Law and the Human Person

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Introduction

Catholic Social Teaching (CST)[1] has much to contribute to our understanding of the human person. It is not only about defining the earliest moments of life as a human person. Nor, when it comes to *law* and the human person, is it simply about a single issue, abortion, still less a single issue within it, such as time limits.

In terms of breadth of concern, Catholic Social Teaching offers a much more comprehensive guide to issues addressed (or sometimes ignored) by our politicians, judges and other officers of the state. In terms of level, it is usually pitched at a higher (or deeper) level of abstraction, rather than giving detailed prescriptions. This means that there remains work for us, especially lay people, to do in each generation to apply the general principles to the circumstances of our society. This includes discerning the signs of times and doing our best to master the detail.

This in turn gives an agenda of opportunities for the Von Hugel Institute and other centres of thought and action, especially as bridges between the religious and secular realms, between faith communities and the public square. In the director's generous introduction, he touched on our time together in Northern Ireland during the end of the troubles and the early days of the peace process. In what follows, I refer to my own geo-political and intellectual odyssey, partly because people sometimes ask why I do not continue to address X or why have I turned to Y or is it true that I am going to write about Z, as if these things are unrelated. There is a place in our public square for people who concentrate on a single issue but there is also space for those who try to apply their understanding of Catholic Social Teaching to a range of issues over time and place, as circumstances change.

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[1] CST, sometimes called Catholic Social Thought. See eg http://www.vatican.va/roman_curia/pontifical_councils/justpeace/documents/rc_pc_justpeace_doc_20060526_compendio-dott-soc_en.html

http://www.catholicsocialteaching.org.uk/

http://www.usccb.org/beliefs-and-teachings/what-we-believe/catholic-social-teaching/seven-themes-of-catholic-social-teaching.cfm

For me, medical law & ethics gave way to media law & ethics and now to sporting law & ethics. Meanwhile, I have worked in different parts of these islands and in different roles. Having written about judges and bishops, then led universities and now writing about leaders in sport, politics and wider life, 'leadership' is one theme.

That takes me across the Atlantic next week to Chicago and Ohio, not to report on the presidential election but to advise the leadership of two Episcopalian seminaries that are coming together and rediscovering the pioneering 'frontier' spirit of their foundations. This has evolved from my work with Virginia Theological Seminary, whose Dean & President, Very Rev'd Professor Ian Markham, is an Anglican/Episcopalian thinker whose inaugural lecture at Liverpool Hope focused on the teaching of Pope John Paul II.

When in Northern Ireland, it seemed right to focus on the politics and community engagement of a troubled legal system and society. One of my contributions was to analyse the language[2] of the troubles and the peace process. Another was to serve as a member of the Standing Advisory Commission on Human Rights. A third was to be the co-founder, with Robin Wilson, the editor of the political magazine, Fortnight, a citizens' enquiry, Initiative '92's Opsahl Commision, in a voluntary sector partnership which could be seen as a forerunner of the Big Society.

Twenty years later, back on this side of the Irish Sea, I write about politics for the Catholic newspaper, The Universe, in a weekly column, alongside other weekly commentators such as the former MPs, David (now Lord) Alton and John Battle, and I am a trustee of ResPublica, the think tank often credited with the Red Tory, Blue Labour, Big Society and One Nation rhetoric of contemporary politics. The founding director of ResPublica, Phillip Blond, and the chair of the trustees, Professor John Millbank, are Anglican theologians who give much credit to Catholic Social Thinking.

In all the wide-ranging interests of Catholic Social Teaching, and in my own various endeavours, twin truths are a constant inspiration and take us to the heart and soul of this topic, Law and the Human Person. The two fundamental points were beautifully put for the 50th anniversary of the Universal Declaration of Human Rights in 1998 by the Catholic Bishops' Conference of England and Wales which issued their best ever statement on *Human Rights and the Catholic Church* in 1998. The bishops had the good grace to apologise for past wrongs but also powerfully explained that Catholic approaches to human rights are based on the

> '… Catholic belief that two vital truths about human persons must always be held together.
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> 'Firstly, all persons are unique, irreplaceable, destined for transcendent life, and so are not just units of some larger mass or entity, who could properly be treated as interchangeable, or merely as the instruments of another's purpose. (For example, each person is embodied: all our thoughts and perceptions are inseparable from our senses, from their openness to the

[2] Simon Lee, Lost for Words', Index on Censorship, 1993 http://ioc.sagepub.com/content/22/8-9/23.full.pdf+html ;The Irish Times, 14 October 1993, imaginary version of the Adams-Hume nationalist document Belfast Telegraph, 30 September 1994, imaginary version of a unionist response.

world and their active response to it. It follows that everyone's experience is unrepeatable).

'Secondly and equally important, everyone is a person-in-relationship whose well-being cannot be attained alone, and whose life can never be considered apart from the many relationships (more or less intimate or enduring) that make up its fabric. In practice, the individual person and the community will always have claims against each other: and their true fulfilment goes together. Neither an individualism that denies the claims of community, nor a corporate prosperity that excludes the well-being or dignity of individual persons, is ultimately tolerable.' [3]

Two years later, there was a moving opportunity to ponder and seek to apply these two truths in the Siamese or conjoined twins' case in the great jubilee/millennium year of 2000, in which Archbishop (as he then was) Cormac Murphy-O'Connor intervened with an amicus brief. The two truths and the five principles of the submission to the court are relevant not only to that un-easy case of Jodie and Mary but to all the litigation which the Human Rights Act 1990 has witnessed and to all thought and action about the human person. As I wrote at the time, I did not agree with the Archbishop's application of the principles in the particular case and nor did the judges. His reasoning, however, appealed to me much more than did the judges' attempts to justify what I thought was their correct decision.

Then the bishops' statement for the following general election in 2001, *Vote for the Common Good*[4], identified a range of issues where in fact the votes of judges have become, as I predicted at the time, just as important as the votes of politicians in the new constitutional order. The bishops' selection of 'a few of the vital issues facing our society' identified families, human life, global poverty and injustice, asylum seekers and refugees, family members needing care, and crime and prison. These remain pressing concerns for our Big Society today. They range much more widely than outsiders might expect of Catholic Social Thinking.

Before we look at some of these issues, I will introduce my way of looking at the law and at other matters, including the human person. Then I will take just one example of development of the law by politicians at the beginning of the 1990s and one of potential development by the judges in this decade, pausing in between to consider much more briefly a range of issues in the intervening twenty years. The statutory example will illustrate the dangers of making mistakes in the detail of grappling with complexities. The very recent case, on the other hand, give a sense of the opportunities that abound for the Von Hugel Institute and others interested in Catholic Social Teaching to make a difference in the public square. Finally, I will ask what lies beyond life, law and the human person before indicating some lessons and some examples of ways in which we can make progress.

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[3] Catholic Bishops' Conference of England & Wales, 1998, http://www.catholic-ew.org.uk/CBCEW-Media-Library/Archive-Media-Assets/Files/CBCEW-Publications/Human-Rights-and-the-Church

[4] Vote for the Common Good, CBCEW, 2001, http://www.cbcew.org.uk/document.doc?id=71

Views of the Cathedral

This is also an attempt to explain my odyssey through the fifty years we are celebrating since the opening of the Second Vatican Council in October 1962. Or, indeed, we can go back slightly further to 1957 when (in no particular order, as they say nowadays when giving talent show audience poll results) I was born, the Treaty of Rome was passed, Pius XII was Pope and the Wolfenden Commission on Homosexual Offences and Prostitution[5] reported.

In more than half a century of learning about these matters, the sub-title of an article by one of my teachers has had the biggest impression, and I use the word advisedly, on my approach to understanding the subjects we are exploring. I would like to think that it can set the scene for not just our topic of Law and the Human Person but for how this multi-disciplinary series of lectures can illuminate our understanding.

When I was a student at Yale Law School, the dean was Harry Wellington. My teacher, Guido Calabresi, later dean himself and then a judge, was the co-author of a law review article, the sub-title of which was 'one view of the cathedral'. The authors noted that Dean Wellington was fond of this expression[6]. In footnote 2, they explained that, 'As Professor Harry Wellington is fond of saying about many discussions of law, this article is meant to be only *one* of Monet's paintings of the Cathedral at Rouen. To understand the Cathedral one must see all of them.'

I have written about the need to do more than that to understand the cathedral we have to walk around it, see how it is painted from many different perspectives, get inside it and understand its purpose. In one inaugural and public lecture after another[7], I have applied and adapted this approach as legal impressionism, religious impressionism, sporting impressionism and so on.

To some critics, or cynics, this is an excuse for blurry painting, for not being sharp enough to capture how it 'really' is. To the holier people here, it might even be seen as a concession to that secular relativism which we hear is so aggressive, presumably in stark contrast to passive religious absolutism or fundamentalism. That is not what I am saying. I am not denying that there are inalienable rights or absolute truth. What the analogy of Monet's studies of the cathedral at Rouen, as I have developed it, is intended to do, however, is to point out that each time we paint a picture, even if we do believe it is the last word, we are not only telling others something about the subject but we are also revealing something of ourselves, at least of our vantage-point, our perspective, our sense of perspective, our point of view.

Impressions from the left, in political or painting terms, are different to impressions from the right, even in the colour-blindness of modern politics, where the think tank

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[5] Wolfenden Report, HMSO, 1957, Cmdn 247

[6] Volume 85, April 1972, Number 6, Harvard Law Review: *Property Rules, Liability Rules and Inalienability: one view of the cathedral*, by Guido Calabresi and A**.** Douglas Melamed

[7] Eg The Foundation of Hope, edited by R Elford, Liverpool, 2003

on whose board I serve, ResPublica, has done much to mix the colour palette of contemporary politics with Red Tory which inspired Blue Labour[8].

So my intention is to explore, through my own experiences, what I think we are doing when we offer often contrasting views on the law and the human person. This yields a way of looking at this whole series of different perspectives on the human person as well as a specific illustration with the law, encouraging those who attend subsequent lectures to compare law with other approaches and influences. In all this, we will be reflecting on fifty years of Catholic social teaching.

What is it about law that turns it into a theatre of the absurd or a battle-field of death or a stadium of light or a cathedral of the uplifting spirit? Or, applying the analysis to itself, is it something about the context of law that makes a difference? My examples of a theatre, a battle-field, a stadium or a cathedral are designed to show that the courtroom and the legislature can be compared to, or contrasted with, the arts, war, sport or religion as ways of depicting and understanding the human person.

Many of us will think that our appreciation of what it is to be truly human has been enhanced by great art, whether or not you put Monet's series in that category, that the Paralympics challenged society's perception of disabilities and abilities, that the canonisation of saints in the last few days has done much to promote a respect for diversity and selflessness and that, ultimately, it was admirable that so many human persons sacrificed their lives in, for instance, the second world war to halt destructive regimes that were contemptuous of so many varieties of the human person. How does law fit into this scale of things? How is it special? Why has it come to assume such rhetorical importance in the media? Is that reflected in real life?

I mention real life because, as the Legal Realists at Yale and Chicago law schools argued between the Wars, if you observe what people do, rather than what they say, the reality is that laws are often broken or ignored for trivial reasons. Inside the law school, we might pay attention to the wording of the black print on the white page, hence the expression 'black letter law', but if you walk outside with a speed gun and a clipboard or iPad, you can record the law being flouted.

One of the things law does is to provide a focus, rooting our discussion of high-minded values in particular, often low-level sets of facts, usually with a need for a decision one way or another. The law has a coercive element and, at its best, a sense of authority. There is much argument about whether unjust laws are really law at all. Aquinas defined law as 'an ordinance of reason, promulgated by him who has the care of the community, for the common good'. Others find it more helpful just to define it as the state's system of rules. Within legal systems, law is developed in both legislatures and courts as well, sometimes in some systems, by the people in direct referendum on matters of particular importance or controversy. In the legislature, elected politicians can take the initiative. In the courts, the usually unelected officials, the judges, are more reactive, developing the law only as a by-product of resolving cases brought on the initiative of litigants.

[8] See eg Phillip Blond, Red Tory (Faber, 2010) and http://www.respublica.org.uk/blog

Impressionism does not mean being vague and woolly. It is, rather, that taking art out of the studio and engaging in real settings with new techniques can allow you to see the wood for the trees and even, in a sense, the trees for the wood. To make sense of how difficult law can be, and what a mess well-intentioned reformers can make of it, we do need to look in detail at the development of the law in at least one instance.

With that in mind, how did the cathedral of the human person appear in what is often thought to have been the gloom of the late 1950s or the brighter outlook of the early 1960s? By October 1962, I had started school, John XXIII was Pope, Vatican Two opened, The Beatles released their first top twenty hit, *Love Me Do*, and the first James Bond movie, *Dr No*, was released. In those five years, I later discovered, the world of jurisprudence had been arguing over that Wolfenden Report.

One of the great Catholic judges of the twentieth century, Sir Patrick (later Lord) Devlin, had given his Maccabean Lecture at the British Academy on The Enforcement of Morals in 1958[9]. Professor H L A Hart, seen as a secular liberal, had torn that apart in a Third Programme talk, printed in The Listener[10]. Then Devlin and Hart were invited to give other lectures and talks on their disagreement and each published with Oxford University Press a slim book, bringing together their thoughts. Hart's was called *Law, Liberty and Morality* (1963)[11] while Devlin's took the title of that initial Maccabean Lecture at the British Academy, *The Enforcement of Morals* (1965)[12]. That was not a great title for the 1960s or for many who thought it was paradoxical, that the essence of morality should be choosing in pursuit of virtue rather than succumbing to the force of the law. *The Reinforcement of Morals* would have been slightly better, *The Encouragement of Morals* better still.

In 1963, Paul VI became Pope. In 1965, the Second Vatican Council came to a close. In 1966, within a few days of each other, as my son pointed out in a recent lecture, England won the World Cup and the senior judges in the House of Lords issued their Practice Statement, announcing that as judges they would in exceptional circumstances, overrule their own decisions. We have come to know 1967 for its legislation, including but not primarily the Sexual Offences Act, which was passed to give effect to the central recommendation of the Wolfenden Report. In 1968, Pope Paul VI's encyclical, Humanae Vitae, suggested that he was not going to follow their Lordships in overturning his predecessor's decisions.

Just to give you a sense of perspective, a very popular programme with my parents was *All Our Yesterdays* which covered the news from 25 years before, in this case the Second World War. That seemed to me to be ancient history. Now, as you will already have gathered, I appreciate the invitation to look back over 25 years (celebrating the life of the Von Hugel Institute) or even 50 years (celebrating the opening of the Second Vatican Council).

In 1968, I was leaving St Michael's Roman Catholic primary school and going to Gillingham Grammar School. My elder brother was leaving that school, taking his

[9] P Devlin, British Academy, 1958
[10] H L A Hart, Immorality & Treason, The Listener, 1959
[11] H L A Hart, Law, Liberty & Morality, Oxford University Press, 1963
[12] P Devlin, The Enforcement of Morals, Oxford University Press, 1965

Oxford entrance examinations and preparing for the General essay paper by studying that Hart-Devlin debate. It was very much in the news and the stuff of which the news was made. It continued to be so seven years later when it was my time to be interviewed for a scholarship at Balliol. In addition to being questioned by law dons, I was interviewed by the dons in politics, philosophy and economics, who were overseeing the scholarships in that General paper. I was asked whether the paper was fair and when I said it was, a philosopher took a leap of illogicality to say that that must mean that I could answer one of the questions orally which I had not chosen to write about. I did not have the presence of mind to say that this did not follow at all. He handed me the paper. I chose the Hart-Devlin question which I had reluctantly avoided in the examination because of its particular form.

I studied the matter as an undergraduate at Balliol and as a postgraduate at Yale Law School, then taught it in Oxford and at King's College London, where my head of department, Professor (now Sir) Ian Kennedy (now the commissioner for parliamentary expenses) turned everything into a question of medical law and ethics. My reason for moving to King's on the Strand was not to pursue that specialism but simply that my wife was going to start work in a firm of solicitors round the corner in Essex Street. Nevertheless, Ian Kennedy's involvement in medical law and ethics, as well as the media, was to have a significant effect on my own focus in the mid-1980s. The locus also made a difference. We were opposite Bush House, then the home of the BBC World Service and diagonally across the road from the Royal Courts of Justice.

So in 1986, a decade after I had begun my undergraduate studies in Law, I wrote my own book on this topic, *Law & Morals*, also published by Oxford University Press[13]. I was then writing in *The Listener* myself. As a squeamish person, I would never have chosen medical law and ethics as the main context for the debate, had it not been for that lucky happenstance of working with Ian Kennedy. Issues which touched on these concerns included the Gillick[14] case on the access of young teenagers to contraception without parental consent, the Warnock Report on in vitro fertilisation and surrogacy[15] and the case of sterilizing a mentally disabled seventeen year-old young woman are examples of the issues addressed in the 1980s[16].

How I became caught up in commenting on them was to do with that background of interest in the Hart-Devlin debate and in Ian Kennedy's mentoring. When he was brought in as a barrister to the government's team for the appeal to the House of Lords, it would have been inappropriate, in those days, for him to continue talking about the case in the media. So I popped across the road to Bush House as a substitute or surrogate. In one such interview, Mrs Victoria Gillick was introduced as a Roman Catholic mother of ten and I was typecast as a law lecturer. I pointed out that I was also a Roman Catholic father of three, who were all at the time under the age of fifteen months. I had earlier predicted, writing in the Catholic press when she had won 3-0 in the Court of Appeal, that Mrs Gillick would lose in the House of Lords. A Mrs Davies wrote an indignant letter saying that I was wrong and that I was in an ivory tower. When I asked the editor about this, he told me that was a

[13] Law & Morals, Oxford University Press, 1986
[14] See n13, ch 9
[15] See n13, ch 8
[16] Re B, 1987 (2) All England Law Reports 206

pseudonym used by an enclosed monk. So, some would say, he knew about ivory towers but I turned out to be right in that Mrs Gillick lost 3-2 in the House of Lords. Since she had lost at first instance, before Mr Justice Woolf, won 3-0 in the Court of Appeal and lost 2-3 in the Lords, I pointed out that she had persuaded a majority, 5 out of 9, of the judges who heard her case, although she lost because she could not muster a majority at that final stage. I tended to add that this showed you could fool some of the judges all of the time and all of the judges some of the time but not all of the judges all of the time. Or, to put it another way, it was a hard case. Later, I came to prefer the term un-easy case, a hard case where whichever way you choose you are left with some sense of moral unease.

Another jurisprudential debate running in parallel, this time between Professor Hart and sundry other academic lawyers, was about what judges were doing in deciding such cases. Were they making it up as they went along, exercising discretion with a free hand? Were they engaged in a quest for underlying principles? Were they just deciding in a particular way because they were old white men educated at public school and Oxbridge?

It seemed to me, as I pointed out in the book *Judging Judges*[17] that this last explanation did not fit the facts. A case in which the judges split 5-4 itself shows that just because they had similar backgrounds they would not decide in the same way. This is the fallacy of affirming the consequent. It runs like this. Judges are conservative. Judges decide against the trade unions. Judges decide against the trade unions because they are conservative. That does not follow. Judges might well have decided against the trade unions because legislation was passed by the elected Conservative government to thwart the trade unions and the judges were applying that statute faithfully.

We are, however, coming close to answering a question about Law and the Human Person – why does law capture our attention? Part of it is to do, of course, with the authority of the law, its combination of moral stance and the coercive power of the state. But it is also partly to do with its drama and its ability to distil some abstract issue into a practical question, usually in the context of a specific dispute (although unusually in Mrs Gillick's case it was not so much a pressing question for the litigant as a matter of public policy to which she was objecting).

A more typical example from this era is a case known as *Re B*[18]. The person in question was unable to care for herself, due to mental disabilities, and was approaching 18, at which point those charged with her care thought they would have even less lawful authority to regulate her fertility, so they were rushing to seek her sterilisation. The case came to public attention when the Court of Appeal gave permission for sterilisation subject to an appeal. Ian Kennedy and I wrote against this in The Times, which was referred to in the hearing before the Law Lords. When I was a student a decade before, the traditional wisdom was that you could only cite a dead academic lawyer in court, apparently because that is the only kind of academic lawyer who will not change their opinion, but now I had the pleasure of seeing in the Judicial Committee the judges take issue with our critique. Lord Hailsham, unusually

[17] Judging Judges, Faber, 1988
[18] 1987 (2) All England Law Reports 206

sitting as the Lord Chancellor, was irked by the headline, 'This rush to judgment'[19]. Counsel pointed out that in newspapers, the authors did not get to choose their headline, which seemed to come as a revelation to Lord Hailsham.

As these cases showed, the law's hierarchical system of appeals builds awareness in the public as a saga wends its way to the highest domestic court, then the Judicial Committee of the House of Lords, now the Supreme Court. Disappointed litigants then sometimes 'take their case to Europe'. Indeed, there are cases awaiting judgment from the European Court of Human Rights brought by a range of Christian litigants[20]. Some Christians like to think that we are being persecuted in some way. Others suspect that these disputes all turn on the exact facts[21].

Changing the law through Parliament

Our primary method of making law, however, is legislation through Parliament. Again, there is more than one round when Parliament legislates on these issues affecting the human person, as illustrated by such terms as the Second Reading. In a different dimension, this process also gives a focal point and also has the tension of a drama or a football match: who is going to win? The media love the opportunities given by football, court cases and parliamentary votes to speculate on who will win, to report on what happens and then to analyse why people won or lost.

Campaigners also like both these modes of law, the court case and the parliamentary process. This takes us to the central concern for Law and the Human Person. There is a danger that we become fixated on the law as a false target when our focus should be on the human person, on those conjoined principles of the human person as unique and yet as flourishing in community.

Professor Ronald Dworkin used the language of false targets[22] in the related but distinct context of arguments about what is really going on when judges decide hard cases. Some observers think it is all about gender or race or economics or some other factor. Economics, the supposed cause which he was criticising as an explanation, or law could be regarded as a false target for the other. Just as a hack golfer with a slice or hook will not correct their swing but will simply adjust their aim accordingly, looking towards a false target, so it is possible that we cannot identify exactly how to perfect our legal system but choose instead a false target that will get us close. The weaknesses of this are many but the result on the fairway seems better than being in the rough.

Applying that to our concern, it has seemed to me that campaigners have placed too much store on the false target of the law when their main aim should have been education in the ethics of respecting the human person. One of the problems of over-emphasising the significance of law is what happens when you lose a case or make a mistake in the drafting of legislation?

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[19] The Times, 1 April, 1987, I Kennedy and S Lee, this rush to judgment

[20] Awaiting judgment, references in n21

[21] Ekklesia http://www.ekklesia.co.uk/node/17018

[22] Ronald Dworkin, A Matter of Principle, Oxford, 1985, Ch 12, Is wealth a value?

All of these problems came together in the well-intentioned but ill-fated obsession of some Catholic and other campaigners to reform the law on abortion. This is still in the news, as when the new Secretary of State for Health, Jeremy Hunt, answered a question about it at the time of the party conferences. He had voted for a 12 week time limit. To my mind, it is a mistake to reduce the study of law and the human person to this single issue of abortion and even more of a mistake to concentrate within it on time-limits but I recognise that others think differently. They have been so vociferous, or effective, and the wider Church has been so hesitant, or ineffective, that the richness of Catholic social teaching on the human person has been identified by many as being capable of being reduced to this one topic.

Yes, it is time to discuss the Abortion Act 1967 and the efforts to amend it. I omitted to name it when I got to 1967 in the story of these past fifty years precisely because attention on it has obscured other issues. Nevertheless, it is salutary to ponder how the law has evolved and how Catholic campaigners have managed to make it worse. For law is not only about the grand principles of self-determination, personhood and rights in conflict. It is also about detailed drafting, understanding how and why there are complexities in the development of our statute-book. It is as if, while painting an overall impression of the cathedral, we now have to examine a single precise detail of the façade and understand its imperfections over the centuries. So let us turn to some statute law (also set out in an appendix).

Perhaps the most often heard title of a statute with the word ‘Person’ in it is the Offences against the Person Act 1861. Perhaps the most often heard title of a statute with the word ‘Human’ in it is the Human Fertilisation & Embryology Act 1990. So, for our study of the Law and the Human Person, it is appropriate that it is only possible to make sense of the Abortion Act 1967 when seen in a sequence which runs from that 1861 Act to the revision in 1990. Needless to say, there have been cases before and afterwards, and indeed an earlier Offences against the Person Act and a later Human Fertilisation and Embryology Act. There are, however, four main steps to consider.

The first of these is s58 of the 1861 Act. s59 is related but omitted for reasons of space, time and relevance. It is about *supplying* poisons or other noxious things or instruments. A good question to ask, however, is why there are so many sections? What is the rest of the Act about? You will know that such terms as causing actual bodily harm or grievous bodily harm come from earlier sections of this statute, as its title suggests. Rather curiously, for the current debate on the law of marriage, the immediately preceding section, that’s s57 for those who are not scholars of mathematics, is about bigamy. If bigamy is an offence against the person, then that says something of interest about our conception of Law and the Human Person, that it is not just about matters of life and death or of bodily harm but that it includes the moral, mental, emotional and spiritual aspects of personhood or personality, as well as the physical. The law is entitled not only to safeguard the physical integrity of the human person but to protect society’s members from those who deceive others and would undermine the integrity of a relationship between the spouses.

When I argued that abortion law was complicated and uncertain[23], that it was far from clear what the legal position was in Northern Ireland, campaigners disagreed. They claimed that abortion was illegal in Northern Ireland but that was not true, as case law subsequently showed. The Supreme Court in Dublin had already faced related issues. The electorate was also involved in Ireland as campaigners attempted to change the constitution through amendment by referendum. Legislators and courts have also now faced the issue in Northern Ireland. In Westminster, campaigners eventually changed the law. They thought they were reducing the time limits for all cases. It was a moot point what the previous time limit was, as it happens. What is more, they managed to make it worse. They have seemed, from my perspective, to be in denial ever since. They even criticise some MPs for voting against their reform when, from the vantage-point of reducing time limits, that was the right way to vote. The law made it an offence to procure a miscarriage unlawfully. Centuries of case law were given statutory form in the Offences Against the Person Act 1837 and then 1861, ss58-59. The use of the word 'unlawfully' was taken by judges to mean, conversely, that a miscarriage could be procured lawfully, in extreme cases, principally to save the mother's life. In a particular case, a judge directed the jury to acquit if they thought that the mother, a teenager victim of a multiple rape, would have been a 'mental wreck'. This was a graphic but unsatisfactory way of putting the point. David Steel's private member's bill gave more precision in the defences to procuring a miscarriage, spelling out and extending what is meant by unlawfully, viz

If two registered medical practitioners are of the opinion, formed in good faith –

(a) that the continuance of the pregnancy would involve risk to the life of the pregnant woman, or of injury to the physical or mental health of the pregnant woman or any existing children of her family, greater than if the pregnancy were terminated; or
(b) that there is a substantial risk that if the child were born it would suffer from such physical or mental abnormalities as to be seriously handicapped.

As this was a private member's bill and any clause could lead to filibustering, the measure drew on existing law, such as the time limit from a different Act of 1929, giving a rebuttable presumption of twenty-eight weeks but focusing ultimately on when the baby was 'capable of being born alive'. Media and campaigners therefore talked of 28 weeks but by 1990 it was probably 24 weeks. When Parliament came to pass legislation on the Warnock Report, campaigners saw their chance for reforming the law on this question of time limits for abortion. In an effort to reduce the limit from what they wished to think it was to what it already was, they managed to remove the time limit altogether from the category of cases where it was most needed (since late abortions were most likely when there was a late diagnosis of disability). This was partly because the opportunity was taken to address not only time limits but also to unpack separate grounds lumped together in that provision (a) and to tighten the law by accepting not just any injury to mother but only a grave and permanent injury. Hence there were to be grounds a-d. A drafting error included the time limit in (a) rather than in an initial clause which would then have governed all four of the grounds. Since the old (b) ground of handicap was the new (d), it did not have any time limit. The law had become worse from the perspective of those who had been

[23] SACHR Annual Report, 1992-3, p317, Abortion Law in Northern Ireland: the Twilight Zone

lobbying for so long to change it. So the Human Fertilisation and Embryology Act 1990 replaced the reference to the 1929 Act and the defences in (a) and (b) by setting out four defences:

(a) that the pregnancy has not exceeded its twenty-fourth week and that the continuance of the pregnancy would involve risk, greater than if the pregnancy were terminated, of injury to the physical or mental health of the pregnant woman or any existing children of her family; or
(b) that the termination is necessary to prevent grave permanent injury to the physical or mental health of the pregnant woman; or
(c) that the continuance of the pregnancy would involve risk to the life of the pregnant woman, greater than if the pregnancy were terminated; or
(d) that there is a substantial risk that if the child were born it would suffer from such physical or mental abnormalities as to be seriously handicapped.

The error was that s37 should have read:

that the pregnancy has not exceeded its twenty-fourth week and

(a) that the continuance of the pregnancy would involve risk, greater than if the pregnancy were terminated, of injury to the physical or mental health of the pregnant woman or any existing children of her family; or
(b) that the termination is necessary to prevent grave permanent injury to the physical or mental health of the pregnant woman; or
(c) that the continuance of the pregnancy would involve risk to the life of the pregnant woman, greater than if the pregnancy were terminated; or
(d) that there is a substantial risk that if the child were born it would suffer from such physical or mental abnormalities as to be seriously handicapped.

Uneasy Ethics and Uneasy Politics

While all this was happening, however, in 1990, I was concerned more with *media* law and ethics than with *medical* law and ethics. These spheres also matter for Law and the Human Person. Catholics and others who believe in virtue ethics should not allow ourselves to be typecast as only interested in a narrow range of issues, in painting just one aspect of the cathedral, from one perspective and mostly in the dark.

In 1988, when I was appointed to the Chair of Jurisprudence at Queen's University Belfast, the Troubles included many unsavoury incidents culminating in the broadcasting restrictions on supporters of terrorism, a measure described in argument by a judge as 'half-baked'. So when I took up the post in January 1989, I naturally turned my attention from medical to media law and ethics, which was timely for event also on this side of the Irish Sea, with the Rushdie saga, when his book *The Satanic Verses*[24] was burned in Bradford[25]. So I wrote a book entitled *The Cost of Free Speech*[26].

[24] Salman Rushdie, The Satanic Verses, Viking, 1988
[25] David Bowen (editor) The Satanic Verses: Bradford responds, 1992, Bradford & Ilkley Community College.
[26] The Cost of Free Speech (Faber, 1990)

Time permits only one illustration of the significance of these matters for an understanding of Law and the Human Person. Those broadcasting restrictions struck many as absurd but there were two ways in which they made some sort of sense. First, they were the least Douglas Hurd could do, as Home Secretary, while being seen, not least by his Prime Minister Margaret Thatcher as doing nothing. Sometimes in politics, somebody has to do or be seen to be doing something. The alternative is to be replaced by somebody who will do something more draconian.

Second, a more principled position would be that it neatly struck at the heart of the modern media-led confusion of celebrity, authority and democracy. By appearing on the news, those who supported terrorism were taken to be politicians like any others. By making it more difficult, by putting the mark of Cain on them, by requiring sub-titles or voice-overs, the government was rupturing that easy link conferred by the power of broadcasting. Of course, many thought it just made the government look absurd. But it rankled with those whose appearances on television were playing a part in legitimising them. In its own curious way, it was an early example of trying to keep a legal response in proportion.

Challenges to these restrictions were taken through the courts but were lost. There were other ways round them, including technology, acting and lip-synch-ing.

Anticipating the Big Society, I was the co-founder of Initiative '92 which, as the name suggested, tried to make a difference in 1992, accepting that people thought there had been dozens of such initiatives. We established the Opsahl Commission[27] which gave a voice to all-comers, including those subject to the broadcasting restrictions, several of whom are now in democratic politics, indeed in the government of Northern Ireland.

Peace having broken out, it was time to seek other challenges and opportunities. If you are looking for trouble, leading higher education colleges and universities is the obvious career path. So I was in the ecumenical college of Liverpool Hope when James Bulger was killed. Having visited, and played a part in closing, prisons in Northern Ireland[28], I was drawn into the debate on how society should punish his killers[29]. I played a small part in the early stages of the bishops' conference's contribution to the ensuing debate, including suggesting the title of their document, eventually published in 2004, *A Place of Redemption*[30]. Pope John Paul II had said that, 'Prison should not be a corrupting experience, a place of idleness and even vice, but instead a place of redemption.'

The bishops believed that, 'To speak of voting as an inalienable human right is to overstate the case. However there are reasons in the Christian anthropology of the imago Dei why the right to vote should be restored for convicted prisoners. A ban on voting is 'unfair, since the notion of civic death is applied selectively to prisoners, while in prison they continue to pay tax on savings or capital gains that accrue while they are serving their sentence. More significant however is the need to inculcate in

[27] A Pollak (editor), The Opsahl Report: a citizens' enquiry, Lilliput Press, 1993
[28] SACHR, Annual Reports, 1991-1994
[29] Uneasy Ethics, Random House 2003, Ch 2
[30] A Place of Redemption, Burns & Oates, 2004

prisoners a sense that they have a continuing stake in the society to which they will return…Moreover, politicians' agendas are determined by votes .. The truth is that the current ban on prisoners' voting is part of the business of forgetting about prisons and the people in them.'[31]

Before that document, towards the end of my time at Liverpool Hope, the bishops came with many laity for a conference which included a form of Question Time. Archbishop (as he now is) Vincent Nichols played the part of David Dimbleby. I was one of the panel members and waffled on about punishment, as did John Battle MP. We are now both columnists for The Universe. Ann Widdecombe MP, another panel member, was unimpressed. She said we were long on analysis and short on policy solutions. My reply was that that was how I liked my Catholicism, long on analysis and short on solutions. She was not amused.

It was only as I was preparing to leave Hope, that I was found time to write another book (drafted in 2002, published in 2003, in between which times much had emerged about one of the topics, the decision to go to war in Iraq). The impetus for *Uneasy Ethics*[32] had come a little earlier, in the year 2000, from a widening participation class, in which teenagers from a school with few connections to higher education impressed me beyond measure as we discussed (and voted on) the case of the conjoined twins, which was in the news.

The then Archbishop of Westminster was Cormac Murphy-O'Connor. His intervention by way of a written submission in that case brought to the attention of the judiciary three powerful critiques of the Law Lords' ruling in the earlier Tony Bland[33] case about whether a victim of the Hillsborough disaster, who was in a persistent vegetative state, should be fed through a tube or not, so that he would live or die. Not only did the Archbishop refer the judges in his detailed legal submission to the masterful analyses of *Bland* by John Finnis and John Keown[34], he also introduced to the Court of Appeal the joint submission from the Anglican and Roman Catholic bishops in this country to the House of Lords Select Committee which considered the Bland case[35]. This step was significant for the development of human rights jurisprudence in the United Kingdom. Hitherto, there has been a tendency for judges to create space for themselves in the middle ground of what they take to be public opinion by caricaturing a crude utilitarianism as one extreme and the views of (as one Law Lord[36] put it in the *Bland* case) Roman Catholics and Orthodox Jews as

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[31] See note 30 at pp65-66

[32] See note 29, Ch 1

[33] A salutary way to read the Tony Bland case is in the context of the Hillsborough report, http://hillsborough.independent.gov.uk/repository/docs/WYC000000600001.pdf

[34] J Finnis, Bland: crossing the Rubicon? 109 Law Quarterly Review 329; J Keown, Restoring moral and intellectual shape to the law after Bland 113 Law Quarterly Review 481

[35] Joint submission, see chapter by S Lee, Uneasy Cases in B Dickson & P Carmichael (editors), The House of Lords, its parliamentary and judicial roles, Hart Publishing, Oxford, 1998

[36] Lord Browne-Wilkinson, as discussed in http://books.google.co.uk/books?id=rWDyNTopgKIC&pg=PA241&lpg=PA241&dq=tony+bland+case+lord+browne-wilkinson+orthodox+jews+and+roman+catholics&source=bl&ots=FVqRgmlFeb&sig=B-KF5kTUu-rKuFASVMs3wSHoqo0&hl=en&sa=X&ei=NY6OUOnGEuPU0QXGxoCYDg&sqi=2&ved=0CCIQ6AEwAQ#v=onepage&q=tony%20bland%20case%20lord%20browne-wilkinson%20orthodox%20jews%20and%20roman%20catholics&f=false

the other extreme. This enables the judges to think of themselves as pretty much in the centre ground. The fact is, however, that a broad spectrum of Judaeo-Christian opinion agrees on these issues and is itself firmly in the mainstream of great humanitarian thinking, as illustrated by the bishops' joint reaction to *Bland*:

> 'The arguments presented in this submission grow out of our belief that God himself has given to humankind the gift of life. As such, it is to be revered and cherished. Christian beliefs about the special nature and value of human life lie at the root of the Western Christian humanist tradition, which remains greatly influential in shaping the values held by many in our society. They are also shared in whole or in part by other faith communities. All human beings are to be valued, irrespective of their potential for achievement.'[37]

The central argument of the Churches' reflection on the issues raised by the Bland case was that:

> 'Those who become vulnerable through illness or disability deserve special care and protection. Adherence to this principle provides a fundamental test as to what constitutes a civilized society. Because human life is a gift from God to be preserved and cherished, the deliberate taking of human life is prohibited except in self-defence or the legitimate defence of others — *a pattern of care should never be adopted with the intention, purpose or aim of terminating life or bringing about the death of a patient* (emphasis added)[38].

This was quoted with approval by the Court of Appeal in the Siamese twins' case[39]. It illustrates that we should not judge a contribution to the common good solely by its impact on the instant decision. Lodging in the public realm a penetrating analysis is always of worth, even if it sometimes requires more than one reference for the judiciary to accept its insights.

I have explained elsewhere that I did not agree with the Archbishop's application of his principles to the facts of the case, nor therefore his recommended decision[40]. The Archbishop's submission has shown, however, that his views and those five principles are not the result of some extreme position which can be disregarded by those who do not share a particular religious faith. On the contrary, they are part of the mainstream of ethical thinking through the centuries, across the boundaries of time, faith and nationality. Professor John Finnis has explained lucidly in *Natural Law and Natural Rights*[41] the ways in which natural law and Roman Catholic teaching dovetail but the one is not dependent on, nor restricted to, the other. As Finnis observes, the principles are 'well recognised in other formulations: most loosely as "the end does not justify the means"; more precisely, though still ambiguously, as "evil may not be done that good might follow therefrom"; and with a special Enlightenment flavour, as Kant's "categorical imperative": "Act so that you treat humanity, whether in your own person or in that of another, always as an end and

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[37] See note 35

[38] See note 35

[39] http://www.bailii.org/ew/cases/EWCA/Civ/2000/254.html

[40] Uneasy Ethics, Ch 1

[41] John Finnis, Natural Law & Natural Rights, Oxford University Press, 1980; see also Human Rights & the Common Good, Oxford University Press, collected essays vol III, 2011

never as a means only."' These are also the fundamental principles on which human rights law has been developed. This is why the Church should face the new constitutional era in a positive spirit, taking every opportunity to build up a society in which the dignity of all is respected and our solidarity with the most disadvantaged is evident, both in our own human rights practices and in our submissions to the courts.

On leaving Leeds Met (Carnegie)[42] in 2009, I have again taken up the opportunity to write. In particular, as chair of Level Partnerships and of the John Paul II Foundation for Sport, as a weekly columnist for The Universe[43], as a visiting professor of sporting law, ethics & governance and as the author increasingly of essays on sport, such as the audiobook The Z to A of Oxford Sport[44], I am struck by the way in which issues dominating sporting law and ethics, such as racism, doping and the role of technology in enabling those with disabilities to use their talents to the full, all take us back to those conjoined twin principles of respecting others as unique human persons and as persons-in-relationships, as people in teams and communities. The form of law has intruded into the realm of sport and the substance of issues is also similar.

Along the way, it has been instructive to note the common bad arguments used against Catholic Social Teaching (and sometimes by those who are meant to be supporting it). In an article for The Independent[45] I highlighted five rhetorical devices in particular: name-calling ('you would say that, wouldn't you, because you are a Catholic and/or a man?', dubious definitions ('pre-embryo', 'playing God'), slippery slope arguments (if we allow this, it will become that), the claim that any reform merely drives the problem underground or into the back streets, and too facile a dismissal of opponents' arguments as inconsistent.

The current example of name-calling that surfaces now for anyone who questions those who want to reform the law on marriage is the insult of 'bigot'. In 1986, when I was arguing in *Law & Morals* for a liberal approach and in the 1990s when I was arguing for an equal age of consent in Northern Ireland and in Ireland, many of those now complaining about bigotry were not even prepared to acknowledge their own sexuality or speak up for a liberal approach. Opponents of the measure cannot be dismissed simply as 'bigots', as Andrew Pierce, recently arguing against gay marriage for ResPublica[46], has declared as a gay journalist who is not by any rational criteria an anti-gay bigot.

Some Catholics, however, are far from convinced by the Church's approach to this. They perhaps agree but do not seem that bothered and are slightly embarrassed that the Church is being attacked again as bigoted. They see that a trend in the law has been to move progressively from the category of 'non-persons' to 'persons', a whole range of people, slaves, people from ethnic minorities, women, children, disabled, employees, foetuses, the elderly. It seems natural, then, from that

[42] See essay 'Character Forming' in L Beckett (ed) City of Leeds Training College: continuity and change, 2007, Leeds Metropolitan University Press
[43] www.catholicuniverse.com
[44] http://www.audiogo.com/uk/the-z-a-of-oxford-sport-complete-simon-lee-gid-61995aa
[45] Simon Lee, 'Crucial Battle for the Moral High Ground', The Independent, 13 October 1989
[46] http://www.respublica.org.uk/item/I-m-a-gay-man-who-opposes-gay-marriage-Does-that-make-me-a-bigot-

perspective, to grant full status, including the right to marry, to people in same-sex couples. The Church has done rather well to put the countervailing view but it must engage with its own laity if its defence of marriage as traditionally understood as a union of a man and a woman is to prevail.

It also has to develop a more nuanced account of the relationships between Catholic Social Teaching and the state. The thrust of my book *Law & Morals* on the Hart-Devlin debate was to set out the common ground of a gap between what is moral and what is unlawful. I quoted St Thomas Aquinas:

> 'Law is laid down for a great number of people of which the great majority have no high standard of morality, therefore it does not forbid all the vices from which upright men can keep away but only those grave ones which the average man can avoid and chiefly those which do harm to others and have to be stopped if human society is to be maintained, such as murder, theft and so forth.'

Aquinas was anticipating by some 600 years the liberal thinking of John Stuart Mill who is usually credited with the 'harm to others' principle. Although resolute on its particular topic, the Vatican declaration on abortion in 1974 states that, 'It is true that civil law cannot expect to cover the whole field of morality or to punish all faults. No one expects it to do so. It must often tolerate what is in fact a lesser evil, in order to avoid a greater one.'[47]

Since the Church has focused so much on protecting its own integrity and all political parties acknowledge that they are not pressing for churches to be required to give church weddings to same sex couples, the obvious reaction of secular liberal campaigners is to suggest that the Church should therefore have no say in what happens in purely non-religious weddings authorised by the state. The Church needs to return to the arguments explored by Lord Devlin to point out that we are all affected when social institutions such as marriage are changed, that we do have a voice and a right to offer an opinion.

So how should the Church, and all of us, respond constructively to the condemnation in Vatican Two's *Gaudium et Spes*[48], reinforced by Pope John Paul II in *Evangelium Vitae*[49], of 'whatever violates the integrity of the human person'? In 1995, Pope John Paul II explained that,

> 'The Second Vatican Council, in a passage which retains all its relevance today, forcefully condemned a number of crimes and attacks against human life. Thirty years later, taking up the words of the Council and with the same forcefulness I repeat that condemnation in the name of the whole Church, certain that I am interpreting the genuine sentiment of every upright conscience: "Whatever is opposed to life itself, such as any type of murder,

[47] http://www.vatican.va/roman_curia/congregations/cfaith/documents/rc_con_cfaith_doc_19741118_declaration-abortion_en.html

[48] Gaudium et Spes, http://www.vatican.va/archive/hist_councils/ii_vatican_council/documents/vat-ii_const_19651207_gaudium-et-spes_en.html

[49] Evangelium Vitae, http://www.vatican.va/holy_father/john_paul_ii/encyclicals/documents/hf_jp-ii_enc_25031995_evangelium-vitae_en.html

> genocide, abortion, euthanasia, or wilful self-destruction, whatever violates the integrity of the human person, such as mutilation, torments inflicted on body or mind, attempts to coerce the will itself; whatever insults human dignity, such as subhuman living conditions, arbitrary imprisonment, deportation, slavery, prostitution, the selling of women and children; as well as disgraceful working conditions, where people are treated as mere instruments of gain rather than as free and responsible persons; all these things and others like them are infamies indeed. They poison human society, and they do more harm to those who practise them than to those who suffer from the injury. Moreover, they are a supreme dishonour to the Creator".

This is quite some agenda. It is not just about abortion. Nor is it just about the Christian cases currently before the European Court of Human Rights. The agenda can be met in part by such initiatives as the Church's innumerable charities, for example, the Cardinal Hume Centre[50] that exemplifies a positive approach to helping individual persons craft something beautiful from their lives, despite many adversities. The tone of public debate, as well as the practicality of charitable engagement, also matters. It is vital that those who are advocates of Catholic Social Teaching should scan the cathedral of law and the human person from all angles to find insights that are worth drawing out or highlighting, in the manner of the amicus brief from the Archbishop of Westminster in the case of the conjoined twins.

The Virtues of Judges

An extraordinary political controversy is underway over the government's proposal to reform the law on marriage to extend it to couples of the same sex who, for the past five years, have been able to enter into civil partnerships. That is a topic for another day but it is not the only matter of family law that deserves attention. Part of the value of artists painting pictures of the cathedral of law and the human person from diverse vantage-points is spotting an interpretation that would otherwise have remained obscure to us.

Consider, therefore, the approach of the Court of Appeal in a recent family law case, Re G(Children)[51]. It shows that judges are not oblivious to debates about virtue ethics. It follows that there are opportunities for the Von Hugel Institute and others to influence the public square not only when legislation is being considered and when the Church might be on the defensive but whenever the courts are called upon to resolve a dispute about law and welcome debate on virtues. This is a case on the choice of orthodox or ultra-orthodox education for Jewish children when their parents' marriage breaks down.

> The case raises some interesting issues about faith and gender equality. The Court of Appeal upheld the decision of the judge at first instance that the children should

[50] http://www.cardinalhumecentre.org.uk/wp-content/uploads/2012/07/CHC-Accounts-31March12.pdf

[51] Re G http://www.bailii.org/ew/cases/EWCA/Civ/2012/1233.html

go to the schools chosen by the mother rather than those by the father. While they were all orthodox, the schools chosen by the mother were more ‘liberal’ and would give the girls, in particular, more opportunities, in the opinion of the judge.

The highlights include the following paragraphs from the judgment by Lord Justice Munby:

15. The real issue in this case is that relating to the children's education.

16. I wish at the outset to stress the importance of the issue. It is, in the circumstances of this case, of transcendental importance not merely to the father, the mother and the children but also to the Chareidi community and, for reasons I will come to, the larger society of which it forms part.

17. Any issue about a child's education is always, of its nature, important. In the circumstances of this case it is, however, an issue about far more than education. Nor is it just an issue about 'lifestyle choice', in the sense in which that label is attached to disputes about relocation, whether to a different part of the country or from one country to another, or in the sense in which one talks, for instance, about a Bohemian or hippy lifestyle. Nor is it just an issue about religion, as that expression might be perceived from some points of view.

18. For the nominal Anglican, whose sporadic attendances at church may be as much a matter of social convention as religious belief, religion may in large part be something left behind at the church door. Even for the devout Christian attempting to live their life in accordance with Christ's teaching there is likely to be some degree of distinction between the secular and the divine, between matters quotidian and matters religious. But there are other communities, and we are here concerned with such a community, for whom the distinction is, at root, meaningless, for whom every aspect of their lives, every aspect of their being, of who and what they are, is governed by a body of what the outsider might characterise as purely religious law. That is so of the devout Muslim, every aspect of whose being and existence is governed by the Quran and the Sharia. It is so also of the ultra-orthodox Jew, every aspect of whose being and existence is governed by the Torah and the Talmud.

19. I therefore agree entirely with what Hughes LJ said when adjourning the matter to the full court. The issue, he said, is:

> "not simply a matter of choice of school but a much more fundamental one of way of life. 'Lifestyle' scarcely does the issue justice. It is a matter of the rules for living."

29. I have referred to the child's happiness. Very recently, Herring and Foster have argued persuasively ('Welfare means rationality, virtue and altruism', (2012) 32 Legal Studies 480), that behind a judicial determinations of welfare there lies an essentially Aristotelian notion of the 'good life'. What then constitutes a 'good life'? There is no need to pursue here that age-old question. I merely emphasise that happiness, in the sense in which I have used the word, is not pure hedonism. It can include such things as the

cultivation of virtues and the achievement of worthwhile goals, and all the other aims which parents routinely seek to inculcate in their children.

30. I have also referred to the child's familial, educational and social environment, and his or her social, cultural, ethnic and religious community. The well-being of a child cannot be assessed in isolation. Human beings live within a network of relationships. Men and women are sociable beings. As John Donne famously remarked, "No man is an Island …" Blackstone observed that "Man was formed for society". And long ago Aristotle said that "He who is unable to live in society, or who has no need because he is sufficient for himself, must be either a beast or a god". As Herring and Foster comment, relationships are central to our sense and understanding of ourselves. Our characters and understandings of ourselves from the earliest days are charted by reference to our relationships with others. It is only by considering the child's network of relationships that their well-being can be properly considered. So a child's relationships, both within and without the family, are always relevant to the child's interests; often they will be determinative.

And so say all of us. In a way, the judge was echoing the points made by the bishops in their statement on the 50th anniversary of the Universal Declaration of Human Rights. Others in public life have also explored and applied a similar understanding of what it is to be a human person, for example Archbishop Rowan Williams in his latest book of lectures[52].

This is not to say that religious leaders or anyone else would necessarily agree with all the thinking of Herring and Foster or of Lord Justice Munby. For instance, there is still in this judgment an overriding obsession with 'choice' or 'autonomy' whereas others might place more store, in their basket of virtues, on the fruit of character formation or on the impact on family relationships (as to whether links with grand-parents will be promoted or broken). As with the conjoined twins' case, we might agree with the result but not all of the reasoning or with the reasoning of a third party submission, but not with its recommended result. What this case reveals, however, is that judges are willing to engage with those who present arguments about cultivating virtue. Lawyers will pick those up if the Von Hugel Institute or others identify them in easily accessible research, let alone if people in the Institute or others present them as third parties directly to the courts.

Beyond Life, Law and the Human Person in the United Kingdom: beyond one view of the cathedral

Finally, I want to step beyond law and beyond preoccupation with the human person at the earlier stages of life. We also need to reach out beyond Roman Catholicism to embrace fellow believers in other denominations and faiths, as well as all others of goodwill who share the approach of Catholic Social Teaching to the cultivation of virtue.

After all, the point about transcendence suggests that Catholic Social Teaching is animated by beliefs about the nature of the divine and of the human condition,

[52] Rowan Williams, Faith in the Public Square, Bloomsbury Continuum, 2012

including what happens *after* life on earth. The words most commonly used to describe attitudes to death nowadays seem to be those found on cards of sympathy and condolence or read out at funerals, beginning thus,

> 'Death is nothing at all. It does not count. I have only slipped away into the next room. Nothing has happened. Everything remains exactly as it was. I am I, and you are you, and the old life that we lived so fondly together is untouched, unchanged… Why should I be out of mind because I am out of sight? I am but waiting for you, for an interval, somewhere very near, just round the corner. All is well…'

Some people who regard themselves as religious folk pour scorn on those sentiments but their author is Professor Canon Henry Scott Holland, an Anglo-Catholic who eventually became Regius Professor of Divinity at the University of Oxford, previously having studied there, and a Canon of St Paul's Cathedral in London. He was a student at Balliol, where he played sport and gained First Class Honours. Scott Holland was a contemporary of the poet and Jesuit priest Gerard Manley Hopkins at Balliol. In later life he declined the offer of a bishopric but was highly influential on the cusp of theology and politics as a founder and leading figure of the Christian Social Union.

So how did a respectable Christian cleric come to write words which irritate so many fellow Christians? What world was Henry Scott Holland living in, or dying in, if he thought that death was nothing at all? When those words are quoted, the context is usually omitted. He was preaching in St Paul's, as a canon of the cathedral, in May 1910 when King Edward VII had just died and he was explaining that 'I suppose all of us hover between two ways of regarding death'[53], of which this is one. The first approach is the exact opposite, to 'recoil from it as embodying the supreme and irrevocable disaster'. The second is this, to wish to think of death as 'nothing at all'.

How did Scott Holland resolve the tension between these two extreme views of death? 'Our task is to deny neither judgement, but to combine both... Only through their reconciliation can the fitness of our human experience be preserved in its entirety. How shall this be done? Is it not through the idea of growth?'

Then the sermon veers, to my mind, towards the unfathomable. It is, however, emphatically not a fair reading of Scott Holland to take one half of the two positions he was contrasting and represent that as the whole, as if he did not understand the other approach, when he had in fact already set it out in his sermon.

The sermon captured the moods of the nation precisely because it was a special time in the life (and reflection on death) of the country, when the king was dead and yet when the cry goes up, 'Long live the king' In life, as with Henry Scott Holland on death, our task is also to take a rounded look at the cathedral of law and the human person. There is not a single issue with a single right answer on which we can rest. It

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[53] Henry Scott Holland, the full text can be found easily on-line by searching for his King of Terrors sermon but it is also instructive to see how part of it is o frequently taken and used: http://www.poeticexpressions.co.uk/poems/death%20is%20nothing%20at%20all%20-%20canon%20henry%20scott-holland.htm

is just as misleading to wrench out of context some campaigners' unfortunate experiences with statutory amendments to abortion law, as if that were all that Catholic Social Teaching has to offer about Law and the Human Person, as it is to take one of Scott Holland's two extremes and equate that with his views on death.

Of course, the poetry of Scott Holland's words contributed to this effect. He was so eloquent in his choice of words to represent a position that he did not hold that it has come to be associated with him.

In contrast, campaigners have not always chosen the right wording to achieve their aims but they have in their own way contributed with the best of intentions to the focus on one out of a much wider range of views. It is their unflagging commitment which has played a large part in elevating their cause above others in public perception.

Those who wish to paint broader pictures of Catholic Social Teaching have to be energetic and wide-ranging, catholic, in their interests. Applying Scott Holland's words, 'I suppose all of us hover between two {or more} ways of regarding' many phenomena. This takes us back to our beginning and possibly, if not in Eliot's words to know it for the first time, then at least to see a little more clearly how many views there are of this cathedral. As the Church document I quoted at the beginning of this lecture puts it:

> '… Catholic belief that two vital truths about human persons must always be held together.
>
> 'Firstly, all persons are unique, irreplaceable, destined for transcendent life, and so are not just units of some larger mass or entity, who could properly be treated as interchangeable, or merely as the instruments of another's purpose…
>
> 'Secondly and equally important, everyone is a person-in-relationship whose well-being cannot be attained alone, and whose life can never be considered apart from the many relationships (more or less intimate or enduring) that make up its fabric. In practice, the individual person and the community will always have claims against each other: and their true fulfilment goes together. Neither an individualism that denies the claims of community, nor a corporate prosperity that excludes the well-being or dignity of individual persons, is ultimately tolerable.' [54]

Our task is to 'deny neither judgement, but to combine both' these 'vital truths'. We do this best with a similarly conjoined twin approach – with our own unique takes on the world but also benefiting from arguing about these values, and living them out, in community.

The Von Hugel Institute therefore has an important role to play in stimulating deep and wide-ranging thought.

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One of the ways in which law contributes to our society is in identifying high moments. As a case reaches its final appeal in the courts or a bill to amend the law reaches its final substantive debate and vote in Parliament, these high moments can be informed by research. If an A to Z of Catholic Social Teaching and related thinking about 'cultivating virtue' could be set out and continuously improved, with a directory of deeper references, this would help enormously.

By 'related thinking', I mean that it should include links to the outcomes of such conferences as the Von Hugel Institute's gathering in 2012 on the Big Society, which I was delighted to see had been funded by the Plater Trust in a scheme recommended by the Plater Review which I had the privilege of chairing. Relevant conferences which are in the early stages of planning include one at Liverpool Hope in 2013 on the legacy of Bishop David Sheppard and Archbishop Derek Worlock[55] and one envisaged for 2014 at Durham, with the John Paul II Foundation for Sport, on sporting ethics 'Half-Way to Rio'[56].

Sometimes, what is needed is a very focused analysis on a neglected legal provision. To give one example, my own view is that more attention should be given to s13 of the Human Rights Act 1990, devised by the government under the aegis of Jack Straw as Home Secretary to meet concerns raised by Cardinal Basil Hume and others. It requires judges to pay 'particular regard' to freedom of religion:

> 'If a court's determination of any question arising under this Act might affect the exercise by a religious organisation (itself or its members collectively) of the Convention right to freedom of thought, conscience and religion, it must have particular regard to the importance of that right.'

I was not in favour of this as it seemed to be an example of the Churches arguing for special treatment and it seemed unlikely to be effective. Indeed, it does seem to have been generally ignored in practice but given that it is on the statute book and seems so relevant to so many cases, it deserves deeper consideration. If Cambridge &/or Catholic &/or other lawyers take it seriously, so will the courts. If it is discussed soon, then it (or a variation on its original purposes) might be considered in the public debate that will ensue as the political parties debate revisions to the Human Rights Act and possibly our commitments to the European Convention of Human Rights.

Sometimes, we need the view from afar. In the USA, there are similar controversies to our own about same sex marriage law reform. In the US, however, there is a wider range of forums, with some states having a referendum, as well as state legislatures and courts playing their parts, presidential candidates pressed for their views and the possibility ultimately of the issue reaching the Supreme Court. Scholars rooted in Catholic Social Teaching, such as Professors John Finnis and Robert George, have written at length against the extension of marriage law to include same sex relationships.

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[55] http://togetherforthecommongood.co.uk/

[56] http://www.johnpaul2foundation4sport.org/

Earlier this month, the president of the US Conference of Catholic Bishops, Cardinal Timothy Dolan of New York, hosted and sat between Democrat President Barack Obama and his Republican challenger, Mitt Romney, at the Alfred F Smith Memorial Foundation Dinner as the US campaign trail entered its last lap. This is a traditional charity fund-raising occasion. The presidential candidates laughed at themselves. Cardinal Dolan laughed with them both.

Part of the significance of this is that the US Conference of Catholic Bishops has clashed with President Obama's administration over contraception provisions in its health care law reforms and disagrees with both candidates over abortion law. Cardinal Dolan revealed that he had received 'stacks of mail objecting to the Church inviting President Obama to the dinner but he went ahead, just as he had given blessings and said prayers at both the Republican and Democratic national conventions in 2012. At least three points are raised by the Church and political opponents coming together in a good cause.

First, this shows that Catholics can break bread with those whose particular decisions are no laughing matter to the Church. More broadly, in a democracy, we should do our best to respect political representatives and not to denounce the good they do if we disagree with their proposals on one issue. Second, it shows that those who write to bishops, or write to Rome about bishops, do not have veto rights over episcopal judgment. Third, this example challenges bishops on this side of the Atlantic to be bolder and more engaged in public debates, despite the risks of controversy. Whoever wins the US presidential election, the Catholic Church will be acting as the voice of the voiceless in what American political observers call the 'public square'.

The current debate on the government's proposal to reform the law on marriage could certainly benefit from rounded views of the cathedral. In March 2013 it will be the fiftieth anniversary of Lord Devlin's Earl Grey Lecture at Durham on Law and Marriage. In 1963, divorce and bigamy were the issues discussed. In 2013, some of Lord Devlin's thinking deserves re-consideration in the context of the debate on reform of the marriage law but also in the everyday resolution of family disputes, as illustrated by the G case.

In conclusion, I am aware that when we paint a picture of the cathedral, it often tells others more about ourselves as painters, about our outlook on the world, than it does about the cathedral or the envelope between us. This is in itself of value, however, and all who are interested in Catholic Social Teaching and related approaches to virtue ethics and public life could benefit from research into the thinking of such leading figures as Mary McAleese, the former President of Ireland and the new Patron of the Von Hugel Institute, John Hume, Bishop David Sheppard and Archbishop Derek Worlock, Professor Canon Henry Scott Holland or Archbishop Temple and Cardinal Manning, Pope Leo XIII and Pope John Paul II, as well as British politicians such as Baroness (Shirley) Williams and Lord (Chris) Patten, or indeed the work of lawyers such as Lord Devlin and clerics such as Cardinal Hume in their joint work on miscarriage of justice cases, in each case exploring how their faith affected their view of politics. John Pius Boland, for example, was not only Britain's and Ireland's first double gold medal winner of the modern Olympics, winning tennis singles and doubles in Athens in 1896, but he became an Irish

nationalist MP at Westminster, a passionate advocate of the Irish language and director of the Catholic Truth Society, which did so much to disseminate Catholic Social Teaching. He was brought up by his uncle, a Catholic auxiliary bishop in Dublin, he went to daily Mass throughout his life and his headmaster was Blessed John Henry Newman.

The more we explore their views on law and the human person, or paint our own sketches, the deeper we will be thinking about these vital matters. This in turn helps us to hone our views on the agenda devised by today's politicians. For instance, the Prime Minister might wonder why he is being criticised from his 'right' by Church sources on his marriage law reform proposals and by them from his 'left' on his strident rejection of prisoners' rights to vote. It might be that the terms 'right' and 'left' are inapposite but it is also the case that proponents of Catholic Social Teaching think that those twin fundamental principles of uniqueness and relationships do raise questions about both of his campaigns.

In any event, it is good to keep painting our impressions of the cathedral from diverse vantage-points. That is why on such significant topics as the Human Person, it is good that the Von Hugel Institute is holding a multi-disciplinary series of lectures. This view from a legal perspective is but one view of the cathedral.*

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Appendix – some statutory provisions related to abortion

Offences Against The Person Act 1861

Attempts to procure Abortion.
58. Every Woman, being with Child, who, with Intent to procure her own Miscarriage, shall unlawfully administer to herself any Poison or other noxious Thing, or shall unlawfully use any Instru ment or other Means whatsoever with the like Intent, and whosoever, with Intent to procure the Miscarriage of any Woman, whether she be or be not with Child, shall unlawfully administer to her or cause to be taken by her any Poison or other noxious Thing, or

shall unlawfully use any Instrument or other Means whatsoever with the like Intent, shall be guilty of Felony, and being convicted thereof shall be liable, at the Discretion of the Court, to be kept in Penal Servitude for Life or for any Term not less than Three Years,-or to be imprisoned for any Term not exceeding Two Years, with or without Hard Labour, and with or without Solitary Confinement.

Infant Life (Preservation) Act 1929

An Act to amend the law with regard to the destruction of children at or before birth.

BE it enacted by the King's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :-
1.-(1) Subject as hereinafter in this subsection Punishment provided, any person who, with intent to destroy for child the life of a child capable of being born alive, by any destruction. wilful act causes a child to die before it has an existence independent of its mother, shall be guilty of felony, to wit, of child destruction, and shall be liable on conviction thereof on indictment to penal servitude for life :
Provided that no person shall be found guilty of an offence under this section unless it is proved that the act which caused the death of the child was not done in good faith for the purpose only of preserving the life of the mother.
(2) For the purposes of this Act, evidence that. a woman had at any material time been pregnant for a period of twenty-eight weeks or more shall be prima facie proof that she was at that time pregnant of a child capable of being born alive.

Abortion Act 1967

Medical termination of pregnancy.
1 Subject to the provisions of this section, a person shall not be guilty of an offence under the law relating to abortion when a pregnancy is terminated by a registered medical practitioner if two registered medical practitioners are of the opinion, formed in good faith—

(a) that the continuance of the pregnancy would involve risk to the life of the pregnant woman, or of injury to the physical or mental health of the pregnant woman or any existing children of her family, greater than if the pregnancy were terminated; or

(b) that there is a substantial risk that if the child were born it would suffer from such physical or mental abnormalities as to be seriously handicapped.

5 Supplementary provisions.

(1) Nothing in this Act shall affect the provisions of the Infant Life (Preservation) Act 1929 (protecting the life of the viable foetus).

(2) For the purposes of the law relating to abortion, anything done with intent to procure the miscarriage of a woman is unlawfully done unless authorised by section 1 of this Act.

Human Fertilisation and Embryology Act 1990

Abortion

37.—(1) For paragraphs (a) and (b) of section 1(1) of the Abortion Act 1967 (grounds for medical termination of pregnancy) there is substituted—

"(a) that the pregnancy has not exceeded its twenty-fourth week and that the continuance of the pregnancy would involve risk, greater than if the pregnancy were terminated, of injury to the physical or mental health of the pregnant woman or any existing children of her family; or

(b) that the termination is necessary to prevent grave permanent injury to the physical or mental health of the pregnant woman; or

(c) that the continuance of the pregnancy would involve risk to the life of the pregnant woman, greater than if the pregnancy were terminated; or

(d) that there is a substantial risk that if the child were born it would suffer from such physical or mental abnormalities as to be seriously handicapped."

(4) For section 5(1) of that Act (effect on Infant Life (Preservation) Act 1929) there is substituted—

"(1) No offence under the Infant Life (Preservation) Act 1929 shall be committed by a registered medical practitioner who terminates a pregnancy in accordance with the provisions of this Act."