SUMMARY

The present issue of the "Ethos", entitled Imperfect Laws or Unjust Laws?, is devoted to the problem of so-called imperfect legislation concerning a value that is indispensable to any human person, namely, human life. The issue of morally acceptable ways to correct imperfect laws which "regulate" the right to life by denying it to certain categories of the unborn was raised by Holy Father John Paul II in Section 73 of the Encyclical Letter *Evangelium vitae*. The section in question has given rise to a violent debate (sample of which has been included in the current issue of the journal) on how to improve imperfect legislation concerning the right to life by means of morally acceptable legal tools.

The authors of the text From the Editors point to a genuine sense of solidarity based on respect for the dignity of each and every human person. Human dignity remains the ground for the right to life that belongs to each human being as the bearer of this special dignity. Therefore respect for one's right to life requires no other condition except for its subject being human. This particular truth must be respected by the states that aspire to being called democratic, or the humanity will embark on a slippery slope towards the worst possible totalitarianism.

In an extract from his address delivered to the participants in the session held to commemorate the fifth anniversary of the Encyclical Letter *Evangelium vitae*, John Paul II restates the message of the encyclical: laws that are contrary to the right to life, in particular the laws that legalize abortion and euthanasia, must not be accepted as an inevitability or as a social necessity in a pluralist society. Continuous effort must be made in order to introduce modification of the public mentality that must precede the modification of the law. Pastoral care and education are of crucial value in this respect.

In the introductory article, Tadeusz Styczeń, SDS, presents the philosophical and theological background of the defence of the lives of the unborn, and points to the fact that the modern proclamation of human rights is above all a proclamation of human dignity, which in turn demands an absolute respect for human life – a fundamental value to the human person.

The first block of texts is entitled Axiological Foundations of the Jurisprudent State.

Kazimierz Krajewski describes the philosophical context of the message included in the Encyclical Letter *Evangelium vitae*. This context is provided by the uniqueness of the human person in the world of objects, by the uniqueness that consists in the person's ability to recognize the truth about good and evil, which in turn reveals the non-instrumental character of personal beings. Thus experience of the other shows another human person as a "self" identified with the person's existence (life). This recognition is a source of the moral duty towards the other, while communion remains the only adequate basis for any personal relationship.

Krzysztof Wroczyński holds, in opposition to the utilitarian approach, that the fundamental aspect of evaluating a law concerns its (in)compatibility with natural law, which provides the absolutely superior norm for State laws. Although the concept of natural law has been frequently

questioned in the history of philosophy, its presence is manifested already in the natural human dynamism that directs man to do good and to avoid evil, and thus demonstrates that the source of moral duty lies in the human nature, and not in legislative decisions. The human nature, manifested in the material sense through natural inclinations, should provide the basis for particular legislative decisions. Paradoxically, modern, conventional formulations of so-called human rights frequently stem from the anthropological error that consists in the conviction that the source of human dignity is rather social agreement than the human nature as such.

Wojciech Łączkowski reflects on the relationship between administration of justice and application of the law by contrasting the two notions, explaining their understanding in the positivist approach and in the conception of natural law, by introducing the *ius – lex* distinction, and finally, by pointing to the conditions in which a judge can refuse to apply a legal norm. The pursuit of the philosophy of law is possible only on the assumption that there are higher values than laws constituted by the State. The judge can experience a genuine moral dilemma in cases when State law does not correspond to the system of values in the sense of *ius*.

In his address delivered on the tenth anniversary of the Supreme Court decision in *Roe* v. *Wade*, President Ronald Reagan stresses that abortion concerns not just the unborn child, but all of us. The real question is not when human life begins, but what the value of human life is. Thus life is either sacred in all circumstances or intrinsically of no account. President Reagan holds that efforts to overturn *Roe* v. *Wade* must involve laying the groundwork for a society in which abortion is not accepted as an answer to unwanted pregnancy, and he points to numerous initiatives which prove that – as a nation – Americans have not rejected the sanctity of human life.

Robert George considers the question where a Catholic politician should draw the line between his private faith and his public duties, and concludes that the idea of privatization of religious faith was absolutely alien to such great statesmen as George Washington, Abraham Lincoln or Theodore Roosevelt. Moreover, a politician should acknowledge an obligation to take unpopular stands when conscience or common good demand it.

Fr. Alfred Wierzbicki presents Augusto Del Noce's analyses of the social and political change in Italy that resulted in the 1974 referendum on whether to prolong the law allowing divorces as well as in the 1981 one on abortion. Del Noce described the inevitable process undergoing in a State that proclaims laws contrary to moral norms, and observed that the modern, consumer society is menaced by a non-authoritarian totalitarianism that makes use of the democratic mechanisms and stems from mass acceptance of a reductionist conception of human freedom.

The succeeding section is entitled *Evangelium vitae* – A Message for Legislators and it includes an introduction and two blocks of articles.

The introductory part comprises the Polish and Latin text of the controversial sections of the encyclical (71-74), which is followed by an opening article by Piotr Ślęczka, SDS, who presents the background of the debate on the moral appraisal of ways to correct unjust laws that legalize abortion. In particular, the author points to the diverse standpoints held by eminent philosophers and theologians as to the question of whether a lawmaker acts licitly while supporting a bill that limits the scope of a permissive law concerning abortion, but does not put an absolute ban on abortion. The proposed solution of the problem consists in a reformulation of the legislative procedure so that the material content of the questions answered by legislators while voting a bill will be modified, and in the elimination of the collective final vote of the particular points included in the bill.

The first block of texts within this section, entitled Interpretations and Discussions, includes a sample of the international debate on Section 73. of the Encyclical Letter *Evangelium vitae*.

Abp. Tarcisio Bertone undertakes the problem of whether so-called imperfect laws can be assented to and of how far someone with a personal credo can participate in the drafting of a law that does not exactly correspond to their convictions. In the first part of the paper, the author

summarizes the main ideas presented during the symposium "Catholics and the Pluralist Society. The case of «imperfect laws,»" held in Rome in 1994, and then continues by presenting a moral analysis of various ways of changing imperfect and thus unjust laws, and by pointing to the attitudes that Christians should take towards them.

John Finnis demonstrates a criticism of the notion of a pluralist society, pointing to the fact that nowadays pluralism is frequently associated with being divided about essentials. Thus a modern society is often a relativistic one, dominated by liberal secularist attitudes, where injustices are rationalized by an ideology of pluralism. However, it is possible for a legislator acting in such a society to amend its unjust laws without embracing situation ethics or proportionalism, provided that one has taken all the possible steps in order to avoid the bad side-effects of one's decision.

Fr. Ángel Rodríguez Luño presents his interpretation of Section 73 of the Encyclical Letter *Evangelium vitae* and explains why lawmakers can sometimes support imperfect legislation that limits – but does not ban – abortion. Thus the author advances the principle that justifies voting for an imperfect law, yet he stresses that in every individual case general evaluations must include an attentive analysis of the circumstances, the possible consequences of the legislator's vote, and the potential for giving rise to scandals or confusion.

Arthur F. Utz, OP, considers the question to which extent a Catholic lawmaker should take into account the majority opinion and how he should act if a parliamentary majority drafts a bill which he cannot accept in his conscience, as it is contrary to the principles of natural law. The author stresses that the politician should not in any case offer his support to a bill that approves of an intrinsic evil. Thus it is absolutely impermissible to back up a law that legalizes abortion in certain circumstances, even if such a law actually reduces the scope of legal abortion. The source of the controversial character of Section 73 of *Evangelium vitae* is that the encyclical does not consider the concept of *malum in se*, but rather the notion of intention, which is of phenomenological provenience, and as such obscures the heart of the problem in question.

A similar opinion can be found in the article by Claudio Vitelli, who stresses that while deciding on whether to support an unjust law, one must reject utilitarian, relativistic, proportionalist and consequentialist positions. Attempts at introducing a just law in place of an unjust one must never be made in cooperation with the unjust law, or legislators will find themselves on a slippery slope, compromising and forced to accept increasingly unjust laws, which will simultaneously affect social conscience in a negative way.

Damian Fedoryka presents a moral analysis of various attempts at improving an unjust law in various legal conditions. The position held by this author is similar to that of Utz and Vitelli, and he concludes his article by stressing that fatithulness to the gift of life and to the ultimate Giver excludes any compromise with imperfect and thus unjust laws that "regulate" the right to life.

Also Colin Harte definitely states that in the Encyclical Letter *Evangelium vitae*, John Paul II does not permit legislators to vote for imperfect legislation. The author points out that the encyclical must be viewed in the context of the entire teaching of the Magisterium, which openly expresses the need to respect as a fundamental requirement of authentic social structures the inviolable and inalienable right to life of every human being without exception. Thus *Evangelium vitae* both liberates legislators from legal positivism and clearly shows the directions of how to change unjust laws in a morally accepted way.

Alison Davis' article constitutes the testimony of a person suffering from the disability spina bifida, who was once involved in the pro-abortion movement, but then experienced a radical change of mind under the influence of a television programme about a newborn baby suffering from the same disability whose death by sedation and starvation was brought about by doctors considering that the quality of the baby's life would be insufficient to make that life worth living. The author goes on to speak about her later involvement in the activity of the pro-life movement and to describe in detail the situations in which British pro-life activists gave up their efforts to protect the lives of disabled babies and babies conceived from incest or rape.

The second block of texts in this section, entitled A Suggested Solution, includes articles in which philosophers and theologians representing the Catholic University of Lublin present their standpoint in the debate.

Fr. Janusz Nagórny reflects on the *Doctrinal Note on some questions regarding the participation of Catholics in political life* issued recently by the Congregation for the Doctrine of the Faith. The author considers in particular the attitude that Catholics should adopt towards civil laws that do not defend or do not fully defend the lives of the unborn. The involvement of Catholics in political life should be determined by the attitudes of participation and opposition, and permeated with the spirit of responsibility. The *Doctrinal Note...* clearly outlines the limits of political compromise: the acceptance of a democratic system must be accompanied by the acceptance of the true conception of the person that lies at the foundation of this system. Dialogue and consensus in social life must never involve resignation from truth, and under no circumstances should they demand acceptance of the "right" to kill.

Jarosław Merecki, SDS, states that the modern conception of the State is based on the abandonment of the vision of man as a cooperative being, which has been replaced with the conception of the social agreement. The new function of the State that has thus emerged consists in defending one from being harmed by fellow citizens. However, even for the sake of preserving the coherence of this approach social agreement should presuppose a situation that will be commonly perceived as favourable for everyone. A just State is one that will secure everyone's basic interests, the most fundamental of them being the want to live, as all the other needs and desires can be fulfilled only as far as one is alive. As the weakest individuals are frequently excluded from the scope of the social agreement, their interests should be protected by the legislators. Those legislators who aim at protection of the lives of the unborn should be given a chance to fully express their standpoint in Parliament. Therefore the bills that are put to vote must never be formulated in such a way that a legislator who aims at introducing absolute protection of life is made to vote against the right to life of some categories of the unborn in order to defend the right to life of others.

Barbara Chyrowicz, SSpS, investigates whether it is justifiable to compare the situation of a legislator who aims at improving an existing permissive law on abortion by means of a more restrictive one that nevertheless does not completely ban abortion with that of a trolley driver who has lost control over his vehicle and now may only decide which of the two groups of people it will hit. However, the legislator's situation turns out to be different from that of the trolley driver, as the latter is under the influence of physical determinism, while the legislator can influence the procedures of law-making and reject any unjust legal proposal during the voting.

Andrzej Szostek, MIC, reflects on the sense of political compromise concerning various issues that are put to vote in Parliament, and concludes by stating that no compromise is acceptable as regards human life. While supporting with his vote a bill that reduces the scope of abortion, but does not absolutely ban it, an upright legislator, who holds that each human life demands legal protection, would simultaneously express the opinion that certain human beings may be murdered with impunity. This would amount to illicit cooperation with an unjust law, definitely rejected by John Paul II in Section 73 of *Evangelium vitae.*

Thus Tadeusz Styczeń, SDS, holds that the Encyclical Letter *Evangelium vitae* was announced in a situation of a moral and cultural collapse, and its aim was to point to the duty to undertake and continue a political and legislative action in order to restore the legal protection of the lives of all the *nascituris*. The theologians and ethicists who claim that the moral principle defended throughout the encyclical has been annulled in Section 73 are absolutely wrong. The formulations included in the section in question demand a precise interpretation as well as practical application. However, such an interpretation must take into account and respect the main premises of the encyclical, which exclude the proportionalist solutions. It is also absolutely essential that the interpretation in question should evade logical absurd characteristic of any imperfect legislation in the field of life protection. Thus the "collective" voting of the entire bill at the final stage of the legislative process

must be replaced by a "distributive" voting of each particular point in the bill referring to a given category of the unborn.

The succeeding section of the volume is entitled Towards Just Laws and it includes articles on the legislative procedures applied in Polish law as well as in international legislation.

Walerian Piotrowski presents the background of the historic anti-abortion bill which was passed in Polish Parliament in 1993. This legislation was followed by the 1996 attempt to replace it with a new, much more unjust law that allowed abortion on social grounds. However, the new law was soon declared unconstitutional by the Polish Constitutional Tribunal. The present legislation on abortion is still unsatisfactory, as abortion remains legal in certain circumstances. However, even this imperfect condition may become subject to negative change due to either the influence of anti-life tendencies that dominate in the European Union or as a result of a local parliamentary initiative. Thus it is absolutely essential to keep the public opinion sensitive to these issues, so that the citizens are fully aware of the decisions they are taking while supporting particular candidates in the elections.

Krzysztof Wiak concentrates in his article on how legislative procedures on abortion are applied, and points out that in the present conditions legislators frequently experience a conflict of conscience when they are about to pass a law limiting the scope of abortion, yet not banning it altogether. Situations of this kind may create an impression that the value of human life is relative in certain circumstances. A characteristic feature of modern pro-life legislation is its axiological incoherence, as it is possible to include in the same bill regulations that defend the rights of the unborn as well as ones that are contrary to such a defence. It is thus essential that the right to life should be included in the Constitution, which is the highest legislative act.

Sylwia Sadowska in turn presents the history and the present context of Polish post-war legislation on abortion, including the international acts ratified by Poland. Although the right to life – as part of natural law – is included among the fundamental human rights and treated as superior to State laws, the problem of regulating the legal status of the unborn child still persists, as Polish law does not state explicitly that human life should be absolutely an unconditionally protected from the moment of conception.

Manfred Spieker presents the history of the involvement of state-recognized Catholic counseling centers in Germany in the procedure of issuing so-called abortion certificates which gave rise to a long-term conflict between German bishops and the Holy See. The author stresses that John Paul II's faithfulness to the value of the sanctity of life resulted in the change of the situation in Germany, since the Church-run counseling centers ceased to issue "abortion certificates" since 1 January 2001.

Fr. Józef Krukowski takes up the problem of the protection of the right to life in the future Constitution of the European Union. The issue that has a basic significance in this respect is whether human life will be understood in the subjective or merely objective sense. The issue in question is obscured in European legislation by the introduction of two different concepts: "person" and "human being," in order to denote the legal subject of the right to life. Moreover, according to European legislation, particular states are to determine the range of the concept of the human being and, which is most significant, to determine at which point the life of a human being starts.

Andrzej Szostek, MIC, reflects on the attitude of the European Union towards the issues regarding morality and culture and considers the question of a future independence of the member States in this respect. In particular, the author stresses the necessity of signing an additional protocol that would help Poland preserve an autonomous legislation in the field of morality and culture.

The topic of the autonomy of Poland as regards legislation concerning morality and culture is continued in the article by Paweł Wosicki, who presents the efforts made the Polish Federation of Pro-Life Movements, as well as by numerous politicians, in order to influence the Polish govern-

ment so that the sovereignty of Polish legislation on human rights and on the rights of the family should be preserved in the process of the integration of our country with the European Union. The author writes about the failure of Polish Parliament to pass the Declaration on the sovereignty of the Republic of Poland in matters concerning morality and culture, and about the apparently meaningless Declaration adopted by the Polish government in this matter, as well as about the failure to amend the Accession Treaty with a special protocol granting Poland sovereignty as to legislation on matters concerning morality and culture.

Alicja Grześkowiak thoroughly analyzes recent legislation on abortion in particular European states, such as Belgium, France, Spain and Portugal, pointing to the predominant tendency in this field to prolong the period of legally permitted abortion. The author points out that although the legislation on abortion in the mentioned states frequently refers to verdicts of foreign Constitutional Tribunals, there is no reference in it to the historic verdict of the Polish Constitutional Tribunal of 1997.

The subsequent section of the volume is devoted to the profile of the late Professor Włodzimierz Fijałkowski (1917-2003), a great defender of life and genuine humanist, and it is entitled A Life in the Service of Life. It opens with the text of the telegram sent by Holy Father John Paul II to Abp. Władysław Ziółek expressing the Holy Father's condolences on the death of Professor Fijałkowski. The text of the telegram is followed by Abp. Władysław Ziółek's introduction to the Holy Mass celebrated during Professor Fijałkowski's funeral and the homily delivered during the Mass by Fr. Andrzej Świątczak. The section concludes with Jerzy Umiastowski's reflection on the life of the late Professor Włodzimierz Fijałkowski.

The succeeding part of the volume is entitled Around the *Roman Triptych* and it includes commentaries on the Holy Father's recently published poem, some of which were presented during a session on the *Roman Triptych* held by the Institute of John Paul II.

The articles by Card. Joseph Ratzinger and Giovanni Reale were originally lectures delivered during the official presentation of the *Roman Triptych* in the Vatican.

In his theological commentary on the *Roman Triptych*, Card. Joseph Ratzinger demonstrates the inner coherence of the visions presented in the succeeding parts of the poem that reflect the way of human life as a pilgrimage towards God.

Giovanni Reale in turn stresses in his literary commentary that the *Roman Triptych* reveals Karol Wojtyła's special philosophical and theological sensitivity that culminates in a poetic vision that he does not hesitate to refer to as absolute.

Stefan Sawicki writes about the motif of the threshold in the *Roman Triptych*, which he interprets as a particular *summa theologica* on God as He is experienced by man, before he crosses the ultimate threshold that each human person must cross, namely, the threshold of the Father's House.

Tomasz Garbol in turn concentrates on the Trinitarian sense of the *Roman Triptych*, which he perceives on the one hand as a triptych about the Holy Trinity, and on the other hand as a triptych about faith, hope and love seen as marks that help to shape the way of the human response to the mystery of God.

Małgorzata U. Mazurczak presents a thorough analysis of Michelangelo's *Last Judgment*, depicted on the walls of the Sistine Chapel, which gave an impulse for the thoughts included in the second part of the *Roman Triptych*.

The section Thinking about the Fatherland... includes the address delivered by Tadeusz Styczeń, SDS, during the International Congress of the Family held in Warsaw in 1994. The author appealed then to Europe to recognize the right to life of the unborn so that she would express genuine solidarity with the weakest of all human beings.

In he section Notes and Reviews Paweł Łącki reviews P. Policastro's *Prawa podstawowe w demokratycznych transformacjach ustrojowych. Polski przykład* [Basic Rights in Democratic Transformations of the Political System. The Polish Example], Jerzy Zajadło presents J. Finnis's

Prawo naturalne i uprawnienia naturalne [Natural Law and Natural Rights], Dominika Zając reflects on three succeeding publications in the series "Etyka i Technika" [Ethics and Technology], edited by Barbara Chyrowicz, SSpS: *Klonowanie człowieka. Fantazje – zagrożenia – nadzieje* [Human Cloning. Phantasies – Threats – Hopes], *Granice ingerencji w naturę* [Limits of Intervention in Nature], *Etyczne aspekty ingerowania w ludzką psychikę* [Ethical Aspects of Intervention in the Human Psyche]. Katarzyna Solecka and Mariusz Solecki present a book entitled *Akropol z hołdy, czyli teologia Śląska. 25 rozmów z ks. Jerzym Szymikiem o Śląsku i teologii, o poezji i kapłaństwie, o Pszowie i podróżach, o życiu i naszym świecie...* [An Acropolis of Cinder, or the Theology of Silesia. 25 interviews with Fr. Jerzy Szymik on Silesia and Theology, on Poetry and Priesthood, on Pszów and Travels, on Life and our World], edited by M. Jakimowicz. The section concludes with the Proposals of the *Ethos*.

The section devoted to Reports includes Cezary Ritter's report on a session on *Roman Triptych*, a report by Andrzej Derdziuk, OFMCap, on a Day of the Sanctity of Life held in Lublin on 25 March 2003, Agnieszka Lekka-Kowalik's report on a session devoted to the so-called anthropological error in philosophy, and Magdalena Lasik's report on a symposium on pursuing philosophy in the context of theology.

In the section The Pontificate in the Eyes of the World, Zygmunt Kwiatkowski, SJ, writes about the present political and cultural situation in the Middle East, pointing to this region's need for the application of the Pope's Gospel of peace and love.

The section Through the Prism of the Ethos includes a feuilleton by Wojciech Chudy on various types of Catholics among the Poles.

The final part of the volume includes the Calendar of the twenty fourth year of John Paul II's pontificate and a Bibliography of John Paul II's addresses on defence of life. The volume concludes with Notes about the Authors.

Summarized by *Dorota Chabrajska*