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Contemporary Irish Moral Discourse

ESSAYS IN HONOUR OF PATRICK HANNON

Edited by
Amelia Fleming



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Table of Contents

Acknowledgements	7
List of Contributors	9
Foreword by <i>Dermot Gleeson</i>	11
1. An authentic Celtic voice: The Irish Penitential and contemporary discourse on reconciliation <i>Hugh Connolly</i>	13
2. Bio-ethics and contemporary Irish moral discourse <i>Padraig Corkery</i>	26
3. The silent voice of creation and moral discourse <i>Amelia Fleming</i>	40
4. A church silence in sexual moral discourse? <i>Raphael Gallagher CSsR</i>	53
5. Moral discourse and journalism <i>Donal Harrington</i>	66
6. Contemporary humanitarianism: neutral and impartial? <i>Linda Hogan</i>	76
7. On having a religious morality <i>Vincent MacNamara</i>	88
8. A discourse on the centrality of justice in moral theology <i>Enda McDonagh</i>	104
9. Moral discourse in a time of AIDS <i>Suzanne Mulligan</i>	117

CHAPTER TWO

Bio-ethics and contemporary Irish moral discourse

Padraig Corkery

Since the birth of Louise Brown in 1978 there has been much discussion worldwide on the ethics of reproductive technologies. Professional ethicists and the public at large have addressed significant questions concerning the nature of human parenthood, the status of human life at its earliest stage of development and the role of science in the area of human reproduction.¹ Societies have, in general, argued that reproductive technologies have societal consequences and should therefore be regulated by society through the civil law. Many societies set up interdisciplinary groups to assist in the forming of legislation in this area. The commission set up under the leadership of Dame Warnock in Britain is probably the best known example of the work of such a group and their influence on the formation of legislation.

The fundamental issues raised by reproductive technologies have generated much debate and disagreement. There is no unanimity on ethical questions concerning the status of the preimplanted embryo or on the nature and scope of human parenthood. This debate is well-documented in the journals and textbooks of bioethics over the past twenty five years. It is no surprise, therefore, that the regulation governing the practice of IVF and other reproductive technologies differ significantly from society to society. The shape and content of legislation in this area flows naturally from a society's response to the core ethical issues.

The response of the Catholic tradition to IVF and other reproductive technologies is clearly set out in *Donum Vitae* published in 1987. A central argument of this document is: 'What is technically possible is not for that very reason morally admissible.'² As moral agents responsible for our actions we are called to exam-

1. Part of this article was first published in *The Furrow* 56 (June 2005): 353-7. Used with permission.

2. *Donum Vitae*, Introduction, Section 4.

CHAPTER TWO

27

ine the means used to achieve the undeniable good that is the birth of a child. After a systematic examination of the process of IVF, rather than just the consequences, reproductive technologies were rejected as incompatible with a Christian anthropology and a Christian understanding of responsible human stewardship. In particular the practice of freezing, discarding and experimenting on 'surplus' embryos was rejected as incompatible with the respect due to the embryo. Catholic tradition claims that the embryo is a part of the human family and should 'be respected and treated as a person from the moment of conception'.³ Furthermore the process of IVF was deemed to be inattentive to our nature as embodied persons called to procreate through bodily union in the context of marriage. The introduction of third parties, either as donors of genetic material or as surrogates, was seen to be counter to the Christian vision of marriage and the family as the locus for the procreating of children. Finally, *Donum Vitae* raised important questions about the language of 'a right to have a child' and its possible negative impact on children and their dignity.⁴

Ireland and IVF

Irish society is quite unique in how it has responded to date to the question of regulating IVF. Unlike most countries there is no legislation here governing this area of life. Instead the Codes of Conduct of the Irish Medical Council and the Irish Institute of Obstetricians and Gynaecologists have provided the only guidelines in this area. Over the years these have evolved reflecting changing attitudes to certain aspects of reproductive technologies. Earlier versions, for example, restricted IVF to married couples and excluded the donation of gametes. The most recent Guidelines make IVF more readily available and allow for donation of both gametes and embryos.⁵ The absence of legislation in this area was perceived by most commentators to be unsatisfactory. In response to this unease and to directives from the EU the former Minister of Health Micheal Martin set up the

3. *Ibid.*, Chapter 1, Question 1.

4. *Ibid.*, Chapter 2, Question 8. 'A true and proper right to a child would be contrary to the child's dignity and nature. The child is not an object to which one has a right ...'

5. The Medical Council, *A Guide to Ethical Conduct and Behaviour*, (Sixth Edition), 2004. Section F.

Commission on Assisted Human Reproduction in March 2000. The brief of the Commission was to 'prepare a report on the possible approaches to the regulation of all aspects of assisted human reproduction and the social, ethical and legal factors to be taken into account in determining public policy in this area.' As part of the process the Commission organised a public conference in February 2003.⁶ Two years later their long awaited Report was published and presented to the Government for their consideration.⁷ After deliberating on the Report, the Government is expected to introduce legislation to govern this important and expanding area of contemporary medicine.

The publication of this Report should generate debate within Irish society on the possible shape of legislation in this sensitive and important area of life. The possible shape, content and tone of the debate might tentatively be sketched from the discussion among Irish contributors, including Professor Patrick Hannon, over the past twenty years. Though the discussion was never very robust, a review of some of the important texts reveals key questions, areas of disagreement and tensions. In the remaining pages of this essay I will identify the key concerns and propose some guidelines that might enable any future Irish debate on reproductive technologies to be enlightening, intellectually robust and moderate in tone. It is to be hoped that a debate on the content of legislation, in an increasing pluralistic society like Ireland, will be a 'learning experience' for all.

Soon after its publication, *Donum Vitae* was reflected on by Patrick Hannon. He correctly predicted that professional theologians would continue to seek 'a more cogent demonstration of the universal wrongness of conception by IVF and ET'.⁸ He also raised the question of the status of the Instruction and its binding force. He judged that the Instruction was somewhat below and encyclical in status but still represented an exercise in authoritative magisterium. Given the reality of disagreement on the conclusion of the instruction he argued for the primacy of in-

6. www.cahr.ie

7. *Report of the Commission on Assisted Human Reproduction*, April 2005. The text is available on the Department of Health and Children website: www.dohc.ie/

8. Patrick Hannon, 'In Vitro Fertilization', *The Furrow* 38 [1987]: 739-746. See also *The Furrow* 39 [1988]: 121 for Hannon's response to correspondence generated by his original article.

dividual conscience for those who had a 'bona fide inability to see the binding force of the Instruction's teaching.'⁹

In a later expanded version of this article, Hannon again raised concerns about the Instruction's central argument re the inseparability of the unitive and procreative dimensions of human sexual intercourse.¹⁰ This argument was developed at length in *Humanae Vitae* but Hannon questioned its applicability in the context of IVF and ET.¹¹ Secondly he judged that the arguments presented in the Instruction against extra corporeal fertilisation seemed 'tendentious'.¹² Finally, he again raised a question about the status of the Instruction and indicated a positive role for individual conscience once the traditional norms governing the formation of conscience are observed.

The Irish bishops and reproductive technologies

Not surprisingly the Irish Catholic Bishops have consistently provided a moral analysis of developments in the area of reproductive technologies. In an early intervention they raised two central objections to IVF.¹³ Their primary argument centred on the destruction of the embryo and the use of the embryo as a means to an end. Underpinning this argument was the understanding that embryonic life is entitled to respect and protection from the moment of fertilisation. Their second argument rested on their claim that through IVF the generation of life becomes a technical process, controlled by experts, and ultimately 'becomes dehumanised'.¹⁴ It is worth noting that they made no explicit mention of the 'separation of ends' argument which was to feature centrally in *Donum Vitae*. Finally, they argued both for greater education about and research into the causes of infertility.

Recently a much more detailed analysis was published by the Bishops.¹⁵ Three principles were identified as central to a

9. *Ibid.*, 746

10. Patrick Hannon, 'In Vitro Fertilization', *ITQ* 55 [1989]: 7-17.

11. *Ibid.*, 14-5, 'An analogy with the case of IVF and ET cannot be pressed.'

12. *Ibid.*, 15

13. Irish Catholic Bishops Commission for Doctrine, 'In Vitro Fertilization', *The Furrow* 37 [1986]: 197-200.

14. *Ibid.*, 199

15. Bishops' Committee on Bioethics, *Assisted Human Reproduction: Facts and Ethical Issues*, Dublin, Veritas, 2000. A second edition of this text was published in April 2003. This slightly revised text can be found at www.catholiccommunications.ie/pastlet/ahr.html

proper evaluation of developments in reproductive technologies: the right to life and bodily integrity; the right to an identity of origin; the essential meaning of human sexuality. What is immediately striking about this document compared to *Donum Vitae* is its language and tone. This is seen strikingly in its omission of any reference to the language of 'product' to describe the fruit of IVF, which featured in the earlier document of the Congregation, and in its inclusion of a short section on conscience. The treatment of conscience is gentle and identifies religious faith as 'an important element' in the process of conscience formation. Further it unambiguously advocates that 'each individual must make and be guided by a judgement of conscience.'¹⁶ Moderate language is also seen in its reflection on the role of technology in the intimate area of procreation: 'Technology, often unawares, introduces into the act of life-giving elements that do not sit well with the dignity of the human person.'¹⁷ At a later stage the document concludes with a question rather than an outright condemnation: 'We must question whether such a highly technological process is a suitable vehicle for the love and the mystery which, properly speaking, is so central to the generation of a human person.'¹⁸

In its ethical evaluation of IVF the primary argument used is that the process is destructive of the embryo. Such destruction, it argues, is an intrinsic dimension of such technology; '— it is very difficult to provide IVF effectively without going down a path that inevitably leads to the death of a great proportion of human embryos.'¹⁹ Furthermore the Bishops argued that, though destructive research on embryos is prohibited in Ireland, IVF practised there is 'dependent on research done elsewhere'.²⁰ Implicitly the document raises the question of co-operation in the wrongdoing of others. The use of multiple embryos, the disposal of surplus embryos or their storage is evaluated negatively because such actions contribute to an ethos that sees the embryo as a means to an end rather than an end in itself.

The document contains a four-line summary-style ethical evaluation of IVF that includes: '[i]n many cases it is inconsistent

16. www.catholiccommunications.ie/pastlet/ahr.html Chapter 1.

17. *Ibid.*

18. *Ibid.*, Chapter 3, Section B.

19. *Ibid.*

20. *Ibid.*

with respect for the family and the identity of origin of the child. With regard to the integrity of human sexuality, IVF is, to say the least, intrusive.²¹ The language used here is strangely imprecise in a document setting out the moral stance of the Catholic community. It could leave the reader with several questions and some uncertainty. Does intrusive mean morally unacceptable? Could such intrusion ever be justified? Later in its evaluation of GIFT, the document employs language that similarly lacks clarity: 'It does replace the act of intercourse, rather than assisting it, but it is arguably less intrusive in terms of the integrity of sexuality, because it does not totally remove the element of mystery and the randomness of natural fertilisation.'²² This imprecision in language is repeated in the documents evaluation of AIH and IUI: 'Strictly speaking, AIH and IUI do not respect the integrity of the sexual act, although relative to other procedures the level of intrusiveness is minimal.'²³

While the absence of legislation in the area of assisted human reproduction is judged to be unsatisfactory, the document does not offer any proposal on the possible shape of legislation. Furthermore, the document does not oppose the allocation of public funding for procedures like IVF but insists on the need to establish 'just and reasonable' criteria for the selection of candidates.²⁴

Other Irish voices

This absence of legislation in this area meant that the only guidelines on ethical practice were those set out by the medical profession. These guidelines have been revised several times in the past twenty years and the resulting changes provide an indication of the quiet evolution of the debate in Irish society. The Institute of Obstetricians and Gynaecologists first addressed the ethical issues surrounding IVF in the early 1980s. These initial guidelines were quite restrictive in several respects. They limited

21. *Ibid.*

22. *Ibid.*, 32. The first edition of the document reached a definitive judgement on this issue: 'it does however, replace the act of intercourse, rather than assisting it, and for that reason is *not* morally accepted.' Emphasis mine.

23. *Ibid.*

24. *Ibid.*, Chapter 4, Section 2. It mentions in particular marital status and age.

the availability of IVF to married couples and insisted that all embryos were to be replaced in the potential mother's uterus. The production or storage of embryos for research purposes was explicitly prohibited, as was third party donation of genetic material.

The 1992 guidelines of the Institute reflected a slight change with regard to the availability of IVF; the original constituency of married couples was broadened to couples. It is interesting to note, however, that the Medical Council retained the original wording in their *Guide to Ethical Conduct*. The guidelines again demanded that all embryos be replaced and added that 'optimally this should be three in any treatment cycle.'²⁵ The guidelines on IVF in the sixth edition of the Medical Council (2004)²⁶ again prohibit the creation of life for experimental purposes and the deliberate destruction of the fertilised ovum. These guidelines for the first time allow for the donation of fertilised ova to a third party.

The Guidelines published over the past twenty years governing the conduct of the medical profession contain both elements of change and consistency. There has been a clear change in the constituency that can avail of IVF and in the rules governing third party involvement as donors and recipients of gametes and fertilised ova. There has been a change also in nomenclature from embryo to fertilised ova. The guidelines have been consistent in their prohibiting of the deliberate destruction of the embryo and of the creation of the embryo for experimental purposes.

Donal Murray²⁷ has made an important contribution to the ongoing conversation in Irish society. In an early work he focused primarily on the nature of ethics and how we decide 'the good'. Experience reveals that people approach the project of 'doing ethics' quite differently and this often results in a pluralism of conclusions on specific issues. Murray, working out of the Catholic moral tradition, argues that the human act in its entirety must be looked at for a proper ethical analysis rather than just consequences or motives. He reflects on IVF in light of the 'truth

25. Medical Council, *A Guide to Ethical Conduct and Behaviour*, appendix G, 62-63.

26. Medical Council, *A Guide to Ethical Conduct and Behaviour* (Sixth Edition 2004) Section F.

27. Donal Murray, *A Question of Morality: Christian Morality and In Vitro Fertilisation*, Veritas, 1985

about human persons and relationships' and identified three dimensions of reproductive technologies that contradict this truth. The first revolves around the process itself; it is by its very nature controlled and views the child as a 'product'. His second objection focuses on the 'quality control' dimension of reproductive technologies. This feature results in the discarding of 'imperfect' embryos and reveals an understanding of human dignity that runs counter to that proposed by the Christian tradition. In that tradition our dignity as persons is intrinsic; it flows readily and universally from our nature as sons and daughters of God. Such a vision explicitly rejects an understanding that links dignity to health, utility or indeed virtue. Finally, using the well-utilised 'slippery slope' argument, he predicted that the 'simple case' of IVF would inevitably lead on to other developments that raise even greater ethical concerns.²⁸

In a later contribution²⁹ Murray again returns to the reality of disagreement on what constitutes morality. This disagreement results in people of 'good will' engaging in bitter arguments on the morality of specific issues. In highlighting this reality Murray has made an important contribution; in contemporary debate about stem cells or the like there appears underlying disagreement about how 'to do ethics'. Do good consequences yield a 'good' act? Are good motives sufficient? Is individual fulfilment and happiness an adequate measure of morality? Besides identifying this root cause of much moral disagreement Murray raised another important concern. Because of the rapid pace of scientific advance and the secretive nature of much research, moral reflection on new developments often happens 'post event'.³⁰ Because of this delay in moral reflection the contribution of ethicists is often seen as interfering and negative. Ideally, ethicists should be involved at the earliest stage of research rather than presented with a *fait accompli*.

Another earlier commentary came from Kevin Doran.³¹ This work closely mirrors the arguments presented in *Donum Vitae*, especially its argument on the status of the embryo. Doran iden-

28. *Ibid.*, 22-3.

29. *Idem*, *The Doctors' Dilemmas: Moral and Ethical Problems of In Vitro Fertilisation*, Veritas, 1988.

30. *Ibid.*, 7-8

31. Kevin Doran, *The Wanted Child and In-Vitro Fertilisation*, Veritas, 1987.

tifies the primary question as: 'Does it [IVF] look on people as having value in themselves, or does it see people as disposable?'³² A refreshingly broader perspective is found in a recent publication by philosopher Dolores Dooley. She looks at the ethical issues surround NRT from the perspective of a balance between individual liberty and the demands of the common good.³³ She ponders whether the widespread availability of NRT might make the following vulnerable: 'people with impairments, the economically marginalized, women and parents.'³⁴ She raises the question whether the availability of pre implantation genetic detection creates and promotes societal attitudes against the disabled? Does it shape societal attitudes towards the childless?

The Commission on Assisted Human Reproduction

The Commission on Assisted Human Reproduction³⁵ held a one-day conference in February 2003. The papers presented there, and more particularly the exchanges from the conference floor, revealed disagreement on a range of issues and an almost complete lack of engagement between the different perspectives. The exchanges were passionate but sometimes revealed intolerance.

Baroness Warnock, in the opening address to the conference, immediately identified the status of the early embryo as the fundamental and irresolvable source of moral disagreement. The best that could be hope for, she argued, was that people who hold different views on that core issue could reach agreement in the framing of regulations that would meet with general approval. She also strongly argued for Government regulation of all aspects of assisted human reproduction rather than allowing market forces to dictate the pace. Though she accepted the reality of the legal prohibition on reproductive cloning, she saw many benefits to the practice of therapeutic cloning: the creation and destruction of a cloned embryo in order, for example, to

32. *Ibid.*, 12. Emphasis added.

33. Dolores Dooley, 'Moral Free-Fall in Ethics: Rethinking Reproductive Responsibility' in Dolores Dooley et al, *Ethics of New Reproductive Technologies: Cases and Questions*, Berghahn Books, Oxford, 2003, 71-5.

34. *Ibid.*, 172.

35. Commission on Human Reproduction: Public Conference, www.cahr.ie

acquire new knowledge. She argued that moral pluralism on these issues within Europe and within countries is to be expected. As she concluded her paper she made two assertions that are worth noting. The first was that the stance of those who see the destruction of the embryo as immoral is 'almost always derived from religion.'³⁶ The accuracy and, indeed, relevance of this claim needs to be questioned. Though many do base their arguments against embryo destruction on a religiously inspired anthropology and worldview, there are also those who reach the same conclusion working out of a humanist or secular worldview. Her second comment was that the 'law in European society will and should be based on a secular consensus.'³⁷ It is difficult to discern exactly what she meant by that comment. Did she mean that those who engage life from a religiously motivated worldview are excluded from contributing to societal debate? If so, this claim certainly needs to be challenged. Common sense reveals to us that everyone works out of a worldview that gives them an understanding of themselves and the world they inhabit. In a very real sense, reason works within this framework of understanding. A secular framework is as much a framework as a religiously motivated vision about life and its meaning. Both understandings inform and shape the exercise of reason. Both direct the person in the ordering of priorities and values. It is also obvious that neither way of understanding the world can be proved or disproved. To claim that a secular mind-frame is more 'objective' and, therefore, the only legitimate participant in public debate is both disingenuous and destructive of society. Both worldviews, and the reasoned argument they generate, are legitimate in the public domain.

In another of the conference papers Brendan Purcell presented a very different approach.³⁸ He engaged the question under three headings: ontological, ethical and legal and argued for the protection of the embryo using a continuity argument. He strongly urged the Commission to see the humanity of the embryo as a member of a 'vulnerable group'.

In its Report the Commission made over forty recommendations governing the whole area of the regulation of assisted

36. *Ibid.*, 8

37. *Ibid.*

38. Brendan Purcell, www.cahr.ie, Session 2, 1- 4.

human reproduction.³⁹ Some of these are quite controversial and radical in their scope and are certain to be the focus of energetic debate in the months ahead. The more controversial ones involve the nature of human parenthood and the treatment of human life in the earliest stage of development. The following recommendations are particularly challenging, both from the perspective of ethics in general and from the perspective of the anthropology and world vision of *Donum Vitae*.

No 10: 'Appropriate guidelines should be put in place by the regulatory body to govern the options available for excess frozen embryos. These would include voluntary donation of excess healthy embryos to other recipients, voluntary donation for research or allowing them to perish.'⁴⁰

No 16: 'The embryo formed by IVF should not attract legal protection until placed in the human body, at which stage it should attract the same level of protection as the embryo formed *in vivo*.'⁴¹

No 30: 'Surrogacy should be permitted and should be subject to regulation by the regulatory body.'⁴²

No 34: 'Embryo research, including embryonic stem cell research, for specific purposes only and under stringently controlled conditions, should be permitted on surplus embryos that are donated specifically for research. This should be permitted up to fourteen days after fertilisation.'⁴³

No 36: 'Regenerative [therapeutic cloning] medicine should be permitted under regulation.'⁴⁴

No 40: 'Pre-implantation genetic diagnosis (PGD) should be allowed, under regulation, to reduce the risk of serious genetic disorders. PGD should also be allowed for tissue typing only for serious diseases that cannot otherwise be treated.'⁴⁵

The future debate

The literature reviewed here, and indeed most of the literature

39. *Report of the Commission on Assisted Human Reproduction*, April 2005. The text is available on the Department of Health and Children website: www.dohc.ie

40. *Ibid.*, xv

41. *Ibid.*, xvi

42. *Ibid.*, xvii

43. *Ibid.*

44. *Ibid.*, xviii

45. *Ibid.*

generated by Irish theologians and philosophers,⁴⁶ has focused on the status of the embryo as a central concern. To a lesser extent contributors have examined the nature of ethics. In the year ahead, these will also be central to the ongoing discussion. Indeed the latter question is one that could be profitably aired and developed in a public debate. How do we as individuals and society evaluate human actions? Is there a consistency in our approach? Are we utilitarian in some areas of life (stem cell research) and advocates of a Christian moral stance in other areas (torture of suspected terrorists)?

As important as these substantive issues are, there are also important questions about the tone and conduct of the future debate. If the bitterness and non-engagement of previous debates on the content of legislation in Ireland is to be avoided, there is a need for some clear ground rules. In this regard a contribution by Richard McCormick,⁴⁷ during the abortion debate in America, provides ten useful pointers that may enable the future debate to be conducted in a manner that enables dialogue. Hannon,⁴⁸ in an article reflecting on the child abuse scandals in Ireland, has already creatively engaged with this article. In the original article McCormick included the following in his list of rules: try to identify the core issues at stake; represent the opposing position accurately and fairly; avoid the use of slogans; and distinguish morality from public policy. Adherence to these rules by participants may result in a debate that is robust, informative but free from hysteria.

McCormick's last 'rule', and the distinctions underpinning it, have been addressed in depth by Hannon in his work on church and state.⁴⁹ It has also been addressed in previous Irish debates on contraception, abortion and divorce but has not been seriously

46. Other important works include; Teresa Iglesias, *The Dignity of the Individual: Issues of Bioethics and Law*, Pieroma Press, Dublin, 2001; Susan Ryan-Sheridan, *Women and the New reproductive Technologies in Ireland*, Cork University Press, 1994; David Smith, *Life and Morality*, Gill & Macmillan, 1996; Kenneth Kearon, *Medical Ethics: An Introduction*, Columba Press, 1995.

47. Richard McCormick, *How Brave a New World?*, SCM Press, 1981. Chapter 9 'Rules for Abortion Debate', 176-188.

48. Patrick Hannon, 'Rules for the Debate', *The Furrow* 54 (February 2003): 67-74

49. Patrick Hannon, *Church, State, Morality and Law*, Gill and Macmillan, 1992

examined in the area of reproductive technologies. There is a need at this stage to move the discussion on by widening the parameters of the debate to include this question. In light of the proposals before the Government, society must engage the thorny issue of public policy. What should the content of legislation be in this disputed area of life? The moral positions have been clearly articulated and are unlikely to change. How can legislation respond to these strongly held moral positions on the status of the embryo and other issues? In a landmark statement in 1973, the Irish Catholic bishops recognised for the first time that the civil law need not coincide with the moral law as understood by the Catholic tradition: '[t]here are many things which the Catholic Church holds to be morally wrong and no one has ever suggested, least of all the Church herself, that they should be prohibited by the State.'⁵⁰

This distinction needs to be again clearly articulated and promoted. The Catholic bishops have accepted that the legislator is obliged to protect and promote the common good of society rather than the moral stance of a particular community. Furthermore, they have accepted that individuals may differ in their understanding of what contributes to the common good and the flourishing of society. As a consequence, they encouraged individual citizens to come to their own conscientious decision about the content of the common good during the past referenda on divorce and abortion. *Dignitatis Humanae*, the Declaration on Religious Freedom, marked a decisive shift in the Catholic tradition's understanding of the relationship between church and state, law and morality. It recognised as fundamental the right to religious and moral freedom in society within limits set by public order in society. In promoting the principle of as 'much freedom as possible and as little constraint as is necessary'⁵¹ it recognised that the exercise of human freedom contributes to the common good of society. The Declaration understood 'public order' to have a threefold content: justice, peace and public morality. Catholic contributors to the future debate will make a valuable contribution if they utilise the content and distinctions of the Declaration on Religious Freedom in their contributions to the public debate. Proposed legislation must be

50. See J. H. Whyte, *Church & State in Modern Ireland 1923-1979* [Second Edition], Gill & Macmillan, 1980. Chapter 13.

51. Declaration on Religious Freedom, 7.

evaluated by appeal to the demands of justice, peace and public morality. Though individuals will differ on the content of these realities, it does provide a framework and terminology that is enabling of rational discourse.

Finally, there is a need for a clear acceptance of religiously inspired argument in public debate. Persons whose worldview is shaped by the Christian vision of life can contribute to a rational debate on the formation of legislation. That vision provides them with an anthropology and an understanding of the world that shapes their rational discourse. Christian faith informs reason rather than replacing it.