THE DEMOCRATIC STATE AND CONCERN ABOUT MAN

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LEGISLATION (*LEX*) AS AN EXPRESSION OF JURISPRUDENCE (*IUS*)

There is an objective standard to measure what is right and wrong, which cannot be changed by the political will, even of majorities. [...] What St. Augustine said about the consequences of leaving out justice, as a result of a general and true cognition. Therefore, what he said is still valid, namely: "And so if justice is left out, what are kingdoms except great robber bands?"

I was asked to speak about legislation (*lex*) as an expression of jurisprudence (*ius*). This needs some clarification. First of all the question arises, how can legislation be an expression of jurisprudence? Is it not, on the contrary, the task of jurisprudence to deal with the laws passed by legislation? And is not jurisprudence in its work strictly bound to take laws as they are, without questioning their content? If the legislator of a democratic country, for instance of the Netherlands, decides by a small majority that in certain cases it is allowed to kill a sick person, is not jurisprudence – like everyone else – bound to accept that as the sovereign will of the democratic legislator? Our Austrian Constitution declares in its Article 1 explicitly: "Austria is a democratic republic. Its law proceeds from the people." Is there anything beyond or besides the will of a people that could determine legislation? Today, the prevailing answer certainly is: No.[1] What, then, can the meaning of my theme be?

In order to find an answer, we ought first to look at a classical definition of jurisprudence given by the famous Roman jurist Ulpian, who was killed in a mutiny of the Praetorian Guard in 223 AD. Not only is his notion of jurisprudence of greatest importance for the entire development of European jurisprudence, but this importance of Roman jurisprudence has also been demonstrated by the fact that it succeeded in developing within a period of about 400

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[1] It is not necessary to list here all the witnesses for these opinions. "The pure theory of law," as Hans Kelsen himself calls it in English, or "the theory of pure law," as H. A u f r i c h t says in *Law, State, and International Legal Order, Essays in Honor of Hans Kelsen*, The University of Tennessee Press, Knoxville 1964, p. 29, may be quoted as probably the most influential among these. All the essays in this book are very informative on the mentioned opinions.

years a legal order (*ius*) which fundamentally formed all legal orders of Europe and of many countries outside Europe, even to the present day. During a stay in Moscow as a guest of the Russian Academy of Sciences, I learned that colleagues there are confronted with the task of drafting a new civil code. The catastrophe of the Communist system has left nothing that could be used for a legal order in any meaningful sense. They see now that the only possible ground on which a just and human legal order can be built is Roman law.

Secondly, we will have to turn to the notion of legislation as it has been understood since antiquity. This will ultimately enable us to see in what sense legislation, in fact, ought to be an expression of jurisprudence; or more precisely, an expression of objective justice in conformity with *ius* as the *ars boni et aequi*, the science of the good and the just, as an other great Roman jurist, Celsus, defines it. This also means that all legislation ought to be in conformity with human rights and ultimately with natural law, in order to be able to produce law, and not simply arbitrary rules in pursuit of some kind of utility. From this we can also draw the consequences which must follow if a legislator violates justice.

1. THE DEFINITION OF JURISPRUDENCE BY ULPIAN

The most famous source for our knowledge of the writings of Roman jurists is the *Digest* compiled under the reign of the Roman emperor Justinian, and published in 533 AD. In the Middle Ages this codification became the main source for legal instruction at the law schools in Italy, especially Bologna, and with time all over Europe. In this work, the writings of Ulpian play a dominant role. One third of the *Digest* consists of fragments from his works. Therefore, Tony Honoré was able to say in his work about Ulpian: "His importance lies in the part he played in the transmission of the Roman legal heritage."[2]

Ulpian's definition of jurisprudence was placed by the compilers at the very beginning of the *Digest*, the first section of the first book, concerning Justice and Law. This section contains famous texts about natural law and justice, and also the only definition of law by a jurist handed down to as coming from antiquity, a definition formulated by Celsus and quoted by Ulpian: "Law is the art of knowing what is good and just."[3] The definition of jurisprudence itself is contained in a fragment that opens with Ulpian's famous definition of justice[4], followed by the statement: "The precepts of the law (*iuris praecepta*) are

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[2] T. H o n o r é, *Ulpian*, Oxford 1982, p. 247.

[3] D. 1, 1, 1 pr., translated by S.P. Scott, *The Civil Law*, first published Cincinnati 1932, reprinted New York 1973, vol. I, p. 209.

[4] D. 1, 1, 10 pr.: "*Iustitia est constans et perpetua voluntas ius suum cuique tribuendi.*"

the following: to live honourably (*honeste*, which means morally right), to injure no one, to give to every one his due."[5] I mention all this in order to make the context understandable, as well as the importance also of the definition of jurisprudence accredited to it by the compilers themselves. It follows immediately after the "precepts of law." I quote first the Latin text: *iuris prudentia est divinarum atque humanarum rerum notitia, iusti atque iniusti scientia*. Scott renders this definition with the words: "The science of the law is the acquaintance with Divine and human affairs, the knowledge of what is just and was is unjust."

Before I enter into an interpretation of this text, I would like to mention that the entire first section was published with the first 26 books out of 50 of the *Digest*, in Russian translation by members of the Russian Academy of Sciences in 1984, that means before *Perestroika* had started. I was told that the copies were out-of-print after a very short time, and that in particular the ideas expressed about justice and law, now open to a broader public for the first time since the Russian Revolution, played an important role in promoting *Perestroika*. This shows that what was seen and formulated by Roman jurists is not something of mere historical interest. It is still fundamental for every humane legal order. And these principles can help to identify injustice within a given a legal order. They demand to be respected wherever fundamental human rights or justice in general are violated. Therefore they are apt to work as a catalyst to shake up consciences. They can encourage resistance to violations of justice and oppressions.

Now to the definition itself. Scott translates *divinarum atque humanarum rerum notitia* as "the acquaintance with Divine and human affairs." It is certainly a correct translation. But here the problem of every translation becomes clear. The Latin word *res* is broader than "affair." It includes the whole divine and natural world and its order. This can be shown by a parallel text, where Seneca says that wisdom is defined by some as: *divinorum et humanorum scientia*, the science or knowledge of the Divine and human, without any further specification.[6] Others add: *et horum causas*, and the causes of all this. But Seneca finds this addition superfluous, because the causes are part of the Divine and the human, anyway. In any case, this comprises all possible human knowledge. Ulpian seems to have a similar view. In order to be able to know "what is just and what is unjust," one must know the Divine, the natural, and the human order in the world. Isolated knowledge of some rules or laws is obvi-

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For a detailed discussion of this definition see: W. W a l d s t e i n, *Ist das "suum cuique" eine Leerformel?*, in: *Ius humanitatis. Festschrift zum 90. Geburstag von A. Verdross*, ed. H. Miehsler, Berlin 1980, pp. 285-320, with further reference.

[5] D. 1, 1, 10 pr. – 2, translation by Scott (see note 3), p. 211.

[6] Sen. *Epist.* 89, 5.

ously not sufficient. And in fact Ulpian stresses in the very first text of the *Digest* that jurists have the task to "cultivate justice" and to teach the knowledge of what is good and just.[7] At the end of this paragraph, Ulpian adds that in this work jurists are "aiming (if I am not mistaken) at a true, and not a pretended philosophy,"[8] which shows his awareness of the philosophical implications of the work of jurists. In connection with the definition of law, which Ulpian quotes in the immediately preceding sentence, this means that in doing so, jurists teach *ius*, that is to say, law. In fact, this is the content of their entire work, which is documented in the *Digest*. Therefore the *Digest* itself was called the *iustitiae Romanae templum*. In the introductory Constitution *Tanta*, passed by the emperor and legislator Justinian, the legislator himself confesses that this temple of Roman justice was built on the works of Roman jurists. And then comes the surprising fact that jurists themselves, that is, these representatives of Roman jurisprudence, are called by the Emperor *legislatores*.[9] All this makes it clear that legislation has, in fact, been an expression of jurisprudence (*ius*). And precisely this legislation was without doubt the most important for the whole legal development in Europe until today. This now makes it necessary to look a little more closely at the notion of legislation. But I must mention already here that jurisprudence itself has, under the influence of positivistic and relativistic ideas, departed from the foundations made clear by Ulpian. We shall still see what it means when legislation becomes the expression of such ideas.

2. THE NOTION OF LEGISLATION

As already mentioned, legislation is today understood as an act of the will of a constitutionally competent organ of a certain state. Especially if this organ consists of the democratically organized people itself, or of a democratically elected representative of it, as, for instance, a parliament, the idea prevails that whatever a democratic majority thinks to be right is to be accepted as law. As long as a democratic majority respects objective justice, human rights, and natural law in general, no real problem arises. But as soon as a majority starts

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[7] Ulp. D. 1,1,1,1; here, it seems to me, the translation of Scott fails. The Latin text reads: *justitiam namque colimus et boni et aequi notitiam profitemur*. The Latin *profiteri* means in this context to teach publicly; see: E. H e u m a n n, E. S e c k e l, *Handlexikon zu den Quellen des römischen Rechts*, Graz 1958, p. 466.

[8] See: W. W a l d s t e i n, *Index*, "International Survey of Roman Law" 22 (1994) No. 31, esp. pp. 33-37.

[9] See: Const. *Tanta* 20 and 20a; see also: T. H o n o r é, *Tribonian*, London 1978, pp. 139-186: *Temple of Justice: The Digest*.

to ignore all of this, because it wishes to do something it thinks profitable for itself but which is contrary to the rights of others and to justice, the question arises, whether or not this is still legitimate legislation. The answer to this question was clearly already seen in antiquity. Even democracy changes in such a case into a form of tyranny, which was called *ochlocratia*. Democracy, like any other legitimate constitutional form of the state, can only exist if fundamental rights are respected without any restriction. A recent statement by our Holy Father John Paul II, namely that "No one can proclaim his own sovereignty or execute his rights at the cost of the sovereignty and rights of his brothers," is certainly a "fundamental moral imperative concerning politics and social life in the contemporary world," as my dear friend Tadeusz Styczeń formulated it. But in addition, it can be shown to be founded on all the principles of justice and law known since antiquity.

Concerning the ancient notion of *lex*, I would like to first quote a relevant passage from the *Digest*, in which the Roman jurist Marcian quotes the Stoic philosopher Chrysippus, who said:

> Law (νόμος, *lex*) is the queen of all things, Divine and human. It should also be the governor of both the good and the bad, and the leader, the ruler, and in this way, be the standard of whatever is just and unjust for those animals (man) who are by nature "living in a community," prescribing what should be done, and prohibiting what should not be done.[10]

Concerning legislation itself, Cicero especially has shown in his work what is important for law in a very clear way. I can only quote a few of the most important passages. He starts by saying:

> But in determining what Justice is, let us begin with the supreme law which had its origin ages before any written law existed, or any state had been established.[11]

In the course of his further inquiry he shows why the law of tyrants cannot be regarded as law at all. Even if a whole people should be "delighted by the tyrant's laws, that would not entitle such laws to be regarded as just." One of the examples mentioned by Cicero is a law allowing a dictator to "put to death with impunity any citizen he wished." Then Cicero goes on to say: "For Justice is one; it binds all human society, and is based on one Law." This law (*lex*)

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[10] See H. G. L i d e l l and R. S c o t t, *Greek-English Lexicon*, Oxford 1961, p. 1435. The relevant passage in Aristotle *Pol.* 1, 9; 1253 a 3, is translated by H. Rackham in *The Loeb Classical Library* (1959) as follows: "man is by nature a political animal." Scott misunderstood the passage of the *Digest* completely in saying: "as well as those *things* which are civil by Nature."

[11] Cic. *Leg.* 1, 19; translated by C.W. Keys, *The Loeb Classical Library* (1966).

is called by Cicero recta *ratio imperandi atque prohibendi*. It is, as in many other passages, not possible to simply translate *ratio* with reason. I cannot discuss this problem here in detail. But it becomes, as I am convinced, clear on the basis of many passages, that *ratio* means order, and is much more related to what St. Thomas formulates as *participatio legis aeternae in rationali creatura*[12] than simply to reason. Therefore, Cicero can add: "Whoever knows not this Law, whether it has been recorded in writing anywhere or not, is without Justice."[13] He then goes on to say: "But if the principles of Justice (he says *iura*, which means law also) were founded on the decrees of peoples, the edicts of princes, or the decisions of judges,"[14] then it would be lawful to commit "robbery and adultery and forgery of wills, in case these acts were approved by the votes or decrees of the populace. [...] But in fact we can perceive the difference between good laws and bad by referring them to no other standard than Nature."[15] Nature is meant here of course in the sense of natural law.

A very famous passage in St. Augustine can help to further clarify things. He refers to a well known incident concerning the Macedonian King, Alexander the Great, who had captured a certain pirate. "When the king asked him what he was thinking of, that he should plunder the sea, he said with defiant independence: The same as you when you plunder the world! Since I do this with a little ship I am called pirate. You do it with a great fleet and are called an emperor." St. Augustine uses this example to argue his statement:

> And so, if justice is left out, what are kingdoms except great robber bands? For what are robber bands except little kingdoms? The band also is a group of men governed by the orders of a leader, bound by social compact (in the sense of contract, bargain), and its booty is divided according to a law agreed upon. If ... this plague grows to the point where it holds territory and establishes a fixed seat, seizes cities and subdues people, then it more conspicuously assumes the name of kingdom, and this name in now openly granted to it, not for any subtraction of cupidity, but by addition of impunity.[16]

These last words: "by addition of impunity" are, so to speak, prophetical for our times. The "social compact" has, in its majority, agreed on the right of women to avoid personal problems by killing unwanted children, and the legis-

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[12] See: *Summa Theol.* I-II, q. 91, a. 2 resp.; in this sense also *Veritatis splendor*, Nos. 43-44 and 50. See also Cic. *Off.* 1, 42.

[13] Cic. *Leg.* 1, 42.

[14] From here on I cannot follow the translation of Keyes, because he simply identifies *ius* with justice, which is contrary to the meaning of the text.

[15] Cic. *Leg.* 1, 43 and 44.

[16] Aug. *Civ.* 4, 4; translated by W. M. Green, *The Loeb Classical Library* (1963).

lator grants them impunity for doing so. In the Netherlands, the majority has further agreed upon the next logical step, namely, to kill aged and sick persons under certain circumstances. But already in 1920, a famous German professor of Criminal Law, Karl Binding, simply a representative of the positivistic theories and not a Nazi, proposed the idea that incurably sick and imbecile persons should be killed in order to avoid the expenditure of national wealth and work, withdrawing it from productive purposes by using it to nurse such "ballast-existences,"[17] There can be no doubt that the ideas formulated by Binding and others helped the Nazi tyranny to carry out its intentions. Robert M. Byrn has called the new ethic the "homicidal high magic of the quality-of-life ethic," into which American jurisprudence submerged itself by allowing abortion. He then says: "The magician knows best. He is going to give us *la dolce vita* even if it kills us, or at any rate, kills those of us who are so inconveniently dependent and burdensome as to stand in the way of the good life."[18] In 1975 such ideas were proposed at a Symposium organized by Albin Eser, another professor of Criminal Law, at the University of Bielefeld. It was argued that new decision-making bodies like a jury should be created, which would have to decide about life and death. This could help to "revitalize" democratic decision-finding and to distribute the new responsibilities which modern science forces upon as the responsibility to "play the good God."[19] This "playing the good God" assumes the right to decide about the lives of others, like God. Here it becomes obvious that such an assumption arrives at the point where democracy should turn into its totalitarian opposite, namely the *ochlocratia*, if the majority should accept these views.

There can be no doubt that positivistic and relativistic jurisprudence, which denies the existence or recognizability of any objective standards of justice, will also help legislation to disregard these standards. This is primarily and emphatically denied by those who promote positivistic theories. No one feels responsible for any crime committed by any system that adopts such theories for its purpose.[20] In any case, any legislation as an expression of such jurisprudence,

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[17] See: L. G r u c h m a n n, *Justiz im Dritten Reich 1933-1940,* Munich 1988, p. 497.

[18] "America" (1973) 511; see also: W. W a l d s t e i n, *Das Menschenrecht zum Leben*, Berlin 1982, p. 94, note 287.

[19] See: A. E s e r (ed.) *Suizid und Euthanasie als human- und sozialwissenschaftliches Problem*, Stuttgart 1976, p. 390; W a l d s t e i n, *Das Menschenrecht*, *op. cit.*, p. 106. In the original German version Kittrie proposes "*die Schaffung von völlig neuen Körperschaften zur Entscheidungsfindung*" which should decide "*ähnlich wie Geschworenengerichte... über Leben und Tod*". This is seen as a way "*zur Wiederbelebung demokratischer Entscheidungsfindung*" *which "dazu helfen könnte, die neuen gesellschaftlichen Verantwortungsbereiche zu verteilen, die uns die moderne Wissenschaft aufzwingt: die Verantwortung dafür, daß wir den «lieben Gott» spielen.*"

[20] This escape from one's own responsibility for the consequences of one's theories is

no matter whether formally democratic or dictatorial, ends up in violating the most fundamental human rights, natural law and justice.

In order to prevent single states from falling into this kind of barbarism, international declarations, and even conventions of human rights, were set up after the Second World War. In the meantime, even these international measures to safeguard human rights fail to do so in the most crucial questions. In the international organisations, the representatives of democratic states which have taken measures against the protection of human rights, especially on the question of protecting the lives of the unborn, have, in the most part, accepted the legislation of their states as legitimate. One of the most shameful things is the debate about the "definition of the word «child»" in Article 1 of the UN *Convention on the Rights of the Child* of 1989. The fact that "abortion is legal in many countries was a factor in arguing for the vague language of Article 1."[21] The conscience of humanity, still alive when the declarations and conventions were set up, faded away under the determined egoistical will all over the world to promote one's own "quality-of-life" at any cost, even at the cost of disregarding unwanted human life. There is no way to avoid the consequences of a legislation serving such goals, on which we now have to focus.

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rightly criticized by M. Kriele in: *Recht, Vernunft, Wirklichkeit*, Berlin 1990, who in his *Vorwort*, p. v, says that, in looking for answers to the question, how all the horrible things under Nazirule were possible, he was always led "*auf das Phänomen des «sophistischen Milieus»: auf die Verführungsanfälligkeit der Intellektuellen mit ihrer fast unbegrenzten Fähigkeit, sich Versionen zu machen, sie zu verbreiten, selbst daran zu glauben und schließlich für nichts verantwortlich zu sein*". And: "*Von Vernunft kann nur die Rede sein, wo das Denken die Lügengespinste der Versionen durchbricht und Verantwortung für die Wirklichkeit auf sich nimmt.*"

[21] C. P. C o h e n, *Introductory Note* to "International Legal Materials" 28 (1989) No. 6, p. 1450. The relevant passage is worth quoting in full: "During the second reading, four areas emerged as what might be called 'hot topics' or highly controversial issues. These were the rights of the unborn child, [...] The rights of the unborn child were an issue from the moment drafting began on the Article 1 definition of the word «child» right through to the end of the second reading. There were delegations and NGO's which argued that the rights of the unborn were protected to some degree by the law of every State, regardless of its national laws relating to abortion, and that to ignore these protections by omitting reference to them in the Convention was patently disingenuous. The carefully worded compromise language of Article 1 which defines a child simply as «every human being...» and leaves it to the State Parties to give their own meaning to the words «human being» according to their national legislation, was not specific enough to satisfy some delegations. A further compromise was finally hammered out during the second reading, when the *Preamble* to the Convention was expanded to include a paragraph quoting the 1959 *Declaration* which refers to «appropriate legal protection, before as well as after birth»."

3. CONSEQUENCES OF LEGISLATION DISREGARDING HUMAN RIGHTS

As much as those who think it desirable or prudent to allow under certain circumstances the killing of innocent human beings for the sake of the "quality-of-life" of others might be convinced that such measures could rightly be allowed by a legitimate legislation, they cannot avoid the consequence, that a legislator, in giving in to such demands, departs from the foundations of a legitimate state altogether. One need not be especially informed about history and human rights to know this. Humanity knew clearly already forty years ago that certain acts committed by totalitarian systems were crimes against humanity. Hitler, for instance, was not able to openly allow the killing of unborn children or incurably sick and imbecile persons, because the conscience of the people was still so strong, and this in spite of the above-mentioned theories. The crimes involved in these actions do not became better if they are now openly allowed by democratic legislators according to the wishes of majorities. There is an objective standard to measure what is right and wrong, which cannot be changed by the political will, even of majorities. This standard was already clearly seen without the light of Christian revelation. As Cicero for instance said, it "binds all human society" and is "based on one Law." And further: "Whoever knows not this Law, [...] is without Justice."[22] What St. Augustine said about the consequences of absence of justice is a result of a general and true cognition. Therefore, what he said is still valid, namely: "And so if justice is left out, what are kingdoms except great robber bands?" The will of a majority is not able to change this truth. But also not a positivistic sceptical theory as for instance the opinion of Alf Ross, expressed in the words: "To invoke justice is the same thing as banging on the table: an emotional expression which turns one's demand into an absolute postulate."[23] If this were true, then all the endeavours of mankind to promote a knowledge of justice would have been in vain, including the achievements of Roman jurisprudence. What it would mean to maintain this was explained by Cicero, who bluntly states, concerning the foundations of justice: "only a madman would conclude that these judgements are matters of opinion, and not fixed by Nature."[24] Therefore they are valid not only for "kingdoms," but also for democratically-organized states.

Democratic organisation does not *per se* guarantee that a certain state is in reality a true democracy. This, too, was seen already in antiquity. A democratically-organized state turns into its corruption, the *ochlocratia*, as

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[22] Cic. *Leg.* 1, p. 42; see above next to note 12.

[23] A. R o s s, *On Law and Justice*, London 1953; see also: W. W a l d s t e i n, *Ist das "suum cuique"*, *op. cit.*, p. 285, note 2.

[24] Cic. *Leg.* pp. 1, 44-45.

soon as fundamental laws, human rights, and thereby justice, are violated, even by votes of a majority. As our Holy Father has shown again in his Encyclical *Veritatis splendor* (No. 50), especially "the origin and the foundation of the duty of absolute respect for human life are to be found in the dignity proper to the person."[25] Vatican II has said clearly: "Therefore, from the moment of the conception, life must be guarded with the greatest care, while abortion and infanticide are unspeakable crimes" (*Gaudium et spes*, No. 51). The Latin says: *nefanda crimina*, which is better translated as "terrible" (and its equivalents such as) "nefarious," "scandalous" or "detestable" crimes. In any case it is clear enough that no vote, even of a majority, can change these crimes into lawful acts. As Robert Spaemann has shown, to think that society could do that, would be a totalitarian misunderstanding of society which leads to the end of a free society.[26]

Most competent representatives of German jurisprudence have throughout many years made clear that legal permission to kill unborn children, according to the wishes of the mother, is unconstitutional.[27] In spite of all the arguments that were produced by jurisprudence, the *Bundestag* passed a new Abortion Act in 1992, not as an expression of jurisprudence, but as the political will of the

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[25] The Latin has: "*origo et fundamentum officii humanae vitae prorsus observandae in germana dignitate propriae personae sunt reperienda*". The German translation omits "*germana*" and is, as in many other cases, unfortunately not adequate. But the English translation also omits it. It could be translated as "inborn". In the same sense as the Latin text the *Austrian Civil Codex* (ABGB) says in its Paragraph 16: "*Jeder Mensch hat angeborene, schon durch die Vernunft einleuchtende Rechte.*"

[26] R. S p a e m a n n, *Verantwortung für die Ungeborenen*, "Schriftenreihe der Juristen Vereinigung Lebensrecht e. V. zu Köln" 5 (1988) No. 5, p. 30. See also much more detailed arguments: J. D e t j e n, *Neopluralismus und Naturrecht*, Paderborn 1988, pp. 270-279, and 639-649; also: M. K r i e l e, *Recht, Vernunft, Wirklichkeit*, *op. cit.*, esp. pp. 204-235; *Befreiung und politische Aufklärung*, Freiburg 1986[2], and *Einführung in die Staatslehre. Die geschichtlichen Legitimitätsgrundlagen des demokratischen Verfassungsstaates*, Opladen 1994[5], esp. pp. 121-126 and 235-272.

[27] The question became more acute after the fall of the Berlin wall and the following *Einigungs-Vertrag*, which was ratified by the new Article 143 GG. Concerning one article of this *Einigungs-Vertrag*, Axel v. Campenhausen said in his commentary to Art. 143 in: v. M a n g o l d t/K l e i n / v. C a m p e n h a u s e n, GG, Art. 143 Rdnr. 23: "*In Art. 9 Abs. 2 EV heißt es, das in der Anlage II aufgeführte Recht der vormaligen DDR bleibe in Kraft, soweit es mit dem GG [...] vereinbar ist. Solches Rechts ist aber, auch wenn es in der Anlage II zum EV aufgeführt ist, von der Fortgeltung ausgeschlossen, sofern es auch nur mit einem der in Art. 79 Abs. 3 GG gennanten Grundsätze unvereinbar erscheint. Das ist bei dem [...] § 1 Abs. 2 bis 4 des bisher in der DDR geltenden Gesetzt über die Unterbrechung der Schwangerschaft, der die Fristenregelung konkret enthält, der Fall: Nach den Grundsätzen, die das BVerfG in dem Urteil v. 25. 2. 1975 aufgestellt hat, ist diese Bestimmung weder mit dem in Art. 1. Abs. 1 GG niedergelegten Grundsatz der Unantastbarkeit der Menschenwürde vereinbar noch auch mit dem in Art. 2 Abs. 2 Satz 1 GG verbürgten Recht auf Leben.*"

majority. In 1993 the German Federal Constitutional Court decided on this Abortion Act. The guiding principles (*Leitsätze*) which the Court formulated, contain almost everything one ought to say concerning the protection of human life, and especially that of the unborn. These principles even include the one stating that the state is not free to renounce measures of penal law for the protection of human life.[28] But obviously social pressure forced the Court to accept a deadly compromise. Although the Court recognizes abortion after consultation (*Beratungslösung*) as illegal, it allows the legislator to withdraw the protection by threat of punishment for the unborn child. In spite of all the well-meant statements of the Court concerning encouragement and help for the woman to carry her child to term, it will in practice have the effect that people will think that if it is not punishable, it is legal. In any case the legislator is now free to renounce the only possible protection the state could effectively give to every unborn child. Because people just want to get rid of unwanted children, some way must be found to allow it, even at the cost of the lives of others. Why, then, should one not also allow the killing of others who can often be much more burdensome than a child? One can already see clearly enough that one day those who had allowed the killing of innocent persons can and most probably will be the victims of their own principles, and all of us with them, if not..., yes, if the human conscience cannot again be awakened from its widespread egoism to the full recognition of the demands of justice.

In this situation it gives real hope that two members of the German *Bundestag*, Norbert Geis and Manfred Carstens, proposed a draft bill containing unrestricted protection for the unborn child.[29] It seems to have found unexpected support among members of the *Bundestag* and the public. If this proposal should be successful, it could really start a new era of returning to human rights, natural law and justice, and by this, to the foundations of a really humane future in human solidarity. The vision of our Holy Father concerning the future of Europe consists in the true spirit of Europe, and is expressed outstandingly in his Encyclicals and other documents but, I think, in the most important way in his Encyclical *Veritatis splendor*. May this light, this splendour of the truth reach the spirits and hearts of humanity. It contains the real foundations of a humane future. In any case, we have to work for that as much as we can. For the rest, we can only hope and pray.

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[28] "Entscheidungen des Bundesverfassungsgerichts" 88 (1993) No. 21, p. 203 ff.; the principles concerning penal law measures are Nos. 8-11, p. 204.

[29] This proposal I found published in "Kirche heute" 1994, No. 3, p. 6.