

RESPONSIBLE PLANNING AND REPRODUCTIVE HEALTH*

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I. THE PRIMACY OF CONSCIENCE IN CATHOLIC THEOLOGY

Reproductive Health bills have been passed by the majority of Catholic countries, particularly by Catholic developing countries such as Argentina, Colombia, Ecuador, Guatemala, and Mexico. Other countries include Italy, Poland, Paraguay, Portugal, and Spain. When the United Nations Fund for Population Activities (UNFPA), now known as the UN Population Fund, profiled 48 Catholic countries, only six countries did not have a reproductive health law. The Philippines is one of them.

In our country, the Catholic Church is the only major religion that opposes the RH bill. Other major Christian churches have officially endorsed the RH bill, and in fact have published learned treatises explaining their position. They are:

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- Interfaith Partnership for the Promotion of Responsible Parenthood, 2007
- National Council of Churches in the Philippines, 2009
- Iglesia ni Cristo, 2010
- Philippine Council of Evangelical Churches, 2011

The position of these Christian churches is supported by the most authoritative body of Islamic clerics in the Philippines, the Assembly of Darul-Iftah of the Autonomous Region in Muslim Mindanao. These Islamic clerics constitute the top-ranking *ulama* who are deemed to have the authority to issue opinions on matters facing Islam and Muslims. In 2003, they issued a *fatwah* or religious ruling called “Call to Greatness.” It gives Muslim couples a free choice on whether to practice family planning, particularly child spacing.

Further, the RH bill is supported by a large majority of Filipinos in the country, as shown by certain nationwide surveys. In October 2008, Social Weather Stations reported that 71 percent of those surveyed were in favor of the RH bill. In October 2010, Pulse Asia likewise reported that 69 percent of those surveyed were in favor of the RH bill.

Vatican Council II and the Revolution in Moral Theology

Despite these surveys, certain Catholics, notably certain bishops, seem poised to fight to the death against the RH bill. To understand why Catholics are so divided on this issue, and why there is such fierce antipathy, we must go back to the Second Vatican Council, the greatest of the councils held by the Catholic Church. A Vatican council is an ecumenical council, meaning that it includes the whole Christian world, or the universal Church. The decisions of an ecumenical council are considered authoritative.

Vatican II, which was held from 1962 to 1965, immediately unleashed a tidal wave of change. It is now viewed as the most tumultuous decade in the whole modern history of the Church. In the words of an eminent Catholic historian: “So many spiritual and religious landmarks were suddenly swept away that the average Catholic was left in a state of complete bewilderment.”¹

¹ THOMAS BOKENKOTTER, *A CONCISE HISTORY OF THE CATHOLIC CHURCH* 409 (2004 rev. ed.)

The central issue of Vatican II was authority. Before Vatican II, the typical Catholic accepted the authoritarian structure of the Church “as a dictate of divine revelation.”² This author’s generation was still very young at that time. It was a generation that was taught that the Pope was a kind of superhuman potentate whose every word was a command coming from a supernatural authority. The autocratic procedures of the Church were positively medieval.

However, with Vatican II, the seeds of a democratic revolution were sown. It emphasized that the Church is primarily the whole people of God. It called for dialogue between all members of the Church. It asserted that the Pope and bishops are collegial. It also called for the establishment of senates among the priests, and of pastoral councils that include the laity.

With authority as the central issue, the Church reached a state of extreme tension when Pope Paul VI issued his encyclical *Humanae Vitae*. An encyclical is a papal letter sent to all bishops of the Catholic Church. *Humanae Vitae* condemned the use of artificial methods of contraception, including the pill. Notably, the Pope did not act collegially with the bishops in issuing his encyclical.

The current problem of authority in the Church is rooted in a conflict between two theologies:

1. Traditional theology, which still sees the Church as a superstate governed by an absolute monarch, whose aim is to impose the maximum amount of conformity.
2. Progressive theology, which sees the Church as, above all, a fellowship of spiritual communities held together in essentials by their recognition of papal primacy.³

In the pre-Vatican II Church, the independence of the individual conscience was kept to a minimum. In the past, the task of the layman was simply to obey the directives of bishops and priests. However, in the post-Vatican II Church, there is now a mood of questioning. Many Filipino

² *Id.* at 410.

³ *Id.* at 412.

Catholics, as Philippine surveys show, are no longer willing to obey the Church blindly. "In a few years the climate in the Church changed so drastically that few bishops dared to express a hard line on Pope Paul's birth control encyclical. Most of them followed a generally permissive policy."⁴

The divide between pre-Vatican II theology and post-Vatican II theology is mirrored in the RH debate among Catholic Filipinos. Theology means the branch of knowledge that deals with Christian theistic religion. It also means the organized body of knowledge dealing with the nature, attributes, and governance of God; in other words, divinity.

Since Vatican II, the Catholic Church has been divided into two schools of thought in theology and in ecclesiology. The two camps in theology are:

1. The classicist or traditional Catholics on the one hand; and
2. The historically conditioned or progressive Catholics on the other hand.

The two schools of thoughts on ecclesiology, meaning the branch of knowledge that deals with the Christian Church, are:

1. Pre-Vatican II ecclesiology, which stresses the constitutional and hierarchical aspects of the Church; and
2. Post-Vatican II progressive ecclesiology, which understands the Church as the whole People of God, always in need of renewal and reform.

This division into two schools of thought in theology and in ecclesiology represents a crisis of authority within the Catholic Church. This crisis is represented as a transition, and thus has *a certain implication*. In the words of a Catholic historian:

One way of looking at the current crisis of authority is to see it as the travails of a Church still trying to make the **transition from the classicist to a historically conscious worldview**. The classicist mentality viewed the Church as moving through history, but more or

⁴ *Id.* at 414.

less unaffected by history. The historically conscious point of view, however, acknowledged how much institutions, governing precepts, and basic ideas about religion and morality are shaped by history, and therefore how relative they are.⁵

The post-Vatican II period has seen a revolution in moral theology in the Catholic Church due to the following factors:

- The acceptance of the historical dimension.
- The profound shift of emphasis on the Church not only as a hierarchical institution, but also as a sacrament, as people of God, and as servants.
- The adoption by Vatican II of an ecumenical point of view, which now considers the experience, reflection, and wisdom of the other Christian churches.

Vatican II emphasizes the nature of the Church as an eschatological, very imperfect, and unfinished reality. Eschatology is the branch of theology that deals with the four last things – death, judgment, heaven and hell – and the final destiny of the soul and of humankind. In the past, Catholics viewed certain moral doctrines as immutable. Today however, many Catholics now accept that so-called immutable moral doctrines should be legitimately re-examined.

One relevant shift in moral theology concerns the principle of *proportionalism*, which is a new way of looking at actions that cause a double effect, one good and one bad. According to the theory of *proportionalism*, a person does not sin in causing the bad effect if there was a proportionate reason. The basis for this theory is that there is no sin if the person's intention was aimed at a good effect and not at the bad effect. Thus, very few actions could be labeled as intrinsically evil. Certainly the Reproductive Health (RH) Bill is not an intrinsic evil.

Another shift involves the identity of the priest, including the bishop. Today, being a priest really means:

⁵ *Id.* at 401.

- The person of the priest is no longer sacred. There is no longer a strict division between the sacred and the profane.
- The treatment of priests and bishops as a special caste in society is no longer observed. The Church does not consist of the priests and bishops alone. The Church consists of the whole faith community. Catholicism is no longer an affair of the person who happened to be born a Catholic, but an affair of the human being who is personally committed.
- The priest is not a special person just because he performs strictly cultic tasks such as presiding at the Eucharist and administering the sacraments.

With these recent developments in the identity of the priest, one historian was moved to comment: "It is no wonder then that many priests suffer from a sense of confusion about their role."⁶

The Encyclical *Humanae Vitae*

The Catholic opposition to the RH bill is based on the 1968 encyclical *Humanae Vitae* issued by Pope Paul VI. The Latin title literally means "Of Human Life," but it is more popularly translated as "On the Regulation of Birth." This encyclical⁷ was the result of a Special Papal Commission established by Pope John XXIII and concluded during the term of Pope Paul VI. The commission submitted two reports: the majority report, and the minority report. The majority report proposed that contraception should no longer be condemned. The minority report urged the Pope to continue to condemn contraception.

Paradoxically, Pope Paul VI decided in favor of the minority view. His unusual decision shook the Catholic world, and that is the reason why the Catholics in this country are so intensely divided over the RH bill.

After Pope Paul VI rejected the majority report, many Catholics were no longer ready to give blind obedience to his decree. It is fair to say that no

⁶ *Id.* at 421.

⁷ Pope Paul VI, *Humanae Vitae* (July 25, 1968).

moral issue in the twentieth century impacted so profoundly on the discipline of moral theology. As a result of the contretemps and the succeeding controversy, Catholics now raise such questions on how conscience is to be sought, the response due to the ordinary magisterium or teaching function of the Pope and bishops, and the meaning of the guidelines of the Holy Spirit.

Catholic theologians, and even some Episcopal conferences, voiced opposition to the *Humanae Vitae* encyclical, or at least took positions that were less than enthusiastic in their support⁸. Surveys in the United States, for example, have indicated that the overwhelming majority (more than 80%) of Catholics of childbearing age do not, in fact, observe the encyclical's teachings.

On the one hand, the controversial encyclical adopted the **minority report** which condemns artificial contraception, based on the following arguments:

- The constant and perennial teaching of the Church.
- The natural law asserting that certain acts and generative processes are in some way especially inviolable, precisely because they are generative. Contraception is evil because it changes an act, which is naturally oriented to procreation, into an act which is oriented to the mutual benefit of the spouses.

On the other hand, the encyclical rejected the **majority report**, which supports artificial contraception, based on the following arguments:

- Traditional teaching fails to recognize the evolutionary character of that teaching. For example, the official Church has changed its teaching in such matters as religious liberty and usury.⁹ A change in that traditional teaching would not necessarily undermine the moral teaching authority of the Church. Such a change is to be seen, rather, as a step toward a more mature comprehension of the whole doctrine of the Church.

⁸ Cleansing Fire, *The Theologians Rejection of Humanae Vitae: How it All Went Down*, available at <http://cleansingfiredor.com/2010/08/the-theologians-rejection-of-humanae-vitae-how-it-all-went-down/> (last modified Aug. 6, 2010).

⁹ RICHARD MCBRIEN, *CATHOLICISM* 986 *et seq.* (3rd ed. 1994)

- The natural-law theory of those who support the traditional teaching has been proved to be erroneous. Because of this mentality, many advances in medical science were prohibited for a time, and the same was true of other areas of scientific experimentation. The conjugal act must be viewed not as an isolated reality but in a larger context of human love, family life, education, etc. This is called the principle of totality. Sexuality is not ordered only to procreation. Sacred Scripture says not only: “be fruitful and multiply” (Genesis 1:28), but also: “they become one flesh” (2:24), portraying the partner as another self (2:18).

This article shall emphasize the most categorical support for artificial contraception in the majority opinion:

In some cases intercourse can be required as a manifestation of self-giving love, directed to the good of the other person or of the community, while at the same time a new life cannot be received. This is neither egocentricity nor hedonism, but a legitimate communication of persons through gestures proper to beings composed of body and soul with sexual powers.¹⁰

The whole controversy over the encyclical is painful and disturbing to a Catholic. But it has also aroused the ordinary Catholic to be much more aware of her own personal responsibility. It has made the Catholic realize that the Church hierarchy does not have all the answers. It has forced her to think about the role of individual conscience.

The teaching of the Catholic Church on contraception is one of the important reasons why the absolute authority of the Church has grown weaker over the years. The RH Act is a result of the deepened sense of history among Catholics. Many Catholics are now more aware that Church authorities have made wrong decisions in the past. To the mind of this author, those errors show that certain teachings should only be relative to their own times, and not permanent for all times. The author humbly appeals to Church authorities to emphasize strong leadership on moral issues such as war and peace, poverty, and corruption in government, instead of a non-issue like the RH Act.

Humanae Vitae defends the rhythm method. Thus, it rests its argument on the physiological structure of the act. However, certain contemporary

¹⁰ GARRY WILLS, PAPAL SIN STRUCTURES OF DECEIT 89–98 (2000) excerpt *available at* <http://theology1.tripod.com/readings/pyle.htm>.

theologians insist that the basic criterion for the meaning of human actions is the total person, and not some isolated aspect of the person.

This author humbly submits that the reason for an exclusive rhythm method given in *Humanae Vitae* was too strongly biological. It is likewise this author's submission that *Humanae Vitae* has opened a disconnect with Vatican II, which allowed for a wider basis for evaluating the morality of such a human act, namely, "the full sense of mutual self-giving and human procreation in the context of true love."¹¹

A Reformulation of Catholic Doctrine

After Vatican Council II, Catholic doctrines began to be reformulated under the recent historical theology. According to a Church historian, the guiding principles of this new historical theology are:

- The inadequacy of every era to define truth for future eras.
- The traditional view of revelation as the transmission of definite fixed concepts was replaced by the idea of revelation as a personal self-disclosure by which God encounters the total person and communicates with him in a historical dialogue.
- Therefore, no formula of faith can exhaust the truth. It can be exchanged for another formula more meaningful to the contemporary mind.
- Every formulation of a divine mystery is only the beginning, never the terminus.
- A theory of the development of dogma which emphasizes the social, historical, and non-conceptual forces impinging on this process.¹²

On the basis of these principles, Catholic doctrines have been reformulated. This paper shall take an overview of this process. One of the first to reformulate Catholic doctrine was a famous book entitled *A New*

¹¹ *Pastoral Constitution on the Church in the Modern World*, Note 51.

¹² Bokenkotter, *supra* note 1, at 418.

Catechism, and subtitled Catholic Faith for Adults. It was originally published in 1966, but later revised in 1970, under the general responsibility of the Dutch hierarchy. It became an international bestseller.

This so-called Dutch Catechism contained a section on Family Planning. It noted that there was a clear development in the late 1960s, both within and outside the Church, toward the use of several methods in regulating births. The Dutch Catechism said:

There is now a growing sense of the independent human value of sexuality. Sexuality and fertility are seen more clearly as values which are combined in the one totality of life, rather than as factors simply arranged in the relationship of means to an end. . . .

Are all methods of regulation of births of equal value to the Christian conscience? The council gave no answer to this question. It does, however, call on married people to ask themselves conscientiously whether the practices in question do, or fail to do, full justice to the great personal values which should be expressed in sexual intercourse and in the whole of modern life. . . . **The last word lies with the conscience**, not with the doctor or with the confessor. But reverence for life undoubtedly demands that no practices be chosen which could be harmful to health for the affective life. (Emphasis added)¹³

Nearly two decades later, in 1986, an Oxford University chaplain took note of the then raging debate on family planning after Vatican Council II. He wrote:

The resolution of this dilemma between the care for the family and responsible parenthood, on the one hand, and the sustaining love, on the other, seems to be found in contraception. But as everyone knows, the teaching of the Catholic Church forbids the use of artificial contraceptives. . . . There seems to be an impasse at this point. . . . It may be, therefore, that a positive attitude, marked by purity of heart, could help most to resolve the impasse.¹⁴

By 1994, a widely-hailed masterpiece, the book entitled *Catholicism*, stated:

¹³ NETHERLANDS BISHOPS, A NEW CATECHISM 403 (1970).

¹⁴ RODERICK STRANGE, THE CATHOLIC FAITH 145 (1986)

The birth control question, once a sharply divisive issue in the Catholic Church, is no longer a matter of intense discussion among the theologians. But it retains its importance as a paradigm of the 20th century debates concerning the nature of Catholic morality and the limits of Catholic teaching authority.

What is really the issue here, therefore, is not birth control in this generic sense but *contraception*, i.e., the intentional placing of a material obstacle to the conception of a child, e.g., a contraceptive pill, an intrauterine device, contraceptive foam, or a condom.

One side argues that contraception by such artificial means is always wrong. This remains the official teaching of the Church today. However, the other side argues that contraception may be not only legitimate under certain circumstances but even mandatory. This side speaks in terms of “responsible parenthood. .

”¹⁵

Liberation Theology

Liberation theology is a theory, originating among Latin American theologians, which interprets liberation from social, political, and economic oppression as an anticipation of eschatological salvation. Liberation theology is a species of progressive theology, which is based on the following principles:

- The Church, not just the hierarchy, is a mystery, or a sacrament.
- The Church, not just the hierarchy, is the whole People of God.
- The whole People of God participates in the mission of Christ, and not just in the mission of the hierarchy.
- The mission of the Church includes service to those in need, and not just the preaching of the Gospel or the celebration of the sacraments.

Liberation theology is a part of post-Vatican II ecclesiology, which emphasizes the nature of the Church as an earthly community of human beings who have a mission in and for the world that includes the struggle on behalf of justice, peace, and human rights.

¹⁵ McBrien, *supra* note 9, at 982.

The appearance of liberation theology has been called “one of the most significant developments of the last several decades.”¹⁶ It is called “a new way of doing theology.” Classical theology is aimed at a deeper understanding of faith. Conversely, liberation theology aims to transform the world, following the famous dictum of Karl Marx that the task of philosophy is not to understand the world, but to change the world.

Classical theology seemed removed from day-to-day experience. In contrast, liberation theology has grown out of the experience of certain Catholics with the harsh reality of the miserable poor. Classical theology interpreted Jesus’ message of the kingdom as a guide to personal morality. Liberation theology sees Jesus’ message as, above all, a call to struggle against the social forces of oppression. Liberation theology believes that the Kingdom of God is partially realized when social justice and love are advanced in society. When we take a step toward social justice and love, we take one further step toward the final consummation of the Kingdom of God.

It is the author’s view that the struggle for an RH bill to protect the health and quality of life of the mother and child, in the context of unspeakable poverty, is part of liberation theology. It emphasizes that the Church’s existence is not for itself, but for others.

According to the principal theologian of liberation theology, Gustavo Gutierrez, the Church should be a place of liberation where there is a break from an unjust social order.¹⁷ This author submits that, in the Philippines, the Church must take a clear stand against social injustice. In all humility, this author echoes the call of liberation theology: the first step in abolishing injustice is to recognize how much the Church itself is tied to the unjust system that oppresses the very poor. RH is available to the rich; why should it not be made available to the very poor?

Catholic support for RH is a call to the major themes of liberation theology in a developing country like the Philippines, namely:

- The injustices visited on the Filipino people by neocolonialism and imperialism.

¹⁶ Bokenkotter, *supra* note 1, at 453.

¹⁷ GUSTAVO GUTIERREZ, A THEOLOGY OF LIBERATION 261 (1972).

- Reinterpretation of salvation to include every form of servitude; and
- The Kingdom of God as beginning in this world, in this country, the Philippines, in this time, now.

In the light of the Filipino experience of the poor, we should take a profoundly historical approach to God. The self-revelation of God and the Filipino's human response is an ongoing historical process. The God revealed in Jesus Christ is not an "unmoved mover," but rather a God whose very essence consists of love. The RH bill is an enterprise in social justice and in love for the poor.

In 1986, the Vatican made a positive critique of liberation theology by issuing the document entitled *Instruction on Christian Freedom and Liberation*. According to the *Instruction*, the supreme principle of the Church's social doctrine is Jesus' great commandment of love. Christian love, when applied, may take various forms, in accord with the changing circumstances of history.

We now understand that, as compassionate disciples of the Lord, the Church exercises a special option for the poor, and shows them a loving preference. The compassion and love of the Church must extend toward the poor of whatever kind – to the infant in danger of being aborted and, particularly, to the poverty-stricken Filipino mother denied the basic information about her own reproductive health.

The Primacy of Individual Conscience

In 1965, Pope Paul VI issued an encyclical letter entitled *Dignitatis Humanae*, also known as *Declaration on Religious Freedom*. In Section 3, par. 4, he wrote:

Man perceives and acknowledges the imperatives of the divine law through the mediation of conscience. In all his activity, a man is bound to follow his conscience in order that he may come to God, the end and purpose of life. **It follows that he is not to be forced to act in a manner contrary to his conscience.** Nor, on the other

hand, is he to be restrained from acting in accordance with his conscience, especially in matters religious.¹⁸ (Emphasis added.)

In 1967, the same Pope Paul VI issued another encyclical entitled *Populorum Progressio*, also known as *On the Development of Peoples*. In Section 37, he wrote:

It is for the parents to decide, with full knowledge of the matter, on the number of their children, taking into account their responsibilities towards God, themselves, the children they have already brought into the world, and the community to which they belong. **In all this they must follow the demands of their own conscience** enlightened by God's law authentically interpreted, and sustained by confidence in Him.¹⁹ (Emphasis added.)

In 1993, Pope John Paul II issued his encyclical entitled *Veritatis Splendor*, also known as *The Splendor of Truth*. In Section 64, he wrote:

The authority of the Church, when she pronounces on moral questions, in no way undermines the freedom of conscience of Christians. This is so not only because freedom of conscience is never freedom "from" the truth, but always and only freedom "in" the truth, but also because the Magisterium does not bring to the Christian conscience truths which are extraneous to it; rather, it brings to light the truths which it ought already to possess, developing them from the starting point of the primordial act of faith. **The Church puts herself always and only at the service of conscience**, helping it to avoid being tossed to and fro by every wind of doctrine proposed by human deceit (cf. Eph. 4:14), and helping it not to swerve from the truth about the good of man, but rather, especially in some difficult questions, to attain the truth with certainty and to abide in it.²⁰ (Emphasis added.)

Against these encyclicals on freedom of conscience, the 1968 encyclical *Humanae Vitae* by Pope Paul VI, based on a minority report of the papal commission, strikes a discordant note. It declared as erroneous the principle of totality, under which contraception could be considered morally legitimate, in the context of the totality of a fruitful married life. Instead, the encyclical declares:

¹⁸ Pope Paul VI, *Dignitatis Humanae*, in Declaration on Religious Freedom, Section 3.

¹⁹ Pope Paul VI, *Populorum Progressio*, Section 37 (Mar. 26, 1967).

²⁰ Pope John Paul, *Veritatis Splendor*, Section 64 par. 2 (Aug. 6, 1993).

The Church calling human beings back to the observance of the norm of the natural law, as interpreted by constant doctrine, teaches that each and every marriage act must remain open to the transmission of life.²¹

Humanae Vitae by itself has drawn a great divide between Catholics. It has stirred up a storm, thus:

The negative reaction of many theologians, moralists, and non-moralists alike, was vigorous and widespread. Bishops' conferences around the world accepted the encyclical as authoritative teaching. However, some of these conferences drew attention, for example, to the **primacy of conscience**, the need to be understanding and forgiving, and the judgment that Catholics who sincerely cannot follow the encyclical's teaching are not thereby separated from the love of God. Such themes were sounded by the bishops of Belgium, Germany, The Netherlands, France, Canada, and the Scandinavian countries.²² (Emphasis added.)

Of all the bishops who supported the primacy of individual conscience, it was the Scandinavian bishops who put it best, thus:

No one, including the Church can absolve anyone from the obligation to follow his (or her) conscience. . . If someone for weighty and well considered reasons cannot become convinced of the argumentation of the encyclical, it has always been conceded that he (or she) is allowed to have a different view from that presented in a non-infallible statement of the Church. No one should be considered a bad Catholic because he (or she) is of such a dissenting opinion.

The 1971 statement made by the U.S. Sacred Congregation for the Clergy over the signature of its cardinal also declares that:

Conscience is inviolable and no person is to be forced to act in a manner contrary to his (or her) conscience, as the moral tradition of the Church attests. Thus, in pastoral practice priests must not be too quick to assume either complete innocence or moral guilt in the persons they counsel. One must recognize

²¹ Pope Paul VI, *Humanae Vitae*, Section 11 (July 25, 1968).

²² McBrien, *supra* note 9, at 990-991.

persons who are “honestly trying to lead a good Christian life.” There must be confidence “in the mercy of God and the forgiving power of Christ.”²³ (Emphasis added.)

The New Dictionary of Catholic Social Thought took note of the progress of liberal progressive Catholic thinking by analyzing the major modern encyclicals and reaching the following conclusion:

The Catholic Church, in its official pronouncements at least, continues today to affirm that natural family planning and sexual abstinence are the only morally acceptable means of controlling births.

What has become the key issue for Catholic thought in the matter of birth control, therefore, is not the intended ends sought by proponents of artificial birth control, but the morally legitimate means to the admittedly good ends that birth control advocates claim to seek and the human values that will be lost or distorted in using morally illegitimate means.

There seems to be several major concerns behind the continued opposition of Catholic social teaching to the practice of artificial means of birth control, be those means mechanical (condoms, IUDs, diaphragms, cervical caps), chemical (spermicidal agents, the “pill”), or surgical (sterilization, abortion). Those concerns focus on the dignity of man and woman, the well-being of children and families, and God’s role in the creation of new life. More cynical or suspicious views of Catholic social teaching would also see a fear and contempt for sex on the part of celibate clerics and a desire by those same celibates to maintain their power in the church and their control over the laity. Whatever merit such suspicious views may have, they are not necessary to account for the continued opposition of the official teachers of the Roman Catholic Church to artificial contraception.²⁴

The book *Christ Among Us*, which has been described as America’s most popular guide to modern Catholicism, describes the ongoing process of reformulating Catholic doctrine:

²³ *Id.* at 991.

²⁴ JUDITH DWYER, ed., *THE NEW DICTIONARY OF CATHOLIC SOCIAL THOUGHT* 85 (1994).

In this matter, as in anything, the Church has not spoken the final word, and a development of its teaching is quite possible in the future. The large majority of theologians agree that **no question of infallibility is involved. . . .**

Soon after the encyclical, 500 American theologians – in concert with many throughout the world – asserted that **for grave reasons Catholics may follow their conscience on this matter even though the Pope has spoken. . . .**

The large majority of Catholic couples have been unable to square this teaching with their consciences. Priest-sociologist Andrew Greeley estimates that nine out of 10 Catholic couples practice contraception at some time during their childbearing years. These couples may be respectful of the Church's duty to teach in moral matters, or trying to live good Christian married lives, and are willing to practice self-denial. They have tried to inform their consciences as best they can, and feel that for serious physical, financial, or psychological reasons they cannot use periodic abstinence. Their consciences tell them that another child at this time would cause great damage to their married life, and perhaps to the children they already had – and, for some, contraception presents itself as the only alternative to a possible abortion, obviously a far greater evil.

As we have seen, **it is a clear teaching that, while erroneous decisions might be made in following one's conscience, one who has tried to inform one's conscience as best one can must then follow it.**²⁵ (Emphasis added.)

If a Catholic disagrees with a moral teaching of the Church, according to an eminent theologian, we must take into account the following principles:

- **If, after proper study, reflection, and prayer, a person is convinced that his or her conscience is correct, in spite of a conflict with the moral teachings of the Church, the person not only may but must follow the dictates of conscience, rather than the teachings of the Church.**

²⁵ Anthony Wilhelm, *Christ Among Us, in A MODERN PRESENTATION OF THE CATHOLIC FAITH FOR ADULTS* 402, (6th rev. ed. 1996).

- The Church has never explicitly claimed to speak infallibly on a moral question.
- No teaching of the Church can hope to account for every moral situation and circumstance.
- The teachings themselves are historically conditioned. What may have been perceived as morally wrong in one set of circumstances would be regarded as morally justifiable in another situation.
- No individual or groups of individuals can hope to identify and grasp moral truth by relying entirely on our own resources. We are all finite and sinful.²⁶

It would be proper to end this overview on the primacy of conscience doctrine with an excerpt from a 2010 book which lists four grounds for artificial contraception:

1. Population explosion is a major issue. It is irresponsible to encourage large families – especially in the “developing world” (a term often used for the world’s poorest countries, which masks the fact that some nations are growing poorer).
2. Responsible stewardship requires adults to plan their families according to their means, their preferences, and their health.
3. Sexual intimacy within marriage is good in itself; the fact that it need no longer be linked with the possibility of conception is to be welcomed with thanksgiving.
4. HIV/AIDS is an immense problem. Its spread is more likely to be stemmed by widespread use of condoms than by unrealistic calls for sexual abstinence.²⁷

It is this author’s view that today, 2011, even within the Catholic Church, private judgment is widespread on the use of artificial contraception. It is said that Italy has a very low birth rate, even though some 80% of the

²⁶ McBrien, *supra* note 9, at 973-74.

²⁷ JOHN YOUNG, CHRISTIANITY – RN INTRODUCTION 273, (5th ed. 2010).

population claim to be Catholic²⁸. The Italian example is one illustration that one strand of Christian ethics acknowledges the supremacy of the individual Christian conscience, even over official Church teaching.

The Lesson from the Catholic Past

Today, the scientific community and society in general consider that science and religion are fully independent of each other. This author does not subscribe to the so-called conflict thesis. It is not this author's belief that there is an intrinsic intellectual conflict between the Church and science. However, this author is acutely aware that history gives us many examples of the conflict thesis and how wrong the Church was.

One example was the case of Copernicus, who was denounced by the Church in the sixteenth century for publishing a new cosmology. Copernicus announced that the sun occupied the central place in the universe, and that the earth moves around the sun. He was made to suffer for his conviction.

Another example was the case of Galileo, who was similarly denounced by the Church in the seventeenth century. Galileo supported the heliocentric view of the universe. Galileo was tried by the Inquisition, found guilty of heresy, forced to recant, and spent the rest of his life under house arrest. However, after a study conducted by the Pontifical Council for Culture in 1992, Pope John Paul II acknowledged that the Church had been wrong.

Still another example was the case of the theory of evolution, which had to struggle against misguided opposition. Like the theories of Copernicus and Galileo, the theory of evolution is now accepted by the Catholic Church. The official position now is that faith and scientific findings regarding human evolution are not in conflict.

As a conclusion, this author shall use the language of liberation theology. The Word of God is mediated through the cries of the poor and the oppressed Filipinos. Faith is the historical praxis of liberation. Faith must always be directed toward the changing of the existing social order. We have

²⁸ U.S. Department of State, Background Note: Italy (May 12, 2011) *available at* <http://www.state.gov/r/pa/ei/bgn/4033.htm>.

to participate in the struggle of the poor and the oppressed Filipino mother and child.

Let us adopt the project of theological feminism by searching the tradition for what has contributed to female subjugation. Uncontrolled pregnancies are certainly one of them. Jesus himself was radically open to woman. Jesus was a revolutionary who accepted women as equal, and rejected any use of God to perpetuate patriarchal or hierarchical relationships.

As legislators and law-abiding citizens of our republic, we are prohibited by the Equal Protection Clause from enforcing anti-female prejudice. The RH Act seeks to correct the fallacy of intrinsic female inferiority. Fathers of the Church like St. Augustine saw woman as dominated by the body, in comparison with man, who stood for the predominance of the spirit. We have since discarded that archaic view. Upon his resurrection, Jesus appeared first to women, thus sending a message. It was, and still is, the message of responsible love.

II. CONSTITUTIONAL AND INTERNATIONAL LAW

No Prohibition in the Constitution

There are a number of constitutional provisions that underlie the RH bill. But the most salient is what could be called the “Sanctity of Life” Clause found under Article 2, Sec. 12, as a declaration of state policy:

The State recognizes the sanctity of family life and shall protect and strengthen the family as a basic autonomous social institution. It shall equally protect the life of the mother and the life of the unborn from conception.

This provision does not mention the term “reproductive health” or any of its affiliate vocabularies. This is in the nature of a constitution. As explained in the 1930 case of *Lopez v. de los Reyes*, speaking of the Constitution:

It is an instrument of a permanent nature, intended not merely to meet existing conditions, but to govern the future. It does not deal in details but enunciates the general principles and general directions which are intended to apply to all new facts which may come into

being, and which may be brought within those general principles or directions.

The Constitution should not be read like a newspaper story, on the basis of which each reader can feel free to express his own interpretation. Instead, to discover the intent and meaning of the Constitution, we have to turn to a process called "constitutional construction."²⁹

In the 1938 case of *Gold Creek Mining Corp. v. Rodriguez*, the Supreme Court ruled that the fundamental principle of constitutional construction is to give effect to the intent not only of the framers, but also of the people who adopted it.³⁰ It is not sufficient to quote the opinion expressed in the records by one delegate to the constitutional convention; that would be only one person's opinion. Neither would it be sufficient to claim that a certain interpretation was the intent of the people who approved the Constitution in a plebiscite.

Hence, we are left with the conclusion that the Constitution is what the Supreme Court says it is. In other words, no legislator can authoritatively construe the meaning of the Sanctity of Life Clause, and it would be pointless to debate its meaning here in the legislature. We can save a lot of time in Congress by waiting for the proper branch of government to tell us what this Clause means – the Supreme Court.

To maintain peace and order, the sovereign people agreed to lend some of their sovereignty to the government, under terms which are defined in the Constitution. If there is no applicable provision in the Constitution, the implication is that the power has been reserved to the people in their sovereign capacity. Thus if there is no prohibition in the Constitution, then it is deduced that the people's representatives in the Congress are free to legislate on the matter. In other words, the Constitution serves merely as a limit to the police power of the State.

Accordingly, the Supreme Court ruled in the 1924 case of *People v. Pomar*: "The state, under the police power, is possessed with plenary power to deal with all matters relating to the general health, morals, and safety of the

²⁹ 55 Phil. 186 (1930).

³⁰ 66 Phil. 259 (1938).

people, and **so long as it does not contravene any positive inhibition of the organic law**” (Emphasis added.)³¹

The Constitution, directly or indirectly, does not prohibit the RH bill. Therefore, in constitutional terms, this Senate is free to enact this bill. It is now well accepted in our jurisdiction that under the “rational basis” test, so long as an act of Congress bears some reasonable relationship to the grant of power to the national government and it is not otherwise prohibited by the Constitution, a reviewing court must find the law to be necessary and proper.

If the Senate passes the RH bill, our action would amount to a legislative construction of the Constitution. The rule is that a practical construction by Congress of a provision of the Constitution is entitled to great weight and should not be lightly disregarded. Hence, if we pass the RH bill, it will enjoy a presumption of constitutionality if it is questioned in the Supreme Court.

It has been said that even if we abolish the entire Bill of Rights, all the rights enumerated would still exist, provided that we keep the Equal Protection Clause and the Due Process Clause. These two great clauses are found in our Bill of Rights, which provides: “No person shall be deprived of life, liberty, or property, without due process of law, nor shall any person be denied the equal protection of the laws.”³²

The right of the mother to protect herself and her baby from death-dealing poverty is a liberty protected under the Due Process Clause. Similarly, the right of the mother in the lowest social class is equal to the right of the mother in the highest social class, when both rights pertain to freedom of information. Thus, to make information on reproductive health accessible to the rich but not to the poor would be a violation of the Equal Protection Clause.

The Reproductive Health Bill Upholds the Right to Information

Since there is no prohibition of an RH bill in our Constitution, it is constitutional for the Senate to pass the bill, until the Supreme Court rules

³¹ 46 Phil. 440 (1924).

³² CONST. art. III, §2

otherwise. This author respectfully contends that the RH bill is positively mandated by the Bill of Rights, particularly Art. 3, which provides as follows:

The right of the people to information on matters of public concern shall be recognized. Access to official records, and to documents and papers pertaining to official acts, transactions, or decisions, as well as to government research data used as basis for policy development, shall be afforded the citizen, subject to such limitations as may be provided by law.³³

In the 1989 case of *Valmonte v. Belmonte*, the Supreme Court ruled that “the right to information goes hand-in-hand with the constitutional policies of full public disclosure and honesty in the public service.”³⁴ Critics might argue that the right to information under Sec. 7 was meant to cover only official records; but there is nothing in Sec. 7 or in the *Records of the Constitutional Commission* to support this view.

We are therefore compelled to follow the rule of constitutional construction that where the law does not distinguish, courts should not distinguish. *Ubi lex non distinguit, nec nos distinguere debemus*. In the 1903 case of *Velasco v. Lopez*, the Court ruled: “Courts are not authorized to distinguish where the law makes no distinction. They should instead administer the law not as they think they ought to be, but as they find it without disregard to consequences.”³⁵ The 1946 case of *Lo Cham v. Ocampo* also declared that the general term or phrase should not be reduced into parts and one part distinguished from the other, so as to justify its exclusion from the operation of the law.³⁶

The Reproductive Health Bill Upholds the Right to Privacy

Although the Bill of Rights does not specifically provide for a right to privacy, nevertheless it is a right protected by the Constitution, under the Due Process Clause and the Equal Protection Clause. The development of the contemporary concept of a constitutionally protected “right of privacy” in

³³ CONST. art. III, §7.

³⁴ 170 SCRA 256 (1989).

³⁵ 1 Phil. 720 (1903).

³⁶ 77 Phil. 636 (1946).

sexual matters can be traced to the 1942 case of *Skinner v. Oklahoma*,³⁷ decided by the US Supreme Court.

In *Skinner*, the Court struck down an Oklahoma law which authorized the sterilization of persons previously convicted and sentenced to imprisonment two or more times of crimes of moral turpitude. This opinion did not mention a “right of privacy” relating to sexual matters. But it established interests in marriage or procreation as areas of special constitutional significance.

In the landmark 1965 case of *Griswold v. Connecticut*³⁸, the US Supreme Court held that Connecticut laws were invalid, because they restricted the right of married persons to use contraceptive devices. The majority of the justices created a new “right to privacy.” Justice Douglas found that the “penumbras” and “emanations” of several guarantees of the Bill of Rights established this right to privacy.

In the 1972 case of *Eisenstadt v. Baird*³⁹, the US Supreme Court invalidated a law which prohibited distribution of contraceptives to unmarried persons. Thus, under the rulings in *Griswold* and *Eisenstadt*, the state has no power to forbid the use of contraceptives by adults. However, the state has the power to restrict the manufacture and sale of contraceptive devices to ensure that the products meet health, safety, and anti-abortion standards.⁴⁰

In the 1977 case of *Carey v. Population Services International*,⁴¹ the U.S. Supreme Court invalidated a law which allowed only pharmacists to sell non-medical contraceptive devices to persons over 16 years old, and prohibited the sale of such items to those under 16 years old. The majority opinion ruled that the burden on an adult’s freedom of choice could only be justified by a compelling state interest. The Court said that distribution only through pharmacists was not justified.

In the Philippines, the right to privacy was first recognized in the 1968 case of *Morfe v. Mutuc*.⁴² It was similarly upheld in the 1998 case of *Ople v.*

³⁷ 316 US 535 (1942).

³⁸ 381 US 479 (1965).

³⁹ 405 US 438 (1972).

⁴⁰ *Id.*

⁴¹ 431 US 678 (1977).

⁴² 22 SCRA 424 (1968).

Torres.⁴³ Most recently, the right to privacy was again upheld in the 2006 case of *Sabio v. Gordon*.⁴⁴ Since the Philippine Supreme Court has already recognized the right to privacy in several cases, then this right also applies to sex, marriage, and procreation, as shown by the American cases. Because of our judicial history, today, American cases are no longer decisive, but American cases remain authoritative in Philippine jurisdiction.

Constitutional Right of Parents Over Child Education

The Constitution provides: “The natural and primary right and duty of parents in the rearing of the youth for civic efficiency and the development of moral character shall receive the support of the Government.”⁴⁵

There is no equivalent provision in the United States Constitution, but in a 1990 decision, the US Supreme Court upheld what is called the constitutional “right of parents . . . to direct the education of their children.”⁴⁶

This parental right was discussed in the 1972 case of *Wisconsin v. Yoder*.⁴⁷ The U.S. Supreme Court held there that the State of Wisconsin could not require members of the Amish Church to send their children to public school after the eighth grade. The majority opinion cited due process rulings concerning parental rights. They focused on the Free Exercise Clause, and used the two-part balancing test, meaning striking a balance between public interest and individual rights. The two parts are:

1. A significant burden on the free exercise of religion would have to be shown.
2. This burden would be balanced against the importance of the state’s interest, and the degree to which it would be impaired by a religious exemption.

⁴³ 293 SCRA 141 (1998).

⁴⁴ 504 SCRA 704 (2006).

⁴⁵ CONST. art. II, §12.

⁴⁶ *Employment Division, Department of Human Resources of Oregon v. Smith*, 494 US 872 (1990).

⁴⁷ 406 US 205 (1972).

The U.S. Court found that the parents' refusal to send their children to school was based on religious belief. However, the Court found that there was a significant burden on the free exercise of religion. The *Yoder* decision was based on both the Free Exercise Clause, and the parental interest in directing the education of their children that was protected by the Due Process Clause.

Senate Bill No. 2865 (the Senate counterpart of the RH Bill) provides, in Sec. 13 for age and development, appropriate reproductive health education. If there is any objection to Sec. 13, it can easily be met by a potential amendment which in effect shall adopt the option for parents provided in the Constitution for the teaching of religion in public elementary and high schools.⁴⁸ Such an amendment would make the *Yoder* case inapplicable to the Philippines.

The Reproductive Health Bill is an Obligation Under International Law

The Constitution under Article II on the Declaration of Principles provides in Sec. II that the Philippines "adopts the generally accepted principles of international law as part of the law of the land⁴⁹." Therefore, when the Philippines becomes party to an international treaty or convention, its principles become part of our international obligation. If our country fails to discharge these obligations, we can be held liable under international law, and we run the risk of being branded as a rogue state, or as a pariah in the international community. That is what would happen should we fail to pass the RH bill.

Conservative Catholics are still opposing the RH bill. But as early as 1968, the Philippines already participated in the International Conference on Human Rights, and became a party to the Final Act, known as the Proclamation of Teheran, which explicitly provides "The protection of the family and of the child remains the concern of the international

⁴⁸ CONST. art. 14, §3, par. 3 *states that*

At the option expressed in writing by the parents or guardians, religion shall be allowed to be taught to their children or wards in public elementary and high schools within the regular class hours by instructors designated or approved by the religious authorities of the religion to which the children or wards belong, without additional cost to the Government.

⁴⁹ CONST. art. II, §2.

community. Parents have a basic human right to determine freely and responsibly the number and spacing of their children.”⁵⁰

As a Philippine commitment, the Proclamation of Teheran was followed by the 1976 International Covenant on Economics, Cultural, and Social Rights. It provides in Article 12:

1. The States Parties to the present Covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.
2. The steps to be taken by the States Parties to the present Covenant to achieve the full realization of this right shall include those necessary for:
 - (a) The provision for the reduction of the stillbirth-rate and of infant mortality and for the healthy development of the child;⁵¹

Subsequently, the Philippines became a party to the 1979 UN Convention on the Elimination of All Forms of Discrimination Against Women, also known as CEDAW. This innovative and ambitious treaty already had 187 states parties as of July 7, 2011. It provides:

Women have the right to decide freely and responsibly on the number and spacing of . . . children and to have access to the information, education, and means to enable these rights.

States Parties shall take all appropriate measures to eliminate discrimination against women in the field of health care in order to ensure, as a basis of equality of men and women, access to health care services, including those related to family planning.⁵²

The Philippines further became a state party to the Programme of Action of the 1994 International Conference on Population and Development, which includes the following commitments:

⁵⁰ Proclamation of Teheran, Final Act of the International Conference on Human Rights, U.N. Doc. A/CONF. 32/41 at 3 (1968), *available at* <http://www1.umn.edu/humanrts/instreet/l2ptchr.htm>.

⁵¹ International Covenant on Economic, Social and Cultural Rights, U.N. Doc. A/6316 (1996), *available at* <http://www1.umn.edu/humanrts/instreet/b2esc.htm>.

⁵² Division for the Advancement of Women, Convention on the Elimination of All Forms of Discrimination against Women, *available at* <http://www.un.org/womenwatch/daw/cedaw/text/econvention.htm>.

- Ensuring women's ability to control their own fertility, as one of the cornerstones of population and development policies.
- Making family planning universally available by 2015 or sooner, and calling on Governments to make these resources available.
- Reducing infant, child, and maternal mortality; and ensuring universal access by 2015 to reproductive health care, including family planning, assisted childbirth, and prevention of sexually transmitted infections, including HIV/AIDS.⁵³

To summarize, the Philippines is already committed to our RH law, and to debate this commitment at this time would be too late and pointless.

The Principle of *Pacta Sunt Servanda*

The Philippines is a party to the Vienna Convention on the Law of Treaties. It defines a treaty as "an international agreement concluded between States in written form and governed by international law, whether embodied in a single instrument or in two or more related instruments, and whatever its particular designation."⁵⁴ The instrument can be designated as a treaty, convention, protocol, covenant, charter, statute, act, declaration, etc.

The Philippines is, likewise, a party to various treaties which impose the obligation to protect reproductive health. If we fail to pass the RH bill, it is highly likely that the Philippines would be designated as "in breach of international obligation." The law of treaties plays a role in international law similar to that played by the law of contracts in municipal law. Since the Philippines is a party to various treaties providing for reproductive health of mother and child, for Congress to fail once more to pass the RH bill is tantamount to breaking a contract with other states.

⁵³ UNFPA, Programme of Action of the International Conference on Population and Development (1994), *available at* <http://www.unfpa.org/public/cache/offence/home/sitemap/icpd/International-Conference-on-Population-and-Development/ICPD-Programme.jsessionid=DC9B3A77D3A1B5EE06038D58397D0907.jahia01> (last checked: Mar. 16, 2012).

⁵⁴ Vienna Convention on the Law of Treaties, May 23, 1969 art. II, §1 par. a.

The Vienna Convention provides: "Every treaty in force is binding upon the parties and must be performed by them in good faith."⁵⁵ This provision embodies two principles: the principle of *pacta sunt servanda*; and the principle of good faith. The Latin term *pacta sunt servanda* means that agreements must be kept. The term "good faith" in law means faithfulness to one's duty or obligation.

The Philippines is a party to a number of treaties imposing the duty to protect the health of mother and child. These treaties in principle are binding only on the parties, but their effect goes further than that. These treaties are so-called "law-making treaties," because they have a strong law-creating effect. Unlike contractual treaties, law-making treaties are not dissolved, after their legal obligations have been observed. Law-making treaties create general norms for the future conduct of parties.

Law-making treaties include the conclusions of international conferences and resolutions of the UN General Assembly. The "Final Act" or other statement of conclusions of a conference of states is a form of multilateral treaty, even if it was not adopted unanimously. The resolutions of the UN General Assembly in general are not binding on member states. But when such resolutions are concerned with norms of general international law, their acceptance by a majority vote constitutes evidence of the opinions of governments.

III. SOCIOECONOMICS

It is easy to discuss reproductive health in abstract terms such as theology, constitutional law, or international law. But it is not so facile to exchange arguments over the hard facts concerning mother and child among the very poor.

Statistics on Maternal Health

According to the 2008 *National Demographic and Health Survey* by National Statistics Office (NSO), 11 mothers die every day due to pregnancy and childbirth complications, this translates to 3,000 to 5,000 mothers dying

⁵⁵ *Id.* art. 26.

every year. Out of every 100,000 live births, 162 mothers die due to complications. 11% of all deaths among women of reproductive age in the Philippines are maternal deaths.⁵⁶

The enactment of the RH Bill will affect 23 million of the reproductive age, from 15 to 49 years old. As of the latest statistics, 15 million are at the risk of pregnancy. In 2008, the Guttmacher Institute made a study⁵⁷ of pregnant Filipinas yielding the following results. In 2008, there were 3.371 million pregnancies. Out of this total, 1.82 million were classified as unwanted pregnancies. Of these unwanted pregnancies, 570,000 were terminated by induced abortions with the abortions resulting in 90,000 hospitalizations due to complications. These factors brought 3,700 maternal deaths in one year, of which 90% of the deaths occurred among women using no or natural family planning methods.

The same statistics also show a lack in healthcare facilities and providers. 56% of pregnancies were delivered at home; such a practice was particularly prevalent in rural areas. Only 44% of the sample delivered in health facilities. Also, only 62% of births were delivered by a birth professional, while 36% were delivered with only a *bilot* (traditional birth attendant). The lack of assistance by a birth professional is alarming as the skilled assistance results in a 75% reduction in birth risks.

In addition to reducing maternal and child deaths during delivery, family planning would prevent not only unwanted and high-risk pregnancies, but also abortion. Under the Penal Code, abortion is a crime, and it will remain a crime under the RH bill. In fact, one important reason to pass the RH bill is that it will reduce abortions. The Act will provide full information to any mother on the entire menu of family planning options, making it unnecessary for the mother to resort to abortion. Hence, pregnancy will result in a wanted child, not an unwanted child that the mother might be forced to abort.

In the Philippines, 1 out of 3 unplanned pregnancies end in abortion. An estimated number of abortions incidences showed that 400,000 abortions occurred in 1994⁵⁸, while another 473,400 occurred in 2004. Of those that

⁵⁶ National Statistics Office, *National Demographic and Health Survey* (2008)

⁵⁷ Guttmacher Institute & UP Population Institute, *Unintended Pregnancy and Induced Abortion in the Philippines* (2006).

resorted to abortions 9 out of 10 are married women while 87% are Catholics. Also in the same year, 91% of mothers were able to avail of antenatal care, 5% of them from a *hilot*, while the remaining 4% did not.

The groups that are vulnerable to risky pregnancies are the following: young adolescent women; women over 35 years old; women who already gave birth to three children; women whose pregnancies have short intervals. 50% of pregnant Filipinas, are not aware of the danger signs of complications, neither do they know where to go in case of complications.

These statistics lead to the question of how the government should prevent maternal death. The obvious answer is that government should provide access to skilled care during pregnancy, during childbirth, and during at least the first months after delivery. Poor women are more at risk of dying from pregnancy and pregnancy-related complications.

Voluntary family planning reduces deaths, by 20 to 35% in case of maternal death and by 20% in the case of child deaths. Lower fertility rates also reduce the incidence of poverty⁵⁹

In the National Capital Region, the fertility rate is 2.3%, the corresponding poverty rate is 7.6%. On the other hand, in Bicol, the fertility rate is 5.1% while the corresponding poverty rate is 49%. Studies also show that actual children are more than wanted children⁶⁰ with wanted children only being an average of 2.4 children while the actual children are 3.3 on the average. From these statistics, each woman has at least one more child than she wanted. 22% affirmed that their need for family planning was not met.

Poor women have three times more children than rich women with the actual fertility rate of the lowest class being 5.2% while women of the highest class only have an actual fertility rate of 1.9%. The same trend could be observed in the desired fertility rate of the two classes: 3.3% for the lowest class while 1.6% only for the highest class. Childbearing is also a risk among teenagers, particularly the uneducated where 25% have children while of the college-educated teenagers,, only 3% have children.

⁵⁹ *Supra* note 58.

⁶⁰ *Id.*

Similarly, a Canadian NGO⁶¹ released a fact sheet based on several studies. It showed that school-based sexual health education results in more parent-child communication.

Studies also show that there is a high incidence of unprotected premarital sex (40%). Moreover, 40% think that pre-marital sex is acceptable for young men while only 22% assent that it is acceptable for young women, implying a double standard with respect to premarital sex.

The Abortion Scare

Contraceptives are not abortifacient. This issue was laid to rest as early as 2006, during deliberations on House Bill No. 4643, which sought to declare contraceptives as abortive. A position paper on reproduction issued by international organizations⁶² and released by the World Health Organization, categorically stated: "None of these methods have been shown to cause the abortion of an implanted fetus. Therefore they cannot be labeled as abortifacients." The position paper covered virtually all the methods of contraception⁶³.

As part of the abortion debate, the question has been raised: **When does life begin?** Doctors and scientists do not know, and it would be presumptuous for legislators to settle this question by the expedient of parliamentary debate. We cannot settle a scientific issue by spouting anecdotal evidence to support a layman's view. Contemporary ignorance of the answer has been admitted by no less than a former professor of biochemistry, who became former dean of the UP College of Medicine. In a book published this year, 2011, the authors apparently reached the conclusion that the process of becoming human is gradual, and that there is no specific point at which a non-human entity suddenly becomes human.⁶⁴

⁶¹ The Society of Obstetricians and Gynecologists of Canada, *Myths, Misconceptions, and Misinformation About Sexual Health Education and Promotion* (2005).

⁶² World Health Organization, UNDP/UNFPA/WHO/World Bank Special Programme of Research, Development, and Research Training in Human Reproduction (2006).

⁶³ Combined hormonal methods, including pills and Evra patch; progestin-only methods including Depo Provera, implants, and mini pills; emergency contraception pills; and intrauterine devices.

⁶⁴ Scott Gilbert et al., *Bioethics and the New Embryology: Springboards for Debates* (2011).

Youth Education on Reproductive Health

The RH bill provides for RH services and information for the youth. This provision is supported by the results of a 2002 UP Population Institute survey⁶⁵, which showed the following results:

- 1.) Many young people engage in risky sexual behavior.
- 2.) Their knowledge of reproductive health problems are inadequate.
- 3.) They rarely seek medical help for reproductive health problems, and
- 4.) They have liberal views on sex and related matters.

The survey showed that many young people engage in pre-marital sex (PMS), the results being that 23% of young people ages 15 to 24 years old have had pre-marital sex experience, the distribution per gender showing that 31.1% of boys and 15.4% girls of the same age have had pre-marital sex. There is also a showing that 20% of these male youths who have engaged in pre-marital sex admitted to paying for it, while 12% admitted accepting payment for the same. Even young men who risk getting infected with HIV also suffer from inadequate knowledge. As a common practice, Filipino youth do not discuss sex at home with their parents. Therefore, it is not realistic to argue that sex discussion should be limited to the parents and the home.

Sexuality education does not encourage promiscuity among the youth. On the contrary, if young people know more about sexual health, they are even more likely to postpone sexual initiation. An American NGO⁶⁶ looked at several studies made in countries where sexuality education is being taught, and reached the conclusion that sexuality education reinforces the sense of responsibility of young people in terms of their sexual behavior. When they are given proper education on reproductive health, young people no longer feel a need to explore other sources of information on sex.

Mistimed or unwanted pregnancies result in health risks which are higher for adolescent mothers. They are more likely to have complications during labor⁶⁷ Unwanted pregnancies compel society to pay a social cost. Parents who are able to plan their families are usually able to raise and

⁶⁵ U.P. Population Institute, *Young Adolescent Fertility Survey* (2002).

⁶⁶ The National Campaign to Prevent Teen Pregnancy, *No Easy Answers* (1997).

⁶⁷ 2006 Family Planning Survey.

educate them. But poor families who cannot plan their families have to rely on government for education, health, and other goods and services.

Philippine Demographics

The branch of knowledge that deals with human population, e.g., the statistical analysis of births and deaths, is known as demography. Here are the demographics⁶⁸, the Philippine Population was predicted to reach 91.8 M in 2010, while in 2020 it will be 105.5 M, and the projection for 2040 is 126 M. This is based on a population growth rate of 2.04% a year, the third highest in Southeast Asia, with an average of 2 M Filipinos estimated to be born per year. The bulk of this population is estimated to be of the age 15 to 49 years old, the estimated percentage being 51.1%. The Philippine population could be described as “young” considering that half of the population is below 21 years old.

Implication of Demographics

The consequences of all these statistics were analyzed in the seminal 2008 paper entitled “Population, Poverty, Politics, and the RH Bill.” It was written by 27 UP economics professors, virtually every single one eminent in this field:

The population issue has long been dead and buried in developed and most developing countries, including historically Catholic countries. That it continues to be debated heatedly in our country testifies to the lack of progress in policy and action. The Catholic Church hierarchy has maintained its traditional stance against modern family planning (FP) methods, particularly modern (also referred to as “artificial”) contraceptives. On the other hand, the State acknowledges the difficulties posed for development by rapid population growth, especially among the poorest Filipinos.⁶⁹

According to the authors, a clear and consistent national population policy is long overdue. The RH bill would be a good instrument of such a policy. Hence, the RH bill would become an integral part of the strategy for

⁶⁸ National Statistics Office, Philippine Census (2007).

⁶⁹ Population, Poverty, Politics, and the RH Bill, 11 August 2008, *available at* http://www.econ.upd.edu.ph/papers/Population_Poverty_Politics_RHBill.pdf

development and poverty reduction. The country needs a population policy, together with a government-funded family planning program. A rapidly growing population has a negative impact on economic development. Rapid population growth is largely caused by the least urbanized, least educated, and poorest segments of our population.

The bigger the family, the poorer. The bigger the family, the less educated the children. The poor know this, and prefer smaller families, but they are unable to keep the family small. The 2006 Family Planning Survey showed that among the poorest women, 44% of pregnancies are unwanted. According to authors: **“Contraceptive use remains extremely low among poor couples, because they lack information about, and access, to them.”**

The lack of access to contraception results in high maternal mortality. At the present rate, the Philippines will be unable to meet the Millenium Development Goal target of 52 maternal deaths per 100,000 live births by 2015. The more children and the more they are closely spaced, the higher the risk of illness and premature deaths for mother and child alike. Everyday, 11 to 12 women die from pregnancy and causes associated with childbirth.⁷⁰ The evil of maternal death is compounded by the evil of induced and illegal abortions amounting to half a million annually.⁷¹

The 2011 National Economic Development Agency Study

Perhaps the most telling lesson taught by the 2008 study is its conclusion that: “Ensuring access to the free range of modern (“artificial”) family planning methods with appropriate information raises the success rate of achieving the desired family size. Limiting family planning options to ‘national family planning (NFP) methods only’ fails to address the social costs of mistimed and unwanted pregnancies.”

One of the authors of the 2008 study is the incumbent Secretary of Socioeconomic Planning, Cayetano Paderanga, Jr. of the NEDA. On the author’s request, Secretary Paderanga has summarized the key findings of

⁷⁰ 2003 NDHS.

⁷¹ Juarez et al. 2005.

studies related to the impact of population on reproductive health and family planning, as follows.

Continued high population growth rate is principally due to the continued high total fertility rate over the last 20 years. The large number of children, specially among the poorest families, is more a result of the inability of couples to reach their desired (i.e., smaller) family sizes due to poor access to contraceptives.

Getting out of poverty becomes difficult with larger family size. Poverty is strongly affected by population growth. Lower birth rates and slower population growth rate over the last three decades contributed to faster economic progress in developing countries. Countries with higher investments in health – including reproductive health, family planning, and women’s education – register slower population growth and faster economic growth.

Family size makes it difficult for families to emerge from poverty. This is the so-called “burden of dependency.” As family size increases, expenditures for education and health for family members decrease systematically. In the past, our country failed to achieve lower fertility and rapid economic growth. This failure is reflected in poor outcomes in human development concerns, as follows⁷²:

- 1.) High maternal mortality
- 2.) High infant and child mortality
- 3.) Poor educational performance
- 4.) High unemployment and underemployment

At the household level, large family size correlates with the following⁷³:

- 1.) Higher poverty incidence
- 2.) Lower savings and asset accumulation

⁷² World Bank 2010.

⁷³ Orbeta 2002; Orbeta 2003; Racelis 2008.

3.) Reduced per capita household expenditures for education and health.

A 2010 study by the Guttmacher Institute and UN Population Fund (UNFPA)⁷⁴ shows that maternal deaths could be slashed by 70 percent, if the world doubled investment in family planning and pregnancy-related cases. According to this latest report, investing in family planning and maternal health would have profound additional benefits, as follows:

- 1.) Increases in condom use for pregnancy prevention would simultaneously curb transmission of HIV and other STIs
- 2.) Preventing unwanted pregnancies would increase women's educational and employment opportunities, enhancing their social and economic status.
- 3.) Family savings and investment would rise, spurring economic growth and reducing poverty.⁷⁵

“Demographic Winter” Scare

In its paper on Philippine population and development, the University of the Philippines (UP) Population Institute defines the term “demographic winter” as the condition when a population no longer increases after a prolonged period of below – replacement fertility⁷⁶. A total fertility rate or TFR of 2 is the working definition of replacement fertility. A TFR below 2 sustained for a number of generations (with one generation lasting for 25 years) would produce the so-called aging society, where the majority of the population is 60 or more years old.

⁷⁴ Adding It Up: The Cost and Benefits of Investing in Family Planning and Maternal and Newborn Health (2010) *available at* <http://www.guttmacher.org/pubs/AddingItUp2009.pdf>.

⁷⁵ *Id.*

⁷⁶ U.P. Population Institute, *Frequently Asked Questions About Population and Development in the Philippine Context* (2011), *available at* <http://www.drdf-uppi.net/UPPI%20Brief%20on%20Population.pdf> (last checked: Mar. 14, 2012). The UPPI Primer was prepared specifically for Senator Santiago in response to a request from her staff for UPPI to prepare a briefing paper on the Philippine population.

Critics of the RH bill agree that a large population in the working ages will provide a boon to development, the so-called demographic bonus, because of the large labor supply. This is fallacious, because the issue is not how big the labor supply is, but how skilled the labor supply is.

To paraphrase the UP Population Institute: The Philippines may have a large pool of working-age population. But the quality of that labor pool is not optimal for economic development. They are poorly educated and not well prepared for the jobs required in the market. Further, there may be a large pool of labor. But they may be too many to be absorbed by the market, even if they have the proper education⁷⁷.

Financial Cost of RH Act

Experts estimate that it will cost government some P3 billion a year to implement the RH law. This is considered modest. In the context of promoting development in less developed countries, the higher cost-benefit ratio is obtained from family planning programs than from infrastructures investment. Similar hardware requirements for development are lumpier, time-consuming, and demand longer gestation periods.

The RH cost of P3 billion a year is only one-seventh, or 14.3 percent, of the P21 billion cost of the Conditional Cash Transfer program. The two programs should be compared. On the one hand, the RH program is self-targeting, meaning that typically, it is the poor who self-select to obtain RH services which they cannot afford on their own. The RH program is simpler and less costly to administer.

On the other hand and by contrast, the CCT program distributes cash, which is fungible, meaning that it can be replaced by another. By comparison, a reproductive health service is non-fungible. Because the CCT program distributes cash, it prevents the real danger that the cash could be diverted to unintended recipients, such as principals and schoolteachers. The CCT program is more costly in terms of direct budgetary allocation, as well as the administrative requirements.

⁷⁷ *Id.* at 4-5.

The 2011 Social Weather Station Survey

The Social Weather Stations conducted a survey for the second quarter of 2011 in June 2011. The respondents were 1,200 adults in Metro Manila, the balance of Luzon, Visayas, and Mindanao, with a sampling error margin of plus or minus 3 percent.⁷⁸

This most recent survey shows unequivocal public support for the RH Act: 73 percent want information on legal methods available from the government, while 82 percent say family planning method is a personal choice. Here are the test statements and the scores:

“If a couple wants to plan its family, it should be able to get information from government on all legal methods.”

Agree	73%
Disagree	13%
Undecided	13%

“The choice of a family planning method is a personal choice of couples, and no one should interfere with it.”

Agree	82%
Disagree	8%
Undecided	9%

“The government should fund all means of family planning, may it be natural or artificial means.”

Agree	68%
Disagree	16%
Undecided	15%

“The use of pills can also be considered as abortion.”

Agree	29%
Disagree	52%
Undecided	18%

“The use of condoms can also be considered as abortion.”

Agree	30%
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⁷⁸ Second Quarter 2011 Social Weather Survey, 82% say family planning method is a personal choice; 73% want information on legal methods available from government Aug. 11, 2011, *available at* <http://www.sws.org.ph/pr20110811.htm>.

Disagree 51%
Undecided 18%

“The use of IUD can also be considered as abortion.”

Agree 29%
Disagree 51%
Undecided 19%

“If family planning would be included in their curriculum, the youth would be sexually promiscuous.”

Agree 31%
Disagree 46%
Undecided 22%

“For me, the plan of those who oppose the RH Bill not to pay their taxes is a reasonable protest.”

Agree 32%
Disagree 39%
Undecided 26%⁷⁹

On 16 August 2011, at the Legislative-Executive Development Advisory Council (LEDAC) meeting, President Aquino announced that he has listed the RH Bill one of his priority bills⁸⁰. Thus, by this announcement, the President of the Philippines has spoken. More importantly, the greater majority of the Filipinos have spoken. In the light of these developments, the democratic option is to pass the RH Bill.

Conclusion: Marketplace of Ideas

Allow the author to conclude with one of the most famous quotes in the history of the law, written by the superlative Justice Oliver Wendell Holmes, Jr.:

But when men have realized that time has upset many fighting faiths, they may come to believe even more than they believe the

⁷⁹ *Id.*

⁸⁰ List of proposed legislative measures discussed during the LEDAC meeting, August 16, 2011 *available at* <http://www.gov.ph/2011/08/16/list-of-proposed-legislative-measures-discussed-during-the-ledac-meeting-august-16-2011/>.

very foundations of their own conduct that the ultimate good desired is better reached by free trade in ideas – that the best test of truth is the power of the thought to get itself accepted in the competition of the market, and that truth is the only ground upon which their wishes safely can be carried out. That at any rate is the theory of our Constitution. It is an experiment, as all life is an experiment.⁸¹

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⁸¹ *Abrams v. United States*, 250 US 616 (1919) (Holmes, Jr., *dissenting*).