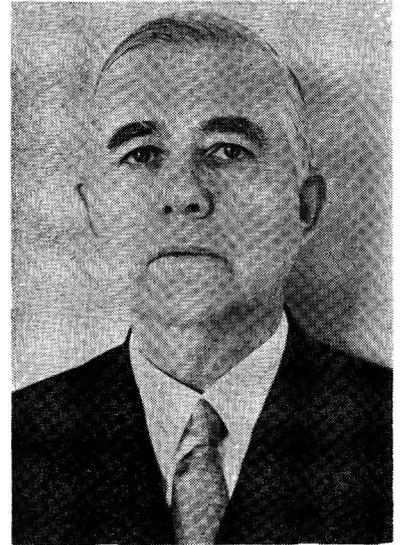




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IDEOLOGICAL SOURCES OF THE LOSS OF THE RESPECT FOR LIFE

The state has the duty to protect human goods of common concern. This is considered in our civilization to be its foremost task and obligation. Human life has always ranked highest among the goods that it is incumbent upon the state to protect. The goods to be protected are recognized as such by the society and in the case of states which have democratic institutions for legislation, it is society which ultimately determines what are to be considered as «human goods of common concern» and what hierarchical order is to be presupposed in the setting up of guidelines for the settling of conflicts between such goods.

Positive law is by necessity based upon pre-positive considerations. Even the «Pure Doctrine of Law» (Kelson) has to recognize this fact, although he puts it into parenthesis as being outside of the domain of the law

proper. The real question in dispute is this: Is there a pre-positive order of norms which the legislator must respect when shaping the positive law in accordance with the given conditions of the society for which he is legislating, or is he the mouthpiece of what has been aptly termed the «opinion climate» (Erich Voegelin) in a given society at a certain time? The doctrine of «natural law» holds that there is an order, an objective hierarchy of goods, although it may in certain respects be far from being obvious to all, thereby requiring renewed efforts in its formulation in order to be convincing to each new generation. The second position is that of relativism: there is no such order, and what is to be considered a good, particularly a good of common concern, the protection of which falls within the duty of the state, is but a matter of what happens to be

so considered in any particular society at a particular time.

Making the prevailing opinion—climate the absolute of which the legislator has to be aware and to which he has to conform, is already an ideological deviation from the true meaning of democracy. One of the basic presuppositions of democracy is the assumption that the combined effort of many may find out better what is right and true than a single ruler would be able to. But how does that take place in a pluralistic society? If the state should protect certain rights in terms of an hierarchical order, how is the legislator supposed to arrive at that which has to be protected? Is he not bound above all else to respect the personal freedom of the citizens, including the right to arrive at their own decisions in moral questions? Has the individual legislator a right to impose his own moral convictions through the law making process upon the rest of society? In the «Declaration on Religious Freedom» of Vatican II freedom from coercion in matters of morality is very much stressed. Some Catholic writers have based their support of liberalisation of abortion on such argumentation; for instance Robert F. Drinan, S. J. (*The Morality of Abortion Laws* in «The Catholic Lawyer» Vol. 14, Nr. 13, 1968 — an ASA-Reprint). The Supreme Court of the United States, declaring the Texas anti-abortion law unconstitutional, goes to great length to stress the right of privacy, i. e. of private judgement of conscience. In short: morality should not be legislated.

The plausibility of this and similar arguments rests upon a basic confusion concerning the relationship between morality and jurisprudence. In both morality and legisla-

tion, we deal with certain goods which, in the case of the law, appear under the aspect of the right of persons to enjoy those goods; freedom, one's own dignity, personal property, and, above all, life, are among those goods. The legislator has not only the duty to see to it that they are protected, he also has to indicate limitations within which they can and should be protected and particularly which hierarchical order should prevail in their protection. The goods to be protected must furthermore be a matter of public concern. Life of the members of the community has always been considered to be foremost among the goods to be protected by the state.

In our context we call a good something which is a «bonum honestum», that means, which is of intrinsic value. Also in morality we are concerned with goods of such character. We are not speaking now of *moral values* such as justice, generosity, veracity, but of that which is of moral concern — that which in human action may be «at stake». With Dietrich von Hildebrand we speak of *morally relevant values*. They are on the side of the object of our actions. As we relate ourselves to them, our actions — and already the internal positions we take, such as mercy or contempt, love or hate etc. — take a positive or negative moral character. Human dignity would be an example of this type of value. It is «at stake» when a person shows contempt towards another person, f. i. because of his race. The contemptuous man has refused to give the value-response, which the morally relevant good of human dignity deserves. «Value-response» is at the root of morality. To have shown this is one of the great achievements of von Hildebrand's moral philosophy (Cf.



Christian Ethics, New York, 1953 and later).

The same values may be morally relevant and juridically relevant, but by far not all belong to both categories. If somebody refuses to talk to somebody else out of racial houghtiness, he will be morally guilty, but the law will not consider him a criminal. The state's protection of human dignity is restricted to the prevention of certain well-defined actions by which the respective good would be violated. The law can restrain people from certain actions, but not from certain attitudes, although they may be immoral. The law is interested basically, though not exclusively, in safeguarding *rights* which are connected with certain goods — my right to life is connected with the good which life represents, because it is of intrinsic value. To this same intrinsic value, as to a morally relevant value, an action, an attitude, a feeling may give the corresponding value response, thus making the act, attitude, or feeling morally good. The fact that a great number of goods which the state takes under its protection, because they are connected with the rights of those persons over which the law extends its protection, are at the same time morally relevant values, does not mean that the protective action of the state becomes an intrusion into the privacy of moral decisions. This is what is meant when the above mentioned Declaration on Religious Freedom speaks of the necessity of government action «which is to be controlled by juridical norms which are in conformity with the objective moral order». (Documents of Vatican II, ed. Abbot, p. 686).

That a good is morally relevant and that a person has to consider its moral relevance, does not in any way predetermine whether or not that same good is also juridi-

cally relevant. While it is obvious that what is morally relevant is not for that reason excluded from the realm of juridically relevant goods (for example, taking the life of another without cause is both morally and juridically wrong), one cannot argue the other way around, namely that something, because it is morally relevant, is therefore also juridically relevant, as in the above mentioned example of racial-grounded dislike being morally wrong yet not punishable by law. This and only this is meant by the rule that the state should refrain from legislative coercion of morality. This also is what is meant when the above quoted document proclaims religious freedom and exempts religious convictions from the realm of state intervention.

Applied to our problem: The fact that the mother would act in a morally wrong way when aborting the fetus in her womb, leaves the question whether the state has to protect unborn life, still untouched. That question arises in the context of the problem whether that child to be has a right to his or her own life. If it has, then the state has to intervene and make abortion illegal, no matter whether or not the mother is well informed about the character of what is at stake, namely that the life of the unborn as an independant entity is endowed with that most elementary of values, existence. This is what the law-maker has to consider: is the fetus a part of the mother about which she has the right to dispose or is it not. This is a matter of evaluation.

Now it must be noted that both the process of evaluation and its subject matter, in our case the objective value character of unborn life, have been subjects of ideological dispute. When using the word «ideological»

we are referring here to «ideas», not so much as they have been formulated by great thinkers, but as they have gained a sort of public presence and can be regarded as real motivating forces within a given society. They usually —not always— originate with philosophers and other thinkers, but have undergone some transformation and simplification by popularizing writers, mass-media, etc. But very often logical consequences of the positions taken by the original thinkers come to the fore and captivate the public mind.

It is my contention that it is ideological processes rather than developments in factual knowledge which have brought about the loss of respect for life, resulting in an opinion-climate which is permissive with respect to abortion. «Only against better knowledge or at least only on the basis of persistent injudiciousness can medical knowledge be invoked, to show that in abortion we are not dealing with human life». (W. Waldstein, *Die Fristenlösung— ein Verfassungsbruch* in «Die Furche», Dec. 15, 1973). Contemporary science has established beyond any doubt the continuity of life of an individual being from the event of conception up to the actual birth. The development of science has definitely ruled out any honest attempt of drawing a line between something indistinct, a «mere blob of cells» and the nascent human being. This has been acknowledged by such prominent abortionists as Judith Jarvis Thomson (*A Defense of Abortion* in «Philosophy and Public Affairs» I. 1. Princeton, 1971, p. 47).

We first turn to the problem of *evaluation* as such for it has an all-pervasive importance and significance in the general opinion-climate in which the abortion discus-

sion takes place. That we are as «free» in our evaluations as we are in our likes and dislikes, rather than being bound by an objective order of intrinsically valuable goods, is the assumption upon which practically all discussions are based. Value relativism is the silent presupposition forming the climate of contemporary ethical dispute.

In the context of the ideological roots of value relativism we must refer to Kant. Although Kant was far from advocating relativism, the consequences of his philosophy can be seen as an example of the way in which readers, interpreters and popularizers of a philosophy often draw out the consequences of concepts — consequences which the philosopher himself was not prepared to draw. By declaring that «objects» should not play any role in ethics, that our moral behaviour should leave out any consideration of an order of what we would call «morally relevant values» (as distinct from moral values), he has in praxis overtaxed the role of conscience. That conscience has to be informed, before it can admonish us to avoid evil, is widely forgotten; that very often «common sense» informs us about the morally relevant values, or education, or counsel, makes us forget, that in critical cases ideologies may, and very often do, distort the immediate awareness of the value-character of what we have to deal with in daily life. Ideologically distorted views cannot lead a person to a valid working of his or her conscience. This is particularly important for an understanding of the arguments relating to privacy, i. e. to the private conscience of the pregnant woman urged or tempted to abort the fruit of her womb. She will not have an adequately informed conscience if she thinks little of the value of



life unborn. She may act in good conscience if she has accepted the prevailing view that nascent life is indeed of no objective value. But it must be stressed that a reference to the right of «privacy» predecides the question under discussion, for by implication it declares: there is no objective order. Therefore everybody must make up his or her own value-order and then —of course— should follow their own consciences according to whatever happens to be the outcome of their own evaluations. In other words, the prevailing ideology declares, value relativism has to be accepted as an absolute truth. This not only is a self-destructive contradictory statement, it also has disastrous consequences for a constitutional state. By leaving the decision of the question: «What are the basic rights which the state has to protect?», to the «privacy» of the individual, it abdicates its responsibility precisely at the point which demands constitutional protection.

But Kant has contributed in still another way to the ideological corrosion which has its practical effects in the abortion-discussion. Here, too, the effect was by no means intended, but it is actually a logical consequence of the Kantian doctrine. Kant denies that, when we consider questions of essence and meaning, we are talking about the real world. Knowledge, he says, is not receptive, but active. We *give* the world its meaning. When we make statements of universality and intrinsic necessity, we do not state how it is, independently of us. We rather «apply» what is beforehand —a priori— ready in the human mind. Kant tries to safeguard his doctrine from opening the gates of unmitigated subjectivism, but in the public mind his teaching has resulted in the general be-

lief: It is *man* who gives to reality its meaning. «And an ever evolving meaning» Hegel would add. When we speak of «meaning» it is obvious that questions of value are also involved. Hence the widespread contention has arisen that values have no objective character whatsoever and that they are subject to historical development. Therefore: Norms are what we —or the spirit of the times— make them to be and, consequently: societies are free to make the code they wish to follow. Brought down to concrete political terms: Under the instigation of shifting political opinion, majorities will conform the law to what happens to be the prevailing opinion of the law-makers, even if it is a majority of 4 votes —as it was in Austria— which decides that unborn life shall not be considered a good to be defended by the state. The very basic justification of a democratic process of legislation has here been turned upside down, for this justification relies on the validity of the argument, that in the long run the combined effort of many will find out not only what are the most effective means to certain given ends, but also, what are the ends, i. e. the basic goods which the state has to protect. Prof. Waldstein, whom I have already quoted, is perfectly right: simple majorities cannot decide about the basic rights of man, (particularly when, as is the case in Austria, they concern rights which the European Convention on Human Rights has *expressis verbis* incorporated in its code, such as the Right of Life of the unborn, and when this Declaration has been made a part of the Constitution, as in the case of Austria).

Turning from the question of evaluation to that of what has to be evaluated, the Life of the Unborn, we are confronted not with

a medical but with an ontological question, because we have seen that medically no line can be drawn between life in its incipient and its fully developed state.

It is a strange, but undisputable fact, that ontologically it is idealistic philosophy which prepared public opinion to become obscured about the intrinsic value of human life unborn, although from quite another angle materialistic, particularly hedonistic arguments have worked in favour of the abortionists. The idealistic trend tends to misjudge the body-spirit unity of the human being. The hedonistic trend pertains to the question of the basic aim of human existence.

Descartes with his dualism, severing the unity of the human being into the duality of two substances, body and spirit, has prepared the way to considering only those human beings fully human who are able to exercise the powers of the mind. A gnostic trend—as a sort of undercurrent—runs through modern philosophy, having its ancestry in ancient times. Kant again must be mentioned when he taught that man's condition as a «being in nature», a bodily being, explains his lack of integrity, his ability to do evil, while as a rational, spiritual, moral agent he would always act according to his own categorical imperative. In clear text this means: Man as an *incarnate* spiritual being, as a person in the flesh, is a somewhat corrupt person for that very reason. This is a typically gnostic position. The Logos incarnate was without sin, and pure spirits may be full of pride. It is not the body which makes us to be *fallen* creatures. Dualism tends to consider as human only the actualization of what is spiritual in man. The classical metaphysics of man, however,

speaks of the substantial unity, in which the «soul» gives that unity. The soul is both, the principle of organic functions and of mental-personal activities. The absence of a soul in the unborn where no spiritual activities are yet to be noticed, can be taught only when one is ready to suppose that man has two souls, one for his organic functions and one for his spiritual activities. That personal functions are not only united with, but grow out of organic functions already in the fetus, is best shown by the experiment of making the newborn listen to the rhythm of the mother's heartbeat. The fact that the newborn baby is calmed by listening to that heartbeat, but disturbed by another, proves that the fetus has already specific experiences. Also, the psychic trauma of the incubatorbaby points to the presence of more than organic functions in the fetus. *When* they begin, cannot be determined. All the characteristics of the fully developed human being are already in his genetic code — not as in a blueprint serving for the construction of a house, but as concretely determined *real* potencies. Contemporary science has shown the untruth of the idealistic philosophy of man, as it is stated for instance by Hegel «Man has to make himself, precisely because he is spirit; he has to shake off nature. The spirit is its own result». (*Philosophy of World-History*, I, edit. Lasson p. 35). — This ideological distortion of the nature of man, appears—only with another signature—also in Marx who has man create himself by his labour and particularly considers him to be human by his being a member of the body social. As an individual he is nothing. No wonder that the unborn individual is of little concern for a socialist state. Consequently we find abortion and anti-abortion laws



promulgated without any consideration for the Right to Life in the communist part of the world, but merely under the view-point of population-regulation.

Liberalism —ideologically closely linked to Utilitarianism— considers the welfare of the individual as the supreme good and the one aim of life. The state, accordingly, has to subordinate everything to this one good. It is particularly the absence of discomfort for which the individual and the state according to these ideologies have to strive. The absence of suffering is therefore placed higher than existence. The greatest happiness of the greatest number is the declared goal of Utilitarianism, happiness being understood in a quite superficial way, very close to what we would term «pleasure». That fulfilling a task heavy with hardship, such as caring for invalids, deformed babies, retarded children, can be the source of deep happiness; that beatitude and suffering are very close to one another, is not seen in this superficial view of human existence. We live today in a social climate which is pervaded by this form of Hedonism. To have fun is all that seems to matter, overriding even existence itself. And yet in truth: «To be or not to be, *that* is the question!».

Hedonistic considerations, the refusal to undergo any hardships, not to forego an easy-going type of life, are very often at root of the decision to abort, although it should not remain unmentioned that society has a great responsibility to come to help of mother and child when they are in distress. Ideologically we are confronted in the case of the hedonistic approach to life with a tremendous loss of those deeper considerations which are intimately connected with the religious understanding of human existence.

The loss of meaning which goes hand in hand with the loss of religious belief, acts as a sort of vacuum. All kinds of permissiveness, sexualisation, drug-mania and the whole assortment of ills which plague contemporary society, rush in to fill the yawning emptiness. The absence of meaning in life is at the root of many decisions to abort, rather than to take up the tremendously meaningful burden of giving life to a new human being and taking care of the new born.

Robert Spaeman has rightly pointed out the role which the general ideology of emancipation plays in our context. Man is claiming more and more independence and «augmented with this are the claims of people to have individual satisfaction... But increased is also the tendency to brutality towards anything which is in the way of one's own claims... but these claims may conflict... Emancipation is quite often another word for Hedonism. It knows a certain solidarity, but only the solidarity of those who are capable of enjoyment and do enjoy... The other rather should not exist at all». («Zeitschrift für Rechtspolitik», March, 1954). The «permissive society» permits a great deal of comfort, and is often ready to alleviate suffering, but is unconcerned about Life. One speaks of the «quality of life» and is unmindful of Life itself. The not yet born and those on the way out, the elderly people, they are the outcasts of that society — of our society!

In present day society the hedonistic ideology combines with another, originating with the tremendous success of technology and the Nietzschean «Will-to-power-Ideology». It is the rampant idea of human mastery over nature. Man tends to think that

he can and may do and make everything he wants. The structure of our artefacts, of our technological achievements have crept into the cosmos of Nature and have transformed it largely into a second world. Technological power-madness has its specific ideological consequences. Particularly in the medical field, where in fact tremendous progress has been achieved, man tends to forget the aim while developing the means in ever greater perfection. The line becomes blurred between the surgeons power and duty to perform operations aiming at preserving life and his capacity of killing nascent or declining life with perfect precision and in a gleaming clinical atmosphere. Is it not almost so, that certain members of the medical profession are looking forward to the

day when they will be able to manipulate by their own doings that tremendous work of nature, the formation of a human being in the mothers womb? In the meantime surgically perfect abortion and euthanasia are proof of our mastership over nature by interfering with its greatest work in a destructive way. The triumph is diabolical.

We have considered but some of the ideological sources of the loss of respect for life. It is strange, how they all combine, though they are opposites in many cases, as it is with Idealism and Materialism. And yet it is not so strange. Once man has placed himself under the dictate of collective rebellion against his Creator, all the demons are set loose and their name is «Legion».



resumen

El Estado tiene el deber de proteger los valores que atañen al ámbito común de los hombres. La legislación tiene como fin determinar cuáles son esos valores y cuál es su orden jerárquico para poder resolver aquellos casos de conflicto que puedan surgir. Indudablemente, algunas consideraciones previas han de formar parte de las deliberaciones del legislador antes de que éste pueda resolver cuestiones de Derecho positivo. Según la interpretación relativista propia de la manera democrática de legislar, es el clima de opinión prevaleciente lo que, por fuerza propia, establece las normas, en oposición al punto de vista clásico, que considera como la máxima fuente de los principios y fines que han de guiar la legislación positiva, un sistema de normas objetivas.

La abolición de las leyes en contra del aborto se basa, por una parte, en el principio de la intimidad, como ha sucedido en el caso de la interpretación del Tribunal Supremo de los Estados Unidos, y, por otro lado, en la acción de minar, ideológicamente, el respeto por la vida humana como tal. Por intimidad se entiende en este contexto que ha de prevalecer el juicio privado de la madre acerca de la moralidad o inmoralidad del aborto, por la razón de que la moralidad no debiera estar sometida a la legislación. Este planteamiento parte de una confusión básica: los valores que han de ser protegidos por la ley son una cosa, y los que se han de respetar «privadamente» otra muy distinta. En lo que se refiere al contenido mismo de estos valores, se ha de apuntar que hay cierta superposición. El hecho de que un valor sea moralmente relevante no es prueba de su relevancia desde el punto de vista legal, ni tampoco demuestra lo contrario. No es propio de la ley preocuparse por la inmoralidad de la madre que acude al aborto: lo que sí es importante ante los ojos de la ley es la vida del feto. La única pregunta es ésta: ¿tiene la vida humana embrionaria el derecho de ser protegida por la ley, al igual que, según el consenso general, lo tiene la vida humana después del parto? Si se le concede al feto este derecho, entonces el Estado habrá de actuar en consecuencia, sin considerar si la madre reconoce su obligación moral o no. Esta es la norma general del derecho criminal tal como se aplica en otros casos. Las «consideraciones privadas» sólo pueden ser tratadas a la luz de las circunstancias atenuantes.

Lo que está en tela de juicio, entonces, es la evaluación, por parte de los legisladores, de lo que es la vida antes de nacer. La Ciencia apunta, inequívocamente, que el fruto del vientre es, desde el mismo momento de la concepción, una unidad biológica independiente, cuyo único destino es el de llegar a constituir un ser humano completamente desarrollado. ¿Qué valor, entonces, se le debe atribuir a esa vida?

Kant encauzó —aunque sin quererlo— la discusión en la dirección del relativismo, con su declaración de que es el hombre quién *da* sentido (y valor) a la realidad, aunque *encuentra* en ella «un sentido en constante evolución», como añadiría Hegel más tarde.

El planteamiento de que la vida del no nacido no debe considerarse como un valor merecedor de la protección del Estado halla sus raíces en la opinión de que los valores no tienen existencia objetiva alguna y de que las normas son lo que nosotros mismos hacemos que sean. Visto que médicamente no se puede señalar /a demarcación entre la vida en su fase incipiente y en su estado de desarrollo completo, la determinación de si la vida humana tiene en sí un valor intrínseco o



no es, por consiguiente, en el último análisis, una cuestión ontológica. Resulta extraño ver que las filosofías idealistas que siguen el dualismo cartesiano y que declaran que sólo es humana la vida espiritual, y las filosofías hedonistas y materialistas con sus doctrinas acerca de los fines básicos de la vida, se hayan unido para dar más ímpetu al movimiento hacia la proscripción de las leyes que protegen al no nacido.

Las filosofías idealistas tienden a reducir la vida humana a sus manifestaciones espirituales. Aún así, no es justificable el aborto, porque el feto manifiesta, desde los primeros momentos, señales de vida propiamente humana, que es por tanto espiritual.

La tendencia hedonista inherente en la sociedad permisiva de hoy considera como valor máximo de la humanidad la llamada «calidad de vida». Se entiende por «calidad de vida» el placer personal y la ausencia del dolor. De acuerdo con esta filosofía, se espera que el legislador subordine absolutamente todo—incluso la vida misma en sí— a este otro valor que es considerado como valor absoluto. En vista de que se ignora desde esta perspectiva el sentido positivo del sufrimiento y del sacrificio, el hecho de ahorrarle a la madre molestias llega a parecer más importante que el derecho a la vida que tiene el ser humano no nacido.

La ideología de la «emancipación» acarrea de hecho una brutalización, porque los fines egoístas del individuo se persiguen a menudo en detrimento de aquellos que se encuentran en situaciones menos favorecidas: los no nacidos y los ancianos. Finalmente, todo el concepto de la aspiración al poder, tal como fue propagado por Nietzsche, ha tenido mucho éxito en una sociedad dirigida por tecnócratas, y ha producido el ídolo del perfecto cirujano-asesino, al mismo tiempo que ha promovido todavía más la opinión de que la mujer embarazada debiera tener el control absoluto sobre el fruto de su vientre.