

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

(Short Version for Newsletter)

(Part 1)

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 (the “No Exceptions Statement”)¹

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 Magisterium² 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.”

To the contrary, the Church condemns as “intrinsically unjust” most of the legislative initiatives that Mr. Ryan supports, and absolutely prohibits all Catholics, including Catholic pro-life activists and politicians, from supporting or voting for those that are “intrinsically unjust”. This moral duty binds the consciences of all, regardless of the circumstances. In other words, it applies whether there is mere “*de facto* tolerance” (i.e. “in fact, but not in law”) or societal acceptance of abortion, or there is existing or proposed legislation “on the table” that explicitly admits the liceity of abortion. In either case, direct and formal participation in the enactment of an intrinsically unjust law is always sinful. No-one is permitted to do evil in the hope of accomplishing good. This is the practical effect of the No Exceptions Statement.

Mr. Ryan adopts an interpretation of EV that, in my opinion, renders the No Exceptions Statement binding only on Catholics who live in a “legal environment” that exists in no democratic nation on the earth, except perhaps Malta. 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”, but only if proposed in a legal environment in which abortion is already absolutely illegal. In Canada, we have no legislation “permitting” abortion, but because abortion is tolerated for any and all reasons, he says that we have a “law” that permits abortion, and that pro-lifers could, for that reason, morally propose legislation that “permits” abortion for some, but not all, of the reasons that are currently tolerated. In virtually every other democratic nation, there is legislation that “permits” abortion in at least some circumstances.

According to Mr. Ryan and a few theologians, in such a legal environment a proposed law that authorizes abortion in specific circumstances doesn't really "permit" abortion in those circumstances if the *existing* law already "permits" it in those circumstances. This is how they seek to avoid having their preferred legislative initiatives stymied by a prohibition that appears, on its plain terms, to be absolute. In my opinion, this is a mere rationalization and not a reasonable argument.

It ignores the plain meaning of the phrase "admits the liceity of abortion" in paragraph 22 of the Congregation for the Doctrine of the Faith's ("CDF") 1974 *Declaration on Procured Abortion*, on which the No Exceptions Statement is based. It seems to me that the plain meaning of this phrase is any legislative initiative that explicitly or implicitly acknowledges or declares or concedes that abortion is a licit procedure. This is given as an "example" of an "intrinsically unjust" law in both the *Declaration* and EV, but this is by no means the only example the Church has used to illustrate an "intrinsically unjust" law. In the context of abortion, these other examples include laws that discriminate against unborn children on the basis of gestational age, circumstances of conception, or on criteria based on health or capacity for normal development, or that "declare to be right what would be opposed to the natural law."³ More generally, one fairly recent Magisterial document has set out somewhat general criteria to discern which legislative provisions are "intrinsically" unjust. These include legislative provisions that are not "consistent with the natural moral law", not "recognized by right reason", or do not respect the "inalienable rights of every person."⁴ Another includes in this category a law "which contradicts the fundamental contents of faith and morals."⁵ In any event, the most important point is that you will not find in EV, or *Veritatis Splendor* (the "Splendor of Truth" or "VS"), or any other Magisterial document any suggestion that such laws are NOT unjust if the existing "legal environment" is such that the liceity of abortion is already admitted. But why would they? Doesn't "intrinsically" mean that the surrounding circumstances are irrelevant?

Pope John Paul II perhaps best explained what the Church means when she describes a legislative initiative or behavior as "intrinsically" unjust or illicit when he wrote, in VS: "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". He further explains: "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!" But, with respect, these statements reflect an outdated mode of moral thinking that has been clearly rejected by the Church. Even as Mr. Ryan admits, early in his analysis, that 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*)", he then proceeds to ignore it. Yet, this is a

principle that the *Catechism of the Catholic Church* (the “*Catechism*” or “CCC”) now presents as a Biblical “prime directive” for all Christians. The *Catechism* says: “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.....”⁶

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.

Mr. Ryan’s interpretation is also not supported by the historical record of how Church leaders have previously responded to the question of whether Catholics may support the kind of “partial measures” he asserts are morally acceptable.⁷ For example, in 1974, the American Bishops rejected outright a number of “compromise” initiatives offered in response to the 1973 *Roe v. Wade* decision of the U.S. Supreme Court because they were inherently immoral. Recall that this decision found in the U.S. constitution an alleged “right to abortion”, thereby creating the “legal and historical environment” that Mr. Ryan alleges “makes all the difference”.⁸

Another example was the expressed position of the American Bishops on the proposed Hatch Amendment of 1981, and the commentary thereon of then Cardinal Ratzinger (now Pope Benedict XVI). 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 Procured 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 explaining why the Hatch Amendment could be licitly supported, and distinguished it from other kinds of initiatives that could not be licitly supported.⁹ They praised the Hatch Amendment because, unlike other initiatives, it did not include “immoral exceptions” to a total ban on abortion. All it would have done was reverse the effect of *Roe v. Wade* and give both the federal government and the states concurrent authority to give legal protection to the unborn. The Bishops did not consider the “historical and legal context” in which such initiatives might be proposed. Instead, they reviewed the text of the initiatives. Mr. Ryan appears to take the position that it would be wrong to not consider the “historical and legal context”. However, in 1982, Cardinal Ratzinger, in his response to questions posed by the American Bishops regarding the morality of supporting the Hatch Amendment, endorsed the Bishops’ approach to the question, but was very careful to state

a qualifying condition for licit “intervention” in a “situation judged evil to correct it for the better”----- the intervening “action” must not be “evil in itself”. Mr. Ryan quotes this comment from the Cardinal, but doesn’t acknowledge that, on its face, it renders his interpretation of the No Exceptions Statement implausible.

It seems to me, then, that the No Exceptions Statement is an absolute moral requirement that binds the conscience of every Catholic, regardless of the “legal and historical context”. Mr. Ryan’s interpretation reduces it to a mere guideline, applicable only in the most rare of circumstances ---- where all abortions are already banned by existing law. In essence, in his view, it only requires one to not propose anything that would make the current “legal environment” worse.

The contrary position argued by Colin Harte at the Life Canada Forum (February 2009) is not excessively rigid, or a modern example of Donatism or Puritanism, as Mr. Ryan suggests. To the contrary, it is a firm teaching of the Roman Catholic Church. To accept Mr. Ryan’s interpretation, one would have to believe that Pope John Paul II, in EV 73, embraced the very kind of moral thinking (the teleological ethical theories (proportionalism, consequentialism)) he roundly condemned in his VS only two years previously as being not within the Catholic moral tradition. 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). He also confirmed that, “from the moral standpoint, it is *never* licit to cooperate formally in evil.”(EV, 74.2). To *propose* a law that would authorize the killing of unborn children under the age of 12 weeks’ gestation, or those who were conceived in rape, would be to *do evil*, and to participate in a propaganda campaign in favour of it would be to *formally cooperate* in the evil act of another. Has the definition of the word *never* changed?

It may be that Mr. Ryan and others have been misled by their reading of the text of EV, 73.3, to take the No Exception Statement out of context. I will call this text, which immediately follows the No Exceptions Statement, the Politician’s Rule.¹⁰

I think it is a grave error to rely upon the Politician’s Rule as support for the view that Canadian pro-life activists can morally propose legislative initiatives that are intrinsically evil, for at least two reasons.

First of all, the Politician’s Rule is *exclusively directed to elected Catholic officials*. This should be clear to anyone who reads the very words of the Politician’s Rule, but even if Mr. Ryan 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).¹¹ In that statement, the CDF is careful to separate the guidance it gives to Catholics in general from that it gives to Catholic legislators.

If someone else proposes legislation that, for the first time, for example, admits in principle the licity of abortion or recognizes homosexual unions, the Church insists that ALL Catholics are

required to “refrain from any kind of formal cooperation in the enactment or application of such gravely unjust laws”. (III,6). This instruction is consistent with the moral requirements of the No Exceptions Statement.

On the other hand, the Politician’s Rule from EV is mentioned only in a Part with the following heading: “IV. Positions of Catholic Politicians With Regard to Legislation In Favour of Homosexual Unions”. Consider also the CDF document entitled *Doctrinal Note on Some Questions regarding the Participation of Catholics in Political Life* (2002) (“*Doctrinal Note*”).¹² 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” Mr. Ryan supports, at least to the extent that any such initiative is an intrinsically unjust law, as defined by the Magisterium.

Second, the Politician’s Rule applies only in a scenario where intrinsically unjust legislation is already in place or is poised to be passed. Despite Mr. Ryan’s protestations to the contrary, the Rule speaks of explicit legislation, and not “law” in some vague “*de facto*” sense. There is no legislation in Canada permitting abortion and no such legislation “ready to be voted on”, and therefore the Politician’s Rule does not apply to the Canadian situation. The Church has clearly identified a meaningful distinction between a legal environment of mere “*de facto* tolerance” and one of positive legislative recognition of the practice of abortion.

In the case of mere “*de facto* tolerance”, when an intrinsically unjust legislative initiative is proposed, “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.”¹³ In such a “*de facto* tolerance” legal environment, all Catholics, including pro-life activists and politicians, are duty-bound to “witness to the *whole* moral truth”.

In any event, it would be a grave mistake to view the Politician’s Rule as an *exception* to the No Exceptions Statement. In and of itself, the No Exceptions Statement speaks to “means” and not “ends”. We have to look elsewhere for guidance on what “ends” Catholic Politicians are duty-bound to seek, but once the ends are identified, the No Exceptions Statement places overriding restrictions on the means they can use to achieve those ends.

Every Catholic legislator has a moral duty to do everything humanly possible to persuade his fellow legislators to pass legislation that upholds the inalienable right to life of *every* unborn child. This is a duty separate and distinct from the duty to avoid formal cooperation with the passage of an intrinsically unjust abortion law. Relying on the teaching of Saint Thomas Aquinas,¹⁴ the Church has consistently acknowledged that she cannot expect the “civil law” to “cover the whole field of morality or to punish all faults” for it “must often tolerate what is in fact a lesser evil, in order to avoid a greater one.” (CDF, *Declaration on Procured Abortion* (1974), 20). However, she has also consistently insisted that the State has a positive duty to intervene to “preserve each person’s rights and to protect the weakest” (Ibid., 21).¹⁵ In EV, 71, Pope John Paul II confirmed that the “civil law must ensure that all members of society enjoy respect for certain fundamental rights which innately belong to the person, rights which every positive must recognize and guarantee. First and fundamental among these is the inviolable right to life of every innocent human being.” He went on to say that the “doctrine on the necessary

conformity of civil law with the moral law is in continuity with the whole tradition of the Church.” (EV, 72.1). It therefore follows that “civil leaders”, “called to serve the people and the common good,....have a duty to make courageous choices in support of life, especially through *legislative measures*.” (EV, 90.3).

A rather obvious limitation on this duty is the scope of what is practically possible in the circumstances. Pope John Paul II encouraged all Christian political leaders to “make those choices which, taking into account what is realistically attainable, will lead to the reestablishment of a just order in the defence and promotion of the value of life.” (EV, 90).

Now that we have identified the “ends” of a Catholic Politician’s efforts on the subject of abortion, we are compelled to look to the No Exceptions Statement and other Magisterial sources for guidance on the permissible means to achieve those ends. These sources give clearly “negative” guidance. A Catholic legislator 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”¹⁶ 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 both “admit in principle the liceity of abortion” and fail to respect the “inalienable rights of every person”. 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.¹⁷

The Politician’s Rule from EV, 73.3, doesn’t negate the moral imperative of the No Exceptions Statement or any other Magisterial teaching. Instead, it simply illustrates the application of the Church’s doctrine of “**material** cooperation in the evil actions” of others. This doctrine is to be contrasted with her doctrine on “**formal** cooperation in evil actions”. The former kind of act is an act which is not in itself wrong, but it assists another person to commit an evil act; the latter kind of act involves direct participation in the evil act of another. The former kind of cooperation is not always sinful. Its morality depends on its “proximity” to the other person’s evil act and whether there is a proportionate reason. If the connection is proximate, the cooperation is sinful. If the connection is remote, “the cooperation is morally allowable for a proportionately serious reason and is not sinful.”¹⁸ In contrast, formal cooperation is **never** permissible. Voting for a “ban on abortions after 12 weeks” proposed by another legislator would be direct participation in an “intrinsically” evil act, and therefore would constitute “formal”, not merely “material”, cooperation with the evil act of the person proposing passage of the intrinsically unjust law.

That is why, in the same document, EV, we see Pope John Paul II repeatedly state “that a law which violates an innocent person’s natural right to life is unjust and, as such, is not valid as a law” and, for that reason, “urgently appeal once more to all political leaders not to pass laws which, by disregarding the dignity of the person, undermine the fabric of society.” (EV, 90.3). That is why, in the same document, we see him confirm that, “from the moral standpoint, it is **never** licit to cooperate formally in evil.”(EV, 74.2). That is why, in the Politician’s Rule, we

see him assuring the Catholic Politician who acts in accordance with it that he is not illicitly cooperating with the existing unjust law that remains unjust, despite his efforts. From the absence of any negative comment on the fact that the Catholic politician *directly participates* in the passage of the “less than perfect” measure by supporting or voting for it, we can only conclude that the underlying premise of the legitimate application of the Politician’s Rule is that the “measure” itself is not intrinsically unjust. Moreover, the “assurance” that the cooperation is not sinful must mean that the connection between the vote for the measure and the existing unjust law is “remote” and that the politician has a proportionately serious reason for voting for the measure. That “reason” would be the fact that he has met all the strict conditions described in the Politician’s Rule. If the “yes” vote could be in respect of a measure that is in itself an intrinsically unjust law, consistency would demand that the Pope condemn such conduct as impermissible formal cooperation with the evil actions of another. This he did not do. Moreover, if the No Exceptions Statement is as weak as Mr. Ryan claims it is, one might wonder why the Pope would have even bothered to have written the Politician’s Rule, with all of its strict conditions, or at all.

The No Exceptions Statement does not, in and of itself, prohibit any Catholic from proposing or supporting legislative measures that are not “intrinsically unjust”, but where, as in Canada, there is “*de facto* tolerance” or general societal acceptance of the practice of abortion, other important moral principles also come into play. Before Catholic pro-life activists and politicians commit themselves to supporting any particular initiative, they ought to consider the previously mentioned moral duty a Catholic legislator has to do everything he can do, legislatively, to end the practice of abortion. It seems to me that there is always a danger that we will become so focused on the “partial measures” that eventually we will convince ourselves to “give up” the ultimate goal of actually ending the practice of abortion. This danger should always factor into a politician’s decision.

Provided all of these conditions are met, *and* the “partial measure” is not, in itself, an “intrinsically unjust” law, supporting or voting for such a measure is morally licit and is consistent with an approach I have called “Principled Incrementalism”.¹⁹ In a separate article in the next newsletter, I will attempt to explain why and how various types of initiatives either satisfy or do not satisfy the demands of the No Exceptions Statement.

For the pro-lifers who share my enthusiasm for this approach to the problem, Principled Incrementalism is certainly NOT a “do nothing” approach.²⁰ Mr. Ryan’s attempted justification for supporting a “ban after 12 weeks” initiative---- “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” ----is therefore based on a false premise and a false choice ----between doing nothing and “doing evil to accomplish good”. This kind of “consequentialist” thinking was specifically rejected by Pope John Paul II in VS, and is inconsistent with the terms of #1753 and #1756 of the *Catechism* and section 9 of the CDF’s 1974 *Declaration on Procured Abortion*. Moreover, his projections of success are merely speculative.²¹

Did Pope John Paul II mean to include proposed legislative measures that are “intrinsically unjust” when he wrote the Politician’s Rule? 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*.

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.²² 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.

Some of our colleagues in the pro-life movement in Canada continue to lobby us to *initiate* a "bargain" in which the lives of some unborn children would be sacrificed for the sake of other unborn children. 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.

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."²³ 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*"²⁴ 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.

(end of part I)

¹Citing as his authority paragraph 22, Congregation for the Doctrine of the Faith (“CDF”), *Declaration on Procured Abortion* (1974): “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....”

² This is what Catholics call the official teaching authority of the Roman Catholic Church.

³ *Declaration on Abortion*, paragraphs 11, 12, 14 and 21.

⁴ CDF, *Considerations Regarding Proposals to Give Legal Recognition to Unions Between Homosexual Persons* (2003), III, 6 (“*Considerations re Homosexual Unions*”).

⁵CDF, *Doctrinal note on some questions regarding the participation of Catholics in political life* (2002), II, 4. (“*Doctrinal Note*”).

⁶The publication of VS in 1993 was a “watershed” moment in Catholic moral theology. Between the publication of *Humanae Vitae* in 1968, and 1993, many theologians who dissented from the Church’s teaching that contraception was an intrinsic evil, continued to publicly teach that it was doubtful that the Church *ever* had the competency to definitively declare any conduct to be *intrinsically evil*. They continued to teach the heresy that a good Catholic could nevertheless engage in evil conduct if he had a “proportionate” good reason for doing so, or if the “consequences” were reasonably expected to be good. As Pope John Paul II noted: “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 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).

The Pope went on to explain his purpose in writing VS: “to set forth, with regard to problems being discussed, the principles of moral teaching based upon Sacred Scripture and the living Apostolic Tradition, and at the same time to shed light on the presuppositions and consequences of the dissent which that teaching has met.” (VS, 5.3).

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).

⁷ The example of the Italian Bishops’ advice on the 1981 referendum on the Italian abortion law does not necessarily undermine this statement. 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). 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.

⁸ Charles Rice (see Note 20, 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.’”

⁹ “*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.

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 both federal and state mechanisms for compliance.

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."

¹⁰ "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."

¹¹ *Considerations re Homosexual Unions*, III, 6.

¹² 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,73.3, 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.”

¹³ Cf. CDF, *Considerations Regarding Proposals to Give Legal Recognition to Unions Between Homosexual Persons* (2003), III, 6 (“*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, in 1990, to withhold its support of, and urge Canadian MPs to vote against, Bill C-43.

¹⁴ St. Thomas Aquinas taught that the purpose of human law “is to lead men to virtue, not suddenly but gradually.” Therefore, although human law should promote virtue, it should not mandate every virtue or forbid every vice. If it did, human law could become “despised” and “greater evils” could result from its unenforceability. Notwithstanding this general principle, he held that civil society had a positive duty to pass laws to prohibit and punish the intentional killing of the innocent: “Now human law is framed for a number of human beings, the majority of whom are not in perfect virtue. Wherefore human laws do not forbid all vices, from which the virtuous abstain, but only the more grievous vices, from which it is possible for the majority to abstain; and chiefly those that are to the hurt of others, without the prohibition of which human society could not be maintained; thus human law prohibits murder, theft and suchlike.”: St. Thomas Aquinas, *Summa Theologica*, I, II (Benzinger edition, 1947), Q. 96, Article 2.

¹⁵ See also CCC, #2273 and #2266; CDF, *Donum vitae* III.

¹⁶ 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.”

¹⁷ Cf. Michael Baker, Note 15.

¹⁸ Hayes et al., *Catholicism and Ethics* (Norwood, MA: C.R. Publications, 1997), at pp. 71-3.

¹⁹ 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).

²⁰ 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.”: Charles E. Rice, *No Exception: A Pro-Life Imperative* (Notre Dame, IN: Tyholland Press, 1990), at p. 91.

²¹ Pope John Paul II forcefully 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 appears to ignore the contrary experience of all the western European countries, and Australia, which all have similar laws. They have both *de facto* abortion on

demand and widespread societal indifference to the plight of the unborn. 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).

²² Pope John Paul II, *Letter to German Bishops*, dated June 3, 1999: “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.”

²³ 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.”

²⁴For example, the *Charter for Health Care Workers* issued by the Pontifical Council for Pastoral Assistance in 1994, in which 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). ...**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]