

RIGHT TO LIFE AND HUMAN DIGNITY

**70th Anniversary of the
Universal Declaration of Human Rights**

Geneva, 2018

EDITORIAL

ARCHBISHOP IVAN JURKOVIČ

Permanent Observer of the Holy See to the United Nations
and other International Organizations in Geneva

“The General Assembly, proclaims this Universal Declaration of Human Rights as a common standard of achievement for all peoples and all nations, to the end that every individual and every organ of society, keeping this Declaration constantly in mind, shall strive by teaching and education to promote respect for these rights and freedoms and by progressive measures, national and international, to secure their universal and effective recognition and observance, both among the peoples of Member States themselves and among the peoples of territories under their jurisdiction.”¹

Seventy years ago, the Universal Declaration of Human Rights (UDHR) stated, for the first time in the history of modern States, the primacy of freedom and the unity of the human family over and above any political or ideological divisions based on race, sex, religion or any other human characteristic. The objective was to defend the individual from the absolute prominence of the State, which totalitarian ideologies might “divinise” and thus promote as an alternative way to build the “city of man”.

The UDHR represented a new attempt to eradicate the elements allowing violence and genocide in the past World Wars and to affirm the importance and centrality of the human being in the relations between States and the International Community, all with the aim to build a new

¹ Universal Declaration of Human Rights, General Assembly Resolution 217 A, 10 December 1948, Preamble, available at https://www.ohchr.org/EN/UDHR/Documents/UDHR_Translations/eng.pdf [Accessed 5 November 2018]

and more peaceful future. To achieve this ambitious goal, the Declaration recognised the natural rights of every individual, affirming the primacy of life, the importance of social community, and the need to build structures capable of guaranteeing democracy, rule of law, and accountability.

The Declaration was not only a simple proclamation but a new stance taken by the International Community as a whole, and it aimed to place human dignity among the highest values which organise the internal and external behaviour of nations, societies, and governments. This stance is still valid today; more importantly, it cannot be substituted because it is the only approach that elevates the individual as the primary actor and recipient of all political decision while simultaneously evaluating the social implications of the rights shared among all human beings.

With great respect, the Holy See recognises “all the true, good and just elements inherent in the very wide variety of institutions which the human race has established for itself and constantly continues to establish”.² Therefore, it has always considered this Declaration as “a step in the right direction, an approach toward the establishment of a juridical and political ordering of the world community”.³

The Declaration represents a very precious reference point for cross-cultural discussion of human dignity and freedom in the world. The quotation shared at the opening of this article concludes the UDHR Preamble and establishes the goal of this document, which is now shared by nine additional human rights treaties elaborated in the past seventy years following the Declaration.

In the present era, the international context has changed radically, and the entire structure of the human rights doctrine and law is struggling to

² Pope Paul VI, Pastoral Constitution on the Church in the Modern World *Gaudium et Spes*, 7 December 1965

³ Pope John XXIII, Encyclical Letter *Pacem in Terris*, 11 April 1963

confront new theoretical and practical threats. On one hand, the consensus that approved the Declaration and reaffirmed it through the adoption of the Vienna Declaration and the related Programme of Action twenty-five years ago, seems to be weakened; meanwhile, different conceptions, and even denunciations of human rights as a mere product of Western culture, are gaining ground in different international and regional fora. On the other hand, recent decades have witnessed the birth of the category of so-called “new rights”, emerging from a theoretical approach that fragments the human being and promotes a selective and often conflicting concept of individual freedom. These different stances lead to misperceptions and confusion that undermine the global recognition of human rights as universal in their nature, thus risking trivializing “one of the highest expressions of the human conscience of our time”.⁴

In its actions at the United Nations, as well as in all its international positions, the Holy See has always supported the implementation of this important Declaration and consistently reaffirms that we share a common human dignity—dignity which provides the indispensable background that sustains the interrelatedness, universality, and indivisibility of human rights.

As Pope Francis posited during an address to the diplomatic corps accredited to the Holy See: “From a Christian perspective, there is a significant relation between the Gospel message and the recognition of human rights in the spirit of those who drafted the Universal Declaration of Human Rights.”⁵ Indeed, it is this “spirit” that we have to recover and re-propose to the world and to every human being, by emphasizing that “recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world”.⁶

4 Pope John Paul II, Address to the United Nations General Assembly, 5 October 1995

5 Pope Francis, Address to the Diplomatic Corp accredited to the Holy See, 8 January 2018

6 Universal Declaration of Human Rights, General Assembly Resolution 217 A, 10 December 1948, Preamble, available at https://www.ohchr.org/EN/UDHR/Documents/UDHR_Translations/eng.pdf [Accessed 5 November 2018]

The aim of this booklet is to present certain aspects of the Holy See's position and reemphasize the original intent of the Declaration. This requires, for instance, clarification on why the right to life is “the supreme right from which no derogation is permitted”⁷ and has crucial importance both for individuals and for society as a whole. The effective protection of the right to life is the prerequisite for the enjoyment of all other human rights. Therefore, the right to life requires a commitment to uphold life from conception to natural death. In all its interventions at the United Nation and other international organizations, the Holy See upholds the original ideals of the U.N. Charter and the Universal Declaration of Human Rights, maintaining the anthropological conception of the human being as an individual in constructive relation with other human beings, all sharing the same equal dignity from conception to natural death.

The drafters of the UDHR knew that the success of their effort would require developing, over time, a “common understanding” of the meaning of the document – as the Preamble states explicitly. Moreover, the development of the vocabulary of human rights profoundly influenced the effective implementation of the UDHR over the next decades. The attempts to rewrite the profound meaning of human rights *a posteriori* have often brought less clarity and conflict, weakening the same structure that was intended to reinvigorate and expand. In fact, the unilateral affirmation of “new rights”, based on certain theoretical and anthropological views, has favoured those who blame the entire structure of human rights as being influenced by Western culture or, even worse, as a new kind of culture colonisation. However, these accusations fail to understand that the UDHR was “the outcome of a convergence of different religious and cultural traditions, all of them motivated by the common desire to place the human person at the heart of institutions, laws and the workings of society”⁸ rather than the imposition of one culture on all others.

7 I.2. General comment No. 36 on article 6 of the International Covenant on Civil and Political Rights, on the right to life

8 Pope Benedict XVI, Address to the United Nations General Assembly, 18 April 2008

In the political vocabulary of human rights today, even a minimal agreement on the core meaning of human dignity is rapidly disappearing and becoming fragmented into incoherence. In the “politics” of human rights, dignity is invoked for the most disparate and contradictory ideas, so much so that it is essentially impoverished of its meaning in some human rights discourse and deconstructed into different, often conflicting, parts. Human dignity is frequently used to justify many so-called “new rights”, even those which contradict or deny the very origin of their basis, which are extensively and expertly presented in the contributions to this booklet. The illustrations of the deconstruction and reinterpretation of dignity are numerous, but in the interest of brevity, I will cite only one prominent example, namely the political efforts in many constitutional and international contexts aimed at legalizing physician-assisted suicide and more active forms of euthanasia; they have taken the word “dignity” as their rallying cry - “death with dignity.” Consequently, dignity has become something that is achieved through a problematic act of will rather than something inherent in the person that is inviolable and worthy of respect.

If we want to reinvigorate the human rights structure, favouring the global implementation of the Universal Declaration and safeguarding the concept of universality that is at the core of the Declaration, we should abandon those interpretations of rights that are objectively distant from the founding texts and thus contribute to making universal consensus much more difficult. If we fail to do this, we risk creating a “conflict of anthropologies”, which has already intensified by the process of globalization and human mobility.⁹ It is important to clarify that the rights recognized by the UDHR were not intended to be reinterpreted or reshaped according to the political or social tendencies of the moment. Indeed, they are derived from the human dignity that is common, shared, and inherent to every human being, regardless of any other difference.

⁹ Statement delivered by Monsignor Paul R. Gallagher, Secretary for Relations with States, on the “Challenge of Universality”, Strasbourg, 11 September 2018

The Preamble of the UDHR concludes with clear and well-defined objectives, simultaneously identifying every human being and institution as an active participant in the implementation and expansion of human rights - rights which ultimately aim to “secure their universal and effective recognition”.¹⁰ The following articles within the booklet encompass contributions of different authors and of the Holy See, all committed to the common effort of the International Community to build a better world where “the universality, indivisibility and interdependence of human rights all serve as guarantees safeguarding human dignity”.¹¹

Facing the challenges and conflicts of our time, we should recognize that due respect of human rights is the true source of peace. Today, the multilateral system is blocked and encounters enormous difficulties; in the meantime, many international organizations are struggling against a growing lack of legitimacy. In this regard, the 70th Anniversary of the UDHR can be a turning point. Though directly referring to a previous economic crisis, Pope Benedict XVI’s encouraging words from his Encyclical Letter *Caritas in Veritate* hold wisdom for us today, especially in our struggle to recognize basic human truths: “The current crisis obliges us to re-plan our journey, [...] to discover new forms of commitment, to build on positive experiences and to reject negative ones. The crisis thus becomes an opportunity for discernment, in which to shape a new vision for the future”.¹² This Anniversary represents a unique opportunity to reaffirm the UDHR’s pivotal importance as a reference point for global and cross-cultural discussion on human rights, freedom, and dignity. It represents further opportunity to restate those very concepts of human rights, democracy, rule of law, and individual freedom that have their roots in the recognition and promotion of human dignity. The relevant

10 Universal Declaration of Human Rights, General Assembly Resolution 217 A, 10 December 1948, Preamble, available at https://www.ohchr.org/EN/UDHR/Documents/UDHR_Translations/eng.pdf [Accessed 5 November 2018]

11 Benedict XVI, Address to the General Assembly of the United Nations Organization, 18 April 2008.

12 Pope Benedict XVI, Encyclical Letter *Caritas in Veritate*, para.21

work of the United Nations should serve as a base and building-block on which to acknowledge this transcendent dignity and in order to fulfil the hope that “this Institution, all its member States, and each of its officials, will always render an effective service to mankind, a service respectful of diversity and capable of bringing out, for the sake of the common good, the best in each people and in every individual”.¹³

¹³ Pope Francis, Address to the United Nations General Assembly, 25 September 2015



Henry Matisse | TREE OF LIFE | detail

THEOLOGICAL ANTHROPOLOGY AND HUMAN RIGHTS

JORGE M. DIAS FERREIRA

Forum of Catholic Inspired Non-Governmental Organizations, Geneva

The importance of the human being and the defense of his/her dignity is the road ahead for the Church.¹ The Church demonstrates this by promoting universal human rights, and thus paying tribute to God, man's Creator. Indeed, God wanted to create the human being in His own image and likeness: a unique, inimitable, unalienable and free being. This God, to whom the man and the woman are called to resemble through a communion of persons, is a Trinitarian God, who is only self-giving. It is, therefore, the intimate life of the Trinity that commands this personalized vision of the human vocation. Certainly, in creation, it is the whole Trinity that is at work and that has created the man and the woman specifically in His image.² Because of this, the human person is a being inhabited by this Trinitarian God who thus penetrates into his/her ontological nature.³ Here lies a notion of original anthropology, already made present by the Fathers of the Church and deepened by Pope John Paul II.⁴

The Son of God, by taking flesh, assumed human nature. He lived and offered His life for every man, and He ultimately ascended to Heaven with this human nature. Jesus wanted to identify with every human

1 Pope John Paul II, Encyclical Letter *Centesimus Annus*, 1991, §53 “ [...] the Church cannot abandon man [...] this man is the primary route that the Church must travel in fulfilling her mission, the way traced out by Christ himself, the way that leads invariably through the mystery of the Incarnation and the Redemption”.

2 Gen 1:26, RSCVE, “Let us make man in our image, after our likeness”.

3 Jorge Dias Ferreira, *Anthropologie et théologie du Corps selon Jean Paul II*, Catholic Center for Studies (Geneva) 2018, pp 43-44.

4 Pope John Paul II, Apostolic Exhortation *Catechesi Tradendae* (1979) available at: http://w2.vatican.va/content/john-paul-ii/it/apost_exhortations/documents/hf_jp-ii_exh_16101979_catechesi-tradendae.html [Accessed 1 November 2018]

being, and we have an example of this in His words: “As you did it to one of the least of these my brothers, you did it to me”.⁵

This anthropological vision determines the way in which the Church understands human rights and the international relations that arise from them, including the relationship between the Church and the State. The State is also at the service of human dignity and the rights of citizens; therefore, the Church and the State can and must cooperate together in the service of the common good of the people whose dignity and rights they both serve. This is true, even while the Church and the State ought to respect each other’s legitimate autonomy and sovereignty in their respective spheres.⁶

These are the anthropological and theological foundations that explain the high dignity of the human being and the reason why the Church is tirelessly committed to the effective implementation of human rights. This is why “the Man considered in his concrete historical aspect represents the heart and soul of the Catholic Social Teaching⁷, which unfolds, in fact, from the principle which affirms the intangible dignity of the human person”.⁸

The incomparable dignity of the person is thus derived, and now it seems essential to understand human dignity within a broad and comprehensive vision. Without specifying what being a person means, how could we act or orient ourselves in life and in the International Community? Furthermore, how could we proclaim and defend our high dignity and rights in a coherent and consistent way?

The dignity of the human person and the defense of human rights are constantly reaffirmed in all international instruments. For the Church,

5 Mat 25:40, RSVCE.

6 Jorge Dias Ferreira, *Anthropologie et théologie du Corps selon Jean Paul II*, Catholic Studies Center (Geneva), 2018, pp 49-50.

7 Pope Pius XII, Radio-message (December 24, 1944), 5: AAS 37 (1945) 12.

8 Pope John Paul II, Encyclical Letter *Centesimus Annus*, 11: AAS 83 (1991) 807.

“the identification and proclamation of human rights is one of the most significant attempts to respond efficiently to the inescapable demands of human dignity”.⁹

The Universal Declaration of Human Rights, which celebrates its 70th anniversary, is the most prominent illustration and unwavering defense for the universal rights and dignity of the human being.

The Convention on the Rights of the Child was also a decisive step forward in concluding that “recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world”,¹⁰ and this in accordance with the principles proclaimed in the Charter of the United Nations. Formally stated in 1989, these acknowledgements are very recent. It is only since then that the child has *de facto* been recognized by the International Community as a fully-fledged subject of rights.

The first article of the Convention defines a child as “every human below the age of eighteen years unless under the law applicable to the child, majority is attained earlier”.¹¹ The vision of the Convention in relation to the human being is integral.¹² The child is endowed with physical (it is often a matter of physical and bodily development), mental (cognitive and affective), social, moral and spiritual abilities. A child is a natural being, biologically composed of chemical elements that also exist in nature (68% water, 18% carbon, calcium, potassium, iron, etc.), with superior cognitive faculties that distinguish him/her from all other existing beings, an emotional capacity (the heart is the engine of the entire process of development that characterizes the human being), social aptitude (sociability for the purpose of reciprocal enrichment and psychological maturity through knowledge of ourselves and those surrounding us),

9 Compendium of the Social Doctrine of the Church, Editions St. Augustin, St. Maurice, 2005, § 152

10 International Convention on the Rights of the Child (1989), Preamble, available at <https://www.ohchr.org/en/professionalinterest/pages/crc.aspx> [Accessed 1 November 2018]

11 *Ibid.*, Article 1

12 Especially in articles 17, 27, 29 and 32 of the International Convention on the Rights of the Child

educational ability (an absolute precondition for the human being to access knowledge and actualize the full potential that he/she is capable of), morals (the effective acquisition and the practical application of the notions of respect, tolerance, responsibility, etc.),¹³ and a spiritual dimension (the possibility and the freedom to give meaning to our life and to practice our own religion). All these capacities are potentially present in children, and they are to be actualized in order to maximize their potential. This is achieved thanks to irreplaceable and fundamental educational investment,¹⁴ in particular through practical experiences and with the indispensable cooperation of family, schools and social environments, which encourage and do not compromise or cause damage to this development process.

In the foreground for the human being, for the child, is first of all the very fact of being, of existing: This is. This pen is, it exists; this table is, a blade of grass is, it exists [...] I exist, too, I am. And this is exactly what I own, my "I am", because no one else can say "I am" in my place. Here is the first dimension of the person. In my personal being, I also experience that I have a unique way, which is my own, to act, to interact with others, to behave. It characterizes me, identifies me, makes me a special and irreplaceable being, capable of asserting my own individuality to achieve the development of my autonomy; it also enables me to establish relationships with others, and this is the second dimension of my person—the process of socialization.

The child has other characteristic features, namely the capacity to try to know his/her surrounding reality, way of evolving, and personal expressions. Thus, the child has the faculty of grasping and of deepening the search for truth about everything that exists (to ask in front of an object: What is it? What is its form? How does it exist? Why is it there?).¹⁵

¹³ In particular Articles 29 (subparagraphs: b - c - d - e) and 30 of the Convention on the Rights of the Child

¹⁴ The need for education, after the experience of children with Wolf-Hirschhorn syndrome – among others - is no longer to be demonstrated. However, we can and must ask ourselves questions about the "how" of the act of educating and constantly adapting to the socio-cultural realities that young people face today.

¹⁵ What is its purpose, for what purpose does it exist? - already since the age of 3 years, the age of the "why?".

The child is able to want fulfillment and seek it through the affection given to others - through love - as well as to cooperate with fellows for the accomplishment of a common goal. This can be realized through, among other things, the artistic activity that enables personal fulfilment.

The child can, through the body and thanks to a harmonious development, achieve the objectives that set to himself/herself. The child can finally give meaning to the words, gestures and thoughts that inhabit him/her.

All this coexists within a single being, the human being, who shows complexity and unity all at once. It is from here that the human being disposes himself/herself and opens up to those ethical, moral and religious values that characterize him/her. The human person with all its peculiarities is a unique and inimitable being. This being is distinguished by uniqueness and own specificities, which encompass different aspects: organic, cognitive, emotional, social, educational, moral and spiritual.

Today, this notion of spiritual development is becoming better accepted and acknowledged both by the scientific community¹⁶ and the International Community.¹⁷ Thanks to the spiritual dimension that characterizes the human person, "in the depths of his conscience, man detects a law which he does not impose upon himself, but which holds him to obedience. Always summoning him to love good and avoid evil".¹⁸ It is all about the dignity as a person. The person not only understood in relation to his/her behaviour, but the person as it is, as it is in each of us, in the very fact of being a person, in being "I am". It is this "I am" that implies the capacity to seek the truth, hence the ability to grasp what it is that structures my person as a spirit. It seems crucial to understand this important link between the search for truth and the development of

16 Namely, the work of Viktor Frankl (logotherapy) and the work of Carl Rogers, among others.

17 World Summit for Social Development, Copenhagen, 1995, especially paragraph 3: "[...] our societies must respond more effectively to the material and spiritual needs of individuals, their families and the communities in which they live [...] We must do so not only as a matter of urgency but also as a matter of sustained and unshakeable commitment through the years ahead".

18 Pope Paul VI, Pastoral Constitution *Gaudium et Spes*. Vatican II, Rome, 1965, §16

the person. Indeed, the search for truth alone can give ultimate dignity to the person, enabling him/her to acquire true awareness of his/her responsibilities and of his/her freedom.¹⁹

In a fundamental way, the notion of human development also concerns the psychological dimension, which presents some peculiarities regarding the human being. The Declaration on the Right to Development rightly wants to honor the human being by outlining that “the human person is the central subject of development and should be the active participant and beneficiary of the right to development”.²⁰ Through these precise injunctions, the Declaration corrects the easy assimilation that is made, and that still persists, between development and economic growth. In the same sense and as advocated by the Stiglitz Report²¹ on the measurement of national wealth in France, the indicator relating to the gross domestic product (GDP) needs to be supplemented by other indicators, in order to also measure the social progress and the well-being of individuals, and through more subjective measures concerning the quality of life (perception of real well-being, happiness, worries, etc.).

The work, the stakes and the great challenges that concern International Communities today, especially in the defense of human dignity, are important, and they compel all the actors in an undisputable way. Pope Francis clearly pointed this out when addressing the United Nations in 2015:

“The common house of all men must continue to rise on the foundations of a right understanding of universal fraternity and respect for the sacredness of every human life, of every man and every woman, the poor, the elderly, children, the infirm, the unborn, the unemployed, the

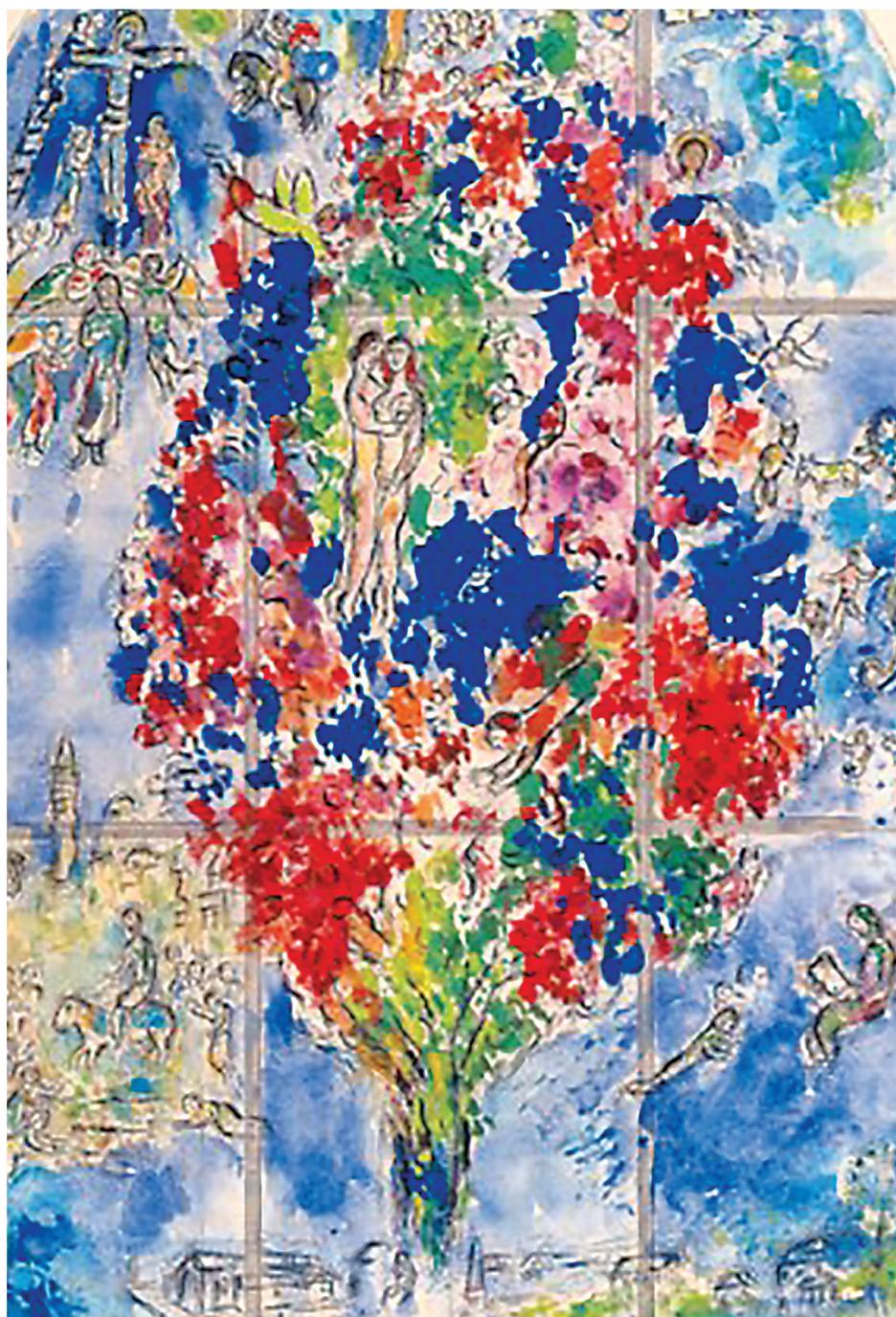
19 F. M.D. Philippe, op, *Le problème de la personne, sommet de la philosophie première*, in *La Personne Humaine*, Aletheia, n° 4, December 1993, pp.9-39.

20 United Nations, General-Assembly Declaration on the Right to Development, A/RES/41/128, 4 December 1986, Article 2; Available at <http://www.un.org/documents/ga/res/41/a41r128.htm> [Accessed 1 November 2018]

21 Joseph Stiglitz, Nobel Prize for the economy in 2001 and President of the Commission on the Measurement of Economic Performance and Social Progress, created by President Nicolas Sarkozy, January 8th, 2008.

abandoned, those considered disposable because they are only considered as part of a statistic. This common home of all men and women must also be built on the understanding of a certain sacredness of created nature. Such understanding and respect call for a higher degree of wisdom, one which accepts transcendence, rejects the creation of an all-powerful elite, and recognizes that the full meaning of individual and collective life is found in selfless service to others and in the sage and respectful use of creation for the common good. To repeat the words of Paul VI, 'the edifice of modern civilization has to be built on spiritual principles, for they are the only ones capable not only of supporting it, but of shedding light on it.'²²

²² Pope Francis, Address at the United Nations General Assembly, 25 September 2015.



Marc Chagall | TREE OF LIFE | detail

1948-2018: REFLECTIONS ON THE UNIVERSAL DECLARATION OF HUMAN RIGHTS

PROFESSOR VINCENZO BUONOMO

Rector of the Pontifical Lateran University

The seventieth anniversary of the Universal Declaration of Human Rights (UDHR) rekindles the debate on the authoritativeness of this instrument, which remains one of the cornerstones of contemporary international law. In fact, the Declaration is essential for the existence of States in their various components, and for the Community of Nations as a whole. However, some questions arise: does it effectively respond to the current visions and needs of international relations? Can it still be considered, as stated in its Preamble, a “common ideal to be reached by all peoples and nations”?¹

There are many viewpoints to these and other questions, especially for those working in the international context. I would like to share with you some reflections from the perspective of Catholic Social Teaching, which represents one approach to understanding the significance of this anniversary.

What does the Universal Declaration of Human Rights Represent in the Vision of the Church?

The UDHR represents “the outcome of a convergence of different religious and cultural traditions, all of them motivated by the common

¹ Universal Declaration of Human Rights, General Assembly Resolution 217 A, 10 December 1948, Preamble, available at https://www.ohchr.org/EN/UDHR/Documents/UDHR_Translations/eng.pdf [Accessed 1 November 2018]

desire to place the human person at the heart of institutions, laws and the workings of society, and to consider the human person essential for the world of culture, religion and science”.² The UDHR is also part of the anthropocentric vision shared by Pope John Paul II at the United Nations (UN): “This document is a milestone on the long and difficult path of the human race. The progress of humanity must be measured not only by the progress of science and technology, which shows man's uniqueness with regard to nature, but also and chiefly by the primacy given to spiritual values and by the progress of moral life”.³

Speaking to the Diplomatic Corps accredited to the Holy See in 2018, Pope Francis pointed out the consonance of the Declaration with the Christian view: “From a Christian perspective, there is a significant relation between the Gospel message and the recognition of human rights in the spirit of those who drafted the Universal Declaration of Human Rights”.⁴

Furthermore, the Pope confirmed the foundation of the Declaration: “Those rights are premised on the nature objectively shared by the human race. They were proclaimed in order to remove the barriers that divide the human family and to favour what the Church’s social doctrine calls integral human development”. Finally, the Pontiff warned against the risk of turning away from the spirit of the Declaration: “A reductive vision of the human person [...] opens the way to the growth of injustice, social inequality and corruption”.⁵

What did the Universal Declaration Express in 1948?

The UDHR is not a simple catalog of rights or a solemn proclamation (as René Cassin said) but an instrument through which the States proclaimed the primacy of freedom against oppression and the primacy of the unity

2 Pope Benedict XVI, Address to the United Nations, 18 April 2008

3 Pope John Paul II, Address to the United Nations 2 October 1979

4 Pope Francis, Address to the Diplomatic Corps Accredited to the Holy See, 8 January 2018

5 *Ibid.*

of the human family with respect to ideological and political divisions, as well as differences of race, sex, language and religion. The ultimate goal of the Declaration is the defense of the human person from the idolatry of the totalitarian State, which started from a shared conviction: “the recognition of the inherent dignity of all the members of the human family, and of their equal and inalienable rights, constitutes the foundation of freedom, justice and peace”.⁶

Is this approach still valid after seventy years? Perhaps its validity is in relation to the principle of equality, even if, in the context of human rights today, equality almost exclusively means empowerment and non-discrimination. However, the concept of freedom is different today (where are the limits of freedom if everything can be done?), and the same can be said for the concept of justice: in the language of human rights, justice stands for justiciability – meaning, the implementation of rights through claims and procedures.

The Declaration was a reaction to the crimes against humanity, to the horrors of war and acts of genocide, and it strove for a worthy future for men, exalting the primacy of life, of freedom and of belonging to the human family. For these purposes, the Declaration is founded on an idea of justice that is realized through sociality and the democratic method.⁷ Democracy was not only understood as a political theory, but as a set of rules, institutions and structures capable of expressing and conveying values, which are established by the common conscience of peoples - the “conscience of mankind”, as stated in the UDHR Preamble.

Today this automatism is no longer valid, but has been replaced by the so-called “cross-cutting approach” that, *inter alia*, separates rights from values. For example, life, before being a right, is a value; if life is considered only a right, everyone can find the way to guarantee life according to his/

6 Universal Declaration of Human Rights, General Assembly Resolution 217 A, 10 December 1948, Preamble, available at https://www.ohchr.org/EN/UDHR/Documents/UDHR_Translations/eng.pdf [Accessed 1 November 2018]

7 *Ibid.*, article 28

her vision or ideology (this is the conjecture of articles 9 and 10 of the Draft General Comment on the article 6 of the International Covenant on Civil and Political Rights (ICCPR) which would interpret abortion and euthanasia as an element of the right to life).

Universal Rights or Universality of the Subject of Rights?

The vision of the Church on human rights emphasizes the importance of the principle of universality in a singular way: it is the universality of the person that provides human rights the characteristic of universality. In fact, “not only rights are universal, but so too is the human person, the subject of those rights”.⁸

For Pope Francis, universality is essential to prevent a limited approach: “In the very name of human rights, we will see the rise of modern forms of ideological colonization by the stronger and the wealthier, to the detriment of the poorer and the most vulnerable. At the same time, it should be recalled that the traditions of individual peoples cannot be invoked as a pretext for disregarding the due respect for the fundamental rights proclaimed by the Universal Declaration of Human Rights”.⁹ This is the view proposed by the Holy See in the context of the preparatory phase of the Vienna Conference on Human Rights in 1993 (2018 marks its 25th anniversary). This position was introduced in article 5 of the Vienna Declaration, known as the so-called “cultural clause”: “All human rights are universal, indivisible and interdependent and interrelated. The International Community must treat human rights globally in a fair and equal manner, on the same footing, and with the same emphasis. While the significance of national and regional particularities and various historical, cultural and religious backgrounds must be borne in mind, it is the duty of States, regardless of their political, economic and cultural systems, to promote and protect all

⁸ Pope Benedict XVI, Address to the United Nations, 18 April 2008

⁹ Pope Francis, Address to the Diplomatic Corps Accredited to the Holy See, 8 January 2018

human rights and fundamental freedoms”.¹⁰

This universal aspect is also important for the elaboration of human rights, and for the activities of the protection and control mechanisms involved (i.e. Human Rights Council/UPR, Treaty Bodies). Currently, the actions of the various intergovernmental bodies face new challenges to combine every activity, situation or strategy with “a human rights-based approach”; on the one hand through the use of the cross-cutting methodology that has effectively neglected the reference to the classic categories of rights - delineated as civil and political, or economic, social and cultural; on the other hand through the basic principles of universality, indivisibility, interdependence and inter-relatedness called to regulate the implementation of rights. The cross-cutting approach, which has emerged as a trend, is now a consolidated methodology present in the current international agenda, in particular that of the United Nations, which integrates the rights within single issues, following the criterion: “human rights throughout the UN System”.

How much Impact does the Fragmentation of the Unity of the Person have on the Lack of Protection of Human Rights?

The fragmentation of the human person is the basis for proclaiming new rights in order to build large spaces of freedom. Often, however, all these spaces remain deprived of the necessary effectiveness: “The interpretation of some rights has progressively changed, with the inclusion of a number of ‘new rights’ that not infrequently conflict with one another”.¹¹

An immediate effect of fragmentation is the recognition of new rights related to consolidated areas in international practice. For example, what is left of the proclamation of the right to peace of 2006?

¹⁰ Vienna Declaration and Programme of Action, 25 June 1993, article 5, available at <https://www.ohchr.org/Documents/ProfessionalInterest/vienna.pdf> [Accessed 1 November 2018]

¹¹ Pope Francis, Address to the Diplomatic Corps Accredited to the Holy See, 8 January 2018

- The responsibility of international personnel participating in peace support operations with respect to the fundamental rights of populations who receive assistance from peacekeeping, peace enforcement, peace building, etc;
- The right of refugees and displaced persons who are victims of conflicts to return to their houses and properties, which has the effect of the resumption of the conflict even if otherwise motivated;
- The disappearances of people in situations of conflict and post-conflict with a definition of missing persons, identified in those whose family is without news or who, on the basis of reliable information, are considered missing following an international or non-international armed conflict.

Further content from the definition of forced disappearance can be pointed out. The definition of forced disappearance (“enforced disappearance”) is outlined in the Convention for the Protection of All Persons from Enforced Disappearance as the effect of “arrest, detention, abduction or any other form of deprivation of liberty by agents of the State or by persons or groups of persons acting with the authorization, support or acquiescence of the State, followed by a refusal to acknowledge the deprivation of liberty or by concealment of the fate or whereabouts of the disappeared person, which place such a person outside the protection of the law”.¹² Disappearances related to conflicts and post-conflict situations are therefore linked to specific elements that fall within the broader legal-political cooperation between States, and not within the right to peace.

What Commitments can be Made?

In the vision of the Catholic Church, the protection of the human person requires the recognition of subsidiarity as the regulating principle of social order. This calls for action in order to clearly affirm that the dignity

¹² Convention for the Protection of All Persons from Enforced Disappearance (2006), art. 2

of the human person is founded in individual rights and freedoms, as well as in those rights linked to the collective dimension, such as the freedom to associate with and establish organizations of civil society, intermediate bodies, those linked to the States' dimension and up to the level of the International Community and its institutions. The collective dimension of human rights is today consistent with human rights protection and promotion. An approach is found in the UDHR, which in the name of the dignified existence of the human person combines civil and political freedoms together with the social vocation inherent to the human being: Nutrition and medical care, education and learning, work and social security, leisure and family life.¹³ Not so in the preparation of the 1993 Vienna Conference. In September 2002, the Holy See proposed what is the current paragraph 2 of the Preamble of the final Declaration: "Recognizing and affirming that all human rights derive from the dignity and worth inherent in the human person, and that the human person is the central subject of human rights and fundamental freedoms", and adding: "in its individual and collective dimension".¹⁴ Regarding the last sentence, some western countries were less worried about the expression "collective". Despite the mediation of several Asian countries, of the African group (which was based on the African Charter of Human and Peoples' Rights in which the collective dimension is structural), and of the Chairperson of PrepCom (Mme Alima Warzazi of Morocco) a proposal to replace "collective" with "social" was finally not accepted.

Moreover, the Church's vision calls for action when fundamental rights are threatened. The right to life, for example, requires a concrete commitment that reaches a person's protection at all stages of his/her existence. This approach is restricted by the lack of a culture of life. We are well aware that issues related to the "beginning of life" or to the "end of life" remain open to discussion in the scientific debate, and these discussions cannot be ignored. Human rights must be confronted in this aspect, but through

¹³ Universal Declaration of Human Rights, General Assembly Resolution 217 A, 10 December 1948, article 25, available at https://www.ohchr.org/EN/UDHR/Documents/UDHR_Translations/eng.pdf [Accessed 1 November 2018]

¹⁴ *Ibid.*, paragraph 2 of the Preamble,

the guiding criterion of human dignity and not of functionality. On this subject there will be a growing debate over the coming years, and every strategy to contrast new theories must be elaborated, combining the ethical plan, the moral principles and the achievements of science to avoid any improvisation.

Being Builders of a Culture of Social Rights

Today the basic socio-economic rights seem to depend on anonymous control mechanisms. According to the Church's view, this situation reflects economic structures which are not based on the central value of the person and supports a pragmatic view of rights, forgetting dignity as a foundation.

To produce a culture of social rights is an important goal. For the Church, this commitment dates back to the systematic doctrine of the Encyclical Letter *Rerum Novarum* (1891), later concretized with the Holy See's participation in the International Association for the Legal Protection of Workers and, after 1919, in the presence and support of the International Labour Organization. However, this means explaining that the cause of the denial of rights is not only the presence of new economic structures but, rather, an abandonment of the person's vision that has increasingly become an object of economic action and is not a subject anymore. This view often reduces a person's claim to rights, relating them to his/her function of stakeholder or consumer and not to his/her nature as a human person.

How to Defend Fundamental Rights?

Our task is to be able to distinguish rights from simple and often limited needs that deprive those rights of their necessary effectiveness. Even when new situations arise, going back to the original setting of the Declaration is possible and can be a way forward. It seems clear that rights can evolve,

yet it is different to deprive them of their foundation by tying them to the current fashion and introducing a partial or ideological vision on which to arbitrarily build new rights without specifying their content and legal consistency.

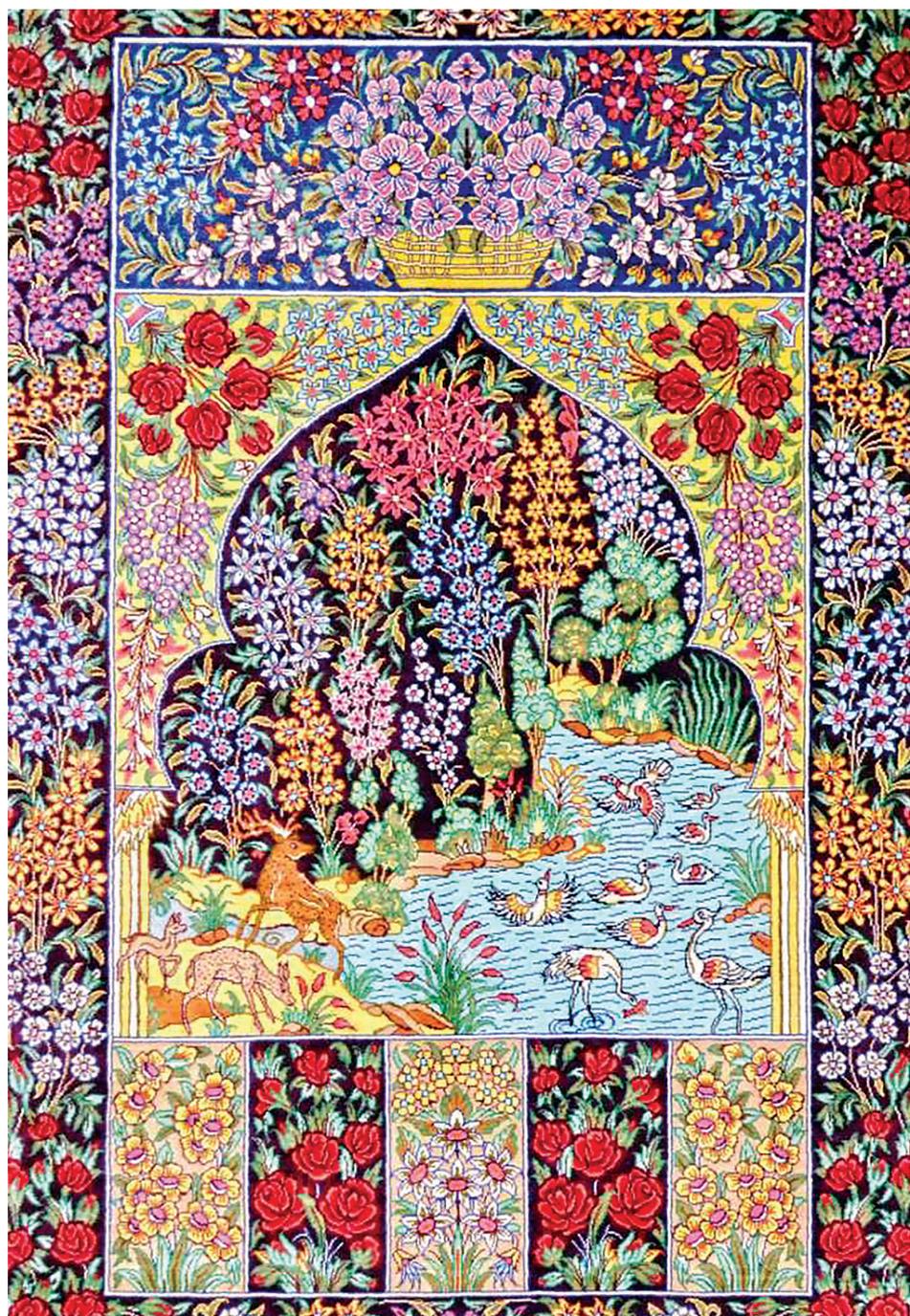
We have to continue to talk about human rights, but with reference to their ethical foundation - to the principles of moral order that are present in social relationships, from the interpersonal dimension to international relations. We may be considered “out of fashion” with respect to dominant models, but this is part of our commitment.

We have to be aware that rights are not “single boxes” that, according to historical, cultural and political moments, are filled with different meanings and elements. On the contrary, it is the lack of a reference to their corresponding values which principally cause the ineffectiveness and violation of rights.

Only a weak view of human rights can consider that the human person is the result of his/her rights. Indeed, this reading does not recognize that rights remain an instrument created by man to give full realization to / her innate dignity. The Universal Declaration, in fact, can serve to defend freedom and its rules, but also to prevent them from degenerating into the negation of the primacy of human beings.

For a Non—Governmental Organization, the Approach to Rights cannot be Generalized

Each Organization must agree on the specifics of its aims and possibilities. It is necessary to improve skills in a specific and interdisciplinary way: i.e. a relationship with science and scientific research is important to understand new tendencies. The foundation of rights and the universality of the subject remains the same: human dignity and the human person.



Persian Rug | FOUR SEASON TREE OF LIFE | detail

THE DIGNITY (AND INDIGNITY) OF HUMAN LIFE IN INTERNATIONAL LAW

Dr. GRÉGOR PUPPINCK, PhD

Director of the European Centre for Justice and Law ¹

What are **dignity**, **life** and **humanity**?

Does dignity apply to **life**, to **humanity** or to both indissociably?

What is **human life** in relation to **animal** and **plant life**?

This article will study the comprehension of the dignity and protection of human life by the drafters of the Universal Declaration of Human Rights in 1948 (I), and from then the more recent evolution of this understanding to explain in particular how the conception of this dignity has changed, entailing the reduction or decrease of the protection of life (II).

I. DIGNITY AND PROTECTION OF HUMAN LIFE IN 1948

A. THE DIGNITY OF HUMAN NATURE IS A SOURCE OF RIGHTS

1. The Dignity of Human Nature

In the founding Charter of the United Nations, signed in San Francisco on 26 June 1945, the “peoples of the United Nations” said they were

¹ This presentation is developed in the author's new book *Les droits de l'homme dénaturé*, published by Le Cerf, November 2018 available in French.

“determined [...] to reaffirm [*their*] faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women and of nations large and small”.²

In the Universal Declaration of Human Rights (UDHR), the General Assembly of the United Nations affirmed that the “recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world”.³

In both 1966 Covenants,⁴ the States recognized “that these rights derive from the inherent dignity of the human person”. This understanding – that human dignity is inherent and the very source of every person’s rights - echoes the teaching of Pope John XXIII, who, in his Encyclical Letter *Pacem in Terris*, explained that “the rights of the human person derive directly from his dignity as a human person, and are therefore universal, inviolable and inalienable.”⁵ Likewise, the Final Act of the Helsinki Conference on Security and Co-operation in Europe, stated that “civil, political, economic, social, cultural and other rights and freedoms all [...] derive from the inherent dignity of the human person and are essential for his free and full development”.⁶ This formulation perfectly shows the link between **dignity**, **fulfilment** and the **rights and freedoms** of the human person.

2 Charter of the United Nations, 26 June 1945, Preamble, available at: <http://www.un.org/en/sections/un-charter/preamble/index.html> [Accessed 5 November 2018]

3 Universal Declaration of Human Rights, General Assembly Resolution 217 A, 10 December 1948, Preamble, available at https://www.ohchr.org/EN/UDHR/Documents/UDHR_Translations/eng.pdf [Accessed 5 November 2018]

4 The International Covenant on Civil and Political Rights, and the International Covenant on Economic, Social and Cultural Rights, both signed on 16 December 1966

5 Pope John XXIII, Encyclical Letter *Pacem in Terris*, 11 April 1963, paragraph 145, available at http://w2.vatican.va/content/john-xxiii/en/encyclicals/documents/hf_j-xxiii_enc_11041963_pacem.html [Accessed 5 November 2018]

6 Final Act of the Helsinki Conference on Security and Co-operation in Europe, 1 August 1975, Principle VII; Available at: <https://www.osce.org/helsinki-final-act?download=true> [Accessed 5 November 2018]. The Helsinki Conference will be at the origin of the Organization for Security and Cooperation in Europe (OSCE).

To affirm, especially like the first article of the UDHR, that “all human beings are born equal in dignity”,⁷ necessarily implies that the origin of human dignity originates in what all Men⁸ share equally. This excludes seeing in the physical, intellectual or material characteristics the origin of human dignity, because they would then give a variable measure according to the person.

What is common to all Men cannot be material, thus dignity is often described as **transcendent** because it goes beyond matter, which can be known and measured. Any person, whatever his specificities, age, abilities, talents and handicaps, shares this ontological dignity. Being human is enough to participate in it. This dignified and common character “to all members of the human family” is called **human nature**. And it is because human nature is itself universal, that the dignity imbued in all persons is also universal.⁹

The dignity of human nature is therefore a common good to all of humanity in which every person participates.

This human nature is what the **inherent** character of dignity, highlighted in the Universal Declaration, refers to. To qualify dignity as inherent means that it is possessed by Man because he is human, and implies that it is not conferred by the State or society. In the spirit of the drafters of the UDHR, what had to be asserted was that the dignity of each person and the rights deriving from that dignity are not conceded by the State, but

7 Universal Declaration of Human Rights, General Assembly Resolution 217 A, 10 December 1948, Article 1, Available at https://www.ohchr.org/EN/UDHR/Documents/UDHR_Translations/eng.pdf [Accessed 5 November 2018]

8 In this text, the word “Man” or “Men” with a capital letter will be used, as it is a language used in international treaties and is used as a generic word, evidently including every human being, man and woman. For an eased reading and comprehension, the masculine pronouns will be used, once again as a reference to the “human being”.

9 This is also reflected in the 1966 Covenant on Civil and Political Rights, which proclaims and defends “the inherent dignity of the human person” (Preamble and Article 10). Yet, the notion of the human person designates the subject imbued with human nature.

pre-exist the latter, and must be respected by it. This is what the American States perfectly expressed in the American Declaration of the Rights and Duties of Man: “The essential rights of man are not derived from the fact that he is a national of a certain State, but are based upon attributes of his human personality”.¹⁰

2. The Dignity of Human Nature is the Source of Human Rights

Dignity is not only an abstract quality of human nature; it is also presented as the source from which human rights stem. This link must be clarified lest its misunderstanding leads to serious confusion and controversy regarding the content of human rights.

As the source of human rights, dignity must be both the origin of the content of rights and of the obligation attached to them. Let us consider these aspects:

a. The Dignity of Human Nature as the Source of the Obligation

If Men are “born equal in dignity”, they are still not accomplished yet at birth. A baby in his mother’s womb is already human – he has received, with life, the gift of human nature – but he must still work to make it fruitful to become an **accomplished person**. The better he achieves in himself the potentialities of human nature, the more he will bear witness to human dignity. Thus, human dignity, like the treasure hidden in the land of the Farmer in Jean de Lafontaine's fable,¹¹ is both a gift and a potential: it is possessed ontologically while having to be accomplished in oneself through one’s efforts. It expresses the value of the human

¹⁰ American Declaration of the Rights and Duties of Man, Bogotá, 1948, paragraph 2, available at <https://www.cidh.oas.org/Basicos/English/Basic2.American%20Declaration.htm> [Accessed 5 November 2018]

¹¹ This fable is about a farmer, who, about to die, tells his children to not sell his land, as the treasure is hidden there. The children turn up every foot of ground and find no gold hidden in it. Yet the field is soon covered in crop, and they see how working in itself is wealth. (French), available at <http://www.la-fontaine-ch-thierry.net/laboureur.htm>; (English) <https://www.studentuk.com/2016/07/20/the-farmer-and-his-sons/> [Accessed 12 November 2018]

nature all persons share and are called to accomplish on their own to the best of their ability. This is called **operative dignity**, which is realized by fulfilling our nature; unlike the **ontological dignity**, due to the mere fact of sharing human nature, the “*óntos*”.

While other beings (animals, plants) are like prisoners of their nature and conditioned by it, each person has a certain freedom which makes him capable and responsible for his own accomplishment. From conception to death, every effort of a human life tends towards fulfilling in oneself the potentialities of human nature: namely, to humanized oneself. The Romans saw in this fundamental desire a duty, that of “perfecting human nature in oneself and respecting it in others”.¹² They called it *humanitas*. By recognizing their dignity, Men thus oblige each other to respect in themselves and in the other their common nature, that is, to live with dignity. It is this duty to oneself and to others that generates obligations: mutual duties and rights; because of the dignity of our common humanity.

b. Human Nature is the Source of the Content of Rights

From that desire and duty of perfection arises a **natural morality** under which a thing is good or bad to the extent that it helps or harms the accomplishment of human nature in everyone. For example, instruction and physical activity are particularly good in that they allow children to grow. The good is therefore determined by human nature: things are good or bad according to whether they benefit human nature or not. Human nature is at the origin of morality, hence the importance of knowing it. The Greek and later Christian philosophers¹³ distinguished four fundamental aspects of it: Man is by nature: being – living – social – spiritual. Each of these aspects is a good which produces a special inclination in Man. Like any **being**, Man desires to maintain his existence. Like any **living being**, Man desires to give life. As a social (or political) being, Man desires to live

¹² Michel Villey, *Le droit et les droits de l'homme*, Paris, PUF, coll. Quadrige, 1983, p. 87.

¹³ Among others: Saint Thomas Aquino, *Summa theologiae*, Ia, IIae, q. 94, a. 2.

in society. Finally, as a **spiritual being**,¹⁴ Man desires to know the truth and God. Everything that answers these desires is good; all that hinders them (death, sickness, loneliness, error) is evil. This morality is natural because it derives from human nature; it is the way, the “**right path**”, through which the person accomplishes his being, actualizes his shared human nature: it is the “natural moral law”. Thus, this “natural law” does not create good, but it is good that determines the **right law**. Reason can deduce the law of the desired good just as one deduces a path from a goal to attain. By observing this law, the person accomplishes himself and finds his good there. The natural moral law thus stems from human nature, from which it also receives its universality and authority.

After World War II, the new international formulations of human rights legally translated, as much as possible, the natural moral law –according to President Roosevelt– to allow the advent of a **world moral order**.¹⁵ The new human rights were then intended to protect each person in the exercise of the faculties by which he tends to humanize, against arbitrary interference.

As a result, it is by observing the characteristic features of human nature that the content of human rights can be known. Thus, the observation that Man is by nature a - living - social - and spiritual - being makes it possible to deduce that human rights protect the life and physical integrity of the persons (being), then their ability to found a family (living being), then that of associating and expressing oneself (social being) and finally the freedoms of the spirit (spiritual being). The protection of these faculties ultimately aims at reducing the obstacles to the harmonious achievement of the personality, in all dimensions of human nature.

Thus, the consideration of the nature and dignity of the human person allows us to establish the purpose, content, authority and universality

¹⁴ Here spiritual means with a spirit, namely able to reflect and think on oneself.

¹⁵ Speech by President Franklin D. Roosevelt before the United-States Congress on 6 January 1941.

of human rights. As a result, any disagreement about human nature and dignity directly breeds contention over human rights.

The first right that derives from the dignity of human nature is the right to life.

B. THE PROTECTION OF HUMAN LIFE

“Life” is the first necessary condition for fulfilment, so its protection is the first natural right of every human being. The fetus, like the child, the teenager and the adult, needs to stay alive to fulfil the potentials of human nature in himself. It is not because the child is less accomplished than the adult that his life would be less valuable. On the contrary, it can be argued that life is all the more precious as human beings are young and still rich in potentialities. For an already mature person, their main goods of life may be their children, their already realized work and the hope for eternal life.

The protection of life comes first among all human rights. It is proclaimed at the beginning of all contemporary declarations. The right to life is the only right described as “inherent”¹⁶ to “every human being”¹⁷ by the International Covenant on Civil and Political Rights. For their part, the judges of the European Court protect the “sanctity of life”.¹⁸ In 1948, in the spirit of the San Francisco Charter, the World Medical Association¹⁹ adopted the Oath of Geneva, in which doctors promised to uphold

16 International Covenant on Civil and Political Rights, 16 December 1966, Article 6, available at: <https://www.ohchr.org/EN/ProfessionalInterest/Pages/CCPR.aspx> [Accessed 6 November 2018]

17 *Ibid.*

18 CEDH, *Pretty c. Royaume-Uni*, 2002, précité, § 14. 6. *Koch v. Germany*, 2012, § 51

19 The World Medical Association (WMA) is a confederation of free professional associations founded in 1947 in the spirit of the Charter of the United Nations and following the two Nuremberg trials. The organization was created to “ensure the independence of physicians, and to work for the highest possible standards of ethical behaviour and care by physicians, at all times. This was particularly important to physicians after the Second World War”.

“utmost respect for human life from the time of conception”²⁰ and to reject “considerations of religion, nationality, race, party politics or social standing to intervene between my duty and my patient”.²¹ In the same vein, the 1969 American Convention on human rights stated that “Every person has the right to have his life respected. This right shall be protected by law and, in general, from the moment of conception. No one shall be arbitrarily deprived of his life.”²² The protection of the right to life was then progressively extended, notably by increasing protection against acts of torture and enforced disappearances, by restricting the acceptance and application of the death penalty,²³ or by protecting childhood and motherhood, especially against the death penalty.

One of the main threats to the right to life stems from ideologies that reduce and condition human dignity to only one of the aspects of human nature. This was the case of the Nazis who thus reduced people to their only racial, political or religious characters. The communists did the same according to the demands of “progress”. This allowed these regimes to overlook and deny human dignity to all those who did not fulfil their criteria and then to murder them. This was the case not only for the Jews, but also for the mentally handicapped or the feeble-minded. All genocides are based on a dehumanizing reductionism. This is also the case with rape which reduces the woman to her body. This is why the prerequisite for the respect of life is the affirmation of the unity and irreducibility of human nature. It cannot be divided or reduced to one of its aspects without leading to the dehumanization of the whole person.

Thus the prohibition of discrimination can be understood, because it ultimately opposes the reduction of persons to one of their non-chosen

20 Oath of Geneva, 1948.

21 *Ibid.*

22 American Convention on Human Rights, 22 November 1969, Article 4, available at http://www.hrcr.org/docs/American_Convention/oashr4.html [Accessed 6 November 2018]

23 Protocol No. 13 to the Convention for the Protection of human rights and Fundamental Freedoms, concerning the abolition of the death penalty in all circumstances. Council of Europe, 3 May 2002.

characteristics, such as race, color, sex, language, origin, fortune, birth, disability, etc. The prohibition of discrimination obliges Men to consider each person in his humanity and forbids a person to be deprived of the enjoyment of a human right because they would have such or such specific characteristic.

This explains why the drafters of the UDHR rejected the proposal by the Commission on the Status of Women, to include exceptions for the right-to-life to “prevent the birth of mentally disabled children” and children “born to parents with mental illness”.²⁴ The representative of Chile opposed this proposal, noting its similarity with the Nazi legislation. Indeed, the equal protection of the right to life cannot depend on the physical characteristics of people.

II. THE NEW INDIGNITY OF HUMAN LIFE

Today, the right to life is once again challenged, with judges and legislators introducing new exemptions not provided for in the original texts. For example, the Human Rights Committee, in the new version of its General Comments on the right to life,²⁵ affirms the right to end the lives of unborn children and to assisted suicide. Moreover, it affirms the obligation for States to guarantee such “right to death” in the case of abortion, against the intention of the drafters of the UDHR.

A. A DUALISTIC CONCEPTION OF HUMAN NATURE

How is it possible to deduce a “right to death” from the right to life? How can some human lives no longer be considered worthy of protection?

²⁴ *Proposition du Groupe de travail de la Commission sur le statut des femmes, Travaux préparatoires, E/CN.4/SR.35, p. 1266.*

²⁵ Human Rights Committee, General comment No. 36 (2018) on article 6 of the International Covenant on Civil and Political Rights, on the right to life, CCPR/C/GC/36, 30 October 2018

This profound questioning of the right to respect for life results once again from a reductionism. It is no longer based on race or religion, but more fundamentally targets human nature. It opposes the body and the will with the idea that humanity resides only in the will (or in the mind), while the body would be only biological, animal. The matrix of this **materialistic and dualistic conception of Man** is rooted in the evolutionist idea that the human mind is gradually emerging from matter. From this idea forward, human nature is no longer regarded as consisting of the harmonious union of body and soul, but as the affirmation and domination of the will over the body.

According to this conception, human life is not perceived as the breath that animates the body, but as the material support of the individual mind. Life would only be a biological reality shared with plants and other animals. It would not be properly human, but only an unconscious material, spread and shared on Earth and perhaps in the universe; it would be a prolific source of raw energy that, like any other material, would have to be dominated and transformed by the human mind in order to acquire a form and a value. Consequently, what would properly be human, dignified, and deserving of recognition and protection, would no longer be life itself, but the spirit or the will - of which it is a carrier.

This dualism introduces a hierarchy of lives according to their degrees of humanity. Every life is thus judged human, and therefore worthy, in proportion to its animation by the mind: the fetus is not worthy yet, and the comatose is not really worthy anymore. Still devoid of personal consciousness and will, the conceived and carried unborn being acquire value only in proportion to the will of which he is first the object and then the subject. His existence is thus worth inasmuch as the adult is able to form a parental project with respect to him, then to the measure of his own level of consciousness, that is to say of autonomy, according to a process of progressive individuation which continues for a long time after birth. The Inter-American Court of Human Rights explicitly endorsed this approach in stating that “the protection of the right to life

under this provision is not absolute, but rather gradual and incremental”.²⁶ The **biological life** would become a human life inasmuch as his personal consciousness develops. Thus, it is no longer life, but the level of individual consciousness, emerging from organic life and identified with the mind, that alone has a value in itself. One’s life, stripped of its humanity, is deprived of human dignity and consequently denied the right to respect. This leads directly to the acceptance of the sacrifice of the life of beings, especially through abortion and euthanasia.

B. THE ACCEPTANCE OF THE SACRIFICE OF THE LIFE OF BEINGS

1. Abortion

As regards abortion, this dualistic understanding of the human being led the European Court of Human Rights (ECHR) to introduce a distinction between “the unborn child” and the “person”, to deny the former the enjoyment of the rights of the latter. In fact, it states that it cannot “answer in the abstract the question whether the unborn child is a person for the purposes of Article 2 of the Convention”²⁷ while admitting his belonging to “the human race”.²⁸ According to the Court, “The potentiality of that being and its capacity to become a person [...] require protection in the name of human dignity”.²⁹ It is no longer real life that is protected, but life as the support of the spirit, which alone would be clad with human dignity.

To prove that this distinction is arbitrary, the Court is unable to determine when the transition from biological life to personal life would take place, from the unborn child to the person, and therefore when his right to life would begin. It takes as a pretext “that there is no European consensus on

²⁶ Inter-American Court of human rights Case of Artavia Murillo et al. (“In Vitro Fertilization”) v. Costa Rica Judgment of November 28, 2012, § 264.

²⁷ ECHR, *Vo v. France* [GC], 8 July 2004, no. 53924/00, § 85.

²⁸ *Ibid.*, § 84.

²⁹ *Ibid.*, § 84.

the scientific and legal definition of the beginning of life”.³⁰ However, the true problem is not so much the “beginning of life”, for everyone knows it starts at conception; it is the determination of the threshold of humanity, namely the moment from which there would be enough mind in a body to make a human person worthy of protection.

Yet, what do we know about the mind or the conscience? Do we know how to define them – do we know their origin and the laws of their development? Life, on the other hand, is a well-known phenomenon – an objective criterion of the existence of a human being – whereas the mind can only be an arbitrary criterion, which reintroduces a hierarchy between human beings, their dignity and the recognition of their rights.

The threshold of humanity of the weakest beings is now determined by third parties, whose only legitimacy is to have had the chance to reach a more advanced stage of development. This is the case for unborn children, but also for the sick or bedridden.

2. Euthanasia

The same can be said today with regard to euthanasia and assisted suicide. After World War II, several official texts were adopted denouncing euthanasia, both internationally and nationally, the most important being the European Convention on Human Rights, stating that “no one shall be deprived of his life intentionally”.³¹ German doctors, who euthanized thousands of disabled people, were consequently sentenced in the Nuremberg trials.³² In France on 14 November, 1949, the Academy of Moral and Political Sciences adopted a declaration

³⁰ *Ibid.*, § 82.

³¹ European Convention on Human Rights, 4 November 1950, article 2, available at: https://www.echr.coe.int/Documents/Convention_ENG.pdf [Accessed 6 November 2018];

³² Trials of the War Criminals before the Nuremberg Military Tribunals under Control Council Law No. 10, Nuremberg October 1946-April 1949, Volume V, Washington, DC: Government Printing Office, 1950.

rejecting “formally all methods intended to cause the death of subjects deemed monstrous, malformed, deficient or incurable”, declaring that “euthanasia and, in a general way, all the methods which have the effect of provoking by compassion, in the moribund, a ‘gentle and quiet’ death, must also be dismissed”, for, otherwise, the doctor would grant himself “a sort of sovereignty over life and death”.³³ This declaration was signed, among others, by René Cassin, one of the main drafters of the Universal Declaration of Human Rights.

Despite the recollection of the atrocities of World War II, the claim for a right to practice euthanasia has continued, and it has since been necessary to regularly recall its prohibition. For example, the Parliamentary Assembly of the Council of Europe (PACE) stated in 1976 that the doctor “has no right, even in cases which appear to him to be desperate, intentionally to hasten the natural course of death”.³⁴ It renewed this recommendation in 1999³⁵ and again in 2012, stating that “Euthanasia, in the sense of the intentional killing by act or omission of a dependent human being for his or her alleged benefit, must always be prohibited”.³⁶

Yet, the ECHR is, on the one hand, developing a right to assisted suicide on the basis of the right to respect for private life,³⁷ and on the other hand, tolerating the practice of euthanasia.³⁸ The Human Rights Committee, in its new interpretation of the right to life, tolerated the practice of euthanasia and assisted suicide.

33 *Revue des Travaux de l'Académie des Sciences morales et politiques, procès-verbaux*, 1949/2, p. 258.

34 PACE, Recommendation 779 (1976), Rights of the sick and dying, § 7.

35 PACE, Recommendation 1418 (1999) Protection of the human rights and dignity of the terminally ill and the dying

36 PACE, Resolution 1859 (2012), Protecting human rights and dignity by taking into account previously expressed wishes of patients.

37 Grégor Puppink & Claire de La Hougue (2014) “The right to assisted suicide in the case law of the European Court of human rights”, *The International Journal of human rights*

38 ECHR, *Lambert and others v. France* [GC], no. 46043/14, 5 June 2015; *Charles Gard and others v. the United Kingdom*, no. 39793/17, 27 June 2017.

How can this profound change of attitude towards the value of life be explained? It is not enough to say that euthanasia is made necessary by the progress of medicine. Why would it be morally necessary? How would this evil have supposedly become a good?

It is once more the materialistic idea that life is not sacred, that it is only a biological process, a support for consciousness, which alone has a strictly human value. This conception of Man confers the power to put an end to the life of other beings, without their consent, and on the grounds that they are not yet, or are no longer, truly human. The ECHR has thus stated that in the area of “the end of life, as in that concerning the beginning of life, States must be afforded a margin of appreciation”³⁹ regarding the extent of the protection of the right to life.

It is no longer real “life” that is protected, but life as a support of the spirit, and the value of that life is evaluated by means of the new notion of “quality of life”.⁴⁰ Thus the European Court accepted the euthanasia of Mr. Lambert, after having noted that his “cognitive and relational functions were profoundly and irreversibly impaired”,⁴¹ allegedly causing his life to lose its truly human character; although still biologically alive, he is considered already dead in his individuality.⁴²

Thus, from the materialistic point of view, euthanasia and abortion do not kill a person, but only a body, and would be morally good because the continuation of these lives would be contrary to human dignity in that it would ultimately generate a domination of the body over the mind: the domination of the body of the child over the will of the mother, and that of the body of the patient over his own mind and his eventual desire to die.

39 ECHR, *Lambert and others v. France* [GC], *op. cit.*, § 148.

The “margin of appreciation” is the liberty left to the States to decide on the implementation of the European Convention consistent with their national law and their cultural and historical context.

40 ECHR, *Pretty v. The United Kingdom*, 29 April 2002, no. 2346/02, § 65; *Koch v. Germany*, 19 July 2012, no. 497/09, § 51; *Gross v. Switzerland*, 30 September 2013, no. 67810/10, § 58.

41 ECHR, *Lambert and others v. France* [GC], *op. cit.*, § 44.

42 Grégor Puppinck et Claire de La Hougue, « “L’effrayant” arrêt Lambert – Commentaire de l’arrêt ECHR, *Lambert et autres contre France*, GC, n°46043/14, 5 juin 2015 », *RGDM*, n°56, 2015.

The promotion of an individual right to assisted suicide is based on the same dualistic conception of human nature, in that it claims to ensure the effective domination of the mind over the body by voluntary death, and thereby to guarantee the dignity of the person up into his death. This so-called right to “die with dignity”⁴³ or to “decide how and when one’s life must end”⁴⁴ is under creation by the ECHR and the Human Rights Committee. It involves a radically new conception of dignity. The latter is no longer considered universal and inherent to human nature, but individual and relative. This is why the countries that allow euthanasia are irresistibly compelled to extend its access to people who are tired of living or who want to avoid old age, because the only real criterion of assisted suicide is not the state of health, but the expression of the will of the person.⁴⁵ The objectivity of the respect for the right to life is thus absorbed into the subjectivity of the will.

It is also this transformation of the relation to the body, and the consequent loss of the sense of dignity of human life, which explains why the fundamental principle of the inalienability of the human body is gradually replaced, in the Western culture, by an opposite right “**to dispose of one’s body**”.

CONCLUSION

Modernity pierces the mysteries of nature to take control over it. After having disenchanted nature in order to better exploit it, it now attacks the mystery of Man, and desecrates it.

43 United Nations, *Comité des droits économiques, sociaux et culturels*, Observation générale no 14: Le droit au meilleur état de santé susceptible d’être atteint (art. 12 du Pacte international relatif aux droits économiques, sociaux et culturels), 2000.

44 ECHR, *Haas v. Switzerland*, no. 31322/07, 20 January. 2011, § 51, cit. in *Koch v. Germany*, 2012, *op. cit.*, § 52.

45 See Grégor Puppink and Claire de La Hougue, “The Right to Assisted Suicide in the Case Law of the European Court of human rights”, *The International Journal of human rights*, vol. 18, 2014, Issue 7-8.

This effort to master human life is determined through the essential characteristics of contemporary modernity:

- Its **atheism**, which forbids modernity to think that Man could have been wanted such as he is, and that his human nature – as an embodied spirit – can be good in itself;
- Its **materialism**, which obliges it, moreover, to separate the two spiritual and corporal dimensions of human nature in order to subject the latter to the power of technical reason;
- Finally, its **evolutionism**, which encourages it to see in the “spirit” the peculiarity of Man and to want to free him from the material, to thus work for the progress of humanity.

In doing so, contemporary modernity introduces division and breaks the harmony of human nature between body and mind. Moreover, this dualism makes the mind the measure of Man and reintroduces a hierarchy into humanity: the more a Man has wit, will or intelligence, the more he has humanity, thus dignity, and therefore rights.

This explains why a fetus, an adult or an elderly person, although animated by the same human life, may no longer enjoy the same right to life. This also explains why autonomy is now identified as the source of individual rights, whereas human nature was formerly recognized as the source of the natural rights of Man.

By losing their integration in human nature, human rights also lose their purpose and universality. They no longer aim for the fulfilment of the person, but for the affirmation of the individual, and find in autonomy their only source and justification. In doing so, human rights are again becoming an instrument of the power of Man over Man.

The loss of the sense of human nature, and consequently of the dignity of human life, is the direct result of atheistic and technical materialism. Consequently, it is also the recognition of the existence of a common Father, the benevolent creator of all Men, which helps us to accept our human nature, to appreciate its value, its dignity, its demands and its potentialities.



Weaving Navajo | TREE OF LIFE WITH 18 BIRDS | detail

IS THERE A RIGHT TO ABORTION?

HELEN ALVARÉ

Professor of Law, Antonin Scalia Law School, George Mason University

Introduction

Calling to mind the Universal Declaration of Human Rights' (UDHR) right to life and right to freedom of thought, conscience and religion, and the application of these rights to "everyone," without "distinction of any kind," it is noteworthy that while some human rights have positively advanced, the right to life – "whose effective protection is the prerequisite for the enjoyment of all other human rights"¹ – has been regrettably ignored or even fervently contested in many nations since 1948, in respect to the lives of our unborn sisters and brothers.

Some governments and NGOs propose legal abortion as a compassionate and discrete solution to a crisis, such as a sick unborn child, a poor or ailing mother, or a bleak economic future. Yet, it is impossible that such a shock to the canon and hierarchy of human rights, and to the body, mind and soul of a woman and her family, would have only discrete consequences.

Instead, the claim to a "right" to destroy human life before the moment of its birth profoundly affects many other arguments about human rights and corresponding duties. For example, a "right to abort" unborn human beings suggests that no human being has a right to life. It also tends to deny the existence of social obligations to the most vulnerable. It suggests that human life is an individual versus relational enterprise. Additionally, it insists that the medical community can be enlisted indifferently to heal or to kill.

Now that abortion has been legalized in some nations for many decades, we can trace the effects of such claims. We can reason together about

1 I.2. General comment No. 36 on article 6 of the International Covenant on Civil and Political Rights, on the right to life

what happens when an act, in the past almost universally understood to be a violation of the most basic human right, is instead labeled a “right”, such that the law valorizes the destruction of human life at one of its most vulnerable moments, and by medical professionals whose first duty is to heal and never to harm.

The following describes some of the consequences of legalized abortion and the “logic of abortion,” as can be observed after decades of experience.

First consequence: growth in the practice of abortion

Using United States data, for example, it is conservatively estimated that the numbers of abortions doubled or tripled between the period preceding the announcement of a right to abortion, and the period immediately following.² Worldwide today, it is estimated that there are at least 56 million abortions annually.³

Second consequence: increased number of women affected

As a consequence of the more frequent practice of abortion, women are increasingly affected physically, psychologically and spiritually. According to well-regarded international medical literature, the physical effects of abortion are varied, and resulting complications can compromise women’s future healthy childbearing.⁴ There are also notable psychological repercussions, as concluded especially in an important meta-analysis published in the British Medical Journal and spanning fourteen years

2 William Robert Johnston, United States abortion rates 1960-2013, Johnston’s Archive (2014), available at: <http://www.johnstonsarchive.net/policy/abortion/graphusabrate.html> [Accessed 9 November 2018]

3 The Guttmacher Institute, Fact Sheet: Induced Abortion Worldwide: Global Incidence and Trends (March 2018), available at: <https://www.guttmacher.org/fact-sheet/induced-abortion-worldwide>. [Accessed 9 November 2018]

4 See e.g. Vincenzo Berghella and Jay D. Iams, Care for women with prior preterm birth, 203 Am. J. of Obstetrics and Gynecology 89, and n. 37 (2010) (finding statistically significant link between prior abortion and later preterm birth, and citing a 2009 systematic review and metaanalysis concluding that a single elective termination was associated with a subsequent preterm birth odds ratio of 1.36 and more than 1 termination was associated with an odds ratio of 1.93.)

of studies.⁵ Clearly, the consequences to abortion are spiritual, as well. The Catholic Church's Project Rachel Post-abortion Healing Ministry is overwhelmed with the number of women of all faiths, or none in particular, who seek out a place where they can be heard, grieve and pursue healing.

I witnessed these psychological and spiritual effects first-hand during a year spent in weekly conversations with post-abortion women. Even those who had first expressed relief following an abortion told of the profound damage it eventually wrought in their relations with men, with other children, and upon their happiness and freedom. So often and so tragically, these women are ignored or marginalized in pursuit of abortion rights.

The position abortion has come to occupy in the political and cultural arenas also affects women's social welfare. In fact, legal abortion has unfortunately become, in the minds of many, a proxy for "progress for women." Despite opposition, regularly from a majority or large plurality of women, some governments, political parties, politicians and NGOs regularly label legalized abortion a pro-woman policy. However, abortion advocacy rather obscures and absorbs energy from efforts to bring to women what most want and need from their governments and societies: fair educational, economic, employment, credit and civil rights, laws and policies - laws and policies facilitating women's ability to do justice both to their families and to their work responsibilities. In other words, advocacy for legal abortion takes attention and resources away from pro-woman policies that women both favour and need. Instead, by stressing the good of childlessness and speaking only of women's absolute autonomy, the movement for legal abortion undercuts legal and social attention to the solidarity that every woman, man and child really needs in order to thrive in our complex and competitive contemporary world. Abortion advocacy undermines the urgent social and political attention required to provide women real equality in the spheres of work, home and education.

5 See e.g. Priscilla K. Coleman, Abortion and mental health: quantitative synthesis and analysis of research published 1995-2009, 199 *The British Journal of Psychiatry* 180 (2011), doi:10.1192/bjp.bp.110.07723.

Happily, women around the world and for over half a century have risen up to lead a wide variety of movements to end abortion, and this includes assisting other women or girls struggling with a crisis pregnancy. Women have founded and staffed thousands of centers to help other women and families financially, emotionally and spiritually during and after pregnancy and childbirth. Many, but not all of these centers, are sponsored by Catholic and other Christian women who, as part of their religious commitment, serve contemporary human needs in whatever form they arise.

Having led a woman-to-woman pro-life effort in the United States, I can personally testify both to women's frustration that the cause of legal abortion is being carried out "in women's name," and to their fervent hope to spare their daughters, sisters and friends from abortion and the atomistic world view it promotes. In 2012, I authored a letter rebutting a United States federal law which declared that the high point of women's freedom included: avoiding childbearing by means of contraceptives and abortifacients; and requiring religious institutions to provide these drugs and devices free to their employees. In a brief period, with no advertising, my letter obtained 77,000 women's signatures. I began to offer these women peer-reviewed research and other materials to empower them to make their voices heard, even in a media environment dramatically biased against them. The number of women who continued to respond, and our eventual victory at the Supreme Court of the United States, revealed the size of the too-often "silent majority" of women who desire governmental policies supporting their ability to have and rear children, their ability to work outside the home while parenting, and the rights of all children to a dignified life. They are weary of hearing that legal abortion is a total proxy for women's freedom.

Third consequence: disproportionate suffering of the poor

In perhaps every country where abortion is legal, poor women suffer from abortion more than economically privileged women. This occurs

despite enormous governmental and private programs supplying free contraception directly to the poor for half a century. This is all the more tragic given that several studies indicate that poorer women tend to oppose abortion far more than wealthier women.⁶ The results of the legalized abortion campaign should not be surprising, given how - at the beginning of that campaign - advocates were regularly vocal about their hopes to thereby reduce the number of poor children. Today, this argument can still be heard articulated publicly, though only on occasion.⁷

At a time when many nations are struggling to deal justly with people of every race, religion and national origin, legal abortion impedes the ethical progress of solidarity with every single person, based on the simple grounds of their membership in the human race.

Fourth consequence: harm caused to the relationships between men and women

As documented by a wide variety of scholars, when sexual relationships are separated emotionally and physically from “tomorrow”, from their link to children, to kin and even to love, they become “unbearably light” and “liquid.”⁸ Sex loses its beauty and meaning, and it becomes transactional.

6 Amber Lapp, Why Poor Women with Unintended Pregnancies are Less Likely to Get Abortion, Institute for Family Studies (March 10, 2015), available at: <https://ifstudies.org/blog/why-poor-women-with-unintended-pregnancies-are-less-likely-to-get-abortions> (citing Rand Corporation and Gallup polling data) [Accessed 9 November 2018].

7 See Emily Bazelon, The Place of Women on the Court, The New York Times, July 7, 2009, available at: <https://www.nytimes.com/2009/07/12/magazine/12ginsburg-t.html?mtrref=www.washingtonpost.com&gwh=CB0B-D03A28D9C72DC0315E6AEF4B561B&gwt=pay> [Accessed 9 November 2018]. (An interview with leading feminist Supreme Court Justice, Ruth Bader Ginsburg, in which she expresses her surprise that the Court had upheld a law limiting federal abortion funding because, “Frankly, I had thought that at the time Roe [abortion rights case] was decided, there was concern about population growth and particularly growth in populations that we don’t want to have too many of.”) See also Ruth Marcus, I would have aborted a fetus with Down Syndrome. Women Need that Right, The Washington Post, March 9, 2018, available at: https://www.washingtonpost.com/opinions/i-wouldve-aborted-a-fetus-with-down-syndrome-women-need-that-right/2018/03/09/3aaac364-23d6-11e8-94da-ebf9d112159c_story.html?utm_term=.33bd0cdd40cd [Accessed 9 November 2018].

8 See e.g. Anthony Giddens, *The Transformation of Intimacy: Sexuality, Love, and Eroticism in Modern Societies* (1993), 2, 27, 112, 121, 144, 156, 167, 174,175, 178-80; Zygmunt Baumann, , *Liquid Love* (2003), 42-43, 47.

Sexually transmitted diseases skyrocket;⁹ temporary, uncommitted relationships proliferate; and marriage and parenting begin to retreat.

Fifth consequence: constraint of the rights of conscience, religion and belief

At the inception of legalized abortion, advocates and the relevant laws and policies promised protection for conscientious objection, but this right has been steadily eroded or even reversed. Today, objecting medical professionals and religious institutions are regularly sued by groups demanding that they perform abortions; these individuals or institutions are denied positions or licenses, despite their superior commitment to the fundamental medical ethic “always to care and never to kill.”

Advocates claim that abortion can be medically necessary to save the life of a woman, but it appears that virtually all abortions are done for reasons unrelated to women’s medical health (according to leading and former abortion providers).¹⁰ The pressure on medical conscientious objection persists despite the fact that a large majority of medical professionals refuse to perform abortions and have done so since the beginnings of legal abortion.¹¹ Because of the attack upon conscientious objection, persons who would otherwise count among the most sensitive to the extraordinary value of every single human life are driven away from practicing medicine,

9 Jonathan Klick and Thomas Stratmann, The effect of abortion legalization on sexual behavior; evidence from sexually transmitted diseases, 32 J. of Legal Studies 407 (2003) (finding a significant positive correlation between the legalization of abortion and the rise in the number of sexually transmitted infections related to increases in nonmarital sexual activity).

10 See Sarah Terzo, Former abortionist: abortion is never necessary to save the life of the mother, Live Action Analysis, Oct. 21, 2016, available at: <https://www.liveaction.org/news/former-abortionist-abortion-is-never-medically-necessary-to-save-the-life-of-the-mother/> [Accessed 9 November 2018]; and Akinrinola Bankole, et al., Reasons Why Women Have Induced Abortions: Evidence from 27 Countries, 24 Int’l Fam. Planning Perspectives 117, Sept. 1998 (The Guttmacher Institute), available at: <https://www.guttmacher.org/journals/ipsrh/1998/09/reasons-why-women-have-induced-abortions-evidence-27-countries> [Accessed 9 November 2018]

11 See e.g. Gaia Pianigiani, On Paper, Italy Allows Abortions, but Few Doctors Will Perform Them, *The New York Times*, Jan. 16, 2016, available at: <https://www.nytimes.com/2016/01/17/world/europe/on-paper-italy-allows-abortions-but-few-doctors-will-perform-them.html> [Accessed 9 November 2018]; Sarah Kliff, 10 Facts That Explain How America Regulates Abortion, Vox, Jan. 21, 2016, available at: <https://www.vox.com/cards/abortion-policy-in-america/who-provides-abortions> [Accessed 9 November 2018] (reporting that only 1720 of 834,000 U.S. doctors perform even one abortion per year; and that the number of U.S. abortion providers has decreased 38% between 1982 and 2005).

or at least driven away from caring specifically for pregnant women and their children. More importantly, in some countries or regions, medicine has become generally less sensitive to the dignity and value of every human life at every stage and in every condition.

Indeed, the governments and NGOs promoting legal abortion are leading forces to deny rights of conscience - rights long known to be essential to citizens' building of ethical, well-governed societies.

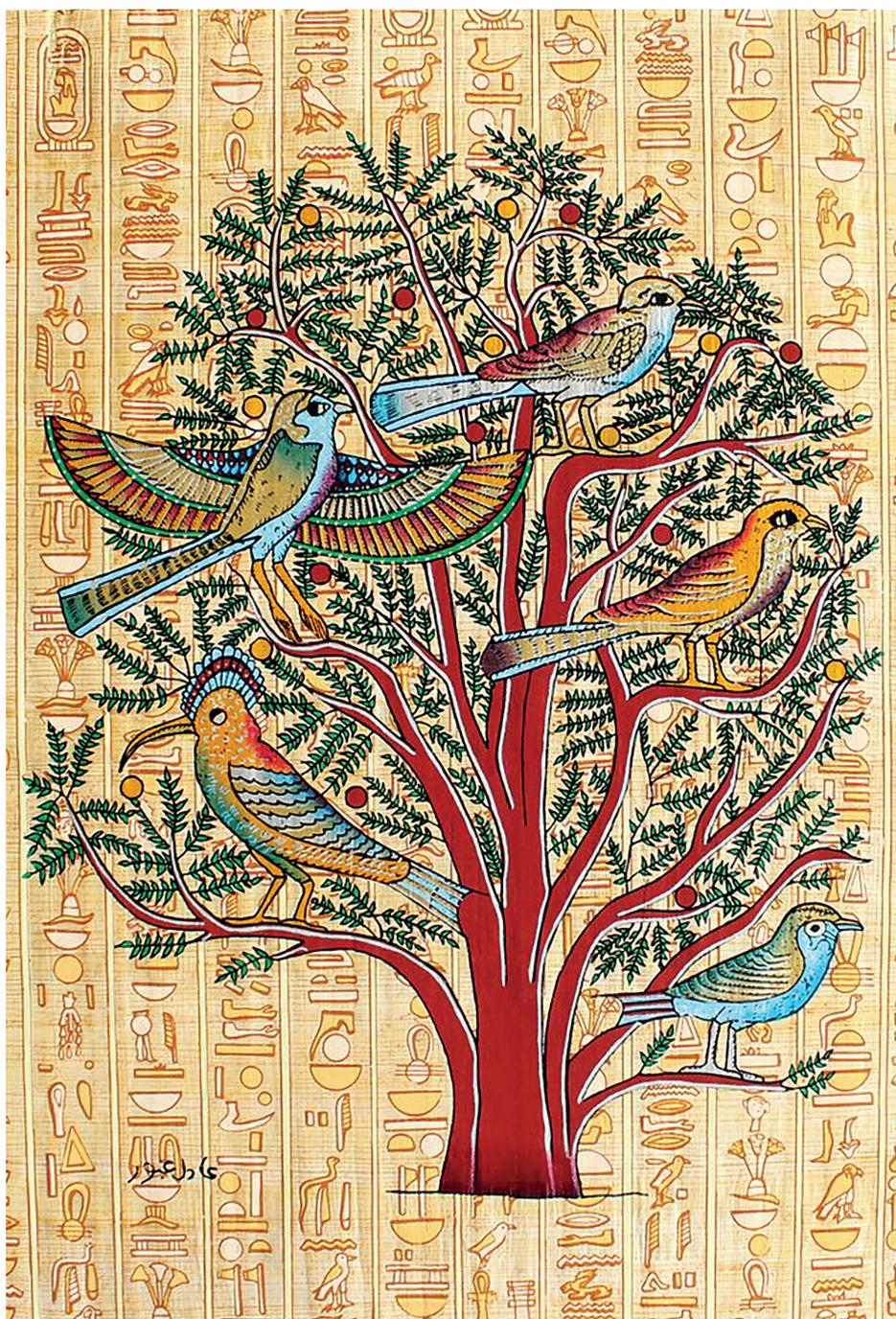
Conclusion

Predictably, the movement to legalize abortion in the name of human rights has undermined human freedom and happiness. It relies upon a vision of human beings as strictly “self-made”, and as possessing the power over the life and death of others. Rather, societies around the globe today need to affirm that every human being is made for relationship, for interdependence, and for care and solidarity within a community. The logic of abortion is a profound mistake at a time in history when we are still struggling to see one another as sisters and brothers by the simple fact of our common humanity.

It is no accident that the movement to respect the lives of both women and children persists despite opposition from powerful forces world-wide and regardless of the challenges to any social movement which entreats this generation to consider the next. Few movements persist as long and against such odds unless their cause is just. In the words of Hans Jonas, father of modern environmentalism:

“[O]nly present interests make themselves heard and felt and enforce their consideration [...]. But the future is not represented. It is not a force that can throw its weight into the scales. The “non-existent” has no lobby, and the unborn are powerless.”¹²

12 Hans Jonas, *The Imperative of Responsibility: In Search of an Ethics for the Technological Age* (1984), 22.



Egyptian Papyrus | TREE OF LIFE | detail

IS THERE A RIGHT TO DIE?

WILLIAM F. SULLIVAN, MD, PhD

St. Michael's Hospital and Surrey Place Centre, Associate Professor, Department of Family and Community Medicine, University of Toronto¹

Director, Order of Malta International Association of Catholic Bioethics;

Ordinary member, Pontifical Academy for Life; Hospitaller, Canadian Association of the Order of Malta

Current advocates of physician-assisted suicide (PAS) and voluntary euthanasia (VE) often frame their support in terms of a “right to die.” This article aims to propose that there are no convincing grounds to interpret the right to life laid down in Article 3 of the Universal Declaration of Human Rights (UDHR),² whose seventieth anniversary we celebrate in 2018, as a right to die. Nor are there grounds to extend it to include this alleged right.

The UDHR was adopted in the aftermath of the violence of World War II and awareness of the extermination of people deemed to be “unfit” and unworthy to live. It reflects a global consensus that such disregard for human lives ought never to recur. This article is structured as follows: First, it recalls the fundamental principles affirmed by the UDHR’s declaration that every human being has a right to life. Then, arguments for the alleged right to die are probed and it is shown how they are based on assumptions that are opposed to those fundamental principles. It is proposed that the UDHR’s principles remain valid today and are important for States to uphold in response to evolving interpretations of the right to life. In the conclusion it is argued that while States have a duty to alleviate avoidable human suffering, this does not include permitting the intentional taking

1 I acknowledge with thanks the helpful input given by John Heng, Michael Bach and Edward Monahan for this paper.

2 United Nations. Universal Declaration on Human Rights. Geneva: United Nations, 1948. Available online at: https://www.ohchr.org/EN/UDHR/Documents/UDHR_Translations/eng.pdf [Accessed 9 November 2018]

of human life by PAS or VE. Rather, States should promote and enhance access to good health care for all, including providing quality palliative and hospice care. Such care is entailed by respect for fundamental human rights, including the right to life.

Fundamental Principles Affirmed by the UDHR's Formulation of the Right to Life

The Preamble of the UDHR (1948) begins with the “recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family [...]”. Article 1 states that “All human beings are born free and equal in dignity and rights [...]”. These are the foundations for Article 3, which specifies that: “Everyone has the right to life, liberty and security of person.” The UDHR concludes with Article 30, which declares: “Nothing in this Declaration may be interpreted as implying for any State, group or person any right to engage in any activity or to perform any act aimed at the destruction of any of the rights and freedoms set forth herein.” Subsequent declarations, such as on the rights of mentally retarded persons (1971) and the rights of disabled persons (1975), begin by “[r]eaffirming faith in human rights and fundamental freedoms and in the principles of peace, of the dignity and worth of the human person and of social justice proclaimed in the Charter [of the United Nations].”³ The Convention on the Rights of Persons with Disabilities (2010), in its Preamble, similarly recalls “the principles proclaimed in the Charter of the United Nations which recognize the inherent dignity and worth and the equal and inalienable rights of all members of the human family as the foundation of freedom, justice and peace in the world.”⁴

The human rights outlined by the UDHR and related United Nations documents provide a frame of reference that is grounded in philosophical

3 <https://www.ohchr.org/EN/ProfessionalInterest/Pages/RightsOfMentallyRetardedPersons.aspx> [Accessed 9 November 2018]

4 <http://www.un.org/disabilities/documents/convention/convoptprot-e.pdf> [Accessed 9 November 2018]

and ethical positions. Key features of this frame of reference include the notions that: (a) the dignity of each human person is “inherent” (i.e., permanent and essential); (b) such dignity, and the rights that follow from it, are “equal” for all members of the human family; (c) human dignity and rights are inalienable (i.e., cannot be taken away from or given away by the possessor); and (d) whatever contributes to the flourishing of human life is a good that should be safeguarded and promoted out of regard for the inherent and equal dignity and worth of all. States therefore have a duty to reduce or prevent avoidable harms to human life and to promote or enhance “social progress and standards of life” that increase the likelihood of flourishing human life.⁵

Clarification of the Notion of a “Right to Die”

The Roman thinker Augustine wrote that everything is uncertain; only death is certain (*Incerta omnia, sola mors certa*).⁶ Death is an unavoidable part of every human life and is not something that humans can lay claim to as a right. What advocates of PAS and VE mean by proposing that there is a “right to die,” therefore, cannot be that humans have a right to be dead. Rather, their claim involves a complex four-fold assertion of the right of persons to be helped: (a) to die at a time and in a manner of their free choosing; (b) that this assistance be given upon request, usually by a patient who has decision-making capability, to a physician or other health care professional; (c) with the intention of ending a life that the patient deems to be no longer worth living; and (d) because of current or anticipated adverse experiences of living with illnesses or disabilities. Each of these claims involves philosophical and ethical assumptions that are opposed to those of the UDHR’s frame of reference.

Claim (a) assumes the libertarian position that one ought to have unrestricted freedom to authorize whatever happens to one’s property,

⁵ For an elaboration on this point, see John Finnis, *Natural Law and Natural Rights* (Clarendon Law Series). Oxford: Oxford University Press, 1980, pp. 220-221.

⁶ Augustine, *Ennarationes in Psalmos*, 38.19.

including disposing and destroying it. This view is sometimes extended to treating one's body and life as if it were reducible to the value of any other object that one might own. Thus, it is claimed that the timing and manner of one's death is something any capable person is authorized to choose without interference from the State or anyone else. This characterization of human life as property that can be destroyed whenever a person no longer deems their life to be good or worthwhile to continue living undercuts the basis of the UDHR's affirmation that all human lives have equal worth, not only to the person as an individual, but also as "members of the human family." Laws that permit PAS and VE affirm the negative assessment of persons regarding the quality and worth of their lives without addressing the medical, social, and other conditions that often give rise to these negative assessments.

Claim (b) assumes that by asserting the right to PAS or VE, one can justifiably impose a corresponding duty on others to implement this right. That is, those who seek to exercise their so-called "right to die" must find others who will comply with their wishes, which include the timing and methods of ending their lives. The question of whether there is or should be a human right to die is thus bound to the question of whether States should oblige some citizens to assist other citizens to end their lives by means of PAS or VE. If those citizens are physicians and other health care professionals, these States would be requiring the very citizens whose profession involves healing and promoting health of other citizens, moreover, to contravene the purposes of their profession in the name of a new "right to die."⁷ As the recent Position Paper of the American College of Physicians correctly observes, "Physicians can influence patients, even in ways physicians may not appreciate. Patients seeking physician-assisted suicide may seek validation to end their lives. Indeed, studies have shown that socially isolated, vulnerable persons seek social support and contact through visits with their physicians. Physicians may influence patients

7 For an elaboration of this point, see Sprung, C.L., Somerville, M.A., Radbruch, L., et al. Physician-Assisted Suicide and Euthanasia: Emerging Issues from a Global Perspective. *Journal of Palliative Care*, October 2018, 33(4), 197-203.

based on their own fears of death and disability.”⁸ To maintain the nature of the patient–physician relationship for all, which is based on trust, and to prevent misunderstandings and misuse of medical authority, physicians and other health care professionals need clear boundaries that prohibit them from intentionally terminating a patient’s life, even if some patients request this.

Claim (c) assumes not only that those who request PAS or VE no longer wish to continue living but also that they would be better off being dead. Based on this conclusion, PAS or VE is chosen from among other possible options as a conclusion of the person’s means-end reasoning process. The conclusion in favor of PAS or VE, however, is based largely on the assumptions of a materialist belief system in which the state of being dead involves complete annihilation of one’s personal existence. Such a belief system holds that the state of being dead is in no way affected, positively or negatively, by the way one lives, including why and how one ends one’s life. Because no one who is alive can know what lies beyond death, none can be certain that this materialist view of death is correct. There are many alternative spiritual and religious traditions that hold different views on what happens after death. It is to such alternative views, in fact, that a majority of humans in the world subscribe. It is neither self-evident nor empirically demonstrable that the unstated premise underlying support for PAS or VE is true, namely that one would be better off dead regardless of how and why this comes about.

Claim (d) assumes certain attitudes toward one’s experience of illnesses or disabilities and the role that these experiences play in a person’s assessment of whether her or his life is worthwhile. The question here is not whether there is a positive right to interventions such as PAS and VE. Rather, the question is whether there is a negative right to a life that is free from illnesses or disabilities. Such a negative right is opposed to the frame

8 Lois Snyder Sulmasy and Paul S. Mueller. Ethics and the Legalization of Physician-Assisted Suicide. An American College of Physicians Position Paper. *Annals of Internal Medicine*, 17 October 2017, 167(8), 576-578, on p. 82.

of reference of the UDHR. This frame of reference accepts that experiences of illnesses or disabilities, and unavoidable suffering associated with them and other losses, are a part of the human condition. Based on this viewpoint, the focus of the UDHR and related documents is to rally our collective responses to these human realities in order to reduce, as much as possible, avoidable and unnecessary suffering of persons facing such adversities.

Claim (d) also assumes that all these adverse experiences, including disadvantage, loss of autonomy, physical and existential suffering, and “loss of dignity” (not “inherent” human dignity, as stated in the UDHR, but dignity that is “attributed” to persons by themselves or by others) are associated only with the condition of the illness or disability itself. This assumption overlooks the health care, social, economic, and other circumstances of the person living with those conditions—circumstances that substantially construct, cause, and constitute these adversities. Some have argued that the positive obligation of the State is justified to bring an end to what persons regard as intolerable suffering caused by their illness or disability and, moreover, that the lack of State intervention to terminate such a person’s life based on her or his request amounts to the State extending, and thus contributing, to that person’s suffering.⁹ However, such arguments overlook the reality that it is the health care, economic, social, and other circumstances (e.g., lack of needed support, lack of proactive interventions to address a person’s isolation, poverty, and lack of control over their lives) that are, to a large extent, causing such adversities and suffering. The State’s intervention to terminate a life on the basis of a “right to die” signals the failure of its positive obligation to ensure conditions necessary for protecting the right to life and promoting its flourishing in people who are adapting to the presence of illness or disability in their lives.

9 For instance, this was the reasoning of Chief Justice Beverly McLaughlin in oral questioning during the *Carter v. Canada (Attorney-General)* case hearing in the Supreme Court of Canada that resulted in the judgment that the universal legal prohibition against PAS and VE in Canada was unconstitutional. For a detailed ethical and legal analysis of the flaws in reasoning in this decision, see John Keown, *Carter: A Stain on Canadian Jurisprudence?* in Derek B.M. Ross (ed), *Assisted Death: Legal, Social and Ethical Issues after Carter*. (LexisNexis, 2018), 1 – 34.

Finally, claims (c) and (d) assume that decisions regarding PAS and VE are private decisions and an expression of a person's self-determination and autonomy. Among the most commonly cited reasons for which people request PAS and VE in those jurisdictions where it is legally permitted, however, are loneliness, social devaluation, lack of meaningful activities, loss of autonomy, and the sense of being an impossible burden on caregivers and others.¹⁰ Such factors impact decision-making and function as inducements to PAS and VE that States have an obligation to eliminate or ameliorate. No one with an illness or disability, or anyone who cares for them, should be in circumstances that affirm the perception of their lives as an impossible burden to themselves or others. In a context where the "right" of some persons with limited capabilities to end lives they regard as burdensome, the social conditions of autonomy and right to life of all persons living with similarly restricted capabilities are irreparably harmed. If PAS and VE become regarded as the most compassionate means to end suffering associated with living with illnesses or disabilities, respect for the inherent dignity and worth of people with such illnesses or disabilities as well as their right to life and social inclusion will be undermined. This trend, already evident in jurisdictions with permissive legislation regarding PAS or VE, is opposed to the positions expressed in the United Nations Convention on the Rights of Persons with Disabilities.

In summary, this article begins to unpack a set of claims constituting a supposed "right to die." Each of these claims is based on philosophical and ethical assumptions that are opposed to the positions on which the UDHR is based. In the book, "Eye of the Heart: Knowing the Human Good in the Euthanasia Debate",¹¹ these and other points are elaborated by comparing and contrasting core philosophical and ethical positions that various thinkers involved in this debate take on a series of questions such as: how do we know the human good?; is such knowledge ever more than

10 M. K. Dees, M. J. Vernooij-Dassen, W. J. Dekkers, et al. Unbearable Suffering: A Qualitative Study on the Perspectives of Patients Who Requested Assistance in Dying. *Journal of Medical Ethics* 2011, 37(12): 727-734.

11 William F. Sullivan, *Eye of the Heart: Knowing the Human Good in the Euthanasia Debate*. Toronto: University of Toronto Press, 2004.

just subjective and private?; how do individual and social goods relate?; is life a basic good?; and is life an absolute good? This analysis revealed that at the levels of personal stories, as well as ethics and public policy debates, underlying philosophical assumptions differ greatly. For a proper analysis of the phenomena of the evolving and expanding interpretations of the human right to life, States need to be capable of assessing critically the philosophical and ethical issues at stake in this debate and taking a stance on them that is consistent with the frame of reference proposed by the UDHR. The UDHR upholds the inherent dignity and worth of every human, including those living with serious illnesses or disabilities. Such a philosophical and ethical framework remains important to uphold, especially in view of the resurgence, among proponents of a “right to die,” of perceptions that some lives are “unfit” and not worth living. This is the very position the UDHR sought to oppose seventy years ago.

The Role of States in Responding to Evolving Concepts Regarding the “Right to Life”

States play several key roles in translating fundamental human rights and freedoms in the UDHR, including the right to life, into practice and in the ongoing monitoring and defense of rights-informed practices. Three main roles are highlighted below:

First, States should affirm the intrinsic dignity and worth of each of its citizens. As part of this, States have an obligation to protect the lives and promote the flourishing of the most vulnerable members in society, including those living with illnesses or disabilities. States should do this by ensuring that their laws and policies do not reflect, explicitly or implicitly, a devaluing of the lives of such citizens. Practices that involve intentionally terminating a person’s life on the basis of her or his illness or disability are an affront to the right to life and should be disallowed as opposed to the legal and ethical frame of reference of the UDHR.

Second, States have an obligation to protect the freedom of conscience of health care professionals who oppose being involved with or complicit in practices such as PAS and VE on medical, philosophical, ethical, or religious grounds.

Third, and most importantly, States have an obligation to address the health care, economic, social, and other circumstances that give rise to adversities and unnecessary suffering of their citizens, including those living with illnesses or disabilities. No citizen facing such adversities should be induced to resort to PAS and VE as the most attractive option open to them in their circumstances. The reality is that quality, holistic palliative and hospice care, and the accommodations and services that people with serious illnesses or disabilities need, are not readily available to the vast majority of people in the world. This is a grave human rights issue. Elaborating on the right to life that is recognized by the UDHR and other United Nations documents should be directed at enhancing the conditions of life that promote human flourishing and social inclusion, which follow from the fundamental right to life. Priority should be given by States through their laws and policies to promoting positive regard and social inclusion of people with serious illnesses or disabilities and ameliorating access to the resources, accommodations, and holistic supports that such persons need.

CONTENTS

EDITORIAL	3
THEOLOGICAL ANTHROPOLOGY AND HUMAN RIGHTS	11
1948-2018: REFLECTIONS ON THE UNIVERSAL DECLARATION OF HUMAN RIGHTS	19
THE DIGNITY (AND INDIGNITY) OF HUMAN LIFE IN INTERNATIONAL LAW.....	29
IS THERE A RIGHT TO ABORTION?	47
IS THERE A RIGHT TO DIE?	55