

Evangelium Vitae 73: The Catholic Lawmaker and the problem of a seriously unjust law (2002)¹

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1. Introduction: partial repeal or reduction of harm?

Number 73 of the Encyclical *Evangelium vitae* treats the problem of conscience faced by members of a legislative assembly when their vote would be decisive for the passage of a more restrictive law on abortion to replace a more permissive law already in force or coming up for a vote. The solution given is well known. In such a hypothetical case "when it is not possible to overturn or completely abrogate a pro-abortion law, an elected official, whose absolute personal opposition to procured abortion was well known, could licitly support proposals aimed at limiting the harm done by such a law and at lessening its negative consequences at the level of general opinion and public morality. This does not in fact represent an illicit cooperation with an unjust law, but rather a legitimate and proper attempt to limit its evil aspects" (John Paul II, Encyclical Letter *Evangelium vitae* [25 March 1995], n. 73).

The basic intention of this solution is sufficiently evident when considered in its context. Moral theology has the task of explaining its foundation more completely, so that this section of the Encyclical may be understood without confusion and be applied correctly to analogous moral questions. One might ask, for example, if the moral liceity of the solution depends entirely on the subjective intention of limiting harm and, if so, whether one must then consider as morally licit every strategy aimed at reducing or minimizing harm, independent of the means used. One can also ask whether it would be licit, based on the theory of the lesser evil, to be responsible for the passage of a law or the application of a strategy which, while being unjust in the abstract, would effectively

reduce evil and thus be considered *hic et nunc* as morally acceptable or defensible.

In order to answer such questions, let us first examine the context in which the solution of *Evangelium vitae* 73 needs to be situated. Then we will look at some precedents in order draw out its foundation and possible applications.

2. The context: the correct attitude with regard to seriously unjust laws

By seriously unjust civil laws we mean laws which substantially injure the goods or rights that belong to the common good of the body politic, for example, fundamental human rights, public order, justice, etc., as well as laws which deprive such goods or rights of their necessary protection. (Civil laws could be unjust for other reasons, which need not be considered here. On the entire topic, the reader can consult Angel Rodriguez Luno, *Etica General*, 4 ed. [Pamplona: Eunsa, 2001], 271-273). Not only are those laws seriously unjust which allow the state to attack a human right, but also those through which the state fails in its duty to prohibit and punish, in a reasonable and proportionate way, the violation of fundamental human rights by others. It is clear that the law must contain certain penalties in order that the exercise of fundamental rights is in fact a reality in a given state. If the state does not protect fundamental rights from the illegitimate exercise of human freedom, the result will simply be domination by those who are more powerful (cf. on this point P. Haberle, *Le liberta fondamentali nello Stato costituzionale* [Rome: La Nuova Italia Scientifica 1993], 47). This last situation is the case with laws allowing abortion; these are the principal subject of this paper.

The position to be adopted in the face of seriously unjust laws is a classic topic in Catholic moral theology (cf. St Thomas Aquinas, *Summa Theologiae*, I-II, q. 96, a. 4, [c]; A. Gunthor *Chiamata e risposta: Una nuova teologia morale*, 6 ed. [Cinisello Balsamo: Paoline, 1989], vol. I, n. 360; vol. III, nn. 230-243; E. Colom and A. Rodriguez Luno, *Scelti in Cristo per essere santi: Elementi di Teologia Morale Fondamentale* [Rome: Apollinare Studi, 1999], 288-291). In short, it can be said that such laws do not bind in conscience; indeed, there is a moral obligation

not to follow their provisions, to oppose them civilly (by means which would include conscientious objection), not to vote for them, and not to cooperate in their application. But there is, above all, the duty of doing everything legitimately possible to repeal such laws. *Evangelium vitae* takes up these principles in numbers 72-74. (*Evangelium vitae* sets out the teaching of St Augustine and of St Thomas Aquinas on unjust laws, and quotes the *Declaration on Procured Abortion* of the Congregation for the Doctrine of the Faith [18 November 1974], 22), adding in the final paragraph of number 73 that if it is not possible to repeal the law, there is a duty to try to lessen its negative effects. (For the reader's convenience, we include here the entire text of the final paragraph of *Evangelium vitae* 73: "A particular problem of conscience can arise in cases where a legislative vote would be decisive for the passage of a more restrictive law, aimed at limiting the number of authorized abortions, in place of a more permissive law already passed or ready to be voted on. Such cases are not infrequent. It is a fact that while in some parts of the world there continue to be campaigns to introduce laws favoring abortion, often supported by powerful international organizations, in other nations - particularly those which have already experienced the bitter fruits of such permissive legislation - there are growing signs of a rethinking in this matter. In a case like the one just mentioned, when it is not possible to overturn or completely abrogate a pro-abortion law, an elected official, whose absolute personal opposition to procured abortion was well known, could licitly support proposals aimed at limiting the harm done by such a law and at lessening its negative consequences at the level of general opinion and public morality. This does not in fact represent an illicit cooperation with an unjust law, but rather a legitimate and proper attempt to limit its evil aspects").

Of course, civil and political action aimed at lessening the negative effects of a seriously unjust law must respect the general principles of morality. Here it is helpful to mention two such principles, which are precisely those that give rise to the questions above. The first states that "although it is true that it is at times lawful to tolerate a lesser moral evil in order to avoid a greater 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 - in other words, to *have as the object of a positive act of the will something which intrinsically contradicts the moral order* ... even though the intention is to protect or promote the welfare of an individual, of a

family or of society in general" (Paul VI, Encyclical Letter *Humanae vitae* [25 July 1968], n. 14). This principle means that a moral evil may not be the direct object of the will, even when it is a lesser evil. No one may licitly carry out the command to kill ten innocent people in order to prevent the killing of thirty. What is intrinsically evil cannot be the direct object of the will, no matter what the cost.

The second principle concerns cooperation: "it is never licit to cooperate formally in evil. Such cooperation occurs when an action, either by its very nature or by the form it takes in a concrete situation, can be defined as a direct participation in an act against innocent human life or a sharing in the immoral intention of the person committing it" (John Paul II, Encyclical Letter *Evangelium vitae*, n. 74). It is not morally possible to collaborate in the creation or application of a seriously unjust law, for example, those which permit or promote abortion or euthanasia (cf. John Paul II, Encyclical Letter *Evangelium vitae*, nn. 72-74).

The solution given in *Evangelium vitae* 73 is the application, to a particular problem of conscience, of the general duty to oppose seriously unjust laws and to work, to the extent possible, for their repeal. It must be interpreted in the light of the two moral principles just mentioned, which *Evangelium vitae* either presupposes or explicitly reiterates.

3. An historical precedent

Evangelium vitae states that problems of conscience, like the one treated at the end of number 73, "are not infrequent" (John Paul II, Encyclical Letter *Evangelium vitae*, n. 73). Many could be mentioned. One example would be the referendum on abortion held in Italy in 1981.

On 28 March 1980, the Italian Radical Party began collecting signatures for a referendum in favor of the modification of Law 194/78 in order to make it more completely and openly favorable to abortion. Faced with the prospect of having to choose between the existing Law 194/78 or one which would be worse, the Italian Pro-Life Movement began collecting signatures for two referenda: one giving maximum protection to human life by eliminating every possibility for abortion, except in the case of conflict with the life of the mother, and another which represented the minimal position: it condemned abortion in general terms, but

allowed legal abortion in two cases: grave threat to the life of the mother and verified pathologies which constitute a grave risk to her physical health. As expected, on 4 February 1981, the Constitutional Court of Italy declared that the minimal referendum of the Pro-Life Movement was admissible, but the one giving maximum protection was not, since it contradicted an earlier decision of the Court of 18 February 1975 (n.27).

The question of conscience then arose regarding whether someone who was absolutely opposed to abortion could vote in favor of the minimal referendum as drafted by the Pro-Life Movement. The Italian Conference of Bishops offered an important clarification on 11 February 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 favor of abortion may be seen as morally licit and may be followed" (The text of the statement is quoted in A. Palini, *Aborto: Dibattito sempre aperto da Ippocrate ai nostri giorni* [Rome: Citta Nuova, 1992], 68).

It should be noted also that certain persons, who presented themselves as Catholics, but who wanted Law 194/78 to remain as it was before, criticized the initiative undertaken by the Pro-Life Movement. Their argument went straight to the most difficult element of the question: "The electorate is called to choose between different types of abortion which, on account of the origins of the different proposals, might be called Catholic abortion, radical abortion, and abortion defined by parliamentary mediation". According to them, 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" (Raniero La Valle, in *Paese Sera*, 27 February 1981. Raniero La Valle had been elected Senator as an independent in the lists of the Italian Communist Party).

This specious argumentation was criticized in the issue of *La Civiltà Cattolica* of 2 May 1981. The journal clarified in the first place that the terms of the Pro-Life Movement's referendum did not correspond to the preference or free choice of its backers: "For those who are against abortion on principle it is not a question of 'choosing'. 'Choosing' implies the freedom to select the solution which best corresponds to one's own

principles. In the present case of the referendum, those who are against abortion do not 'choose' freely. Rather, they are forced to support a proposal which does not fully correspond to their principles, but which in the current historical situation is the one which will save a larger number of human lives". The fact that the Pro-Life Movement had wanted to present another proposal giving the maximum protection, which was declared inadmissible by the Constitutional Court, made this argument very clear.

The article went on to offer a clarification regarding the nature and morality of the Pro-Life Movement's referendum. It was not the creation of a restrictive law allowing abortion, but rather the partial repeal of an existing law, the partial and incomplete nature of the repeal being independent of the will of those promoting the solution: "If, as in our case, it is not possible to propose a total repeal, it is morally licit to propose the partial repeal, which, even though it does not eliminate all cases of abortion, greatly restricts their number. This is precisely what the minimal proposal of the Pro-Life Movement accomplishes. It is not really a positive proposal which seeks to create a law permitting abortion, but rather a proposal which abrogates parts of an already existing law. Of course, the repeal that is sought is only partial, since it leaves therapeutic abortion in place, but the fact that the sought-for repeal is partial does not arise from a desire to keep therapeutic abortion in place, but is necessitated by the terms of Sentence 27/1975 of the Constitutional Court. It is therefore a proposal for repeal 'to the extent possible'. Here, since it is a question of a goal which is extremely important, that is, the protection of human life, it is morally licit to do what is possible to reach this goal, even if one is forced to 'permit' (or better to endure) something which is objectively evil, in our case, the continuation of article 194 permitting therapeutic abortion".

Two reflections on these facts are apposite. First, the referendum was aimed at abrogation; that is to say, the promoters of the referendum were asking the electorate, in both form and in substance, for an act of repeal, that is, for the elimination of part of Law 194/78. The electorate was not asked *in any way* to approve the articles which could not be abrogated. If formal logic can be trusted, the negation of an evil is simply a good, which has no further need of justification. In this case, it would be totally useless and inappropriate to introduce the theory of the lesser evil or the principle of double effect (*voluntarium indirectum*). The

abrogating act which was sought was good and dutiful, "binding on Christian conscience", as the statement of the Italian Bishops' Conference explained. The option of not backing this referendum or not voting for it, limiting oneself to voting against the referendum of the Radical Party, would have contributed to the strengthening of Law 194/78, something which a Catholic could not desire and should try to prevent.

The second reflection begins with an important distinction found in the communication by the Italian Bishops' Conference: the moral liceity of supporting the referendum which would partially repeal Law 194/78 absolutely does not imply that, if this obtained the votes of a majority of the voters, "the remaining pro-abortion provisions of the civil law could be seen as morally licit and may be followed". The law that remains after the repeal would be considered by Catholic morality as an unjust law in all its effects, to be changed as soon as possible; one may not cooperate in the application of such a law and health care workers must present conscientious objection. From the fact that the partially abrogating act was licit and dutiful, it does not follow that the resulting legislation is *hic et nunc* just. The only point that can be concluded is that those who repealed what was capable of repeal are neither the authors nor in any way responsible for the immoral provisions which remain in effect. They are authors and are responsible simply for the fact that the abrogated articles no longer exist.

4. The teaching of Evangelium vitae 73

Evangelium vitae 73 intends to offer a moral judgment on a specific action, not a general judgment on all actions that might be inspired by the subjective intention of limiting the harm caused by a seriously unjust law. Therefore, it is helpful to delineate precisely the elements which define the action under consideration and which distinguish it from other possible actions that might seem at first sight identical or analogous. The notes that distinguish the case under consideration are the following:

- a more permissive abortion law is already in effect or is being voted on;
- it is not possible to overturn or completely abrogate the abortion law already in effect or being voted on;

- the absolute personal opposition to abortion on the part of the lawmaker is known to all, thus preventing any confusion or scandal;

- there is the intention not only to limit quantitatively the harm, but also to lessen the "negative consequences at the level of general opinion and public morality". This means that the effects of one's choices on the consciences of others, as well as on the collective conscience of a people, and thus the attitude or ideology expressed by the law, need to be taken into consideration;

- the lawmaker is in a situation in which his vote is *determinative*. Not to vote for the more restrictive measure given the number of voters and votes would imply supporting the more permissive law, making oneself responsible for its passage, since such support could easily be avoided. This condition is essential. If it is possible to repeal some elements of the prior law without participating in the final vote on the resulting text, such a final vote must be avoided. If the more permissive law will be overturned even though the lawmaker abstains, then he must abstain; if the permissive law will be overturned solely if he votes against it, then he must vote against it. If there is the complete certainty that the more permissive law will pass in any case, then he should vote against both proposals.

This being the case, *Evangelium vitae* 73 states that it is morally licit to support the more restrictive law. (The Latin text of the Encyclical Letter says "*suffragari licite posse*") and that this "does not in fact represent an illicit cooperation with an unjust law". What is the basis for this moral judgment? The judgment of the Encyclical is not based on the principle of double effect (*voluntarium indirectum*); *Evangelium vitae* does not refer to this category of moral reasoning because it would be inapplicable in this case. The first condition for the liceity of an act that has indirect negative effects is that the action in itself is good or at least indifferent; in our case, however, it is precisely the liceity or non-liceity of the act itself which is at issue. If the act of voting in favor of the more restrictive law were in itself morally illicit, the principle of double effect would not make it licit. If, on the other hand, it were shown that the action was, by its object, good or at least not morally evil, then, if there were negative collateral effects, the rule of double effect should be applied to determine if, all things considered, the action may be done or not.

The theory of the lesser evil is similarly inapplicable. This theory, at least in its more popular presentations, is highly questionable and above all unsuited to the construction of good argumentation. To state that an action can be licitly willed because it is an evil, even though it is a lesser evil, offends the basic principles of a sound theory of human action. What may be willed and desired is only what is good. In any case, *Evangelium vitae* states that contributing with one's vote to the elimination of part of the immoral elements of the more permissive law is a good, but it does not say that the more restrictive law is a good or that it is desirable, acceptable or defensible in its quality of being a lesser evil. The more restrictive law authorizes or favors abortion in certain cases; thus it must be considered a seriously unjust law, without authentic juridical validity (cf. John Paul II, Encyclical Letter *Evangelium vitae*, n. 72), with which one may not formally cooperate either in its legislative approval or in its practical application. However, it might be objected - in the legislative stage, doesn't our lawmaker formally cooperate with the more restrictive law, which is still a law that is evil? As seen above, *Evangelium vitae* excludes at the minimum any illicit cooperation, that is to say, formal cooperation or unjustified material cooperation. It remains to understand why this is so.

It is thus clear that the solution given in *Evangelium vitae* 73 is based on a judgment concerning the moral object of the act by which the lawmaker gives his support to the more restrictive law, always under the conditions mentioned above. The moral object of the lawmaker's act is the *elimination of all the unjust aspects of the prior law which here and now he is able to eliminate*, without thereby becoming the cause of the retention of the other unjust elements, which he neither wants nor accepts, but which he is unable to eliminate (cf. J. Finnis, *Le leggi ingiuste in una società democratica: Considerazioni filosofiche*, in J. Joblin - R. Tremblay, *I cattolici e la società pluralistica: Il caso delle "leggi imperfette"* [Bologna: Edizioni Studio Domenicano, 1996], 99-114. Finnis correctly explains that the real meaning of the action of a member of a legislative body can only be understood in the light of the procedural context and the existing legal situation: "For example, a law of the type: 'Abortion is legal up until the sixteenth week' is an unjust law. But legislation of the kind: 'Abortion is legal up until the sixteenth week' might be proposed either (a) to permit abortions which were prohibited before or (b) to prohibit abortions which prior to the law were permitted

between the sixteenth and twenty-fourth weeks. The decision to support the proposed law (a) is substantially different from the decision to support proposed law (b). Indeed, that which is decided - the object of the deliberation of supporting the proposed law - is different in the two cases. In case (a) it consists in supporting the permission of abortion, in case (b) it consists in supporting the prohibition of abortion, or at least all abortions which the lawmaker at that moment has the opportunity to prohibit" [107]). That which is made the direct object of his will is that which he is able to do eliminate part of the unjust provisions of the law, something which is undoubtedly good - and not what is beyond his power: the elimination of the remaining unjust provisions. *Ad impossibilia nemo tenetur*: no one can choose impossible things and no one is required to prevent what cannot be prevented (cf. St Thomas Aquinas, *Summa Theologiae*, I-II, q. 13, a. 5: *Utrum electio sit solum possibilium*; see also *In decem libros Ethicorum Aristotelis ad Nicomachum Expositio*, lib. III, lectio 5.). No one is responsible for things which are impossible to prevent.

In the situation described, the moral liceity of the lawmaker's action is not based on the notion that it would be morally possible to make oneself responsible for a smaller number of abortions in order to avoid a larger number (an idea that some erroneously call the theory of the lesser evil), but on the fact that the lawmaker is not morally responsible for any intrinsic disorder, because nothing which is intrinsically disordered is willed by him. The object of his will is the elimination of as much injustice as he is able to eliminate. This is a good which has no further need of justification. In synthesis, the nature and the sole authentic meaning of the lawmaker's action is that it is the partial repeal of an unjust law, always under the condition that it is partial solely because total repeal is not possible.

Certainly a law remains, which, while more restrictive, is still unjust. But the persons responsible for this injustice are those who supported it, thinking that it was right, and who make it impossible for the lawmaker who respects human life to obtain the total exclusion of direct abortion. The evil, both greater and "lesser", is done by others, those whose program the lawmaker was unable to thwart. The lawmaker eliminates the evil elements of the law to the degree possible and this limitation of evil is the only thing which he wants and which he does. By his action, he limits the evil done by others, but the remaining lesser evil

is done by others, not by the lawmaker mentioned in *Evangelium vitae* 73.

The contents of *Evangelium vitae* 73 have nothing to do with the position of those who think that compromise solutions are acceptable based on the idea that a woman who wants an abortion should be able to have one within certain limits, and who would approve a restrictive law despite being able *hic et nunc* to obtain much more. Such persons want both what the law prohibits and what it allows. The difference is not only subjective in the worst sense of the word, but is also objectively verifiable: being able *hic et nunc* to obtain greater respect for human life, they do not pursue this goal because they think that in a pluralistic society a certain permissiveness is proper on the question of abortion; it is like saying that a little injustice is not harmful. In this hypothesis, the moral object that is directly willed is completely different from that willed by the lawmaker mentioned in the Encyclical.

Of course, this presupposes that the lawmaker has proceeded in a way that the nature of his action is clear to all, in order to avoid confusion and scandal. Confusion is highly improbable if the more restrictive law is formally the partial repeal of an earlier law. When this is not the case, it cannot be excluded that people who are not very well informed might not correctly understand the lawmaker's actions. In any case, there is a certain danger that his action will not be understood correctly by everyone; this should be assessed as a possible indirect and unwilled negative effect, which needs to be attentively weighed, but which does not change the moral object of the act. As the Encyclical *Veritatis splendor* states, "The morality of the human act depends primarily and fundamentally on the 'object' rationally chosen by the deliberate will [...] In order to be able to grasp the object of an act which specifies that act morally, it is therefore necessary to place oneself in the perspective of the acting person. The object of the act of willing is in fact a freely chosen kind of behavior. [...] By the object of a given moral act, then, one cannot mean a process or an event of the merely physical order, to be assessed on the basis of its ability to bring about a given state of affairs in the outside world. Rather, that object is the proximate end of a deliberate decision which determines the act of willing on the part of the acting person" (John Paul II, Encyclical Letter *Veritatis splendor* (6 August 1993], n. 78).

5. Applications of *Evangelium vitae* 73

In the years since the publication of the Encyclical *Evangelium vitae* many have asked whether it is possible to extend the solution contained therein to similar situations or at least to those which are analogous to the case given in n. 73. We will consider three possible scenarios (In proposing these three scenarios, we follow the presentation by Tarcisio Bertone, "Catholics and pluralist society: 'imperfect laws' and the responsibility of legislators" in *Evangelium Vitae: Five Years of Confrontation with the Society*, ed. J. Vial Correa and E. Sgreccia [Citta del Vaticano: Libreria Editrice Vaticana, 2001], 214-217).

a) First scenario

The first scenario would be when, on account of a change in public opinion or in the political forces in a legislature or parliament, a politician or a group of politicians see the possibility of taking the initiative in promoting the repeal of the more permissive articles and more negative elements of an already existing law. If the conditions indicated in *Evangelium vitae* 73 are present (see above n. 4), this case does not pose particular moral problems. Substantially it is a question of the scenario described in *Evangelium vitae* 73, with the sole modification that it is the lawmakers themselves who take the initiative in the attempt at repeal. It seems clear that one may licitly take the initiative in promoting a repeal that, if promoted by others, it would be licit to vote for. If the proposal for repeal is aimed at obtaining the most protection for unborn human life which hic et nunc can be obtained, then it is clear that the object of their act is the defense of human life and the limitation of the evil here and now possible, without implying any necessary approval or responsibility for what cannot be prevented.

b) Second scenario

The second scenario would be when, on account of a change in public opinion or in the political forces in a legislature or parliament, a politician or a group of politicians see the possibility of proposing a new law on abortion, more restrictive than the law currently in force and more restrictive than the law which other groups will propose. If the proposal

foresees some cases in which abortion is depenalized, it can be asked whether it is morally licit to be the promoter of such a law by participating in a public opinion campaign in its favor or by voting for it, etc.

It is not easy to give an unequivocal answer to this question. Such a legislative proposal, promoted for example by people who are publicly known as Catholics, could be the most intelligent way to limit evil, in the greatest way possible here and now, but it could also be or could be interpreted (and this is important on the level of general opinion and public morality) as the expression of an attitude of compromise. This attitude might be described as follows: Catholics are absolutely opposed to abortion; non-Catholics are to varying degrees in favor of abortion; since the state is home to all, it is not right to claim that the law should reflect unilaterally either the Catholic or the non-Catholic position, because the law must by its nature be a compromise, a mediation between opposing viewpoints. This reasoning is clearly erroneous, because the protection of human life is not simply a requirement of Catholic morality, but part of the ethical and political character proper to the modern democratic constitutional state. (Quite significant in this regard was the interview with Norberto Bobbio published in *Corriere della Sera* on 6 April 1981, in which he said: "It amazes me that secular nonbelievers leave to believers the privilege and honor of standing up for the principle 'thou shalt not kill'". Equally important was the article he published in *La Stampa* of 15 May 1981, in which he responded to criticism of this interview by Giorgio Bocca: "It would be helpful to remind him [Bocca] that the first great political thinker who formulated the thesis of the social contract, Thomas Hobbes, held that the only right which is not forfeited by those who enter into the social contract is the right to life". For further information on this question, see A. Palini, *Aborto: Dibattito sempre aperto da Ippocrate ai nostri giorni* [72-75]). Every law which allows abortion approves a criterion of discrimination, according to which it is not enough simply to be a human being in order to enjoy an inalienable right to life; other elements are also necessary (being wanted, being healthy, etc.) and so, in practice, the right to life becomes a concession of civil law. This discrimination, which is lethal for those who suffer it, is seriously unjust and, with the passage of time, will call into question a basic principle of social life. A restrictive law which is the expression of this political attitude of compromise would always have negative effects,

at least on the level of general public opinion and morality, and would truly give rise to *Catholic abortion*, that is, to abortion which "some Catholics" believe should exist legally in a pluralistic society like our own. (The only hypothetical situation which perhaps would allow for compromise is that of the extremely rare cases of certain and imminent danger of death of the mother, since the state probably cannot coercively require heroic ethical behavior. But here also great prudence is required. In reality, such cases, which may still exist, will not be true cases of direct abortion if the physician acts wisely. They will not, therefore, be what today is called "therapeutic abortion" [on this question, see Angel Rodriguez Luno, *La valutazione teologico-morale dell'aborto*, in E. Sgreccia - R. Lucas, *Commento interdisciplinare alla "Evangelium vitae"* - Citta del Vaticano: Libreria Editrice Vaticana, 1997], 421-423. However, to ask that the civil law enter into these distinctions is perhaps too much.), an opinion which seems to me unacceptable.

However, if the promotion of the new law does not correspond to this conception and what is possible is done to exclude this interpretation in public opinion, I believe, in light of what has been said above, that it would be morally licit to propose a new law on abortion, which is more restrictive than the one currently in force, but which depenalizes some cases of abortion, but only if three conditions are simultaneously present (1) those given in *Evangelium vitae* 73 [see above, n. 4]; (2) the promotion of the new law permits the obtaining of the greatest protection for human life which here and now, after evaluating all the circumstances, is possible; (3) it would not be possible to arrive at an analogous level of protection of human life through a simple repeal. The reference to results must not cause disorientation: it does not mean that everything is good that produces good results, but rather that there has to be certainty that the negative aspects still present in the new law are here and now so unavoidable as to be unattributable to the promoters of the new law.

The greatest protection for human life should not be understood in a purely quantitative sense, though this is very important, but also from the social and public policy perspectives. From this standpoint, the following elements may be important, for example: that in the presentation of the more restrictive proposed legislation, the intention of obtaining complete protection for unborn human life is expressed in some way and therefore the process is deliberately left open to the possibility of securing further

improvements; that abortion is recognized as an action contrary to law and therefore illegal in general terms, even if it is depenalized in certain cases; that the depenalization results from the application of general principles of law (state of necessity, etc.) and not from the concession of a special statute to certain types of abortion; that the depenalization is accompanied by legal provisions encouraging pregnancy (economic assistance, adoption assistance, laws concerning working women, etc.); that broad interpretations of the law are prevented, both in the area of healthcare as well as in the judiciary; that conscientious objection is regulated in a way that does not prevent conscientious objectors from trying to dissuade people from abortion; that penalties are established for healthcare personnel who break the law, as well as for employers who create difficulties for pregnant employees, etc.; that abortion is not regarded, for the purposes of payment, as a therapeutic operation, etc.

c) Third scenario

This is the situation of a country where abortion is illegal. Changes in public opinion, the position of political groups, and other factors make it reasonably certain that within a short period of time it will be impossible to prevent the approval of a very permissive law on abortion. The following problem then arises: would it be morally licit to take the initiative, with the intention of forestalling a further worsening of the situation, by promoting a law which depenalizes abortion in just a few cases - rigorously defined - and which would also contain serious provisions aimed at preventing abortion?

In my opinion, the answer should be negative. The fundamental reason is that, in this case, the backers of the law would be morally responsible for a seriously unjust law and one which also represents a worsening of the prior legal situation, even if it might be relatively positive in comparison with a possible or probable future legal situation. One should not take the initiative of making oneself responsible for something in itself morally wrong in order that others do not do something worse. (This is required by the moral principle presented in *Humanae vitae*, n. 14 and cited above [footnote 7]). If the political situation makes it impossible to prevent the approval of such a law on abortion, it would be better to follow the strategy of avoiding a direct confrontation: by dialogue, by participating in the discussion in the

legislative assembly or parliament on the provisions of the law as proposed by others, by seeking to reduce as much as possible the negative aspects of the law and by voting against it in the final vote on the entire legislation. All this should be done in a way that makes one's personal opposition to abortion clear to everyone.

It is not unimportant to recall that in every individual case these general evaluations must include an attentive analysis of the circumstances, the possible consequences, and the potential for giving rise to scandal or confusion. Public statements by persons who in some way represent the Church (Bishops, etc.) call for particular prudence, so that certain criteria or prudential positions are not interpreted erroneously as doctrinal positions in favor of laws which do not guarantee complete protection for human life. If it is licit to do what is possible to lessen evil, it is also always obligatory to form consciences adequately in the social and political areas.

¹ «L'Osservatore Romano», 18 settembre 2002.