H]uman activity cannot be judged as morally good merely because it is a means for attaining one or another of its goals, or simply because the subject’s intention is good” (VS, 72.2). If that is so, how can bargaining away the inalienable right to life of some unborn children for the sake of other unborn children be considered any less illicit? The CDF’s 1974 *Declaration on Abortion* affirms that “man can never be treated simply as a means to be disposed of in order to obtain a higher end” (section 9);
9. The Politician’s Rule does not expressly state that proposals aimed at “limiting the number of authorized abortions” or “limiting the harm done by” an existing unjust law, which an elected Catholic official is permitted to support or vote for, include legislative measures that, in and of themselves, are intrinsically unjust laws;
10. The CDF applied this interpretation of the No Exceptions Statement and the Politician’s Rule to the analogous issue of the legal recognition of homosexual unions in 2003;<sup>34</sup>
11. In 1982, Cardinal Ratzinger may have said that “intervention” in “a situation judged evil to correct it for the better” may be licit, but he qualified that statement with the conditions that both the “object and proximate effect consist in (sic) limiting an evil insofar as it possible” and “the action is not evil in itself”. His comments were in respect of a proposed measure that was not in fact evil in itself; and
12. Any alternative interpretation leads to absurd results and a breach of the Principle of Non-Contradiction (see my analysis of the next question).

For all these reasons, I accept that the Roman Catholic Church teaches that one may never vote in favour of an intrinsically unjust law or take part in a propaganda campaign in favour of such a

law. Mr. Ryan suggests that the Church not only permits elected Catholic officials to sometimes support and vote in favour of such a law; she also authorizes pro-life activists and elected Catholic officials to actually *initiate* the enactment of such laws.

I ask the reader to re-read the No Exceptions Statement. If you don't think it means that freely choosing to take part in a propaganda campaign in favour of a law that admits, in principle, the liceity of abortion, or freely choosing to vote for it, has been definitively determined by the Church to be an intrinsically evil act, then I am forced to ask you the same question posed by Michael Baker: What part of the word *never* do you not understand?

Ultimately, Mr. Ryan proposes that pro-lifers engage in intrinsically evil behaviour in order to “accomplish good”. If I understand him correctly, if Canadian pro-lifers proposed a “gestational” law, for example, it would be with the deliberate intention of “buying” the votes of legislators who are not inclined to offer *any* legal protection to the unborn. In other words, we would be deliberately attempting to bargain away the supposedly “inalienable and inviolable right” to life of some unborn children, in the hope of getting the other legislators to agree to extend legal protection to other unborn children. We would be “directly willing” others to “take the bargain” that we offer.

The very human act of proposing such a law with that intention is in itself an intrinsically evil act. The act arguably contravenes the fifth commandment, which includes a prohibition against “exposing someone to mortal danger without grave reason,<sup>35</sup> as well as refusing assistance to a person in danger”: *Catechism*, #2269. The act also involves “alienating” and “violating” the inalienable and inviolable right to life of some unborn children. The result is a “bad effect” directly intended by the act because it is the *immediate object of an act of will or of choice; an object chosen and commanded by the will*. The *Catechism* says that everyone is “responsible for his acts to the extent they are voluntary” (#1734) and that every act “directly willed is imputable to its author” (#1736). It also says that the “bad effect” is not “imputable” to the actor if it was not foreseeable and the actor had the opportunity to avoid it (#1737). The pro-life activist in this scenario cannot possibly claim the benefit of this moral principle, as he not only foresees the “bad effect”, he convinces himself that the “bad effect” is necessary to achieve his “end”. Moreover, he makes the proposal voluntarily, without duress or compulsion, and could have avoided the “bad effect” by not making the proposal! The pro-life activist cannot rationally say he does not “intend” to deny some unborn children their right to life any more than a fisherman can rationally say that he does not “intend” the worm with which he baits his hook to die.

Now, it is also true that the pro-life activist *intends* the *proximate end* of this act --- legal protection for some unborn children, and this is a “good end.” However, as St. Thomas Aquinas insisted, *all* of the following factors --- objects, ends, and circumstances ---- must be “morally good or in harmony with the precepts of the natural law” before the entire human act can be considered to be good.<sup>36</sup> This teaching is now codified in #1755 and #1756 of the *Catechism*. I also agree with William E. May’s assessment that St. Thomas Aquinas taught that “killing the innocent” was among those “natural law precepts proscribing acts specified as morally bad by reason of their `objects’” alone.<sup>37</sup> In the words of St. Thomas himself, there are some kinds of human acts that “have deformity inseparably annexed to them...”<sup>38</sup> In my

opinion, the teachings of St. Thomas Aquinas are the intellectual foundation of #1750 to 1761 of the *Catechism*. Moreover, Pope John Paul II reaffirms these principles in VS, 72.2 and EV, 62.4.

Neither can the pro-life activist seek refuge under the principle of “double effect”. He cannot satisfy at least two of the four conditions to its operation. As the foregoing demonstrates, the immediate act is not, in itself, good or at least morally indifferent (it unjustly discriminates), and the “good effect” (legal protection for *some* unborn children) would be achieved by the “bad effect” of the act (“bargaining away” the inalienable and inviolable right to life of *other* unborn children).

What does Mr. Ryan offer as a justification for pro-lifers taking the initiative in proposing a law that would sacrifice the right to life of some unborn children for the sake of others? ----- “If we must await a perfect ban on abortion we can easily wait years, even decades, and forego the saving of countless lives in the meantime.” In my view, this offered justification is plainly rejected by the terms of #1753 of the *Catechism* and section 9 of the *Declaration on Abortion*. Moreover, Pope John Paul II strongly rejected this aspect of “consequentialist” and “proportionalist” thinking in VS: “The weighing of the goods and evils foreseeable as the consequence of an action is not an adequate method for determining whether the choice of that concrete kind of behaviour is ‘according to its species’, or ‘in itself’, morally good or bad, licit or illicit. The foreseeable consequences of the act, which, while capable of lessening the gravity of an evil act, nonetheless cannot alter its moral species.....Moreover, everyone recognizes the difficulty, or rather the impossibility, of evaluating all the good and evil consequences....of one’s own acts: an exhaustive rational calculation is not possible. How then can one go about establishing proportions which depend on a measuring, the criteria of which remain obscure? (77). Mr. Ryan mentions a “study” that purports to show a sharp decline in abortions after a ban with exceptions was introduced in Poland, but he ignores the contrary experience of all the western European countries, and Australia, which all have similar laws. Their societies continue to reflect both *de facto* abortion on demand and widespread societal indifference to the plight of the unborn.<sup>39</sup>

Nevertheless, for the sake of argument, let’s compare this justification with those offered by persons more intimately affected by the Church’s prohibitions against participation in specific activities such as abortion, artificial contraception, research on human embryos, the use of *in vitro* fertilization techniques, and embryo reduction. In each of these other contexts, the Church expresses sympathy to the individuals personally affected and considers their “justifications”, but then nevertheless holds fast to the “supreme principle of morals”. If the Church is so unrelenting in its teaching in these contexts, what would make anyone think it could give a “free pass” to pro-lifers who have no personal stake in the matter, other than, perhaps, alleviating their personal frustration over not being able to achieve legislative change? As John Paul II wrote in EV(57.6), building on his previous statement in VS(96): “As far as the right to life is concerned, every innocent human being is absolutely equal to all others.....Before the moral norm which prohibits the direct taking of the life of an innocent human being ‘there are no privileges or exceptions for anyone. It makes no difference whether one is the master of the world or the ‘poorest of the poor’ on the face of the earth. Before the demands of morality we are all absolutely equal.’ ”

### *Abortion*

The Roman Catholic Church has consistently taught that “God alone is the Lord of life from its beginning until its end: no one can, in any circumstance, claim for himself the right to destroy directly an innocent human being.”<sup>40</sup> It is on the basis of this constant teaching that she has held, for example, that it is never morally permissible for anyone to kill an unborn child, even for the purpose of saving the life of the mother.<sup>41</sup>

In his Encyclical Letter *Casti Connubi* (December 31, 1930), Pope Pius XI stated this constant teaching in the following words:

[H]ow deeply we feel for the mother whose fulfillment of her natural duty involves her in grave danger to health and even to life itself. But can reason ever avail to excuse the direct killing of the innocent? For this is what is at stake. The infliction of death whether upon mother or upon child is against the commandment of God and the voice of nature: *Thou shalt not kill!* The lives of both are equally sacred and no one, not even public authority, can ever have the right to destroy them. It is absurd to invoke against innocent human beings the right of the State to inflict capital punishment, for this is valid only against the guilty. Nor is there any question here of the right of self-defence, even to the shedding of blood, against an unjust assailant, for none could describe as an unjust assailant an innocent child. Nor, finally, does there exist any so-called right of extreme necessity which could extend to the direct killing of an innocent human being. Honourable and skillful doctors are therefore worthy of all praise when they make every effort to protect and preserve the life of both mother and child. On the contrary, those who encompass the death of the one or the other, whether on the plea of medical treatment or from a motive of misguided compassion, act in a manner unworthy of the high repute of the medical profession.

In 1951, Pope Pius XII restated this teaching: “***Never and in no case*** [my emphasis] has the Church taught that the child’s life must be preferred to that of the mother. It is a mistake to formulate the question with this alternative: either the child’s life or the mother’s. No; neither the mother’s life nor the child’s may be submitted to an act of direct suppression. For the one and for the other the requirement can be only this: to make every effort to save the life of both the mother and the child”.<sup>42</sup>

Consider also the following excerpts from the CDF’s 1974 *Declaration on Abortion* (part of which formed the basis of the No Exceptions Statement in EV):

7. ....In fact, there are certain number of rights which society is not in a position to grant since these rights precede society; but society has the function to preserve

and to enforce them. These are the greater part of those which are today called “human rights” and which our age boasts of having formulated.

8. The first right of the human person is the right to life. He has other goods of which some are more precious, but this one is fundamental –the condition of all the others. Hence it must be protected above all others. It does not belong to society, nor does it belong to public authority in any form to recognize this right for some and not for others: all discrimination is evil, whether it be founded on race, sex, color or religion. It is not recognition by another that constitutes this right. This right is antecedent to its recognition; it demands recognition and it is strictly unjust to refuse it.
9. Any discrimination based on the various stages of life is not more justified than any other discrimination.....In reality, respect for human life is called for from the time that the process of generation begins....
14. Divine law and natural reason, therefore, exclude all right to the direct killing of an innocent man..... We proclaim only that none of these reasons [serious questions of health, of life or death, for the mother; fetal deformity, consideration of honour or dishonor, loss of social standing, economic burden, “and so forth”] can ever objectively confer the right to dispose of another’s life, even when that life is only beginning....
19. ....Even if the legislator continues to regard abortion as an evil, may he not propose to restrict its damage?
20. These arguments [pluralism, the “lesser evil”, majority opinion, impossibility of enforcement, dangers of clandestine abortions] and others in addition that are heard are not conclusive. It is true that civil law cannot expect to cover the whole field of morality or to punish all faults. No one expects it to do so. It must often tolerate what is in fact a lesser evil, in order to avoid a greater one. One must, however, be attentive to what a change in legislation can represent. Many will take as authorization what is perhaps only the abstention from punishment.....
21. ....The law is not obliged to sanction everything, but it cannot act contrary to a law which is deeper and more majestic than any human law: the natural law engraved in men’s hearts by the Creator as a norm which reason clarifies and strives to formulate properly, and which one must always struggle to understand better, but which it is always wrong to contradict. Human law can abstain from punishment, but it cannot declare to be right what would be opposed to the natural law, for this opposition suffices to give the assurance that a law is not a law at all.
22. It must in any case be clearly understood that whatever may be laid down by civil law in this matter, man can never obey a law which is in itself immoral, and such is the case of a law which would admit in principle the liceity of abortion. Nor can he take part in a propaganda campaign in favour of such a law, or vote for it.....

### *Artificial Contraception*

What about the married mother with four young children, who doesn't think she has the energy or financial resources to raise another child, and does not trust natural methods of avoiding pregnancy? Are she and her husband given a "free pass" to use artificial birth control? No. On November 12, 1988, Pope John Paul II made the following comments in the course of his address to approximately 400 moral theologians:

Closely connected with the theme of moral conscience is the theme of the binding force of the moral norm taught by *Humanae Vitae*. By describing the contraceptive act as intrinsically illicit, Paul VI meant to teach that the moral norm is such that it does not admit exceptions. No personal or social circumstances could ever, can now, or will ever, render such an act lawful in itself. The existence of particular norms regarding man's way of acting in the world, which are endowed with a binding force that excludes always and in whatever situation the possibility of exceptions, is a constant teaching of Tradition and of the Church's Magisterium which cannot be called into question by the Catholic theologian (n. 5).<sup>43</sup>

John Kippley said of John Paul II's views on the subject of artificial contraception:

In his manner of speaking, John Paul II has left no room for doubt that the doctrine of marital non-contraception reaffirmed by *Casti Connubii*, *Humanae Vitae*, and *Familiaris Consortio* must be believed and put into practice. He has taught .....that to hold out for exceptions as if God's grace were not sufficient is a form of atheism (17 September 1983).....<sup>44</sup>

### *Experimentation on Living Human Embryos or Fetuses*

The Church's teaching on this subject is similarly uncompromising. It matters not that the scientist may be working at finding a cure to the worst disease imaginable.

In its 1987 Instruction *Donum Vitae*, the CDF said:

No *objective, even though noble in itself, such as a foreseeable advantage to science, to other human beings or to society, can in any way justify experimentation on living human embryos or fetuses, whether viable or not, either inside or outside the mother's womb. The informed consent ordinarily required for clinical experimentation on adults cannot be granted by the parents, who may not freely dispose of the physical integrity or life of the unborn child (DV, No. 4).*

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Human embryos obtained *in vitro* are human beings and subjects with rights: their dignity and right to life must be respected from the first moment of their

existence. *It is immoral to produce human embryos destined to be exploited as disposable "biological material".* In the usual practice of *in vitro* fertilization, not all of the embryos are transferred to the woman's body; some are destroyed. Just as the Church condemns induced abortion, so she also forbids acts against the life of these human beings. *It is a duty to condemn the particular gravity of the voluntary destruction of human embryos obtained 'in vitro' for the sole purpose of research, either by means of artificial insemination or by means of "twin fission".* By acting in this way the ***researcher usurps the place of God; and, even though he may be unaware of this, he sets himself up as the master of the destiny of others inasmuch as he arbitrarily chooses whom he will allow to live and whom he will send to death and kills defenceless human beings***" (DV, section I, paragraph 5).

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Applied biology and medicine work together for the integral good of human life when they come to the aid of a person stricken by illness and infirmity and when they respect his or her dignity as a creature of God. ***No biologist or doctor can reasonably claim, by virtue of his scientific competence, to be able to decide on people's origin and destiny*** (DV, Introduction, section 3).

In its very recent Instruction titled *Dignitas Personae* (2008) (DP), the CDF follows up on many of the issues canvassed in DV. The CDF said:

16. In reality, it seems that some researchers, lacking any ethical point of reference and aware of the possibilities inherent in technological progress, surrender to the logic of purely subjective desires and to economic pressures which are so strong in this area. In the face of this manipulation of the human being in his or her embryonic state, it needs to be repeated that "God's love does not differentiate between the newly conceived infant still in his or her mother's womb and the child or young person, or the adult and the elderly person. God does not distinguish between them because he sees an impression of his own image and likeness (*Gen 1:26*) in each one... Therefore, the Magisterium of the Church has constantly proclaimed the sacred and inviolable character of every human life from its conception until its natural end".

35. ....It needs to be remembered above all that the category of abortion "is to be applied also to the recent forms of intervention on human embryos which, although carried out for purposes legitimate in themselves, inevitably involve the killing of those embryos. This is the case with *experimentation on embryos*, which is becoming increasingly widespread in the field of biomedical research and is legally permitted in some countries... [T]he use of human embryos or fetuses as an object of experimentation constitutes a crime against their dignity as human beings who have a right to the same respect owed to a child once born, just as to every person". These forms of experimentation always constitute a grave moral disorder.

...At times, the objection is raised that the above-mentioned considerations would mean that people of good conscience involved in research would have the duty to oppose actively all the illicit actions that take place in the field of medicine, thus excessively broadening their ethical responsibility. In reality, the duty to avoid cooperation in evil and scandal relates to their ordinary professional activities, which they must pursue in a just manner and by means of which they must give witness to the value of life by their opposition to gravely unjust laws. Therefore, it needs to be stated that there is a duty to refuse to use such “biological material” even when there is no close connection between the researcher and the actions of those who performed the artificial fertilization or the abortion, or when there was no prior agreement with the centers in which the artificial fertilization took place. This duty springs from the necessity to remove oneself, within the area of one’s own research, from a gravely unjust legal situation and to affirm with clarity the value of human life. Therefore, the above-mentioned criterion of independence is necessary, but may be ethically insufficient.

Of course, within this general picture there exist differing degrees of responsibility. Grave reasons may be morally proportionate to justify the use of such “biological material”. Thus, for example, danger to the health of children could permit parents to use a vaccine which was developed using cell lines of illicit origin, while keeping in mind that everyone has the duty to make known their disagreement and to ask that their healthcare system make other types of vaccines available. Moreover, in organizations where cell lines of illicit origin are being utilized, the responsibility of those who make the decision to use them is not the same as that of those who have no voice in such a decision.

#### *Participation in In Vitro Fertilization Procedures and Embryo Reduction*

What of the married couple who desperately seek to have a child, and who have unsuccessfully tried every other means of conceiving? Are they entitled to have recourse to *in vitro* fertilization methods? Again, the Church says an emphatic “No”. In the CDF’s Instruction DV, one of the reasons the Church gave for categorically prohibiting participation in such techniques was the loss of life inevitably associated with them:

The connection between *in vitro* fertilization and the voluntary destruction of human embryos occurs too often. This is significant: through these procedures, with apparently contrary purposes, life and death are subjected to the decision of man, who thus sets himself up as the giver of life and death by decree. This dynamic of violence and domination may remain unnoticed by those very individuals who, in wishing to utilize this procedure, become subject to it themselves. The facts recorded and the cold logic which links them must be taken into consideration for a moral judgment on IVF and ET (*in vitro* fertilization and embryo transfer): the abortion-mentality which has made this procedure possible thus leads, whether one wants it or not, to man's domination over the life and

death of his fellow human beings and can lead to a system of radical eugenics.  
(DV, section II).

In DP, the CDF rejected many of the justifications offered for participation in these procedures, and such subsidiary practices as “embryo reduction”:

15. It is often objected that the loss of embryos is, in the majority of cases, unintentional or that it happens truly against the will of the parents and physicians. They say that it is a question of risks which are not all that different from those in natural procreation; to seek to generate new life without running any risks would in practice mean doing nothing to transmit it. It is true that not all the losses of embryos in the process of *in vitro* fertilization have the same relationship to the will of those involved in the procedure. But it is also true that in many cases the abandonment, destruction and loss of embryos are foreseen and willed.

.....[T]he practice of multiple embryo transfer implies *a purely utilitarian treatment of embryos*. One is struck by the fact that, in any other area of medicine, ordinary professional ethics and the healthcare authorities themselves would never allow a medical procedure which involved such a high number of failures and fatalities. In fact, techniques of *in vitro* fertilization are accepted based on the presupposition that the individual embryo is not deserving of full respect in the presence of the competing desire for offspring which must be satisfied.

This sad reality, which often goes unmentioned, is truly deplorable: the “various techniques of artificial reproduction, which would seem to be at the service of life and which are frequently used with this intention, actually open the door to new threats against life.

16..... The blithe acceptance of the enormous number of abortions involved in the process of *in vitro* fertilization vividly illustrates how the replacement of the conjugal act by a technical procedure – in addition to being in contradiction with the respect that is due to procreation as something that cannot be reduced to mere reproduction – leads to a weakening of the respect owed to every human being. Recognition of such respect is, on the other hand, promoted by the intimacy of husband and wife nourished by married love.

The Church recognizes the legitimacy of the desire for a child and understands the suffering of couples struggling with problems of fertility. Such a desire, however, should not override the dignity of every human life to the point of absolute supremacy. The desire for a child cannot justify the “production” of offspring, just as the desire not to have a child cannot justify the abandonment or destruction of a child once he or she has been conceived.

21. Some techniques used in artificial procreation, above all the transfer of multiple embryos into the mother’s womb, have caused a significant increase in

the frequency of multiple pregnancy. This situation gives rise in turn to the practice of so-called embryo reduction, a procedure in which embryos or fetuses in the womb are directly exterminated. The decision to eliminate human lives, given that it was a human life that was desired in the first place, represents a contradiction that can often lead to suffering and feelings of guilt lasting for years.

From the ethical point of view, embryo reduction is an intentional selective abortion. It is in fact the deliberate and direct elimination of one or more innocent human beings in the initial phase of their existence and as such it always constitutes a grave moral disorder.

The ethical justifications proposed for embryo reduction are often based on analogies with natural disasters or emergency situations in which, despite the best intentions of all involved, it is not possible to save everyone. Such analogies cannot in any way be the basis for an action which is directly abortive. At other times, moral principles are invoked, such as those of the lesser evil or double effect, which are likewise inapplicable in this case. It is never permitted to do something which is intrinsically illicit, not even in view of a good result: *the end does not justify the means.*

DP also provides a good summary of the how Catholics should generally respond to the Church's absolute negative moral precepts in their application to all of the afore-mentioned life issues:

The Christian faithful will commit themselves to the energetic promotion of a new culture of life by receiving the contents of this Instruction with the religious assent of their spirit, knowing that God always gives the grace necessary to observe his commandments and that, in every human being, above all in the least among us, one meets Christ himself (cf. Mt 25:40). In addition, all persons of good will, in particular physicians and researchers open to dialogue and desirous of knowing what is true, will understand and agree with these principles and judgments, which seek to safeguard the vulnerable condition of human beings in the first stages of life and to promote a more human civilization.

Contrast the kind of response to the Church's "supreme principle of morals" expected of us by the CDF with the response displayed by Mr. Ryan in his article. It is as if Mr. Ryan believes the No Exceptions Statement to be a mere "guideline" or an "ideal" to "strive for" --- but certainly something that need not always be obeyed; and certainly not the "supreme principle of morals" that is absolutely binding on all Christians. This is a mode of thinking that Pope John Paul II himself condemned in VS. In the course of describing his purpose in writing VS, the Pope lamented the then trendy notion that the Magisterium "is capable of intervening in matters of morality only in order to 'exhort consciences' and to 'propose values', in the light of which each individual will independently make his or her decisions and life choices." (VS, 4.2).

Michael Baker, an Australian lay Catholic lawyer, says that in considering any proposal aimed at reducing the harm of an existing unjust law on abortion, the Catholic legislator must "never

depart from the supreme principle of morals—*do good; avoid evil.*” He says: “In the moral order the supreme principle is *Do good; avoid evil* and its immediate corollary is *You may not do evil that good may come of it.* There is no principle governing the morality of human acts which is more important than this. Every other moral principle must be subordinated to it. It is folly, then, to claim reliance on some subsidiary principle, such as the principle of harm minimization, as providing a reason for departing from that supreme principle.”<sup>45</sup>

### ***Can the Politician’s Rule Be Logically Reconciled With the No Exceptions Statement?***

#### *A Dilemma?*

The same man (Pope John Paul II) who wrote the No Exceptions Statement, published in 1995, also:

1. said, in the very same document: “No circumstance, no purpose, no law whatsoever can ever make licit an act which is intrinsically illicit, since it is contrary to the Law of God which is written in every human heart, knowable by reason itself, and proclaimed by the Church” (EV, 62.4);
2. said in 1988, that such a description of specified behavior, which cloaks the prohibition with a “binding force that excludes always and in whatever situation the possibility of exceptions, is a constant teaching of Tradition and of the Church’s Magisterium which cannot be called in question by the Catholic theologian;”<sup>46</sup>
3. reprimanded the German Bishops, in a 1999 letter, for allowing Catholic agencies to issue “Counselling Certificates” to pregnant women, which they could then present to German authorities to obtain a “non-punishable abortion” under German statute law, pointing out that “[t]he unconditional commitment to every unborn life, to which the Church feels bound from the very beginning, permits no ambiguity or compromise. Here, in word and deed, the Church must speak one and the same language always and everywhere;”
4. in VS (1993), heaped praise on those martyrs of the Church who had in fact chosen to die rather than to do evil (sections 91-93) and specifically said:
  - (a) we have a “duty to refrain from performing even a single concrete act contrary to God’s love and the witness of faith” (91.3);
  - (b) “Martyrdom rejects as false and illusory whatever ‘human meaning’ one might claim to attribute, even in ‘exceptional’ conditions, to an act morally evil in itself. Indeed, it even more clearly unmask the true face of such an act: *it is a violation of man’s ‘humanity’*, in the one perpetrating it even before the one enduring it.” (92.2);

- (c) "...[I]t is always possible that man, as the result of coercion or other circumstances, can be hindered from doing certain good actions, but he can never be hindered from not doing certain actions, especially if he is prepared to die rather than to do evil." (52.2); and
  - (d) "Although martyrdom represents the high point of the witness to moral truth, and one to which relatively few people are called, there is nonetheless a consistent witness which all Christians must daily be ready to make, even at the cost of suffering and grave sacrifice. Indeed, faced with the many difficulties which fidelity to the moral order can demand, even in the most ordinary circumstances, the Christian is called, with the grace of God invoked in prayer, to a sometimes heroic commitment. In this he or she is sustained by the virtue of fortitude, whereby –as Gregory the Great teaches – one can actually `love the difficulties of this world for the sake of eternal rewards.'" (93.2); and
5. endured years of abuse from dissenting theologians over his uncompromising refusal to "soften" the Church's prohibition against the use of unnatural forms of contraception, rebuffing their efforts with the following tough teaching:
- (a) that to hold out for exceptions as if God's grace were not sufficient is a form of atheism (17 September 1983);
  - (b) that denying the doctrine is "equivalent to denying the Catholic concept of revelation" (10 April 1986);
  - (c) that the truth of the doctrine was beyond discussion (5 June 1987);
  - (d) that calling the doctrine into question "is equivalent to refusing God himself the obedience of our intelligence" (12 November 1988); and
  - (e) that "what is being questioned by rejecting that teaching.....*is the very idea of the holiness of God*" (12 November 1988).<sup>47</sup>

Mr. Ryan would have us believe that this same man could not possibly have meant that pro-life activists and elected Catholic officials are prohibited from putting forward legislative initiatives that are "intrinsically unjust laws".

### *Resolving the Apparent Dilemma*

Mr. Ryan fails to recognize that the No Exceptions Statement is itself the key to understanding the truly limited scope of the Politician's Rule, and to reconciling the two passages on a rational basis. When we place the thesis of Finnis, Fisher, Luno et al. beside the No Exceptions Statement, there is an obvious apparent contradiction that screams out for a logical resolution or explanation. When a possible violation of the bedrock Western philosophical "Principle of Non-Contradiction"<sup>48</sup> is identified, there can be only one of two possible outcomes: one of the

statements is false and the other is true, or the two statements can both be true because each refers to a thing of a different nature. In these circumstances, philosophers will often first attempt to “reconcile” two *apparently* contradictory statements by discerning whether or not there are unarticulated underlying premises in the statements that will render both of them “true”.

This principle is potentially violated if the Politician’s Rule is interpreted as permitting an elected Catholic politician to support and vote in favour of a particular legislative measure that, in itself, is an “intrinsically unjust law”. However, there is no violation of this principle if, for example, the Politician’s Rule is interpreted as permitting, in very limited circumstances, an elected Catholic politician to support and vote for (but not actually propose) only those legislative measures that **are not** “intrinsically unjust”, and the No Exceptions Statement is interpreted as prohibiting a politician from **ever** proposing, supporting or voting in favour of legislative measures that **are** “intrinsically unjust”. This is the interpretation that I believe is supported by the Magisterium. I do not see why, as Mr. Ryan apparently does, proposals aimed at “limiting the harm done by” existing abortion legislation or “limiting the number of authorized abortions” have to necessarily include, for example, laws that “admit in principle the liceity of abortion.” There is nothing in EV 73 that suggests that the Politician’s Rule is an **exception** to the No Exceptions Statement. This does not mean that the politician has no choice but to “do nothing”. There are plenty of other legislative initiatives he can pursue that are not “intrinsically unjust”.

The Politician’s Rule is not a true *exception* to the No Exceptions Statement, but rather an *illustration* of why a politician who finds himself caught in a very specific set of circumstances is not imputed with moral responsibility for his actions when the final result of his efforts is legislation that remains an “intrinsically unjust” law. This interpretation, I believe, leaves Catholic moral theology in a coherent state. The content of the “supreme principle of morals” -- - avoid evil, do good --- is not emptied of all meaning, and Catholic politicians are assured that when they are “faced with” a “no-win” scenario not of their own making, they may act in good conscience in supporting and voting for a legislative measure presented to them that will improve, but not totally abrogate, an existing bad law, as long as the measure is not, in itself, an “intrinsically unjust law.”

Catholic moral teaching has consistently held persons “responsible” for their acts only to the extent that they are “voluntary”. It has also consistently held that a bad effect resulting from an action (in this case, taking part in propaganda campaign in favour of, or voting for, a legislative proposal) is not imputable to the actor if it was not willed either as an end or as a means of the action; if the bad effect was not foreseeable and the actor could not have possibly avoided it. In my opinion, therefore, it should not be considered heretical to suggest that the “absolute” No Exceptions Statement should be “read down” to take into account these other principles of the moral law. Unfortunately, for Mr. Ryan, this “reading down” exercise will not provide him the “green light” he is looking to give pro-life activists. A pro-life activist typically has no duties in the legislative process and therefore his actions are always “voluntary”. As I explained previously, his actions and their bad effect are directly willed, and the bad effect can always be avoided by a simple decision to not do the actions. No pro-life activist has a “gun to his head” when it comes to proposing or supporting legislative proposals. With respect to a gestational law, for example, Mr. Ryan must admit that the proposers, in freely choosing, without duress or

compulsion, to make the proposal, would be “directly and deliberately willing” the “bargain” which would see some unborn children losing their inalienable right to life in exchange for legal protection for others.

As for elected Catholic officials, the strict conditions in the Politician’s Rule seem to dovetail perfectly with the afore-mentioned principles. Even so, it would still be virtually impossible (as so it should) for such a politician to satisfy the demands of these moral principles *if* the Politician’s Rule is interpreted as permitting him to support and vote in favour of proposals that are, in and of themselves, “intrinsically unjust laws”.

In my opinion, the Politician’s Rule is based on a very narrowly-defined scenario in which an elected politician finds himself in a situation that he did not himself create, and the only choices he has are abstaining from voting, voting in favour of the status quo, or voting in favour of a “legal measure” that, though not capable of accomplishing a perfect result, has a reasonable prospect of lessening the harm caused by current pro-abortion legislation. In such circumstances, and subject to certain conditions, he would be only “materially” cooperating with the *existing unjust law that will nevertheless remain unjust* by voting for the “measure aimed at minimizing the harm done by” the existing law. In the circumstances, but only in those circumstances, the Church has judged such material cooperation to be licit.

Consider the strict conditions in the Politician’s Rule:

1. there must be existing or proposed legislation ready to be voted on that, according to the Magisterium, is or would be an “intrinsically unjust law”, and more permissive than another, more restrictive, proposal. If there is only *de facto* societal recognition of abortion, the No Exceptions Statement strictly applies, and the Politician’s Rule has no application whatsoever;
2. the more restrictive proposed legislation must be aimed at limiting the number of authorized abortions, limiting the harm done by the more liberal existing or proposed legislation or lessening its negative consequences. This fact should not be assumed, but rather assessed with careful discernment;
3. the elected Catholic official is compelled, by the duties of his office, to “respond” to a call for a vote on the more restrictive proposed legislation presented by others. The CDF’s *Considerations re Homosexual Unions* characterizes this as a situation the elected Catholic official is “faced with”; not a scenario created by him, which would be the case if he actually initiated the proposal. The politician is given “special instruction” only because of his distinct responsibilities in the legislative process; responsibilities not typically shared by ordinary citizens (referenda aside);
4. a vote by the elected Catholic official in favour of the proposal would be decisive for its passage;

5. it is not then possible to overturn (repeal) or completely abrogate the existing (or other proposed legislation); and
6. the elected Catholic official's personal opposition to procured abortion must be well known (the possibility of scandal must be avoided).

Like the rest of us, elected Catholic politicians are not permitted to *propose* a legislative measure that explicitly or implicitly admits in principle the liceity of abortion, or otherwise is an intrinsically unjust law. The No Exception Statement applies, regardless of the circumstances -- i.e., whatever the civil law currently says about abortion. Proposing such a law would be an "intrinsically evil act" on the part of the politician, an act of the kind that the Church and Pope John Paul II have repeatedly and emphatically declared to be "always seriously wrong by reason of their object", independent of circumstances. In EV, 90.3, the Pope said: "I repeat once more that a law which violates an innocent person's natural right to life is unjust and, as such, is not valid as a law. For this reason I urgently appeal once more to all political leaders not to pass laws which, by disregarding the dignity of the person, undermine the very fabric of society."

The Church's teaching on cooperating with evil, and its more flexible approach to "material" cooperation, is not relevant to this scenario. As indicated above, the Politician's Rule applies only where the politician is "faced with" a scenario created by others; it does not authorize the Catholic politician to actually "create" or bring about the situation that would force him to choose between two evil laws.<sup>49</sup> It would make no sense whatsoever for the Pope to include the last sentence of the Politician's Rule if this were not true. It also helps to explain why Cardinal Ratzinger (now Pope Benedict XVI) added to the 1982 statement (quoted by Mr. Ryan without comment) his qualifier that the actions of the politician must be licit in themselves. The more flexible constraints against cooperating behavior that is merely "material" and not "formal" apply only if the person's actions are not immoral in themselves, or are at least morally indifferent. Again, if further clarification of the "proper sense" of the Politician's Rule were required, we need look no further than to the CDF's *Doctrinal Notes* (2002) and *Considerations re Homosexual Unions* (2003). Mr. Ryan's article did not address the content of these Magisterial documents.

The Politician's Rule also does not apply where there is no explicit legislation in place (or a proposed statute or regulation tabled for consideration) that admits in principle the liceity of abortion, but, rather, only *de facto* tolerance of the practice. The Pope never explicitly includes the scenario where there is no explicit legislation governing abortion already in place or being proposed by others; where there is only *de facto* recognition of the practice. The Pope never explicitly says that the elected Catholic politician may actually *propose* or *initiate* the passing of legislation that admits in principle the liceity of abortion. He says only that the elected Catholic politician may "support" or "vote for" "proposals aimed at *limiting* the harm done" by existing legislation and at "lessening its negative consequences at the level of general opinion and public morality" in the specific scenario he lays out.

I would argue, contra Mr. Ryan, that "*de facto* tolerance" is the situation we now have in Canada with respect to abortion.<sup>50</sup> In such a "legal environment", all Catholics, including politicians, are required to "witness to the *whole* moral truth". If someone else proposes legislation that, for

the first time, admits in principle the liceity of abortion, everyone is required to “refrain from any kind of formal cooperation in the enactment or application of such gravely unjust laws”. In particular, “the Catholic law-maker has a moral duty to express his opposition clearly and publicly and to vote against it. To vote in favour of a law so harmful to the common good is gravely immoral.”<sup>51</sup> Any moral demand less rigorous than this would be inconsistent with the terms of John Paul II’s 1999 letter to the German Bishops.

In such cases, the elected politician is *not* relieved of his duty to do everything humanly possible to persuade his fellow politicians to pass legislation that upholds the inalienable right to life of every unborn child. He is never permitted, under any circumstances, to *propose* legislation that would authorize the killing of *some* unborn children, even if it prohibits the killing of other unborn children. He is not permitted to “bargain away” the right to life of *some* unborn children, in favour of the right to life of others. Indeed, the word “inalienable”<sup>52</sup> is robbed of its very meaning if someone is permitted to “bargain” the right away. Any legislative proposal that is the result of any such bargaining would “admit in principle the liceity of abortion”. With respect to other kinds of proposals, such an assessment might not be so obvious. Whether or not any particular proposal would “admit in principle the liceity of abortion” or could be judged “intrinsically unjust” for other reasons can only be determined by a close or precise examination of the language used by the legislative draftsman.<sup>53</sup>

So let’s assume that there is existing legislation that is an “intrinsically unjust” law. Two preconditions to having permission to exercise his vote in favour of an “imperfect” legislative proposal are that it is not possible to overturn or completely abrogate the existing unjust law (to make it a “just law”) and the proposed measure is aimed at limiting the evil aspects of the existing unjust law. I submit that, in any given case, whether or not these pre-conditions have been satisfied is a fact that must not be easily presumed. To the contrary, this is a question that must be carefully examined with prudent judgment or discernment. For example, with respect to the second condition, if the proposal is a “sham” and its only real effect would be to maintain the *status quo* or codify *de facto* “abortion on demand”, then the politician should avoid supporting or voting for the proposal. This was arguably the case in Canada, in respect of Bill C-43 in 1990, and Bill C-338,<sup>54</sup> in 2006. The history of the pro-life movement in the United States suggests a lack of prudent judgment on the part of the “dominant voices”<sup>55</sup> of that movement on the first pre-condition. As Professor Rice wrote, in 1990: “Sometimes, pro-life advocates and legislators convince themselves that an authentically pro-life law cannot be enacted; they themselves then become proponents of compromise measures that validate the anti-life position by implicitly defining the lives of some unborn as negotiable. Perhaps they ask: If we can support exceptions at the bitter end, why can’t we propose them in the first place if we honestly believe they are inevitable? One answer is that, in practical terms, that tactic is not only a predictable loser but also a contributor to the dominance of the anti-life ethic. Every time a pro-lifer proposes a law that would tolerate the execution of some unborn children, his pro-life rhetoric is drowned out by the loud and clear message of his action, that he concedes that the law can validly tolerate the intentional killing of innocent human beings.”<sup>56</sup>

The politician must also take care to ensure that, before casting his vote, his absolute personal opposition to abortion is well-known, so that his positive vote does not have the effect of “scandalizing” the Catholic faithful. In the real world, for the reasons just cited by Professor

Rice, I do not think this would be possible if the Politician's Rule means that Catholic politicians can licitly vote for proposals that are intrinsically unjust laws. If the Catholic politician votes for a gestational law that permits abortions for unborn children under 12 weeks' gestation, with the blessing of the Church, and a 16 year old pregnant Catholic girl seeking an abortion knows this, how does he persuade the girl, at 8 weeks gestation, that it is "wrong" for her to have the abortion? The maxim – Do as I say, and not as I do --- comes to mind. This is another reason why Mr. Ryan's interpretation is not plausible.

In the case of an existing unjust abortion statute, an argument might be made that when an elected Catholic official "acts" strictly within these constraints of the Politician's Rule in supporting or voting for a measure aimed at limiting the harm done by existing legislation, even one that in itself "admits in principle the liceity of abortion", his "act" is not, in substance, in support *of*, or a vote *for*, that legislative measure, but rather a vote *against* the existing law. I respectfully suggest that this is an evasion of the Catholic moral truth that both the *immediate object* and the *proximate end* of an act must be good, or at least morally indifferent, for the act to be considered, in its entirety, licit.

Recall that the *Catechism* says that "the object of the choice can by itself vitiate an act in its entirety. There are some *concrete* acts .....that it is always wrong to choose, because choosing them entails a disorder of the will, that is, a moral evil" (#1755). Recall that #1753 says: "A good intention (for example, that of helping one's neighbor) does not make behavior that is intrinsically disordered .....good or just" and "the condemnation of an innocent person cannot be justified as a legitimate means of saving the nation." Recall that section 9 of the *Declaration on Abortion* said that man "can never be treated simply as a means to be disposed of in order to obtain a higher end." Recall Pope John Paul II's statements in EV, 62.4 and VS, 72.2 . The foregoing further explains Cardinal Ratzinger's 1982 stated condition. In my view, the Cardinal must have known that, unless he added this condition, his statement would have contradicted the Church's moral laws, in more than one respect.

Even the less demanding and secular Anglo-Canadian common law holds that an actor is presumed to intend *all* the foreseeable consequences of his actions.<sup>57</sup> Consider also the words of the last sentence of EV, section 74, paragraph 2: "Each individual in fact has moral responsibility for the acts which he personally performs; no one can be exempted from this responsibility; and on the basis of it everyone will be judged by God himself (cf. *Rom 2:6; 14:12*)."

If this rather complicated and nuanced explanation (not a vote *for* something, but a vote *against* something else) was in fact the basis for the Politician's Rule, one would have reasonably expected a man such as the Pope to have stated it explicitly. In my opinion, the Politician's Rule can be reconciled with other Church teachings only if it is based on the underlying premises that the "less than perfect" proposal is not itself "intrinsically unjust", and the "material cooperation with evil" that is being excused is that in relation to the intrinsically unjust law that remains so even after the improvement, and not any cooperation in relation to the imperfect proposal.

What about an appeal to #1734-37 of the *Catechism*? Can it be reasonably argued that the "support" or vote is "not voluntary"? I think not, and especially so, if the Catholic politician is

the one actually proposing the measure. Can it be reasonably argued that the “bad effect” of the legislative measure should not be imputable to the “actor”? I think not. The bad effect is foreseeable and the “actor” always has the opportunity to “abstain” when called upon to vote for the measure. It is not true that the politician has no choice or voice in the matter. Abstention is a choice. Abstention is the appropriate choice in order to avoid any connection with the bad effect. Any objection that the politician really has “no choice” is fully answered by the following words of the author of EV: “...[I]t is always possible that man, as the result of coercion or other circumstances, can be hindered from doing certain good actions, but he can never be hindered from not doing certain actions, especially if he is prepared to die rather than to do evil.”(52.2)

What about an appeal to the principle of “double effect”? This does not apply in these circumstances. A condition for its application is that the “act” must be, in itself, either good, or morally indifferent. By definition, voting for an “intrinsically unjust law” cannot be good or morally indifferent.

What about the doctrine of permissible material co-operation with evil? Elected Catholic politicians are given a “special status” but even that special status does not entitle them to cooperate *formally* in evil. The Church teaches that formal co-operation with evil is never permissible, in any circumstances. Material co-operation with evil is permissible only if the act is, in itself, either good, or morally indifferent. Again, the “material co-operation” that the Politician’s Rule “excuses” is not the act of voting in favour of the measure that “improves” the existing law *per se* (that would be, in any event, one’s own act, not an act that assists someone else in committing an evil act), but rather the role of the act of voting in helping to produce the ultimate result --- an amended law that may still be intrinsically unjust. The separate act of voting for the amending legislation would be judged by the terms of the No Exceptions Statement. Thus, if the measure is not, in and of itself, an intrinsically evil law, the operation of the foregoing moral principles set out in the *Catechism*, as well as the principles of “double effect” and “material co-operation with evil” logically explain why any remaining “evil effect” resulting from the “amended legislation” should not be imputed to our elected Catholic official. All of this is nonsense if the contrary interpretation is correct.

### *Final Comments*

**“The unconditional commitment to every unborn life, to which the Church feels bound from the very beginning, permits no ambiguity or compromise. Here, in word and deed, the Church must speak one and the same language always and everywhere.”**

These are the words of the late Pope John Paul II in a 1999 letter to the German Bishops, reprimanding them for allowing Catholic agencies to issue “Counselling Certificates” to pregnant women, which they could then present to German authorities to obtain a “non-punishable abortion” under German statute law.

If we are Roman Catholics, we are called to always “witness to the *whole* moral truth” when it comes to the matter of abortion. In a very narrowly defined set of circumstances, a Catholic politician is excused from moral responsibility if his support for or vote in favour of remedial

legislation presented to him does not completely abrogate existing man-made legislation that is “intrinsically unjust”. The “evil effect” that remains is not imputable to him, and his material co-operation with that evil is justified. However, this judgment is conditioned on the remedial legislation not being, in and of itself, an “intrinsically unjust law”; otherwise, he commits an intrinsically evil act, the bad effects of which are directly imputable to him, both as a principal actor and as a formal co-operator in the evil of others (the ones who presented the measure for enactment). Indeed, in EV, paragraph 2 of section 74, Pope John Paul II explicitly confirms: “[F]rom the moral standpoint, it is **never** (my emphasis) licit to cooperate formally in evil.” The moral principles of “double effect” and “material co-operation” have no application, as the politician’s actions are not “good” or “morally indifferent”.

In my opinion, if the pro-life movement in Canada returns to its single-minded focus on building a Culture of Life, in which the inalienable and inviolable right to life of every single human being, from fertilization to natural death, is recognized by society, we can then discuss what principled, incremental legislative measures, if any, are prudent and worthy of effort. That discussion is warranted and not fraught with moral difficulty.

In 1990, before the publication of VS and EV, Professor Charles Rice seemed to hold a completely negative view of *all* “incremental” efforts, whether “principled” or not, while at the same time proposing “piecemeal” initiatives that complied with the demands of section 22 of the 1974 *Declaration on Abortion*. I do not know whether he continues to hold that view. Nevertheless, his following statement remains a good starting point for discussion in 2009:

There is no reason to disparage those who honestly try to get whatever piecemeal restrictions on abortion they can. Unfortunately, that approach will never fully restore the right to life because every time it is used it vindicates the pro-death principle that innocent life is negotiable. It is time for a new approach. We ought to build on the position taken by the four Cardinals in 1974<sup>58</sup> and refuse to support any proposal that allows any abortion. We should introduce no-compromise bills, fight for them and vote against anything less. Surely we will lose at first, but we are losing now through our own acquiescence. When we lose we should come back and fight again and again without compromise. We should not criticize the incremental approach to abortion ‘reform’ as immoral. But the approach in practice has subordinated pro-life principles to the interests and judgment of ...the professional politician. Professional politicians not only do not fear the compromising pro-lifers; they eat them for breakfast. The politicians half-heartedly endorse marginal pro-life proposals in exchange for pro-life endorsement of their re-election campaigns. And the pro-lifers give the politicians a veto power over their agenda by introducing only those proposals likely to get their approval. Solely concerned with re-election, the politicians know they can placate the pro-lifers with small-change rhetoric and guarded endorsements of peripheral bills without arousing the focused opposition of the pro-abortion camp. The ‘practical’ pro-lifers are so devoted to politics as ‘the art of the possible’ that they risk becoming professional politicians themselves.....The political pro-life movement will be counterproductive until it stops playing politics and stands firm on the basic truth that the law can never

validly tolerate the intentional killing of innocent human beings. Our only chance to succeed is through fidelity to the truth. But we should be faithful to the truth on this matter of life-and-death principle whether it brings political success or not.<sup>59</sup>

Professor Rice also said: “There is a difference....between the pro-life advocate who fights the good fight, is beaten down and then, under protest, takes what he can get and the one who himself takes the initiative in promoting laws that allow abortion.”<sup>60</sup> At that time, he did not articulate that this “difference” was a moral difference, but I submit that the very stringent conditions stated in the Politician’s Rule reflect the Church’s teaching that this is indeed a “moral” difference.

The 1982 movie “Sophie’s Choice” helps to illustrate the difference. Meryl Streep’s character was a survivor of a Nazi death camp. While in the camp, the presiding Nazi officer had said to her: “You have a daughter and a son. Tell me which one you want me to kill, and I will spare the other. If you refuse to choose, I will kill them both.” He rebuffed her plea --- “Please do not make me choose!” She chose to save her son, and her daughter was gassed. Eventually, the Nazis killed her son anyway. At the end of the movie, she commits suicide, and it is implied that her guilt and despair over that choice made years before played a role in that final decision. Taken to its logical conclusion, Mr. Ryan’s philosophy would have deemed it licit for her to have gone to the Nazi officer, even before he put the ultimatum to her, and offered up her daughter in exchange for a promise not to kill her son.

Pope John Paul II called upon us to build a “Culture of Life”. In the process, he called us to heroism, even to the point of martyrdom. He called us to unconditional solidarity with every unborn child. He called upon us to not “give in”. He called us to speak, *in word and in deed*, without ambiguity or compromise, in one voice. Mr. Ryan’s article calls us to something quite different, out of what I believe is a spirit of despair and a lack of confidence that God’s grace is sufficient to enable us to faithfully carry on HIS work. The Church has an answer for this too, the same answer it recently gave to childless couples looking for permission to use *in vitro* fertilization procedures and researchers working in this area:

36. There are those who say that the moral teaching of the Church contains too many prohibitions. In reality, however, her teaching is based on the recognition and promotion of all the gifts which the Creator has bestowed on man: such as life, knowledge, freedom and love..... Human history shows, however, how man has abused and can continue to abuse the power and capabilities which God has entrusted to him, giving rise to *various forms of unjust discrimination and oppression* of the weakest and most defenseless: the daily attacks on human life.....

37. In virtue of the Church’s doctrinal and pastoral mission, the Congregation for the Doctrine of the Faith has felt obliged to reiterate both the dignity and the fundamental and inalienable rights of every human being, including those in the initial stages of their existence, and to state explicitly the need for protection and respect which this dignity requires of everyone.

The fulfillment of this duty implies courageous opposition to all those practices which result in grave and unjust discrimination against unborn human beings, who have the dignity of a person, created like others in the image of God. *Behind every “no” in the difficult task of discerning between good and evil, there shines a great “yes” to the recognition of the dignity and inalienable value of every single and unique human being called into existence.*

The Christian faithful will commit themselves to the energetic promotion of a new culture of life by receiving the contents of this Instruction with the religious assent of their spirit, knowing that God always gives the grace necessary to observe his commandments and that, in every human being, above all in the least among us, one meets Christ himself (cf. *Mt 25:40*). (DP, 36-37).

Scripture says: “Greater love than this no man hath, that a man lay down his life for his friends”: (*John 15:13*). What do we call it when someone proposes to lay down not his own life, but the lives of others, for the sake of his friends? Whatever we call it, it certainly cannot be “love” for those whose lives have been judged expendable.

Geoffrey F. Cauchi, LL.B.

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<sup>1</sup> This is what Catholics call the official teaching authority of the Roman Catholic Church.

<sup>2</sup> “A particular problem of conscience can arise in cases where a legislative vote would be decisive for the passage of a more restrictive law, aimed at limiting the number of authorized abortions, in place of a more permissive law already passed or ready to be voted on. Such cases are not infrequent. It is a fact that while in some parts of the world there continue to be campaigns to introduce laws favouring abortion, often supported by powerful international organizations, in other nations-particularly those which have already experienced the bitter fruits of such permissive legislation-there are growing signs of a rethinking in this matter. In a case like the one just mentioned, when it is not possible to overturn or completely abrogate a pro-abortion law, an elected official, whose absolute personal opposition to procured abortion was well known, could licitly support proposals aimed at limiting the harm done by such a law and at lessening its negative consequences at the level of general opinion and public morality. This does not in fact represent an illicit cooperation with an unjust law, but rather a legitimate and proper attempt to limit its evil aspects.”

<sup>3</sup> In my humble opinion, the “question” posed by Mr. Ryan cannot be adequately addressed without a close analysis of applicable provisions of the *Catechism*, the 1974 *Declaration on Abortion*, issued by the Sacred Congregation for the Doctrine of Faith (“CDF”), the CDF’s *Instruction on Bioethics* (1987), the CDF’s *Instruction on Respect for Human Life in its Origin and on the Dignity of Procreation for Human Life in Its Origin* (“*Donum vitae*”), the

2003 statement of the CDF on *Considerations Regarding Proposals to Give Legal Recognition to Unions Between Homosexual Persons*, the CDF 2002 *Doctrinal Note*, the CDF Instruction *Dignitatis Personae* (2008), Pope John Paul II's Encyclical Letters VS (1993) and EV (1995), and Pope Paul VI's Encyclical Letter *Humanae Vitae* (1968). What we get from Mr. Ryan, instead, is a lot of references to secondary sources and the opinions of individual theologians. He thereby denied readers who did not or could not attend the LifeCanada forum in February (many of whom may be leaders in the pro-life movement in Canada) the opportunity to decide for themselves whether or not he is justified in saying that he was "not persuaded" by the arguments of Mr. Harte.

<sup>4</sup> The Pope said that "consequentialism" "claims to draw the criteria of the rightness of a given way of acting solely from a calculation of foreseeable consequences deriving from a given choice." "Proportionalism" "by weighing the various values and goods being sought, focuses rather on the proportion acknowledged between the good and bad effects of that choice, with a view to the 'greater good' or 'lesser evil' actually possible in a particular situation." (VS, 75.1).

<sup>5</sup> John Paul II, Address to 400 theologians – November 12, 1988; quoted in Kippley, Note 22, at p. 143.

<sup>6</sup> Contrary to Mr. Ryan's speculations, it seems to me to be logical that the No Exception Statement, not the Politician's Rule, applies to the situation in Canada in 2009. Mr. Ryan cites John Finnis as authority for his speculative view that the Politician's Rule probably applies to the legal environment in Canada on the subject of abortion, but given the 2003 statement of the Congregation of the Doctrine of Faith on *Considerations Regarding Proposals to Give Legal Recognition to Unions Between Homosexual Persons* ("*Considerations re Homosexual Unions*") it is neither necessary nor appropriate to continue to "speculate" on the question.

Applying the teachings previously expressed by Pope John Paul II in EV to the similar question of proposed laws recognizing same-sex relationships, the CDF gave the following guidance and instruction to Christians, in general, in section 5:

Where the government's policy is *de facto* tolerance and there is **no explicit legal recognition of homosexual unions**, it is necessary to distinguish carefully the various aspects of the problem. Moral conscience requires that, in every occasion, Christians give **witness to the whole moral truth**, which is contradicted both by approval of homosexual acts and unjust discrimination against homosexual persons. .... **Those who would move from tolerance to the legitimization of specific rights for cohabiting homosexual persons need to be reminded that the approval or legalization of evil is something far different from the toleration of evil.**

In those situations where homosexual unions have been legally recognized or have been given the legal status and rights belonging to marriage, clear and emphatic opposition is a duty. One must refrain from any kind of formal cooperation in the enactment or application of such gravely unjust laws and, as far as possible, from material cooperation on the level of their application. In this area, everyone can exercise the right to conscientious objection.

Later in a section of the document with a heading clearly indicating that the CDF was specifically addressing elected politicians, it said (at section 10):

If it is true that all Catholics are obliged to oppose the legal recognition of homosexual unions, Catholic politicians are obliged to do so in a particular way, in keeping with their responsibility as politicians. **Faced with legislative proposals in favour of homosexual unions**, Catholic politicians are to take account of the following ethical indications.

When legislation in favour of the recognition of homosexual unions is proposed for the first time in a legislative assembly, the Catholic law-maker has a moral duty to express his opposition clearly and publicly and to vote against it. To vote in favour of a law so harmful to the common good is gravely immoral.

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When legislation in favour of the recognition of homosexual unions is already in force, the Catholic politician must oppose it in the ways that are possible for him and make his opposition known; it is his duty to witness to the truth. If it is not possible to repeal such a law completely, the Catholic politician, recalling the indications contained in the Encyclical Letter *Evangelium vitae* “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”, on condition that his “absolute personal opposition” to such laws was clear and well known and that the danger of scandal was avoided. This does not mean that a more restrictive law in this area could be considered just or even acceptable; rather, it is a question of the legitimate and dutiful attempt to obtain at least the partial repeal of an unjust law when its total abrogation is not possible at the moment.

Substitute the words “legislation admitting the liceity of abortion” for the words “legislation in favour of the recognition of homosexual unions”, and the reader should readily see that this teaching exposes flaws in Mr. Ryan’s position.

In any event, it is arguable that the striking down of the 1968 abortion law by the Supreme Court of Canada in the 1988 *Morgentaler* decision has returned Canada to the same kind of legal environment described by the CDF as “de facto” recognition of abortion as a right, without explicit legislative recognition. If a new proposal for an abortion law were to be presented to the Canadian Parliament in the future, there is no meaningful difference between that scenario and the scenario described by the CDF: “When legislation in favour of the recognition [of abortion as a right] is presented for the first time in a legislative assembly...” The instruction regarding permissible conduct should be exactly the same. In either case, *someone* is seeking to fill a “legislative void”. It seems to me that, in either scenario, all of us are morally bound to “witness to the *whole* moral truth”. The implications of this moral command are obvious: where no legislation is currently in place, Christians are not permitted to propose or advance legislative initiatives judged to be “intrinsically unjust” for one or more reasons.

<sup>7</sup> Cf. *Considerations re Homosexual Unions*. That is why, contra the views of “Monday morning quarterbacks” such as Suzanne Scorsone and Iain Benson, the Canadian pro-life movement had a moral obligation to withhold its support of, and urge Canadian MPs to vote against, Bill C-43, in 1990.

<sup>8</sup> Black’s Law Dictionary defines “inalienable rights” to mean “rights which are not capable of being surrendered or transferred without the consent of the one possessing such rights. *Morrison v. State*, Mo.App., 252 S.W.2d 97, 101.”

<sup>9</sup> Cf. Michael Baker, Note 40.

<sup>10</sup> *Considerations re Homosexual Unions*.

<sup>11</sup> The *Doctrinal Note* says the following: “[L]egislative proposals are put forward which, heedless of the consequences for the existence and future of human beings with regard to the formation of culture and social behaviour, attack the very inviolability of human life. Catholics, in this difficult situation, have the right and duty to recall society to a deeper understanding of human life and to the responsibility of everyone in this regard. John Paul II, continuing the constant teaching of the Church, has reiterated many times that those who are directly involved in lawmaking bodies have a ‘grave and clear obligation to oppose’ any law that attacks human life. For them, as for every Catholic, it is impossible to promote such laws or vote for them.” The *Doctrinal Note* then goes on to quote Pope John Paul II’s words in EV,73, and then concludes: “In this context, it must be noted also that a well-formed Christian conscience does not permit one to vote for a political program or an individual law which contradicts the fundamental contents of faith and morals.”

<sup>12</sup> *Declaration on Abortion*, paragraph 22.

<sup>13</sup> This proposition is not new. Judie Brown, the leader of American Life League, and a member of the Pontifical Academy for Life, endorses only those efforts that do not abrogate the “personhood principle.” Michael Baker, an Australian lay Catholic lawyer, says that in considering any such proposal the Catholic legislator must “never depart from the supreme principle of morals—*do good; avoid evil.*” See Michael Baker, “*Evangelium Vitae 73 & the Supreme Principle of Morals*”, July 20, 2003 (available at [www.superflumina.org](http://www.superflumina.org)).

<sup>14</sup> Charles E. Rice, *No Exception: A Pro-Life Imperative* (Notre Dame, IN: Tyholland Press, 1990), at p. 91.

<sup>15</sup> Charles Colson, “Living in the New Dark Ages,” *Christianity Today*, October 20, 1989, pages 30, 32; quoted in Rice, Note 14, at page 111.

<sup>16</sup> In any event, this offered justification is plainly rejected by the terms of section 1753 of the *Catechism* and section 9 of the *Declaration on Abortion*. Moreover, Pope John Paul II strongly rejected this aspect of “consequentialist” and “proportionalist” thinking in VS: “The weighing of the goods and evils foreseeable as the consequence of an action is not an adequate method for determining whether the choice of that concrete kind of behaviour is ‘according to its species’, or ‘in itself’, morally good or bad, licit or illicit. The foreseeable consequences of the act, which, while capable of lessening the gravity of an evil act, nonetheless cannot alter its moral species.....Moreover, everyone recognizes the difficulty, or rather the impossibility, of evaluating all the good and evil consequences....of one’s own acts: an exhaustive rational calculation is not possible. How then can one go about establishing proportions which depend on a measuring, the criteria of which remain obscure? (77). This is why that, even if it were a morally relevant argument, Mr. Ryan’s reference to a “study” that purports to show a sharp decline in abortions after a ban with exceptions was introduced in Poland is misguided. See the text at Note 39.

<sup>17</sup> Referred to in John F. Kippley, *Sex and the Marriage Covenant* (Cincinnati: Couple to Couple League, 1991), at page 144.

<sup>18</sup> Even Pope John Paul II admitted that the human arguments used by the Magisterium to support its teachings may have “limitations”: see VS, 110.2.

<sup>19</sup> John Paul II, Address to 400 theologians – November 12, 1988; quoted in Kippley, Note 17, at p. 143.

<sup>20</sup> Msgr. Vincent Foy, *A Search for the Truth: Did Pope Paul VI Approve the Winnipeg Statement* (Toronto: Life Ethics Information Centre, 1997), at page 14: “If Pope Paul VI had approved the Winnipeg Statement, he would have been guilty of the ultimate dissent --dissent from himself. Hence the importance of trying to find the answer to the question: did Pope Paul VI approve the Winnipeg Statement.”

<sup>21</sup>For example, in the *Charter for Health Care Workers* issued by the Pontifical Council for Pastoral Assistance in 1994, the authors state the following:

If the health care worker is faced with legislation favourable to abortion he “must refuse politely but firmly.” “One can never obey a law that is intrinsically immoral, and this is so in the case of a law which admits, in principle, the lawfulness of abortion”.

**As a result, doctors and nurses are obliged to be conscientious objectors. The great, fundamental value of life makes this obligation a grave moral duty for medical personnel who are encouraged by the law to carry out abortions or to co-operate proximately in direct abortion.** [emphasis added]

Awareness of the inviolable value of life and of God’s law protecting it, is antecedent to all positive human law. When the latter is contrary to God’s law, conscience affirms its primary right and the primacy of God’s law: “One must obey God rather than men” (Acts 5:29).

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“It is not always easy to follow one’s conscience in obedience to God’s law. It may entail sacrifice and disadvantages, and one can in no way discount this cost; sometimes heroism is called for if one is to be faithful to these demands. Nevertheless, it must be clearly stated that the road of genuine progress for the human person passes through this constant fidelity to a conscience upholding rectitude and truth.” (n. 143)

As well as being a mark of professional loyalty, conscientious objection on the part of the health care worker, for the right reasons, is highly meaningful as a social condemnation of a legal injustice against innocent and defenseless life. (n. 144).....

**The protection and acceptance of the expected child, its preference to all other values, is a decisive and credible witness which the Christian must give no matter what.** (n. 145)  
[emphasis added]

A direct example of the seriousness with which the Church views even “cooperation with evil” that is not formal, but only “material”, can be found in the controversy over the local Church’s alleged “material co-operation” in Germany’s state-regulated counselling system for abortions, in the late 1990’s. According to German law, a woman cannot obtain an abortion without first obtaining a “Certificate” from a counselling centre certifying that she has received the required pre-abortion counselling. Local Roman Catholic authorities were alleged to have issued such Certificates, thereby “materially co-operating” in the provision of state-provided abortions. This conduct was so objectionable that it moved Pope John Paul II to intervene personally in the matter. In his formal *Letter to German Bishops*, dated June 3, 1999, he stated the following:

In a Letter of 11 January 1998 I offered you.....some guidelines for dealing in the future with the difficult question of the correct relationship of Catholic counselling centres to the State-regulated counselling system..... I invited you to not only **continue unchanged the counselling and assistance you offer to pregnant women in need but also, if possible, to strengthen it further.** [emphasis added] At the same time, for the clarity of our witness to the inviolability of every human life I invited you to **ensure that ecclesiastical counseling centres or those connected with the Church would no longer issue the certificate that, according to the law, is the necessary requirement for obtaining a non-punishable abortion.** [emphasis added]

The German Bishops responded to his first letter with a compromise proposal. He praised them for the “content” of the proposed counselling, but nevertheless asked them to put the following statement on any “certificate” that may be issued at the end of the counselling: “This certificate cannot be used to obtain a non-punishable abortion.” He said:

The plan offers a series of elements which are clearly aimed at the welfare of pregnant women and the defence of unborn children. The integration of counselling with the offer of assistance, and especially the binding commitments regarding support, aid and job placement, make the purpose of the Church’s counselling - the support of women in crisis situation and the defence of unborn children’s right to life — even more clearly understandable in your society than before. **The various opportunities for counselling and assistance must help an even greater number of women in need to turn to Church counsellors or those connected with the Church and to maintain the Church’s effective presence in the counselling of pregnant women.** [emphasis added]

.....With this necessary addition [the added statement], Catholic counsellors and the Church, on whose behalf the counsellors act, are freed from a situation which conflicts with their basic belief regarding the defence of life and with the purpose of their crisis counselling. **The unconditional commitment to every unborn life, to which the Church feels bound from the very beginning, permits no ambiguity or compromise. Here, in word and deed, the Church must speak one and the same language always and everywhere.** [emphasis added].

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If the Pope was so moved to intervene in a case where there was a connection between a counselling certificate and an abortion, how then much more moved would he have been to intervene if he became aware that Canadian Catholic pro-lifers had succumbed to despair and been prepared to actually *propose*, without compulsion or duress or personal cost, a law that was “intrinsically unjust”?

<sup>22</sup> Cf. Michael Baker, “*The Criticism*” (published at [www.superflumina.org](http://www.superflumina.org)). In criticizing similar arguments made by a corresponding priest, Mr. Baker wrote: “But your whole approach to the question of interpretation is, with respect, upside down. One doesn’t start with the words and try and work out what they mean; or try and fit them into some preconceived assessment of ‘what the Pope meant’. One starts with Catholic principle and requires the words to comply with that Catholic principle. The Pope is, after all, writing as the one to whom it is given to interpret and apply the laws of God; the guarantor of unity and strength in the Church; the confirmer of his brethren; the steward of the Kingdom of God on earth and governor of God’s Church.”

<sup>23</sup>The Church has consistently taught that “God alone is the Lord of life from its beginning until its end: no one can, in any circumstance, claim for himself the right to destroy directly an innocent human being”: Congregation for the Doctrine of Faith (“CDF”), *Instruction on Respect for Human Life in its Origin and on the Dignity of Procreation for Human Life in Its Origin (1987)* (Donum vitae or DV), Introduction, section 5. Cf. POPE PIUS XII, *Discourse to the Saint Luke Medical-Biological Union*, 12 November 1944: *Discorsi e Radiomessaggi VI (1944-1945)* 191-192.

<sup>24</sup>Ibid.

<sup>25</sup>Cf. Michael Baker, “*The Criticism*”, available at [www.superflumina.org](http://www.superflumina.org).

<sup>26</sup> Ibid.

<sup>27</sup> “*Turning Point In Pro-Life Cause: Senator Hatch Introduces New Human Life Amendment*”, Volume 2, Number 2, November 1981. They said:

“The amendment states:

A RIGHT TO ABORTION IS NOT SECURED BY THIS CONSTITUTION. THE CONGRESS AND THE SEVERAL STATES SHALL HAVE THE CONCURRENT POWER TO RESTRICT AND PROHIBIT ABORTIONS: **PROVIDED**, THAT A LAW OF A STATE WHICH IS MORE RESTRICTIVE THAN A LAW OF CONGRESS SHALL GOVERN.

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**DEFINITION:**

The Hatch Human Life Amendment is a Constitutional Amendment which would:

- a. Establish that there is no right to an abortion guaranteed by the Constitution;
- b. Reverse the 1973 Roe v. Wade decision;
- c. Specifically give to Congress power with the States to prohibit abortions. It would also allow the States to establish even more restrictive standards of protection for the unborn than set by an Act of Congress.

**NOT A STATES RIGHTS AMENDMENT:**

The Hatch Amendment avoids the dilemma of “States Rights,” namely, the prospect that some states would pass restrictive anti-abortion legislation while other states would not, thus creating abortion havens. By authorizing Congress to pass national legislation applying in all fifty states, this problem can be avoided. However, by also authorizing concurrent state legislation, the amendment makes possible the utilization of

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both federal and state mechanisms for compliance.

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**EXCEPTIONS:**

This approach avoids writing morally unacceptable exceptions to abortions into the Constitution in order to create an amendment that can be passed. Further, since it defers questions regarding the actual legislation prohibiting abortion until a time when only a majority of Congress is needed rather than 2/3, a much more restrictive national standard can actually be obtained with this Amendment.”

<sup>28</sup> Cf. Michael Baker, “EV 73 and the Supreme Principle of Morals” and “Monsignor Luno’s View of *Evangelium Vitae*, paragraph 73”, available at [www.superflumina.org](http://www.superflumina.org)). Baker writes: “Regrettably, Professor Luño lumps together two situations which are specifically distinct: 1) voting with pro abortion lawmakers in favour of their pro abortion legislation because this is perceived as ‘reducing the harm’ of even worse pro abortion legislation that otherwise might ensue; and 2) voting to repeal provisions in a pro abortion statute which will have the effect of limiting the number of abortions which may be carried out under the legislation. The first is morally illicit. The second morally licit. It would seem that the Italian referendum involved the second scenario. The terms of the referendum are not available for perusal. Professor Luño seeks to draw a principle from the conduct over the Italian referendum and to apply it willy nilly to the morally illicit situation exemplified in 1).”

Notwithstanding my concurrence with the view that the “second scenario” is morally licit, I make this judgment somewhat cautiously. In any event, I concur with Michael Baker in his judgment that Luno is in error when he says that an elected Catholic official would be morally **obligated** to vote in favour of such a proposal. The Politician’s Rule does not say this. It uses the word “may”. I am inclined to reserve to myself the right to oppose support for such a proposal, on prudential grounds, and dissent from the terms of any statement similar to that made by the Italian Conference of Bishops on February 11, 1981:

The referendum proposed by the Pro-Life Movement is morally acceptable and binding for the consciences of Christians since it seeks, by overturning some elements in the current abortion law, to restrict, as much as possible, its extent and to reduce its negative effects. It does not follow, however, that the remaining elements in the civil law in favour of abortion may be seen as morally licit and may be followed.

Michael Baker comments: “There was criticism of this statement by many Italian Catholics including criticism by an Italian Senator, Raniero La Valle. He is quoted by Professor Luño as having said, that if the referendum of the Pro-Life Movement were to prevail, Italy *would be the first and perhaps the only country in the world in which abortion was introduced... with the active participation of Catholic voters.* Whether this criticism is justified depends, as has been stated above, on the terms of the referendum. If it sought to *eliminate* provisions which *permitted* some abortion, the referendum was justified and the fact that it would leave other pro abortion provisions in place could not amount to ‘introducing’ abortion and the statement of the Italian Conference of Bishops was right. It would be otherwise, however, if the referendum had involved the people *voting for a law which permitted any abortion.*”

The referendum to repeal the 1978 law was rejected by two thirds of Italy’s eligible voters.

<sup>29</sup> Consider whether the Church has even “toughened” its stand on this type of amendment since 1974. See *Catechism*, section 2273: “...the law **must** provide appropriate penal sanctions for every deliberate violation of the child’s rights.”

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<sup>30</sup> Hayes, Hayes, Kelly, Drummey, Catholicism and Ethics (Norwood, MA: C.R. Publications, 1997): “Those who share in an evil act sometimes claim that they did so unwillingly (“I am personally opposed to abortion, but...”). If they were truly unwilling, and truly opposed to abortion, they would not have assisted in the evil act at all, say by voting for or promoting easier access to abortion.” (page 71).

<sup>31</sup> See Note 28. “*EV 73 and the Supreme Principle of Morals*”.

<sup>32</sup> John A. Hardon. S.J. The Catholic Catechism (New York: Doubleday, 1981), at p. 332.

<sup>33</sup> This is why Anglo-Canadian common law, which can trace its roots to Catholic moral tradition and a Thomist understanding of the natural law, has never recognized “necessity” as a valid defence to a charge of murder. Wouldn’t it be ironic if it were true that Catholic moral demands, on this point, were now less rigorous than secular Canadian law?

<sup>34</sup> *Considerations re Homosexual Persons* (2003).

<sup>35</sup> I trust no pro-life activist will have the nerve to argue that “grave reasons” include (1) alleviating his own sense of frustration or despair over his failure to convince politicians to enact any kind of law protecting the unborn; or (2) protecting the right to life of other unborn children.

<sup>36</sup> William E. May in his An Introduction to Moral Theology (Huntington, Indiana: Our Sunday Visitor, 1991), at pp. 132-138.

<sup>37</sup> *Ibid.*

<sup>38</sup> *Ibid.* Conversely, St. Thomas taught that *apparent* exceptions to the specific norms (e.g. killing in self-defence) are in truth *different kinds of human acts, specified by different objects of human choice* (May, Note 31, p. 134). In other words, the “circumstances” surrounding a particular human act may “enter into the very ‘object’ chosen” in such a way ---- the object, end, and circumstances may be so intertwined --- that the “object” of the act is transformed into something quite different. As May says, “[I]n legitimate self-defense the ‘object’ of choice is not something evil but something good: the protection of one’s own life from unprovoked attack. The act that one chooses is not an act of killing but an act properly and legitimately called an ‘act of self defense.’ The death of the assailant, while foreseen, is not properly what one is setting out to do: it is not the ‘object’ of one’s choice. Rather it is an unavoidable effect of the chosen act of self-defense, but an effect that is not directly and deliberately willed.” (p. 135).

This explains why killing in self-defence is not a true *exception* to the precept against killing the innocent: *Catechism*, section 2263. I make the simple observation that this is obvious, as the word “innocent” is an *internal* qualifying circumstance that changes the very nature of the “human act of killing”. Killing a human being is not an intrinsically evil act --- that judgment depends on ends and circumstances *external* to the description of the act; killing an *innocent* human being *is* an intrinsically evil act that no circumstance or end external to the description of the act can justify.

<sup>39</sup> Cf. Michael Baker (www.superflumina.org) (as to the Australian experience) and Alexandra Colen, “*Politics, Abortion, and the Welfare State*”, Human Life Review, Vol XXI, No. 4, Fall 1995, p. 79 (as to the western European experience).

<sup>40</sup> Congregation for the Doctrine of Faith (“CDF”), *Instruction on Respect for Human Life in its Origin and on the Dignity of Procreation for Human Life in Its Origin* (1987) (“DV”), Introduction, section 5. Cf. POPE PIUS XII, *Discourse to the Saint Luke Medical-Biological Union*, 12 November 1944: *Discorsi e Radiomessaggi VI* (1944-1945) 191-192.

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<sup>41</sup> This does not refer to those special cases involving medical procedures (e.g. removal of a cancerous womb that contains a non viable unborn child, the case of an ectopic pregnancy) that indirectly and unintentionally result in the death of an unborn child, which are permitted under the doctrine of “double effect”. The act is, in itself, a good act.

<sup>42</sup> “*Address to the Congress of the Family Front and of the Association of Large Families*”, AAS 43 (1951), 857-59.

<sup>43</sup> Quoted in John F. Kippley, Note 17, at page 143.

<sup>44</sup> *Ibid.*, at page 144.

<sup>45</sup> Michael Baker, “*Evangelium Vitae 73 & the Supreme Principle of Morals*”, July 20, 2003 (published at [www.superflumina.org](http://www.superflumina.org)).

<sup>46</sup> See Note 43.

<sup>47</sup> See Note 44.

<sup>48</sup> See “Aristotle on Non-contradiction” (Stanford Encyclopedia of Philosophy)(first published on-line on February 2, 2007): “According to Aristotle, first philosophy, or metaphysics, deals with ontology and first principles, of which the principle (or law) of non-contradiction is the firmest. Aristotle says that without the principle of non-contradiction we could not know anything that we do know. ....

Aristotle's main and most famous discussion of the principle of non-contradiction occurs in *Metaphysics* IV (Gamma) 3–6, especially 4.....

There are arguably three versions of the principle of non-contradiction to be found in Aristotle: an ontological, a doxastic and a semantic version. ....

The second version is as follows: “It is impossible to hold (suppose) the same thing to be and not to be (*Metaph* IV 3 1005b24 cf.1005b29–30).” Although this version is ambiguous as it stands, it is best understood as the claim that it is impossible to hold the same thing to be *F* and not to be *F* &c.

As a descriptive account of human psychology, this may not seem plausible. People surely have inconsistent beliefs and many of them. Must one believe the consequences of one's beliefs? These remain difficult issues in modern philosophy of language and epistemology. Can one knowingly believe an outright contradiction? Here, Aristotle might retort, and he does so retort with respect to Heraclitus, that people can say the words, but cannot really believe what they are saying (*Metaph* IV 3 1005b23–26).

An alternate way of understanding the second formulation is to treat it not as a descriptive claim about human psychology, but as a normative claim, a claim about what it is rational to believe. On this view, it is not that one cannot believe that *x* is *F* and not *F* &c, but that one cannot rationally do so.”

According to James Sullivan, the results of denying the principle of non-contradiction include, among others, the following: “To deny the necessity and validity of the Principle of Non-Contradiction would be to deprive words of their fixed meaning and render speech useless....It would mean the destruction of truth, for truth and falsity would be the same thing.... It would destroy all thought, even opinion, for its affirmation would be its negation... Everything would be equally true and false at the same time, so that no opinion would be more wrong than any other even in degree”: Sullivan, James, B., “An Examination of First Principles in Thought and Being in the Light of Aristotle and Aquinas”, Ph. D. Dissertation, Catholic University of America, Washington, D.C., (Catholic University of America Press, 1939), pp. 121-122; quoted in a post by “Josh” at the website Quadrivium at “The Nature of Truth (Part 2): The Principle of Non-contradiction.

<sup>50</sup> See Note 6. In any event, it is arguable that the striking down of the 1968 abortion law by the Supreme Court of Canada in the 1988 *Morgentaler* decision has returned Canada to the same kind of legal environment described by the CDF as “de facto” recognition of abortion as a right. If a new proposal for an abortion law were to be presented to the Canadian Parliament in the future, there is no meaningful difference between that scenario and the scenario described by the CDF: “When legislation in favour of the recognition [of abortion as a right] is presented for the first time in a legislative assembly...” The instruction regarding permissible conduct should be exactly the same. In either case, *someone* is seeking to fill a “legislative void”. It seems to me that, in either scenario, all of us are morally bound to “witness to the *whole* moral truth”. The implications of this moral command are obvious: where no legislation is currently in place, Christians are not permitted to propose or advance legislative initiatives judged to be “intrinsically unjust” for one or more reasons.

<sup>51</sup> Cf. *Considerations re Homosexual Persons*. That is why, contra the views of “Monday morning quarterbacks” such as Suzanne Scorsone and Iain Benson, the Canadian pro-life movement had a moral obligation to withhold its support of, and urge Canadian MPs to vote against, Bill C-43, in 1990.

<sup>52</sup> Black’s Law Dictionary defines “inalienable rights” to mean “rights which are not capable of being surrendered or transferred without the consent of the one possessing such rights. *Morrison v. State, Mo.App.*, 252 S.W.2d 97, 101.”

<sup>53</sup> Cf. Michael Baker, Note 39.

<sup>54</sup> This was a Bill introduced by Paul Steckle (MP). This Bill would have made those who perform an abortion after twenty weeks gestation guilty of an indictable offence and liable to imprisonment of up to five years, or (else) jail for up to two years and/or a fine up to \$100,000. However, it also provided for exceptions that would permit abortion beyond 20 weeks “to save the life of a woman whose life is endangered by a physical disorder, physical illness, or physical injury, including a life-endangering physical condition caused by or arising from the pregnancy itself” and also to “prevent severe, pathological, physical morbidity of the woman.” This Bill purported to offer some protection to children beyond 20 weeks gestation, but even that “protection” is based on a myth --- the myth that there are sometimes physical indications for abortion. In my view, the overall effect of the Bill would have been to enshrine in law the current *de facto* abortion on demand legal environment, as, historically, so-called “health” exceptions have been ignored by the abortion industry, with impunity. At the time, I therefore publicly said: “The [unprincipled] ‘incremental approach’ has been likened by some to establishing a beachhead from which ultimate victory can be launched. In my view, enacting Bill C-338 would instead be akin to helping your enemy build its fortifications and bunkers along the beach before making your landing attempt.” Mr. Ryan and others, on the other hand, lobbied educational pro-life groups to support this Bill.

<sup>55</sup> I have no doubts that here, Professor Rice was speaking of the leadership of the National Right to Life Committee, and not the American Life League.

<sup>56</sup> Rice, Note 14, at page 85. Professor Rice goes on to say: “The incremental approach should be rejected not as immoral but as counterproductive.” He wrote this before the publication of VS and EV, in which Pope John Paul II, once and for all, in my opinion, put an end to the notion that the Church could not define any particular act as “intrinsically evil”. In my opinion, the “unprincipled” incremental approach should now be rejected as both immoral and counterproductive.

<sup>57</sup> The text in question is *Quaestiones Quodlibetales*, 9, q. 7, a. 2. Janssens, “Norms and Priorities in a Love Ethic,” *Louvain Studies* 6 (1978), 232; McCormick, “Moral Theology since Vatican II: Clarity or Chaos?” *Cross Currents* 29 (Spring, 1979) 21; reviewed by William E. May in his *An Introduction to Moral Theology* (Huntington, Indiana: Our Sunday Visitor, 1991), at pp. 132-136. May says that these theologians claim that the text in question “shows clearly that [St. Thomas Aquinas] recognized that an act which, materially considered, involves the deformity of some nonmoral evil, can be made right by circumstances in which the nonmoral goods

achieved will outweigh the nonmoral evils involved and make the act to be morally right and good.” (page 132). Ultimately, William May rejects this assertion, claiming that Janssens and McCormick selectively ignored another passage in the same text, in which St. Thomas “affirms what they deny: the truth of moral absolutes and the intrinsic evil of certain sorts of human acts as specified by their moral objects.” (page 135). One of those absolutes or specific norms is the prohibition against “killing the innocent”. May points out that St. Thomas agreed that, if circumstances could change the moral quality of an act, they had to completely take away the disorder or deformity of the act, so that “object” of the actor’s choice is not something evil but something good. However, this did not apply to intrinsically evil acts. The example he gave of the “apparent exception” was an act of self-defence. In essence, the circumstance of the person killed being an unlawful aggressor changes the nature of the act completely. Of course, killing the aggressor is a completely “different kind of human act”, and therefore is not a true “exception” to the absolute prohibition against killing the innocent. May notes that, elsewhere, St. Thomas gave another example of how circumstances could change the nature of a person’s act: “[F]or St. Thomas, the object of Abraham’s act, when he was willing to obey God’s command to sacrifice his son Isaac, was not the ‘killing of an innocent person’ but the ‘carrying out of God’s just command.’” (page 134). However, I make the simple observation that God stopped Abraham from carrying out the act, so even this comment is not evidence that God would ever will us to kill the innocent, or bargain away their right to life for the sake of others.

<sup>58</sup> The American bishops responded to the *Roe v. Wade* decision of the U.S. Supreme Court in 1973 quickly and admirably. Rice (Note 14, at pp. 88-90) reports the following: “When Cardinals Krol, Manning, Cody and Medeiros testified before the Senate Subcommittee on Constitutional Amendments on March 7, 1974, they affirmed their uncompromising insistence on full restoration of constitutional protection to the unborn child. Cardinal Medeiros insisted that ‘The constitutional amendment should clearly establish that, from conception onward, the unborn child is a human person in the terms of the Constitution.....The constitutional amendment should restore the basic protection for this human right to the unborn, just as it is provided to all other persons in the United States.’

The Cardinals declined to endorse the constitutional amendment proposed by Senator James L. Buckley (R.-N.Y.) because it would have allowed abortion ‘in an emergency when a reasonable medical certainty exists that the continuation of the pregnancy will cause the death of the mother.’ Cardinal Cody tentatively said, ‘The Senator’s proposal here, as it stands, I don’t think would be justified on moral grounds.’ Cardinal Medeiros, responding to a question about the Buckley Amendment, said, ‘if direct taking of life and intentional taking of life to save the life of the mother, is what we have in mind, then it is not licit..... I could not endorse any wording that would allow for direct abortion.’ In his prepared statement, Cardinal Medeiros said, ‘A ‘states rights’ amendment which would simply return jurisdiction over the abortion law to the States, does not seem to be a satisfactory solution to the existing situation. Protection of human life should not depend upon geographical boundaries.....The Constitution should express a commitment to the preservation of all human life. Therefore, the prohibition against the direct and intentional taking of innocent human life should be universal and without exceptions.....As for an amendment, which would generally prohibit abortion but permit it in certain exceptional circumstances, such as when a woman’s life is considered to be threatened, the Catholic Conference does not endorse such an approach in principle and could not conscientiously support it.’”

Rice goes on to comment that that “1974 position was later repudiated when the Catholic Bishops endorsed the states’ rights Hatch Amendment in 1981; abortion later became one pro-life issue among many in a ‘seamless garment’ of Catholic ‘pro-life’ positions on war, poverty, capital punishment and other matters. ....Suffice it to say that the four Cardinals were right in 1974 and their position is right today.’

A partial Amen to that. Did the Church’s teaching “change” after 1974? I think not. For reasons already expressed, I do not agree that the American bishops repudiated any moral principle in supporting the Hatch Amendment. One can argue whether such support was prudent, but not that it was inconsistent with the earlier judgment of the four Cardinals as to the liceity of previous proposals. Nevertheless, some people in the Church later changed their personal opinions on such matters. What changed was that Bishops around the world started taking guidance on life issues from the protégés of dissenting moral theologians who filled the seminaries in the post *Humanae Vitae* era, instead of from the Magisterium. As John Paul II noted, in VS (1993): “In fact, a new situation has come about *within the Christian community itself*, which has experienced the spread of numerous doubts and objections of a human and psychological, social and cultural, religious and even properly theological

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nature, with regard to the Church's moral teachings. It is no longer a matter of limited and occasional dissent, but of an overall and systematic calling into question of traditional moral doctrine, on the basis of certain anthropological and ethical presuppositions. At the root of these presuppositions is the more or less obvious influence of currents of thought which end by detaching human freedom from its essential and constitutive relationship to truth." (VS, 4.2).

<sup>59</sup> Rice, Note 14, at pp. 110-111.

<sup>60</sup> Ibid., at p. 111.