

California's Proposition 85: Was It Pro-Life Suicide?

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ABSTRACT

The present essay explores the implications of legislative proposals such as California's recent Proposition 85 that regulate legally sanctioned abortions. Pro-life activists aggressively campaigned for Proposition 85 in the name of child protection and of parental rights to know. The author contends that support for such regulations on abortion in the name of other rights ignores the rights of the unborn and therefore the issue of justice as central to abortion and the political situation. The abandonment of justice as an operative principle is of particular importance to confessional communities that hold that intrinsic injustice should not be institutionalized in the public square. An Appendix addresses the support of Proposition 85 by the Catholic Bishops of California.

“In the case of an intrinsically unjust law, such as a law permitting abortion or euthanasia, it is therefore *never licit* to obey it, or to take part in a propaganda campaign in favor of such a law, or vote for it.”
Evangelium Vitae §73, emphasis added.

“A physician shall *not perform an abortion* upon a pregnant unemancipated minor *until* the physician or the physician's agent has provided written notice to her parent or guardian personally....”
Proposition. 85, sec 32.b, emphases added.

IN THE *GOSPEL OF LIFE* Pope John Paul II calls for the courage to look things in their face and call them by their proper name. He goes on to call abortion “murder.”¹ His comment creates a difficulty with regard

¹ Pope John Paul II, Encyclical Letter, *Evangelium vitae* (Vatican City: Libreria Editrice Vaticana, 1995), §58: “We need now more than ever to have the courage to look the truth in the eye and to call things by their proper name, without yielding to convenient compromises or to the temptation of self-deception.... The moral gravity of procured abortion is apparent in all its truth if we recognize that

to things like Proposition 85, which was presented to the California electorate in November 2006. The proposed legislation, without using the word, regulates “murder” by requiring, as one condition for its performance, a prior notification of the parents or legal guardian of an unemancipated minor woman. The issue here is not the use of the word “abortion” as opposed to the word “murder,” but the substance of the proposed legislation.

If we keep in mind that the substantial meaning of this proposal is that “an *innocent human life in the womb* shall not be taken unless the physician notifies the parents or legal guardian,” then the proposition intends the state to protect legislatively the performance of an abortion subject to the stated regulation. This being said, it seems the following items should be distinguished:

- (1) The *intent* of the regulation is ostensibly the right of the parents to be informed.
- (2) The *matter* regulated is abortion, or, as John Paul II called it, murder.
- (3) The practical *consequence* of such a law could well be and, let us assume, will be a reduction in the number of innocents killed by abortion.

The right of parents to know what their minor children are involved in is a legitimate object of legislative protection. However, the defense of such a right *does not justify* the protection or regulation of a matter that is intrinsically unjust and therefore immoral. While the designation of the proposed legislation as defending “parental rights” may (possibly) be tactically effective in gaining the support of those who affirm such rights, it is strategically self-defeating since the proposed law actually regulates and legislatively protects the right to abortion as regulated. The proposal presupposes a right to abortion. Participation in the defense, promotion, and enactment of such a law not only concedes that

we are dealing with murder and, in particular, when we consider the specific elements involved. The one eliminated is a human being at the very beginning of life. No one more absolutely innocent could be imagined. In no way could this human being ever be considered an aggressor, much less an unjust aggressor!”

there is a right to abortion but is an explicit affirmation of such a right, albeit regulated. Why would one do such a thing?

One reason is the intention of defending one right in the context of another right, in this case, (1) the right of parental notification in the context of a “right” to abortion. Such an intention is quite legitimate as long as *both* rights are real rights.

Another reason one might do such a thing is (3) the set of probable *consequences* of a legislation that regulates abortions by requiring notification of parents or guardians. I say “probable” consequences because a *reduction* in the number of abortions is not the intent of the law. Now, it is quite possible that “state interest” might dictate a reduction in the number of abortions. Thus, the state may determine that the reduction of a future native pool of workers and consumers due to abortion is not in the state’s interest. In the present context, apart from the question of the state treating its population from the perspective of economics alone, that is not the intent of the legislative proposal.

Still, a legislator might have a reduction in the number of abortions as a *subjective intention*, even if such is not the *intent of the law*. Would it be licit for a legislator with such an intention to participate in a law that regulates abortion, in other words, one that *permits* and protects it under specified conditions? *Evangelium vitae* §73 seems quite clear and unambiguous in saying that it is *never* licit to participate in a law that permits abortion. However, prominent and well known Catholics have argued precisely in this way by saying that voting for an intrinsically unjust law is permissible as long as one intends the good consequences and not the evil ones protected by the law. If an intrinsically unjust law lessens the evil consequences of existing legislation, the argument holds, one is allowed to participate in such a law as long as one intends only the good consequences.

The above outlined positions, which have the affirmation of (1) a *parental right* of notification and (3) the good *consequence* of reducing the number of abortions are psychologically convincing and logically valid to the extent that one ignores the significance of (2) the *matter of abortion* as intrinsically unjust and, therefore, materially a moral evil.

One could argue that it is morally licit to vote for an intrinsically unjust law as long as one intends not the injustice but only the good

effects of such a law.² One could erroneously invoke §73 of the *Gospel of Life* by assuming that it spoke, in the third paragraph, of participation in an intrinsically unjust law as licit when one intended to lessen the evil effects of another “more permissive” unjust law. In fact, the encyclical speaks of two kinds of law: one, the *unjust* abortion law and the other an *imperfect but just law* that prohibits some abortions.³ As stated in the

² Cf. John Finnis. “Unjust Laws in a Democratic Society: Some Philosophical and Theological Reflections, *Notre Dame Law Review* 71/4 (1996): 595-604; also “Helping Enact Unjust Laws without Complicity in Injustice,” *American Journal of Jurisprudence*, 44 (2004): 11-42.

³ This is the position I defended in a more extensive fashion in my essay, “Thoughts Towards a Clarification of *Evangelium Vitae* §73 in *Life and Learning XII*, ed. Joseph W. Koterski, S.J. (Washington, D.C.: University Faculty for Life, 2003), pp. 311-32. It seems that Finnis does not simply misinterpret the third paragraph of §73 in his essay “Catholic Church and Public Policy Debates in Western Liberal Societies: The Basics and Limits of Intellectual Engagement” in *Issues for a Catholic Bioethics* (London UK: Linacre Centre, 1999), p. 268, when he claims that according to Catholic teaching Catholic legislators can support legislation that “permits abortion, but less permissively” than an existing law or proposed bill. In fact, he misrepresents the text of the encyclical, which contrasts the existing “*more permissive* abortion law” with a “*more restrictive*” proposal that seeks to limit the negative consequences of the former. Nowhere does the encyclical use the expression “less permissive.” On the contrary, the encyclical explicitly states that it is illicit to support, promote, or vote for intrinsically unjust laws, i.e., laws that legislatively *permit* and protect abortion regardless of the extent of this permission. Finnis not only contradicts the teaching of the document but makes it contradict itself when he mislabels the encyclical’s “more restrictive law” that a legislator can licitly support in order to lessen the negative consequences of a more *permissive abortion* law as a “less permissive” one. This misinterpretation is important for Finnis since it allows support for an unjust abortion law, i.e., one that permits abortions. In turn, this allows him in “Unjust Laws in a Democratic Society” (p. 601) to speak of a legislative act that explicitly *permits abortions*, albeit “less permissively,” as something that allows the legislator voting for it to consider it a “just change—accepting as a bad side effect the simultaneous continuation of unjust law.” The incomprehensible thing is the treatment of a *vote* for a law that “permits” abortion as if it were something that one *accepts* as a “bad side effect.” The treatment of the intentional enactment of a law whose *intent is the protection of an injustice* as if it were a “bad side effect” of a subjective intention that is extrinsic to the intent of the law in question seems to indicate at the very least a momentary lapse in the understanding of the nature of law.

second paragraph of §73, the first is always and unconditionally wrong and it is never licit to support, promote, or vote for such laws.

The misinterpretation here to the effect that it is licit to support an intrinsically unjust law with the intention of the “good consequences” introduces an internal contradiction into the *Gospel of Life* and simply negates the whole meaning of a previous encyclical, *Veritatis splendor*, as well as a long-standing teaching of the Church that it is never permissible to do evil for the sake of the good.

For my part, I add nothing new to this tradition when I note that the “good” or the “thing” intended in a proposal such as Proposition 85 is the *reduction* of the number of abortions. It remains to ask the question *why* one intends this “thing” as a good considered in itself.

I noted above that the state may have an interest in the reduction of abortions for reasons that have nothing to do with the injustice of the abortion. Now, when one uses the authority of a law that protects an injustice such as abortion even as it regulates it, one cannot possibly have as his reason for participation in this legislation the intention of defending the innocents against this injustice. When we speak of the *reasons* for doing this “good thing,” that is, the reduction of abortions by means of an intrinsically unjust law, these reasons are anything but justice. On the contrary, when one is willing to “use” evil in order to accomplish the good, one is acting as lord and master over the thing being “used” (as is the case in every instance of “using” something). In doing so, one also places oneself “above” the good and acts as if one were its sovereign source. In effect, one is claiming the prerogative of being the origin of any “good thing” that occurs on earth. One is claiming “to be as God.” The intention to seek *to do* the good even at the cost of injustice cannot possibly be *motivated* by justice.

Tactically, the use of intrinsically unjust laws to reduce the number of abortions logically implies the “saving” of more innocent unborn children than would otherwise have been the case. It is a tactical victory of sorts against those who seek to increase the number of abortions. Strategically, it is a radical defeat since it implies a loss of the very principle of justice—*cuique suum* (to *each* his own). For we have abandoned that principle when we legislatively protect the *taking* of some innocent lives in order to “save” more than would have been the case had we refused to participate in an intrinsically unjust law. We have ex-

changed principle for quantity; we have entered the market, we have traded a lesser number (who were “ours” in the first place only because they were “ours” to protect) for a greater, thinking ourselves the more cunning the greater the “saving.”

In groups or communities, as in the case of individuals, there can occur an inner split analogous to the sort described by St. Paul when he agonized over the fact that “he could not do what he willed and willed not what he did.”⁴ In our case, an individual can genuinely will justice for the unborn but act in a way that it itself unjust. There is an inner rupture in his soul, an inner division between two types of mutually opposed and incompatible motivations: the one, a genuine if imperfect affirmation of justice and the dignity of the innocent individual; the other, an unconditional affirmation of self. In both cases there is a “will” to save unborn babies. In this, they are similar. Nevertheless, the first is a response to an obligation; the second, a yielding to temptation. Thus, there is a difference in the matter of “will.” In the first case, willing is the submission of obedience to a call and an obligation. It is a service. One recognizes that one “belongs to one’s neighbor” (the innocent unborn) and “gives” what is “due” to one’s neighbor. This is a response of justice, *cuique suum*. In the context of John Paul II’s hermeneutics of the gift,⁵ one *receives* one’s

⁴ Rom 7¹⁵⁻¹⁹: “I do not understand my own actions. For I do not what I want, but I do the very thing I hate. Now if I do what I do not want, I agree that the law is good. So then it is no longer I that do it, but sin which dwells within me. For I know that nothing good dwells in me, that is, in my flesh. I can will what is right, but I cannot do it. For I do not do the good I want, but the evil I do not want is what I do.”

⁵ Cf. John Paul II, General Audience of January 2, 1980, where he introduces what he calls the hermeneutics of the gift as the basic category for the proper understanding of human existence as a gift: “now it is opportune to turn again to those fundamental words which Christ used, that is, the word ‘created’ and the subject ‘Creator.’ They introduce in the considerations made so far a new dimension, a new criterion of understanding and interpretation, which we will call ‘hermeneutics of the gift.’ The dimension of the gift... is also at the heart of the mystery of creation..., which enables us to construct the theology of the body ‘from the beginning’....” The General Audiences cited here are contained in their earlier English edition: John Paul II, *The Theology of the Body: Human Love in the Divine Plan* (Boston MA: Pauline Books & Media, 1997). The second edition is John Paul II, *Man and Woman, He Created Them: A Theology of the Body*,

neighbor (the innocent unborn) and reciprocates with a “sincere *gift of self*.” In the second case, willing is an appropriation of one’s neighbor (the innocent unborn) as if he were “my own.” This is an act of injustice, an unconditional *mihique meum*. This is a “using” of the unborn, those who are saved as well as those who are “handed” over to the unjust law.

Any law that *regulates*—as opposed to prohibiting or restricting—the intrinsic evil of abortion protects the act of abortion when the regulating conditions have been fulfilled. It is an intrinsically unjust law. When a Catholic (or anyone for that matter) supports, promotes, or votes for such a law, he or she acts as if the unborn victims of a regulated abortion were his or her “own” and could be legitimately traded for those that otherwise would not have been “saved.” This is an act of injustice, an *appropriation* of the unborn who were given to us as gifts to be *received*. The number of abortions may have been reduced, a greater number have been “saved,” but the “thing” accomplished was not for the sake of justice.

A man may truly love his wife but still commit adultery. Perhaps a better example for our case is the man who truly loves his wife but authorizes an abortion to save her life. The “saving of her life” is a good thing. It is *what* he wills. But the *reason* for his authorizing an abortion is not the love for his wife. It is a desire to “possess” what has been given to him and to be the “cause” of saving her. In one word, the *motive* for his action is satisfaction, identified by the Catholic tradition in its two forms, pride and concupiscence. In this form of motivation, the husband is no longer in the *receptive* mode. In taking such an action he disregards St. Paul’s reminder that we have nothing that we have not received and he acts as if he had not received.⁶ This precisely is the attitude that John Paul II has identified as sin: the appropriation of what has been given as a gift and the rejection of the Giver and His love. He also calls it the “extortion of the gift.”⁷ Such an attitude is also and essentially unjust since it appropriates not only “neighbor” but also what belongs to God and is

translated and with introduction by Michael Waldstein (Boston MA: Pauline Books & Media, 2007).

⁶ 1 Cor 4:7: “What have you that you did not receive? If then you received it, why do you boast as if it were not a gift?”

⁷ John Paul II, General Audience of February 6, 1980.

“due” to Him; it refuses to reciprocate with a sincere gift of self in gratitude for what was to be received.

Since the man in our above example truly loves his wife, he can easily deceive himself that he authorizes the abortion *because* he loves her. In fact, he is interiorly split and acts not from his “value responding and loving center” but from a “center of pride and concupiscence.”⁸ The latter, like the angel of darkness disguising himself as the angel of light, “hides” behind the real love that co-exists with his selfishness within him. From its hiding place that “center” of pride and concupiscence goes into the attack mode with the righteous: “Who are you to say that I don’t love my wife?” Indeed, it is true that he loves her; but he uses the truth to justify an act that is destructive of that very love. Analogously, the pro-life “movement” in its individual members has a real concern for justice in the defense of innocents. Unfortunately, some of its acts, such as the regulation of abortion in terms of a prior notification of parents, are unjust and cannot have their source in a “justice affirming” concern. The “thing” intended, the saving of babies, cannot have justice as its motive since its condition is an inherent injustice: the legally regulated abortion. Here, too, one might hear the indignant, “Who are you to say that we are not truly concerned with justice for the unborn?” In response it must be said that it is the action in question that speaks for itself: the intrinsically unjust action, unless performed in total ignorance, cannot possibly have justice as its real motive. This is a metaphysical impossibility. Any attempt to justify such acts by “good intentions” must systematically, necessarily, and *actively* ignore the objective nature of abortion as murder. In other words, such an attempt “explains” and justifies the action by an appeal to ignorance, by refusing to look things in their face call them by their proper names. The traditional proposition that one *may* not do evil “for the sake

⁸ Cf. Dietrich von Hildebrand, *Ethics* (Chicago IL: Franciscan Herald Press, 1972), Ch. 31: “Centers of Morality and Immorality,” where von Hildebrand notes a *qualitative* affinity between all moral acts that are contrary to and incompatible with an analogous qualitative affinity characteristic of all immoral acts. On this basis he goes on to distinguish the existence of “different centers in the person: one of them is the source of all morally good attitudes, the other...of all morally evil attitudes. The positive one we have called ‘the reverent, humble loving center,’ the two negative centers are pride and concupiscence” (p. 412).

of the good” does not imply that one *can* do so even though one *ought not*. It simply states that one may not use evil as a means towards an end. It says nothing about the motive that one has when one in fact proceeds to use evil as a means towards the good. It is an unfortunate and disastrous *philosophical* error to assume that all men have the “good” as the motive or “end” of their actions. Both experience and the Catholic spiritual tradition indicate that what is “good in itself” can, although it ought not, be *used* in the attempt to satisfy pride and concupiscence. The “good,” which always demands “submission” and “service,” is disregarded in its sovereignty when it is used, that is, pressed into service of the agent’s satisfaction. The “good” of the object is a means; the end or motive is the agent’s satisfaction, not the good in any sense.

In the real individual person who has not yet lost possession of his self to the pride and concupiscence in him, there is always real hope that the real and living love, though not perfect, will function as a channel of grace to help him actively “overcome” his pride and concupiscence. If he does not accept grace, the acts springing from pride and concupiscence will destroy the real love. This is inevitable since the dynamics of pride and concupiscence are essentially hostile to and destructive of the good. It would be totally useless, indeed, anti-rational for such an individual to undertake a reform or “turning” by “institutionalizing” acts of pride or concupiscence, by reducing the frequency of his marital infidelity to some specific days of the week or month, or by restricting abortions to certain “serious” conditions such as rape or incest or threat to the life of the mother. In doing so, he would consign any true though imperfect love to a certain death.

A “movement” or political program that *institutionalizes* certain conditions for the legal protection of what are intrinsically unjust acts *against* the principle of justice in a radical way. But in this case there is no “hope” because it is not a living, individual person in whom there can be a “divided heart.” Its activity of supporting such intrinsically unjust acts contradicts or *negates existentially* anything that it may *affirm theoretically* about justice and the right to life. For a corporate movement, it is suicidal to do so. Hence, it is a pious illusion to speak of the success and future victory of a “pro-life” movement that is willing to use unjust laws to save children. The *individuals* involved may still have the intention of justice, but every time they act from a “divided heart,” they

participate in an injustice. Their “*movement*” takes part in the culture of death and is shaped by it.

Catholics—and especially their leaders—who are involved in attempts to “save” the unborn by legislative regulation of abortions have the serious task of reconciling two propositions:

- (A) “In the case of an intrinsically unjust law, such as a law permitting abortion or euthanasia, it is therefore *never licit* to obey it, or to ‘take part in a propaganda campaign in favor of such a law, or vote for it.’” (*Evangelium vitae* §73, emphasis added).
- (B) “A physician shall *not perform an abortion* upon a pregnant unemancipated minor *until* the physician or the physician’s agent has provided written notice to her parent or guardian personally...” (Proposition 85, sec 32.b, emphases added).

It would be a spiritual work of mercy to explain, if possible, how the “never licit” of statement A (that is, an *unconditional*) becomes the *conditional* “until” of statement B. If I am not mistaken, the “never licit” of *Evangelium vitae* does not include either a tacit “unless one has a good intention” or a tacit “unless the good consequences outweigh the evil.” A reconciliation of the two statements is impossible. The futility of the attempt can disguise itself only by systematically ignoring abortion as murder, namely, the killing of an innocent human being as a means or as an end. This is essentially indistinguishable from the systematic ignoring, on the part of the opposition, of the dignity of human life. Such a systematic employment of ignorance is intellectual and spiritual suicide—as unconditionally wrong as murder.

Human life began when God “breathed” a soul into man. If it began with an “inspiration” (the *receiving* of the soul as a gift), it can continue only as a “respiration.” Thus, if man is to live, he must “expire” (come out of himself in the reciprocity of gratitude, the sincere gift of self) to the Giver of life. Reciprocity in the total gift of self is the essential structure of love. In the fallen condition, this love as a total gift of self involves a dying, a complete separation from all self-affirmation and self-actualization for the sake of the beloved. Love—and justice—requires the *giving* of one’s self and sometimes one’s life for the sake of the other. *Taking* the lives of innocent others is the loss of innocence and justice and, in the end,

is suicidal, for he who takes the lives of others in order to keep his own will lose his life.

APPENDIX: A COMMENTARY ON THE SUPPORT OF
PROPOSITIONS 73 AND 85 BY CALIFORNIA'S CATHOLIC BISHOPS

With all due respect to their best personal intentions and the dignity of their office, it is suggested that some aspects of the Bishops' statements⁹ might lead to interpretations that are at odds with these intentions.

(1) Is there some reason why the statements do not ask and answer the decisively important question: *Are Propositions 73 and 85 intrinsically unjust?* The injustice of abortion consists in its violation of the right to life. This is the thing the pro-choice lobby chooses to ignore or avoid. The statements surely presuppose this right to life but do so tacitly. On the verbal level, the statements do not mention the *right to life* of the aborted children whose maternal grandparents or guardians of their unemancipated mothers were notified of the intended abortions as provided by both propositions. It would seem preferable to note explicitly the very right to life that is rejected by legislation that protects its violation, even as it regulates it.

(2) Surely, the bishops did not intend to convey or suggest that the Catholic Church in its teachings does not reject the legislative protection of *pregnancy termination*. One statement identifies Proposition 73 as *Termination of Minor's Pregnancy, Waiting Period and Parental Notification*. The statement on Proposition 85 identifies it as *Waiting Period and Parental Notification Before Termination of a Minor's Pregnancy*. This clear regulation of termination of pregnancies indicates that the *matter regulated* is a "woman's right to abortion." By the wording of the propositions, it is not even *restricted*. The Bishops make a strong recommendation to support both Propositions. Was it their intention to suggest or affirm that it is licit to support, promote, or vote for intrinsically unjust laws?

(3) From the wording of both Propositions, it is clear that the *intent* of the proposed laws is the parents' right to know. There is no intent to restrict the right to abortions or to reduce their incidence.

⁹ "California Catholic Bishops Support Proposition 85" (issued August 18, 2006), <http://www.cacatholic.org/prop85.html>; "Statement of the California Catholic Bishops in Support of Proposition 73: Parental Notification Prior to Termination of Minor's Pregnancy" (September 1, 2005), <http://www.cacatholic.org/docsppr/BishopsPNIStatement.pdf>.

(4) Is the silence of both statements with regard to the injustice of abortion as a violation of the *right to life* to be taken to mean that the legitimate right to know can be balanced against the “right to abortion”? The bishops informally identify Proposition 73, as called by its sponsors, *Parents’ Right to Know and Child Protection Act*. This refers to the *subjective intentions* of its supporters and sounds innocuous, namely, harmless.

(5) The terminological “shift” to the parents’ right to know together with the silence about the injustice of abortion logically exempts both Propositions from the principle stated in *Evangelium vitae* §73, according to which it is *never licit* to promote, support, or vote for an intrinsically unjust law. The *subjective intention* of some (hoped for) positive consequences—accidental with respect to the intent of the law—obscures the substance of both Propositions in the bishops’ statement of support. Their substance as a regulation of murder is not and cannot be changed by an appeal to *subjective intentions*. Such an appeal shares materially in the position of pro-choice advocates who appeal to the subjective intention of defending “freedom of choice” while ignoring the difference between possible objects of choice: choosing life or choosing murder.

(6) The systematic absence of any reference to the inviolable *right to life* of innocent human persons infuses the bishops’ *statements* in support of both Propositions 73 and 85 with a spirit that they certainly did not intend and raises a new question that should be dealt with. Both *statements*, signed by bishops of the Catholic Church, selectively *mention* the letter of the teachings of the Catholic Church in their endorsement of two legislative proposals that ignore both the spirit and the letter of these teachings. How are the faithful to understand this tension without losing confidence and trust in their teachers? The statement in support of Proposition 73 cites the *Catechism of the Catholic Church* on the family as the “privileged community” in which *children* are meant to grow in wisdom, stature, and grace. The support for Proposition 85 repeats the same and adds a quote from “The Church in America” on the Church’s commitment to the task of *educating and supporting* “people involved in law-making, government, and the administration of justice, so that legislation will always reflect those principles and moral values which...advance the common good.” Both statements reference the same passage in Propositions 73 and 85 as affirming the “interest in and responsibility for protecting the health and well being of *children* and promoting parent-child communication and *parental responsibility*” (emphasis added). Is it conceivable that the drafters and supporters of that passage did not pause on the use of the words “children” and “parental responsibility” in the context of a proposed legislation regulating the murder of innocent unborn children? The context clearly excludes the

unborn human being from the meaning of the word “children” and therefore the unemancipated minor mother from the meaning of the word “parental responsibility.” The rhetoric of “pro-choice” advocates such as Planned Parenthood does not include the unborn human being in the intension of the concept “child.” The same rhetoric identifies “parental responsibility” in terms of the *subjective intention* of a planned pregnancy.

The language of the bishops’ support of both propositions suggests a rhetoric more in conformity with the proponents of the “freedom of choice” than with the teachings of the Church, for the Church’s teachings with regard to the right to life from conception to natural death are not even mentioned, to say nothing of being a fundamental presupposition for any public statements by those who accept the *Magisterium* and its presuppositions.

The invocation of a “compelling interest in and responsibility for protecting the health and well being of children” is necessarily restricted to the unemancipated minor women about to have abortions. Given the context of Propositions 73 [*Termination of a Minor’s Pregnancy*] and 85 [*Waiting...and Notification Before Termination of Minor’s Pregnancy*] it necessarily and legislatively excludes unborn children and their right to life from the “legislation and administration of justice.”

If this is an example of the “education” intended by the bishops, then it teaches that the mere mention of “children” can be *used* to project an image of concern even as one systematically ignores the *reality* of the real children abandoned to the regulative legislation. One must be forgiven for even being tempted to make the judgment that this suggests a clerical cynicism on the part of the authors.

(7) Apparently the strong *support* for both Propositions 73 and 85 functions as a fulfillment of the Church’s commitment to the task of “*educating* and supporting the legislative, executive and judicial branches of government” so that these “will always reflect those principles and moral values which...advance the common good.” Such an education is in fact not at all “*tasking*” when one redefines “children” and “parents” in such a way as to exclude some of them from the common good.

The operative, even if tacit, exclusion in the bishops’ statements of the unborn from the category *children* and of unemancipated minor women from the category of *parent* is an integral part of the logic of these statements, since both support the legislative protection of abortions performed on minors under the specified regulations. By virtue of this tacit exclusion, the right to life becomes, by definition, not applicable to the unborn unwanted by their biological mothers who are not parents because they did not plan their pregnancies. Surely the bishops did not intend this in the statements. Neverthe-

less, the wording of the statements plays into the hands of those who would read them to do so. With the shroud of silence drawn around the right to life of the unborn, the following statement in Proposition 85 could become an exemplar of public relations that does not take into account the reality at hand: “We believe that society’s common good is enhanced when *family* integrity is honored, *parental* responsibility is respected, and nascent *human life* preserved” (emphasis added). Do the bishops intend to convey as theirs the judgment that the Propositions *do not regulate* the violation of *family* integrity, of *parental* responsibility and of *human life*?

(8) In the context of the Catholic Church, parental responsibility is not restricted to the married, who constitute an “integral family.” It includes the mothers and fathers who are not married to each other. Nor is “parental responsibility” to be defined by wanting the born and unborn children. And, furthermore, the common good is not enhanced when “*nascent* human life,” that is, human life in the *process of being born*, is preserved. As “common,” the good must include the conceived even though unborn.

(9) The above quoted passage from the bishops’ support of Proposition 85 could be given a positive interpretation outside of the context of a support for that Proposition.

(10) The context of their *support* for a Proposition 85 that affirms a right to abortion even as it regulates it (“[w]e strongly encourage Catholics...[to vote] for it,”) raises the questions for the faithful and for the hierarchy whether the *Magisterium*, entrusted to the apostles and their successors, is to be included in the “common good” and whether its exclusion, in matters of morality and justice, is “good public policy.”

In other words, it raises the question as to what exactly *fidelity* to the Magisterium means if participation in public life allows *public* infidelity to it. This question has become an urgent one by virtue of the wording of both California bishops’ statements. These suggest that Catholic laity, not only Catholic politicians, *strongly urged* to support both Propositions, can be faithful Catholics in their private lives while participating in intrinsically unjust public acts. The ethical implication is that private motivation, love of all the unborn, justifies participation in public acts that regulates the killing of some of them.

The answer suggested by the culture of death is that religion is to be radically *privatized* while private love can be publicly authenticated by euthanasia and abortion—the taking rather than the giving of life. It is respectfully suggested that a clear and unambiguous statement of the difference between the suggested answers would be a spiritual work of mercy for all men of good will.