

## **WHAT IS OR SHOULD BE THE ROLE OF RELIGIOUSLY INFORMED MORAL VIEWPOINTS IN PUBLIC DISCOURSE (ESPECIALLY WHERE HOTLY CONTESTED ISSUES ARE CONCERNED)?**

■ VITTORIO POSSENTI

1. The title of my speech was suggested by the organizers and I gladly accepted: it refers to the religiously informed moral viewpoints in public discourse and to the hotly contested issues. Among them there are not only the problems concerning religious freedom, but several other questions of the same level of importance. For each of these, the problem is what should be the role played by a religious public opinion.

I begin with an assumption which represents the background of the paper, that is to go beyond the liberal-individualistic interpretation of rights, moving towards a postliberal society and finding ‘personalistic’ arguments to understand the framework of rights, including religious freedom and the right to life. Two assumptions are part of the view set out: democracy should abandon the temptation to speak in a purely aggregative form, namely in the form that R. Dworkin has vividly described as ‘statistical democracy’;<sup>1</sup> and public debate, necessary to a genuine process of deliberation, should reject the primacy of individual preferences and opinions, accepting the premise that people can change their minds during public discussion. Deliberation is a method to change our minds through reason. It is typical of the resolution to transform opinions into rational or reasonable arguments, so as to reach a common way of thinking.

Let’s start with a famous passage by Tocqueville: ‘In order that society should exist and, a fortiori, that a society should prosper, it is necessary that the mind of all the citizens should be rallied and held together by certain predominant ideas; and this cannot be the case unless each of them sometimes draws his opinions from the common source and consents to accept certain matters of belief already formed’.<sup>2</sup> Where do we stand in this respect

<sup>1</sup> R. Dworkin, *The Moral Reading and The Majoritarian Premise*, in H. Hongju Koh, R. C. Slye (eds.), *Deliberative Democracy and Human Rights*, Yale U.P., New Haven 1999, p. 94.

<sup>2</sup> A. de Tocqueville, *La democrazia in America*, I, III, Rizzoli, Milano 1995, p. 427. See also: ‘There is hardly any human action, however particular a character be assigned to it, which does not originate in some very general idea men have conceived of the Deity,

in the West, where the debate is never ending and the ground of common truths is thinner than in the past?

The mess and deadlock of public discourse in Western countries, where serious charges are traded and many slogans proclaimed, reveal the deep disagreement that pervades our democracies. The disagreement is not only political but also moral, as citizens and their representatives have increasingly taken polar positions. A better kind of public discussion is needed, capable of addressing some of our most difficult controversies and allowing diverse communities separated by class, ethnic group, religion, and gender to reason together. In principle political arguments, grounded on reciprocity and dialogue in exchanging arguments, should be based on reasoning that can be understood and accepted by other citizens interested in reaching agreement. But cases do exist, such as the abortion issue, where there is a fundamental deliberative disagreement, and at present little hope to reach a substantive agreement.<sup>3</sup>

I suggest two remarks on present and near future situation of public debate:

1) Since nearly three decades an increasing share of problems stems from the libertarian and individualistic interpretation of human rights, and this just when the individualistic idea shows increasing limits. So the first consideration is that we must reach a *postliberal society*, where the reference to freedom of choice of the individual is no longer the only (or almost only) policy rule of public matters. The term 'postliberal', which of course does not mean hostility toward freedom, is substantiated by *four meanings and contents*: a) the rights of freedom must not possess always and everywhere a predominance; b) the balance between rights and obligations must be more rigorous than in liberal individualism; c) religion cannot only be *cultus privatus*, but should have a public presence and influence, and finally d) freedom cannot be the sole or ultimate political goal, which takes shape in the common good. Everyone sees the big differences between the two following formulas: *finis rei publicae libertas est* and *finis rei publicae bonum commune est*.

of his relation to mankind, of the nature of their own souls, and of their duties to their fellow-creatures. Nor can anything prevent these ideas from being the common spring from which everything else emanates. Men are therefore immeasurably interested in acquiring fixed ideas of God, of the soul, and of their common duties to their Creator and to their fellow-men; for doubt on these first principles would abandon all their actions to the impulse of chance, and would condemn them to live, to a certain extent, powerless and undisciplined. This is then the subject on which it is most important for each of us, left to himself, to settle his opinions by the sole force of his reason' (p. 437).

<sup>3</sup> A. Gutmann, D. Thompson, *Democracy and Disagreement. Why moral conflict cannot be avoided in politics, and what should be done about it*, The Belknap Press of Harvard U.P., Cambridge, Mass., 1996, p. 55.

As regards freedom of religion, in a postliberal view it cannot be understood only on an individualistic basis as freedom to profess or not profess a religion (freedom of religion and freedom from religion, which surely remains necessary), but as a right to be understood also in relation to the traditions of a people, to its own self-understanding and to the identity of a nation's history. So it is a right to some extent mediated with a common good which is not only made of a summation of individual positions.

To continue the 'history of freedom' we can no longer look only at the 'free society', as do the libertarian currents, but also at the 'just society'. When the pressure in favour of individual autonomy is absolute, it is worth remembering the real situations of many people and the conditions of dependence in which they are, as well as the needs of care and loving concern that they express. In short, we do not arrive at a solution trying to bring the moral dilemmas only within the private sector and focusing only on the freedom of choice. M. Sandel Rightly observes: 'A just society can't be achieved simply by maximizing utility or by securing freedom of choice. To achieve a just society we have to reason together about the meaning of the good life, and to create a public culture hospitable to disagreements that will inevitably arise'.<sup>4</sup>

The liberalism of neutrality says that when we participate as citizens in a public debate we should leave aside our most thoughtful moral and religious convictions, eventually relying only on a political and reduced conception of the person (Rawls). This pattern of neutrality is theoretically inadequate and did its time – perhaps at first in North America where it was very strong from the 60s to early 90s – more than in Europe.

2) Secondly, it should be noted that in Western countries there is no open violence against religion, but mostly creeping hostility and rooted prejudices against it, and especially Christianity, so that since some time the term 'Christianophobia' has been created.<sup>5</sup> The distrust against religion often feeds on the idea that it is an obstacle to the full realization of human rights, especially in their extreme interpretation of the libertarian type that sets them as absolute.

<sup>4</sup> M. Sandel, *Giustizia. Il nostro bene comune*, Feltrinelli, Milan 2010, p. 293.

<sup>5</sup> The term Christianophobia appears for the first time in the speech of Benedict XVI to the Roman Curia (20 December 2010). Differently from the past, the Christian is not usually one who is on the side of power, but often he is discriminated. The matter of persecution of Christians in the world should not be addressed only in a confessional way, but in the name of defending fundamental human rights, including religious freedom. Do not let the Christians fight Christianophobia, the Jews battle against anti-Semitism and Muslims against Islamophobia.

This approach is subject to criticism, showing that human rights are inalienable, indivisible and interdependent or interrelated, so that no one can be pushed to infinity without violating other important rights, and no one can be left out. You should also entrench the rights framework in personalistic anthropology which includes the concept of human nature as a source of *normativity*: in this perspective not everything can become a matter of free choice of subjects. It is ungrounded that two subjects of the same sex can form a ‘family’ and adopt those ‘children’ which homosexual union, intrinsically infertile, denies them.

Finally, the arguments to use in hotly contested issues are also commensurate with the patterns of secularism which prevail in certain contexts. In Europe there are basically two schemes of secularism, which we could call *laïcité de combat et laïcité apaisée et ouverte*. The first form of secularism, which prevailed in the past in France and is now in slow change, was not neutral, but ended up clearly to favour the secular position and a biased critical attitude towards religion. The *laïcité de combat* is opposed in principle to the public presence of religion, while open secularism, which of course still holds the difference between Church and State, incorporates a more friendly attitude towards religion, and tends to see it more as a resource to rely on that as a negative problem.

I wish to add that in a well ordered society it is not up to the secular State to build up the society, but it is a better and more effective way to rely on fresh and plural energies of civil society.

## **2. The mutual learning between believers and nonbelievers, and the crucial points, namely the lack of mid-point between opposite principles**

Faced with the situation of our society, it is no longer proper to think that religious communities will be dissolved under the pressure of a secularism that progresses: moreover this is no longer true, if it ever was. The right attitude is to ask openly to *all* citizens not to deny cognitive value to the religious discourse, and to seek a dialogue between religious and ‘secular’ people in which we have in place processes of mutual learning, as suggested by Habermas: ‘But respect [for religious positions] is not all, philosophy has good reason to show itself, in the face of religious traditions, eager to learn... The secularized citizens, to the extent that present themselves as citizens of the State, do not have the right to deny in principle a potential truth to the religious images of the world, or to contest the right of religious citizens to contribute to public discussion with a religious language’.<sup>6</sup> Believers can

<sup>6</sup> *Tra scienza e fede*, Laterza, Roma 2006, p. 14 and p. 18.

not be seen by secularised citizens as a species threatened with extinction, which is expected with relief. In public debate religious people bring a sensitivity and a contribution of its own, declined through the methods of dialogue and public discourse, and represent the religiously informed moral viewpoints. Thus they do not break any rule but rather bring an essential contribution, without which the public sphere would be devoid of something vital. On the other hand believers should commit themselves to honestly understand the motivations of the secular people, avoiding to condemn them a priori. The ‘gap media’ should also be put in the income, namely the situation of minority of the religiously informed moral viewpoints in the public sphere in Europe in general and in the West, where a considerable part of the media is not favourable to the positions of the religious area, and perhaps especially to the Catholic one.

At this point we are forced by the nature of the problems involved to ask the question: is mutual learning, rightly wished by Habermas, always possible, or are there issues that cannot be mediated?

I do wish to recall that the issue of disagreement is immanent to the nature itself of some (not all) questions and to the fundamental diversity between *interests* and *principles*. Let us reflect a bit on this very crucial matter: interests have a price, can be bargained and admit mid-points during the negotiation. We can think of a commercial bargaining referred to the purchasing of a flat. On the contrary principles have a dignity and not a price, and by themselves do not admit a mid-point: there is no mid-point between to kill and not to kill. So it is very difficult and sometimes impossible to solve divergences between positions of principles without a mid-point. An important example is offered by laws which do not *prohibit* or *order*, but which *permit* some behaviours: let us consider abortion laws. Permanent is the charge raised against antiabortion and pro life people: ‘If you do not want it, why can’t I?’. In the abortion case it is difficult to circulate the essence of the problem, which cannot be solved with the question: ‘If you do not want it, why can’t I?’, for pro life people are contrary to abortion as it is a violation of the universal right to life. In some sense pro life people are charged by an abortion law more than pro choice people are burdened by an antiabortion law.<sup>7</sup>

<sup>7</sup> J. Habermas asserts: ‘The burdens of tolerance, as demonstrated by the more or less liberal rules on abortion, are not symmetrically distributed between believers and non-believers’, *Tra scienza e fede*, cit., p. 17.

### 3. Criteria and contexts to enforce religiously informed moral viewpoints

The appropriate criteria and the general objectives of religiously informed moral viewpoints in public discourse are not difficult to identify in their generality, and now we do not need to compile a complete list. They include promotion of human dignity and the fundamental rights and duties, showing that what is to be preserved is something that affects everyone and not just believers, participation on an equal basis to the public debate, contribution to the formation of a well-ordered public opinion, etc.<sup>8</sup> But to proceed, you must directly address some of the knotty problems of the contemporary debate by identifying the most dramatic and controversial ones, because the structure of argument to be taken will depend on the nature of the problem at stake.

Of particular importance is the investigation of fundamental spiritual opposition now existing. In my opinion the main battlelines today are of three types: a) a *religious split* between believers and nonbelievers. It invests in particular the issues of open and explicit presence of religion and its symbols in the public sphere, against the liberal position of religion as a private affair: this attitude started with the French Revolution, which was contrary to public exhibition of religious symbols; b) a *cognitive or epistemological divide* between those who believe that the supreme court of reason is science, and those that follow, in addition to science, philosophy and natural law; c) an *anthropological split* between those who report the human being to freedom of choice and those who have a more complete account of human being. The three poles do not coincide completely, even if they have different points of contact, often denoted by a post-metaphysical postulate; moreover the second and third fractures exert a very high influence that rarely shows itself on the surface.

<sup>8</sup> It seems appropriate to recall the opinion of David Hollenbach, American Jesuit, quoted by J. Rawls in *The Idea of Public Reason Revisited* (Rawls, *The Law of Peoples*, 1999, p. 135): 'Conversation and argument about the common good will not occur initially in the legislatures or in the political sphere (as narrowly conceived in the domain and power which interests are adjudicated). Rather it will freely develop in those components of civil society that are the primary bearers of cultural meaning-and value - universities, religious communities, the world of arts, and serious journalism. It can occur wherever thoughtful men and women bring their beliefs on the meaning of the good life into intelligent and critical encounter with the understandings of this good held by other people with other traditions. In short, it occurs wherever education about and serious inquiry into the meaning of good life takes places', David Hollenbach S.J., *Civil Society: Beyond Public-Private Dichotomy*, 'The Responsive Community', Winter 1994-95, p. 15.

I'll discuss two cases: that of the display of religious symbols in public places, with reference to the crucifix displayed in Italy, and the case of the human embryo. In the first case specific cultural and religious traditions come into play, which can enter the problem and promote a positive solution, while in the second in which the issue is more general, it is necessary to present my own positions arguing with philosophy, anthropology and constitutionalism.

#### 4. The crucifix in public places

Within the ambit of the debated issue of religious symbols on display in public places (for example, courtrooms and classrooms) two important sentences were recently issued, which converge in their assessment of the subject matter and are destined to create 'jurisprudence'. The first sentence was handed down in Italy by the Court of Cassation.<sup>9</sup>

The other sentence comes from the European Court of Human Rights (Strasbourg), the organ of the Council of Europe (which collects 47 States) called to pass judgment on the crucifix diatribe in the wake of an appeal filed by an Italian citizen of Finnish origin, Ms. Soile Lautsi. She contested the presence of that religious symbol in Italian public schools, which included the one attended by her children because that presence was assumed to violate the freedom of education of the parents. After having initially decided in favour of Ms. Lautsi (November 3, 2009), the case was appealed and the Grand Chamber of the Court, made up of a larger number of magistrates (and with fifteen votes out of seventeen) judged that the crucifix may legitimately remain on display in Italian classrooms since, contrary to what the plaintiff had argued, it does not violate freedom of education and conscience. As the first verdict created notable reactions in several European countries, ten different countries (Armenia, Bulgaria, Cyprus, Greece, Lithuania, Malta, Monaco, Romania, Russia and San Marino) supported Italy in the appeal before the European Court. Later they were joined by

<sup>9</sup>The Italian Court of Cassation brought to a close the law suit filed by Mr. Luigi Tosti, a justice of peace in Camerino who had refused to enter a courtroom until the crucifixes had been removed from all the courts in the country. In fact, the Court of Cassation sitting in its joint civil sections (March 2011) rejected the final appeal lodged by Mr. Tosti, transferring further judgments on the merits of the issue to the will of the legislative branch. In particular, the judges determined that the principle of the non-confessional nature of the State now in force in Italy, even if not explicitly set forth in the letter of the Italian Constitution, 'cannot be doubted in any manner whatsoever' by the presence of the crucifix in courtrooms, and that for the possible display of other religious symbols 'a discretionary choice on the part of the legislative branch necessary is, which at present does not exist'.

other States (Albania, Austria, Croatia, Hungary, Moldova, Poland, Serbia, Slovakia and Ukraine) which, questioning the first verdict, asked that national identity and religious traditions be respected. They submitted written records requesting the Court to reconsider its ruling. Belgium, France, Portugal, the Netherlands, United Kingdom, Germany, Spain and Switzerland did not support Italy.

In more specific terms, the sentence of the European Court demonstrates with due authority that the culture of human rights (in itself at the selfsame origin of the Council of Europe) cannot be placed in contradiction with the religious foundations of the European civilization, to which Christianity gave the essential contribution.

The idea of the Grande Chambre is that the crucifix is a passive symbol, so that a subjective feeling of discomfort/trouble is not sufficient to configure a legally relevant offense. In addition, Italy has the right to preserve its traditions. In this sentence the Court specifically recognizes the existence of the principle of subsidiarity at the European level and applies it in concrete terms, respecting liberty and identity (cultural and historical) of the individual States, and not intervening too frequently to not disturb legal domestic balance in individual member States.

4.1 The character of subsidiarity that is affirmed by Strasbourg in relation to religious traditions, avoids that the laicity/*laïcité* criterion as a core of European Union is intended in one way, i.e. in the secularized French style. Many States, especially orthodox and Eastern European countries escaped from State atheism, have indicated the danger of the de-Christianization of their societies. Influential is the intention of the Orthodox Churches to protect them from the advance of secularism, as requested by Patriarch Cyril of Moscow. In this sense, the Metropolitan Hilarion of Volokolamsk, president of the Foreign Relations Department of the Russian Orthodox Church, has proposed the establishment of a strategic alliance between Catholics and Orthodox to defend together Christian tradition against the secularism, liberalism and relativism prevailing in modern Europe. This may mark a profound change in the spirit of the formation of Europe, hitherto thought of as a movement that proceeded from west to east through a conquest of the latter to economic liberalism and western culture. Eastern Europe and a share of Catholicism are opposed to Western secularism in order to defend the Christian culture and a proper understanding of religious freedom. Freedom of/from religion cannot become an ideological battle against those who believe. Is only that which comes from the absence of God respectful of pluralism?

## 5. The case of the human embryo

The current status of bioethics and its problems, despite the focus of many researches on it, seems precarious because of the difficulty in forming shared 'evidences'. The bioethics debate is one of those areas in which hotly contested issues are present almost everywhere. The urgency of finding solutions to moral dilemmas raised by the advance of biotechnologies that achieve a power of disposition on life, has its importance in driving to hasty decisions. In this context the theme of human embryo takes on symbolic value, which combines its 'unapparent' status, i.e. its reduction to something quantitatively and dimensionally minimum, and its vital importance and value, because in it is at stake the understanding of the human being and the dramatic question of eugenics.

The problem of the embryo is universal and applies to all, at least for the fact that each of us was an embryo: impossible to find a more universal problem than that! No ground possess objections, rare indeed, that the embryo treatment would fall within a private realm before which the State should stop. In reality, in the embryo case the most fundamental and public right is at stake: the right to life.

You cannot resolve the moral and the legal embryo question without addressing the problem of its identity and the underlying anthropology: the moral and legal status of the embryo depends on its ontological status, which cannot be ascertained only by science. This confirms that anthropology more than ethics is the real pivot of the matter. In other words, the question of the embryo makes the problem of the person emerge in all its power, for the clarification of the concept of person is essential to solve many problems with which bioethics is concerned. While the idea that we should respect the person is almost universally accepted (it is a kind of ecumenical value), it must be acknowledged that often there is agreement only in words. It is not uncommon in researches on the identification of the person, particularly complex in border cases, that different and *ad hoc* concepts of person are formed. Such an event occurs within bioethics.

## 6. How to address the crux of the embryo and how to argue?

Recurring only to a *religiously informed* moral viewpoint to manage the issue of the embryo may be misleading, because it suggests that the positions in favour of the embryo are motivated only by faith, and therefore are 'idiomatic' and confessional. This criticism is frequently repeated in various countries, including Italy, as a refrain that the Catholic Church and the believers want to impose their partial and sectarian views upon all. The first step is to show that the theme of the embryo not only affects everyone, but

that it should be regulated with an argument that can be universally recognized and based on a close intertwining of science and philosophy. Moreover the question is whether the central concepts of *person* and *human dignity* (constitutionally protected in several countries and included in the Universal Declaration of 1948) should or should not be applied to the human embryo. In the affirmative we must protect it from destruction that can come from scientific research or therapeutic purposes, as well as from the practice of prolonged freezing, which denies the natural and primary right of the embryo to develop.

The topics to be proposed must take into account the latest scientific knowledge and the best philosophical arguments, avoiding improper references to positions of faith or in principle demonization of scientific research. The fundamental language of reality and being remains that of ontology, not that of sciences, and it is worth repeating this. Moreover, there is a fundamental harmony between the realism of the sciences and the realism of philosophy of being, so that we have to bet on it and seek a new alliance between ontology, ethics and science. If we consider the case of fertilization, discoveries of sciences offer significant support to the view that the conceptus is a human being in its own right. I think in particular of two discoveries: a) The discovery of the mammalian ovum in 1827 (E. von Baer), and the subsequent identification of conception in the uniting of spermatozoon and ovum. This discovery undermined belief in a radical transition at forty days (or ninety days for women), and b) the discovery of DNA and the individual human genome, perfectly identified and capable of governing in an autopoietic way the embryo's ontogenetic development from conception forward (Crick and Watson, 1953). We must make certain we don't force ourselves into a false choice between science and ethics – because we need both. And there is good reason, and growing scientific evidence, to believe that we can have both.

We can now formulate the relevant questions so many times raised: without appealing to religion, are there enough reasons to think that from fertilisation there is a new human life? Isn't the early embryo just a ball of cells? These matters raise questions and issues of reality (ontological problems) more than moral ones, and we have to respond to them. In any case, the position with which to enter the debate should be clear: a religiously informed moral viewpoint on the embryo is not only religious or moral. In this tangle of problems it may be that the philosophical and scientific arguments advanced are not considered conclusive by some people, but at least they will be able to silence a frequent and aggressive criticism that merely says: you talk like that because you defend a fideistic position.

In *Il Principio-Persona* (Armando, Rome 2006) I have developed an argument showing that the human embryo is a human being in its own right, and therefore a person deserving unconditional respect. The central point of the argument lies in the fact that at conception a substantial transformation occurs, i.e. the formation of a new substantial reality (the conceptus/unborn), and that from then on do not appear further substantial changes, but only accidental ones: accidental, however, does not mean secondary.<sup>10</sup> The argument claims that becoming person is an act and not process, and between a not-developmental and developmental view of the human person it is necessary to opt in favour of the former. The developmental conception of the person includes a developmental conception of the rights of the embryo, so that the human embryo does not have the same range of rights as the newborn baby, and then of the adult. This is excluded if we resort to language of substantial transformation. The unconditional respect towards human embryo includes the minimal care, demanded by a human being at every stage of development: to be supported in his process of development and not to be destroyed. Ethically this must mean, at the very least, that embryos should not be deliberately created for experimental purposes of any kind, and should not be frozen, for freezing denies the fundamental natural right to development and growth.

<sup>10</sup> I developed this argument for the first time twenty years ago in *Medicina and morale* (La bioetica alla ricerca dei principi: la persona, *Medicina e morale*, n. 6, 1992, pp. 1075–1096), and I have taken it up and discussed further in the book *Il Principio Persona*, cit. I was pleasantly surprised to find very similar language in a report by the United States' Government's Domestic Policy Council. It admits that embryos are human beings: the only differences between embryos and human beings, the report says, are accidental differences in levels of development, Washington DC, January 10, 2007 (LifeSiteNews.com). 'Embryos are humans in their earliest developmental stage', writes the Council. Each of us originated as a single-celled embryo, and from that moment have developed along a continuous biological trajectory throughout our existence. To speak of 'an embryo' is to designate a human being at a particular stage. The report condemns the destruction of human embryos for the purpose of stem-cell research, and instead advocates alternative sources of stem-cells, including cells derived from amniotic fluid and adult stem-cells. 'In sum', reads the Executive Summary, 'it increasingly appears that the qualities researchers value in embryonic cells may also exist in other stem cells that are easier to procure, more stable to grow, safer to use in therapies, and free of the ethical violations of embryo destruction'. Human embryos are what the embryology textbooks say they are, namely, human organisms – living individuals of the human species – at the earliest developmental stage. Read 'Advancing Stem Cell Science Without Destroying Human Life' by the Domestic Policy Council: [www.whitehouse.gov/infocus/healthcare/stemcell\\_010907.pdf](http://www.whitehouse.gov/infocus/healthcare/stemcell_010907.pdf)

Ontological personalism supports full identity between *homo* and *persona*, *homo* being any member of the human race for its genetic inheritance, and whatever his degree of development. This position removes the categories of non-person (the foetus), quasi-person (the baby), semi-person (the old and severely declining), no-more-person/no-longer-person (the patient in a vegetative state). One thing is personalism, the other ‘personism’: I call personism those doctrines for which there are human beings that are ‘not yet persons’ and ‘no more persons’, as claimed by many contemporary authors including H.T. Engelhardt, D. Parfit, P. Singer, etc.

In the Catholic Church in recent decades, bioethical and embryo issues have received much attention, in the last two pontificates in particular. Biotechnologies require an answer to the question whether the human embryo is indeed someone and not something. I will not develop here the complex history of a journey which should include the instructions *Donum Vitae* (1987) and *Dignitas personae* (2008). The case is still ongoing, and Benedict XVI devotes much attention to it. Alluding to the human embryo, he argued recently: ‘It is not an accumulation of biological material but rather of a newliving being, dynamic and marvelously ordered, a new unique human being...there is no reason not to consider him a person from conception’.<sup>11</sup>

## 6.2. *The right to life of the embryo*

The right to life from conception was a matter that was placed during the preparation of the Universal Declaration of 1948. Currently, the right to life is protected by Article 3, which reads: ‘Everyone has the right to life, liberty and security of person’, but two delegations in the preparatory work (Chile and Lebanon) proposed to reformulate art. 3, including with regard to the right to life the following phrasing: ‘from conception up to the natural death’. But the integration was not implemented. Very recently it has been observed that the new Hungarian Constitution protects the life of the foetus from conception.<sup>12</sup>

Now perhaps it is clear why I concentrated on the case of the embryo instead of taking up once more that of abortion. The two problems differ

<sup>11</sup> Benedict XVI’s Homily at First Vespers of the First Sunday of Advent, November 27, 2010, cf. *Avvenire*, November 28, 2010, p. 7.

<sup>12</sup> On the new Hungarian Constitution see the Hungarian Deputy Prime Minister Tibor Navracscics’ article on *The Wall Street Journal*, April 19, 2011, p. 13, with important remarks about the idea of marriage, possible only between a man and a woman, and the idea of family, applied also to single-parent family.

structurally, as human realities are at stake in the first two: the mother and the foetus that in some cases are opposed existentially (or rather this is the perception of the adult: either he/she or I), while in the second such existential opposition is not at stake. In this respect, the question of the embryo may be less difficult to solve than that of abortion since the discovery of non-embryonic pluripotent stem cells removes many claims and legitimacy to the manipulation and destruction of the embryo: there is a way out.

### **6.3. *Situation of the defence of the embryo***

Legislation on the human embryo is different, but generally do not express an appropriate degree of protection. In several countries the embryo can be frozen indefinitely, destroyed to obtain stem cells, used by science, manipulated in various ways, and then subjected to the voracious power of the principle of utility. The claim so often repeated is that you cannot put limits on the research, its effects and therapeutic techniques: what is useful, what produces effective drugs and care is ethical. It would be very lengthy to follow the individual national laws and practices: I will only consider the UK situation where the human embryo is only partially protected. In this country, according to the Warnock report, the human embryo does not possess complete protection but only a special status, that should guard it against use in anything other than important and necessary research, or so deemed. The Warnock report concluded that ‘the embryo of the human species ought to have a special status and that no one should undertake research on human embryos the purposes of which could be achieved by the use of other animals or in some other way’. But this special status, which in truth does not guarantee the full right to life of the embryo, is likely to be diminished. Recently Professor Lisa Jardine, chair of the HFEA (Human Fertilisation and Embryology Authority), said: ‘My worry is that to achieve a consistent approach to research licensing, the safeguarding of the “special status of the embryo” will be lost – that fundamental principle laid down in the Warnock report, which provides special protection in law for the human embryo and embryonic material outside the body. Under current law, scientists wishing to use human embryos in research have to go through a lengthy consultation process with the HFEA in order to receive permission. We are concerned that if the regulation of research on human embryos is handed to a more general body, the special status of the embryo recognised in law will be further eroded’. As it is easy to understand, a simple developmental concept of human embryo is unable to defend his full right to life from dangers and temptations rising from biotechnologies.

### **6.4. *The constitutional legal framework***

In national and international debate the wording of some constitutions and the support from ‘neo-constitutional’ movements may be important: with the latter term I mean a movement that, relying on the material validity of values (and not only of formal procedures) of various constitutions, can evolve into forms, perhaps not explicitly declared, of natural law/right.

In the 35/1997 ruling the Italian Constitutional Court ruling was confronted with a request of a referendum promoted by the Radical Party, aimed at the mere deletion of any legal regulation of abortion and its liberalization. The Court examined the exigencies of constitutional defence of the life of the unborn, and in that sense the expression ‘right to life’ occurs several times in the sentence. The reference to Article 2 of the Italian Charter is explicit and so is the assumption that human life must be protected from the very beginning, a principle that has achieved over the years more and more recognition, including the international and global levels. ‘So we have also reinforced the belief, inherent in the Italian Constitution, in particular art. 2, whereby the right to life, understood in its most ample extension, is to be included among the inalienable rights, that is, between those rights which occupy, so to speak, a privileged position, since they belong – to use the expression of Ruling No 1146 of 1988 – “to the essence of supreme values on which is founded the Italian Constitution”’. The ruling does not use the term ‘person’: the Court’s reference is to the right to life, not to the category of person, and that right is equal for all and for each, it is unitary and indivisible. Subsequently, Law 40 of February 19, 2004 (‘Rules for medically assisted procreation’) in art. 1 has secured the rights of the unborn, prohibiting experimentation on human embryos and their cryopreservation.

## Conclusions

1. At the beginning I wished for a *postliberal* society, and here I repeat that by that name I mean a society in which the only rights of freedom do not always have primacy, where religions can have a public presence, and where the paradigm of secularism is open (*laïcité ouverte et apaisée*). I discussed two important and controversial cases: the public presence of religious symbols, and the right to life of the embryo. The first right has been pretty long run by the criteria of non-discrimination, neutrality and privacy, which ended up confining the religious fact and freedom of religion in private realm, and sometimes discriminating the public presence of the religions. Something begins to change with the signals arriving from Strasbourg Court. When looking ahead to the future with some hopefulness, we can say that the Europe of the 21st century will concretely be what its citizens and especially its creative minorities will make of it.

The libertarian and 'technological' parties recognize that the question of the embryo is not manageable with the criteria of neutrality and privacy, so the supporters of his manipulation should look elsewhere for arguments against the embryo, creating a conditional right to life which is the danger against which the whole project of human rights can smash. The right to life begins with conception and does not have degrees. A developmental idea of the human being as a person, essentially empiricist and post meta-physical, undermines the understanding of the right to life and its attribution to humans.

Of course a religious minority should not impose religious views, but the relation of religion to ethics is complex. Often religion plays the role of *inspiring* people to take up ethical causes (for example, the abolition of slavery, and now embryo protection), but ethical and anthropological causes are and remain matters of *common concern*. I confirm this, adding that the Christian humus is a key inspiring factor for the success of the human rights project. Without its nourishment this project and the liberal democratic societies would enter into a danger zone.