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**Ethical Establishment & Theological Role
in the
American Hospital Ethics Committee**

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PART ONE

ETHICAL ESTABLISHMENT OF AMERICAN HOSPITAL ETHICS COMMITTEE

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1. Terminologies

AMA	<i>American Medical Association</i>
ERD	<i>Ethical and Religious Directives</i>
HEC	<i>Hospital Ethics Committee</i>
IEC	<i>Institutional Ethics Committee</i>
IRB	<i>Institutional Review Board</i>
NCCB	<i>National Catholic Conference of Bishops (USA)</i>

2. Journals and Documents

AAS	<i>Acta Apostolica Sedis</i>
Ann Int Med	<i>Annals of Internal Medicine</i>
Ann of Neuro	<i>Annals of Neurology</i>
Arch Intern Med	<i>Archives of Internal Medicine</i>
CQ Healthcare Ethics	<i>Cambridge Quarterly Healthcare Ethics</i>
Crit Care Med	<i>Critical Care Medicine</i>
DS	<i>Denzinger Schönmetzer</i>
EV	<i>Evangelium Vitae</i>
Hastings Center	<i>Hastings Center Report</i>
HEC Forum	<i>Hospital Ethics Committee Forum</i>
Issues in Law & Med.	<i>Issues in Law and Medicine</i>
J. of Applied Phil	<i>Journal of Applied Philosophy</i>
J. of Clinical Ethics	<i>Journal of Clinical Ethics</i>
J. of Fam Prac	<i>Journal of Family Practice</i>
J. of Med & Phil	<i>Journal of Medicine and Philosophy</i>
J. of Med Ethics	<i>Journal of Medical Ethics</i>
J. of Pediatrics	<i>Journal of Pediatrics</i>
JAMA	<i>Journal of the American Medical Association</i>
Law Med. & Health Care	<i>Law, Medicine and Health Care</i>
NEJM	<i>The New England Journal of Medicine</i>
Theor Med	<i>Theoretical Medicine</i>

TS	<i>Theological Studies</i>
ScrTh	<i>Scripta Theologica</i>
SM	<i>Sacramentum Mundi</i>
VS	<i>Veritatis Splendor</i>

INTRODUCTION

AN OVERVIEW

Medical technology in the healthcare system has been developing tremendously since the past half century. As we move on to the twenty-first century, we are confronted with more complicated medical, socio-economic and other related technical advances. In the midst of these developments and complexities, there are also equally perplexing ethical or moral issues which demand more attention and concern. Contemporary society is aware of these intricacies and has set out to address various critical clinical issues such as the ethical value of available medical options. This response gave birth to Bioethics, a specialized science recently established to help man tackle ethico-medical questions. However, in order to achieve this goal directly and effectively, man must either study and examine deeply his personal bioethical case, consult someone else's expertise or ask the cooperation of a group of people presumed to be capable of rendering the necessary services. Faced with an increasingly diverse complex ethical approaches, available medical options, mandatory legal demands, social pressures, etc., a general feeling of helplessness surged among these people. They were convinced that these issues cannot be resolved single-handedly. Mutual cooperation is called for among themselves – patients, healthcare givers, hospital administrators, friends and relatives, ethicists/theologians, lawyers, and other concerned members of the society–, as the best way to achieve a morally acceptable clinical decisions. In response to the growing demands for well considered moral and clinical decisions, formally organized bioethics groups called Hospital Ethics Committee (HEC) are formed.

The HEC might be an effective way to deal with the various bioethical issues in a pluralistic environment where everyone is heard and an optimum clinical and moral decision is sought for. But what can moral theological perspective offer in bioethics public forums like the HEC? In a society marked by pluralism and secularism¹ there is a need to investigate more deeply the role of rendering moral theology in the HECs.

¹ “The discipline of bioethics came of age just as secularism crested as a social movement (the 1960s) and was formed by people—including some theologians– who often found secular institutions and cause more promising than religious one. The ethos of bioethics is now pronouncedly secular...The critic against theological discourse will point to the package of problems we call “pluralism”. Religion and theology bring to public discourse particular truth claims, private languages, and special warrants that do not convince people who do not share heritages and basic assumptions about the world. Thus, to invite religious traditions to contribute to public bioethics discourse seems like an invitation to conflict and entanglement in unresolvable debates”. J. P. WIND, *What can Religion Offer Bioethics?*, in “Hastings Center Report”, 20/2 (1990) 18.

INTEREST IN THE STUDY

This study has been motivated primarily by the observation that the HEC is becoming a common tool for patients, doctors and hospital administrators, theologians and ethicists, lawyers and social health workers to make clinical and ethical decisions. Considering that HEC is one of the few «privileged» American hospital set-ups directly involved in both ethical and medical questions², it is important to know the nature and function of this emerging entity, not only from the practical standpoint of utility and efficacy, but also from the ethical or moral point of view. In other words, we want to analyze whether the establishment of HEC as an organized group exercising functions over bioethics issues is morally acceptable and valid for the people concerned.

The HEC involvement plays an important role and contribution in the clinico-ethical decisionmaking from the moment it offers an advice, provides education, formulates directives, or renders theological views to physicians and patients who, in principle, exercise autonomy and full responsibility on the various clinico-moral decisions. HEC's involvement in the bioethics forum is viewed as a factor that enhances or undermines the decisions made by these persons because such decisions depend largely on the views and approaches employed by the corresponding HEC. Hence, it is imperative to know whether or not the HEC truly fulfills its ethical role of assisting these persons. On the other hand, Christian moral perspective is viewed by many, as a concrete method in imparting ethical services to bioethics dilemmas. But under what moral basis can Christian moral approach rely on in order that it can really afford offering such services to all types of HEC groups: whether they be secularly or religiously oriented?

HEC's noble aims and functions are accompanied by numerous external and internal difficulties. Internal, refers to the HEC's organizational, administrative and existential problems such as difficulties in assessing appropriateness or not of the theologian's participation and the problem on setting-up membership qualifications in the HEC. External, on the other hand, refers to problems like how HECs are to confront the outside pressures such as the demands of state laws and the tensions that exist between the committee members and their clients. Although these features are important to have a broader grasp of the HEC, they shall be taken for granted to allow a deeper and more concrete study of the HEC's ethical role and the justification of rendering theological perspectives in the bioethics discussions. We shall show the moral justification of establishing HEC, scrutinize the HEC's ethical role and clarify the difficulties which some patients, doctors and HEC members themselves have encountered in the course of its development and implementation.

There are various types of HECs available in the different hospitals. Two general types of HECs call our attention. Those that are characterized by a secular-pluralist orientation, and those adopting theological perspectives such as the Catholic-run HECs. We are interested to know the background and nature of these two orientations. We

² "Ethics committees have largely been borne along by bursts of enthusiasm from their participants. Yet there is no scientifically validated evidence of their efficacy... Any other factor that so affected decisionmaking in healthcare would be subject to more careful scrutiny and analysis. But ethics committees today may well be considered "privileged" from such investigation". C. B. COHEN, *The Adolescence of Ethics Committees*, in the "Hastings Center Report", 20/2 (1990) 29.

believe that Catholic morals must be applied not only to religious adherents but also to those who do not share the same faith within the bioethics field.

Is it not possible for an HEC, regardless of its dominating moral orientation to always adopt and apply well-founded theological perspectives to controversial questions like assisted euthanasia to critically-ill patients, public allocation of scarce healthcare resources, provision or prohibition of hormone therapy for rape victims, etc.? We believe that in an atmosphere of pluralism, ethical discussions should be based on an authentic dialogue and open-mindedness, without falling into moral subjectivism or relativism. How can Catholic moral viewpoints be validly applied to whatever type of HEC orientation? It is interesting to investigate on the various secularist HEC's difficulties in accepting theological perspectives as its integral part or intrinsic function. It motivates us in finding out the bioethics secularist's characteristics and cultural conditions that have resulted to the existence of two distinct HECs: the secular-oriented and Catholic-oriented HEC groups.

STATEMENT OF THE PROBLEM AND GOALS

In order to come up with a clear and objective evaluation of the existence of HEC and its involvement in clinical decision making, it first describes the various features of the HEC with respect to motivating factors, organizational functions, composition, structures, and historical development. This initial phase is geared towards a thorough understanding of the subject matter in question «the American Hospital Ethics Committee» which is considered essential in the achievement of a balanced and comprehensive evaluation of HEC's ethical role and existence.

In spite of the inspiring motivations and sublime objectives of the HEC in assisting the ethical needs of anyone who seeks its services, there are some essential points which need to be ethically assessed insofar as the very existence of this entity is concerned. There are multi-faceted ethical implications that are affecting the establishment of HEC consultation which is perhaps the reason why there is presently a decline in the request for HEC services as compared to the early years of its existence. Is the HEC after all, necessary as an organized mode of providing bioethics decisions in the clinics? Ethical problems against the use of HECs may come from all parts: pressures coming from the patient's claim to self-determination, the doctor's desire to maintain his exclusive right in providing the best possible healthcare to his patients, the involvement of the other people concerned (nurses, family members, lawyers, theologians, chaplains, etc.) who also hope to be heard to assure them that the best moral and medical options are adequately contemplated.

If the general function of HECs is to give moral assistance, what is the role of offering theological perspective in the HEC forums? What moral support can be given to justify it? Can theological viewpoint in bioethics discussions applicable to non-Christians within the HEC? This is the second inquiry which has provoked us to search for the validity in offering theological perspectives in HEC's group discussions of clinical moral issues.

Therefore, these problems involve two major ethical questions which we wish to analyze. First: what ethical consideration or implications can an HEC support if it involves itself in the bioethical discussions and decisions? Would it seriously affect the

traditional doctor-patient relationship? In other words, is the presence of HECs and its involvement in decision making ethically acceptable in the face of the supposed preference over the patient's and doctor's rights in such decisions? This shall be dealt with in the first part of the thesis. If the result of this inquiry turns out to be ethically recommendable, then, the second question is: what is the place of HEC's role in offering theological reflection of Christian foundation to various decision making within a secular-pluralist society?

SOURCES AND STRUCTURE

Chapter one of part one delves on the motivating factors, historical background, objectives and functions, and organizational composition and structure of the American Hospital Ethics Committees. There are sufficient reference sources in the form of manuals, journals and commentaries on the subject matter. Nevertheless, books of exhaustive discussions are few. E. Pesqueira's doctoral thesis on the Spanish HECs from the University's Bioethics Department renders an informative discussion, although this present work attempts to improve the lay-out and emphasis. The general discussion on HEC background basically illustrates the differences existing between Catholic-oriented American HECs and secular-oriented HECs borne out by the following topics: the legal vs. Christian motivation; secular vs. theological functional perspective; the State proceedings vs. Catholic hospital directives.

Chapter two of part one begins by identifying the difficulties on the part of the doctors and patients to accept the HEC's involvement in their personal bioethics problems. The task of gathering these data is complicated because, as G. G. Greiner and J. L. Storch testify in an official HEC journal, there are certainly many journals that mention doubts on the ethical validity of HEC's existence but there are few published evaluations and critical studies related to them³. Others commented that while it is true that there are various works which deal with their existence, these works nevertheless do not necessarily explain how well the HECs function⁴. For instance, C. Cohen, an expert of the Hastings Center, observes that:

«...as ethics committees move toward adulthood, they will increasingly confront the issue of how their work should be evaluated... and yet there is no scientifically validated evidence of their efficacy. How should they determine which things they do well and which they don't»⁵.

All the aforementioned observations regarding the available materials about HEC formation and development (scarcity of evaluative data, HEC failure in critical self-

³ "A partial explanation is to be found in the practical difficulties in carrying out an evaluation, the lack of assessment, and that only a handful of studies present any data at all about the effectiveness of HECs, and these results are typically anecdotal". G. P. GRAMELSPACHER, *Institutional Ethics Committees and Care Consultation: Is there a role?* in "Issues in Law & Med.", 7/1 (1991) 81. see also: G. G. GREINER, J. L. STORCH, *HECs: Problem in Evaluation*, in "HEC Forum", 4/1 (1992) 6; KLIEGMAN, MAHOWALD, YOUNGNER, *In Our Best Interests: Experience and Workings of an Ethics Review Committee*, in "Pediatrics", 108 (1986) 178.

⁴ Cf. T. HARDING, M. UMMEL, *Evaluating the Work of Ethical Review Committees: An observation and a Suggestion*, in "J. of Med Ethics", 15 (1989) 191-194.

⁵ C. B. COHEN, *The Adolescence of Ethics Committees*, in "Hastings Center Report", 20/2 (1990) 29.

evaluation, its 'privileged' situation in spite of the lack of scientific scrutiny and analysis of data) need further evaluation. Hence, one aim of this study is to attempt to accomplish C. Cohen's aspiration of exploring more deeply into the subject matter. To achieve this goal, this study inquires into the validity of HEC's existence but of course, approaching the problem in a different way: not from the standpoint of mere statistical efficacy but rather, from the ethical or moral point of view.

To facilitate an orderly presentation of the topics in part one chapter two, it is divided into two sections. The first section deals with the various difficulties encountered by doctors when HEC is used as a partner in the clinical decision making. A corresponding ethical evaluation immediately follows which consists of a discussion on the doctor's medical and ethical competence, the value and respect for patient-doctor relationship, and the relevance of the virtue of prudence. These assertions of various doctors are analyzed to draw out appropriate arguments supporting the validity of HEC's existence and functions.

The second section demonstrates the existence of diverse attitudes of the patients towards HEC's involvement in their personal bioethics dilemmas. A thorough ethical evaluation is carried out as in the previous section. It highlights the patient's demand for personal autonomy based on its American concept as applied in bioethics issues such as: the decision making for competent and incompetent patients, patient's self-determination and protection of his best interest.

Part one closes its discussion after demonstrating that HECs have in fact adequate ethical basis for justifying its existence and functions. The HEC's ethical validity permit us to address the second part of the thesis which deals with the role, contributions and importance of offering theological perspectives within bioethics group.

Part two commences⁶ by illustrating HEC's actual situation in the US healthcare system. It shows that there are two main orientations existing in the HEC: secular orientation and religious orientation exemplified by the Catholic-run HECs.

By applying the same methodology as in the first part of the thesis, we gathered the works of some bioethics authors to find out and identify the root of skepticism with respect to the use of theological perspectives in bioethics forums like the HECs. George Schner, H. Tristram Engelhardt, Basil Mitchell and Richard McCormick are our four representative authors who have written important works relating theology and bioethics. The discussion starts from the most basic themes such as the rationality of theological arguments (G. Schner), the use of natural theology in bioethics (H. T. Engelhardt), and the more elevated perspectives on Christian moral theology in the context of pluralistic bioethics (B. Mitchell), and the relation between Catholic morals and Secular ethics (R. McCormick).

Although this set of assertions do not pretend to exhaust the diverse arguments against the use of theological perspectives in all types of HEC orientation, it nevertheless describes in a concrete manner, the secular bioethics mentality.

⁶ Part two commences in continuous numerical series of chapters as «Chapter 3» to provide the reader a correlative divisions of topics.

Part two chapter four analyzes the secular philosophical and theological arguments described above. It explains the cultural background of the problem: Secularism. The prevailing cultural outlook denies any radical break between theology and bioethics. However, there are finer points that need have to be ironed out with the view of achieving a holistic relationship, and errors that have to be corrected. It furthermore discusses some of the principal causes of the reluctance in using theological perspectives especially on the part of secular-oriented HECs: the conceptual dichotomy between faith and reason, supernatural and natural theology, Christian and human ethics. The dichotomy in the concept of faith and reason answers the secular-empiricist views of Schnier. T. Engelhardt's dichotomous views is analyzed by demonstrating that his naturalist's view of theology is inadequate since it is detached from supernatural theology. B. Mitchell's exclusivist's views and R. McCormick's secular-pluralist dichotomy between the order of ethos and the order of salvation are examined using the help of the recent document of the Magisterium and other Catholic theologian's analysis on the matter. This chapter shows the relevance of using theological perspectives in bioethics forums such as the HECs, they be of Catholic orientation or not.

The last chapter of the thesis is a practical demonstration of the adequacy and validity of using theological reflection in any bioethics HEC forum. It presents two case models which aim at drawing out concrete theological contributions to bioethics discussions. The first case is a secular-oriented HEC issue regarding a moral dilemma on prolonging life. The second case is a problem about a Catholic-run HEC policy on contraception and abortion issues.

As a whole, this work provides convincing arguments showing the ethical validity of establishing HECs establishment to render ethical advice, education and policy formulation to all people who honestly search the best moral choice and that it is recommendable for use in the hospital bioethics issues. Moreover, this investigation adequately assesses the validity of offering Catholic theological reflections in the HECs.

METHODOLOGY

Since medical bioethics promotes the study of applied ethics in medicine, this study employs a case-centered method of argumentation⁷. This mode of presentation is specifically adopted in the ethical and theological evaluations as found in the second chapter of part one and in the whole discussion of part two.

The methodology begins with the gathering of relevant data based on particular cases or views that have been observed and commented on from the books and journals. From this perspective, valid general bioethical principles and facts or firm theological notions are drawn in order to arrive at morally upright and ethically valid assessment. Although the inductive method is obviously advantageous, it is limited in providing detailed

⁷ "Ethics committees can and do engage in moral deliberation. Should these be seen as "applied moral philosophy" or something more akin to the case reasoning advocated by Jonsen and Toulmin? Applied moral philosophy –deductivism– assumes that the proper way to make moral decisions is to deduce specific judgments from general theoretical principles; conversely, that the way to justify a moral judgment is to subsume it under a general principle or theory. In contrast, a case-centered approach, begins with cases that yield unequivocally clear moral judgments, and then proceeds to more problematic ones". T. H. MURRAY, *Where are the Ethics in Ethics Committees?*, in "Hastings Center Report", 18/1 (1988) 12.

discussion of the various principles and notions. This difficulty is resolved by supplementing descriptions of these terms and principles in the footnotes.

LIMITATIONS

This study seeks to provide the bases of the ethical validity of the HEC establishment and the need to offer and contribute theological perspectives. With respect to the first objective, there are countless problematic cases from the doctor's and the patient's points of view which can be commented upon but are not included in the discussion. The reason is that firstly, this work intends to set aside those aspects which are administrative, organizational or economic in favor of those aspects which are primarily related to ethical or moral issues. Secondly, since this work does not make a statistical analysis of the bioethics cases and theological arguments, it is sufficient to consider only the significant views and cases that serve us as subjects of ethical evaluations.

The topic of «hospital committees» is in itself a practical medico-ethical theme and not an entirely ontological nor theological notion. This fact prevents us from discussing a homogeneously theological treatise familiar to moral theology. However, this thesis endeavors to maintain an adequate theological mold throughout the discussion. For purposes of order and clarity, the thesis is thus divided into two main parts.

Lastly, it can be noted that most of the discussions in part one are directed towards problems regarding the consultative role of the HEC. The consultative features are given more emphasis since this area is the most debated issue at present⁸. Nevertheless, part two rectifies this imbalance by also giving importance to other HEC functions like the formulation of hospital policy in a Catholic-run HEC.

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⁸ "Faced with the obvious complexity of successfully completing a comprehensive evaluation of HEC effectiveness, there is a strong temptation to break the evaluation down into its component parts. Thus, one would have an evaluation of the HEC in the policy formation role, and a separate evaluation of the HEC in the education role, and so forth. But this is a temptation which should be overcome, for the three roles are not as easily separated in practice as they are in theory". G. G. GREINER, J. L. STORCH, *HECs: Problem in Evaluation*, in "HEC Forum", 4/1 (1992) 7. see also: C. B. COHEN, *Is Case Consultation in Retreat?*, in "Hastings Center Report", 18/4 (1988) 23.

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Part One

ETHICAL ESTABLISHMENT OF AMERICAN HOSPITAL ETHICS COMMITTEE

PART ONE: CHAPTER 1

The American Hospital Ethics Committee: A General Overview

I. General Notion

“Hospital Ethics Committee” (HEC), is a term which refers to a special group in healthcare services that has recently surged in the field of medical ethics. The existence of the American HEC, or the Institutional Ethics Committee (IEC) as others would prefer to call it, comprises a well organized group of healthcare providers in a clinical institution who have the task of imparting ethical advice, policies, or solutions to medical issues, or perhaps, even to some legal dilemmas encountered within the clinics. It is a relatively new establishment in the hospital or institution’s organizational structure. Historically, its formation was envisioned by a general objective of delivering concrete moral assistance (mission oriented support) to the various ethical needs of patients, relatives, physician-in-charge, the institutional administrators of the hospital itself, or the society as a whole in an atmosphere of friendly and paternal confidence. But instead of immediately delving into the historical objective of the HEC formation, it would be more appropriate this time to describe the terminological concepts of this newly conceived healthcare group.

It was certain that in the early stages in the development of bioethics as a specialized field, many healthcare providers became enthusiastic in establishing institutionalized groups that would be dedicated in bioethics analysis and discussions such as the formation of hospital ethics committees. But as in most cases of pioneering projects, they were confronted by various difficulties in defining exactly the nature, composition, functions, and field of expertise these healthcare ethics organization should have⁹. Nevertheless, by 1984, Cranford and Doudera defined HEC as:

«a multi-disciplinary group of healthcare institution that has been specifically established to address the ethical dilemmas that occur within the institution»¹⁰.

⁹ “Para los Centros de Bioética y para los Comités de Bioética, el razonamiento sobre las necesidades históricas, sobre las causas, requiere considerar los orígenes culturales y epistemológicos de la bioética misma. Por eso no podemos hablar de los Centros y de los Comités de bioética sin recordar las razones del nacimiento de la bioética, su justificación epistemológica y su fundación como juicio de eticidad”. E. SGRECCIA, *Centros y comités de Bioética: orígenes culturales y situación actual*, in “Dolentium Hominum”, 26/2 (1994) 50.

¹⁰ R. CRANFORD, E. DOUDERA, *The Emergence of Institutional Ethics Committees*, in “Law, Med. & Health Care”, 12/1, (1984) 13.

This definition contain some general yet fundamental elements which should be examined more in detail in order to grasp a substantial understanding of the HEC.

Granted that Cranford's and Doudera's definition of a HEC is composed of generic concepts, the question would be: is the commonly accepted terminology "Hospital Ethics Committee" or "Institutional Ethics Committee" appropriate for such general concepts or objectives? Without prejudice to other possible terminologies applicable to the described institutional bioethics groups, I would prefer to use solely the term "Hospital Ethics Committee" or the "HEC" to maintain consistency and avoid confusion in the discussion. Throughout the evaluative study regarding the notion of "HECs", I shall attempt to explain the derivation of this particular terminology and to justify the term's appropriateness for practical use in the American hospital set-ups and in this thesis.

The broad term "Ethics Committee" appeared in the 1984 report submitted to the President of the United States recommending hospital institutions to establish a type of intra-institutional body to help the physician, patients, and administrators impart adequate answers or advice to ethical questions in medicine¹¹. Since that time, the term HEC has acquired an almost «official» standing in the medical sciences and in ethics.

The term «committee», is defined in the New Encyclopedia of Law as:

«a group of persons which is named or constituted for a certain task that is usually transitory and that it may have an administrative, consultative, political or legislative character. It is often synonymous to a «commission». A committee usually possesses a certain stability or hierarchy, with heterogeneous composition, but with minor executive character»¹².

When this meaning is applied according to Cranford and Doudera's definition of HEC, we can consider the term appropriate and adequate because the HEC «committee» connotes the existence of a group's multi-disciplinary composition and consultative task. However, many authors are aware that the consultative, administrative or legislative meaning within the term, is limited. They say that it would leave behind important bioethics committees' tasks which are also within its competence, i. e., in education and policy formation. Thus, it is not surprising why some medical literatures or groups use different names to signify similar or related concepts. For example, some ethical healthcare groups are called «Ethics Healthcare Forum» or «Bioethics Study Group»¹³, or the «Tribunal for the Sick»¹⁴. These names or terminologies may not be as precise nor as commonly employed as the hospital ethics «committee». However, it is worthwhile to mention that the users of the other congruous names share practically the same meaning as the conventional word "committee".

¹¹ Cf. PRESIDENT'S COMMISSION FOR THE STUDY OF ETHICAL PROBLEMS IN MEDICINE AND BIOMEDICAL AND BEHAVIORAL RESEARCH, *Deciding to Forgo Life-sustaining Treatment: A Report on the Ethical, Medical, and Legal Issues in Treatment Decisions*, United States Government Printing Office, Washington, D.C. 1983, pp. 160-165.

¹² G. CABANELLAS, *Comité*, in "Diccionario Enciclopédico de Derecho Usual", Heliasta, Argentina 1989, p. 218.

¹³ Cf. B. HOSFORD, *Bioethics Committees: The Health Care Provider's Guide*, Aspen Publication, Maryland 1986, p. 114.

¹⁴ Cf. F. COMPAGNONI, *Comitati Etici in Ospedale: Bioetica e Cultura*, in "Istituto Siciliano di Bioetica", 2/3 (1993) 59.

The word “ethics”, in the Hospital Ethics Committee is an important term worth clarifying so that ambiguity in philosophical notions may be avoided. There is no need to make a rigorous philosophical exposition nor an exhaustive study of the philosophical/theological implications the concept «ethics (bioethics)» might bear upon at this introductory stage of the discussion. It will be tackled more extensively in the later part of the thesis. However, inasmuch as the healthcare providers belong to a pluralistic society and have decided to use the term “ethics” to the acronym «HEC», it is understandable that the word «ethics» may be conceived from a very wide range of philosophical and theological viewpoints, schools of thought and methodological consequences. Thus, unless explicitly qualified or differentiated, I shall designate the term «ethics» in the HECs as:

«the practical science of human acts which intends to direct these free acts towards the perfect good or ultimate end of the person»¹⁵.

Aside from this, ethics should be also understood as a practical science of philosophical character. Using the science of «ethics» in a practical mode may imply the capacity of explaining in a scientific manner i.e., through human reasoning, the practical aspects of the universal principles of morality, such as the human acts, ethical norms, man’s conscience, judgments and decisions. In short, it is a scientific analysis of the different valid criteria of human morality¹⁶.

Ethics should then be understood as comprising both practical and scientific knowledge of human reasoning because it enables to distinguish, identify and live the norms or values of morality: those human acts to be regarded as good and desirable because it directs us towards the ultimate end, or judged as evil to be avoided because it leads us away from it; and those which may transform us into virtuous human persons, or prevents us from becoming vicious men¹⁷.

Some ethicists¹⁸ prefer using “bioethics” instead of simply using the term “ethics”,

«to imply that its specific field is on “life” or “living organisms” and whose practical aim is to promote understanding and provide guidance for decision makers regarding ethical issues

¹⁵ A. RODRIGUEZ-LUÑO, *Etica General*, Eunsa, Pamplona 1991, p. 27.

¹⁶ Cf. *Ibidem*. See also the same author's previous edition, *Etica*, Eunsa, Pamplona 1982, pp. 20-21.

¹⁷ “Etica se ocupa de la conducta libre del hombre, proporcionándole las normas necesarias para obrar bien. Es por ello una ciencia normativa, que impera y prohíbe ciertos actos, puesto que su fin es el recto actuar de la persona humana. Aristóteles afirma que no estudiamos ética «para saber qué es la virtud, sino para aprender a hacernos virtuosos y buenos; de otra manera, sería un estudio completamente inútil». *Ibidem*. See also: ARISTOTLE, *Nicomedian Ethics*, II, Chap. 2, 1103b 27-29.

¹⁸ The genesis of the term «bioethics» was first coined by Van Rensselaer Potter in his work “Bioethics: The Science of Survival” edited in 1970. in which he viewed the existence of this new discipline as an “ethics of survival” because of the medical ethical dangers he perceived during those times calling for a moral establishment or support. A simultaneous pioneering counterpart in using this term, defining it as “a systematic study of the human conduct in the field of life sciences and health, insofar as they are viewed in the light of values and moral principles” was employed by the Hastings Center (founded in 1969) and Kennedy Institute of ethics founded in 1971) in the United States. Cf. V. R. POTTER, *Bioethics, a Bridge to the Future*, Prince-Hall, Englewood Clif (NJ) 1971; G. RUSSO, *Storia della Bioetica: Le origini, il significato, le istituzioni*, Armando Editore, Roma 1995, pp. 19-43.

in the whole spectrum of life sciences (e.g., molecular biology, human genetics, and clinical research), and their application to human problems»¹⁹.

This statement indicates that the practical application of ethics when concretized to biomedicine, is actually a new branch within the two academic disciplines: medicine and ethics. This new specialty is popularly called “bioethics”. As a consequence, this new ethical field led to the birth and formation of institutional organizations or groups that are dedicated in discussing «bioethics» issues in medicine: the upsurge of “Hospital Bioethics Committee”.

Other people prefer using the word «biomedical ethics» instead of simply employing the term «bioethics» in some hospital committees. However, Bowen Hosford commented that “Biomedical Ethics Committee” is *excessive* because it may lead people to think that the ‘medical’ part of the first word refers only to physicians²⁰. Nevertheless the recent description released by the Office of Technology Assessment of the U.S. Congress would suffice, to explain that these terminologies are in fact one and the same thing.

«bioethics is the same as biomedical ethics which implies that the field is devoted to systematic reflection about values that underlie action in the practice of medicine and research»²¹.

The notion of HEC is not complete without mention of the peculiar organizational composition of this group. These ethics committees are organized within the «hospital» by virtue of being an institutional group. A hospital which is «institutional», means that it is situated and circumscribed in a specific place, structure or locality that are composed of various people dedicated to medical healthcare and assistance. In other words, a hospital is a healthcare institution or facility which may be called for instance, an acute care hospital, a nursing home or a hospice²², whereby these places possess the basic functions of providing health maintenance, care, treatment, therapy or cure²³.

A brief commentary of the term “Hospital” used in the acronym HEC helps to distinguish and confine the coverage of this thesis. Since hospitals are generally considered institutionally organized within particular places whereby healthcare treatment and therapy is provided, this study is therefore limited in evaluating only those types of committees which deal with the ethical and clinical problems or situations *within*

¹⁹ J. C. FLECHER, N. QUIST, A. R. JONSEN, *Ethics Consultation in Health Care*, Health Administration Press, Ann Arbor, Michigan 1989, p. 7.

²⁰ Cf. B. HOSFORD, *Bioethics Committees...*, *op. cit.* p. 113.

²¹ G. J. ANNAS, *Will the Real Bioethics (Commission) Please Stand Up?*, in “The Hastings Center Report”, 24 (1994) 19.

²² The nature of the major institutions where patients face decisions about life-sustaining treatment varies considerably. For example, «acute care hospitals» (over 7000 in the U.S. with a total of 1.3 million beds) have a dominant predisposition to prolonging life; «nursing homes» have a weaker and more variable commitment to prolonging life, but is a place where people spend time in a long-term care (LTC). «Hospices» is an alternative to LTC institution with the sole purpose of assisting the dying patients such as cancer patients who have exhausted all reasonable forms of curative treatment to live their remaining weeks or months free of symptoms and as much control as possible. Cf. PRESIDENT’S COMMISSION FOR THE STUDY OF ETHICAL PROBLEMS..., *op. cit.* pp. 106-117.

²³ Cf. B. ASHLEY, K. O’ROURKE, *Health Care Ethics, a Theological Analysis*, Catholic Health Association of the United States, St. Louis 1982, pp. 129-130.

the hospitals. This circumscription therefore excludes ethics committees of national or international organizational structures. Committees which study the ethical appropriateness of the clinical or medical researches, or moral investigations composed by a centralized, national-based structure (e.g., The Institutional Review Board or the National Commission for Protection of Human Subjects of Biomedical and Behavioral Research), or groups of international character such as the International Committee on Red Cross, the Ethics Advisory Board, are beyond the scope of this work.

II. Motivating Factors in the HEC Formation

In the world of contemporary medicine, approximately situated in the last quarter of the twentieth century, many doctors, patients and healthcare providers have begun to be confronted by new and complex ethical, legal, theological and religious factors in clinical decision-making never before encountered in the medical field. These complex factors have continued becoming more and more sophisticated until it has reached the point where the possibility of resolving them seems insurmountable. Richard McCormick commented that contemporary culture is met

«with the growing sophistication of medical technology and the expression of treatment options, the ethical and medical dimensions of many decisions have become indistinct and complex. Since both the healthcare personnel and the hospital administration presumably wish to engage in 'ethically acceptable' practices, they begun looking for help in gray areas»²⁴.

This moral worry on the part of the healthcare providers, and on their patients and families, side by side with their desire for legal protection, and religious convictions have induced themselves to consider the possibility of establishing a 'group' that would be knowledgeable, responsible, and capable in the fields of medicine, law, and ethics or moral theology. This means that this group would be engaged in the counseling, formation, recommendation and solution-making of many clinical-ethical problems in the hospital.

A notable complicating factor in today's medico-moral ambiance is the increasing sense of patient autonomy whereby on one hand, the doctor's benevolence in treating the patient the best he can might not, on the other hand, coincide with the patient's best interest²⁵. For example, there might be a conflict of interest over the patient's right to self-determination²⁶ or right to assisted suicide²⁷ over the doctor's capacity of extending treatment. Or it might also be seen in another manner: that the evaluation done by the doctor or by the patient's representative (proxy) in deciding treatment as «futile» and thus

²⁴ R. McCORMICK, *Ethics Committees: Promise or Peril?*, in "Law, Med. & Health Care", 12/4, (1984) 150.

²⁵ Cf. S. GOROVITZ, *Doctor's Dilemmas: Moral Conflict and Medical Care*, Macmillan, New York 1982, p. 36.

²⁶ Cf. L. J. NELSON, *How Should Ethics Committees Treat Advance Directives* in "Hastings Center Report", 18 (1988) 26-27; J. C. FLETCHER, *The Patient Self-Determination Act: Yes*, in "Hastings Center Report", 20 (1990) 33-35.

²⁷ Cf. T. BEAUCHAMP, *Active Euthanasia and Assisted Suicide*, in T. BEAUCHAMP, L. WALTERS (eds.), *Contemporary Issues in Bioethics*, Wadsworth Publishing, California 1994, pp.431-438.

forgoing life sustaining treatment, clashes with the patient's implied «best interest» in applying all heroic means to save his life²⁸. As a result, real ethical dilemmas have emerged. These complex ethical dilemmas gained much publicity in the American society that provoked many concerned people (especially the doctors and moralists) to form a group which could respond adequately to these problems: the necessity of forming hospital ethics committees. In response to these occurring crisis, a study-commission was set up for the first time and published an extensive report on ethical problems in medicine and biomedical and behavioral research along with a recommendation over some manners on how to decide forgoing life-sustaining treatment²⁹. This then became the fundamental document in the U.S. court legal proceedings.

As the years pass and as medical technology advances, more and more interesting ethical questions arise which needed to be addressed. To mention a few: ethical cases of prenatal abortion for various motives³⁰, reproductive technologies and surrogate parenting arrangement³¹, conflicts in religious beliefs (Jehovah's witnesses' belief over blood transfusion)³², questions on global AIDS epidemic³³, ethical responsibilities in human genetics³⁴, the role of justice in the distribution of healthcare³⁵. Very often, complicated ethical questions arise from varied medical options and sophisticated technology available in the clinics. Ethical appropriateness in using them should therefore need a thorough evaluation. And for this reason, the establishment of HEC was motivated in order to collaborate in the search for a validly reasoned-out and more acceptable moral stance in the clinical decision making.

Another motivating factor in the establishment of HEC is due to the appearance of diverse moral options and judgments offered by some ethicists or ethics consultants using various forms of «moral theories», systems or methods in solving a particular ethical issue. Moral theories are sets of ethical concepts applied by moralists in evaluating ethical questions. Depending on the ethical questions to be analyzed, moralists or persons with

²⁸ A concrete case about HEC's ethical/theological evaluation to questions involving the forgoing or prolonging of life issues is discussed in the fifth chapter.

²⁹ Cf. PRESIDENT'S COMMISSION FOR THE STUDY OF ETHICAL PROBLEMS, *op. cit.*, pp. 121-258.

³⁰ Another concrete ethical/theological HEC case on the question of contraceptive/abortive hormone as treatment to rape patients is discussed in chapter five. For a general reference on the topic, see. J. LA PUMA, C. M. DARLING, C. B. STOCKING, K. A. SCHILLER, *A Perinatal Ethics Committee on Abortion: Process and Outcome in Thirty-One Cases*, in "J of Clinical Ethics", 3/3 (1992) 192-203.

³¹ Cf. ETHICS COMMITTEE OF THE AMERICAN FERTILITY SOCIETY, *Ethics and the New Reproductive Technologies*, in "Fertility and Sterility", 53 (Supplement II, 1990) 17-21.

³² Cf. R. MACKLIN, *The Inner Workings of an Ethics Committee: Latest Battle Over Jehovahs Witnesses*, in "Hastings Center Report", 18 (1988) 15-20; W. J. WHALEN, *Jehovah's Witnesses*, Claretian Publications, Chicago 1978, p. 18.

³³ Cf. C. LEVINE, R. BAYER, *The Ethics of Screening for Early Intervention in HIV Disease*, in T. BEAUCAMP, L. WALTERS (eds.), *Contemporary Issues in Bioethics...*, *op. cit.*, pp. 571-580.

³⁴ Cf. A. SARMIENTO, G. RUIZ-PÉREZ, J. C. MARTÍN, *Ética y Genética: Estudio Ético sobre la Ingeniería Genética*, Eunsa, Pamplona 1993, pp. 107-109.

³⁵ Cf. H. T. ENGELHARDT, *Rights to Health Care*, in T. BEAUCAMP, L. WALTERS (eds.), *Contemporary Issues in Bioethics...*, *op. cit.* p. 706.

ethical knowledge make use of a certain mode of ethical reasoning to justify the moral basis and content of a particular clinico-moral issue. It is an ethical system of

«reasoning process(es) or method(s) for deciding what *ought* to be done in the face of ambiguous choices, i.e., in the face of alternative ways of acting that exhibit real inconsistencies and that are logically incompatible in some sense. In other words, ethics devises [or utilizes] methods of thinking about human behavior whereby the consequences of that behavior can be evaluated as relatively good or evil and can be judged as right or wrong in a particular setting. There are several methods of ethical decision making and for each method, several variations usually exist»³⁶.

For instance, some people make use of a set of «principles» or «norms» as rational method in an ethical analysis. Or, they may apply other systems like the utilitarian, personalist, ontological, consequential, situational, etc. methods³⁷. Moreover, such methods may either adopt or disregard theological perspectives as an integral part of moral analysis (an ethical system that differentiates religious-motivated HECs from secular-oriented HECs)³⁸.

Thus, the availability of the aforementioned ethical methodologies which attempt in achieving a more adequate moral stance becomes even more arduous to attain. A thorough analysis through group discussions and open dialogue should be done to reach it. P. Craig and companions said that the establishment of ethics groups like the HECs was motivated by the aspiration of being able to discuss and evaluate the diverse moral options to a concrete moral issue resulting from various ethical systems or methods.

The task of imparting a heterogeneous but consistent standard of adequate moral stance in a pluralistic American society with various moral theories is very challenging³⁹, especially among Christians who should be always attentive to Christ's teachings and to His Church. For instance, the U.S. Catholic Hospital Ethics Committees apply various ethical approaches or methods in explaining moral issues, but at the same time, they are guided by and attuned to the teaching Magisterium of the Church. Basic bioethics moral

³⁶ R. P. CRAIG, C. L. MIDDLETON, L. J. O'CONNELL, *Ethics Committees: A Practical Approach*, Catholic Health Association of the United States, St. Louis 1986, pp. 41-42.

³⁷ B. Ashley and K. O'Rourke group the different ethical methods or systems into the following: 1) Deontological (Duty) methodology: Noncognitivist or Emotivism, Religious Legalism, Positivism, Autonomism, Existentialism 2) Teleological (Means-ends) methodologies: Teleology and Natural Law, Utilitarianism, Situationism, Proportionalism 3) Prudential Personalism methodology: Jesus as model, Ontic Values and Disvalues, Personalism of Proportionalist, Utilitarian, or Physicalist trends. Cf. B. ASHLEY, K. O'ROURKE, *Ethics of Health Care*, The Catholic Health Association of the United States, St. Louis 1986, pp. 148-175.

³⁸ «Según la ética secular, el cambio que se ha producido en Occidente habría partido desde una ética religiosa, pacíficamente admitida, a una situación de franco pluralismo. Este cambio de coordenadas –desde una situación de dominio religioso a una pluralismo sin predominio de ninguna ética religiosa–, es el que ha proporcionado a esa ética el apelativo de «secular» o «civil» que, precisamente, intenta implantarse en el seno del pluralismo». A. PARDO CABALLOS, *El punto de vista de las hipótesis secularistas en Bioéticas: una presentación crítica*, in A. POLAINO-LORENTE (ed.), *Manual de Bioética General*, Rialp, Madrid 1994, p. 167.

³⁹ Pluralistic society can be observed as a homogeneous form of social life characterized by the presence of diversity of ideas among its constituents: «el concepto del pluralismo sirve hoy día para designar diversos caracteres de la sociedad moderna...ostenta frente a la sociedad considerada como homogénea un alto grado de heterogeneidad». M. HÄTTICH, *Pluralismo*, in «Sacramentum Mundi», vol. 5, Herder, Barcelona 1974, pp. 475-478.

reasoning may be similarly encountered from both the Catholic and non-Catholic hospital committees. However, Catholic-based HECs are backed up by a special value to Christian ethics as concrete method or system to achieve satisfactory solutions to many moral problems⁴⁰. Many secular-based HECs on the other hand, overlook the value as this system. This topic shall be furthermore discussed in the second part of this thesis.

Perhaps there are many more complicating factors that have contributed in setting up HECs. However, a noticeable aspect worth mentioning in the American HEC system is the influence of their legalistic or juridical mentality in resolving moral questions⁴¹.

Beauchamp observes that:

«Bioethics in the United States is currently involved in a complex and mutually stimulated relationship with law. The law often appeals to moral duties and rights, places sanctions on violators, and in general strengthens the social importance of moral beliefs. Morality and law share concerns over matters of basic social importance and often acknowledge the same principles, obligations, and criteria of evidence»⁴².

This description demonstrates how the American society renders relative importance to state laws over some moral issues. Although in a way, they feel protected by some juridical statements, they are also aware that,

«the law rightly backs away from attempting to legislate against everything that is morally wrong. In recent years the judges have been searching in their opinions for extra-legal mechanisms such as peer review, committees, codes of ethics, and self-regulatory procedural mechanisms that will promote morally sound judgments while also avoiding entanglement with legislatures, regulatory agencies and the courts»⁴³.

This characteristic will be seen more clearly in the course of its historical development as presented in the following pages. It will be shown how legality and morality have interacted in the complex organization and composition of Hospital Ethics Committees in the United States. Through this historical exposition, we shall arrive at a better understanding and perhaps contribute in some way to clarifying the superiority of morals over state laws. For although we know that laws are important, these laws are such only insofar as when they are in accord with what is morally upright. Thus, a phenomenon warned by the Spanish bishops can be applied,

«[Also], a reaction in the face of excesses of legalist moralism viewed as something imposed, exterior, not imprinted in the hearts of men, perceived as a yoke of servitude and not

⁴⁰ “Ethical decisions are always made within some value systems, and American society has a plurality of such systems. Therefore, Christians need to be fully conscious of their own system and to enter into dialogue with others to reduce conflict and to find some area of consensus. Thus bioethical matters require a logic which will help people make decisions which are consistent with the Christian systems of values, but which will also enable them to recognize analogies between their system of values and those of others”. Such dialogue can be encountered in the HEC. B. ASHLEY, K. O’ROURKE, *Ethics of Health Care*, The Catholic Health Association of the United States, St. Louis 1986, p. 174.

⁴¹ Cf. T. A. LONG, *More Ethics Committees, Fewer Malpractice Suits*, in “Hastings Center Report”, 14 (1984) 44; G. J. ANNAS, *Ethics Committees: From Ethical Comfort to Ethical Cover*, in “Hastings Center Report”, 21 (1991) 18-21.

⁴² T. L. BEAUCHAMP, *Ethical Theory and Bioethics*, in T. BEAUCAMP, L. WALTERS (eds.), *Contemporary Issues in Bioethics...*, op. cit., p. 31.

⁴³ *Ibid.*

as something that flows out from human fulfillment, has influenced in the demoralization of some Christians»⁴⁴.

Given that ethics is related to, but cannot be reduced to dictates of juridical law, and that ethics must in some way be considered as superior to law, then ethics committees may be one of the answers to Beauchamp's observation that "it seems inevitable that procedures to protect ethical interests that are outside the reach of the law assume greater significance"⁴⁵.

All the aforementioned motivating features in the formation of the HEC have made us realize man's sincerity in his search for the most adequate moral good not only for himself, but also for the others. Through his innate attitude of assisting and imparting the moral knowledge to those in need by involving himself through ethics discussions, he participates in one way or another in the noble task of really collaborating in search for the best moral answers to the complex demands of clinical issues of the modern age.

III. Historical Background

A. Early traces of the ethics committees

1. *The American Medical Society and the Medical Code of Ethics*

Some authors trace the historical commencement of the HEC, to the establishment of the American Medical Society whose purpose was the regulation of the professional ethics and discipline of practicing physicians.

«Hospital Medical affairs traditionally have been governed by credentialing tissues, mortality, pharmacy and therapeutics, records and other committees»⁴⁶.

This medical society was and still is responsible for approving and providing the permit to practice medicine by assuring that the doctors are adequately equipped in the medical discipline. This implies that it also possesses the authority for regulating the medical and ethical practice of these physicians⁴⁷. The traditional Professional Code of Ethics in Medicine, popularly known as the «Hippocratic Oath», is its guiding moral principle in this professional regulatory task. This ancient code, as well as other recently developed health professional codes, are basically quasi-legal, self-legislative documents developed by the medical profession that consist primarily of moral rules or rights which

⁴⁴ COMISIÓN PERMANENTE DE LA CONFERENCIA EPISCOPAL ESPAÑOLA, Instrucción Pastoral, *La Conciencia Cristiana ante la actual situación de nuestra sociedad*, Mundo Cristiano, Madrid 1990, p. 54.

⁴⁵ T. L. BEAUCHAMP, *Ethical Theory and Bioethics...*, *op. cit.*, p. 31.

⁴⁶ J. A. ROBERTSON, *Ethics Committees in Hospitals: Alternative Structures and Responsibilities*, in "Issues in Law & Med.", 7/1 (1991) 83.

⁴⁷ Cf. PRESIDENT'S COMMISSION FOR THE STUDY OF ETHICAL PROBLEMS... *op. cit.*, pp. 40-41.

implicitly appeal to general ethical principles⁴⁸. Even though they may serve as administrative and regulatory laws used to expand opportunities for care and to improve its quality, very little attention has been given to providing programmatic or organized incentives for good decision-making, practices or guidelines against inadequate ones⁴⁹.

We shall now see how this Medical Association or Society has participated in its role of conserving the ethical code of Physicians towards their patients and how and when the Ethics Committee arose as a moral forum for resolving difficult ethical problems.

2. The sterilization legislation and the 'legalization' committee

In the 1920's the United States passed a «Sterilization Legislation» that would have somehow regulated the unethical practice of this technique that resulted from the «Eugenic Movement» which was very much in fashion among the “modernist scientists” of this epoch. For instance, there was a group of physicians who made an investigation by using psychiatric patients as subjects. In view of this, they consulted the Medical Society about the possibility of creating a “committee” which would be capable of resolving their ethico-legal uncertainty regarding the sterilization of those patients since they strongly believed that their psychiatric illness could be transferable to their children⁵⁰. A committee was formed, consisting of three or four professionals, mostly physicians, who met to determine whether these patients were really «feeble-minded»⁵¹. It is curious that the committee concentrated solely on the determination of which patients were psychiatrically ill, instead of studying the morality of sterilization.

It can be noted then that although the committee was formed to resolve the ethical question of the sterilization of the «feeble-minded», this committee was solely motivated by the legal protection of the physicians concerned. This attitude could perhaps be attributed to this committee's lack of previous experience during its initial phase. This «legalistic» characteristic that occurred in its early historical phase is however still strongly maintained in the present system, as can be noted as we unfold the historical development of the American ethics committee.

3. The Code of Medical Ethics for Catholic Hospitals

In American Catholic hospitals, a different characteristic or system was taking roots at the turn of the twentieth century. In 1918, Reverend Michael P. Bourke, director of hospitals in the Detroit diocese, drafted the first ethics code which consisted of a list of ethical standards regarding surgical operations involving abortion, and was first published in the American journal *Hospital Progress* in 1920⁵². This work spread rapidly to many

⁴⁸ Cf. T. L. BEAUCHAMP, *Rights and Responsibilities*, in T. BEAUCAMP, L. WALTERS (eds.), *Contemporary Issues in Bioethics...*, *op. cit.*, p. 40.

⁴⁹ Cf. PRESIDENT'S COMMISSION FOR THE STUDY OF ETHICAL PROBLEMS..., *op. cit.*, p. 41.

⁵⁰ Cf. B. HOSFORD, *Bioethics Committees...*, *op. cit.*, p. 65.

⁵¹ Cf. J. A. ROBERTSON, *Ethics Committees in Hospitals: Alternative Structures and Responsibilities...*, *op. cit.*, p. 83. See also the court proceedings in *Buck v. Bell*, 274 U.S. 200 (1927).

⁵² Cf. T. SHANNON, *Bioethics*, Paulist Press, New Jersey 1981, p. 207.

states: “the dioceses of Hartford, Toledo, Grand Rapids and Los Angeles followed, although the Toledo Code was the one recommended to be used to all other dioceses, backed-up by the National Catholic Welfare Conference, an agency of the US bishops. In 1935, a document of the Catholic Health Association (CHA) was released to define the primary objectives of the Catholic hospitals saying that its aim was to foster the adequate care of the patients. By 1949, the now existent *Ethical and Religious Directives for Catholic Hospitals* (ERD) was first published and recognized, then followed by the so called *Code of Medical Ethics for Catholic Hospitals* drafted in 1955”⁵³. Rev. Gerald Kelly, SJ, one of the pioneers in the field of medical ethics in the United States, wrote the first comprehensive set of ERD at the request of the Catholic Hospital Association⁵⁴. CHA published these directives, which, however, had no canonical force until they were approved by a bishop for his diocese. Many dioceses with several Catholic hospitals did in fact approve the CHA directives. We shall see in the succeeding pages how this Catholic hospital code played a vital role in the HEC’s moral recommendations and counsels. I think it is best to relate this historical background in a chronological manner in order that we can see the process of HEC development through the years.

B. The Second World War and the Post War scandals

1. The Nazi experiments

During the Second World War, the Nazi medical doctors conducted numerous horrifying human experiments on living human subjects without seeking first their voluntary consent. In many instances, these victims were obliged to subject themselves to experiments of questionable or of dubious scientific aims and methodologies. But worst of all, they were treated as mere research objects devoid of the dignity worthy of human persons.

A graphic example was the experiment designed to see if conquered populations could be sterilized surreptitiously. Concentration camp inmates were told to sit at a certain desk and to fill out a questionnaire. As they did this, an x-ray machine built into the desk beamed rays at their genitals. A few weeks later, their organs were cut off to discover whether or not the test had succeeded⁵⁵. There were other barbarous wartime malpractice and “scientific projects” of this sort. For these reasons, immediately after the war, the Nuremberg Code,⁵⁶ a special international tribunal’s formulation, was implemented in order to protect the human person’s voluntary consent when taking part in whatever type of scientific experiments.

⁵³ R. P. CRAIG, C. L. MIDDLETON, L. J. O’CONNELL, *Ethics Committees: A Practical Approach...*, *op. cit.*, pp. 22-23.

⁵⁴ J. DEBOLOIS, K. O’ROURKE, *Introducing the Revised Directives: What Do They Mean for Catholic Healthcare?*, in “Health Progress”, (April 1995) 18.

⁵⁵ Cf. L. ALEXANDER, *Medical Science under Dictatorship*, in “NEJM”, 241 (1949) 42.

⁵⁶ Cf. G. HERRANZ, *Experimentación científica en el hombre*, in N. LÓPEZ MORATALLA (dir.), *Deontología biológica*, Facultad de Ciencias, Universidad de Navarra, Pamplona 1987, pp. 281-284. See also the reprint of the *Nuremberg Code* in T. BEAUCAMP, L. WALTERS (eds.), *Contemporary Issues in Bioethics...*, *op. cit.*, p. 510.

2. *The Institutional Review Board*

Ethical scandals of comparable gravity also occurred in the United States, such as the so called «Tuskegee Syphilis Cases» of 1932 in which doctors deliberately withheld the use of the newly discovered penicillin as a replacement for arsenic. Or the «Willowbrook experiments» in which retarded children were used as experimental subjects⁵⁷.

The Nuremberg Code was adopted by the U.S. immediately after its ratification in 1945. But, due to the rapid scientific and therapeutic advances, these norms were left inadequate. This led to the approval in June 1964 by the World Medical Association of the basic ethical principles to be adhered to by the biomedical researchers⁵⁸.

The American government exercised stricter measures. In 1974, in a climate generated by the abuse of science, Congress decreed that an IRB (Institutional Research Board) should be erected to protect human subjects in biomedical and behavioral research. Its main function was “to monitor the research protocols mainly by analyzing the risk-benefit ratio for the patient, by evaluating the informed consent process, and by examining the scientific procedure insofar as they might affect the safety of the human subject”⁵⁹. This institutional group received international support which led to its adoption in the revised code amended in 1975 by the 29th World Medical Association in Finland, popularly called the Helsinki Declaration⁶⁰. The IRB’s present role in the investigative world like in genetics and pharmaceutical therapeutics, plays a very important function in the approval of various proposed research projects, by seeing to it that these protocols as ethically, legally, scientifically and efficiently acceptable.

It can be observed above that the IRB intended to occupy a national, centralized ethics committee in bio-research. Its aim was similar to the HEC, except that it functioned in a nationwide level and was limited to the bio-research ethics assessment. It can be deduced that historically, the IRB structural formation and legal status would have contributed a lot in gaining experiences for the formation of the HEC in the succeeding years.

C. *Institutional Committees ad hoc*

1. *The Seattle Committee*

There are historical accounts of the establishment of *ad hoc* committees. A good example occurred in 1960 when Dr. Belding Scribner, a 30 year old professor of medicine in the University of Washington, invented the kidney dialysis shunt and opened an Artificial Kidney Center in Seattle with a maximum capacity of seven patients. In order

⁵⁷ Cf. B. HOSFORD, *Bioethics Committees: The Health Care Provider’s Guide...*, *op. cit.*, pp. 39-40.

⁵⁸ Cf. A. SARMIENTO, G. RUIZ-PÉREZ, J. C. MARTÍN, *Ética y Genética...*, *op. cit.*, p.153.

⁵⁹ Cf. B. ASHLEY, K. O’ROURKE, *Ethics of Health Care...*, *op. cit.*, p. 105.

⁶⁰ The latest amendments of the Declaration of Helsinki was made in 1989 in Hong Kong. The document can be found in the *World Medical Association Recommendations Guiding Physicians in Biomedical Research Involving Human Subjects*, Ferney-Voltaire, France September 1989.

to accommodate and to choose appropriate patients among so many, a committee was formed composed of a psychiatrist and a kidney specialist⁶¹. The criteria used was that the patients must be adults under 45 years old with no long-standing high blood pressure or coronary artery disease. They must be stable, emotionally mature and abide by dietary restrictions. As a result, many were eliminated. Yet still others would remain and this led them to form what was known as the «Life or Death Committee» whose function was to make a definitive selection based upon non-medical criteria⁶².

This example is one of the first instances of a hospital-based and clinically oriented institutional body. It can be noted that its preoccupation with ethical question of medical allocation and its desire for setting up a medico-ethical forum were valid, although the manner or methodology of applying its ethical criteria was clearly insufficient and weak. It was nonetheless proof of the practical need for the existence of a committee in resolving such ethical problem.

2. *The Medico-Moral Committee and the Catholic Hospital Directives*

Since the last publication of the Ethical and Religious Directives in 1949 by the Catholic Hospital Association of the United States, and of its revision in 1955, little was known of the existence of the ethics committees in the Catholic Hospitals. However by 1965, “the pressure on socio-economic and political conditions, rapid advances in medical technology, and the enlightened theological perspectives of the Second Vatican Council demanded that the (1955) directives be reexamined”⁶³. A group of American bishops, theologians and healthcare providers were quickly gathered together and given the task of revising this directives in the spirit of dialogue about diverse biomedical, ethical and moral contemporary questions. It aimed at responding to the pastoral intentions of the Second Vatican Council which stated that:

«beneath all that changes there is much that is unchanging, much that has its ultimate foundation in Christ, who is the same yesterday, and today, and forever. And that is why the Council, relying on the inspiration of Christ, the image of the invisible God, the firstborn of all creation, proposes to speak to all men in order to unfold the mystery that is man and cooperate in tackling the main problems facing the world today»⁶⁴.

Thus, Catholic hospitals, in collaboration with their bishops, expressed their cooperation in search for a Christian solution to the medical moral problems pervading American society during those days. They saw the need to speak up, with a spirit of cooperation, about the unchanging teachings of Christ because it seemed that

«traditional institutions, laws and modes of thought and emotion do not always appear to be in harmony with today’s world. This has given rise to a serious disruption of patterns and even of norms of behavior»⁶⁵.

⁶¹ Cf. B. HOSFORD, *Bioethics Committees...*, *op. cit.*, p. 66.

⁶² Cf. *ibid.*

⁶³ R. P. CRAIG, C. L. MIDDLETON, L. J. O’CONNELL, *Ethics Committees: A Practical Approach...*, *op. cit.*, pp. 23.

⁶⁴ VATICAN COUNCIL II, Pastoral Constitution on the Church in the Modern World, *Gaudium et Spes*, n° 10. English translation by FLANNERY, A. (ed.), Dominican Publishers, Ireland 1984.

⁶⁵ *Ibid.*, n° 7.

A commission was formed with the task of revising the Directives. By September of 1971, the Ethical and Religious Directives (ERD) for Catholic Health Facilities was approved by the Committee on Doctrine by declaring that the Directives contained nothing contrary to Catholic teaching or morality⁶⁶. As a consequence, the Catholic Bishops Conference of the United States encouraged the local bishops to promulgate these Directives. Moreover, medico-moral committees were established in hospitals so that patients and hospital healthcare providers could practically and effectively implement these Directives.

Henceforth, the 1971 Ethical and Religious Directives became the regulatory tool in all Catholic hospital ethics committees serving as fundamental Christian moral guideline in the various and difficult clinical moral issues in the hospitals. Most of the cases were initially related to reproductive issues such as questions about abortion, maternal-fetal risks, or sterilization. “They were utilized sporadically since the 1970’s [and then], they began to receive renewed and heightened attention in late 1982”⁶⁷. They progressively expanded to wider scopes and responsibilities perhaps due to their relative practical effectiveness, greater awareness or acceptance by many⁶⁸.

However, as years go by, many more changes in the healthcare management, administration, medical practices and technological treatment have occurred. For instance, when the 1971 directives was written, nothing was yet heard of about in-vitro fertilization, genetic manipulation, AIDS management, artificial hydration and nutrition and respirators of advance technology. Furthermore, it was noticed that the Catholic healthcare facility and management has been moving from the dominantly ecclesiastical mission of religious congregations to a prevalently laymen involvement⁶⁹. And presently, there is a new trend in Catholic healthcare facilities that demands greater cooperation not only among themselves but also among lay members and non-Catholic persons or secular healthcare facilities. These changes called for another revision of the then existing 1971 hospital ERD.

Another reason why the 1971 directives needed over-all revision was due to a considerable amount of legal and social changes in public health which need to be addressed urgently. For example, the numerous people in need of adequate access to healthcare like organ donation, the medicare expense dilemmas, development of «advance directives» that can lead in opening its doors to legalize euthanasia⁷⁰, are topics which need more attention.

⁶⁶ An extract of the document with its corresponding commentary on the 1971 Ethical and Religious Directives for the Catholic Health Facilities can be referred to in B. ASHLEY, K. O’ROURKE, *Ethics of Health Care*, Catholic Health Association, St. Louis MO. 1986, appendix 2.

⁶⁷ R. CRANFORD, E. DOUDERA, *The Emergence of Institutional Ethics Committees*, in “Law, Med. & Health Care”, 12/1, (1984) 13.

⁶⁸ Cf. J. LAPPETITO, P. THOMPSON, *Today’s Ethics Committee Faces Varied Issues*, in “Health Progress”, 34 (Nov. 1993) 35.

⁶⁹ Cf. J. DEBOLOIS, K. O’ROURKE, *Introducing the Revised Directives: What Do They Mean for Catholic Healthcare?*, in “Health Progress”, (April 1995) 20.

⁷⁰ Cf. *Ibidem*.

Prior to the latest 1994 ERD version, at least in 1981, the Catholic bishops had addressed some of these contemporary ethical issues in a pastoral letter, (which is still operative until now) which explained the general mission of the Catholic hospital healthcare in the name of Jesus Christ⁷¹. The value of Christian medical mission as «ethical method» in moral implementation of bioethics issues was mentioned and specifically expressed in the revised 1994 ERD⁷².

The actual 1994 ERD revision started its workshop as early as July 1988. It was composed by a subcommittee under the supervision of the Committee on Doctrine of the National Catholic Conference of Bishops (American NCCB). They also asked the support, collaboration and consultation from the following centers: The Catholic Hospital Association, the Pope John XXIII Center, the Center for Healthcare Ethics in Saint Louis University Health Sciences Center, the Medical-Moral Board of the Archdiocese of San Francisco, and the Kennedy Institute of Ethics at Georgetown University. They started working since 1990 and completed the final draft in the Autumn of 1994. In November 1994, the Bishops of the United States approved the hospital ERD revised version, and recommended their implementation by the diocesan bishops⁷³.

We can therefore say, that the 1994 ERD are up-dated sets of principles or rules that inform and guide new healthcare services under Catholic sponsorship. However, many Catholic moralists want to stress the point that:

«these standards are not set of *a priori* rules. Rather, they are conclusions drawn from a faith-inspired vision of the human person and the experience gained from providing holistic health-care»⁷⁴.

Thus, the basic function of the Directives insofar as the HEC is concerned is for it to serve as a regulatory guide benefiting patients, hospital staff, and administrators in search of a holistic healthcare mission which Christian moral guidelines can be readily offered.

The directive's contents are fundamentally based upon Christian moral grounds, although they also carry with them some aspects that can protect themselves from legal constraints. The ERD "has proved to be secure grounds for legal defense of the Catholic

⁷¹ "The theological principles which guide the Church's vision of healthcare and expressed once again the full commitment of the Church in the United States to the health care ministry". U.S. CATHOLIC BISHOP'S CONFERENCE, *Health and Health Care: a Pastoral Letter*, in "Origins", (Dec. 3, 1981) 396-402.

⁷² Cf. J. DEBOLOIS, K. O'ROURKE, *Introducing the Revised Directives:..., op. cit.*, p. 20.

⁷³ "The Directives begin with a general introduction that presents a theological basis for the Catholic health care ministry. Each of the parts that follow is divided into two sections. The first section provides the context in which concrete issues can be discussed from the perspective of the Catholic faith. The second section is in prescriptive form, stating directives which protect the truths of the Catholic faith as those truths are brought to bear upon concrete issues in health care. From a general introduction that presents the various parts and a brief scriptural and theological explanation of the healing mission of Jesus and its implications for contemporary healthcare, the text of the ERC is divided into parts: 1) The social responsibility of Catholic Health Care. 2) The pastoral and spiritual responsibility of Catholic Health Care. 3) The professional-patient relationship. 4) Issues in care for the beginning of life. 5) Issues in care for the dying. 6) Forming new partnership with health care organizations and provides". *Ibid.*, p. 22.

⁷⁴ *Ibidem*.

ethical perspective in a court of law”⁷⁵. As a matter of fact, most Federal States recognize the legal validity of these Directives. The Directive’s legal validity facilitates the rendering of Catholic moral conviction and identity⁷⁶ while fulfilling their tasks in the Catholic hospitals without fear from legal suits⁷⁷.

In contrast, non-Catholic or secularist ethics committees do not usually have legally protected hospital directives similar to the legal privileges Catholic ERD enjoy⁷⁸. Thus, secular HECs act more often by protecting themselves against legal malpractice rather than seeking predominantly the moral well-being of the persons concerned. As a result, most of their HEC topics are oriented upon legal grounds. Moreover, since they lack a common guiding principle, ethical opinions among their members tend to be too disparate and heterogeneous that at times their definitive recommendations lacked ethical consistency resulting to a more problematic situation⁷⁹. Hence, Catholic HECs effective functioning owes much to the existence of the Catholic Hospital Directives.

D. The U. S. court cases and the formal establishment of an HEC

Ethical issues which reach courts and finish with legal decisions are not uncommon to an American Society so keen for their legal rights⁸⁰. Hence, it is not surprising that the HEC historical formation and the establishment of many of its HECs are linked in various ways to court cases related to concrete medical ethical dilemmas occurring in hospitals. Moreover, due to accompanying publicity, they have even gone as far as to legislate moral questions. Public sensitivity to both moral and legal aspects led many healthcare institutions, state legislators, patients, and relatives to an urgent need in establishing bioethics committees as a means of desaturating legal cases regarding moral questions. They also realized that HEC would serve in circumventing the difficulties which arose from lack of experience in moral discernment, lack of substantial supporting legislation, and lack of individuals competent enough to give morally upright counsels, recommendations, and guidelines in the clinical setting. The following are examples of such legal interventions.

⁷⁵ R. P. CRAIG, C. L. MIDDLETON, L. J. O’CONNELL, *Ethics Committees: A Practical Approach...*, *op. cit.*, p. 27.

⁷⁶ Cf. O. N. GRIESE, *Catholic Identity in Health Care: Principle and Practice*, Pope John Center, Massachusetts 1987, p. 305.

⁷⁷ Thus, it was not surprising that as early as 1982, 41% of all American Catholic Hospitals already had existing HECs, as opposed to the 1% of the non-Catholic Hospitals. Cf. J. KALCHBRENNER, M. KELLY, D. MCCARTHY, *Ethics Committees and Ethicists in Catholic Hospitals* in “Hospital Progress”, 64 (1983) 47-51.

⁷⁸ Cf. A. L. MERRITT, *Assessing the Risk of Legal Liability for Ethics Committees*, in “Hastings Center Report”, 18/1 (1988) 13-14.

⁷⁹ Cf. J. RANDALL, *Are Ethics Committees Alive and Well?* in “Hastings Center Report”, 13/1 (1983) 10-12.

⁸⁰ Cf. S. M. WOLF, *Ethics Committees in the Courts*, in “Hastings Center Report”, 16 (1986) 12-15.

1. *The Karen Quinlan case and the Prognosis Committee*

This was a case of a 21 year old girl who, after taking Valium, Librium and Barbiturates, went into a Persistent Vegetative State and was then sustained by a respirator to keep her alive. Many years after, the New Jersey Supreme Court justices allowed the family to decide in behalf of the unconscious patient to disconnect the respirator. But that decision was not that easy to take, not only for the part of the relatives, but the society as well. The judges realized that in order to solve this ethical issue, there might be a need for establishing a committee capable of resolving difficult clinical decision problems like this. The judges thus opted for the formation of a “prognosis committee” with the intention of consulting medical specialists about whether or not the patient would have a favorable condition in the future if the respirator were to be removed. In other words, they wanted to determine if Karen could return to her “cognitive sapient state” if the respirator were withdrawn⁸¹.

Examining the operative aim of this committee, it was clear that the prognosis committee utilized in the Quinlan case was simply and literally speaking, only a consultative and juridical move to decide through mere educated guess, regarding the future medical outcome of a concrete ethical problem in question. In other words, a committee was set up to decide about an ethical issue, not by assessing them from their moral stand-point, but rather, based on medical effectiveness or utility in legal form⁸².

What can be learned from this event? It can be said that this particular case provoked the moralists and legislators to take more seriously the warning of Dr. Karen Teel that the way to improve medical decision making was for each hospitals to establish an:

«ethics committee composed of physicians, social workers, attorneys and theologians... which serves to review the individual circumstances of ethical dilemma[s] and which [provides] much in the way of assistance and safeguards for patients and their medical caretakers»⁸³.

Following Teel’s advice, this event became a historical landmark in the formal establishment of the HECs⁸⁴.

2. *The Baby Doe case*

This is a case of a 31 year old mother and a management executive father, parents of two other siblings. Their third child, Baby Doe, suffered from Down’s Syndrome (Trisomy 21), complicated by an esophageal atresia and communicating esophago-

⁸¹ Cf. C. LEVINE, *Hospital Ethics Committee: A Guarded Prognosis*, in “Hastings Center Report”, 7/3(1977) 25. See also: R. VEATCH, *Hospital Ethics Committee: Is There a Role?*, in “Hastings Center Report”, 7 (1977) 22-25.

⁸² Cf. R. BERESFORD, *The Quinlan Decision: Problems and Legislative Alternatives*, in “Annals of Neurology”, 2 (1977) 74-77; see also: G. ANNAS, *In re Quinlan: Legal Comfort for Doctors*, in “Hastings Center Report”, 6/3 (1976) 30-32.

⁸³ K. TEEL, *The Physician Dilemma, A Doctor’s View: What the Law Should Be*, in “Baylor Law Review”, 27 (1975) 6.

⁸⁴ Cf. S. YOUNGNER, *A National Survey of Hospital Ethics Committees*, in “Crit Care Med”, 11 (1983) 902-905.

tracheal fistula.⁸⁵ The parents refused a relatively good outcome esophageal surgery and intravenous feeding to Infant Doe. The doctors' and the public's options conflicted with the parents' wishes, and the case was brought in court. Two Bloomington judges upheld the parents' right to forego treatment. But many people were left unsatisfied and appealed to the Supreme Court on April 15, 1982 to override the judges' decision. The case was mooted because on that same day, Baby Doe died.

This case reached President Reagan who subsequently gave instructions to the Secretary of the Department of Health and Human Services to notify healthcare providers that Section 504 of the Rehabilitation Act should be applied to infants as it did to other handicapped people. It states that:

«It is unlawful... to withhold from a handicapped infant nutritional sustenance or medical or surgical treatment required to correct a life threatening condition if: 1) the withholding is based on the fact that the infant is handicapped; and 2) the handicap does not render the treatment or nutritional sustenance medically contraindicated»⁸⁶.

A year later, on Oct. 11, 1983, "The Baby Jane Doe Case" appeared. The case concerned an infant named Keri-Lynn, who suffered from hydrocephalus and spina bifida. The parents refused surgery, but allowed the baby to receive antibiotics, good nutrition, and nursing care. In compliance to the mentioned ruling of the Infant Doe case, the hospital was sued for not demanding surgery to the baby in spite parent refusal. As a result of an apparent conflict of values, the American Association of Pediatrics recommended the establishment of an Infant Care Ethics Committee for hospitals which aimed at studying, advising, and recommending medico-ethical decisions⁸⁷. They felt that it would be better that the pediatric ethical issues be resolved by the physicians, parents and hospital administration in order that they may not fall victims to court suits brought upon them by a stranger or by the United States Government.

These three graphic cases clearly describe that the American society has been over-legalistic in viewing the ethical problems of biomedicine. Deeper considerations of the foundations of the objective principles of morality are perceived to be wanting. For instance, there is a confusion between what is moral and what is merely legal and of the scope of the nature of morality over legality. It is true that government intervention is not at all bad in the sense that the civil law should always protect the interests of the persons concerned. Legislation guided by objective moral principles would most likely also pass regulations of morally up-right decisions. However, it is observed that not all moral decisions should fall within the sole competence of juridical laws. And this is precisely what the American Association of Pediatrics originally wanted to establish⁸⁸: that there must be an organism, such as a bioethics committee, which can have the capability and

⁸⁵ Cf. J. E. PLESS, *The Story of Baby Doe*, in "NEJM", 309 (1983) 664; Or see IN RE INFANT DOE, No. GU8204-00 Cir. (Ct. Monroe County, Ind. April 12, 1982), writ of mandamus dismissed, sub. nom. *Infant Doe v. Baker*, No. 482-S-140 (Ind. Sup. Ct., May 27, 1982).

⁸⁶ Cf. R. WEIR, *The Government and Selective Non-treatment of handicapped Infants*, in "NEJM", 309 (1983) 661-663.

⁸⁷ Cf. J. STRAIN, *The American Academy of Pediatrics Comments on the Baby Doe II Regulations*, in "NEJM", 309 (1983) 443-444.

⁸⁸ Cf. A. R. FLEISCHMAN, T. H. MURRAY, *Ethics Committees for Infants Doe*, in "Hastings Center Report" 13 (1983) 5-9.

competence of dealing with the immediate ethical problems encountered by the patient, physicians, the relatives (in this case, the parents), and hospital administrators that is not solely dependent upon legal grounds.

3. *The President's Commission for the Study of Ethical Problems in Medicine and Behavioral Research*

Initially, the Federal government was solely interested in forming a commission that would handle ethical questions concerning biomedical research and investigations. In view of this, the National Commission for the Protection of Human Subjects of Biomedical and Behavior and Research was formed in the 1970's in order to discuss ethical matters like the use of fetuses, children, prisoners and the mentally ill as possible experimental subjects in the proposed scientific protocols. Other similar commissions were also conducted. The report submitted by the President's Commission for the Study of Ethical Problems in Medicine and Biomedical and Behavioral Research was passed on March 21, 1983. It was actually a result of a "natural outgrowth of the studies on informed consent, the 'definition' of death, and access to healthcare and because it [seemed to us to] involve some of the most important and troubling ethical and legal questions in modern medicine"⁸⁹. This report is a very extensive and comprehensive work describing ethical, medical and legal issues in treatment decisions, and more concretely, on the questions related to the decisions to forego life-sustaining treatment.

It was noted that immediately after the Federal Government's authorization and support to this commission ended in 1983, the usual academic-based bioethics departments regained more strength and prestige in the field of biomedical ethical issues. Examples of these academic bioethical departments are the Institute of Society, Ethics and the Life Sciences (popularly called the Hastings Institute), the Center for Bioethics, and the Kennedy Institute of Ethics in Georgetown University, Washington D.C.

This phenomenon coincided with the resurgence of the establishment of HECs brought about by this commission's suggestion that healthcare institutions should develop and utilize methods of internal review that will permit all relevant issues to be explored and all opinions to be heard and that will improve communication among the full treatment team and the patient's family members.

E. Today's HECs

After the widely accepted report of the 1983 President Commission was formally endorsed, HEC establishment has grown exponentially in the last ten years. Statistics vary from place to place, but there is a general upward trend. For example, in Maryland hospitals, "eighty-nine percent of the hospitals in the state have established patient care

⁸⁹ Letter to the President sent by the chairman, M. B. ABRAM, of the PRESIDENT'S COMMISSION FOR THE STUDY OF ETHICAL PROBLEMS IN MEDICINE AND BIOMEDICAL AND BEHAVIORAL RESEARCH, *Deciding to Forgo Life-sustaining Treatment : A Report on the Ethical, Medical, and Legal Issues in Treatment Decisions*, op. cit., intro. page.

advisory committees or ethics committees”⁹⁰. Similarly, in a survey of the Catholic Health Association member hospitals, “92% indicated that they have formal ethics committees at their institutions. Sixty-two percent said their ethics committees were formed between 1985-1989”⁹¹.

After making a thorough historical view of our field of study, it can be summarized by saying that the intention for which the HEC was formed was undoubtedly noble and welcome in a world sown with too complicated and intricately woven ethical issues that demanded concrete moral decisions. While it is true that a great enthusiasm was evident at the start of the project, this does not necessarily mean that they enjoyed a safe voyage towards a fulfilling goal, largely because of the ethical complexities that the HEC establishment and functions imply, especially when their ethical recommendations result in an apparent conflict of values between patients and healthcare givers. A detailed study will be made after making a clear description of the following topic.

IV. The HEC Organization

After a detailed review of the motivating and historical aspects of the HEC formation, this section shall deal with a thorough description of how the HEC is generally organized. Organizational structure means the description of the HEC’s aims, functions, composition, and set-up. It is a bit complicated to give an exhaustive demonstration of the various existing HEC organizational forms and structures because very often one HEC organizational formation and establishment can entail a different functional type and mode from the others. One factor is due to the diverse objectives each group might have. For instance, one HEC group’s organizational structure would rely largely upon the hospital administration’s general organizational objectives, directives, by-laws and roles, formed under foundational aims of a particular healthcare institution. Or due to the employment of concrete and specific «ethical approaches» in rendering ethics services in the committee discussions, these approaches or ethical methods may affect the HEC aims and functions as well. In fact, there are various special functions available whose aims and functions are reflected according to the various ethical principles and ethics approaches these particular HEC organizers and members assume. Nevertheless, I shall describe here a schematic presentation of the most commonly used HEC organizational formation by presenting first, their roles or functions and then, by making commentaries regarding the reasons for which they were intended in such manner. It is hoped that through this exposition, we may be able to have a sufficient grasp of the HEC set-ups which will later become a relevant factor in comprehending the validity or convenience of their existence. Moreover, such understanding would help us to focus our attention not solely to the mere pragmatic utility of the HEC as means to acquire adequate ethical advice in the hospital discussion-making, but rather, to the identification and evaluation of their moral perspectives as well.

⁹⁰ D. HOFFMAN, *Does legislating Hospital Ethics Committees make a Difference? A Study of Hospital Ethics Committees in Maryland, the District of Columbia and Virginia*, in “Law, Med. & Health Care”, 19/1-2 (1991) 105.

⁹¹ J. LAPPETITO, P. THOMPSON, *Today’s Ethics Committee Faces Varied Issues*, in “Health Progress”, 34 (Nov. 1993) 34.

A. HEC functions

Although HEC organizations come in various forms, they can be grouped according to their functions. It is viewed that the majority of HECs assume a mission-oriented role or function⁹². This means that the organizational role is directed towards rendering ethical service to patients and healthcare providers (among doctors, nurses and hospital administrators), and by providing them ethical assistance in terms of education, policy formation, and case consultation. These functions are commonly called the “big three” or the “traditional” role of the HEC⁹³.

Aside from these traditional HEC functions, it may also assume secondary functions. It can be noticed that the presence of HEC secondary functions may be a means to discern what type of HEC ethical principles they follow. The employment of these additional functions in a particular HEC can create an artificial yet practical method of grouping and differentiating the numerous types of existing HEC organizations. In most HEC compositions, there are structural and functional organizations which are common or traditional to many, and those added secondary functional forms which seem to call some special attention, not because of their peculiarity or ambiguity, but because of their wide and exceptional acceptance from some identified groups. I am referring to the special or secondary functional concern offered by most Catholic HECs: the functional role of providing not only purely bioethical orientation, but also of providing higher moral values, i.e., Christian values. R. R. Craig identified this specific function as the “role of providing theological reflection”⁹⁴.

In explaining the different HEC traditional and secondary functions, let me start by commenting on the proposed guideline prepared by the prestigious American ethics institute, the Hastings Center, a year after the publication of the President’s Commission recommending the ethics committee utility. This statement was occasioned by the uncertainty on the part of many healthcare providers of arriving at an up-right moral clinical decision over terminally ill patients and the availability of life support treatment. This resulted into a recommendation specifying the diverse manners on how bioethics might be implemented in many healthcare institutions such as the HECs. It stated that an HEC

«can initiate educational programs within the institution. They can also formulate institutional policies and guidelines in ethically sensitive areas, monitor compliance with those policies, and undertake needed policy revision. Finally, they can advise on particular cases and serve as a forum for discussing and resolving disagreement about treatment decisions. In a sense, all of these functions are always of educating people on specific ethical issues and more generally on the nature and role of medical ethics. [An HEC] might decide to take on all of these functions, or might decide to take on some but not others»⁹⁵.

⁹² Cf. D. SCHIEDERMAYER, J. LA PUMA, *The Ethics Consultant and Ethics Committees, and their Acronyms: IRBs, HECs, RM, QA, UM, PROs, IPS, and HREAPs*, in “CQ in Healthcare Ethics”, 2 (1993) 469.

⁹³ Cf. J. M. GIBSON, T. K. KUSHNER, *Will the Conscience of an Institution Become Society’s Servant?*, in “Hastings Center Report”, 16 (June 1986) 10.

⁹⁴ R. P. CRAIG, C. L. MIDDLETON, L. J. O’CONNELL, *Ethics Committees: A Practical Approach...*, *op. cit.*, p.4.

⁹⁵ HASTINGS CENTER (ed.), *Guidelines on the Termination of Life-Supporting Treatment and the Care of the Dying*, Indiana University Press, Indiana 1987, p. 100.

The recommendation given above has shown that the HEC would play an important role in providing ethics to patients and healthcare givers. And it did not take too long until many people realized the seriousness of this recommendation when they were confronted by increasingly urgent, sensitive and difficult ethical concerns going out of control. So, Hastings Center realized the practical solution of establishing an ethical institution of local clinical magnitude like the HECs, which would be capable in getting into close contact with the persons concerned through education, formulation of hospital policies, and at times through giving particular advice regarding difficult moral issues in the hospital set-up. I shall describe these one by one.

1. Education

One of the most important HEC function is to provide education, i.e., to teach the HEC members and interested persons like patients or other concerned individual to know in a scientific and comprehensive manner the clinical and ethical fundamental points at issue. HEC education program may involve:

«improving the understanding of the institution's staff and serving as a focal point for multi-disciplinary discussion and education on medico-legal and bioethical issues»⁹⁶.

This is done in two phases or modes. First, to teach the clinical and ethical fundamentals or cases of special interest among its HEC members. It is aimed at training its own members mostly coming from medical and nursing staff, about the various fundamental ethical principles commonly encountered in biomedical field. This is done by giving formal or informal classes, meetings, symposia, grand rounds or in-service training. At times they can be in the form of preceptorship or supervised self-study. This initial educative phase is oriented on the following objectives: to develop their faculties identify ethical issues and to enable them to scientifically analyze and ascertain logical advice; to have the readiness in considering what types of procedures the Institutional Ethics Committees wish to follow if it undertakes the prospective review of ongoing cases and; to discover which ethical issues are arising within the institution⁹⁷.

The second task is geared at instructing other interested individuals not directly involved in the committee, by means of lectures or seminars conducted in the hospital or university conference halls.

Almost all ethicists and healthcare providers agree that this specific educative function of the HEC has succeeded well and that in most cases it occupies a preferred and primary role among all other HEC functions⁹⁸. Its success is logical because this HEC task is only confined to rendering informative or descriptive moral decision-making without personally intervening into actual and specific cases of individuals concerned.

⁹⁶ R. CRANFORD, E. DOUDERA, *The Emergence of Institutional Ethics Committees*, in "Law, Med. & Health Care", 12/1, (1984) 16.

⁹⁷ Cf. GUIDELINES ON THE TERMINATION OF LIFE-SUPPORTING TREATMENT AND THE CARE OF THE DYING..., *op. cit.*, p. 103.

⁹⁸ Cf. B. C. THORNTON, D. CALLAHAN, J. L. NELSON, *Bioethics Education: Expanding the Circle of Participants*, in "Hastings Center Report", 23/1 (1993) 28.

Perhaps the difficulty occurs when the HEC assumes a peculiar ethical line of thought that might conflict with the commonly accepted moral views of the rest of the participants. Nevertheless, the prediction given by the Catholic Health Association in September 1983 which says that educative function shall dominate HEC's tasks is now a reality⁹⁹.

Although educative function occupies the main bulk of all types of HECs, the Catholic-run HECs take this task more seriously because they are also motivated in rendering moral educative functions with Christian ideals. They are aware of their great responsibility in promoting Christian values to all those who come in contact with them. This task is well specified in the Catholic hospital directive, as mentioned earlier.

Hence, the HEC's general function in imparting education is aimed at orienting oneself, at learning among themselves as a group, at extending such knowledge to others and the community regarding the various ethical and clinical fundamentals in bioethics in order that they may be able to give a scientific, competent, reasonable and responsible moral advice to everyone¹⁰⁰.

2. Policy development

Hospital policies are guidelines or regulations issued by the administrative staff which state in a clear and explicit manner the various rules, indications and explanations for adopting certain ethical guidelines to be up-held by such institution¹⁰¹.

The HEC policy formation initiates its role by studying the different moral cases existing within the hospital. After a determined period of investigation and deliberative consultation among HEC members regarding particular ethical problems of these cases, they finally convene and pass concrete ethical guidelines by means of specific documentary formulations called the hospital directives or policies of administrative level. They serve as moral guidelines for hospital use. Examples of these types of formulations are the recommendations on how to resolve ethical questions related to the determination of death, orders not to resuscitate (commonly called the DNR orders), forgoing life-sustaining treatment, supportive care, and treatment of handicapped newborns¹⁰². Hospital guidelines are essential to facilitate the administration's effective implementation of their concrete over-all mission, objective and aim, both for practical and legal purposes. The HEC helps the administration and staff in their implementation. Aside from this, the HEC's function becomes more indispensable whenever these policies

⁹⁹ "Education as the principal purpose of institutional committees [due to] the continued development of new medical technology, with its attendant ethical challenges, suggests the continued dominance of this purpose well into the 1990's". M. J. KELLY, D. McCARTHY, *Ethics Committees: A Challenge for Catholic Health Care*, Pope John Center and the Catholic Health Association 1984, p. 7.

¹⁰⁰ Orientation should include a discussion of definitions and ethical distinctions, analysis of the different directives, laws, principles, or particular cases. Cf. J. W. ROSS, *Handbook for Hospital Ethics Committees*, American Hospital Publishing, Illinois 1986, pp. 49-52.

¹⁰¹ Cf. PRESIDENT'S COMMISSION FOR THE STUDY OF ETHICAL PROBLEMS IN MEDICINE AND BIOMEDICAL AND BEHAVIORAL RESEARCH, *Deciding to Forgo ... op. cit.*, p. 23. It is also called a hospital code which means: "a statement of values, and assertion of goals, and/or an expression of rules whose purposes all focus on good decision making and behavior". CATHOLIC THEOLOGICAL SOCIETY OF AMERICA REPORT, in "Hospital Progress", 64 (1976) 49.

¹⁰² Cf. R. MACKLIN, *Making Policy by Committees*, in "Hastings Center Report", 18/4 (1988) 26.

need to be laid down in the light of the newest medical information or when it requires careful interpretation that should demand coherence in its formulation and firmness in the use of moral standards¹⁰³. For these reasons, the HEC can participate in revising, updating, improving, or refining existing guidelines.

A policy has four elements: a statement of the policy, statement of principles, a list of definitions and a list of procedures. They are usually brief in structure which according to many bioethics experts should carry an advisory rather than a mandatory or authoritative value¹⁰⁴.

R. P. Craig identified six specific roles of the policy development¹⁰⁵. For him, a set of ethical directives or code of hospital ethics may be: 1) Instructional: which provides moral and ethical information to the uninformed; 2) Declaratory: which declares the group's values, goals and objectives to its own members and others; 3) Conservative: which upholds certain essential standards of behavior that conserve the group's unity and identity; 4) Policy Setting: which provides a definite method of action to guide and determine decisions and to evaluate behavior once the decisions have been taken; 5) Arbitrational: which enunciates principles and establishes or allows procedures for the resolution of conflicts of consciences, and; 6) Coercive: which creates varying degrees of social pressure or sanction to guarantee adherence to a certain ethical behavior and to provide both internal and external identification.

3. Consultation and case review

R. Cranford and E. Doudera describe consultative or case review function by stating that through this role, the committee would be able to discuss the ethical and social concerns of interested parties in a personalized way (by consultation), or in a concretized manner (by case review). Through this function, the ethics committee actually and directly intervenes in the moral case study of persons involved in the healthcare dilemmas¹⁰⁶.

In practice, case consultation is done whenever a patient, patient's family member, nurse, physician, or any other member of the healthcare team brings a specific ethical dilemma to the HEC for deliberation. A forum is formed in which different ethical opinions and approaches are heard, studied and commented. After concrete ethical issues presented in the clinical case are discussed, debated and consulted, the HEC gives a

¹⁰³ "In areas where there is uncertainty or disagreement about the appropriate way to approach an ethical issue, guidelines are necessary to change guidelines to policies to ensure standard ethical practices". J. W. ROSS, *Handbook for Hospital Ethics Committees...*, *op. cit.*, p. 52.

¹⁰⁴ "In the past, committees have been more likely to recommend *guidelines*, which are only advisory, rather than *policies*, which are mandatory, primarily because they were not always certain of their authority or mandate". *Ibidem*.

¹⁰⁵ Cf. R. P. CRAIG, C. L. MIDDLETON, L. J. O'CONNELL, *Ethics Committees: A Practical Approach...*, *op. cit.*, pp. 25-27.

¹⁰⁶ Cf. R. CRANFORD, E. DOUDERA, *The Emergence of Institutional Ethics Committees*, in "Law, Med. & Health Care", 12/1, (1984) 16.

definitive advice and issues a specific recommendation on how to confront that particular moral dispute or conflict¹⁰⁷.

Many people believe that HEC consultative role plays a very controversial issue because they allegedly view this function as an attempt to occupy a preferential or decisive task in decision making rather than confiding the final decisions solely to the individual conscience of each persons concerned. Others say that aside from this fear, it also infringes upon the authority and prerogatives of the attending physicians¹⁰⁸. They are worried that consultative role might result into a complicated matrix when the question on the moral and legal responsibility is asked: Whose final moral responsibility? Does the HEC's advice oblige? If not, what use can HEC offer?

Some problems faced by the consultative function will be discussed in the succeeding chapter. For the moment, I shall demonstrate how the consultation is generally done.

Ordinarily, an ethics consultation is not obligatory for use by the attending physician nor by the patient if ethical problems are simple to solve, and an agreement is met without much complication. However, someone, or a group of people can be confronted by an apparently complicated and conflicting ethical dilemma that would need consultation regarding specific ethical issue. In this case, they may optionally call on the HEC for advice. The HEC can now act as «ethics consultant». It usually serves as advisor and facilitator in three points: 1) to determine where they are (the technical “facts” and the technical options of a case); 2) to determine what goals are possible (prognostic facts) and what important values are to be observed, and lastly; 3) to select a course of action (point out the terrain along possible roads and help make a selection) by connecting the two previous points¹⁰⁹. In short, the HEC help the persons in ethical dilemma to make informed, reasonable and responsible ethical decision while at the same time maintaining its consultative feature by not imposing or dictating to anyone the course of actions they concretely and explicitly recommend.

4. Theological reflection

In the bioethics committee manual written by R. P. Craig, C. Middleton and L. J. O'Connell, they included the rendering of theological reflection in the HEC clinical ethical issues as one of those essential HEC functions. They also call this theological reflexive function as «the role of providing religious perspectives». They argue that theological moral reflection or perspective is significant because they believe that it is directed not only towards understanding of one's faith tradition but to also achieve a deeper moral insight. They support this conviction using St. Anselm's dictum that theology is «faith seeking understanding». They state that:

¹⁰⁷ Cf. G. P. GRAMELSPACHER, *Institutional Ethics Committee and Case Consultations: Is There a Role?*, in “Issues in Law & Med.”, 7/1 (1991) 76.

¹⁰⁸ Cf. D. C. BLAKE, *The Hospital Ethics Committee: Health Care's Moral Conscience or White Elephant?*, in “Hastings Center Report”, 22/1 (1992) 6.

¹⁰⁹ Cf. This data was taken from the *Manual for Ethics Committees of Froedtert Memorial Lutheran Hospital and John L Doyne Hospital Joint Ethics Committee* in Milwaukee, acquired via Internet <http://akebono.stanford.edu/yahoo/Humanities>. April 28, 1994. p. 2.

«Within a Catholic healthcare facility's context, an Institutional Ethics Committee (IEC) can contribute to the understanding of the Roman Catholic faith tradition as it encounters the cultural variables... Within the IEC religious and ethical convictions of Roman Catholicism both challenge and are challenged by contemporary developments»¹¹⁰.

First and foremost, the authors consider theological moral reflections to be significantly indispensable to all Catholics who are challenged by surmountable and complicated ethical issues in the hospitals. According to them, the HEC forum would then become an appropriate forum or place in discussing these issues. And secondly, they see that they also have an obligation or commitment in addressing non-Christian individuals regarding Christian morals because they believe that there is a general unity of human morality which goes beyond the mere limits of any particular religious moral belief. The HEC forum is again, an appropriate place for such discussion. They say that:

«Christians affirm a general unity of authentic human morality which goes beyond any single religious perspectives. Thus, Christians contend that moral consciousness or conscience is a characteristic quality of *all women and men*»¹¹¹.

Hence, they think that such perspective may certainly be applicable and reasonable to all men because Christian moral reflection carries a perspective of moral universality and unity. However, these two reasons justifying the functional theological reflexive HEC role as commonly found among religiously affiliated healthcare institutions, may give rise to some crucial questions. For instance, our authors themselves ask:

«How does an HEC respectfully accommodate the moral perspectives of non-believers as well as believers of different faith traditions? For instance, is it possible –and if it is possible, is it desirable– for a Catholic long term care facility to invite non-believers and representatives from other faith traditions to serve the HEC?»¹¹².

These questions are also of extreme importance to us in such a way that in the second part of this thesis, a deeper discussion and analysis is undergone.

Nevertheless, the use of theological reflection as one of the HEC function (commonly found in religiously oriented HECs like the Catholic-run hospitals) contrasts with those HEC entities which adopt a secularist mentality¹¹³. While the U.S. Catholic-run Hospitals firmly believe its necessary function, others would find it something superfluous, irrelevant or at least, difficult to sustain because they say that a characteristic secularist's

¹¹⁰ R. P. CRAIG, C. L. MIDDLETON, L. J. O'CONNELL, *Ethics Committees: A Practical Approach...*, *op. cit.*, p. 4.

¹¹¹ The authors based these propositions from the Vatican II document: "in fidelity to conscience, Christians are joined with the rest of men in the search for truth, and for the genuine solution to the numerous problems which arise in the life of individuals and from social relationships". *Ibid.* p. 13.

¹¹² *Ibidem*.

¹¹³ "El término 'secularismo' no ha recibido siempre el mismo sentido. Podría decirse que hoy designa un fenómeno histórico-socio-cultural que se caracteriza por una crítica creciente ante toda ideología con pretensiones de absolutez... La secularización consistiría, pues, primariamente en una afirmación positiva del puesto del hombre como señor autónomo de los procesos intrahistóricos, así como en una concepción antropocéntrica del mundo y de la vida humana". J. R. FLECHA-ANDRÉS, *Teología moral fundamental*, BAC, Madrid 1994, pp. 128-129. See also: A. KELLER, *Secularización*, in "Sacramentum Mundi", vol. 4, Herder, Barcelona 1976, pp. 272-293; P. VANZAN, *Secularización*, in *Diccionario Teológico Interdisciplinar*, vol. 4, Sigueme, Salamanca 1983, pp. 271-284.

moral objective should be confined only to providing humanly reasonable ethical solutions.

It is certain that other people might construe that this type of recommendation should only address a limited number of people such as, for example, its believers¹¹⁴. And at times, due to a very secularized humanistic mentality¹¹⁵, some members and interested parties may find that the theological method is something uncertain, controversial and solely based upon the transcendental arguments that are presumed to be beyond the scope of medical bioethics¹¹⁶. Because of these problems, they resulted into uncomfortable feeling of uncertainty in providing religious or theological perspectives on moral judgments within the HEC forums, and especially when this function involves non-believers or believers of different faith traditions.

Before delving into a detailed analysis of these questions that is foreseen to be discussed in the succeeding chapters, I find it convenient at this stage, to allude briefly on this topic by using the Catholic points of view, in order that my ethical and theological discussions that will follow hereafter may be better understood.

The Catholic HEC's desire of rendering Christian moral perspective in the bioethics discussion is based on the conviction that all man hears God's law from the voice of conscience. God speaks to man of his moral life because:

«...deep within his conscience man discovers a law which he has not laid upon himself but which he must obey. Its voice, ever calling him to love and to do what is good and to avoid evil, tells him inwardly at the right moment: do this, shun that. For man has in his heart a law inscribed by God. His dignity lies in observing this law and by it he will be judged»¹¹⁷.

The law which is inscribed by God in the heart of all men, (called the natural law) shows that God has a real place in the deliberation of our moral values¹¹⁸. This is one of the reasons why the Catholic's view on the functional role of theological reflection is not at all strange in man's quest for his moral values. And we can deduce in the same manner,

¹¹⁴ Cf. R. P. CRAIG, C. L. MIDDLETON, L. J. O'CONNELL, *Ethics Committees: A Practical Approach...*, *op. cit.*, pp. 13.

¹¹⁵ The secularized mentality is well described in *Veritatis Splendor*: "Secularism, wherein many, indeed too many people think and live 'as if God did not exist'. We are speaking of a mentality which affects, often in a profound, extensive and all-embracing way, even the attitudes and behavior of Christians, whose faith is weakened and loses its character as a new and original criterion for thinking and acting in personal, family and social life. In a widely deschristianized culture, the criteria employed by believers themselves in making judgments and decisions often appear extraneous or even contrary to those of the gospel". JOHN PAUL II, Encyclical letter, *Veritatis Splendor* n° 88, (Aug. 6, 1993), St. Paul Books and Media (Eng. trans.), Boston 1993, p. 53.

¹¹⁶ Cf. B. MITCHELL, *The Role of Theology in Bioethics* in E. E. SHELPS (ed.), *Theology and Bioethics*, Reidel Publishing Company, Holland 1985, p. 77.

¹¹⁷ "For instance, pagans who never heard the Law but are led by reason to do what the Law commands, may not actually 'possess' the Law, but they can be said to 'be' the Law. They can point to the substance of the Law engraved on their hearts-they can call a witness, that is, their own conscience-they have accusation and defence, that is, their own inner mental dialogue". (*Rm* 2, 14-15). VATICAN COUNCIL II, Pastoral Constitution on the Church in the Modern World, *Gaudium et Spes*, n° 16.

¹¹⁸ "La cuestión sobre la ley natural o condición racional del hombre no puede ser desconocida en modo alguno de la ley divina, de la que es un destello o preparación". N. BLASQUEZ, *Ley Natural*, in G. DEL POZO-ABEJON, *Comentarios a la «Veritatis Splendor»*, BAC, Madrid 1994, p. 595.

that neither can it be said that this function in the HEC is irrelevant. Furthermore, Catholic HEC members think that they have the moral obligation to promote theological and Christian values because:

«...in fidelity to conscience, Christians are joined with the rest of men in the search for truth, and for the genuine solution to the numerous problems which arise in the life of individuals and from social relationship»¹¹⁹.

Christians want to offer a genuine moral solution by basing its arguments both from well formulated human reasoning and from the Revelation and teachings of the Church. An important question along this line would be, if by human reason one can arrive at the upright discernment proper of the dignity of his nature, what specific role can moral Revelation or Scripture offer in bioethics? This crucial question are asked by many secularist groups¹²⁰. And the Church defends its cause in many modes. One way is through the words of the Catechism of the Church which states that:

«Man stands in need of being enlightened by God's Revelation, not only about those things that exceed his understanding, but also about those religious and moral truths which of themselves are not beyond the grasp of human reason, so that even in the present condition of the human race, they can be known by all men with ease, with firm certainty and with no admixture of error»¹²¹.

Therefore, it affirms that Revelation plays its role in two aspects: first, by revealing truths that are beyond mere human reasoning; and second, by revealing a more complete and certain knowledge of religious and moral truths even though they can be accessible also by reason (as in the case of the Decalogue). The Christian Revelation and Church's guidance ensure that morals are grasped in their entirety and with certainty¹²². Not that Revelation is opposed to reason, but rather, through revelation, it gives certainty from the fallibility and skepticism of the human mind¹²³.

These Christian Truth and values, which compose the central points of moral doctrine in American Catholic Hospitals are declared explicitly in the Catholic Hospital Ethics and Religious Directives (ERD). ERD adopts a Christocentric ideals and gives testimony to it because they believe that Christ is the model of moral perfection and the only one capable of giving a full and definitive moral answer: a mission which He in turn, has confided to His Church. There is a conviction that Christian morals, aside from the

¹¹⁹ VATICAN COUNCIL II, Pastoral Constitution, *Gaudium et Spes* n° 16.

¹²⁰ Catholic theologians of «secular ethics» approach, critical against the importance of Faith and Scriptures in ethics are Fuchs, Demmer, Cahill, etc. For example, Fuch said that medical ethics is based on philosophical ethics and cannot appeal to faith as starting point and ultimate basis. He insists that human self-understanding precedes every faith and every believing reflection. He emphasized that medical ethics is not found in God, nor in Scripture, nor in Jesus Christ, but in reason directing us as human beings to our ultimate end in accord with our nature. Cf. J. C. HARVEY, *A Brief History of Medical Ethics from the Roman Catholic Perspective: Comments on the Essays of Fuchs, Demmer, Cahill, and Hellwig*, in E. PELLEGRINO et al (ed.), *Catholic Perspectives on Medical Morals*, Kluwer Academic Publishers, Netherlands 1989, pp. 129-144.

¹²¹ CATECHISM OF THE CATHOLIC CHURCH, N° 38, Geoffrey Chapman (Eng. ed.), London 1994; Cf. PIUS XII, Encyclical letter, *Humani Generis* (Aug. 12, 1950): AAS 42 (1950), 561-562; DS 3876.

¹²² P.E. BRISTON, *The Moral Dignity of Man*, Four Courts, Dublin 1993, p. 18.

¹²³ Cf. *Ibid.*

universality of the natural law applicable to all men, has something more specific and special to offer, and that these Christian values, taught by Christ through his Church, should not to be taken as if they were only exclusive to Christians nor merely exhortative in nature¹²⁴.

After explaining briefly the Catholic viewpoint defending the use of theological perspectives in the HEC, would this not conflict with the apparently opposing ethical interests among those people who do not regard the same or similar belief?

Some Christian authors say that “it does not and cannot add to human ethical self-understanding as such any material content that is, in principle, ‘strange’ or ‘foreign’ to [persons] as [they] exist and experience [themselves] in the world”¹²⁵. R. Craig also mentions that this of course, is not to deny that Christian faith informs the personal moral consciousness of believers and that it is a simple assertion of radical congeniality of all moral consciousness¹²⁶. Moreover, many secular ethicists have also acknowledged theological perspective to be practically advantageous because it can give greater security in occasions whereby human ethical reasoning becomes limited or inadequate in resolving some ethical problems. Engelhardt declares:

«If one is accustomed to the sure answers of a religiously grounded ethics, a general secular bioethics may occasion frustration when one is forced into lengthy chains of reasoning, and disappointment when final answers are not forthcoming»¹²⁷.

Thus, it can be said that the role of giving theological perspectives in moral bioethics problems are commonly implemented in most Catholic-run healthcare institutions in the United States due to their firm conviction of Christian morals as universally valid and acceptable. Such religious moral conviction is legally implemented because of the existence of what we call the Catholic Hospital Religious Directives, jointly approved by the State and the Catholic Bishops.

Detailed discussion regarding the importance of using theological reflection in the HEC forums, and its moral implications when used in secular-oriented HEC groups is reserved for the second part of the thesis.

¹²⁴ Veritatis Splendor warns of the erroneous concept contrary to Catholic doctrine which attempts to make a sharp distinction between the *ethical order*, which would be human in origin and of value for this world alone, and the *order of salvation*, for which only certain intentions and interior attitudes regarding God and neighbor would be significant. Otherwise, this would deny that there exists, in Divine Revelation, a specific and determined moral content, universally valid and permanent. The Word of God is not merely exhortative, i. e., the objective particular moral norms which deal with the so-called ‘human good’, does not solely depend on the autonomous human reason, but rather also on the permanent moral truths revealed by God and entrusted to His Church for men’s salvation. Cf. JOHN PAUL II, Encyclical letter, *Veritatis Splendor* n° 37. An exhaustive critical evaluation of the topic regarding what is specific of the Christian morals can be found in T. LOPEZ, G. ARANDA, *Lo específico de la Moral Cristiana: Valoración de la literatura sobre el tema*, in “Scripta Theologica”, 7/1 (1975) 687-767.

¹²⁵ J. F. BRESNAHAN, *Rahner’s Christian Ethics*, in “America”, 123 (1970) 351-354.

¹²⁶ Cf. R. P. CRAIG, C. L. MIDDLETON, L. J. O’CONNELL, *Ethics Committees: A Practical Approach...*, *op. cit.*, pp. 13.

¹²⁷ H. T. ENGELHART, *The Foundations of Bioethics*, *loc. cit.*, p. 12.

5. *Other functions*

There are other HEC roles which are pragmatic in nature. One of these is the committee's «supportive function», which aims at helping the interested party cope with moral or psychological stress and that it gives them some sense of assurance that the interested party's moral actions are in line with the community standards¹²⁸.

Another useful HEC function which coincides with the American society's pragmatic view is on the HEC's function as an «internal arbiter» in keeping ethical disagreements from spilling over into criminal justice system¹²⁹. Since many HECs in most parts of the U.S. are enjoying certain immunity from legal liabilities many healthcare providers, patients, and family relatives consider HEC's support in this area to be of great help. These HECs can therefore serve as protective shield against lawsuits. Most secularist HECs function more likely by this system because most clients feel that such HECs have the obligation to protect their legal rights: HECs that function as legal guardians.

B. *General Composition*

One of the favorable advantages in the formation of HECs is the existence of interdisciplinary groups within healthcare institutions, that are capable and adequately prepared in rendering moral advice about pressing bioethical problems that arise in clinical care¹³⁰. Interdiscipline means shared ethical discussion. The fact that the HEC's purpose is a «shared» ethical decision making, this means that the membership should be coming from diverse individuals from many scientific and practical endeavors of life. It is recommended however that such participants be as much as possible, reliable, or perhaps, even competent persons in the various fields in medicine, ethics, theology, law, or in some case, the participation of someone who has adequate practical experience in the clinical and ethical care of patients.

The number of participants vary greatly from one committee to another. Generally, they are composed of the following groups of professionals: the healthcare providers who are made up of physicians and nurses; a hospital administrator; an ethicist or a theologian and/or pastoral care giver; and a social worker.

For example, 50% of all hospitals in Maryland, the District of Columbia and Virginia, of 250 or more bed capacities, have established their own HECs¹³¹. These HECs have 13 to 17 members on the average, divided as follows: 5-6 medical doctors; 3 nurses; 1 social worker; 1 lawyer; 1 community representative; 1 hospital administrator; 1 ethicist or clergy.

¹²⁸ Cf. J. A. ROBERTSON, *Ethics Committee in Hospitals: Alternative Structures and Responsibilities*, in "Issues in Law & Med.", 7/1 (1991) 86.

¹²⁹ Cf. *Ibid.*

¹³⁰ Cf. C. B. COHEN, *Ethics Committees: Birth of a Network*, in "Hastings Center Report", 18/1 (1988) 11.

¹³¹ Cf. D. HOFFMANN, *Does Legislating Hospital Ethics Committees Make a Difference?: A Study of Hospital Ethics Committees in Maryland, the District of Colombia, and Virginia*, in "Law, Med. & Health Care", 19/1-2 (1991) 105-111.

Many Catholic HECs include other members like a patient advocate, pastoral care giver, mission integration personnel, risk management personnel or Diocesan representative¹³². Usually, the clergy or pastoral care giver acts, at the same time, as their theologian although it is not always the case. And “due to the ecumenical nature of the population served by most U.S. Hospitals, at least one member should be a non-catholic who shares the hospital’s commitment to Catholic ideals and values”¹³³.

Can the patient or family members join the HEC? There are varied opinions to this. Some say yes, others, due to ethical, sociological or psychological factors, would refrain from inviting them. This will be tackled later in its descriptive section.

Here is a brief description of their varied representative roles:

1. Healthcare providers

Healthcare providers are those who directly collaborate in one way or another in the patient’s medical necessities.

The Physician, due to the more solid patient-doctor relationship, occupies a more important role with a greater responsibility in providing healthcare. This is then followed by the nurses and hospital administrators.

a. The physicians

All existing HECs include the presence of the attending physician who can personally convoke the HEC to work on his case, or, through the patient’s desire, the physician can call for an HEC consultation. The use of the HEC by the physician poses a fundamental question over the traditional patient-doctor relationship because some say that clinical decision making remains a private matter between the attending physician and his patient or, when the patient is incompetent to decide, between him and the patient’s family¹³⁴. Siegler argues that such intrusion of other parties might weaken the doctor’s responsibility or diminish the confidence of the patients in him¹³⁵. David C. Blake on the other hand states that “since physicians are not the only healthcare professionals involved in patient care, they are not the only ones with moral responsibility for that case”¹³⁶.

Further discussions regarding the doctor’s position and views towards the HEC are extensively dealt with in the next chapter.

¹³² Cf. J. LAPPETITO, P. THOMPSON, *Today’s Ethics Committee Faces Varied Issues*, in “Health Progress”, 34 (Nov. 1993) 38.

¹³³ O. N. GRIESE, *Catholic Identity in Health Care: Principles and Practice*, Pope John Center, Massachusetts 1987, p. 310.

¹³⁴ Cf. G. G. GRIENER, J. L. STORCH, *HECs: Problems in Evaluation*, in “HEC Forum”, 4/1 (1992) 9.

¹³⁵ Cf. M. SIEGLER, *Ethics Committees: Decisions by Bureaucracy*, in “Hastings Center Report”, 16/30 (1986) 22-24.

¹³⁶ D. C. BLAKE, *The Hospital Ethics Committees: Health Care’s Moral Conscience or White Elephant?*, in “Hastings Center Report”, 22 (1992) 6.

When choosing a physician as part of the panel, some experts prefer that the attending physician participates. However, others maintain a contrary view to attending physician's involvement because they want to avoid arising confrontations and possibilities of personal and professional prejudices. In any case, doctors coming from departments with higher incidence of ethical problems or those who have adequate ethics training would be particularly useful.

b. The nurses

The nurses also occupy a vital role in the HEC because of their closer personal contact with the hospital patients. By hearing their personal views and ethical assessments, the HEC can have a wider range of considerations in arriving at morally upright and reasoned ethical recommendations. In other words, through the nurse's intimate patient relationship, contact and awareness over his personal circumstances, they can contribute at arriving at a personalized evaluation of the ethical issues in question. Craig identified four areas of nurse's involvement in the ethical issues. These are: The nurse is in a position to monitor the patient's quality of life; through her frequent interaction with both patient and family he or she is in a unique position to help judge the benefits of the medical treatments and modalities; she can appropriately act as advocate to patient's autonomy; and, most of all, she is in a position to appreciate the dynamics of the total situation such as the patient's family relationship, spiritual needs and personal preferences¹³⁷.

c. The hospital administrators

Hospital administrators are considered as part of the healthcare providers group and, for this reason, they are involved with ethical questions in searching not only for the good of the patients in the hospital, but also for the good of the other medical personnel and the institution's ethical character. It is observed that the administrator's principal functions in the ethical decision making concern on education, coordination and implementation¹³⁸.

2. Lawyers

The role of the lawyer is usually that of providing legal perspective to committee deliberations when necessary. But there are two sides of the coin. Some say that there is no need for their participation while others say yes. The opponents argue that lawyers might "divert the discussion from ethical issues to legal risks - and the two, [as lawyers] maintain - rarely converge such that the committee falls legally vulnerable to them"¹³⁹. On the other hand, others feel their importance in providing legal information which affect their ethical analysis, such as those which help them articulate the difference between what is ethically appropriate and what is legally required.

¹³⁷ Cf. R. P. CRAIG, C. L. MIDDLETON, L. J. O'CONNELL, *Ethics Committees: A Practical Approach...*, *op. cit.*, p. 34.

¹³⁸ *Ibid.*

¹³⁹ S.M. MITCHELL, M. S. SWARTZ, *Is There a Place for Lawyers on Ethics Committees? A View from the Inside*, in "Hastings Center Report", 20/2 (1990) 32-33.

3. *Humanities consultants*

These members are those who have acquired adequate knowledge in the humanities, such as philosophers, ethicists, theologians, and pastoral care giver (clergy and the bishop in Catholic hospitals).

a. Bioethicist or philosopher

Most bioethicists are university trained philosophers: some teach undergraduate courses and others teach in medical schools¹⁴⁰. Ethicists in the committee play the role of teacher, mediator or consultant “whose expertise consists of identifying, analyzing and resolving moral dilemmas in patient care”¹⁴¹. They can contribute a great deal to clarifying pertinent facts that require logical reasoning in order to distinguish what is morally upright from what is not by alluding to their ethical principles and values¹⁴². While it is true that they can be of great help to the committee, one serious factor to consider is to see to it that the committee chooses a bioethicist of sound philosophical ideas. It is observed for instance, that an ethicist who is at the same time a physician by profession has a greater advantage because of his wider capability of relating adequately to both moral and medical questions¹⁴³.

The process of how to choose an appropriate ethicist for the HEC is beyond the scope of this thesis although it is presumed that for a committee to function well, they should use prudence in selecting who could be their resource person in dealing with ethical problems.

b. The theologian

In some hospitals, the task of analyzing bioethical cases is also given to someone who has sufficient theological background and clinical bioethics knowledge. He may be a theologian or member of the clergy who “serves the HEC by helping to coordinate the sources of moral insight, i.e. Sacred Scripture and Tradition, with personal experience and contemporary culture”¹⁴⁴. Cardinal Ratzinger said that a theologian can generally assist individuals in:

«...the understanding of the moral demands of the gospel in the particular conditions of his day (personal experience and cultural) and so serves the formation of conscience. In this way he [the theologian] also serves in the development, purification and deepening of the moral tradition of the church»¹⁴⁵.

¹⁴⁰ Cf. B. HOSFORD, *Bioethics Committees: The Health Care Provider's Guide*, loc. cit., p. 132.

¹⁴¹ G. R. SCOFIELD, *Ethics Consultations: The least Dangerous Profession?*, in “CQ of Health Care Ethics” 2 (1993) 417.

¹⁴² Cf. B. FREEDMAN, *One Philosopher's Experience on an Ethics Committee*, in “Hastings Center Report”, 11 (1981) 20-22.

¹⁴³ Cf. E. PESQUEIRA-ALONSO, *Los Comités de Ética Hospitalaria*, in A. POLAINO-LORENTE (ed.), *Manual de Bioética General*, Rialp, Madrid 1994, p. 357.

¹⁴⁴ R. P. CRAIG, C. L. MIDDLETON, L. J. O'CONNELL, *Ethics Committees: A Practical Approach...*, op. cit., p. 34.

¹⁴⁵ J. RATZINGER, *Bishops, Theologians and Morality*, in “Origins”, 13/40 (1984) 665.

If the fundamental role of the HEC is generally meant to seek sufficient and adequate answers to ethical questions, how can a theologian concretely contribute towards a deeper understanding of the moral demands of the persons concerned: the patient, doctors and other members of the committee belonging to a pluralistic society? What is the theologian's role in rendering theological perspectives and by applying the use of Divine Revelation and Church's teaching in the HEC discussions? Should this perspective directed to both Catholics and non-Catholics?

Most non-catholic hospitals consider the importance and participation of a theologian in the committee, but within limits. Commenting on the idea of J. D. Swales, Hosford said that "battles over ethical principles are seldom fought on religious grounds, and ministers can speak only for the religious feelings of adherents of the particular belief"¹⁴⁶. This topic shall be discussed thoroughly in the second part of the thesis. For the moment, it suffices to defend the contrary fact by first demonstrating the use of theological perspective's practical value.

Although American society is made up of many creeds, most of them believe in God¹⁴⁷. This gives a practical ground for saying that whatever type of existing committee, whether it be secular or sectarian, they must provide ethical reflections backed up by moral theology. The provision of a wider view and more profound ethical analysis and decisions can be sufficiently and adequately considered when theological perspective is likewise supplied.

There are different types of theologians depending on the type of religious beliefs one has. Hence, in choosing a theologian for the HEC, prudence must be exercised. Craig suggests that it is better to find someone who is familiar with the sound doctrine especially if it refers to Catholic Hospitals. They should see to it that Catholic theologians involved in the Catholic-run HEC are guided by the Church's teachings and that they explicitly abide by the guidelines indicated in the Catholic Hospital Ethical and Religious Directives (ERD). In most instances, membership (including the theologian) in a Catholic HEC functions under the guidance of the local bishop¹⁴⁸.

Hence, a Catholic theologian is expected to act in accordance with the Church's doctrine on morals¹⁴⁹. His specific role is to study and elaborate Divine Revelation and the Teaching Magisterium of the Church and at the same time, maintains coherence with

¹⁴⁶ B. HOSFORD, *Bioethics Committees: The Health Care Provider's Guide...*, *op. cit.*, p. 134. See also, J. D. SWALES, *Medical Ethics: Some Reservations*, in "J of Med Ethics", 8 (1982) 117-119.

¹⁴⁷ "Why has American history been different? Not, I believe, because religious and moral belief was banished from the public square –quite the contrary– but because conscience was welcomed. Call these religious convictions, call them moral values, call them points of natural law. But whatever we call them, they are not narrow, divisive ideas. They are ideas that from the very start have kept us together as a people. Always we have been a people to whom religion and morality have been as vital, essential, and ever-present as the air we breathe. If there is any common thread to the American story, this is it: A diversity of beliefs, but a unity in moral purpose, a coming together in conscience". R. P. CASEY, *Public Policy and Moral Truth*, in R. E. SMITH, *The Splendor of Truth and Health Care: Proceedings of the Fourteenth Workshop for Bishops*, Pope John Center, Massachusetts 1995, p. 197.

¹⁴⁸ R. P. CRAIG, C. L. MIDDLETON, L. J. O'CONNELL, *Ethics Committees: A Practical Approach...*, *op. cit.*, p. 34.

¹⁴⁹ Cf. CONGREGATION FOR THE DOCTRINE OF THE FAITH, *Instruction on the Ecclesial Vocation of the Theologian*, *Donum Veritatis* n°. 16, (May 24, 1990): AAS 82 (1990), 1557.

the demands of human reason. Among all other ethical methods available, he often employs moral arguments guided by the Church's Teaching.

Church doctrine has certainly undergone a more profound development and deeper understanding of the contents of Faith and Morals. It is through God's guiding providence and many years of experience¹⁵⁰, that people who need moral help, or those persons who intend to impart well grounded moral criteria to others (like the theologians in the HEC), should expediently recognize the Church doctrine's competence in the field of morals and should suitably apply them.

The Church fosters dialogue with moral norms through the use of natural law. However, She also wants to emphasize that even though human reasoning can be valid, it cannot be completely sovereign or absolutely independent from the Divine Wisdom known to us through Revelation. It is an effective means for knowing not only those truths of the natural order, but also of those higher moral truths¹⁵¹. In order to make these truths expressed with more clarity, the concrete role of the HEC theologian as specialist in moral theology and applied bioethics comes into the picture. He is expected to elucidate, clarify, and assist the HEC members in directing themselves, not only upon purely anthropological, socio-cultural, medico-technological, historical, psychological or experiential grounds, but also towards more transcendental aspects of these individuals, as persons related to the other members of the community and to God. *Veritatis Splendor* said that:

«The work of many theologians [is to impart] interesting and helpful reflections about the truths of faith to be believed and applied in life, reflections offered in a form better suited to the sensitivities and questions of our contemporaries. The Church, and particularly the Bishops, to whom Jesus Christ primarily entrusted the ministry of teaching, are deeply appreciative of this work, and encourage theologians to continue their efforts, inspired by that profound and authentic "fear of the Lord, which is the beginning of wisdom" (cf. Prov 1:7)»¹⁵².

Thus, theologians should develop the sense and wisdom of reflecting moral theology when applying it in concrete bioethics issues. Theologians using moral theology should be

«...concerned with "morality", with the good and the evil of human acts and of the person who performs them; in this sense it is accessible to all people. But it also uses "theology," inasmuch as it acknowledges that the origin and end of moral action are found in the One who "alone is good" and who, by giving himself to man in Christ, offers him the happiness of divine life»¹⁵³.

The Church invites theologians to focus moral analysis of concrete human acts of the person not only upon the goodness or evilness reachable by human reasoning, but rather, to also to take special care for the renewal of moral theology increasingly based on the teaching of the Scripture, and to look for a more appropriate way of communicating doctrine to the people of our time.

¹⁵⁰ "The Church is an expert in Humanities". JOHN PAUL II, Encyclical letter, *Sollicitudo Rei Socialis* n°. 41, (Dec. 30, 1987): AAS 80 (1988) 522.

¹⁵¹ Cf. *Ibid.* See also, PIUS XII Encyclical letter, *Humani Generis* n° 42: AAS (1950) 561-562.

¹⁵² JOHN PAUL II, Encyclical letter, *Veritatis Splendor* n°. 29.

¹⁵³ *Ibidem*.

But how can the HEC members have an assurance that a theologian is competent enough and is adequate for giving such theological recommendations? As stated earlier, the Catholic Church is an expert in the humanities¹⁵⁴. Because of this, she is capable of discerning and giving judgments, normative for the consciences of all men of goodwill. She also has the moral authority in teaching and directing those acts which in themselves should conform to the demands of faith and foster their expression in life and warning us of those acts that are intrinsically evil and are therefore incompatible with such demands¹⁵⁵. Thus, as long as the theologian maintains his adherence to the Church's doctrine as an expert in matters of faith and morals, his competence is assured. In fact, the doctrinal affirmation of moral principles used in an honestly executed theological reflection in bioethics is not merely based from the competence of formal empirical methods nor from a theologian's personal methodology, but rather, it is drawn from the competence of the Church's Magisterium with regard to the expressed Truth in the moral norms¹⁵⁶. For practical purposes, most Catholic hospitals function under the doctrinal guidance of the local bishop by "seeing to it that this moral teaching is faithfully handed down and to have recourse to appropriate measures to ensure that the faithful are guarded from every doctrine and theory contrary to it"¹⁵⁷.

c. Pastoral care giver or chaplain

The participation of the Pastoral Care Giver in the HEC, especially in the Catholic hospitals, is significant. Pastoral Care Givers may be chaplains or may be any member of the clergy. Their role is to assure that the patients have access to spiritual care. In other words, they are there to be vigilant and to anticipate the needs of spiritual consultation and counseling. The presence of these types of persons can assure the patient's privilege of enjoying the basic religious freedom and the right to practice the faith.

«Freedom of this kind means that all men should be immune from coercion on the part of individuals, social groups and every human power so that, within due limits, nobody is forced to act against his conviction nor is anyone to be restrained from acting in accordance with his convictions in religious matters in private or in public, alone or in association with others»¹⁵⁸.

In response to this, the Catholic hospitals declared in their code or directive, that:

«The administration should be certain that patients in a health facility receive appropriate spiritual care»¹⁵⁹.

Viewed in this regard, it can be said that the pastoral care givers can share a role in the HEC composition.

¹⁵⁴ Cf. JOHN PAUL II, Encyclical letter, *Sollicitudo Rei Socialis* n°. 41.

¹⁵⁵ Cf. CONGREGATION FOR THE DOCTRINE OF THE FAITH, Instruction on the Ecclesial Vocation of the Theologian..., *op. cit.*, 1557.

¹⁵⁶ Cf. JOHN PAUL II, Encyclical letter, *Veritatis Splendor* n°. 112.

¹⁵⁷ *Ibid.*, n°. 116.

¹⁵⁸ VATICAN COUNCIL II, Declaration on Religious Freedom *Dignitatis Humanae*, n°. 2.

¹⁵⁹ ETHICAL AND RELIGIOUS DIRECTIVES FOR CATHOLIC HEALTH FACILITIES, Directive n°. 34, in the appendix section of O. N. GRIESE, *Catholic Identity in Health Care: Principles and Practice*, Pope John Center, Massachusetts 1987, p. 494.

4. *The patient and the family*

What about patient and family involvement in the committee? The patient's participation in the committee depends upon whether or not he or she is competent. A competent patient presupposes that in psychological fact or in law, the patient is preconditioned in apprehending information and acting voluntarily in such a way that he is capable of responsible, reasonable moral decision. A person is commonly said to be competent only if he is capable both of processing specified information, of choosing goals and of using the means to those goals, as well as acting on reasonable decisions¹⁶⁰. Thus, it is presumed that incompetent patients cannot, in any way, participate in the Ethics committee's discussions. For this reason, the HEC sometimes allow the participation of the family in behalf of the patient's interest.

There is a wide range of providing patient and family access to the HEC: from a maximum access to minimal involvement. Those committees who foster maximum involvement usually have a broader method of disseminating information about HEC services to the patient or family. The patient or the family can convene or initiate a consultation directly and automatically and they can fully participate in the entire meeting and expect to receive in writing every committee recommendations, including disagreements among committee members¹⁶¹. In order to facilitate their participation, some «processes» or «approaches» rendered and focused in patient-centered values and principles are encouraged¹⁶².

Another type of committee renders them only a minimal access. For instance, only the physician can convene the committee and the other party is not informed of the HEC's existence. Patients and families would be routinely excluded from the review process and would receive recommendations or reports only under the direction of, and in a form decided by their primary physician.

Now, if we are to consider the importance of the competent patient's desire, the inclusion or exclusion of the patient in HEC meetings would point to a complex moral problem. What importance could the HEC contribute if, after all, it is the patient who finally decides his fate? This problem is very strongly felt in a society which is very sensitive to the individual's autonomy and rights such as the right to die, the right to self determination, etc. This opens up a rich field of ethical analysis which shall be tackled in the second chapter.

With regards to the family, it is seen as an important resource for patients in order to help them make better decisions. Family members, by virtue of their closeness to and intimate knowledge of the patient are often well qualified to shore up the patient's

¹⁶⁰ Cf. L. BEAUCHAMP, J. F. CHILDRESS, *Principle of Bioethics*, Oxford University Press, New York 1983, pp. 70-73.

¹⁶¹ Cf. G. J. AGICH, S. J. YOUNGNER, *For Experts Only? Access to Hospital Ethics Committees*, in "Hastings Center Report", 21 (1991) 19.

¹⁶² «processes» means the set of legal or moral procedures rendered by the institution to protect patient's involvement in the decision making. Cf. S. M. WOLF, *Toward a Theory of Process*, in "Law, Med. & Health Care", 20/4 (1992) 282-283.

vulnerable autonomy and «best interest», or assist him/her in the exercise of optimum moral decision¹⁶³.

V. HEC General Structure

Although there are various ways of structuring an HEC, the recent article published by C. Cohen attempts to identify (in a schematic and critical manner), the different structural models used by the HECs in operation. She noted three basic operational structures in carrying out its different functions, especially for case reviews or consultations. These are: the committee working as a whole, as a team derived from the committee, or as an individual consultant¹⁶⁴.

A. Committee as a whole

What transpires at this meeting is based on the information brought into the room by those involved in the patient's care, whereby they ask questions, express views and offer supporting reasons and arguments for their approaches. Its advantage is that it is comparatively large and multi-disciplinary in composition. It also offers a good chance that it will provide fresh perspectives or innovative options on the issue. Moreover, it can provide a broader range of relevant options and justifications, and foster a collegial approach that cancels out the usual hierarchical relations among care givers¹⁶⁵.

B. Teams

This is a modification of the first model. It makes use of a smaller group composed of committee members with considerable experience and special skills in a particular case. They work together within discrete period of time and visit the patient. They encourage the patient to participate and later on, present their recommendations to the «parent or main» HEC group.

This sub-group is viewed by some bioethics experts to be more efficient administratively because it gives a more personal atmosphere to all concerned and is quick on resolving the issue. The disadvantage is that, very often, they work without accountability because they do them on their own accord, without guidelines or rules. The patient and care givers may feel that it offers no «due process» protection¹⁶⁶.

¹⁶³ Cf. J. BLUSTEIN, *The Family in Medical Decisionmaking*, in "Hastings Center Report", 23/3 (1993) 6.

¹⁶⁴ Cf. C. B. COHEN, *Avoiding 'Cloudcuckooland' in Ethics Committee Case Review: Watching Models to Issues and Concerns*, in "Law, Med. & Health Care", 20/4 (1992) 294-299.

¹⁶⁵ Cf. *Ibid.* p. 296.

¹⁶⁶ Cf. *Ibid.* p. 297.

C. Individual members or consultants

An individual member of the ethics committee sometimes functions as a lone consultant using his or her own exclusive judgment. He is usually considered as the only “expert” mediator and specialist in medical ethics. In this case, an ethicist is presumed or at least, believed to be competent in almost all moral aspects and situations.

Ethicists who advocate this arrangement are in some way, undermining the capability of group involvement in bioethics forums. Very often, they view the HEC organization to be superfluous¹⁶⁷. Or, taken in a less radical attitude, they think that there is no need to report to the HEC group at all unless they need serious consultative assistance.

This method is effective, especially when he acts as the patient’s advocate¹⁶⁸. But at times, difficulty arises when the consultant assumes an autonomous mode in directing or advising his clients in a manner that there is no way to determine whether his advice is really the best available or whether such advice is drawn from his biased set of philosophical views¹⁶⁹. In contrast to the individual consultation, the advantage of ethics consultation by groups is found in the collegial and democratic assessment of the case because it gives equal chances to other’s opinions until they arrive at the most adequate solution possible. The disadvantage, on the other hand, of having many people involved in the consultation is the problem of who should bear the accountability¹⁷⁰. If there exists just one consultant, then, it might be easier to presume that this particular ethicist should be the one responsible for the consequences of his advice. Nevertheless, this apparent simplicity of “whose final responsibility”, is challenged by some authors. For instance, Purtillo questions the term «consultant» and holds that “under no circumstance would the outcome of an ethics consultation, [especially a consultation coming] from an ethicist, becomes the primary care giver of assumed ongoing responsibility for clinical management care”¹⁷¹.

¹⁶⁷ Cf. E. N. OTTAL, *Medical Aid: Ethics Experts Help US doctors Handle Hard Moral Decisions*, in “The Wall Street Journal”, March 13, 1987, pp. 1-12.

¹⁶⁸ *Ibid.*

¹⁶⁹ Cf. E. PESQUEIRA-ALONSO, *Los Comités de Ética Hospitalaria...*, *op. cit.*, p. 358.

¹⁷⁰ Cf. S. FRY-REVERE, *The Accountability of Bioethics Committees and Consultants*, in “Issues in Law & Med.”, 9 (1993) 111.

¹⁷¹ R. PURTILLO, *Ethics Consultation in Hospital*, in “NEJM”, 311/15 (1984) 983-986.

PART ONE: CHAPTER 2

Ethical Evaluation of HEC Establishment from Doctor's and Patient's Viewpoints

I. General presentation

Since the early formation of the HEC, it has always been the organizer's desire to assist in the best possible way, in solving the patient's and healthcare givers' ethical problems. We have just seen the HEC's practical roles in educating, formulating policies and rendering advice to such individuals or groups. Two of these three traditional roles (imparting ethics education, and rendering hospital policies or directives) are considered effective, less taxing and less controversial. Increased ethical awareness of many individuals inside and outside the hospital, may be attributed to the success of these two major HEC roles.

However, the HEC establishment is presently confronted by an ethical apprehension regarding the consultative or case-review role. As a consequence, the over-all ethical role of the HEC is also compromised. This apprehension is due to the existence of various moral views affecting the patient's rights to self determination or autonomy, and physician's exercise of paternalism, benevolence or personal competence. The «interference» of HEC as intermediary to the two major protagonists in the ethical field (doctors and patients) is viewed intrusive of their fundamental rights to autonomous decision making. Many of them think that the HEC's establishment as a special group that assist in giving bioethics advice, whether it be through pure ethical reasoning or accompanied by some theological perspectives, is unethical.

So far, the HEC's consultative function was a major prelude to the establishment or setting up of ethics committees. We have already described this fact from the early historical accounts of HEC formation. But today, it seems that many HECs are shying away from its consultative role¹⁷² because some doctors and various patients started questioning the validity of the HEC fundamental functions and existence. Reciprocally,

¹⁷² Cf. C. B. COHEN, *Is Case Consultation in Retreat?*, in "Hastings Center Report", 18/4 (1988) 23.

patients and some other healthcare givers are also refraining from requesting HEC services to individualized case interventions of ethical problems for fear that they might be deprived of full freedom in choosing their preferred medical options¹⁷³. Since the contemporary concepts of autonomy, patient-doctor relationship, competence, etc. greatly affect the patient's and doctor's rights, there are now doubts to whether the HEC intervention is ethically valid for use or not. In other words, can the HEC establishment, which aims at serving people reach adequate moral stance in complicated moral issues, ethically valid? A thorough analysis and search for appropriate ethical explanations are important to justify its existence. Furthermore, we shall also see whether the HEC consultative rendition in offering theological perspectives to bioethics moral discussions is justifiable or not. The first question shall be tackled immediately in this section while the succeeding question shall be the topic of the second part of this thesis.

Thus, the overview of this chapter discusses the various problems which HEC encounters insofar as its ethical existence, roles and functions are concerned. It describes some ethical questions or doubts selected from the numerous articles written by some bioethicists regarding the doctor's and patient's attitudes towards the HEC's establishment as special ethics consultation group in clinical discussions. Ethical or moral reflections regarding these attitudes are discussed. The succeeding ethical evaluations rendered in this chapter covers practical and ethical analyses of the themes in question, by offering adequate explanations where HEC roles and existence may be justified. It aims at achieving convincing moral arguments favoring the ethical validity of the HEC's roles, functions or establishment in the clinical decision making.

II. DOCTOR'S ETHICAL PROBLEMS AND A CRITIQUE TOWARDS THE HEC ESTABLISHMENT

Doctors play a very crucial position in the clinical and moral decision making. Their attitudes towards the existence of an HEC can significantly affect the outcome of such decisions, either for better or for worse. This section shows the most commonly encountered attitudes of physicians towards the HEC's attempts in helping them solve their personal ethical problems in the clinics. There are numerous doctor's points of view gathered in this research, although I have tried to select only those which, according to my assessment, are more related to issues involving the HEC ethical existence and leaving behind those aspects referable to the administrative or organizational affairs.

¹⁷³ In 1989, an empirical study was done measuring HEC success in rendering its three major functions. It revealed that 89.1% of them provided some form of bioethical education, 86.1% had developed guidelines, and only half of the committees (49.6%) provided consultation per year which is less than one consultation per week. Cf. L. S. SCHEIRTON, *Measuring Hospital Ethics Committees Success*, in "C Q of Healthcare Ethics", 2 (1993) 495-504.

A. Doctor's point of view:

1. A challenge to doctor's Hippocratic Oath

Most doctors have been trained to assume optimum responsibility for their patients¹⁷⁴. The medical profession is a sublime vocation of service to the patients. Through the traditional Hippocratic oath, the doctor forms part of a sacred commitment which he must abide to and keep. It is an oath or covenant which commits him to act, according to his best ability and judgment always for the good of his patient¹⁷⁵. First and foremost, this implies that he is required to practice the "art of medicine" by fulfilling his duty of beneficence and non-maleficence understood as: "rendering treatment remedy and nutrition and keeping them from harm and injustice"¹⁷⁶. He undertakes the personal responsibility of forming his medical knowledge with clear and honest conscience so that the health of his patient should always be his primary concern¹⁷⁷. This concern assumes that his patients will be treated with the respect becoming of a dignified human person¹⁷⁸. Aside from this, his duty also extends towards his community by participating in spirit of cooperation with other healthcare professionals in his institution and the society as a whole¹⁷⁹. Therefore, a doctor who bears these attitudes and values, is worthy of praise.

These ideals, are however often challenged. For instance, doctors are aware from experience, that the best knowledge and judgment which his conscience can reach is not always sufficient in confronting the complex medical and ethical milieu of the present world. Tension comes in when dilemma arise from doubts about whether or not a concrete

¹⁷⁴ The majority of the university ethics training are geared towards a deontological discipline which is a type of an approach using paradigms or codes based on duties and responsibilities of the medical profession. Cf. G. HERRANZ, *El código de ética y deontología médica*, in "Cuadernos de Bioética", 20/4 (1994) 328-340; K. BAIER, *Deontological Theories*, in *Encyclopedia of Bioethics*, Macmillan, New York 1978, pp. 413-417.

¹⁷⁵ O. TEMKIN, C. L. TEMKIN (eds.) *Hippocratic Oath*, in *Ancient Medicine*, John Hopkins Univ. Press, Baltimore 1967. See also, W. F. MAY, *Code, Covenant, or Philosophy*, in "Hastings Center Report", 5/6 (1975) 29-38.

¹⁷⁶ The Hippocratic Oath expresses the duty of nonmaleficence together with the duty of beneficence: "I will use treatment to help the sick according to my ability and judgment, but I will never use it to injure or wrong them". Generally, the concept of nonmaleficence is associated with the maxim *primum no nocere*, 'above all, or first, do no harm'. Cf. T. L. BEAUCHAMP, J. F. CHILDRESS, *Principles of Biomedical Ethics*, Oxford Univ. Press, New York 1983, p.106.

¹⁷⁷ "Primary concern" referable to the doctor's duty has been affirmed by revised codes. Take for example, *The Physician's Oath* as amended by the 22nd. World Medical Assembly in Sydney, Australia on August 1968 and the 35th World Medical Assembly in Venice on Oct. 1983. Cf. A. J. ROWE (Chair.), *Philosophy and Practice of Medical Ethics*, The British Medical Association, London 1988, pp. 96-98.

¹⁷⁸ It states that: "A physician shall be dedicated to providing competent medical service with compassion and respect for human dignity". A reprint from T. L. BEAUCHAMP, J. CHILDRESS, *The Preamble of the American Medical Association Principles of Medical Ethics* adopted in 1980, in *The Principles of Biomedical Ethics*, Oxford Univ. Press, New York 1983, pp. 331-332.

¹⁷⁹ The Preamble states that: "A physician must recognize responsibility not only to patients, but also to society, to other health professionals, and to self". Furthermore, in part VII, it states that: "A physician shall recognize a responsibility to participate in activities contributing to an improved community". Cf. *Ibid.*; See also, the AMERICAN PSYCHIATRIC ASSOCIATION, *Opinions of the Ethics Committee on the Principles of Medical Ethics*, American Psychiatric Association, Washington 1985.

medical option in question, ethically speaking, is a transgression of his commitments. His doubtful conscience¹⁸⁰ leads him to seek moral help from his colleague. This uncomfortable, yet, real situation is a proof of the doctor's weakness and vulnerability in the ethical field in spite of the fact that he has an adequate knowledge of medicine and also perhaps, a bit of medical ethics¹⁸¹.

In this particular case, what should he do? Many wise and praiseworthy physicians would apply the use of moral standards of good conduct¹⁸². For instance, he may comply with the general moral principle for physicians which states that:

«A physician shall continue to study, apply and advance scientific knowledge, make relevant information available to patients, colleagues, and the public; obtain consultation and use of the talents of other health professionals when indicated» and «A physician shall respect the rights of patients, of colleagues, and other health professionals, and shall safeguard patient confidence within the constraints of law»¹⁸³.

This moral principle helps him realize the importance of living the spirit of mutual professional cooperation among doctors. This cooperative relationship underlines the appropriateness in seeking for more medical guidance and learning from others on how to confront moral difficulties. However, it can be construed that the "others" means exclusively his "colleagues" in the medical profession. After all, the Hippocratic Corpus says that:

«A physician reasoning should never make one jealous of another [physician]. This is a sign of weakness. A Physician does not violate etiquette even if, being in difficulties on occasion over a patient and uncertain owing to inexperience, he should urge the calling in of others in order to learn by consultation»¹⁸⁴.

This time, let us pose the following questions: Does the doctor really need the help and cooperation of other healthcare professionals with regard to his medico-ethical problems? Does the HEC, composed by various non-medical individuals, have adequate ethical capacity to serve the doctor's needs in this area? By practical reason perhaps, yes. Nevertheless, does the HEC role and its existence have real ethical relevance towards doctor's ethical needs? On the other hand, while it may be true that a doctor should consult medical doubts with fellow colleagues who may be better equipped to answer questions in medical sub-specialties, are these doctors more competent in ethical issues than the

¹⁸⁰ To clarify this notion, it is sufficient for the moment to mean that a certain conscience is that which dictates over the moral character of an action without fear of error, and that it is doubtful when the mind is in suspension, for which one vacillates between two contrary propositions without arriving at whatever judgment. Cf. J. MAUSBACH, G. ERMECKE, *Teología Moral Católica*, Eunsá, Pamplona 1971, pp. 248-250.

¹⁸¹ Cf. B. LO, *Behind Closed Doors: Promises and Pitfalls of Ethics Committees*, in "NEJM", 317 (1987) 46-50.

¹⁸² Medical deontological standard of good conduct may be derived from the use of norms, principles codes or rules.

¹⁸³ *American Medical Association Principles of Medical Ethics...*, *op. cit.*, pp. 331-332.

¹⁸⁴ Taken from the Hippocratic Corpus Precept 8, as translated by D. W. AMUNDSEN, *History of Medical Ethics: Ancient Greece and Rome*, in *The Encyclopedia of Bioethics*, Macmillan Publishing, New York 1978, p. 935.

doctor himself¹⁸⁵ in answering questions which the HEC on the other hand, pretends to render?¹⁸⁶

This dilemma experienced by doctors can be partly attributed to the complex medical and technological, as well as legal and moral components which the doctor encounters. In the midst of these intricacies, there remains the image of the traditional physician-patient relationship¹⁸⁷ which the medical profession strongly clings to, especially when confronted with bed-side ethical issues. Physicians feel uneasy when other persons, such as the presence of an external “third party” acting as consulting body (like the HEC, bioethicist, theologian, and of the clinical ‘bed-side’ ethicist), gets in the way. What moral roles, does the existence of the «third party» like the HEC have towards the physician’s personal decisions?

2. *HEC supposed interference to doctor’s decisions*

The following are examples of the subjective reasons why some doctors feel that the HEC is nothing but an interference to their personal and exclusive responsibility or authority over their patients.

a. *“I am also competent”*

The American medical and specialty program, which consists of no less than fourteen years of rigorous, competitive medical education and training, is a rough gauge of the physician’s adequate medical competence. In addition, physician’s personal experience makes him wiser and hence, improves his competence. As a result, medical and technological know-how also gets intermingled with moral experiences in such a way that, ethical and technological aspects are hardly distinguishable¹⁸⁸. A remark by Dr. Joanne Lynn, former assistant director of the President’s Medical Ethics Commission and associate professor at George Washington University Medical School, is in a way certain:

«I’ve had a lot of training concerning the ethics issues. If I have to run everything I do pass on ethics committee that is less adept at what I do than I am, and they require silly things or put me through a lot of time and effort, I won’t like it at all. I will work to have it squelched»¹⁸⁹.

¹⁸⁵ Cf. F. MARSH, *Why Physicians Should Not Do Ethics Consults*, in “Theor Med”, 13 (1992) 285-292.

¹⁸⁶ Cf. L. McCULLOUGH, *Laying Clinical Ethics Open*, in “J. of Med & Phil”, 18/1 (1993) 1-8.

¹⁸⁷ Since we are considering the American culture in the HEC, it is appropriate to follow the Anglo-American significance of the premise, Patient-Physician relationship. This means that it is a bilateral and fiduciary relationship wherein the patient’s preferences are significant and that the physician acts as the ‘fiduciary’. He has the obligation to protect the best interests of this particular person who has entrusted himself his care. Cf. A. R. JONSEN, M. SIEGLER, W. J. WINSLADE, *Clinical Ethics: A Practical Approach to Ethical Decisions in Clinical Medicine*, Macmillan Publishing, New York 1982, pp. 54-55.

¹⁸⁸ Cf. B. HOSFORD, *Bioethics Committees: The Health Care Provider’s Guide*, Aspen Publications, Maryland 1986, p. 94. “Existe una corriente de pensamiento que niega la diferencia entre el «logos técnico» y el «logos ético»” in A. SARMIENTO, G. RUIZ-PEREZ, J. C. MARTIN, *Ética y Genética*, Eunsa, Pamplona 1993, p. 43.

¹⁸⁹ *Ibid.*, p. 93.

Hence, it seems that this feeling becomes more pronounced as doctors get older and acquire more experience, not only in the technical, but in ethical issues as well. It is not surprising that some doctors find no significant reasons for ethical or moral consultations with the HECs.

b. Doctor's personal responsibility

Some doctors think that they fundamentally assume greater responsibility towards their patients. To assure them of this responsibility, they furthermore think that nobody else should meddle around with his medical and moral decisions except his patient. Siegler for instance defends this attitude by saying that:

«Most troubling of all, they may remove or at least attenuate the decision-making authority of the physician who is responsible medically, morally and legally- for the patient's care»¹⁹⁰.

Thus, Siegler stresses the need of examining the ethical reasons why the role of delegating various moral decisions to the HEC be done. He and many other physicians fear that the HEC counsels might directly or indirectly get meddled up with patient-care decisions and usurp the major role and responsibility proper to them: meaning, the doctor's fundamental patient-care responsibility.

This opinion represents a paternalistic attitude. It means that this physician feels that his primary commitment is to help his patient and at the same time, oblige him do what he sees best¹⁹¹. Under what conditions can the HEC come to show the limits of doctor's decision? Can the HEC oblige the physician and substitute his conscience in preference to the "institutional conscience"?¹⁹²

As mentioned earlier, the doctor's relationship with his patient is based on fiduciary trust and confidence¹⁹³. The doctor gains moral strength through the maintenance of this mutual respect. The involvement of a «third party» such as the HEC, are threatening. "They [the doctors] feel that the HEC's intervention challenges their ability to negotiate a reasonable course of medical treatment with their patient and undermines the trust and

¹⁹⁰ M. SIEGLER, *Ethics Committees: Decisions by Bureaucracy*, in "Hastings Center Report", 16 (1986) 22.

¹⁹¹ Paternalism is understood as the traditional notion that the doctor acts even to the interference of the person's liberty justified by the some circumstances such as to act for the good of the patient's interest. Cf. A. R. JONSEN, M. SIEGLER, W. J. WINSLADE, *Clinical Ethics...*, *op. cit.*, p. 52.

¹⁹² Cf. J. M. GIBSON, T. KUSHNER, *Will the Conscience of an Institution Become Society's Servant?*, in "Hastings Center Report", 16/3 (1986) 9-11. The President's Commission for the Study of Ethical Problems states that "primary responsibility for ensuring that morally justified processes of decision making are followed lies with physicians. Health care institutions also have a responsibility to ensure that there are appropriate procedures to enhance patient's competence, to provide for designation of surrogates, to guarantee that patient's are adequately informed, to overcome the influence of dominant institutional biases, to provide review of decision making, and to refer cases to the courts appropriately. The Commission is not recommending that hospitals and other institutions take over decisions about patient care; there is no substitute for the dedication, compassion, and professional judgment of physicians". See PRESIDENT'S COMMISSION FOR THE STUDY OF ETHICAL PROBLEMS..., *op. cit.*, p. 5.

¹⁹³ Cf. H. S. PERKINS, *The Physician as Fiduciary: The Basis for an Ethics of Patient Care*, in J. H. STEIN (ed.), *Internal Medicine*, Little Brown, Boston 1990, pp. 1448-1450.

respect central to a good doctor-patient relationship”¹⁹⁴. The doctor feels that the patient can maintain this respect only if he himself is responsible in his decisions by acting like a good father who decides what is best for his son, because “father knows best”.

Nevertheless, the majority of the presently existing HECs emphasize that their consultative role should merely perform as a recommendation in order to avoid interference with anybody’s final preferences. This means that this HEC function is not morally nor legally obligatory. Despite this non-binding advisory role and the disclaimers of decision making authority, others opine that these committees can significantly serve as “influential factor” whenever they give such recommendations. HEC recommendations can influence concrete and personal moral decisions which for them is unethical. For instance, Gramelspacher observes that doctors who act contrary to the committee’s advice can encounter legal, psychological, and social pressures, even if the HEC performs no more than an advisory function¹⁹⁵. In addition, if their consultative claim is purely advisory, and the doctor makes the final decision¹⁹⁶, and remains the fiduciary of the patient’s preferences, what good does the HEC provide?

B. Ethical evaluation

After presenting the difficulties demonstrated by many medical and bioethics commentators, I find it necessary to present some adequate and sufficient practical answers to these arguments by explaining the ethical and moral values of the HEC participation in the ethical or moral evaluation of bioethical issues in the hospital.

1. Doctor’s competence distinct from ethical expertise

As described earlier, the American doctor’s medical education and training comprises a university course that requires a long period of academic studies. This fact may suggest that physician’s medical competence is practically unquestionable¹⁹⁷.

However, experience also shows that it is more convenient to specialize in a certain field like Ophthalmology, Surgery, Internal Medicine, Pathology, Pediatrics, etc., in order to augment medical competence, while at the same time, limiting the field of study for

¹⁹⁴ G. P. GRAMELSPACHER, *Institutional Ethics Committee and Case Consultations...*, *op. cit.* p. 77

¹⁹⁵ Cf. *Ibid.*

¹⁹⁶ The American College of Physicians states that: “The final moral responsibility for the [treatment] decision rests with the patient and the attending physician and not with the consultant or a committee”. THE AMERICAN COLLEGE OF PHYSICIANS, *American College of Physicians Manual, Part 2: The Physician and Society; Research; Life-sustaining Treatment; other Issues*, in the “Ann of Int Med”, 111 (1989) 324.

¹⁹⁷ “Competence is a common sense concept that has acquired a technical, though somewhat imprecise, meaning in the law. Competence in ordinary life may refer to mechanical or technical skills or intellectual or emotional capacities. It means a person is able to perform certain tasks and do so adequately or proficiently. In this case it is heavily value laden, resting more on norms than on facts. The term ‘clinical competence’ used to evaluate physicians, carries this meaning”. A. R. JONSEN, M. SIEGLER, W. J. WINSLADE, *Clinical Ethics...*, *op. cit.*, pp. 56-57.

more concrete but deeper understanding. Everyone knows that a doctor can be an expert in one thing but not in everything.

Given these advantages and limitations, the Hippocratic oath does not prevent him from seeking advice from his fellow physicians or colleagues in the profession. In fact, the American Medical Association Principle of Medical Ethics declares that:

«...the courts have recognized that the attending physicians must consult if they are not qualified to render necessary treatment, they know or should reasonably know that they do not possess the knowledge required for treatment. They realize that their methods of treatment are ineffective and that other treatment modalities are available, or they recognize that a higher degree of skill and training is necessary in the patient's management¹⁹⁸.

The above statements show that the doctor is not the sole source of competence in medical aspects. It can be deduced that a doctor must also seek advice when he feels that he not possess all the necessary skills and knowledge in medical management. Moreover, he can also have a similar feeling of inadequacy in discerning the moral consequence of his medical decisions. Nevertheless, what differentiating relevance does «medical» and «ethical» knowledge have? This differentiation shall be explained in the succeeding section.

a. Competence of medical science is not autonomous

Medicine is a practical science because in the first place, its object is the acquisition of a body of knowledge in the biomedical field through certain conclusions from causes¹⁹⁹. However,

«Medicine is not an exact science [because] an exact science is a body of knowledge that allows one to reach certain conclusions from causes and to apply that knowledge without fear or error. Mathematics is an exact science. Only human error causes defects in mathematical conclusions»²⁰⁰.

Medical disciplines containing exact sciences like Biochemistry or Anatomy, do not end in the acquisition of such knowledge because the object of the science of medicine is also practical or operative: to curing illness. This practical science becomes operative when the «art of medicine» is concretely applied to individuals or patients as persons²⁰¹. Patients are not only sets of bodies anatomically composed or physiologically determined but are also persons who react socially and spiritually. A well rounded medical science must therefore respond operatively to the cognitive-affective needs of each person's well-being. Once these operative conditions inherent to medicine are recognized as essential,

¹⁹⁸ W. B. WEEKS, W. A. NELSON, *The Ethical Role of the Consultant*, in "C Q of Healthcare Ethics", 2 (1993) 477.

¹⁹⁹ Medicine is a science insofar as it employs the acquisition of practical knowledge but not necessarily theoretical (*episteme*). Yet: "La palabra ciencia proviene del latín *scientia*, el equivalente del griego *episteme*. La definición clásica es «*cognito certa per causas*», conocimiento cierto por causas. Hay cierta ambigüedad en el empleo actual de la palabra, pues todos la usan para referirse a los mismos campos". J. G. COLBERT, *Ciencia*, in "Gran Enciclopedia Rialp", vol. 5, Rialp, Madrid 1971, pp. 597-600.

²⁰⁰ K. D. O'ROURKE, D. BRODEUR, *Medical Ethics: Common Ground for Understanding*, vol. 2, Catholic Health Association of the United States, St. Louis M.O. 1989, p. 3.

²⁰¹ P. RAMSEY, *Patient as Person*, Yale Univ. Press, New Haven 1970.

physicians would comprehend the need to also seek the aid of other sciences and the reality that there is no radically autonomy of medical scientific competence²⁰². Through an open attitude, physicians can adequately respond to the physical and spiritual needs of patients as persons²⁰³.

Contrary to the doctor's pretensions of radically autonomous professional competence just mentioned earlier, it should be taken into account that by obtaining a scientific specialty does not necessarily mean enclosing oneself within a radical independence from the other sciences. Medicine should relate itself with the other branches of science in such a way that doctors should be also attentive in relating himself, along with the patient, in the development of both their bodily and spiritual needs. The doctor must be concerned with his spiritual and social needs in as much as he does for his bodily health or necessities. «Ethics» is one of these especially related sciences which he has to acknowledge. Undoubtedly, "ethics is the science related to medicine, on the same way that medicine is a science related to ethics"²⁰⁴. This implies that there is a mutual relationship between these two disciplines. The inter-disciplinary concept of medicine and of ethics is what has been responsible for the development of what we call bioethics²⁰⁵.

But why does the general public believe that the doctor "knows best" in matters regarding clinical decisions and that ethical questions should be left out altogether because they seem to fall outside of his medical competence? This would supposedly imply that doctors need not consult about ethical problems since ethics does not seem to fall within the bounds of medicine.

E. Pellegrino and D. Thomasma attribute this erroneous notion to the Cartesian dualism²⁰⁶ whereby Descartes insists in believing only what is clear and distinct. Doctors sometimes feel that ethical problems affecting the psychological, social, and spiritual needs of the patient are not his to think about because they are 'not exact, or distinct or clear'. Criticizing Descartes, these authors say that when this attitude happens, doctors would depreciate their patient's value and tend to dehumanize medicine and the patient. The patient is then seen as a mere machine, a body separated from his soul²⁰⁷.

²⁰² "En realidad, esta autonomía científica que el s. XX ha recibido como un legado de las etapas antes consignadas, ha sido sometida en nuestra época a una revisión profunda... Hasta el siglo pasado la proclamación de la autonomía de la ciencia ocultaba la pretensión al saber exclusivo, al único saber verdaderamente válido y valioso; saber destinado a suplantar toda religión y toda filosofía. La declaración de autonomía científica contemporánea reconoce la existencia de objetivos del conocimiento que caen fuera del área de sus propios métodos". R. SAUMELLS, *Autonomía Científica...*, op. cit., pp. 606-607.

²⁰³ Cf. P. RAMSEY, *Patient as Person...*, op. cit., 200 pp.

²⁰⁴ A. POLAINO-LORENTE, *Más allá de la confusión: Razones para la prioridad de la Bioética*, in *Manual de Bioética General*, Rialp, Madrid 1994, p. 74 (translation mine).

²⁰⁵ "Estudiosos como Beauchamp, Childress, Walters, incluso Pellegrino y Gorovitz entre otros, admiten que la Bioética es una parte (más que una aplicación práctica) de la Etica: es una ética médica". *Ibid.*, p. 83. See also, M. J. FISHER, *Ethics, Problems and Principles*, Harcourt Brace College Publishers, Forth Worth 1992, pp. 213-250.

²⁰⁶ Cf. E. PELLIGRINO, D. THOMASMA, *A Philosophical Basis of Medical Practice*, Oxford Univ. Press, New York 1981, p. 99.

²⁰⁷ Cf. K. D. O'ROURKE, D. BRODEUR, *Medical Ethics...*, op. cit., pp. 5-6.

Therefore, a physician should be open to consulting other people's advice, who can be of help in attaining sufficient knowledge over the various human needs, both physical and spiritual, of the patient²⁰⁸. Insofar as ethical issues are concerned, it can be construed from this argument that at times there is a need for the doctor to seek ethical recommendations and advice from other competent people like moralists, ethicists, lawyers, and theologians, or taken as a whole, the HEC consultative body.

b. Medical competence: ethical reasoning versus technical reasoning

In the preceding section, we have alluded to what competence should be. The problem now lies over the difficulty of distinguishing ethical and technical aspects. The confusion between «ethical reasoning» from «technical reasoning» has become the source of frequent misunderstandings and has even led to the point of thinking that medicine is nothing but a technique divorced from ethical or moral realms.

This confusion of terms by many may perhaps be attributed to man's fundamental experience of instrumentality who has come to view work and fabrication as a sign of his dominion over the material world. As Hannah Arendt observed and commented, man has reached the stage of imagining himself as an *animal laborans*, i.e., human labor power who, through his marvelous ability to use and dominate things and the world, has later transformed himself into *homo faber* or man a "tool-maker", as described by Benjamin Franklin²⁰⁹. She lamented by saying that:

«... the philosophy of *homo faber* par excellence, can be diagnosed theoretically as an innate incapacity to understand the distinction between utility and meaningfulness, which we express linguistically by distinguishing between "in order to" and "for the sake of"»²¹⁰.

To differentiate this point clearly, and to avoid falling into the trap of thinking that medicine is nothing but a simple technique "in order to" treat a patient as if he were a machine and not "for the sake of" being a person, or of limiting the doctor to simply a *homo faber* (tool-maker), let us examine briefly Aristotle's work. In his book *Nicomachean ethics*, he states:

«Among things can be otherwise are included both things made and things done; making and acting are different; so that the reasoned state of capacity to act is different from the reasoned state of capacity to make... Making and acting being different, art must be a matter of making, not of acting»²¹¹.

²⁰⁸ It is to be warned that when we refer to the necessity of spiritual concerns, it does not advocate the opposing pole known as «spiritualism» because separation of the spiritual and corporal aspects in man as a person would also imply a Cartesian view-point. "Spiritualism is a misunderstood reduction of the moral meaning of the body and of kinds of behavior involving it... In fact, body and soul are inseparable... which is the person himself in the unity of soul and body, in the unity of his spiritual and biological inclinations and of all the other specific characteristics necessary for the pursuit of his end". JOHN PAUL II, Encyclical letter, *VS* n° 49-50.

²⁰⁹ Cf. H. ARENDT, *The Human Condition*, The Univ. of Chicago Press, Chicago 1958, p. 144-147.

²¹⁰ *Ibid.*, p. 154.

²¹¹ ARISTOTLE, *Nicomachean Ethics*, VI, 5: 1140 a 1-5, 15; English translation from J. BARNES, *The Complete Works of Aristotle*, Princeton Univ. Press, New Jersey 1984, pp. 1799-1800.

The word *poiesis*, used by Aristotle and the Greeks, or *ars* in Latin (art) means production; whereby it is that whose aim is to obtain a determined result. This term was changed to «technique» during modern age, starting from the 18th century, conceived as a form of scientific discipline of practical applications, now popularly known as «technology»²¹². On the other hand the Greek word *praxis* or *actio* in Latin (action) “pertains to all actions corresponding to ethical or juridical knowledge”²¹³.

Applying the notions «technique» and «action» in the practical exercise of reason, these terms are essentially distinct in such a way that technique is mere *production* while reasoned action is *wisdom*²¹⁴. The difference lies in the following: when a person produces or makes something, he applies a «technique». He does not necessarily perfect himself, rather, he only manifests a certain capacity for doing something. On the other hand, the word «reasoned action» is the wisdom of perfecting himself as he is because the effect of this action is intrinsic to the subject who works while he produces something. This reasoned action is related to what we call «ethics or morals» when this practical attitude is ordered to the production of human acts. Such acts are ethical or moral in so far as they perfect the subject who actualizes them. Art and technique are thus united when they are compared and applied with ethics or morals²¹⁵.

But how does the finality of one differ from that of the other? The difference of finality of the technical type from that of moral or ethical finality consists primarily in this: the «technical finality» does the abstraction from the realities of nature taken as means and as an end considered not other than by its calculable utility. In a way, it serves as a means for an end, or something which is considered as end for a series of means. On the other hand, the «moral finality» is determined by the nature of the realities themselves, such that some things are ends by its very nature and can never be considered lightly as if they were mere means²¹⁶.

Thus, a person acts humanly when he considers the finality of his acts for what he is, and by the finality of his nature. In practical terms, a doctor cannot simply be a *homo faber* who looks at his work or job as a mere technique and see his patient as if he or she were just a simple means or instrument. Reality shows that he and his patient are persons and not objects. So, to be ethically righteous, he has to learn how to distinguish what is technical and at the same time, to perceive the ethical finality and implications of his acts.

²¹² Cf. S. PINCKAERS, *Las Fuentes de la Moral Cristiana*, Eunsa, Pamplona 1988, p. 123.

²¹³ J. V. ARREGUI, J. CHOZA, *Filosofía del Hombre*, Rialp, Madrid 1992, p. 377.

²¹⁴ “A estos dos modos de ejercerse la razón práctica corresponden dos actitudes permanentes, esencialmente diversas: a la «producción» le corresponde la técnica y a la «acción» la sabiduría”. A. SARMIENTO, G. RUIZ-PEREZ, J. C. MARTIN, *Ética y Genética...*, *op. cit.*, p. 42; C. CAFFARRA, *Ratio technica-ratio ética*, in “Anthropotes”, 1 (1989) 129.

²¹⁵ S. PINCKAERS, *Las fuentes...*, *op. cit.*, pp. 122-123.

²¹⁶ Cf. S. PINCKAERS, *La cuestión de los actos intrínsecamente malos y el «proporcionalismo»*, in “Ethos”, 10/11 (1982-1983) 252.

2. *Prudence as physician's virtue*

We mentioned earlier that “reasoned action is wisdom”²¹⁷. Moreover, we have also explained that moral finality is superior to technical finality because the latter is aimed at mere utility while the former is ethical or moral such that its end is determined by its very nature. To act in wisdom, (i. e., to act morally) would highlight then the fact that man is essentially *homo sapiens*, and not merely *homo faber*. This also implies that the technical reasoning of the physician must be subordinated to ethical reasoning. St. Thomas Aquinas, in explaining that the right reason of making (*recta ratio factibilium*) is subordinated to the right reason of action (*recta ratio agibilium*), alludes to what we call the virtue of prudence²¹⁸.

a. *The virtue of prudence*

The virtue of prudence has been considered by many as the ‘charioteer’ of virtues, because through the *recta ratio agibilium*, man is made capable of the right measure of a concrete act which tends to perfect the directive activity of the practical reason in determining the concrete demands for truth, whose ultimate terms are charity and felicity²¹⁹. In other words, it is a discernment and a command to realize a concrete action as a means ordered to its end²²⁰. The ultimate end, based on truth, are the values of charity and felicity²²¹.

St. Thomas went further: in order that prudence may exercise a perfect knowledge of the *ratio agibilium*, three things are required: first, to search or seek good counsel; second, to know it well; and third, to use this acquired knowledge well in order to discover new aspects and to judge them all rightly²²². Without going into too many details of these three required components, let me focus myself upon the first two elements: the search for counsel and by knowing it well. Both of these components are what is meant by «discernment», as St. Thomas comments:

«Prudence does not refer properly speaking to the field of art, because this is ordered to a particular end. And in order to reach its end, it possesses determined means. Nevertheless we say in certain likeness, that one works prudently in matters of art in a manner that through the indetermination of the means of some art, it is necessary to seek counsel as we have seen in medicine and in navigation»²²³.

²¹⁷ “Et ideo signanter dicitur quod prudentia est ‘sapientia viro’, non autem sapientia simpliciter”. ST. THOMAS AQUINAS, *S. Th.* II-II, q. 47, a. 2 ad 1.

²¹⁸ “Ad tertium dicendum quod omnis applicatio rationis rectae ad aliquid factibile pertinet ad artem. Sed ad prudentiam non pertinet nisi applicatio rationis rectae ad ea de quibus est concilium”. *Ibid.* *S. Th.* II-II, q. 47, a. 2 ad 3.

²¹⁹ Cf. A. RODRIGUEZ-LUÑO, *Etica General*, Eunsal, Pamplona 1991, p. 273. See also J. PIEPER, *Prudencia y Templanza*, Rialp, Madrid 1969, pp. 39-109

²²⁰ “La definizione classica della virtù della prudenza: questa discerne e comanda le azioni concrete da compiersi come mezzi in ordine al fine”. D. TETTAMANZI, *Verità e Libertà: Temi prospettive di Morale Cristiana*, Piemme, Casale Monferrato 1993, p. 311.

²²¹ Cf. *Ibid.* p. 351.

²²² Cf. From the commentaries of: S. RAMIREZ, *Introducción general a la Suma Teológica de Sto. Tomas*, vol. 8, BAC, Madrid 1956, p. 54.

²²³ ST. THOMAS AQUINAS, *S. Th.* II-II, q. 47, a. 5, c.

This lends credence to the point which we are trying to prove: that the HEC's consultative function makes sense. Concretely, the angelic doctor advises us over this point by saying that generally, man by himself cannot reach the best moral action from the numerous options available, without the help from somebody. He needs others' instructions, especially from learned and experienced elders who have the ability for good judgment. Righteous man reaches his complete development and perfection depending upon the solicitude, frequency and respect towards the consultative teachings of sages: as opposed to the carelessness, laziness or pride, of the imprudent²²⁴. The scripture likewise advises: "Do not rely on your own prudence" (*Prov* 3,5); "Seek the company of elders, and if you find some wisdom, rejoice with him" (*Eccli* 6,15).

b. Prudence and its components

A logical relationship can be derived between the physician who searches for good counsel and the HEC which serves as a consulting body. There are two subjects involved here: a prudent doctor seeking counsel, and the HEC which aims at rendering good counsel or prudent consultative recommendations. To avoid confusion and to maintain the consistency of the topic, I shall deal exclusively on the doctor as the subject of our inquiry because the HEC's task belongs properly speaking to another field of prudence called the «gift of counsel», which calls for a separate topic.

Prudence is analogous to the following components: wisdom, vigilance and discernment. Thus, it could be said that "a wise man is a prudent man". Or, prudence is «vigilance» because it is linked with *procul videre* (to see from afar by ordering the opportune means and foreseeing the consequence). It is also called the virtue of «discernment», because it gives someone the ability or capacity of right judgment relative to the means²²⁵. If these components feature the necessity of foresight in ordering of means, and discernment of the means to right judgment, then, this «means» may take the form of receiving counsel which requires the attitude of docility. I shall relate these components in the following manner:

1). The classical notions

The Greco-roman philosophical concept has been dealt with earlier. To wit, Plato relates prudence with the virtue of directing the administrative affairs of the state, called the «virtue of good counsel» or *phronesis*. A doctor in a way, is likened to Plato's administrator who should be ready to give good counsel. Yet, this exercise of virtue is idealistic because in practice, it is not easy to achieve. It must imply that he should have the capacity of discernment and requires advice from others. For this reason, Aristotle, and later on St. Thomas, affirm the need to apply the «components of prudence» in order to practice this specific virtue well²²⁶. Thus, seeking advice as a means of acting prudently is an important factor stressed by these classical authors.

²²⁴ Cf. *Ibid.*, *S. Th.* II-II, q. 49, a. 3, 2 c.

²²⁵ Cf. D. TETTAMANZI, *Verità e Libertà...*, *op. cit.*, p. 315.

²²⁶ St. Augustine said: "amorem bene discernentem ea quibus adjuventur in Deum, ab iis quibus impediri potest". AUGUSTINE, *De Mor. Eccl.* 1, 15, PL. 32, 1322.

2). Scriptural notions of the components of prudence

The Judeo-Christian tradition is filled-up with teachings on this virtue. From the Old Testament, it is conceived as a gift from God because man has realized that only through the help and counsel on the Wisdom of God can he attain the corresponding wisdom and prudence. “Because the Lord gives wisdom, and from his mouth comes wisdom and prudence” (*Pr* 2,6; cf. *Is* 11,2). This shows that the source of the prudence of man is God. Man, however wise he might be, still senses the weakness and the limitation of his capacity to discern things morally. He needs God as his source of advice.

Holy Scripture offers three fundamental ways to exercise and to educate the virtue of prudence: by way of prayer, by way of docility in hearing their counsel, and by way of experience²²⁷. A prudent man prays for prudence: “I prayed and prudence was given me, I pleaded and the spirit of Wisdom came to me” (*Ws* 7,7). Docility means that he should be attentive to the advice and counsel of elders, teachers, and those who have good experience in life: “for it is by wise guidance that you wage your war, and the victory is due to a wealth of counselors” (*Pv* 24,6; *Eccli* 32,24; 37, 14-20).

This notion of prudence has been elevated to a higher and supernatural plane through the teachings of Jesus Christ who is the cause of the fundamental notions of Christian morals²²⁸.

Christ’s teachings on the exercise of the virtue of prudence can be grouped in the following manner, as described by Tettamanzi²²⁹. First, through Christ’s examples and actions: “All who were listening to him were amazed at his intelligence [prudence²³⁰] and his answers (*Lk* 2,47)”. Second, by word or preaching whereby Christ revealed a greater form of prudence, more sublime and, at times, in apparent contradiction to the mere «prudence of this world», such as in the following examples: prudence and wisdom manifested by giving one’s life for love of friends (*Jn* 15,14); or the scandal of the Cross (*1 Cor* 1,19-24). He also used parables when teaching the Christian virtue of prudence, especially with regard to the specific components of this virtue: vigilance and discernment. Christ taught vigilance comparing it to the prudent virgin (*Lk* 16,8), or to be prudent as serpents and guileless as doves (*Mt* 10,16). Discernment or foresight is important in a prudent man who wishes to build a tower by first sitting down and outlying the necessary structures (*Lk* 14, 28-31). Or the need to discern the signs of the times (*Mt* 16,2-3, *Lk* 19,42-44). So that through this virtue, he can look not only to the Kingdom of God but also in a concrete situation in life²³¹.

²²⁷ Cf. D. TETTAMANZI, *Verità e Libertà...*, *op. cit.*, p. 317.

²²⁸ Man inherently seeks perfection and it is fully achieved through the ‘*sequela Christi*’ commented as: “Following Christ is thus the essential and primordial foundation of Christian morality: just as the people of Israel followed God who led them through the desert towards the Promise Land, So every disciple must follow Jesus, towards whom he is drawn by the Father himself (Cf *Jn* 6, 44)”. JOHN PAUL II, Encyclical letter, *VS* n° 19.

²²⁹ Cf. D. TETTAMANZI, *Verità e Libertà...*, *op. cit.*, p. 320-321.

²³⁰ “*Stupebant autem omnes, qui eum audiebant, super prudentia et responsis eius*”. The ‘super prudentia’ is translated as ‘intelligence’ in the JERUSALEM BIBLE, Geoffrey Chapman, London 1971.

²³¹ “D’altra parte, la prudenza cristiana ha l’occhio rivolto non solo al regno di Dio, al cui servizio tutto pone, ma anche alle situazioni concrete di vita”. D. TETTAMANZI, *Verità e Libertà...*, *op. cit.*, p. 321.

St. Paul expounded more upon the component of prudence as discernment of the will of God, called «*dokimázein*» when he said: “be not conformed to this world, but be transformed in the newness of your mind, that you may discern what is good acceptable, and the perfect will of God” (*Rm* 12,2). According to Tettamanzi, through Christ, these Christians are now able to discern and transform their mind to the will of God²³².

Lastly, the virtue of prudence by discernment is not only a spiritual moment of judgment, but also a moment of particular decision such that this action becomes conscious and responsible. “For you were once darkness, but now you are light in the Lord. Walk, then as children of light (for the fruit of the light is all goodness and justice and truth), testing what is well and pleasing to God” (*Ep* 5,8-11).

Another component of prudence is docility in listening to counsel or advice²³³. A graphic example is found in the gospel of St. Matthew. A rich young man sought Jesus’ advice: “Teacher, what good must I do to have eternal life?” (*Mt* 19,16). Jesus, the «True Light» enlightens this man and everyone because,

«the man who wishes to understand himself thoroughly and not just in accordance with immediate, partial or superficial, and illusory standards and measures of his being, must, with unrest, uncertainty, and even his weakness and sinfulness, with his life and death, draw near to Christ»²³⁴.

However, it is not enough to seek advice, as we can see from the consequence of the decision of the rich young man when he “went away sad”. The component of docility is also needed because “since no one cannot give anything which he does not have, so we have to learn from those who know with good disposition to receive, avoiding one’s pride”²³⁵. The young man in the gospel narrative reacted inappropriately and realized the gravity of his personal decision. Docility in seeking counsel, as component of prudence,

«...is not a passive responsibility in the decision. It is rather, a disposition of inquiring for truth, avoiding sterile autarchy or reasons brought about by pride. So, by hearing and taking into account the necessary counsel, one may learn how to refrain from speaking and yet, have a fully personal decision which is in a way, more free and accommodating to the truth»²³⁶.

3. Ethics counseling, consultation, committee: root of the present contexts

«Seeking counsel from elders» as a component of the virtue of prudence has been described. In the present systems of thought, entities such as consultative bodies, group counseling, and committees need to be explored in order to clarify and to situate our objective: what is really meant by the «consultative role» of the HEC?

In ancient medicine, the Hippocratic oath alludes to the need to call others in order to learn «by consultation». In 1803, Thomas Percival’s «Medical Ethics» was published

²³² *Ibidem*.

²³³ Cf. ST. THOMAS AQUINAS, *S. Th.* II-II q. 49, a. 3 ad. 3; II-II q. 129 a. 9 ad. 1.

²³⁴ JOHN PAUL II, Encyclical letter, *VS* n° 8; Encyclical letter, *Redemptor Hominis* n°. 10, (March 4, 1979): AAS 71(1979), 274.

²³⁵ B. MONTEJANO, *Prudencia*, in “Gran Enciclopedia Rialp”, Rialp, Madrid 1971, p. 328.

²³⁶ I. J. CELAYA, *Prudencia...*, *op. cit.*, p. 330.

urging the British Doctors to seek help by consultation²³⁷. It can be observed that medical consultation was originally meant as an inquiry to technical problems. However, due to growing ethical complexities which challenged the patient's autonomy and the physician's duties, consultative specialty, not only in technical aspects, but also in ethics consultations (in groups or individually), eventually emerged. It is of common opinion that this type of ethical organization in contemporary health care institutions is a recent development²³⁸. The historical background in the HEC formation described in the earlier chapter is sufficient to stress this point.

However, ethical or moral consultation of physicians with one another, especially with trusted personal non-medical advisers like the priest or confessor, has already been in practice for a long time. Historical precedents of ethics consultations with priests are found extensively in the Catholic and Jewish tradition of moral-theological scholarship of medicine, health and illness that underlie the contemporary interactions between physicians and specialists in Jewish law and Roman Catholic Moral Theology and Canon Law²³⁹. I shall now discuss the roots of these concepts, and their evolution in medical bioethics as it is commonly understood.

a. The notion of consult or consultation

«To consult» is derived from the Latin term *consulere/consulto*, technically meaning «to consult with» or, «to take counsel» or «to submit a thing for deliberation». Cardinal Newman, a versatile latinist and theologian, made a very important descriptive and differentiating point:

«The English word «consult», in its popular and ordinary use, is not so precise and narrow in its meaning; it is doubtless a word expressible of trust and deference, but not of submission. It includes the idea of inquiring into a matter of *fact*, as well as asking a judgment»²⁴⁰.

This means that to seek consultation is to seek, through trust and confidence, the truth of the fact –to inquire or to deliberate upon a decision which does not necessarily mean submission, i.e., it may not be binding. This particular notion is perhaps the most appropriate meaning to apply in the consultative functional role of the HEC. This means that the doctor can consult the HEC about the “matter of fact” or the truth. Although the HEC can give definitive ethical advice, it always remains a recommendation which is advisory and non-binding in nature. The personal judgment or deliberation of the doctor is thus preserved.

The modern term “consultation” in medicine has suffered much confusion. It can be defined in numerous ways such as «a conference at which advice is given or views are exchanged» (American Heritage Dictionary). But generally, it is understood in medicine as:

²³⁷ Cf. J. C. FLECHER, N. QUIST, A. R. JONSEN, *Ethics Consultation in Health Care*, Health Administration Press, Michigan 1989, p. 10.

²³⁸ Cf. *Ibid.*, p. 11.

²³⁹ Cf. *Ibid.*

²⁴⁰ J. H. NEWMAN, *On Consulting the Faithful in Matters of Doctrine*, Geoffrey Chapman, London 1961, p. 54.

«...a collaborative problem-solving process consisting of several, often non-distinct stages that requires an open, trust relationship between the consultant and the consultee [and] to be effective, consultants must elicit accurate information about the client's problem and the consultee's attempts to resolve the problem»²⁴¹.

b. Notion of council and committee

Once a consultation turns into a group of consultants, it takes a form of a «council» or «committee». The English word «council» may mean a deliberative assembly; a somewhat permanent group elected or appointed to constitute an advisory body, or a body with a degree of legislative power; an administrative body, a federation or a central body uniting a group of organization (Webster's Third New International Dictionary). In other words, it is a group or body of consultants constituted for an advisory function or with some degree of legislative power.

In this case, a consultative body can take two categories of action: binding or non-binding consultative body. When this body is capable of making binding or legislative decisions, it is usually called a «council» or *consilium*²⁴². This type of meaning is what is commonly applied in the Canon Law²⁴³.

The other category is a «committee»: a body of consultants delegated to consider, investigate or take action upon and usually to report concerning some matters or business²⁴⁴. A committee should thus be understood as a group aimed solely at giving counsel or advice and which produces a report or recommendations which are not necessarily legally binding.

Many HECs opt for the original concept of the committee as a non-binding ethical recommendation in clinical decision. Problems arise when some HECs attempt to oblige the doctor or patient, under juridical mandate, to assume HEC decisions that are in essence contrary to the consultee's views.

4. Doctor's personal responsibility

Whenever we talk about responsibility, this notion automatically entails a corresponding duty. The physician's duties are very much linked to the norms which are

²⁴¹ D. BROWN, *Defining Human Service Consultation*, in J.E. ZINS, T. R. KRATOCHWILL, S. N. ELLIOTT, in the *Handbook of Consultation Services*, Jossey-Bass, San Francisco 1993, pp. 47-61.

²⁴² K. S. SEBASTIAN, *Consultative Bodies within the Parish According to the 1983 Code of Canon Law*, Urbaniana, Rome 1989, p. 75.

²⁴³ "The second Vatican Council focused particular attention on the need of consultation as a means of advancing the common good. This is reflected in the new Code of Canon Law. The index provides 25 entries under the heading of 'consultation/counsel'. This listing involves approximately 60 canons of the code. It is significant that the word 'council' is defined as 'an assembly of persons called together for consultation, deliberation, or discussion;' and the advice resulting from such an assembly is known as 'counsel' (from the Latin '*consulere*' to consult). The propriety of consultation is urged in situations as diverse as a bishop consulting with his auxiliary bishop (Can. 407), or with a pastor preliminary to appointing an associate pastor (Can. 547)... parish pastoral councils (Can. 536)": O. N. GRIESE, *Catholic Identity in Health Care: Principles and Practice*, Pope John Center, Massachusetts 1987, p. 304.

²⁴⁴ There is no Latin equivalent of "non-binding" *consilium* as expressed to the term "committee" in English, or "comitato" in Italian, "Comite" in French and "Komitee" or "Ausschuß" in German.

valued by the very nature of his profession. I have described earlier how most of the doctors perceive the importance of his professional oath as a manifestation of his sincere desire to help his patients. The awareness of his duties and responsibilities towards his patients plays an essential part in the ethical evaluation of his acts. In concrete, I shall relate this topic to the scope of our study: The demonstration that the HEC as a consulting body is ethically relevant in the doctor's exercise of moral decisions.

a. Versus paternalism

In the past, the doctor's position in the patient relationship (*vis-a-vis*) was more inclined toward the paternalistic approach. The Oxford English dictionary defines paternalism as "the principle and practice of paternal administration; the claim or attempt to supply the needs or to regulate the life of a nation or community in the same way as a father does to his children: policy of controlling people in a paternal way by providing them with what they need but giving them no responsibility or freedom of choice". Transposing this concept to medicine, this type of relational approach is encountered when a patient takes a passive position and tells his physician in a paternal and fiduciary manner: "you decide what you think is the best form of treatment". The doctor here "seems to be a medical mystique seen as the only individual capable of rendering health: which is obviously a misconception"²⁴⁵.

While it is certain that the doctor should do his best to treat his patient and to always win and maintain the trust and confidence given to him, this form of dealing is now viewed as incomplete. Presently, there is a keen awareness in partnership relations through an active patient participation whereby patients can autonomously decide for himself²⁴⁶. Moreover, this contractual partnership which involves the two parties also demands a relationship among other individuals in the health care services such as nurses, priests or spiritual and pastoral care givers, ethicists, theologians, social workers and lawyers, depending upon the opportune necessities. This section discusses how this relationship can be applied to the HEC as participant in decision making while maintaining intact the personal responsibility of the doctor.

b. The doctor-patient relationship

A more developed notion of this relationship in which the patient takes an active part in the decision making process emerged strongly after the second world war and has been noticeably visible since the 1970's²⁴⁷. The ethical principles for medicine, endorsed as the «Fundamental Elements of the Patient-Physician Relationship» by the Council on Ethical and Juridical Affairs of the American Medical Association in 1980, represents a

²⁴⁵ Cf. A. J. ROWE (Chair.), *Philosophy and Practice of Medical Ethics*, British Medical Association, London 1988, p. 7; A. H. GOLDMAN, *Refutation of Medical Paternalism*, in *Moral Foundation of Professional Ethics*, Rowman and Littlefield Publishers, New Jersey 1980, p. 125.

²⁴⁶ There are numerous models of Patient-doctor relationship such as the collegial, priestly, engineering, convenantial types as described by Veatch. Cf. R. M. VEATCH, *The Care for Contract in Medical Ethics*, in *The Clinical Encounter*, Reidel, Boston 1983, pp. 105-112; J. DE LAS HERAS, *La Relación Médico-Paciente*, in A. POLAINO-LORENTE, *Manual de Bioética General*, Rialp, Madrid 1994, p. 271.

²⁴⁷ A. J. ROWE (Chair.), *Philosophy and Practice of Medical Ethics...*, *op. cit.*, p. 8.

departure from the moral obligations of physicians towards “Patient’s Rights”²⁴⁸. This formulation was based upon basic fundamentals of ethics, but focused more upon the principle of autonomy and veracity.

Thus, Pope Pius XII reiterates that physicians have no right over the patient except those which have been given to him by the patient. He describes how an authentic patient-doctor relationship should be:

«First of all one must suppose that the doctor, as a private person, cannot take any measure or try any intervention without the consent of the patient. The doctor has only that power over the patient which the latter gives him, be it explicitly or implicitly and tacitly. The patient, for his part, cannot confer rights which he does not possess»²⁴⁹.

The doctor is not therefore, the sole decider. The emphasis is then moving towards a better expression of this mutual relationship in which the patient is now taking an active part in decision making: by demonstrating the value of his personal expression and by the exercise of his freedom, a manifestation of his dignity as a person. At this point, however, care must be taken in the manner of interpreting patient’s autonomy. Patient’s autonomy should also take into consideration his doctor’s opinions and his dependence upon ethical norms²⁵⁰. How the patient should use his autonomy in this area will be discussed in the succeeding section which deals with the patient’s responsibility and freedom. Limiting myself to the doctor’s point of view, it would suffice to indicate what Pope Pius XII delicately expounded with regard to this point:

«The rights and duties of the doctor are correlative to those of the patient. The doctor, in fact, has no separate or independent right when the patient is concerned»²⁵¹.

The term «correlative» alludes to the fact that there should be a reciprocal cooperation existing between the two involved persons. This cooperation indicates that the doctor’s rights and duties are related to the corresponding rights and duties of the patient. Neither of the two should act autonomously, out of simple free choice, whim or desire.

c. Doctor’s responsibility involving other parties

The patient-doctor relationship involving other individuals known as «third parties»²⁵² (i. e., individuals or institutions like nurses, parents, spouse, committees, or

²⁴⁸ Cf. L. WALTERS, *Professional Relationship to Patients and Subjects: Rights and Responsibilities*, in *Contemporary Issues in Bioethics*, Wadsworth Publishing, California 1994, p. 40.

²⁴⁹ PIUS XII, *Allocution to the First International Congress of Histopathology*, (September 13, 1952): AAS 44 (1952) 784-789; An English translation in *The Papal Teachings: The Human Body*, St. Paul’s Publishing, Boston 1960, p. 198.

²⁵⁰ «La ética es propiamente un saber normativo, capaz de establecer virtudes y normas de valor absoluto e incondicionado, cuyo valor no depende de normas establecidas por otra ciencia práctica». A. RODRIGUEZ-LUÑO, *Ética General*, Eunsal, Pamplona 1991, p. 27.

²⁵¹ PIUS XII, *Allocution to Gregor Mendel Genetic Institute*, (November 24, 1957): AAS 4 (1957) 127-133.

²⁵² Here, «third party» means anyone else who gets involved aside from the traditional patient-doctor relationship. Cf. T. L. BEAUCHAMP, L. B. McCULLOUGH, *Third Party Interests*, in *Contemporary...*, *op. cit.*, pp. 75-83.

insurance companies), are viewed by many as an essential consideration in the dynamics of seeking moral stance in decision-making. They are found to be necessary because “the physician has a moral duty at least to consider the third party interests in their encounter with patients”²⁵³.

The difficulty of asking consultative advice from the HEC as a supposed competent «third party» lies, perhaps, in the following concern: whether a consultation of non-physician (the «third party») by a doctor is within the bounds of the Hippocratic concept, or rather, does it constitute a break with his ethical commitment to patient’s confidence and trust.

T. Beauchamp and L. McCullough consider that this principle rests upon the dubious and indefensible assumption that the patient-physician relationship²⁵⁴ never involves a primary obligation to third parties. These two authors draw compelling moral reasons why the physician should consider third parties, such as spouses, parents, guardians or committees, as important and which cannot be ignored because, in reality, a doctor of contemporary medicine must also adopt an institutional role²⁵⁵. These authors assert that conflicts arise when the focus is exclusively centered upon the sole interest of the patient’s autonomy²⁵⁶ and the doctor’s beneficence²⁵⁷ as models of moral principles in medical ethics which, by themselves, are unable to take into account their corresponding obligations to other interested individuals or groups. For example, “they do not tell the physician how to weigh the requirements of these models against a competing principle that would put some third party’s best interests first. There is, therefore, no *a priori* ground for asserting that third party obligation cannot be primary”²⁵⁸.

If a third party involves itself in decision making, whose decision shall predominate in the final analysis? Is it the doctor’s, the patient’s, or the third party (in our case, the HEC’s) recommendation? According to these authors, “one cannot stipulate in advance

²⁵³ L. WALTERS, *Professional Relationship to Patient and Subjects...*, *op. cit.*, p. 41.

²⁵⁴ A graphic example of Anglo-american concept of «patient-doctor relationship» is described by A. Jonsen: “patients’ preference are significant because the law has considered that patient-doctor relationship to be a sort of contract. Essential to a contract is the consent of both parties. The patient-doctor ‘contract’ is sometimes described in terms of a fiduciary relationship in which one party is held to a higher standard of performance than in an ordinary contract. The fiduciary, in this case the physician, has an obligation to his care. Despite this obligation, the patient’s consent initiates the contract and sustains it by accepting the recommendation of the physician. The patient’s withdrawal of consent can terminate it”. A. R. JONSEN, M. SIEGLER, W. WINSLADE, *Clinical Ethics...*, *op. cit.*, p. 55.

²⁵⁵ Cf. T. L. BEAUCHAMP, L. B. McCULLOUGH, *Third Party Interests*, in *Contemporary...*, *op. cit.*, pp. 75-83.

²⁵⁶ “Autonomy can mean the type of ethical principle widely endorsed in our (U.S.) culture, forcefully expressed by Stuart Mill: «The only part of conduct of anyone for which he is amenable to society, is that which concerns others. In the part which merely concerns himself his independence is, of right, absolute. Over himself, his own body and mind, the individual is sovereign»”. J. S. MILL, *On Liberty* [1859], Appleton-Century-Crafts, New York 1947, p. 10.

²⁵⁷ The term beneficence is the positive dimension of non-maleficence which is: “non-maleficence is the technical way of stating that we have an obligation not to harm people, one of the most traditional principle of medical ethics, ‘First of all, do no harm’. This is the basic principle derived from the Hippocratic tradition. If we can’t benefit someone, then at least we should do that person no harm”. Cf. T. A. SHANNON, *Bioethics*, Paulist Press, New Jersey 1987, pp. 6-8.

²⁵⁸ T. L. BEAUCHAMP, L. B. McCULLOUGH, *Third Party Interests...*, *op. cit.*, p. 76.

whether the moral obligations of physician to patient will be stronger than, equivalent to or weaker than their obligations to third parties”²⁵⁹. Nevertheless, it is opportune to consider at this moment some basic solid principles which help one arrive at the explanation of how the involvement of others can contribute towards a good decision making when used wisely.

The Aristotelian principle of the «good of the state» has been amplified by Pope John XXIII, as the «good of the whole of humanity». In the words of *Gaudium et Spes*:

«It is the sum total of all those conditions of social life which enable individuals, families, and organizations to achieve complete and efficacious fulfillment»²⁶⁰.

In this case, neither the doctor by himself nor the doctor and patient together can achieve their full human and spiritual formation and fulfillment without considering their participation and cooperation with the rest of the society. This reality is manifested when

«...individuals, families and the various groups which make up the civil community [become] aware of their inability to achieve a truly human life by their own unaided efforts; they see the need for a wider community where each one will make a specific contribution to an even broader implementation of the common good»²⁶¹.

This, I believe, is where the HEC can find its firm ethical support. In fact, most of the health care organizers have become ever more sensitive to this social role played by medicine. The New Medical Code of Ethics on the fundamental elements of the Patient-Physician relationship, approved in June 1990 by the American Medical Association, declares that:

«The physician has an obligation to cooperate in the coordination of medically indicated care with other health care providers treating the patient... Physicians, along with the rest of the society, should continue to work toward this goal»²⁶².

d. Doctor's final personal responsibility?

In the preceding paragraphs, I have tried to show the existence of ethical reasons which justify the involvement of «third parties» in patient-doctor relations. Concretely applied, the HEC, being a group of individuals participating in the search for a morally upright clinical decision in difficult ethical issues, now possesses ethical evidence to support its involvement. Granted, at this point, that the doctor recognizes the role of the HEC as an aid to decision making, under what ethical principle can the doctor oblige himself to assume an HEC decision as his own?

It should be remembered that many doctors say that the inconvenience of HEC is that at times the HEC obliges them to act against their will because they are, at times,

²⁵⁹ L. WALTERS, *Professional Relationship to Patient and Subjects...*, *op. cit.*, p. 41.

²⁶⁰ VATICAN COUNCIL II, Pastoral Constitution on the Church in the Modern World, *Gaudium et Spes* n° 74; Cf. JOHN XXIII, Encyclical letter, *Mater et Magistra*, (May 15, 1961): AAS 53 (1961) 417.

²⁶¹ *Ibid.*

²⁶² AMERICAN MEDICAL ASSOCIATION COUNCIL ON ETHICAL AND JURIDICAL AFFAIRS, *Fundamental Elements of the Patient-Physician Relationship* (1990), in “The Journal of American Medical Association”, 264 (1990) 31-33.

mandated or ordered to do so²⁶³. In other words, the HEC seems at times, to have the final decision and the doctor is required to follow their stance. J. Robertson puts it in a very intriguing manner:

«Will it be enough to require that physicians consult HEC leaving it up to them whether to follow the HEC's advice, or should both review and compliance with the HEC decision be required, as occurs with Institutional Review Board of human subject research? Some clinical situation may be so fraught with ethical risks as to require that an HEC have final decision-making power»²⁶⁴.

Robertson recognize the importance of consultation on the part of the doctor. This aspect was explained in the previous discussion regarding the importance of seeking counsel as part of prudence. When the HEC final decision is merely optional, there are no ethical problems. The crucial question is over whose final decision should be followed if the HEC's decision is taken to be mandatory.

The exercise of his full freedom and responsibility is what gives the doctor the fulfillment of being a responsible human person. His dignity lies in the responsible use of his freedom which implies freedom from whatever form of coercion. How therefore, can other individuals oblige him to act against his conscience, when after a diligent search for advice, the doctor perceives that deep within himself a voice is calling him to love and to do what is good and to avoid evil, telling him inwardly at the right moment: do this, shun that?²⁶⁵ In fact "his conscience is man's most secret core, and his sanctuary. There he is alone with God whose voice echoes in his depths"²⁶⁶.

This debate in the contemporary moral reflection drives us to the particularly strong sense of freedom: it is a part of the dignity of the human person who should

«...enjoy the use of his responsible judgment and freedom, and decide on his actions on grounds of duty and conscience, without external pressure or coercion»²⁶⁷.

At the same time, many humanities experts, and most especially, the Church, directs their attention to discerning the danger of affirming one's moral judgment as «true» merely by the fact that the presumed truth has its origin in conscience alone instead of recognizing the reality of the universal knowledge of the good.

²⁶³ The different forms of HEC recommendations are presented in chapter 1. They can be summarized as: Final HEC advice is optional in two cases-optional/optional and mandatory/optional; Final advice is mandatory in two cases- optional/mandatory and mandatory/mandatory. This final mandatory advice is the problematic issue.

²⁶⁴ J. A. ROBERTSON, *Ethics Committees in Hospitals: Alternative Structures and Responsibilities*, in "Issues in Law & Med.", 7/1 (1991) 90.

²⁶⁵ Cf. VATICAN COUNCIL II, Pastoral Constitution of the Church in the Modern World, *Gaudium et Spes*, n° 16.

²⁶⁶ Cf. PIUS XII, Radio message on *Rightly Forming the Christian Conscience in the Youth*, (March 23, 1952): AAS 44 (1952) 271.

²⁶⁷ JOHN PAUL II, Encyclical letter, *Veritatis Splendor*, n° 31; Declaration on Religious Freedom, *Dignitatis Humanae* n° 1; See also JOHN XXIII, Encyclical letter, *Pacem in Terris* (April 11, 1963): AAS 55 (1963) 279; PIUS XII, *Radio message* (Dec. 24, 1944): AAS 37 (1945) 14.

«Certain currents of modern thought have gone so far as to exalt freedom to such an extent that it becomes an absolute, which would then be the source of value»²⁶⁸.

The topic of freedom will be dealt with more extensively in the future, especially when we discuss it based on how should the HECs confront the ethical problems involving the use and respect for freedom or autonomy of the patient, doctors or other individuals in clinical decision making.

III. THE PATIENTS' ETHICAL PROBLEMS AND A CRITIQUE TOWARDS THE HEC EXISTENCE

A. Patient's points of view:

This section deals with the various attitudes of patients²⁶⁹ regarding the HEC existence viewed as an entity that is intended to serve patients' ethical problems in clinical set-ups. The positive benefits manifested by some patients after becoming acquainted or after having used the HEC's functions can easily be drawn from the motivating factors and historical assessments presented in the first chapter. For this reason, discussions regarding the advantages or the patients' welcoming attitudes towards the HEC's existence and functions will not be reiterated here in order to avoid redundancy.

1. *The apparent benefits of making use of an HEC*

Apart from what has been indicated previously, there are however, some essential cases to allude to why patients at times prefer the use of the HEC. One of these cases is when they view that through the HEC, they can be given the assurance of exercising his autonomous right to final decisions. Very often, patients search for the committee's assistance if and when their personal decisions conflict with the physician's interest²⁷⁰. The patient's confidence in the HEC increases when such committee shows its readiness to protect his desires if he enters into incompetent or comatose stage in the future, becomes severely handicapped, or when the family decision conflicts with theirs²⁷¹. Here, the HEC acts as the patient's rights advocate²⁷².

Since the 1970's, the patient's sensitivity to his personal rights have become more pronounced. This resulted to the proliferation of various movements such as the «right to

²⁶⁸ JOHN PAUL II, Encyclical letter, *VS* n° 32.

²⁶⁹ Children, infants or premature babies, due to being at the start, incapable of expressing reasoned attitudes are excluded.

²⁷⁰ Cf. D. C. JACKSON, S. J. YOUNGNER, *Patient Autonomy and Death with Dignity*, in "NEJM", 301/8 (1979) 404-408; T. E. ACKERMAN, *Why Doctors Should Intervene*, in "Hastings Center Report", 12/4 (1982) 14-17.

²⁷¹ Cf. J. HARDWIG, *What About the Family*, in "Hastings Center Report", 10/2 (1990) 5-10.

²⁷² "A patient rights advocate is a person [or the HEC] whose job is to help patients exercise the rights outlined in the state's or institution's patient Bill of Rights. The critical characteristic is loyalty: the patient right advocate must represent the patient. (The brackets mine). G. ANNAS, *The Rights of Patients: The Basic ACLU Guide to Patient Rights*, Humana Press, New Jersey 1992, p. 258.

informed consent», the «right to refuse treatment», the «right to see one's own medical records», the «right to participate in the therapeutic decisions» and the «right to live and the right to die»²⁷³. The patient's awareness of exercising his autonomy and his sense of personal security or protection when using the HEC are several of the various factors why these committees seem to be beneficial to the patient's needs. It can be construed at this point that, in some ways, the HEC assumes a vital role and is ethically relevant when it acts in promoting or protecting the patient's interest.

2. *The surge of the problem: When the HEC's decision is different from the patient's decision*

The problem begins to exist when the HEC, after having a thorough deliberation over a moral problem, arrives at a conclusion that the HEC itself cannot, in a way, support or protect the patient's personal interest. For example, it might happen that a patient who, after having made in advance his or her personal medical preferences, has now fallen incompetent to decide. After all the various possible HEC efforts have been exhausted, this committee might still be obliged to maintain their position of favoring the «patient's best interest»²⁷⁴ although they may not necessarily be the same as the patient's personal preferences. In this particular situation, it might seem that the HEC attitudes could indirectly or implicitly favor the doctor's, the administrator's, the family's, or other people's best interest, limiting or affecting the patient's right to self-determination and autonomy in clinical decisions.

The patient's concerns and fears that the HEC's involvement which may lead to the eventual interference with his autonomy is presented by S. Youngner *et al.* in the following manner:

«Are they [the HEC] supposed to determine prognosis, make final decisions, or only give advice? Are they primarily a source of "legal comfort" to physicians²⁷⁵, or do they have a more vital role in protecting or promoting the patient's best interests? How much access should patients, their families or other health professionals (e.g. nurses) have to such committees?»²⁷⁶

The authors practically express the following fundamental questions in this manner: Is the HEC's educative, or more specifically, advisory or consultative function, always

²⁷³ Cf. P. STARR, *The Social Transformation of American Medicine*, Basic Books, New York 1982, p. 389.

²⁷⁴ "They must try to make a choice for the patient that seeks to implement what is in the person's best interests by reference to more objective socially shared criteria. Thus the best interest standards does not rest on the value of self-determination but solely on protection of patient's welfare". This statement proposed by the President's Commission can be intriguing because in practice, the objective societal criteria to determine the patient's best interest through welfare protection is hard to delineate. Cf. PRESIDENT'S COMMISSION FOR THE STUDY OF ETHICAL PROBLEMS IN MEDICINE AND BIOMEDICAL AND BEHAVIORAL RESEARCH, *Deciding to Forgo Life-sustaining Treatment...*, *op. cit.*, p. 135; J. GOLDSTEIN, A., FREUD, A. SOLNIT, *Beyond the Best Interest of the Child*, The Free Press, New York 1979.

²⁷⁵ «Legal comfort» signifies that the HEC acts in favor of the patient only to satisfy or protect the doctor's legal risk. In other words, the HEC acts as doctor's shield from legal responsibility. Cf. G. J. ANNAS, *In re Quinlan: Legal Comfort for Doctors*, in "Hastings Center Report", 6/3 (1976) 26-31.

²⁷⁶ S. J. YOUNGNER, C. COULTON, B. JUKNIALIS, D. JACKSON, *Patients' Attitudes Toward Hospital Ethics Committees*, in "Law Med & Health Care", 12/1 (1984) 21.

helpful for the patient's moral needs and autonomous protection? In the final analysis, who should be responsible for making the final decision and, up to what extent can the patient exercise his own autonomy?

B. An Ethical evaluation

1. On the competent patients' decisions

Most of the medical journals and articles which deal with the question of patients' attitudes towards the HEC existence and functions about certain topics related to their right to self determination or autonomy are studied by making use of surveys and statistical analysis after which ethical or moral considerations are drawn²⁷⁷. For instance, «competent patients», considered as possessing the capacity of processing specific information and of choosing goals and the means to those goals, as well as to act on reasonable decisions²⁷⁸, were asked about their opinion of the use of the HEC as a means of providing them with ethical assistance in the form of education, policy formation, and consultation. Their attitudes towards the HECs, as revealed in a 1984 survey done in the University Hospital in Cleveland, Ohio, shows that 76% of the respondents affirm the usefulness of the HEC, most especially in providing consultation and advice. Although the turn-out of the survey was affirmatively high, only a few of them (12 %) viewed that ethics committees should make final decisions²⁷⁹.

It can be roughly evaluated through the mentioned data that most patients find the HEC very useful, and perhaps, even effective in helping them solve ethical questions. Nevertheless, most of them would prefer that, in spite of the HEC consultation, the final decision be left to themselves rather than to the committee. In a way, this attitude is valid, especially when the competent patient is adequately informed²⁸⁰ of all the risks and benefits of the treatments. In this case, the final decision comes from the patient and it then becomes the patient's personal responsibility. This approach towards the respect for patient's choice recommended by the President's Commission:

«Building on a central conclusion of its report on informed consent –that decisions about care ultimately rest with competent patients–»²⁸¹.

²⁷⁷ *Ibid.*, pp. 21-25; PRESIDENT'S COMMISSION FOR THE STUDY OF ETHICAL PROBLEMS, *Hospital Ethics Committees: Proposed Statutes and National Survey...*, *op. cit.*, pp. 439-457.

²⁷⁸ According to T. Beauchamp and J. Childress, this description is in reality, insufficient, because of the numerous disagreements over the standards of competence such as: the capacity to reach a decision based on rational reasons; capacity to reach a reasonable result through a decision, or; the capacity to make a decision at all. Cf. T. BEAUCHAMP, J. CHILDRESS, *Principles of Biomedical Ethics*, Oxford University Press, New York 1983, p. 72.

²⁷⁹ Cf. S. J. YOUNGNER..., *op. cit.*, p. 23. See also same author, *A National Survey of Hospital Ethics Committees*, in "Crit care Med", 11 (1983) 902-905.

²⁸⁰ There is «informed consent» when a "communication between a health professional and a patient should prevent ignorance from constraining autonomous choice, whether ignorance is present from a lack of information, or a lack of comprehension". It should generate requirements of comprehension, as well as disclosure. T. BEAUCHAMP, J. CHILDRESS, *Principles of Biomedical Ethics...*, *op. cit.*, p. 67.

²⁸¹ PRESIDENT'S COMMISSION FOR THE STUDY OF ETHICAL PROBLEMS..., *op. cit.*, p. 2.

However, it is interesting to note that at the same time, the President's Commission reported on the existence of the different situations wherein the patient's choice to forgo life sustaining therapy may be limited by moral or legal grounds. It identified some constraints on patient decisions as justifiable. These are:

«—Health care institutions may justifiably restrict the availability of certain options in order to use limited resources more effectively or to enhance equity in allocating them.

—Society may decide to limit the availability of certain options for care in order to advance equity on the general welfare, but such policies not be applied initially nor especially forcefully to medical options that could sustain life»²⁸².

As just presented in the statement above, it is evident that there is a limitation to patient's choice. In other words, a health care institution such as the HEC may justifiably restrict or implicitly limit the patient's autonomy, choice and preference, depending on some well founded legal or moral grounds. A practical example may illustrate this difficulty:

Insofar as the competent patient is concerned, in order to ensure that he enhances his competence over the appropriate choices, the HEC's educative function can play a big factor towards the achievement of a sufficiently informed, deliberated patient decision. Therefore, the exercise of this specific HEC educative function demonstrates its practical and ethical relevance.

Yet, it can happen that the patient may disagree with the health care professional's decision because, as far as this health care professional is concerned (e.g. the doctor), he feels that this particular case falls under the «justifiable constraints» on the patient's decisions. At this point, the consultative use of an HEC can help solve the patient's and doctor's conflicts of interest. Again, the HEC's consultative role is found practical and ethically significant in this aspect.

But, once the HEC starts to recommend something different from the patient's preferences, the final judgment then resides according to the guideline given by the Commission:

«The Commission is not recommending that hospitals and other institutions [like the HEC] take over decisions about patient care; There is no substitute for the dedication, compassion, and professional judgment of physicians. Nevertheless, institutions need to develop policies»²⁸³.

This means that, in principle, the physician is the only one responsible for rendering final decisions to the patient and, in so far as the HEC is concerned, agreements can easily be reached by alluding to the demands of the hospital policies which the HEC itself has formulated. Thus, the third function (hospital policy formation or directives), takes a significant role.

But the Commission statement further adds that:

²⁸² *Ibid.*, p. 3-4. see also, A. G. JOHNSON, *Pathways in Medical Ethics*, Edward Arnold, London 1990, pp. 63-66.

²⁸³ PRESIDENT'S COMMISSION FOR THE STUDY OF ETHICAL PROBLEMS..., *op. cit.*, p. 4.

«When a physician's assessment conflicts with a competent patient's decision, further discussion and consultation are appropriate; ultimately the physician must follow the patient's decision or transfer responsibility for the that patient to another physician»²⁸⁴.

In this particularly complicated situation, the President's Commission would still advocate the patient's choice in the final decision because, according to them:

«A competent patient's self-determination is and usually should be given greater might than other people's views on that individual's well being»²⁸⁵.

It can be observed here that in the final analysis, neither the health care institution, nor the committee, nor the physician himself can impose moral or medical preferences upon the competent patient. By respecting the patient's autonomy, the patient in the long run, is the sole and final decision maker.

Although everything might end up this way, it is important to bear in mind that the HEC efforts were not at all futile in rendering its task of assisting the patient in solving his moral dilemma and in arriving at a responsible decision. The HEC's educative, policy directive and consultative efforts of informing and resolving conflicts, together with the doctor's compassion, dedication, and support in maintaining a presumption in favor of sustaining life, are considered as vital contributions in enhancing patient's ability to make decisions on his own behalf. In this way, the HEC fulfills the task of promoting the understanding of the various available treatment options and moral consequences²⁸⁶.

2. *On the incompetent patients' decisions*

Incompetent patients are those who do not have the sufficient capacity to make particular decisions for themselves. They may be: patients with permanent or partial loss of consciousness, the newborn or children²⁸⁷. Since this topic is concerned with the patient's attitudes to the HECs, I shall limit this discussion to those mature patients (thus excluding the newborn, children or those with psychological illness) who, for some reason or another, have become incompetent. In other words, I am referring to those who, while still conscious decided their medical preferences by themselves if one day they fall incompetent. To protect the interests of these patients, the state and legislators have considered making provisions for «advance directives» or «living wills» or «durable power of attorney». These notions generally mean that people designate others to make health care decisions on their behalf and/or give instructions about their care once they have fallen incompetent²⁸⁸.

²⁸⁴ *Ibid.*, p. 8.

²⁸⁵ *Ibid.*, p. 27. Person's interest in «self-determination» means the «capacity to form, revise and pursue his or her own plans for life». It may also be called «Autonomy». Cf. J. RAWLS, *Rational to Full Autonomy*, in «Journal of Philosophy», 77(1980) 524.

²⁸⁶ Cf. PRESIDENT'S COMMISSION FOR THE STUDY OF ETHICAL PROBLEMS..., *op. cit.*, p. 3.

²⁸⁷ Cf. K. D. O'ROURKE, D. BRODEUR, *Medical Ethics: Common Ground for Understanding*, vol. 2, Catholic Health Association of the United States, St. Louis M.O. 1989, p. 209.

²⁸⁸ «Such advance directives provide a means of preserving some self-determination for patient's who may lose decision making capacity. «Durable powers of attorneys» are preferable to «living wills» since they are more generally applicable and provide a better vehicle for patients to exercise self-

There are three basic reasons why patients desire that these documents be implemented in the eventuality that they turn incompetent. One is to assure them of not being technologically sustained by only expanding physiological existence with minimal cognitive or conscious activity. Another factor is, as a result of Quinlan's case, they now want a full guarantee that their personal values will be respected if they fall incompetent. And lastly, for legal assurance in order to protect the doctor's, the institution's and the family's rights²⁸⁹.

The use of these documents are increasing in number and the HEC has to deal with them squarely²⁹⁰. This task is obviously challenging, and, as Cohen observes, the HEC's experience and maturity helps substantially in promoting the educative role, to advise, and to serve as a forum for such cases, and not only within the institution, but also by engaging in patient care advocacy outside their walls²⁹¹. In this way, the HEC is viewed as helping the patients prepare and assure their ethical and responsible self-determined decisions.

In the whole context of this case, it is evident, that the HEC can deliver its educative, policy directive and advisory or consultative roles in this particular type of arrangement. But what can limit the patient's self-determination? At times, even the patients themselves can suspect that the HEC's consultation is an interference to their autonomy. Is the patient's autonomy unbounded? This shall be discussed in the succeeding section.

3. *The ethical root of patients' attitudes: A focus on autonomy*

The patient as the final decision maker endowed with the «right to self-determination» or «autonomy» is the radical force allowing him to use the documents like the «advance directives» or the «living will», etc. These documents are markers of the liberal ethic of individual autonomy and of self-determination current in the American society²⁹².

Considering that the root cause of the patient's attitude to moral questions is featured in his capacity to self-determination, I think that it is important at this point to explain how American society conceives this notion of autonomy in order to arrive at an analytical understanding and to pin-point those aspects where this notion can be clarified according to its true moral value. A critic to the notion of autonomy and liberty shall be dealt with. In order to do this, I shall discuss two of the prominent American authors' views about

determination". PRESIDENT'S COMMISSION FOR THE STUDY OF ETHICAL PROBLEMS..., *op. cit.*, p. 5. There are two types of Advance directives: «Living Will», as a "Natural Death Act" designed to give information to the incompetent patient about which treatments are acceptable or unacceptable; the second, «Durable Power of Attorney» identifies the decision maker for the incompetent patient. Cf. K. D. O'ROURKE, D. BRODEUR, *Medical Ethics...*, *op. cit.*, p. 201; Cf. A. M. CAPRON, *The Patient Self-Determination Act: Not Now*, in "Hastings Center Report", 20/5 (1990) 35-36.

²⁸⁹ Cf. K. D. O'ROURKE, D. BRODEUR, *Medical Ethics*, *op. cit.*, p. 200.

²⁹⁰ L. J. NELSON, *How Should Ethics Committee Treat Advance Directives*, in "Hastings Center Report", 18/4 (1988) 26-27.

²⁹¹ Cf. C. COHEN, *Ethics Committees, 1990 and Beyond: The Genie Out of the Bottle?*, in "Hastings Center Report", 20/5 (1990) 33.

²⁹² Cf. B. JENNINGS, *The Limits of Moral Objectivity*, in "Hastings Center Report", 19/1 (1989) 524.

the American notion of «Autonomy in Bioethics». It is believed that the complicated HEC involvement with patient's autonomous clinico-moral rights is rooted upon how they understand this fundamental ethical issue.

a. Tom Beauchamp and James Childress

In a broad sense, T. Beauchamp and James Childress refer to the term «autonomy» in American bioethics by applying two philosophical markers. First, they support Emmanuel Kant's deontological rule. Second, they adhere to J. Stuart Mill's utilitarian approach.

Insofar as Kant's proposition is concerned (in his *Groundwork of the Metaphysic of Morals* and other writings), Kant argued that persons should always treat each other as autonomous ends, and never merely as means to the ends of others²⁹³. It is a notion of autonomy which gives the person the ability to govern himself and his own choices in accordance with universalizable moral principles, i.e., principles or rules that can be self-willed and be universally applicable or valid for everyone. Furthermore, while a «moral rule» obliges someone to act in accordance with it, this person is only complying with a «self-legislated rule». Action from fear and impulse, as well as coerced actions, are obviously heteronomous²⁹⁴.

Whereas Kant emphasizes the moral autonomy of the will, the second philosopher, J. S. Mill, focuses his concern on *action* and *thought* ²⁹⁵. “Mill argues that social and political control over individual actions is legitimate only if it is necessary to prevent harm to other individuals. He construes the principle of utility to permit all citizens to develop their potential according to their convictions, as long as they do not interfere with a like expression of freedom by others”²⁹⁶.

Hence, T. Beauchamp and J. Childress synthesize the notions of American autonomy from these two philosophers by making a formulation very representative of the American concept of autonomy or self-determination in bioethics:

«Autonomy as governance in the absence of controlling constraints points to the individual able to legislate norms of conduct (Kant) and able voluntarily to fix a course of action (Mill). Only if these conditions are present is a person autonomous»²⁹⁷.

²⁹³ Cf. T. BEAUCHAMP, J. CHILDRESS, *Principles of Biomedical Ethics*, Oxford University Press, New York 1983, p. 60.

²⁹⁴ Cf. *Ibid.*

²⁹⁵ J. S. MILL, *On Liberty*, Appleton-Century-Crafts, New York 1947, p. 10.

²⁹⁶ T. BEAUCHAMP, J. CHILDRESS, *Principles of Biomedical Ethics...*, *op. cit.*, p. 60; Cf. J. F. CHILDRESS, *The Place of Autonomy in Bioethics*, in “Hastings Center Report”, 20/1 (1990) 12-16.

²⁹⁷ The authors use Kant's notion of self-directed action based on a principle freely accepted by the agent (but not necessarily a valid universal principle) as the central ingredient of «moral autonomy» and Mill's «individual autonomy» or individual self-determination from a personal point of view i. e., insofar as an autonomous agent's actions does not infringe upon the autonomous actions of others, that agent should be free to perform whatever action he or she wishes even if it involves serious risk and even if others consider it to be foolish. Cf. T. BEAUCHAMP, J. CHILDRESS, *Principles of Biomedical Ethics...*, *op. cit.*, p. 61-62.

b. *H. Tristram Engelhardt*

My work has consistently described American culture as belonging to the «pluralist secular» mentality. H. Tristram Engelhardt, in his book *The Foundations of Bioethics*, explains the nature of this approach which uses principles for resolving moral disputes among individuals who do not share a common moral vision when confronted by moral judgments in bioethics. He sustains that the disparity in moral views is the ethical fabric of a secular pluralism; i.e., where no one moral sense can be established²⁹⁸.

Thus, the principle of autonomy for him is characterized by an:

«Authority for actions involving others in a secular pluralist society derived from the free consent of those involved. As a consequence, without such consent there is no authority. Actions against such authority are blameworthy in the sense of placing a violator outside the moral community in general, and making licit (but not obligatory) retaliatory, defensive, or punitive force by members of any particular moral community»²⁹⁹.

Furthermore, he sustains that:

«the principle of autonomy expresses the fact that authority for resolving moral disputes in a secular, pluralist society can be derived only from the agreement of the participants in the disputes, since it cannot be derived from rational arguments or common belief. Therefore, consent is the origin of authority, and respect of the right of participants to consent is the necessary condition for the possibility of a moral community»³⁰⁰.

Based on my observations of these American ethicists' descriptions of the American notion of autonomy, it can be noted that there is an over emphasis on individual choice as the key factor in the final moral judgment. Beauchamp's and Childress's combination of deontological and utilitarian vision focus their attention to the patient's ability to choose and formulate his convictions devoid of any coercion, and that it acquires its usefulness insofar as it does not harm the autonomy of the others.

Engelhardt's secularist-pluralistic view is not totally different from the preceding authors' views. What is striking in Engelhardt's description is the lack of objectivity of moral norms, exemplified by the presence of various subjective moral opinions which must always be mutually respected. The patient then, has the unlimited choice for his life and his consent is the root of authority for performing whatever he prefers to do.

After examining this notion, it is now easy to understand why many patients make use of this «right to self-determination» or «autonomy» in their moral and clinical decisions, up to the extent that such decisions can be mandated by legal documents as mentioned earlier. The HECs must therefore react accordingly if they want to assure their patients the moral help they are committed to perform. This complex problem entails the following question: What ethical attitudes should the HEC demonstrate to such patients if they are confronted by these difficult moral problems? Perhaps, the key factor is to adopt certain «ethical approaches» in order to arrive at a reasoned thinking in selecting their final decisions in favor of the patient's best interest. There are in fact many ethical

²⁹⁸ Cf. H. T. ENGELHARDT, *The Foundations of Bioethics*, Oxford University Press, New York 1986, p.85.

²⁹⁹ *Ibidem*.

³⁰⁰ *Ibid.*, p. 86.

approaches available to confront these problems. For instance, there are approaches that appeal to Christian moral theology, and those that are not: secular (of varying philosophical emphasis like the utilitarian, formalistic, relativistic trends). But which of these approaches is the most appropriate to use in the HECs comprising all types of people and culture? Is the use of Christian moral theology in all HEC forums valid and acceptable?

IV. Brief résumé

The first part of this thesis has come up with the following affirmations:

□ The HEC is a new organized, and multi-disciplinary group that functions primarily to give education, offer advice and formulate policies within the hospital on various bioethics issues affecting the patient, doctors, administrators, etc. Rendering of moral advice using theological reflection is characteristic of non-secular HEC orientation like the Catholic run-HECs.

□ Although the existence of HECs have initially functioned satisfactorily, their continued presence were later on met by various ethical doubts, mainly coming from the patient's and doctor's points of views.

□ The above mentioned views are used to investigate the HEC's real ethical validity. In the second chapter, it first addressed the question towards the doctor's problem of competence and its effect to doctor-patient relationship. It answered by saying that HEC certainly influences in the moral decision. However, such influence must remain only in a consultative, non-binding recommendation. A doctor who seeks advice from the HEC definitely augments his moral views and can practice better the virtue of prudence. His competence is also broaden by means of a collegial consultation. HEC acting as «third party» moral giver but not as imposer is therefore ethical, and can be validly used.

□ Patients were observed to have certain amount of confidence to HEC's role specially if the latter's decision coincides with theirs. However, the doubt they pose to ethical validity of HECs is when they turn out on the contrary. This difficulty addressed the second inquiry: patient's autonomy according to its contemporary American bioethics concept. Although this problem is complicated, we still adhere to the similar argument that HECs can validly, and morally function well if the HEC's final recommendations remain advisory, and non-legally binding. A more detailed investigation on how the presently understood patient's autonomy in American bioethics issues should be fully conceived in its authentic moral meaning is suggested for future research.

□ Supposing that the HEC existence is validly and morally enforced, can the Catholic-oriented HECs validly give theological perspectives to these people of different cultures, background and moral views? This inquiry opens up and introduces us to the second part of the thesis.

Part two

THE USE OF THEOLOGICAL PERSPECTIVES IN THE HEC

PART TWO: CHAPTER 3

The American Bioethicists' Views Towards the Use of Theological Reflections or Perspectives in the HECs

I. GENERAL PRESENTATION

After explaining in the first two chapters the ethical justification for the Hospital Ethics Committee's structural existence and its practical use in searching for moral assistance on hospital bioethics issues, we shall tackle in this chapter another subject matter closely related to HEC's function or role: the moral-theological perspective in the HECs.

We identified previously that HEC's functions are conventionally geared towards education, policy development and consultation and case reviews. Patients, doctors, administrators and other ethically concerned individuals recourse to the HEC's assistance because this entity is presumed to be capable of conveying recommendations, policies or educative criteria that are drawn from ethically good and up-right moral process of decision making. Nevertheless, we also noticed that aside from these roles, the rendering of theological reflection/perspective may also play a significant part in the HEC's function. In fact, this special theological provision is viewed to work intimately and integrally with the various bioethics models of argumentation, and that they are commonly encountered in Catholic-run hospital committees established and guided by a particular theological conviction³⁰¹. However, this theological function is not unanimously recommended to all types of HEC forums³⁰². Why?

³⁰¹ «Theological reflective role» was mentioned in chapter one. Although this will be discussed more in detail in the succeeding sections, we can anticipate in describing this notion as “a value system of ethical reasoning rooted in a view of reality contained in the Christian gospel, and authoritatively formulated by the pope and the bishops”. B. ASHLEY, K. D. O'ROURKE, *Health Care Ethics: A Theological Analysis*, The Catholic Association of the United States, St. Louis 1982, p. xv.

³⁰² See a supplementary collection of articles by the Hasting Center regarding Theology, Religion and Bioethics: D. CALLAHAN, *Religion and the Secularization of Bioethics*; C. CAMPBELL, *Religion and Moral Meaning in Bioethics*; J. P. WIND, *What Can Religion Offer Bioethics?*; L. S. CAHILL, *Can Theology Have a Role in «Public» Bioethical Discourse?*; A. D. VERHEY, *Talking with God –But with Whom?*, in “Hastings Center”, 20/2 (1990) 1-24.

Let us mention a commentary regarding the skeptical or restrictive attitude among various people when using theological views in the ethical decision making:

«This method of ethical decision making is based upon religious faith in a church or a person. Although church directives may be helpful and fulfilling for human beings, and although many churches offer worthwhile and reasonable explanations for their teachings, the ultimate motivation for accepting the teaching is religious faith. Thus, directives of churches, even though reasonable, will not be accepted in a pluralistic society by people who do not share the same faith»³⁰³.

Moreover, some of these people do not only find uncomfortable in using theological analysis in bioethics based on «faith», but also, they see it *intrusive* of private religion on public civil debate. Bioethics discussions based on humanism of secular view is presumed to be reasonably acceptable than when based from theological perspective of any religious conviction.

«For a long time in this country, the Protestant value system was taken as self-evident, [while] all efforts of Jews and Catholics to defend their own value systems were rejected as an intrusion of a private religion on public civil debate. Today, the academy and the media assume that humanism is self-evident, and any effort to speak up in the name of a “religious” value system is decried as an imposition»³⁰⁴.

Many also assume that a theological perspective of various religious convictions applied in bioethics issues have weak arguments because they are always confronted by difficult polemics with no rational solution. Thus, they suggest that to become more convincing and “if there is to be any public debate and consensus, it must be in terms of a neutral, philosophical, secular, and humanistic value system”³⁰⁵.

However, I hold to the proposition that certainly, theological perspective may be validly rendered, proposed, recommended and administered in a pluralistic society composed of faithful and non-faithful adherents with bioethical inquiries. I support the convictions stated by Benedict Ashley and Kevin D. O’Rourke who said:

«We believe that every human being has a value system of some sort which is either religious or equivalent to a religion. To label one of these as neutral or humanistic is from the onset to give it a privileged position which can only frustrate honest debate and any effort to achieve some measure of sincere cooperation in a pluralistic society»³⁰⁶.

I also believe that it is not merely through whatever type of religious conviction can theological reflection become valid and adaptable in bioethics arguments. But rather, it is through Catholic theological perspective can there be an authentic role and contribution in the bioethics committee’s ethical forums. B. Ashley and K. O’Rourke are also convinced that Catholic perspective is validly applicable in bioethics public debates and discussions such as in the HECs when they declared:

«Catholics believe this Gospel with the commitment of faith... This commitment to authoritative teaching, as well as respect for a long tradition of Catholic theological reflection,

³⁰³ K. D. O’ROURKE, D. BRODEUR, *Medical Ethics: Common Ground for Understanding*, The Catholic Health Association of the United States, St. Louis 1989, pp. 13-14.

³⁰⁴ Observation given by B. ASHLEY, K. D. O’ROURKE, *Health Care Ethics...*, *op. cit.*, p. xv.

³⁰⁵ *Ibidem*.

³⁰⁶ *Ibid.*, p. xiv.

however, cannot exempt educated Catholics from listening honestly to other systems of belief, nor from comparing beliefs with the discoveries of science and history and with the personal experience of life. Such testing of belief affects the way Catholics understand and apply fundamental convictions. The same way be said of those who adhere to other beliefs and value systems and who also have an obligation to be open to dialogue undertaken in a truth-seeking spirit. None of us has the right to say to another, "You are biased because you are committed to your belief system, while I am not biased because I am only committed to the truth." Each of us seeks the truth through a belief and value system in which we think and which, if we are honest, we seek to deepen, broaden, and make more realistic. Since the Second Vatican Council, Catholics have experienced how fruitful such an ecumenical approach can be, not for *conversion* of others so much as for a *convergence* of insight³⁰⁷.

Thus, this study aims at finding out some reasons that could justify the use of Catholic moral-theological reflections in these HECs especially because various difficulties seem to emerge when this role is applied to people of diverse cultures, beliefs or religious background. At the same time, it endeavors to explain that despite all these, there are valid reasons in favor of the use/application of theological perspective to HEC bioethics forums not only to the faithful adherents but also to those who do not share the same faith. This work is directed towards an analysis for the theological perspectives' *validity* in the HEC forum, although it does not aim at delving into whether or not this validity is ultimately acceptable to everyone, because the question on *acceptability* involves personal freedom of choice to decision making which is beyond the scope of our investigation.

However, it is essential to mention in this investigative phase another two important limiting factors in our discussion. First, it does not aim to explore nor make a comparative analysis of the different ethical and theological perspective models that are available in the clinical decision making³⁰⁸. Second, whenever we talk of theological matters, the author is likewise aware that we can also attribute the term «*moral theological perspectives*» to «*reflections through moral religious convictions*». Certainly, this assumption can be considered correct in some respect. However, our present investigation does not pretend to make an analysis of whatever differences or relationships these two terms might imply³⁰⁹, nor intend to evaluate the various theological and religious beliefs or convictions found among HEC members and participants involved in the ethical dilemma³¹⁰. Hence, moral «*theological perspective*» or «*religious reflection*» in bioethics

³⁰⁷ *Ibid.*, pp. xv-xvi.

³⁰⁸ There are different ethical and theological modes or approaches to decision making such as teleological (utilitarian, consequential, situational ethics), formalistic (deontological or duty ethics), personalistic and integrative model. Cf. R. P. CRAIG, C. L. MIDDLETON, L. J. O'CONNELL, *Ethics Committees: A Practical Approach*, Catholic Health Association of the United States, 1986, pp. 41-52; See also, E. SGRECCIA, *Centros y comités de Bioética: orígenes culturales y situación actual*, in "Dolentium Hominum" 26/2 (1994) 51-53.

³⁰⁹ To allude to the possible relationships between religion and morality, "it may be organized into three prominent types that have received most serious attention from modern scholars: 1) Cosmic unity, in which moral obligations derive from a natural or metaphysical order that is understood in religious terms; 2) logical independence, in which moral norms, despite their historical connections to religion, do not depend directly on religion for their validity, and in which religious values must be sharply distinguished from judgments of moral worth; and 3) cultural interdependence, in which neither religion nor morality can be understood apart from the communities in which they have developed and in which their practices have become intertwined". R. LOVIN, *Ethics: Religion and Morality*, in T. REICH (ed.), *The Encyclopedia of Bioethics*, Macmillan, New York 1995, pp. 758-765.

³¹⁰ It means that we are not evaluating the relationship of moral beliefs with the different world religions like Judeo/Christian, Islamic, Buddhist moral beliefs.

will be used indiscriminately here³¹¹. And to us, moral theological perspective or religious reflection, would signify the use of theology as³¹²

«a form of ethical analysis or reasoning which is based from a value system rooted in a dimension of reality contained in the Christian Gospel, interpreted by the Church in its life of faith, and authoritatively formulated by the pope and the bishops»³¹³.

Given this background, the first section shall seek to analyze the difficulties HEC members and participants might have encountered in using the moral-theological perspective in such situations. To achieve this objective, we have gathered some commentaries of notable bioethicists and theologians regarding these propositions. Then, through the gathered commentaries from bioethicists, we would like to narrow our investigative focus to some fundamental moral concepts which have caused difficulties in recognizing the validity of well-rendered Christian moral-theological reflections in the HEC forums. We shall endeavor to identify secularist disputes that commonly arise whenever a Catholic theological reflection in bioethics issues are given. We likewise aim to provide adequate fundamental answers or explanations to these problems.

Let us pose the following moral questions: what could be the reasons behind the secularist's difficulties or reluctance in imparting theological reflections, not only among Catholic faithful but also other Christians or non-Christian HEC participants? Is it logical, valid and admissible that theological reflection be included in any type of HEC forum, or should it be proposed only among its faithful adherents and institutions like those entities established by the Catholic HECs abiding by the demands laid down by the American Catholic Hospital Directives?

II. Two general viewpoints

A. The Catholic HECs and the Secularist HECs

We can generally identify at least two existing American Hospital Ethics Committees: those groups that uphold guiding principles founded on theological and

³¹¹ For instance, the following inquiry may be accepted to be belonging in the same argumentative niche: "The assumption that religion and morality are somehow related thus gives way to questions about exactly what forms this relationship may take and how it is understood. What claims are person making when they relate a moral judgment to a religious belief, and how are we to understand the similar judgment that others make on non-religious grounds? How will these different moral and religious orientations relate to the findings of the biomedical sciences? How should the providers of medical services relate to the diversity of these religion and moral orientation in a complex pluralistic society?", R. LOVIN, *Ethics: Religion and Morality...*, *op. cit.*, 1995, p. 758.

³¹² Theology is a reflexive method which seeks to understand in a deeper way the Words of God, and by the faithful guidance of the Church magisterium. "La teología adquiere, de modo reflejo, una comprensión siempre más profunda de la Palabra de Dios, contenida en la Escritura y transmitida fielmente por la Tradición viva de la Iglesia bajo la guía del Magisterio, se esfuerza por aclarar esta enseñanza de la Revelación frente a las instancias de la razón y, en fin, le da una forma orgánica y sistemática". SACRED CONGREGATION FOR THE DOCTRINE OF FAITH, Instruction for the Ecclesial Vocation of the Theologian, *Donum Veritatis* n° 21. See also: PAUL VI, *Discurso a los participantes al Congreso internacional sobre la Teología del Concilio Vaticano II*, (Oct. 1, 1966): AAS 58 (1966) 892.

³¹³ B. ASHLEY, K. D. O'ROURKE, *Health Care Ethics...*, *op. cit.*, p. xv.

religious convictions and those which follow a secularist ethical approach as mode of rendering concrete bioethics decisions to patients, doctors, administrators and other HEC participants in need of moral help. An example of HECs using theological perspective as part of ethical approach are those coming from various Catholic hospital institutions and administrations³¹⁴. The other set, composed by the majority of existing American HEC set-ups, are those that promote a secularist viewpoint: HEC groups that generally do not use ethical arguments beyond what is accessible through mere human reason³¹⁵.

Thus, there appears a tension between these two existing HEC set-ups. It is a tension produced by positive value upon theological approach, and the misgivings the other group pose upon the application of theological moral reflection (especially Catholic moral perspective). For instance, the Catholic HECs want to maintain the role of theological rendering as one of their basic functions because they believe that they have something morally concrete and specific to contribute imparting a deeper certainty over the universal morality among Christians and non-Christians alike³¹⁶, or because it claims that it is capable of rendering more security on some points wherein human moral reasoning might be wanting³¹⁷. On the other hand, the secular group is suspicious over the real value of rendering such theological reflections in hospital set-ups wherein the majority of such members are immersed in a secular-pluralistic society.

³¹⁴ “In a survey of Catholic Health Association member hospitals, 92 percent indicated they have formal ethics committees at their institutions. Sixty-two percent said their ethics committees were formed between 1983 and 1989. The survey found that current ethics committees are still committed to their traditional roles –education, policy development and case review– but the education is directed to more diverse audiences than the past. For example, respondents expressed interest in attending seminars, conferences, and workshops. They requested information about newsletters that provided Catholic perspective issues, and they also need books to help ethics committee members understand various medical-moral issues and strengthen their programs for medical staff and the community”. J. LAPPETITO, P. THOMPSON, *Today's Ethics Committees Face Varied Issues*, in “Health Progress”, 74/9 (1993) pp. 34-52.

³¹⁵ Promoters of secularist hospital ethics committees can be observed from an organization known as the Center for Healthcare Ethics Committees. It has been under development since 1990 as a project of the International Bioethics Institute, supported by the Walter & Elise Haas Foundation of San Francisco. The activities of the Center, under the direction of Thomasine Kushner, PhD and Robyn Shapiro, JD, are coordinated with leaders of national and international networks of ethics committees who represent the disciplines of health law, ethics, medicine and administration. Contact person is T. KUSHNER, *Center for Healthcare Ethics Committees*, University Hall, University of California, Berkeley, California, 94720.

³¹⁶ R. P. Craig is convinced that Christian faith informs the personal moral consciousness of believers. For those non-adherents of Christian morals, he says that it can still contribute to their ethical needs. Craig finds his support from Bresnahan's commentary on Rahner's opinion saying that “it does not and cannot add to human ethical self-understanding as such, any material content that is, in principle, ‘strange’ or ‘foreign’ to [persons] as [they] exist and experience [themselves] in the world”. Cf. R. P. CRAIG, C. L. MIDDLETON, L. J. O'CONNELL, *Ethics Committees: A Practical Approach...*, *op. cit.*, p. 13. See also: J. F. BRESNAHAN, *Rahner's Christian Ethics*, in “America”, 123 (1970) 351-354.

³¹⁷ There are many secular ethicists who in the long run, have acknowledged the advantages of using theological reflections because it gives greater security, and that they still recognize their limitations and inadequacies in handling some profound moral questions like the meaning of death, suffering, etc. Engelhardt, a known secularist declares: “If one is accustomed to the sure answers of a religiously grounded ethics, a general secular bioethics may occasion frustration when one is forced into lengthy claims of reasoning, and disappointment when final answers are not forthcoming”. H. T. ENGELHARDT, *The Foundations of Bioethics*, Oxford Univ. Press, New York 1986, p. 12.

B. Theological Reflection: a function applicable or not applicable in HEC decision making?

The use of theological reflection is one of the specific functions of some HEC groups (e.g.: the Catholic-run HECs), but which is not often adopted by the secularist HECs. Offhand, one can get the impression that in a society of diverse creeds and culture like the United States, theological reflection as part of HEC role and function would sound irrelevant, superfluous or at least, difficult to sustain. In fact, many secularist bioethicists have maintained this notion³¹⁸ because they are contented in giving everyone a solely secular ethical approach in their moral analysis of clinical issues. For instance, many American principles of bioethics committee manuals³¹⁹ are based upon the idea of rendering a «neutral» ethical approach because they believe that the best way to manage and deliver ethical advises is by purely anchoring themselves on ethical concepts demonstrable only through human reasoning, detached from the theological-moral realms. Many secular bioethicists say that they can only give with certainty

«the provision of a “neutral framework” to address moral problems in biomedicine as a peaceable solution to the problems of delivering health care, when physicians, nurses, patients, and individuals generally hold a diversity of moral views»³²⁰.

For them, a «neutral» approach is more logical and can maintain a universally acceptable contention because the theological reflections derived from metaphysically or religiously grounded views of moral probity cannot be imposing³²¹. In other words, they believe that using a range of heterogeneous moral visions limited within the application of plain reason or personal sentiments, avoiding references to theological arguments such as those derived from the Revelation and grace, is an apparently peaceable moral cement which the «secular pluralistic ethics» are firmly committed to provide³²².

Despite the existence of these secularist HEC groups, let us now examine one of the commonly encountered HEC groups which apply theological approach in their bioethics decision making: those HECs established from the Catholic-run health care centers³²³.

³¹⁸ Cf. D. CALLAHAN, Religion and the Secularization of Bioethics, in “The Hastings Center Report”, 20 (Jul./Aug. 1990) 2-4; R. HAMEL, *Speaking of God: Must Theology Remain Silent in Bioethics and Public Debate?*, in “Second Opinion”, 18 (Jan. 1993) 18-83.

³¹⁹ B. HOSFORD, *Bioethics Committees: The Health Care Provider’s Guide*, Aspen Publication, Maryland 1986.

³²⁰ H. T. ENGELHARDT, *The Foundations of Bioethics*, Oxford Univ. Press, New York 1986, pp. 11-12.

³²¹ Cf. *Ibid.*, p. 11.

³²² Cf. *Ibid.* p. 385.

³²³ Most of these HECs are connected with Catholic-oriented Bioethics Centers. There are many bioethics centers of Catholic leanings around the world. The following is a partial list: Bioethics Center at the Catholic University of *Sacro Cuore* (Rome), Department of Medicine and Human Sciences at the Scientific Institute of *S. Raffaele* (Milan), Maurizian Bioethics Center (Turin), Sicilian Institute of Bioethics (Palermo), Ethics and Medicine Project - Lanza Foundation (Padua), Center for Bioethics Studies (Louvain), Linacre Center (London), Borja Institute of Bioethics (Barcelona), Group of Bioethics Investigation in Galicia (Santiago de Compostela), Pope John XXIII Bioethics Center (Boston), Thomas More Center (Victoria), Bioethics Center in St. Vincent Hospital (Sidney), L. J. Goody Bioethics Center (Perth), Institute for Biomedical and Family Ethics (Manila), Institute of Humanities in Sciences and Health

Fundamentally, this type of HECs is characterized by their conscientious application of the Directives for Catholic Hospitals issued by the U.S. Bishops, i. e., the use of the theological reflection as one of its integrated functions³²⁴. They abide by these directives because they perceive the serious need to elevate the moral arguments of ethical validity towards a higher level: the Christian theological level³²⁵. They believe that the rendering of theological reflection is reasonable and can be readily accepted by most of the patients and hospital care givers belonging to the same creed or culture. At the same time, convinced that an authentic HEC organization enjoys the unique and important characteristic of multi-disciplinary composition, they think that precisely through the use of theological reflection allows for an authentic manifestation of tolerance and plurality in these forums³²⁶.

They also say that while a sincere establishment of an HEC should be geared at handling all sorts of ethical cases, the committee should also be ready to provide ethical recommendations by appealing to a widely accepted, logical and reasonable theological bioethical approach. For instance, the Preamble of the Catholic Directives which is recognized both by the State Legislation and the U.S. Catholic Bishops state that:

«Catholic health facilities witness to the saving presence of Christ and His Church in a variety of ways: by testifying to transcendent spiritual beliefs concerning life, suffering and death... [employed by] consulting among theologians, physicians and other medical and scientific personnel in local areas, the committee on Health Affairs of the United States Catholic Conference...»³²⁷.

This means that the Catholic health facility's role of imparting and giving testimony to its Christian moral conviction can be done by means of consultation among healthcare personnel or through committee discussions (concretely applied in the HEC set-ups). HEC theological reflections can be rendered to everyone in whatever type of hospital bioethics issue presented to them.

Let us see the other viewpoint: the secular-motivated HECs. H. T. Engelhardt once said:

(Mexico). See: E. SCRECCIA, *Centros y comités de Bioética: orígenes culturales y situación actual*, in "Dolentium Hominum", 26/2 (1994) 59.

³²⁴ This Directives, also called ERD, was mentioned in chapter one, section three. E. Sgreccia explains the ERD's position in the Catholic HECs by saying that: "Creemos que los códigos deontológicos y los diversos pronunciamientos internacionales sobre los derechos del hombre pueden representar una criteriología ética compartida por cada Comité de Bioética. Naturalmente, para los comités que surgen en el interior de instituciones confesionales, las indicaciones de la propia autoridad religiosa (p. e., para un hospital católico, las indicaciones del Magisterio de la Iglesia Católica), se convierten en una ulterior y más vasta visión de orientación. De aquí la oportunidad de que las instituciones católicas den vida a tales comités en su interior". *Ibid.*, p. 58.

³²⁵ A typical example of the Catholic Hospital's implementations by theological reflection can be noted significantly when the American Bishops published the issue about nutrition and hydration. Cf. COMMITTEE FOR PROLIFE ACTIVITIES NATIONAL CONFERENCE OF CATHOLIC BISHOPS, *The Theological Reflection on Nutrition and Hydration*, in "Issues in Law & Med", 8 (1992) 387-406.

³²⁶ Cf. R. P. CRAIG, C. L. MIDDLETON, L. J. O'CONNELL, *Ethics Committees: A Practical Approach...*, *op. cit.*, pp. 4, 13-19.

³²⁷ The Preamble paragraph 1 & 7, of the Ethical and Religious Directives for Catholic Health Facilities from: ETHICAL AND RELIGIOUS DIRECTIVES FOR THE CATHOLIC HEALTH FACILITIES (1971), in O. N. GRIESE, *Catholic Identity in Health Care: Principles and Practice*, Pope John Center, Massachusetts 1987.

«bioethics, where it succeeds, shows where it does not need theology»³²⁸.

This declarative statement presumes that the theological perspective offered in the aforementioned directives is a type of recommendation suitable only to a limited number of people such as, for example, its believers³²⁹. It contends that a well reasoned-out bioethics arguments are sufficient and need not appeal to theology to achieve and accomplish its moral task.

Thus, they adopt what is known as a secularist mentality³³⁰, because of the impression that the theological method, which is based upon the transcendental arguments³³¹, is beyond the scope of medical bioethics, controversial and should thus be avoided³³². The other HEC secularist concern is over the doubt behind the real contribution of theological perspectives to the HEC's moral judgments especially when this function is directed to non-believers or believers of different faith traditions, especially in public discourses like the HEC forums³³³.

Concrete examples of two occurring types of HEC orientations are discussed and analyzed in the fifth chapter of the second part of this thesis.

III. Bioethicists' comments regarding the role AND contribution of Theo-logical Reflection in Bioethics Issues

This section seeks to discover, based on a selection of representative bioethics authors, the reasons behind the hesitations of accepting theological reflections in hospital ethics committees. In general, no one is radically opposed to the exercise of theological reflections in bioethics issues. Nonetheless, they vacillate in the application of such reflections to all types of bioethics questions or quandaries because they worry that they may simply be sweeping or overstated moral judgments. The following pages summarize some of the relevant, skeptical moral theological reflections in bioethics.

³²⁸ H. T. ENGELHARDT, *Looking for God and Finding the Abyss: Bioethics and Natural Theology*, in E. SHELP (ed.), *Exploring the Foundation and Frontiers*, Reidel Publishing, Dordrecht 1985, p. 88.

³²⁹ Cf. R. P. CRAIG, C. L. MIDDLETON, L. J. O'CONNELL, *Ethics Committees: A Practical Approach...*, *op. cit.*, pp. 13.

³³⁰ *Veritatis Splendor* describes secular mentality as "Secularism, wherein many, indeed too many people think and live 'as if God did not exist'. We are speaking of a mentality which affects, often in a profound, extensive and all-embracing way, even the attitudes and behavior of Christians, whose faith is weakened and loses its character as a new and original criterion for thinking and acting in personal, family and social life. In a widely dechristianized culture, the criteria employed by believers themselves in making judgments and decisions often appear extraneous or even contrary to those of the gospel". JOHN PAUL II, Encyclical letter, *Veritatis Splendor* n° 88, (Aug. 6, 1993), St. Paul Books and Media (Eng. trans.), Boston 1993, p. 53.

³³¹ Transcendental arguments may mean discussions which refer to those concepts beyond what can be naturally attained by logical reasoning. A more detailed explanation of this topic is found in the succeeding pages.

³³² Cf. B. MITCHELL, *The Role of Theology in Bioethics* in E. E. SHELP (ed.), *Theology and Bioethics*, Reidel Publishing Company, Holland 1985, p. 77.

³³³ Cf. L. S. CAHILL, *Can Theology Have a Role in "Public" Bioethical Discourse?*, in "Hastings Center Report", 20 (1990) 10-14.

A. Problem on the rationality of theological arguments by GEORGE P. SCHNER

G. P. Schner, a professor from Regis College and a respected bioethicist from the United States and Canada, questions the relationship between theology and the medical life sciences. In one of his essays, *Theology and Science: Their Difference as a Source of Interaction in Ethics*, he considers that there are two types of concepts: medical science and theology, which should be identified and differentiated since they refer to a set of knowledge “with a complex history that internally, are composed with a variety of detail in need of clarification, and externally [it seems] already related to each other”³³⁴.

This declaration demonstrates that such a relationship is, for him, not entirely clear because he claims that medical scientists and theologians apparently operate in distinct manners. He illustrates it by saying that:

«Insights into what kind of relationship can exist between theology and science must begin with a frank exposition of what constitutes their difference before efforts to relate them can proceed with intellectual honesty»³³⁵.

In his search for these intellectual differences, Schner first describes Christian moral theology as an «intellectual enterprise» which fundamentally is based upon the Word of God as its point of non-compromised thought, and that it needs no other proof of rationality. He describes this type of «intelligibility as demanded by faith itself» as nothing more than a metaphor, which is considered in a highly refined manner³³⁶. Part of the reason for this description is due to his view of Christian Theology as a transcendent intellectual claim whose identity and ethical norms are found upon or geared around Christ’s life and teachings. He then affirms that when transcendental notions of moral theological reflection are considered, these propositions are inadequately sustained by rational means and, in attempting to do so, must rely on metaphorical assumptions or interpretations using, for instance, the Christian ethics.

On the other hand, Schner sees science as occupying the other side of the spectrum. He says that “the scientist of whatever sort is committed to an uncompromising pure inquiry”³³⁷. This «science» uses its own proper rational methodology. Even when reflecting upon transcendental dimensions of life –including religious and theological notion of bioethics– science should remain faithful to its uncompromising rational methodology. Schner thus insists that transcendental claims must be subjected to empirical scrutiny. The method of subjecting theological notions to strict rational criticism would make possible the convergence or relationship of these two approaches. Any other method would be, as he reiterates, unfounded or nonsensical³³⁸.

³³⁴ G. P. SCHNER, *Theology and Science: Their Difference as a Source of Interaction in Ethics*, in E. E. SHELPS (ed.), *Theology and Bioethics*, Reidel Publishing Company, Dordrecht 1985, p. 17.

³³⁵ *Ibidem*.

³³⁶ “As it grows in scope, the metaphor incorporates a great variety of interpretative devices and contents and in so doing, claims ultimately to give them their meaning and proper use by reference to a single symbol... [i.e.,] their identity and the norms of action, in the person and work of Christ”. *Ibidem*.

³³⁷ Here he advocates the Cartesian view when he alludes to Descartes’ “*Discourse of Method*” by stating that this should be the basis of whatever scientific methodology. *Ibid.*, p. 19.

³³⁸ He said that regarding religious or theological notions, “such a theory of scientific endeavor must face the criticism belonging to that long tradition of empiricism expressed in modern history by David

Schner is aware that during this contemporary epoch, there exists significant attempts to relate theology with medical science using empirical-positivist articulations. Examples of these are the attempts of unifying basic moral principles through common vocabulary, as was done in Anthropology or in the Theory of Man, as well as the application of more ambitious programs aimed at integrating differing, although not necessarily incompatible nests of moral concepts. Schner finds these attempts acceptable and feasible although he acknowledges the difficult situation which occurs whenever moral theology utilizes reflective method in discussions about the transcendence of human life, grace, sin or salvation applied to bioethics³³⁹.

Schner proposes another possibility of accommodating theological reflections to an empirical-positivistic scientific mode: “by emphasizing the constructive work of the imagination in theology such that an ‘as if’ interpretation is seen to be the gist of theology”³⁴⁰. This would imply that theological propositions are mere works of imagination or worldviews which are essentially cultural, and must therefore to be dealt with in a practical way. One practical manner which he proposes, is to employ sets of religious experiences featured as data to be processed under empirical formulations similar to those of other sciences. Schner suggests three accommodative ways to merge theology and the sciences:

«There can be then, at least three efforts to accommodate theology to scientific model. One can search for a method which is ultimately scientific because it is the function of the same subjectivity at work in science; one can search for experience so as to have data for investigation as does science; and one can speak of theology as the work of the imagination, a great ‘as if’ to be dealt with pragmatically. The inherent difficulty with such efforts can be located in the contrast of scientific rationality, the demand for transparency of reality to the inquisitive eye of the researcher, with the contemplative rationality of the believer who, in the first instance, must exercise a *potentia obedientialis* in face of the encountering transcendent»³⁴¹.

In the event that these three accommodative modes are applied, the question would be, how should we consider those moral transcendental theological notions which cannot be completely answered by empirical studies? Schner suggests that the empirical method can perhaps still be applied under «ethics». Ethics deals with problems of human freedom: its quest for truth requires both transcendence and transparency. With this relationship, he proposes that theology would be able to describe the human drive toward transcendence, while science would deal with transparency in such a manner that freedom for truth would deem bounded by both clarity and certainty³⁴².

At this point, Schner acknowledges the possibility that moral theology can articulate itself with empirical science in logical, rigorous and persuasive arguments. However, he finds it difficult to reconcile them when dealing with the moral implications of transcendent notions like grace, suffering, salvation, etc., forcing him to allow it to

Hume in the ‘*Dialogue on Natural Religion*’ and ending on the position of A. J. Ayer, throughout which the use of a covertly Christian view of reality, an optimum both metaphysical and epistemological is deemed at best emotive, in fact nonsensical”. *Ibid.*, p. 20.

³³⁹ Cf. *Ibid.*, p. 19.

³⁴⁰ *Ibidem*.

³⁴¹ *Ibid.*, p. 21.

³⁴² Cf. E. E. SHELPS (ed.), Introduction to *Theology and Bioethics: Exploring the Foundations and Frontiers*, Reidel Publishing Company 1985, p. xv.

function only in an exclusive manner: “It does so only within the human community of particular religious tradition and it cannot adopt the definition of truth as clarity and certainty”³⁴³ –which, for him, is achieved by empirical science.

It can therefore be stated, that Schner’s view of theology and the sciences, or of moral theology and medical ethics, is that they are two disciplines which are connected or related, but not reconcilable. According to one observation, Schner conveys the thesis that “science helps [keeps] theology honest by challenging it to meet the demands of new representations of the world, and theology keeps science honest by seeing that clarity and certainty do not collapse into ideology”³⁴⁴.

Summary:

In general terms G. P. Schner recognizes both the relationship and the non-reconcilable aspects between moral theology and the sciences. He considers that the fundamental characteristic of a scientific inquiry should be based from the Kantian category of clarity and distinctiveness, or certainty. He presumes that science is authentically intellectual and logical only insofar as it is subject to an empirical methodology, or, at least, utilizes a positivistic analysis through the collection of experiential data. He views theology as composed of two basic elements: those elements to which science has immediate access, and those to which it does not, except by accommodation - the transcendental or Christian faith like grace, sin and salvation. Schner describes the latter as the compromising aspect of moral theology because it cannot be empirically proven and always remains obscure and uncertain. He permits its application, only among its religious followers. However, he believes that this irreconcilable feature does not necessarily create an *impasse* in (ethics) bioethics. He identifies three accommodative relationships or points of convergence: the attempt to unify theological and related medical concepts through common anthropological vocabulary; the treatment of theology as a work of imagination through scriptural metaphor by relating it to practical cultural affairs³⁴⁵; lastly to consider moral theology as sets of religious experiences which can be statistically gathered and subjected under empirical analysis.

It can be stipulated that Schner views moral theology to be, in a way part of bioethics, but only out of practical convince or accommodation which keeps theology «honest» whenever its moral theological reflection is challenged by empirical science. On the other hand, theology also seems to play a role in keeping science from being burdened with what cannot be explained plainly and empirically.

³⁴³ G. P. SCHNER, *Theology and Science...*, *op. cit.* p. 23.

³⁴⁴ E. E. SHELP (ed.), *Introduction to Theology and Bioethics...*, *op. cit.*, p. xv.

³⁴⁵ Another American bioethicist coincides with Schner’s views by saying that: “Embedded in religious communities and theological traditions are «alternative imaginations» that allow us to approach enduring human riddles like suffering, health, death, procreation, and the like from different vantage points... Another is the possibility that religious communities might help us develop a more adequate ethical language”. J. P. WIND, *What Can Religion Offer Bioethics?*, in “Hastings Center Report”, 20/2 (1990) 18-20.

B. Problem on natural versus supernatural theological reflection by: H. TRISTRAM ENGELHARDT, JR.

H. T. Engelhardt is a well-known American bioethics expert who has written books and essays about the secular-pluralistic method while confronting problems related to medico-moral issues. Essays and commentaries like “Theology and the Nameless God”, or “Looking for God and Finding the Abyss: Bioethics and Natural Theology”, are examples of how he perceives of these two dimensions which, in this section, I will try to elucidate.

This author believes that when we speak about God using theological reflections, it is nothing but the expression of a particular culture and how this culture and religion view the good life and proper conduct. On the other hand, he warns that the manner in which one speaks of God and its theological reflection should at least be in accordance with the theological concept proposed by authors like Charles Hartshorne: that theological reflection should be limited only to the rational level of understanding a Deity³⁴⁶. Here, the rational level refers to what he believes to be God as perceived through natural theology. Thus he declares:

«The natural theologian’s task is, after all, to place persons in the context of their relationship to the Deity... The God who is God is unlikely to share fully the moral sensibilities of particular cultures and religions»³⁴⁷.

He furthermore argues that

«One of the major contribution of natural theology to your or to any culture, is a culture or religion that God is not a Christian, Jewish, or Hindu God, but a nameless God who belongs to all creation and to whom all creation belongs»³⁴⁸.

Based upon this line of thought, practical cases regarding bioethics arguments like abortion, infanticide, euthanasia, homosexuality, etc., would always reflect the appeal to natural theology while avoiding anything to do with Revelation which Engelhardt does not admit for reasons of particularism (against pluralism of American culture), and as being non-secular and insufficient in arriving at rational certainty³⁴⁹.

³⁴⁶ Hartshorne declares that: “With Paul Tillich, I take the formula as an implicit definition of what should be meant by ‘God’. The word stands for the ‘One Who is Worshipped’, and ‘worship’ is unqualified devotion... which in principle includes *all* one’s concerns or interests... God has, in ideal degree, power over all things; but it does not follow that whatever happens, divine wisdom must have decided that it would happen and divine power have seen to it that it happen”. See: C. HARTSHORNE, *Scientific and Religious Aspects of Bioethics*, in *Theology and Bioethics*, Reidel Publishing Company, Dordrecht 1985, pp. 27-28.

³⁴⁷ H. T. ENGELHARDT, *Hartshorne, Theology and the Nameless God*, in E. E. SHELPS (ed.), *Theology and Bioethics...*, *op. cit.*, p. 46.

³⁴⁸ *Ibid.*, p. 45.

³⁴⁹ “If condition for the possibility of resolution presumes generally justified grounds for drawing a conclusion, appeals to special revelation will not suffice. Beyond simple agreement, rational arguments is the only means to settle conflicts when common grace is not available to resolve moral disputes. Thus, examining the rationality of belief, an element of rational theology’s endeavors, is likely to bring into question many of the dogmas of revealed religions, including moral perceptions regarding abortion, infanticides as one asks how religious appeals could in principle resolve, or contribute to the resolution of moral controversies”. *Ibid.*, p. 47.

Engelhardt has tried to prove this thesis by showing how bioethics committees, bodies, institutional research groups and the State have actually been working in this manner when he observes that:

«Secular pluralist societies are polytheist in this fashion. The State is neutral toward the various, often quite divergent, peaceable religious beliefs of its citizens. Yet it is willing to consult various representatives of such religions... Priests, ministers, rabbis are employed as special custodians of *particular* understanding of values and of morals. Thus, the national Commission for the Protection of Human Subjects of Biomedical and Behavioral Research had a Catholic theologian and a Rabbi. *However*, the recommendations of these bodies were carefully framed in secular terms with secular arguments. It is as if the representatives of various Gods had been convened to fashion *ethical norms in a godless language* ³⁵⁰.

I think that this observation is, in actuality, true. It seems that, in the name of pluralism, everyone, of different culture and religious moral beliefs, is clamoring to be heard. Yet, in the name of secularism's «peaceful accord», they attempt an agreement by fashioning or creating ethical norms founded upon a nameless God by which the theologians themselves express their ethical motivation, which springs from special religious source, using a «*lingua franca*» that appears as common to all.

H. T. Engelhardt doubts whether arguments based on religious viewpoints, or which use particular theological reflections in solving bioethics problems, could be universally accessible, acceptable or valid. For example, he thinks that for many years there had been attempts to justify the use of particular religious beliefs as one of the arguments in public policy-making, such as the provisions of hospital directives or declarations. He presumes that its results have not been very fruitful, and suggests that “in a secular society we are living in, it might be enough to just recourse to a moral discourse in a natural theological mode”³⁵¹.

For H. T. Engelhardt, natural moral theology means the recognition of the existence of a God whose nature and wishes do not depend upon prior commitments to the presuppositions of a particular revelation or of a particular religious community. However, he apparently alludes to the need for each man to search for the meaning of some difficult bioethical questions, especially those regarding the transcendent significance of suffering, pain, disease, deformity and death, and find their relation with theology which some particular religious reflections might be capable of assuming³⁵². Inasmuch as he acknowledges the need for their transcendent meaning, he is nevertheless

³⁵⁰ H. T. ENGELHARDT, *Looking for God and Finding the Abyss: Bioethics and Natural Theology*, in E. E. SHELPS (ed.), *Theology and Bioethics...*, *op. cit.*, p. 81 (italics mine). Also see H. T. ENGELHARDT, *Bioethics and Secular Humanism: The Search for a Common Morality*, Trinity International, London 1991, pp. 206.

³⁵¹ “The problem is not simply one of the bounds of religious authority, but one of the ability to forward generally accessible arguments based on religious viewpoints. Indeed, the problem can be put more universally still. The issue is whether there are generally accessible arguments for establishing the need for a recognition of the religious, however generally such is to be stated, as an element of fashioning a secular society. In short, one come to a very traditional intellectual problem of assaying the extent to which, if at all, a natural theology can be maintained or framed”. H. T. ENGELHARDT, *Looking for God...*, *op. cit.*, p. 82.

³⁵² “It is difficult, however, to relinquish the notion of God, for the idea of God and of transcendent religious significance has given meaning to suffering, pain, disease... Of the concreteness of a particular religious story, it accounts of meaning of pain and death, it becomes unclear how a deity could allow the innocent to suffer”. *Ibid.*, p. 83.

apprehensive and anxious about how these particular religious accounts could face a completely reasonable justification. He states:

«They become suspect because their concreteness depends not upon a general rational set of arguments, but upon particular faith commitments, religious traditions, or cultural assumptions»³⁵³.

He therefore confesses that in the search for God either through natural moral theology, or theology through religious commitment, one will only find an abyss (as how he entitled one of his essays) because of the inability to respond to the ultimate rational driving force in justifying them. He thus opted to one solution. That is, to apply natural theology but with one condition: as long as the concerns for general rational justification and the distraction of the numerous other communities competing for one's attention do not block one's ability to find certainty within the confines of a particular community of belief³⁵⁴. In other words, let the theological reflection function only exclusively within the limits of its adherents. Insofar as natural theology is concerned, he claims that it has not yet adequately supplied its intellectual framework in morals, and that there is still much work to be done along this line, and that at this time, we cannot foretell what special contributions natural theology in bioethics may make³⁵⁵. But, to consider a particular theological reflection as part of medico-moral arguments for everyone, he considers it vicious.

Summary

H. T. Engelhardt, Jr., acknowledges the relationship between bioethics and theology. He is convinced of God's involvement in biomedical moral issues, especially whenever there is difficulty in comprehending man's search for moral transcendence like the meaning of pain, suffering, disease, or death under secular arguments. However, he does not agree that this God is necessarily and particularly the revealed personal God. In agreement with Hartshorne's rational or logical theological concept of a nameless God, he affirms that whenever moral arguments are involved which lacks an essential common basis for settling moral disputes, we must refrain from using Christian moral revelation since this leads us to vicious circle of moral argument unless it is subjected to purely logical or natural theological discourse.

On the practical side, Engelhardt, as proponent of the American secular-pluralist bioethical view, observes that numerous theologians of divergent religious beliefs involved in bioethics committees, forums, legislation, etc., have attempted to express their ethical analyses using the *lingua franca* in secular terms: a theological viewpoint of a «nameless God» which is aimed at being generally valid, universally accessible and acceptable; a God who does not claim prior divine authority through a particular revelation. He says that if ever one uses this particular revelation as means for bioethics argument, it must be confined to those particular communities and, in our case, limiting the Christian moral reflections to within the confines of the Catholic Hospital Ethics

³⁵³ *Ibid.*, p. 84.

³⁵⁴ Cf. *Ibid.*, pp. 88-90.

³⁵⁵ «Whether we find the innocence that will allow us to return to ingenuous reflections on the ultimate things of our lives and the universe, remains to be seen» . *Ibid.*, p. 90.

Committees without meddling secular groups, thus preserving it from competing justifications coming from the various religious interests of a pluralistic society.

C. Problem on particular Christian theological reflection versus a pluralistic bioethics forum by: BASIL MITCHELL

B. Mitchell, a professor from Oriel College in Oxford, has written about some topics related to secular morals and religion, and in particular, themes related to bioethics and theology. Although he is an Englishman, he has contributed greatly in the American philosophical and theological circles³⁵⁶. In one of his works, he claims that theological reflection has a relevant role and contributions in the bioethics secular society. He thinks that there is reason to believe that theological arguments, if freely and fairly conducted, can lead to the truth³⁵⁷. This affirmation is clearly illustrated in the essay «The Role of Theology in Bioethics», and in his book «Morality: Religious and Secular»³⁵⁸. He combats the objection which suspects that theological reflection is either otiose (futile) or intrusive. Futile, because it seems to some that there is no need to bring theology into biomedical moral problems, perhaps due to their prejudice of resolving such problems solely through the use of reasonable ways commonly accepted by all men. B. Mitchell poses this question: Is theological reflection in moral issues commonly encountered in man? His answer is, “Yes”. However, due to our pluralistic society, it is not clear if this perception can be resolved into one common moral stance unless a high degree of consensus is achieved. This consensus will more properly manifest the values of a pluralistic society if it admits theological arguments³⁵⁹. At the same time, it is apparent that theological reflection will be exposed to the danger of «compromising» or «breaking down» such tradition or of producing more confusion by attempts of searching for more rational alternatives. In spite of these problems, he claims that theology has a role to play in this field. He declares that by the use of our

«intuition, [it] amounts to claim that morality is required by the universe and once Aristotle’s immanent teleology has been abandoned, it is hard to see how this claim can be maintained except in terms of some form of theism»³⁶⁰.

He adds that:

For if –and, arguably only if– God has a purpose for us and we can flourish and attain ultimate satisfaction only by seeking to realize that purpose can the demands of morality have the objective and categorical character we intuitively ascribe to them»³⁶¹.

³⁵⁶ For a brief commentary about the author and his works, see: C. IZQUIERDO, *The Rationality of Religious Belief in Honor of Basil Mitchell*, in “ScrTh” 20 (1988) 900.

³⁵⁷ Cf. B. MITCHELL, *The Role of Theology in Bioethics*, in E. E. SHELPS (ed.), *Theology and Bioethics: Exploring the Foundations and Frontiers*, Reidel Publishing Company, Dordrecht 1985, p. 77.

³⁵⁸ B. MITCHELL, *Morality: Religious and Secular*, Oxford Univ. Press, New York 1980, pp. 200.

³⁵⁹ Cf. B. MITCHELL, *The Role of Theology in Bioethics...*, *op. cit.*, p. 65.

³⁶⁰ “The conception of an objective morality open in principle to all men as such is itself part and parcel of theism and the integrity which this state imparts to ethics is something which theologians must acknowledge”. *Ibid.*, pp. 66-67.

³⁶¹ He also related man’s recognition of God’s moral purpose in him by viewing himself as an image of God. He declares: “It is that case to be expected too, that men, as created in the divine image of

From Mitchell's vivid description we can deduce the following significant affirmation: that each man is naturally and intuitively moved towards his Ultimate End who is God; and that the acquisition of this Ultimate End or Satisfaction is achieved by realizing the universal demands required of him (the demands of morality).

If moral insights or «intuitions» help fulfill the demands of morality, what can theology offer us, strictly speaking? Mitchell says that theological reflection's role in bioethics issues is more clearly seen when we acknowledge the fact that by moral insights alone we are prone to error. It is interesting to note that, even though B. Mitchell affirms the role of theology as helpful in elucidating and rectifying erroneous moral intuitions, he does not exempt theologians from errors since he assumes that in all men, the image of God has been corrupted. For him, theology can provide us with a clearer view of man and of morality although men, which includes theologians themselves, are not free from errors in doing theology.

A bioethics commentator, E. E. Shelp, observes that B. Mitchell believes that particular/specific theological values and norms may be adequately applied in bioethics moral discussions. To him, moral reasoning of values and norms can render a proper autonomy in a full theological context in bioethics arguments. Shelp comments therefore, that he “finds traditional medical ethics compatible with traditional Judeo-Christian moral values and norms”³⁶². It is doubtful however, if Mitchell admits the Revealed Truths (as source of Judeo-Christian theological reflection) exempt from any error or any kind. He therefore views Judeo-Christian moral reflections as justified and possible in practical applications in bioethics issues. This implies that:

«Christianity itself is not straightforwardly to be identified with the given culture of a particular time and place, but it needs to be related to it. Indeed, more than that, it needs to be given effective expression within it »³⁶³.

By and large, whenever Christian theological moral reflection is used in the bioethics committees, two important points are suggested: that this topic should refrain from subjecting itself to consensus and from resorting to compromise by utilitarian calculus. But, since there are situations like “where there must be compromises, where full agreement is not possible, but the state or [the committee] cannot remain entirely neutral,... let separate communities develop, each dedicated to its own pattern, not claiming authority over a national state [or committee] as such. Religious groups, with their own ethical traditions, will be among these”³⁶⁴.

In general, this is the present set-up in the American HEC's: each one according to its own ethical-religious traditions and convictions. For example, Catholic HEC on one side, and Secular-pluralistic HEC on the other side.

God, will have some capacity, as men, to recognize what they are meant to be, and how they are to become it; in other words, their moral intuition will tend to be trustworthy. *Ibidem*.

³⁶² E. E. SHELPH, *Theology and Bioethics...*, *op. cit.*, p. xvii.

³⁶³ B. MITCHELL, *The Role of Theology in Bioethics...*, *op. cit.*, p. 75.

³⁶⁴ *Ibid.*, pp. 72 & 74.

Summary:

Basil Mitchell claims that there is a relationship between theological reflection and bioethics issues. Man, by intuition or moral insight demands morality. Theological reflection helps man see these moral demands more clearly. He acknowledges the role of theological reflection, based upon Judeo-Christian tradition because of firm and well grounded philosophical/theological foundations. Furthermore, he recognizes that a theologian may err in his reflections. He however, does not exempt the sources of revelation to be free from error, and implies doubt, about the infallibility of the sources of faith.

Whenever theological reflection is used in public forums such as the HEC, Mitchell recommends that it be binding only for its adherents. For instance, attempts to use the Judeo-Christian moral reflections within a pluralistic and heterogeneous group may result in forced choice through consensus, utilitarian calculus or compromise which may become detrimental to the theological faith's integrity and sound tradition.

D. Problem on the specificity in rendering Catholic moral theological reflection versus human ethical reflection by: RICHARD A. McCORMICK

R. McCormick, a Catholic theologian and bioethics expert, has written a number of essays regarding what could be considered theological and distinctly Christian in the theological reflections rendered by some particular moralists whenever they deal with medico-moral problems. His search for a clear theological identity was provoked by two well known philosophers/theologians Lisa Sowle Cahill³⁶⁵ and Alistair MacIntyre³⁶⁶, who questioned whether or not the Christian theological approach is functionally significant and valid as a mode of arriving at an acceptable bioethics decision. In my opinion, R. McCormick's doctrinal views can be schematically presented in this manner: First, he explains how faith relates with reason. Secondly, he justifies the manner in which this concept of «faith illumines reason» becomes connected with morals. And lastly, he shows what makes Christian morals distinct.

McCormick's first and foremost principle is founded upon the tradition which states that theological reflection should be based upon «reason informed by faith». He explains that this should be interpreted in the following perception:

«it is neither reason replaced by faith, nor reason without faith»³⁶⁷.

³⁶⁵ “McCormick forcefully correlates religious and similar values but does not so clearly demonstrate the functional significance for ethics of his theology, precisely as Christian”. L. S. CAHILL, *Within Shouting Distance: Paul Ramsey and R. McCormick on Method*, in “J. of Med & Phil”, 4 (1979) 398-417.

³⁶⁶ “Theologians still owe it to the rest of us to explain why we should not treat their discipline as we do astrology or phrenology. The distinctiveness and importance of what they have to say, if it is true, make this an urgent responsibility”. A. MacINTYRE, *Theology, Ethics and the Ethics of Medicine and Health Care*, in “J. of Med & Phil”, 4 (1979) 435-443.

³⁶⁷ R. A. McCORMICK, *Theology and Biomedical Ethics*, in “Eglise et Théologie”, 13 (1982) 320.

This means that, in order to go beyond reason, one requires the support or illumination of faith. Faith, nonetheless, is also «reasonable». In order to ascertain that faith is reasonable and reliable when applied to moral reflections, and subsequently to Christian ethics, he asserts a qualifying statement:

«Reason is more reliable than faith if philosophical ethics is taken in the normative sense, and Christian ethics in genetic-historical sense»³⁶⁸.

From this point of departure, he moves on to the succeeding phase of major interest: after declaring that «reason should be informed by faith», he nevertheless views faith as supportive and less reliable due to his allegation that faith's moral contents, when applied in Christian morals, is not normative at all³⁶⁹. This means that whenever moral demands are found or contained in the natural law which reason can readily perceive, it bears within itself a true moral value which he calls normative. However, he thinks that there is nothing materially new or distinct in Christian moral demands which is not already contained in the natural moral law. For him, the most Christian morals can specifically offer is for it to be fundamentally exhortative or parenetic³⁷⁰. In fact, he tries analyzing the same problem by examining it in the reverse position: what if faith is viewed in the normative sense, while philosophical ethics in genetic-historical sense? He argues that Christian morals as based from Christ's works or deeds (Revelation) and yet, he believes that Christ's words and works do not in principle, add anything substantially new to natural moral law. Thus, for him, such morals are solely parenetic.

1. R. McCormick's sources of the moral questions

At this point, I think it is appropriate to mention McCormick's two of his basic sources of aforementioned propositions. With regard to the relationship between faith and ethics, his arguments stem from Dietmer Mieth's theological interpretation that:

«everyone admits that faith and ethics have something to do with each other. They cannot be separated, but they must be distinguished»³⁷¹.

³⁶⁸ This is where he, along with B. Schüller, tend to be different from most Catholic theologians. They accuse Ratzinger as confusing the difference between «normative or true value» and «genetic-historical sense»: “In saying that faith is more reliable than reason, Ratzinger confuses these two levels. Reason is more reliable than faith if philosophical ethics is taken in the normative sense and Christian ethics in the genetic-historical sense. However, faith seems more reliable if taken in the normative sense and philosophical ethics in the genetic-historical sense. The traditional teaching on norms (revelation does not add anything concretely to them) concerns only the epistemological status of norms, not the sociological, historical, or psychological conditions that may hinder reason from arriving at true value judgment. This is overlooked by Ratzinger”. R. A. McCORMICK, *Moral Arguments in Christian Ethics in «The Critical Calling» Reflections on Moral Dilemma Since Vatican II*, Georgetown Univ. Press, Washington D.C. 1989, p. 64. See also: B. SCHÜLLER, *Zur Diskussion über das Proprium einer Christlichen Ethik*, in “Theologie und Philosophie”, 51 (1976) 321-341.

³⁶⁹ McCormick cites Schüller by saying that “the referring of the moral law to the gospel has nothing to do with normative ethics but is a specific sort of parenesis”. Cf. R. A. McCORMICK, *Christianity and Morality: Notes on Moral Theology:1976*, Univ. Press of America, Lanham M.D. 1984, p. 637.

³⁷⁰ Parenetic means, exhortative, interpretative or motivative. Cf. *Ibidem*.

³⁷¹ *Ibid.*, p. 633. See also: D. MIETH, *Autonome Moral im Christlichen Kontext*, in “Orientierung”, 40 (1976) 31-34.

Thus, he accepts the existence of a connection between faith and ethics. McCormick is, however, troubled by how they are distinct from one another: what is there in the moral norms (ethics bounded within the moral law) which is specifically Christian? Or rather, are there Christian morals which bear distinct roles and contributions in bioethics? Here, he bases his analysis principally on German moral theologians like J. Fuchs, R. Hoffmann, F. Böckle, and Schüller³⁷².

Using these sources along with R. McCormick's corresponding moral analysis, relevant moral questions, when applied to bioethics Christian moral reflective role can be posed in the following manner: How does Christian faith relate to moral reasoning in bioethics? Is Christian moral theological reflection, which theologians or Christian faithful attempt to offer in the HEC forum, really capable of relating itself with bioethics problems in a reasonable, valid and distinctive manner?³⁷³ Answers to these questions evidently play a key factor in understanding the theological role and contributions to bioethics whenever they share and establish moral convictions in the public forums like HECs³⁷⁴. There is thus, a need to show that Christian moral demands and convictions, when considered in the HEC forums, have something specific, reasonable and justifiable tasks to share, and have a different and yet closely related function with the other committee members' ethical renderings in the committee. We shall expound R. McCormick's attempt to answer this problem and then identify and analyze some of the weak or ambiguous points in his arguments.

2. *Faith and reason: McCormick's interpretation*

Richard McCormick insists that faith is related to reason insofar as faith acts as a light which illuminates, as a support that aids, or as a guide which influences reason in its interpretation and arrival at a morally right judgment³⁷⁵. This "relationship" is taken from the traditional notion, «reason informed by faith». Faith informs reason, but from the presupposition that this same faith acts *only* as a support which provides a context for their reading or interpretation at a given point in life. He says:

«In this sense, [the faith in] Christian tradition only illumines values, provides a context for their reading at given points in history. It aids us in staying human by understanding the truly human against all cultural attempts to distort them. It is by steadying our gaze on the basic human

³⁷² Cf. R. McCORMICK, *Moral Theology 1940-1989: An Overview*, in "Theological Studies", 1989, p. 8. See also: J. RATZINGER, *Prinzipien Christlicher Moral*, Published in English in *Problems of the Church Today*, US. Catholic Conference, Washington 1976, pp. 74-83.

³⁷³ "There are many ways of phrasing this question: What is the relationship of moral theology to moral philosophy? Is there a specifically Christian ethics? Does Christian faith add material content to what is in principle knowable by reason? Is Christian morality autonomous? Is Christ the ultimate norm for the morally good and right and what sense?" R. A. McCORMICK, *Christianity and Morality...*, *op. cit.*, pp. 626-627.

³⁷⁴ Cf. *Ibid.*, p. 627. See also two other works: R. A. McCORMICK, *Theology in the Public Forum*, in *The Critical Calling: Reflections on Moral Dilemmas Since Vatican II*, Georgetown Univ. Press, Washington D.C. 1989, pp. 191-208; *Pluralism in Moral Theology*, *ibid.*, pp. 131-146.

³⁷⁵ "Faith in these events... yields a decisive way of viewing and intending the world, of interpreting its meaning of hierarchizing its values, of reacting to its apparent surges of conflict". Cf. R. A. McCORMICK, *Christianity and Morality...*, *op. cit.*, pp. 637-638.

values that are the parents of more concrete norms and rules that faith influences moral judgment and decision-making. This is one way of understanding “reason informed by faith”»³⁷⁶.

He connects faith and reason, but only insofar as faith is taken as something supportive or contextual which does not carry within itself any concrete moral content³⁷⁷. He classifies faith as merely supportive because everything which faith can offer to morals is already materially present or contained within the concrete basic human values or insights of reason. Thus, there is nothing mysterious, and nothing new in faith that is not humanly reasonable at all. To justify this concept, he utilizes F. Hürth and P. M. Abellan’s theological arguments by saying that:

«All moral commands of the ‘new law’ are commands of the natural moral law... that holds also for the command of love... the ethical demand to love God and one’s neighbor for God’s sake is a demand of the natural moral order»³⁷⁸.

Although it might be true that faith can inform, and is compatible to reason and cannot be sustained without it (against fideism)³⁷⁹, it is however apparent from McCormick’s point of view that faith has no specific or essential content above the realm of natural moral law.

3. *Faith that «influences»*

At this stage, it is essential to understand more deeply McCormick’s views of «faith». At first, he states that faith «informs» reason. In addition, he also considers it as something that supports, motivates, influences and illuminates. In simple terms, it is a faith which «influences».

His explanation of faith as something that «influences» comes from Gustafson’s view of religious faith which is grounded upon two basic points: «Belief» described as the unconditional attraction towards the Good/God; and «culture» conceived as the conditional attitudes in life³⁸⁰. McCormick understands «beliefs» as a ‘basic human value’ which is non-derived and irreducibly attractive because,

«for each of these values has its self-evident appeal as a participation in the unconditional Good which we call God. The realization of these values in intersubjective life is the only adequate way to love and attain God»³⁸¹.

³⁷⁶ R. A. McCORMICK, *Theology and Biomedical Ethics...*, *op. cit.*, p. 315.

³⁷⁷ He believes “that the sources of faith do not originate concrete obligations (thought to apply to all persons, *essential* morality) that are imperious to human insight and reason”. *Ibid.*, p. 311.

³⁷⁸ R. A. McCORMICK, *Christianity and Morality...*, *op. cit.*, p. 636.

³⁷⁹ “This general [Christian moral theological] reflection constitute the shape of, informing of our reasoning as we deliberate the more concrete problems of biomedicine, especially the duty to preserve life. They do not replace reasoning: but moral reasoning ought to be compatible with them”. R. A. McCormick, *Theology and Biomedical Ethics...*, *op. cit.*, p. 324.

³⁸⁰ For further readings, see the ff.: J. M. GUSTAFSON, *The Contribution of Theology to Medical Ethics*, Marquette Univ. Press, Milwaukee 1975, 115 pp.; *A Theocentric Interpretation of life*, in “Christian Century”, 97 (1980) 754-760; *Theology Confronts Technology and the Life Sciences*, in “Commonweal”, 105 (1978) 386-392.

³⁸¹ R. A. McCORMICK, *Theology and Biomedical Ethics...*, *op. cit.*, p. 314.

If faith in God is a basic human value, what makes it attractive to man? McCormick responds by expounding that man has a basic human tendency, conceived as natural inclination (*inclinationes naturales*) towards the good, in such a way that his self-evident attraction to the unconditioned good is ultimately his attraction to God himself.

At the same time, he emphasizes that this inclination must be «open» to whatever is perceived as good because the morality of our conduct is determined by the adequacy of our openness to these values. For him, Faith is a basic value which is open to whatever is perceived as good. When man openly directs himself towards these perceived conditioned goods, faith and morals are then conceived as «culturally conditioned» values. He states:

«Our way of perceiving the basic human values and relating to them is shaped by our whole way of looking at the world... Faith in these events, yields a decisive way of viewing and intending the world, of interpreting its meaning, of hierarchizing its values»³⁸²

His notion of faith and morals as being culturally conditioned explains his subjectivity when viewing the contents of faith in Christian morals. From this vantage point, it can also be affirmed that McCormick is consistent with his proportionalist methodology (for which he became famous for)³⁸³: he finds it difficult to affirm that there are concrete moral acts which are *per se* intrinsically evil. He could hardly admit the idea that there cannot be exceptions to intrinsic evils when man, by natural inclination, considers a different subjective perception of the world.

Hence, for McCormick, faith is reduced to a basic human value that is rationally defensible: man's belief in God is merely based upon his natural inclination to the Good, and at the same time, it is culturally conditioned, depending on how he perceives or looks at the world. And as a consequence, theological reflections regarding the Christian faith is considered solely as an influential or supporting factor for the basic human values:

«In this sense, Christian tradition only illumines human values, supports them, provides a context for their reading at given points in history. It aids us in staying human by undermining the truly human against all cultural attempts to distort the human»³⁸⁴.

4. *Specificity of Christian Morals*

If Christian faith is connected with ethics, is there a concrete and specific moral content in Christian morals which is applicable to bioethics issues and which is distinct from those present in the natural moral law? If so, what are these moral contents which are specifically Christian, and which should play a relevant role in the bioethics forums and discussions? This problem of Christian moral «identity crisis»³⁸⁵, has certainly

³⁸² *Ibid.*, p. 315.

³⁸³ Cf. D. COMPOSTA, *Tendencia de la Teología moral en el Post Concilio Vaticano II*, in G. DEL POZO ABEJON (ed.), *Comentarios a la «Veritatis Splendor»*, BAC, Madrid 1994, p. 328; D. ATKINSON, D. FIELD, A. HOLMES, O. O'DONOVAN, R. McCormick, in *New Dictionary of Christian Ethics and Pastoral Theology*, International Press, Illinois 1995, p. 255.

³⁸⁴ R. A. McCORMICK, *Theology and Biomedical Ethics...*, *op. cit.*, p. 315.

³⁸⁵ Cf. J. RATZINGER, *Bishops, Theologians, and Morality*, in McCARTHY, D., *Moral Theology Today: Certitudes and Doubts*, Pope John Center, Missouri 1984, pp. 3-24. See also same author in, *Transmisión de la Fe y Fuentes de la Fe*, in "ScrTh", 15 (1983) 9-30.

affected the American health care secular society despite the fact that this fundamental problem was originally rooted in various academic German thinkers. R. McCormick recounts the European debate:

«this European discussion is often couched in terms of autonomy (a term rooted in developments in philosophical ethics since Kant) and theonomy (attributable especially to Tillich), some recent theologians discuss this question in terms of ‘autonomous moral in a Christian context’»³⁸⁶.

R. McCormick joins himself to this heated debate, and admits that he is another adherent or proponent of this renewed type of theological thinking called theology of autonomous morality. McCormick’s comments as a renowned and influential American Bioethicist demonstrates how this thinking has also rapidly spread among intellectuals in the American pluralistic society. In his works he describes autonomous morality as follows:

«The most basic thesis of the autonomous ethics theologians is that *Christian* ethics does not consist in insights available only to believers. Rather, Mieth reports, the specific character is located in a new horizon as meaning (*to dines neuron*) and a specific intentionality. They do not deny the competence of the Magisterium for the entire moral order, as Ratzinger asserts. Rather they (especially Auer) suggest that the Magisterium expresses itself in an *original* way in the area of the intentionality and horizon of meaning specific to Christians, but only in a *subsidiary* way in the realm of inner worldly reality. Thus a statement of the Magisterium will be less necessary the more autonomous morality itself offers arguments, and all the more necessary the greater the deficiency of ethical awareness»³⁸⁷.

Let us, in simpler and more tacit form, analyze what R. McCormick and company advocate. They declare that there is no ethical insight within Christian ethics which is not also found in the natural or human morality. For them, moral rules incumbent in Christians are materially identical with the precepts or prohibitions of the so-called natural law. This is not surprising if they pretend to readily justify, and without distinction, the earlier mentioned stance of Hürth and Abellan’s which states that the moral demands of the New Law are also commands of the natural moral law.

McCormick also supports Schüller’s attack against Ratzinger’s position by saying that the difficulty lies in the confused understanding of the nature of moral judgment³⁸⁸. For them, moral judgments should be qualified as either normative or parenetic. Normative ethics is based upon its true moral value as encountered in the natural law. Parenetic ethos is founded upon the genetic-historical or interpretative value of the moral act. We shall now see how this concept has affected the Christian views in bioethics issues.

³⁸⁶ “Such an autonomous morality has been presented in its most detailed form by Alfons Auer (Tübingen). Similar position have been developed by Joseph Fuchs, R. Hoffmann, Dietmer Mieth, Franz Böckle, Bruno Schüller and others. The first attack on such positions, issued by Gustave Ermercke, has been intensified by the addition of B. Stoeckle, K. Hilpert, J. Ratzinger, and Hans Urs von Balthasar to the list of attackers”. R. A. McCORMICK, *Christianity and Morality...*, *op. cit.*, p. 633.

³⁸⁷ R. A. McCORMICK, *Christianity and Morality...*, *op. cit.*, p. 633. See also C. E. CURRAN, R. McCORMICK (eds.), *The Distinctiveness of Christian Ethics*, in *Readings in Moral Theology II*, Paulist Press, New York 1980, 200 pp.

³⁸⁸ As alluded earlier, there was a heated discussion between Schüller and Ratzinger about what is normative ethics and parenesis. Cf. B. SCHÜLLER, *Zur Diskussion über das Proprium einer Christlichen Ethik*, in “Theologie und Philosophie”, 51 (1976) 321-343.

5. *R. McCormick's views of Christian Identity in Bioethics issues*

If Christian ethics is materially identical with precepts and prohibitions of the natural law, what role can Christian ethics play in bioethics issues? What makes Christian ethics «specifically and exclusively Christian»?

The reason why they insisted to differentiate moral judgment depending on its «true» (normative) value, or according to its «parenthetic» (exhortative) concept, is to attribute to the subsequent the presumed proposition of Christian specificity based from Christ's teachings in the Revelation (Holy Scripture): a sheer motivation that is not binding to all men except to His is followers. McCormick emphasizes that all good moral acts found in the natural law are applicable to all men and for all times, while Christ's works and words added nothing substantially new to it, although His works may be influential, inferring moral motivations in the manner of accomplishing them³⁸⁹. He concludes by declaring that:

«Christian ethics does not and cannot add to human ethical self-understanding as such any material content that is, in principle, strange or foreign to man as he exist and experiences himself»³⁹⁰

Thus, Christ's moral teachings, conceived as possessing a merely parenthesis or exhortative value, would certainly affect moral or bioethical decisions. Christian ethics would perhaps, simply play the role of sharpening or intensifying moral insights over the good to be attained, without producing any binding force to any concrete moral issues. Through his theological reflection and reasoning, man is informed, opens himself to the world and discovers the call to follow the moral demands of Christ which have a supportive value but which is not necessarily binding or normative. He declares:

«Christian tradition is much more a value-raiser than an answer-giver and it affects our values at the spontaneous, prethematic level»³⁹¹.

6. *Christian Ethical Contributions to Bioethics issues*

By applying this «exhortative» value of Christian ethics, McCormick draws from it a list of theological themes as possible sources of a more concrete action guide in the bioethics issues i.e., points of reference to determine conduct. He believes that a concrete moral act can be judged by the influential Christian insights, interpretations, views and perspectives. For instance, R. McCormick suggests some succinct although not exhaustive list of Christian insights applicable in bioethics issues. These insights are basically drawn from the notion of seeing God as creator of life and whose respect is

³⁸⁹ «Christian tradition ought to be an outlook on the human, a community of privileged access to the human... Whatever is distinctive about Christian morality is found essentially in the life-style, the manner of accomplishing the moral tasks common to all persons... The experience of Jesus is regarded normative because he is believed to have experienced what is to be human in the fullest way and at the deepest level". R. A. McCORMICK, *Christianity and Morality...*, *op. cit.*, p. 637. See also: R. A. McCORMICK, *The Insight of the Judeo-Christian Tradition and the development of an Ethical Code*, in *Human Rights and Psychological Research*, Crowell, New York 1975, pp. 23-36.

³⁹⁰ R. A. McCORMICK, *Christianity and Morality...*, *op. cit.*, p. 637.

³⁹¹ R. A. McCORMICK, *Theology and Biomedical Ethics*, in "Eglise et Théologie", 13 (1982) 316.

attributed for making us in His likeness; or, by taking Christ as role model, man can be influenced to lead a new life of charity, justice, forbearance etc.³⁹².

The theological themes and insights bears, as our author asserts, the theological moral framework for various concrete bioethics moral issues. By transforming these theological themes adjusted towards the bioethics Christian perspective, he comes up with six examples:

«Thus far, I have been discussing Christian perspectives or themes or insights that give shape to our ethical deliberations in biomedicine. I have mentioned six. (1) Life as a basic but not absolute value. (2) The extension of this evaluation to nascent life. (3) The potential for human relationships as that aspect of physical life to be valued. (4) The radical sociality of the human person. (5) The inseparability of the unitive and procreative goods. (6) Permanent heterosexual union as normative. There are probably many more such themes that are woven into the Christian story»³⁹³.

However, it is important to remember that R. McCormick maintains the qualified proposition of «reason informed by faith» as mentioned earlier. He asserts that in a public forum with secularist orientation within the American HEC, a «particularistic biblical story» (or the Revelation in the Christian sense) might be problematic for non-Christians who do not agree with the Scriptures than among Christians themselves³⁹⁴. Thus, in order to solve this dilemma, and to make it admissible for a pluralistic society, he insists that Christian morals be devoid of any mystery: faith which reason cannot reach. In other words, as for him, Christian morals cannot add anything more to human ethical self-understanding because in principle, its material content is not strange or alien at all to any man³⁹⁵. He concludes:

³⁹² .“To see what these perspectives, themes, insights as related to medical ethics might be, let us attempt to disengage some key elements of the Christian story, and from a Catholic reading and living of it. One might not be too far off with the following listing: 1) God is the author and preserver of life. We are ‘made in His image’. 2) Thus life is a gift, a trust. It has great worth because of the value He is placing in it (Thielicke’s ‘alien dignity’). 3) God places great value in it because He is also (besides being author) the end, purpose of life. 4) We are on a pilgrimage, having here no lasting home. 5) God has dealt with us in many ways, but his supreme epiphany of Himself (and our potential selves) is His Son Jesus Christ. 6) In Jesus’ life, death and resurrection we have been totally transformed into ‘new creatures’ into a community of the transformed. Sin and death have met their victor. 7) The ultimate significance of our lives consists in developing this new life. 8) The spirit is given to us to guide and inspire us on this journey. 9) The ultimate destiny of our combined journeys is the ‘coming of the kingdom’, the return of the glorified Christ to claim the redeemed world. 10) Thus we are offered in and through Jesus Christ eternal life. Just as Jesus has overcome death (and now lives), so will we who cling to Him, place our faith, hope in Him and take Him as our law and model. 11) This good news, this covenant with us has been entrusted to a people, a people to be nourished and instructed by shepherds. 12) This people should continuously remember and thereby make present Christ in His death and resurrection at the Eucharistic meal. 13) The Chief and central manifestation of this new life in Christ is love for each other (not a flaccid “niceness”, but a love that shapes itself in concrete forms of justice, gratitude, forbearance, chastity, etc.)”. *Ibid.*, pp. 317-318.

³⁹³ *Ibid.*, p. 329.

³⁹⁴ “Those who do not agree with the themes I have disengaged from the story need only say: ‘sorry, I do not share your story’. There the conversation stops. Public policy discussion is paralyzed in the irreconcilable stand-off of conflicting stories and world views”. *Ibidem*.

³⁹⁵ “Christian ethics does not and cannot add to human ethical self-understanding as such any material content that is, in principle, strange or foreign to man as he exist and experiences himself”. R. A. McCORMICK, *Christianity and Morality...*, *op. cit.*, p. 637.

«Since these insights can be shared by others, I would judge that the Christian warrants are confirmatory rather than originating»³⁹⁶.

Therefore, although Christian morals contains nothing specifically different from that which is humanly attainable, its exhortative values, supported by Revelation may act in a privileged manner an assurance for grasping such faith with ease³⁹⁷.

Summary:

R. A. McCormick has attempted to interpret, in a modified manner, the concept of the traditional *fides quaerens intellectum*. He does not deny the existence of faith nor its connection with morals. In fact, he considers faith to be an illuminator and a supporter to human values. While «ethical reasoning and judgment» for him is “steadying our gaze on the basic human values that are the parents of more concrete norms and rules”, «faith» he says, is something that influences this moral judgment. Thus, from this stance he concludes, «faith informs reason».

He however denies anything mysterious with faith and morals because for him, faith is nothing more than a part of basic human value: on the one hand, there is an unconditional natural inclination toward the Good/God which he calls «belief in God»; when this concrete human value (faith) is «culturally» conditioned, it forms part of man’s moral conduct.

This distinction would imply that Christian faith is culturally conditioned and has a merely a supportive, interpretative, and contextual «parenthetic» value which does not carry in itself any concrete moral content. It assumes solely a genetic-historical sense. The normative or true face-value of moral act would then be found in the basic human insights or values which are reachable by plain reasoning. W. B. Smith commented thus:

«I take [this position] to be basically a rationalistic stance wherein the classic definition of theology *fides quaerens intellectum* is effectively reversed: now it is *intellectus quaerens fidem* – if persuasive reason can be found to command his assent of faith»³⁹⁸.

By following McCormick’s theological viewpoint of faith as applied in Christian morals, it would not be difficult for him to consider Revelation simply as a «Christian Story» that functions exclusively as an aid, support or motivation for leading someone to live humanly since it is solely in the basic human values of natural law where concrete moral contents are universally and ultimately derived. Christian theological reflection may act as an influential factor, but only as a genetic guide, motivator and illuminator toward a concrete moral act. Definitely, he considers Christ’s moral life and teachings giving insights to bioethics issues and through which, themes of theological reflection is recommended. However, he believes that Christ did not add anything that is not within the universal natural demands of normative value although as expounded earlier in the

³⁹⁶ *Ibid.*, p. 330.

³⁹⁷ Cf. *ibid.*, pp. 329-331.

³⁹⁸ He furthermore observes that McCormick only “accepts as authentic teaching whatever reason finds «persuasive» and when, à la Böckle, «reasonable» meaning not ultimately mysterious”. W. B. SMITH, *The Revision of Moral Theology in Richard A. McCormick*, in “Homiletic and Pastoral Review”, 81/6 (March 1981) 11-12.

discussion, he sees in Him the distinct quality of influencing Christians become their moral model and motivator. It is through this perspective that he sees where Christian moral theological insights or reflections may actually render a relevant role and contribution in the bioethics questions: that men of various creeds and mentalities seek the concrete dictates of natural law, and Christian ethics is not alien to it. Christian ethics based on Christ's moral teachings is merely influential, motivational, and genetically exhortative.

PART TWO: CHAPTER 4

A Critical Analysis on the HEC's Role in Using Theological Perspectives in Bioethics Forums

I. GENERAL PRESENTATION

We have just identified the viewpoints of some prominent American bioethicists/moral theologians regarding on whether or not the rendering of theological reflections has significant roles or contributions in the medical bioethics forums. From their philosophical-theological arguments, we shall analyze to draw out concrete points why theological reflection may be certainly utilized to solve moral dilemmas presented to hospital bioethics committees or forums within a pluralistic and secular society. Conceptual difficulties such as the relationship between theology and bioethics, reason and faith, the innovative post-Vatican council attempts to dialogue with various and wider groups of peoples and cultures by applying new moral concepts resulting to separation between the order of ethos and the order of salvation, or the search for specific distinction between Christian morals and universal natural moral norms, are by stipulation, among the secularist topics that permeate the bioethics field and are therefore worth discussing.

II. Secularism: the cultural condition of the problem

Our representative authors serve as the reference points in the real conditions behind the difficulties in rendering moral theology perspectives in bioethics when applied in the HEC forums. It is obvious that we are dealing with people of diverse cultures and of pluralistic mentality and are confronted with similar bioethics dilemmas. These authors tried to respond to everyone's ethical needs by formulating "morals which might be solely directed to man himself, credible for all, in a society which has lost the Christian foundation of moral values"³⁹⁹. Even Christian moralists, like R. McCormick and B.

³⁹⁹ E. MOLINA, *La Encíclica «Veritatis Splendor» y los intentos de renovación de la teología moral en el presente siglo*, in "ScrTh", 26/1 (1994) 142 (translation, mine).

Mitchell⁴⁰⁰, have attempted to impart a humanly good or correct bioethical judgments and decisions that would be applicable to all, but would consider the indispensable supernatural moral truths⁴⁰¹ proposed by Revelation or Christian Teachings of the Church advisable only to their faithful adherents and not necessarily applicable or binding to everyone⁴⁰². It is an expression of their desire to become more “universal, morally autonomous and responsible” in a multi-cultured modern biomedical world⁴⁰³. The aforementioned attitudes or characteristics which we encounter nowadays in many American bioethics groups, committees and forums form the backbone of what we call the secularist’s moral posture.

Moral secularization can be described in general terms as a way of interpreting and living reality according to «ethical norms of universal validity»⁴⁰⁴ but in a way detached from a Personal God and His Revelation, devoid of any religious perspective. It gets rid of any correlation with morality outside man himself such as the belief in God and His transcendence⁴⁰⁵. In the Bioethics world, this tendency is evident in our authors. Schner recognizes the relation between faith and morals but insists on the distinction of faith from reason, i.e., faith becomes credible only if it is subjected to empirical tests or scrutiny. Otherwise it would be superfluous. For his part, Engelhardt rejects Christian moral theological reflection in Bioethics forums because it cannot be applied to everyone in a pluralist culture, but to a specific group such as the Catholic HECs⁴⁰⁶. Natural

⁴⁰⁰ See chapter 3, regarding B. Mitchell and R. McCormick’s views.

⁴⁰¹ “El peligro que acecha al «cristianismo secular» aparece con bastante claridad: una asimilación al mundo y a su espíritu en el nombre de la participación de sus valores y de sus esperanzas que conducen al mismo rechazo, el de las renunciaciones evangélicas, el rechazo por el hombre de renunciar a sí, de colocar el centro de su vida en otro diferente de sí mismo, y para decirlo todo en una palabra que presenta la ventaja de haberse hecho en nuestros días algo escandalosa, el rechazo de lo «sobrenatural»”. S. PINCKAERS, *Las Fuentes de la Moral Cristiana*, Eunsá, Pamplona 1988, p. 404.

⁴⁰² “Se apuesta, por tanto, por una moral capaz del diálogo con un mundo secularizado, que deja intacta la immanencia de la moral laica. En este contexto resulta sumamente interesante el papel que se concede a la Revelación en la teología, y, en concreto, el valor de la moral evangélica para la ética racional: el mensaje moral evangélico se presenta a un mundo agnóstico como una hermenéutica o maiéutica que permite comprender la insuficiencia de las normas morales laicas”. E. MOLINA, *La Encíclica «Veritatis Splendor»...*, op. cit., pp. 142-143.

⁴⁰³ R. McCormick describes it this way: “This is the radical theological meaning of secularization: the loss of the context which subordinates and relativizes these basic human goods and which prevents our divinizing them. The goods are so attractive that our constant temptation, our continuing enslavement, our bondage to the world, our constant need for liberation and deepening conversion is to center our being on them as ultimate ends, to cling to them with our whole being”. R. McCORMICK, *Theology and Bioethics: Christian Foundations*, in E. SHELPS (ed.), *Theology and Bioethics...*, op. cit., pp. 106-107.

⁴⁰⁴ An example is Auer’s secular method: “Para encontrar una regla de moralidad, es necesario partir de la realidad, y captar que los hechos son regulados por opciones múltiples radicales. Se trata de partir de la dignidad del hombre y de la racionalidad de la realidad cuyo valor se alcanza solamente a través de la *precomprensión*, es decir, en el análisis de los conflictos, de las tensiones, de los ideales, del pluralismo ético. De este análisis surgirán las normas éticas válidas universalmente”. E. MOLINA, *La Encíclica «Veritatis Splendor»...*, op. cit., p. 142.

⁴⁰⁵ Cf. P. VANZAN, *Secularización*, in *Diccionario teológico interdisciplinar*, Sígueme, Salamanca 1983, pp. 274-275.

⁴⁰⁶ “MacIntyre’s view of the implications of pluralism on morality has been taken up recently by H. Tristram Engelhardt, who sees ethics being divided between a public, secularist ethic suitable for a pluralistic society and particularistic ethics espoused by individuals or religious communities. The secularist ethic basically comes down to an ethic of personal freedom without any corresponding objective

Theology for him would suffice. Even our Christian authors B. Mitchell and R. McCormick propose the idea that a dialogue with secular morals based from autonomous morality is what constitutes the universality of ethics. As a consequence, Christian morals becomes nothing more than just «an aid» to bioethics, and therefore, not always morally and universally binding. Secular morality is normative while Christian morals is merely exhortative making a distinction between the order of ethos and the order of Salvation.

The prevalence of secularism in bioethics can be gleaned from a recent Catholic Church's document which states:

«In fact, a new situation has come about. which has experienced the spread of numerous doubts and objections of a human and psychological, social and cultural, religious and even properly theological nature with regard to the Church's moral theology [such as] calling into question of traditional moral doctrine, on the basis of certain anthropological presuppositions»⁴⁰⁷.

In the face of this situation, we are encouraged to make an intent study and reflection regarding its implications in bioethics. Likewise, the Church is aware of this condition by reminding us of the effects of secularism when She warned that:

«... one of the most acute pastoral concerns of the Church amid today's growing secularism, [is where] many, indeed too many people think and live 'as if God did not exist'. We are speaking of a mentality which affects, often in a profound, extensive and all-embracing way, even the attitudes and behavior of Christians, whose faith is weakened and loses its character as a new and original criterion for thinking and acting in personal, family and social life. In a widely dechristianized culture, the criteria employed by believers themselves in making judgment and decisions often appear extraneous or even contrary to those of the gospel»⁴⁰⁸.

As we shall see, the bioethics discussions, decisions and judgments in the HECs, are not immune from the growing secularist influences that is expanding even more widely, yielding a greater break between bioethics and its connection/relationship with moral theology.

The Church has been so concerned of this annoying development that true to her role as guardian of Faith and Morals, feels the need to dig deeper into the matter, respond to the emerging moral crisis, judge, exhort and guide the whole of humanity. Thus,

«In Christ's name and with his authority they have exhorted, passed judgment and explained the moral teachings regarding the many different spheres of human life. In their efforts in behalf of humanity, in fidelity to their mission, they have confirmed, supported and consoled. With the guarantee of assistance from the Spirit of Truth they have contributed to a better understanding of moral demands in the areas of human sexuality, the family, and social, economic and political life. In the tradition of the Church and in the history of humanity, their teaching represent a constant deepening of knowledge with regard to morality»⁴⁰⁹.

scale of values. In order to maintain peace and order in such a society, according to Engelhardt, we have to turn from substantive moral objectivity to procedures for assuring freedom for individuals to exercise their own preferred moral style". R. LEAVITT, *Notes on a Catholic Vision of Pluralism*, in E. PELLEGRINO *et al* (eds.), *Catholic Perspectives on Medical Morals*, Kluwer Academic Publishers, Dordrecht 1989, p. 250.

⁴⁰⁷ JOHN PAUL II, Encyclical letter, *Veritatis Splendor* n° 4.

⁴⁰⁸ *Ibid.*, n° 88.

⁴⁰⁹ *Ibid.*, n° 4. See also: JOHN XXIII, Encyclical letter, *Mater et Magistra* (15 May 1961): AAS 53 (1961) 410-413.

We shall now discuss the fundamental moral difficulties that impede the theological reflexive role offered by theologians or those participants who are deeply concerned to impart an authentic HEC recommendation based on recent Church teachings⁴¹⁰.

III. towards some holistic attempts in relating bioethics with moral theology

A. God as common ground for ethics

Searching for a common perspective among the authors analyzed, we can observe that they reflect, to a greater or lesser degree, a concept of God and ethics. They recognize that these two concepts are closely related in practical life to the point that some would say that this relationship produced a morally different life-style among its believers. Thus says Robin Lovin:

«Even in secular discussions of ethics, law and medicine, the presumption remains strong that religious beliefs are an important source of moral guidance. Both those who hold religious beliefs (belief in God), and those who do not, expect that such belief will make a significant difference in the moral lives of their adherents»⁴¹¹.

B. Mitchell's commentator, Robert Gascoigne, asserts that B. Mitchell certainly believes that what is «ethical» must be coherent with «theological» context, when he declared that:

«Our notion of the good is developed through our reasoning, in an interpretative rather than strictly deductive manner from the nature of reality. Yet a fully developed morality is compatible only with a reality which has God as its source, since otherwise, doing the good cannot be said to fulfill human needs. In accordance with God's creative purpose, morality dedicates human beings to each other, and at the same time brings each individual towards the fulfillment of his deepest longings in the Kingdom of God»⁴¹².

H. T. Engelhardt's contention is not far from this same perspective because he is also convinced that God is very much implicated in bioethics whenever moral arguments related to the meaning of pain, suffering, disease and death are at stake. However, this God, according to him, is not a personal God that Christians know of, but rather, a «nameless God» involved in man's moral claims of a common morality based on reason, typically secular and humanistic⁴¹³.

⁴¹⁰ It shall focus on the Encyclical *Veritatis Splendor* and documents at par with approximately 25 years of bioethics establishment as a special field of ethics. The use of the Church documents in the discussion follows A. Lang's argument of demonstrative validity: "Las declaraciones de la Iglesia sola como medio para conocer cuál es el concepto cristiano de la revelación [y en moral]. En consecuencia, tales declaraciones no pueden considerarse argumento demostrativo... Pero es cierto también que señalan el fin y la tarea de quien se propone demostrar la legitimidad de la afirmación del cristianismo". A. LANG, *Teología Fundamental*, vol. 1, Rialp, Madrid 1966, pp. 44.

⁴¹¹ R. W. LOVINS, *Ethics: Religion and Morality*, in T. REICH (ed.), *Encyclopedia of Bioethics*, Macmillan, New York 1995, p. 758.

⁴¹² R. GASCOIGNE, *God and Objective Moral Values*, in "Religious Studies", 21 (1985) 535. See also B. MITCHELL, *Morality: Religious and Secular*, Oxford Univ. Press, New York 1980, p. 143.

⁴¹³ Cf. D. P. SULMASY, *A Review on Bioethics and Secular Humanism in the Search for Common Morality by H. Tristram Engelhardt*, in "Theological Studies", 53 (March 1992) 189. See also H. T.

Schner's notion of God and its relationship with ethics is implicitly postulated by the fact that he sees theology's importance in bioethical science at least by accommodation, especially with respect to transcendental questions in moral life that are difficult to explain by mere rational arguments. Lastly, it would be accurate to say that almost all theologians are unanimous in affirming that ethics and God are, in reality, intimately linked to each other. R. McCormick testifies: Man's natural inclination towards the Good, is no other than the relationship of man's moral life to God who is Goodness itself.

A relevant observation can be made at this initial stage of the discussion: various authors agree that God and ethics are related to each other. J. B. Nelson likewise arrives at this conclusion by remarking that while the post-modern late twentieth century are still children of dualism, (i.e., there is numerous complex reasons as to why some still sustain a radical opposition between concepts like body and spirit, medicine and religion, the sacred and the secular, the private and the public, love and justice, men and women) we are now starting to discover at least one point in common: that bioethics is related to God⁴¹⁴.

Notwithstanding this widely-held perspective, why do many people remain skeptical to using theological reflections in bioethics forums? What is the root of the counter-current attitude which hold them back from offering bioethical recommendations and decisions that are founded upon theological perspectives?

B. An on-going search for the theological role in Bioethics

Theology and bioethics should indeed be treated in an integral or holistic approach. Although this is a considerable leap forward, it is but a small speck of sand in a desert of complexity of the problem. This complexity is due once again to the wave of secularization much deeply wounding than before⁴¹⁵ which explains why the question over the proper role or theological claims in health care ethics remains a subject of controversy. Let us take a look at some academic developments.

In 1975 James Gustafson, a respected leader in this intellectual field, viewed that the theological role and contribution to bioethics play a minimal importance, if at all⁴¹⁶. For

ENGELHARDT, *Bioethics and Secular Humanism: The Search for Common Morality*, Trinity International, Philadelphia 1991, 206 pp.

⁴¹⁴ Cf. J. B. NELSON, *Theology and Bioethics*, Reidel Publishing, Dordrecht 1985, p. vii.

⁴¹⁵ "Tanto la historia de la teología moral, incluido el momento del Concilio Vaticano II, como el breve recorrido efectuado por la literatura bíblica, han evidenciado suficientemente la estrecha vinculación de hecho entre la confesión de la fe y el comportamiento humano responsable... Pero esa conexión, no resulta tan evidente en un mundo en el que la secularización ha llegado, al fin, al último reducto de lo sagrado que parecía ser la ética. Hoy es más necesario que nunca preguntarse por la relación entre la fe y la ética. El problema no se reduce a una cuestión erudita. Tal pregunta nos remite necesariamente a la cuestión de la fundamentación de la ética, al problema de la especificidad de la ética cristiana, así como a las preguntas sobre la posibilidad de un auténtico ecumenismo ético". J. R. FLECHA-ANDRÉS, *Teología Moral Fundamental*, BAC, Madrid 1994, pp. 115-116.

⁴¹⁶ "For most persons involved in medical care and practice, the contribution of theology is likely to be of minimal importance, for the moral principles and values can be justified without reference to God, and the attitudes that religious beliefs can be grounded in other ways. From the standpoint of immediate practicality, the contribution of theology is not great, either in its extent or its importance". J. M.

S. Hauerwas, a Protestant theologian from Notre Dame University, proved that the appeal to Christian convictions embedded in biblical stories, also a valid point of convergence among non-Christians⁴¹⁷, is but an ignition point to deeper questions lying ahead. Commented authors in this thesis, progenies 10 to 20 years later, reveal these deeper inquests. Most of the recent works have tried to reassess on whether or not there is universality and dependence of morals on religion, parting off from Frankena's affirmation that morality's dependence is only insofar as religion serves as a motivation, intention or inspiration⁴¹⁸.

How do these inquiries affect our HEC forums and viewpoints in bioethics decision-making? As far as theological role is concerned, they make the following inquiries: If God and morals are related, should medico-moral issues *always and necessarily* be grounded on theology, faith and religion, or should it be acceptable only if faith is subject to empirical bioethics arguments? Does God have a universal moral authority over man identifiable with those truths revealed by Christ, or the argument regarding Christian specificity holds, limiting the Christian morals to its adherents?

As to inquiries about theological contributions, J. Nelson laid down the following questions:

«just what, if anything, does theological ethics have to offer to bioethics and to the practice of health care? By what faith do we perceive the meanings of health practice? By what faith do we interpret the possibilities of new reproductive technologies? What faith shape the decisions about the distribution of medical care?»⁴¹⁹

Moreover, when theology is concretized in the clinical setting such as the HEC set-up, related questions may be posed for critical analysis. For example, G. McKenny asks:

«Should theology identify points of convergence between particular claims of religious traditions and the claims of secular traditions in order to arrive at a public consensus, as many have agreed in recent years? Or should theology bring to attention specifically religious issues that are inseparable from many of the stories of both practitioners and patients which are usually obscured by the reigning methods of moral inquiry? Should theology seek to offer a more adequate account of norms, rules, principles or virtues that govern the clinical encounter?»⁴²⁰.

These intriguing questions have renewed interest in this sphere. Going through each one of them by applying the fundamental theological and philosophical analyses would need a vast and diverse research study approaches. One way is to demonstrate through the twenty five-year bioethics life-span, the theological developments in understanding its roles and contributions from the recent church teachings, which we shall now elaborate in the succeeding pages.

GUSTAFSON, *The Contribution of Theology to Medical Ethics*, Marquette Univ. Press, Wisconsin 1975, p. 94.

⁴¹⁷ Cf. S. HAUERWASS, *Truthfulness and Tragedy*, Notre Dame Univ. Press, Indiana 1977, p. 203. See same author, *Salvation and Health: Why Medicine Needs the Church*, in "Philosophy and Medicine", Reidel, Dordrecht 1985, pp. 204-224.

⁴¹⁸ Cf. B. MUSSCHENGA (ed.), *Does Religion Matter Morally? A Critical Reappraisal of the Thesis of Morality's Independence from Religion*, Kok Pharos Publishing, Dordrecht 1995, 212 pp.

⁴¹⁹ J. B. NELSON, *Theology and Bioethics...*, *op. cit.*, p. vii.

⁴²⁰ G. P. MCKENNY, J. R. SANDE, *Theology and Medicine: Theological Analyses of the Clinical Encounter*, Kluwer Academic Publishers, Dordrecht 1994, p. viii.

C. Link between theology and morals: The need to recall certain fundamental truths

Similar questions had intrigued the world since the epoch of the Enlightenment. Numerous important church documents were published to explain these propositions. For instance, the relationship of faith and reason was championed by many magisterial documents around the Vatican I era⁴²¹. Without going into the details, nor with the intention of undermining the richness of these church teachings, it would suffice to say that since the pontificate of Pope Pius IX, there have never been so many disputes over the dangers of theological methods instigated by traditionalists, rationalists and ontologists who viewed some aspects of the Catholic faith in a different way. For instance, they attempted in reducing religion of its supernatural content and convert it to purely rational or natural. Pope Pius XI's encyclicals *Quanta Cura* (8 Dec. 1864, DS 2890-2896), *Syllabus* (DS 2901-2980) and the dogmatic constitution *Dei Filius* (24 April 1870) dealt with the relationship between faith and reason, the possibility of demonstrating the existence of God, providing arguments against pantheism, materialism and atheism⁴²². These documents defended the Faith against rationalist methodological prejudices. Above all, the Church's declarations affirmed the unity and harmony between faith and reason, between religion and science, creation and natural law⁴²³.

Evidently, these church documents have since caused various reactions and developments in the moral theological world. One century hence, the Second Vatican Council still echoes the existence of these dangerous mentalities and we can say that in a way, these reactions have permeated even our recently constituted bioethics science.

The Vatican Council II, far from assuming merely a defensive posture, has called on theologians to actively participate, respond and support the church's doctrinal teachings on faith and morals, more attuned to current ethical problems and worries. The move has produced valuable reflections on the church's task of renovating under positive dimensions, the study and application of Catholic moral theology. It also has given emphasis over the need to confront the present and future world in a spirit of Christian specificity, identity and dialogue characterized by rigorous scientific methodology aimed at achieving an outlook of discipleship in Christian perfection, that is both ecclesial and open to the whole community⁴²⁴.

The recent church teachings will serve as our principal source in the critical analyses of relevant topics mentioned by our representative authors. We think that a deeper study and analyses of fundamental moral theology is considerable because through the words of *Veritatis Splendor*:

«It seems necessary to reflect on the whole of Church's moral teachings, with the precise goal of recalling certain fundamental truths of Catholic doctrine which, in the present circumstances, risk being distorted or denied: the traditional doctrine regarding the natural law,

⁴²¹ Cf. VATICAN COUNCIL I, *Dei Filius* (DS 3000-3045).

⁴²² Cf. C. BASEVI, *Leon XIII y la Redacción de la «Aeterni Patris»* in P. RODRIGUEZ (ed.), *Fe, Razón y Teología*, Eunsa, Pamplona 1979, pp. 93-95.

⁴²³ Cf. *Ibid.*, p. 95.

⁴²⁴ Cf. VATICAN COUNCIL II Decree on the Training of Priests, *Optatum Totius* n° 16.

and the universality and the permanent validity of its precepts, is rejected; certain of the Church's moral teachings are found simply unacceptable; and the Magisterium itself is considered capable of intervening in matters of morality only in order to "exhort consciences" and to "propose values", in the light of which each individual will independently make his or her decisions and life choices»⁴²⁵.

IV. Conceptual dichotomy: the root cause of contemporary ethical problems

Dichotomous conceptions in ethics and moral theology are also found in many bioethical discussions, characterized primarily by their indiscriminate and vicious differentiation and subordination of one reality to another. For example, the supposed opposition between faith and reason in morals is for us, not a new surging theological question. But the subject matter merits attention because most of the current moral doubts and errors can be traced to the same erroneous understanding of these fundamental concepts. To prove its actual relevance, *Veritatis Splendor* states that man's authentic freedom may be encountered only in harmony, union and accordance with the Truth (VS n° 4, 32-34, 84). It explains that the root cause why most of us living in a secular society have fallen into grave errors is due to the pernicious attempts of separating freedom from truth. Such dichotomous separation is but a consequence of their attempt in opposing «reasonable» morality from faith. It declares:

«The attempt to get freedom in opposition to truth, and indeed to separate them radically, is the consequence, manifestation and consummation of another serious and destructive dichotomy that which separates faith from morality»⁴²⁶.

Evidently, the problem regarding this dichotomy is not totally new to us. It is testified by some well known historical markers like during the "especially heated time of the Renaissance and the reformation... [But presently], our age is marked, though in a different sense, by a similar tension. The penchant for empirical observation, the procedure of scientific objectivation, technological progress, had led to these two terms being in opposition, as if a dialectic, if not an absolute conflict" (VS n° 46).

Thus, it is not surprising that the pastoral concern of the church amid today's growing inclination towards secularism is

«to rediscover and to set forth once more the authentic reality of Christian faith, that faith which is a lived knowledge of Christ, a living remembrance of his commandments, and a truth to be lived out»⁴²⁷.

The church invites and calls us to conserve and adhere to the patrimony of truths which she, the Church has always defended while at the same time discovering the newness of the faith and its power to judge a prevalent and all-intrusive culture: like the American secular-pluralistic ambiance in bioethics in which many persons involved appear being critical in using Christian reflections in medical-ethical discussions. To

⁴²⁵ JOHN PAUL II, Encyclical letter, VS n° 4.

⁴²⁶ *Ibid.*, n° 88.

⁴²⁷ JOHN PAUL II, Encyclical letter, VS n° 88. See also VATICAN COUNCIL II, Dogmatic Constitution, *Lumen Gentium* n° 36; Encyclical letter, *Redemptor Hominis* n° 4 (March 1979): AAS 71 (1979) 316-317.

counteract such dichotomous mentality in some bioethics groups, the Church's analysis and conviction on this matter can be applied in this manner: the role of rendering theological reflections through faith on medico-moral issues should never be disregarded because

«the development of science and technology, this splendid testimony of the human capacity for understanding and for perseverance does not free humanity from the obligation to ask the ultimate religious questions»⁴²⁸.

A. Dichotomy between the concepts of faith and reason

Catholic church theology affirms that faith is reasonable in relating itself to morals. This would then imply, that theological reflection may also be justifiable to use in bioethics. But this affirmation seems not so convincing to the others. Thus, the Church was compelled to address Herself to those persons who would “question the existence of an ultimate religious foundation for moral norms [and] have nonetheless, been led to undertake a profound rethinking about the role of reason and faith in identifying moral norms with reference to specific «innerworldly» kinds of behavior involving oneself, others and the material world”⁴²⁹.

Let us examine carefully the secular attitude in biomedical morals among authors like Schnier and Engelhardt, who wanted to make a dichotomous moral «rethinking» by treating «faith» as apparently «unreasonable» for bioethics discussion. On the other hand, the Church and most Catholic moralists are firmly heeding towards an integral and harmonious dialogue over the subject matter. They believe that faith is connected with morals because “faith also possess a moral content. It gives rise to and calls for a consistent life commitment; it entails and brings to perfection the acceptance and observance of God's commandments”⁴³⁰. To clarify this Church position, it is worthwhile to consider some necessary truths about such relationship.

1. On Faith

Faith is a free assent of man's understanding or reason in which, through the influence of divine grace, he becomes capable of accepting the revealed truth of God. The Catechism of the Church says:

«What moves us to believe is not the fact that revealed truths appear as true and intelligible in the light of our natural reason: we believe ‘because of the authority of God himself who reveals them, who can neither deceive nor be deceived’. So that the submission of our faith might nevertheless be in accordance with reason, God willed that external proofs of his Revelation should be joined to the internal helps of the Holy Spirit. They are motives of credibility, which show that the assent of faith is by no means a blind impulse of the mind»⁴³¹.

⁴²⁸ JOHN PAUL II, Encyclical letter, VS n° 1.

⁴²⁹ *Ibid.*, n° 36.

⁴³⁰ *Ibid.*, n° 89.

⁴³¹ CATECHISM OF THE CATHOLIC CHURCH, n° 156.

Three factors are essentially interconnected: reason, freewill and grace. Not one of these three factors should be lacking in the genesis of faith, and neither can one factor stand without the other two⁴³². In other words, faith and the free and meritorious decision to believe cannot surge out without the essential cooperation of reason, nor is it simply a pure result of reasoning activity. Moreover, free decision for believing is intervened by the will through the Divine assistance called grace. Whenever these elements are manifested fully in life (described earlier as «lived knowledge»), they acquire a moral content, giving significance and understanding of the love of God and of neighbor. Thus, it is important that man, aided by the grace of God willingly open himself up through faith in order that he may arrive at a better understanding and certainty⁴³³ of the moral truths about himself and attain his destiny toward God: faith possessing moral content for being «lived out», as *Veritatis Splendor* asserts⁴³⁴.

2. *On reason: its methods*

Through reason, man becomes capable of understanding the ordering of things established by the Creator⁴³⁵. One manner of applying this capacity is through what is known as empirical reasoning. It is a method or structure in human activity which searches the knowledge of nature under experimental control through trials or proofs of validity over constructed concepts, experiences or theories. This is also called experimental⁴³⁶ or positive science⁴³⁷. One of the common methods used is the Cartesian mode of proving the truth of nature through clear, authentic and logical, certain and if possible, perfect demonstration of facts. So far, this mode claims at least four criteria for scientific validity: explicative power, predictive capacity, precision, level of independent trials or mutual relations or intersubjectivity⁴³⁸. However, it is very important to restate that experimental method presupposes some concepts of philosophical order which they

⁴³² Cf. A. LANG, *Teología Fundamental*, Rialp, Madrid 1966, vol. 1 pp. 3-4

⁴³³ “Faith is more certain than all human knowledge because it is found on the very word of God who cannot lie. To be sure, revealed truths can seem obscure to human reason and experience, «but the certainty that the Divine light gives is greater than that which the light of natural reason gives»”. CATECHISM OF THE CATHOLIC CHURCH, n° 157. See also ST. THOMAS AQUINAS, *S Th* II-II, q. 171, a. 5, obj. 3.

⁴³⁴ Cf. JOHN PAUL II, Encyclical letter, *VS* n° 88.

⁴³⁵ Cf. CATECHISM OF THE CATHOLIC CHURCH, n° 1704.

⁴³⁶ Cf. M. ARTIGAS, *Ciencia y Fe: Nuevas Perspectivas*, Eunsá, Pamplona 1992, pp. 43-44.

⁴³⁷ My observation is that S. Pinckaers' definition of positive science is similar to Artigas' although the former attributes this methodological philosophy to Comté and Bacon. Cf. S. PINCKAERS, *Las Fuentes...*, *op. cit.*, p. 94.

⁴³⁸ The guarantee of confidence and validity in experimental or empirical reasoning method can be described in this manner: “La ciencia experimental posee una peculiar «fiabilidad» porque posee las cuatro características siguientes: La intersubjetividad significa que el valor de la ciencia puede ser comprobado por cualquier persona, con total independencia de sus ideas filosóficas, políticas o religiosas, por ejemplo. La contrastabilidad empírica significa que los enunciados científicos pueden ponerse a prueba mediante el control experimental. La predictibilidad consiste en la capacidad de formular predicciones acerca de sucesos o procesos, cuando se conocen sus antecedentes. La progresividad implica que existen criterios para distinguir cuándo se realizan progresos auténticos”. M. ARTIGAS, *Ciencia y Fe: Nuevas Perspectivas...*, *op. cit.*, p. 54.

necessarily support without needing any proof from this same method⁴³⁹. Although it merits having a particular mode of reasoning ability, empirical method thus, also concurs another ordering of reality in nature which is much more profound than that which can be ordinarily experienced or calculated. Let us elaborate on this a little more.

3. *Limitations of scientific or empirical reasoning*

Empirical reasoning as stated is a method, structure or human activity which seeks under experimental control, some trials and proofs of validity over constructed concepts, experiences or theories aimed to achieve a deeper knowledge of nature⁴⁴⁰. Despite this, the characteristic methodological precision of empirical reasoning incurs some limitations. The exponents of faith, for instance, are essential concepts in the moral theological reflection in bioethics which may not be totally subjected to empirical methodology. If there are authors who still insist that moral theological reflection is wanting, the problem is not that theological reflection is inadmissible as judged from the presumed inaccessibility and uncertainty through pure rational discourse, but rather, the empirical or experimental mode is limited in grasping them totally. The empirical method's system of measuring truth may be valid but certainly lacks other dimensions. For example, transcendental truths are accessible by another mode –faith– which pertains to a different and higher sphere or level of understanding.

Classically, reason may function either speculatively/ theoretically, or practically/ operatively as in the case of moral reflections. Based on our previous discussion, empirical reasoning may be regarded as speculative in two manners: sapiential or scientific, –as Aristotle fondly use –*sofia* or *epistème*– respectively⁴⁴¹. Classical philosophy admits that sapiential reasoning deals with the first causes and the highest of all beings, while the scientific reasoning is done from the inferior causes. In any case, “reason is an etiologic inquisition, such that it judges by evidence the knowable truth either through cause and effect or coming from effects to causes. Whenever rational judgment is founded on «inferior causes» to arrive at the knowledge of a thing, it precedes as scientific reasoning; and whenever it is achieved and supported from the superior causes, it precedes as sapiential reasoning”⁴⁴². Hence, if empirical reasoning is not sapiential, its limitations can be deduced in the following manner: first, it moves only along the categorical order by studying the particular genres of the things while sapiential reasoning is oriented to the transcendental level of being as being; and second, before any demonstrative operation is done, it is necessary for scientific reasoning to «assume» the essence of a thing. This «received assumption» cannot be justified using the same

⁴³⁹ “La ciencia experimental no es totalmente autónoma. Se apoya sobre unos supuestos que ella no demuestra y que, sin embargo, resultan indispensables para que la actividad científica tenga sentido... Entre ellos están el «realismo ontológico» y «realismo gnoseológico»”. *Ibid.*, p. 51.

⁴⁴⁰ Cf. *Ibid.*, pp. 43-44.

⁴⁴¹ Cf. ARISTOTLE, *Metaphysics* VI, 1, 1025 b, 7-17; ST. THOMAS AQUINAS, *Metaphysics*, 1, 1.

⁴⁴² CRUZ CRUZ, J., *Intelecto y Razón*, Eunsa Pamplona 1982, p. 113.

scientific method⁴⁴³. Sapiential reasoning is one mode (although not exclusively, nor autonomously) to achieve it⁴⁴⁴.

Another helpful way of analyzing this topic is to present a comparison between the moral reflexive methodology, as an operative or practical mode of reasoning (as stated earlier), and the positive empirical methodology in the human sciences. Servais Pinckaers, a well-respected Catholic moralist, made a clearly defined tabulation describing what makes an authentic moral reflection related, and yet different from human empirical or positive knowledge⁴⁴⁵. Empirical or human scientific reflection has the following characteristics⁴⁴⁶: human act is analyzed from the exterior observations by employing simultaneous or successive relationship of things. To ascertain the purity of such observations, it tries to maintain a neutral or static proposition of actual facts. This means that human acts are evaluated from a non-compromised, non-directive, non-normative acts as «a matter of fact» and not as human acts which must be done impelling him to do good. It is impersonal, mechanical, and dependent on experiential facts. It is mainly objective and abstract because it is based solely on the material observations detached from the subject's source of personal action or election which is rightly found in the moral knowledge.

On the other hand, methodology used in an authentic «moral or ethical reflection» employs the following characteristics⁴⁴⁷: it analyzes the act of the will as the principal cause of morality on the part of the agent's responsibility and finality (intentionality); it is focused on what is dynamic in man because it constitutes the practical judgment on how he directs himself through it. Therefore, it analyzes them to the effect that such acts and decisions are directive (leading him to do the good) and normative (impelling him to do the good). The person is viewed as the cause and end of his free action and thus, is personal and concrete; its object is trans-subjective because his personal acts should be able to relate with other persons.

We can now see from this discussion that the empirical, positivist method of rendering moral reflections is definitely contributory and related to how an «authentic moral reflection» should be conceived and rendered. But what is even clearer is that a purely empirical or scientific reasoning method cannot sufficiently explain the higher moral values present in and needed by the human person. Thus, the contentions of Schner and other authors along this line is not sustainable.

4. A recent guideline regarding empirical methodology in morals

The Church has watched this old yet renewed theological and philosophical error. The *Veritatis Splendor* warns us by saying that there is no sovereignty of reason in the domain of moral norms regarding the right ordering of life in this world because in no way is human reason autonomous in laying down the moral law independent of faith in

⁴⁴³ Cf. *Ibid.*, p. 118.

⁴⁴⁴ Cf. JOHN PAUL II, Encyclical letter, VS n° 40.

⁴⁴⁵ Cf. S. PINCKAERS, *Las Fuentes de la Moral Cristiana...*, *op. cit.*, pp. 108-109.

⁴⁴⁶ Cf. *Ibid.*, pp. 95-111.

⁴⁴⁷ Cf. *Ibidem*.

the Author of the Law, who is God⁴⁴⁸. Moreover, ethicists should never be tempted in thinking that the sole decisive constituent of human morality is considered simply

«as the standard for their discipline and even for its operative norms, the results of a statistical study of concrete human behavior patterns and the opinions about morality encountered in the majority of people»⁴⁴⁹.

Positivistic analysis through experimental gathering of data with the pretension of making moral theology “certain and honest” as Schnier proposes is likewise untenable. Notwithstanding the fact that empirical method may understand the moral behavior of man, it must be stressed that “moral principle is not within the competence of formal empirical methods [because] moral theology, faithful to the supernatural sense of the faith, takes into account first and foremost the spiritual dimension of the human heart and its vocation to divine love”⁴⁵⁰. This spiritual dimension, a call to Christian morals, is indisputably beyond the empirical field.

5. *Moral theologian’s role in harmonizing faith with empirical reasoning in moral reflections*

Given that Faith is evidently related to morals, the ideal person capable of rendering such services to the human society, and concretely, in the Hospital Ethics Committees, may be a theologian. The Church has recently indicated how this responsibility should be accomplished. First and foremost,

«the theologian has to highlight through their moral theological scientific reflection that dynamic aspect which will elicit the response that man must give to the divine call which comes in the process of his growth in love, within a community of salvation»⁴⁵¹.

It shows that the moralist’s theological reflections consist primarily in directing all men to the divine call to salvation, spiritual and human at the same time, wherein faith and reason merge. But how can the moral theologian achieve the harmony which should exist between the faith’s moral contents and the corresponding scientific empirical contributions in morals if any? So far, this question can be more lucidly grasped by bearing in mind the fundamental guideline which states that natural and empirical reasoning may actually contribute something to moral understanding and yet, moral norms, especially when based on the Christian faith

«do not rely on the results of formal empirical observation or phenomenological understanding *alone*. Indeed, the relevance of the behavioral sciences for moral theology must always be measured against the primordial question: What is good or evil? What must be done to have eternal life»⁴⁵².

⁴⁴⁸ Cf. JOHN PAUL II, Encyclical letter, VS n° 36.

⁴⁴⁹ *Ibid.*, n° 46.

⁴⁵⁰ *Ibid.*, n° 112.

⁴⁵¹ *Ibid.*, n° 111; SACRED CONGREGATION FOR CATHOLIC EDUCATION, *The Theological Formation of Future Priests* (22 Feb. 1976) n° 100.

⁴⁵² JOHN PAUL II, Encyclical letter, VS n° 111 (*italics mine*).

Therefore, man's primordial desire to always do good and aspire to achieve eternal life can be fully and satisfactorily attained not solely from the truths which can be scientifically experienced but more importantly, through his openness towards the deeper truths of life, encountered certainly in God's Revelation. These truths can be imparted well by a moral theologian because ideally he holds the science⁴⁵³ capable of explaining moral reflections to be reasonable and, at the same time, harmoniously related to the contents of Christian morals, as encountered by faith through Revelation⁴⁵⁴. The Christian moral role and specificity offered by Christian moral theologians or by someone with firm Christian moral knowledge in the hospital ethics committee will be delved more in detail, as we go along with the following discussion.

6. *Empirical science contributes to moral theology: point of coherence and dialogue*

We have just stated that the use of moral-theological reflections acquire an important and specific role when they aim at attaining a deeper understanding of truth in bioethics issues in the committee: what is good or evil, and what is to be done to gain eternal life. On the other hand, we can also affirm that the employment of reason or empirical science has important function in human morality. These two levels must be conceived as mutually coherent rather than dichotomously contradictory⁴⁵⁵.

In the first place, it is impossible to ignore the special role of historical and empirical human sciences. Depending on the degree of human understanding, scientific results may help reach a more profound notion about the moral situations in man. But as stated previously, these human, empirical and scientific contributions are nonetheless limited and not entirely autonomous. They function well and coherently when applied to theology.

Moral theology acknowledges also from its side, the importance of humanistic empirical support or aid in moral reflection. The mutual relationship existing between moral theology and the human empirical sciences is explicitly elucidated by *Veritatis Splendor* as «the interdisciplinary context» within theological reflections⁴⁵⁶. Theological scientific reflection recognizes the value of this empirical methodology in human sciences because it possesses some truths which cannot be excluded⁴⁵⁷. But the «interdisciplinary context» should also imply that human empirical sciences are limited by nature and thus,

⁴⁵³ “Theological science responds to the invitation of truth as it seeks to understand the faith”. SACRED CONGREGATION FOR THE DOCTRINE OF THE FAITH, Instruction on the Ecclesial Vocation of the Theologian, *Donum Veritatis* (24 May 1990), 6: AAS 82 (1990), 1552.

⁴⁵⁴ Cf. S. PINCKAERS, *Las Fuentes de la Moral Cristiana...*, *op. cit.*, p. 111.

⁴⁵⁵ Cf. *ibidem*.

⁴⁵⁶ “It impels the Church constantly to carry out not only her dogmatic but also her moral reflection within an interdisciplinary context, which is especially necessary in facing new issues”. JOHN PAUL II, Encyclical letter, *VS* n° 30. See also VATICAN COUNCIL II, Pastoral Const. *Gaudium et Spes* n° 42-44.

⁴⁵⁷ “Claro que la teología en todas sus ramas, incluida, por supuesto, la moral, no puede prescindir de las ciencias humanas, ni siquiera, en muchos casos, de las ciencias de la naturaleza... No puede ser de otra manera, dada su confianza fundamental en la razón humana, basada en los motivos teológicos”. J. A. MARTINEZ CAMINO, «La Fe que actua...» (*Gál 5,6*): *Fe y Razón en la «Veritatis Splendor»*, in G. DEL POZO ABEJON (ed.), *Comentarios a la Veritatis Splendor*, BAC, Madrid 1994, p. 400.

those ultimate truths proper to theological reflections cannot be subordinated under such method⁴⁵⁸. By bearing these things in mind, moralists and all who participate in the bioethical discussions should realize that there is no real conflict between the use of empirical methods and the contents of Faith. On the contrary, there is a healthy and harmonious dialogue between the two⁴⁵⁹.

B. Conceptual dichotomy between supernatural and natural theology.

Let us now analyze a higher level of secularist trend: the distinction between natural and the supernatural moral reflection. Here, we shall recall T. Engelhardt's affirmation that only through natural reasoning one can know God and perceive what is good to be done and evil to be avoided. He furthermore says that moral problems in bioethics may be solved using rational theological arguments detached from any supernatural «particularistic» revelation such as the ones applied in Christian moral theological reflections. These contentions raise two related fundamental questions: a recourse to pure reasoning in natural moral theology, and as a result of which, the non-indispensable use of faith with the aid of Divine Revelation in supernatural moral theology.

1. Natural theology

We stated earlier that sapiential reasoning is naturally found in man which makes him thus, capable of studying, understanding and arriving at the knowledge of God and the transcendence of his moral life⁴⁶⁰. This is the case of natural theology⁴⁶¹. However, this human sapiential natural reasoning capacity in moral theological reflections is also

⁴⁵⁸ “No es posible ignorar el distinto estatuto de las ciencias históricas o empíricas que, por justificadas razones de método, no abordan la cuestión del hombre en toda su integridad. No lo hacen, ni deben hacerlo, a la luz de la revelación de la verdad última del hombre en Jesucristo. Ni siquiera los enfoques filosóficos, de por sí más integrales, lo hacen necesariamente en esta perspectiva. De ahí que la teología no pueda subordinarse a los resultados de las ciencias (cf. VS n° 111)”. *Ibid.*, p. 401.

⁴⁵⁹ Here is a good example of a harmonious dialogal attitude in moral reflection: “A los educadores, profesores, catequistas y teólogos corresponde la tarea de poner de relieve las *razones antropológicas* que fundamentan y sostienen el respeto de cada vida humana. De este modo, haciendo resplandecer la novedad original del *Evangelio de la vida*, podremos ayudar a todos a descubrir, también a la luz de la razón y de la experiencia, cómo el mensaje cristiano ilumina plenamente el hombre y el significado de su ser y de su existencia; hallaremos preciosos puntos de encuentro y de diálogo incluso con los no creyentes, comprometidos todos juntos en hacer surgir una nueva cultura de la vida”. JOHN PAUL II, Encyclical letter, *Evangelium Vitae* n° 82.

⁴⁶⁰ To reiterate this point, the Catholic Magisterium proclaimed the natural capacity of human intelligence to know God by starting from the created reality (against fideism and naturalism), see: VATICAN COUNCIL I, *Dei Filius*, (DS 3004); VATICAN COUNCIL II, *Dei Verbum* n° 6; CATECHISM OF THE CATHOLIC CHURCH, n° 35; VS n° 40 states: “The teaching of the Council emphasizes the role of human reason in discovering and applying the moral laws: the moral life calls for that creativity and originality typical of the person, the source and cause of his own deliberate acts. On the other hand, reason draws its own truth and authority from the eternal law, which is none other than divine wisdom itself. At the heart of the moral life we thus find the principle of a «rightful autonomy» of man, the personal subject of his actions”.

⁴⁶¹ Cf. A. L. GONZALEZ, *Teología Natural*, Euns, Pamplona 1985, 317 pp.

limited by itself⁴⁶². The limitations become more evident if we acknowledge the following facts. First, whenever man's reasoning power arrives at the notion of God's existence and know what is good and evil, this cosmological or natural philosophical conclusion is actually valid, although incapable of reaching a higher truth and knowledge of a living, personal God: his Trinitarian intimacy with man, source or giver of grace, and retributor of eternal life to those who lived morally well according to His salvific plan⁴⁶³. The knowledge of God and his attributes solely derived from created causes cannot adequately reach these revealed truths⁴⁶⁴. God can certainly be discovered in nature and yet would remain hidden in the universe if he so wills. However, God through his own initiative, has wanted to manifest himself more fully, revealing to us supernatural truths that constitute the Divine Revelation. Written in the Sacred Scriptures, this supernatural truths are embodied and perfectly fulfilled through the person of Jesus Christ. Thus, it is said that,

«Man is able to recognize good and evil thanks to that discernment of good from evil which he himself carries out by his reason, in particular by his reason enlightened by Divine Revelation and by faith through the law which God gave beginning with the commandments on Sinai. In addition, the Church receives the gist of the New Law, which is the "fulfillment" of God's Law in Jesus Christ and in his Spirit»⁴⁶⁵.

2. *Natural theology needs the support of supernatural truths*

Secondly, as St. Paul attests (Rm 1, 18-25; 1Cor 1, 21; 2, 11), man by experience and historical fact has fallen into sin which is the root cause of everyone's weakness, error and failure⁴⁶⁶. Thus, man can hardly attain moral perfection without the aid of the

⁴⁶² «Una teología que pretenda asumir una plena autonomía racional de moralidad se encuentra con una dificultad primera y fundamental, a la que ha de dar respuesta: la teología moral no puede prescindir de una comprensión del sujeto humano y, sin embargo, la razón autónoma no ha conseguido y ni siquiera pretende ya ofrecer una comprensión del ser hombre tal que a partir de ella se puedan volver y colocar en su justo lugar todos los aspectos del enigma humano». A. CARRASCO ROUCO, *Iglesia, Magisterio, Moral*, in *Comentarios...*, *op. cit.*, p. 451.

⁴⁶³ Cf. Y. CONGAR, *La Fe y la Teología*, Herder, Barcelona 1977, pp. 34-35. See also CATECHISM OF THE CATHOLIC CHURCH, n° 31-34.

⁴⁶⁴ «By natural reason man can know God with certainty, on the basis of his works. But there is another order of knowledge which man cannot possibly arrive by his own powers: the order of divine Revelation». *Ibid.*, n° 50. See also VATICAN COUNCIL I, *Dei Filius*, (DS 3015).

⁴⁶⁵ JOHN PAUL II, Encyclical letter, *VS* n° 44-45.

⁴⁶⁶ «La VS hace referencia en varios pasajes a «un estado actual de naturaleza caída» (n° 36) que la antropología cristiana y la moral que en ella se basa tampoco pueden olvidar. La razón y la experiencia mismas son capaces de ver el «drama» en el que se halla inmersa la libertad del hombre, «inclinada misteriosamente a traicionar su apertura a lo Verdadero y al Bien» (n° 86). Y a la luz de la fe, desde la «libertad liberada» (*ibid.*), desde «el Evangelio... que revela la verdad integral sobre el hombre y sobre su camino moral» (n° 112), aquel drama del ser humano aparece como el fruto de «una rebelión radical que lo lleva a rechazar la Verdad y el Bien para erigirse en principio abosoluto de sí mismo: seréis como dioses (Gen 3,5)» (*ibid.*). Todo esto implica que la «capacidad para conocer la verdad queda ofuscada y debilitada (la) voluntad para someterse a ella» (n° 22)». J. A. MARTINEZ CAMINO, «La Fe que actúa...» (*Gál 5,6*): *Fe y Razón en la «Veritatis Splendor»*, in G. DEL POZO ABEJON (ed.), *Comentarios a la Veritatis Splendor*, BAC, Madrid 1994, p. 396.

revealed truths⁴⁶⁷. Man definitely needs supernatural help to know and understand the Divine truths. This assistance, light and support comes to us through the Words of God himself, consigned to the Sacred Scriptures. Through the use of this supernatural aid, the knowledge of God and of human morality becomes more complete and surpassing.

Supernatural theological reflection uses revealed truths besides concepts reached through natural reasoning, but without falling into real contradictions⁴⁶⁸. It presupposes that there exists a harmony, and not dichotomy between one theological level of reflection and another. Their contents are not contrary to human reason because the truths they express comes from the same author who is God. Therefore, anyone may accept the revealed supernatural truths with ease apart from just relying on natural moral theological discourse.

«Even if moral-theological reflection usually distinguishes between the positive or revealed law of God and the natural law, and within the economy of salvation, between the “old” and the “new” law, it must not be forgotten that these and other useful distinctions always refer to that law *whose author is the one and the same God and which is always meant for man*. God’s plan poses no threat to man’s genuine freedom; on the contrary, the acceptance of God’s plan is the only way to affirm that freedom»⁴⁶⁹.

Thus, man through weakness, feels the need and importance of God’s help to understand himself better, to answer why he is created for, what good he is for and to where his moral destiny should lead him. Supernatural theological reflections through Revelation is then a scientific mode⁴⁷⁰ to achieve this understanding. It surpasses a merely theological-natural recourse because it leads man towards a deeper view of God and his life’s destiny without producing any contradiction nor desolation of his freedom and

⁴⁶⁷ *Dei Filius* declares that human reason, by virtue of being eternally subjected to Uncreated Truth, is not autonomous. Reason is not a principal norm nor the only means so that man can reach the knowledge of supernatural truths. Divine revelation, whose divine things are in themselves inaccessible to human reason is not a necessary absolute. However, it is through divine revelation that divine things which in themselves cannot be reached by human reason, can be known by everyone in an easy manner, with firm certainty and without any fear of error. Cf. VATICAN COUNCIL I, *Dei Filius* n° 3, (DS 3005), see also ST. THOMAS AQUINAS, *De Veritatis, Quaest. disp. q. 14, a. 11*.

⁴⁶⁸ “Análogamente, la moral cristiana no está separada de la moral natural, aunque, teniendo en cuenta que la gracia divina es un don absolutamente gratuito de Dios al hombre al que éste no tiene ningún derecho, no podemos decir que la naturaleza humana necesita estrictamente la gracia divina para ser completada, o que la moral natural es incompleta sin el Evangelio. Lo que sí podemos decir, sin embargo, es que la naturaleza humana, por ser una naturaleza dañada, necesita asistencia externa para su curación, y esta asistencia puede venir sólo como condescendencia misericordiosa, no como una obligación, del único ser que está por encima de la creatura racional. Y de modo similar, puede venir una moral divina-revelada (cristiana) a curar a una moral natural, o a llenar sus lagunas sin cambiar su orientación básica”. J. M. DE TORRE, *Moral y Moral cristiana*, in “ScrTh” 26 (1994) 252.

⁴⁶⁹ JOHN PAUL II, Encyclical letter, *VS* n° 45 (italics mine).

⁴⁷⁰ This theology is rightfully a science because it proceeds from human reasoning and at the same time penetrated by divine light (*intellectus fidei*), in which through valid philosophical arguments, it may serve in expounding deeply the faith and morals. Thus says St. Thomas: “Theologia est scientia diversis modis argumentativa philosophica documenta, quibus utitur, ad fidei metas redigens, facit de extraneis propria. Et sic obiectum eius est «scibile divino lumine fulgens»”. ST. THOMAS AQUINAS, *S Th* I, q. 1, a. 8; *In Boet. de Trin.* q. 2, a. 3.

understanding. Principally because, God who is the source of these both the natural and supernatural, cannot contradict Himself⁴⁷¹.

3. *Supernatural Theology: morality lived out to the fullest*

The third reason why supernatural moral theological reflection is necessary in ethical discussions is the fact that man is also impelled by love and service to others, freely lived out to the fullest. *Veritatis Splendor* says that:

«he feels an interior urge, a genuine necessity and no longer a form of coercion not to stop at the minimum demands of the Law, but to live them in their fullness»⁴⁷².

It is through this natural call or vocation that leads man to live a moral life based not just on natural theological reflection but also on the higher truths revealed by God. He does not limit himself to distinguishing between good or evil, but he acts out of love and service to all. Such attitude presupposes faith and confidence in God. This reliance is practically encountered in the Divine revelation, especially through the inspiration of the New Law of Love in Christ known as Christian morals⁴⁷³.

The three points discussed carry out the bases of the supernatural, moral theological reflection as applied to bioethics problems. There is then no real division between natural and supernatural moral theology in an authentic moral reflection. Harmony and complement is achieved by acknowledging the capability of natural theological reflection on one hand, and the completeness and superiority of supernatural theological reflections on the other hand. And Christian moral reflection in this case serves its role. But what is there in Christian biomedical morals that is not found in natural theological reflection? What is its peculiar value and contribution? We shall see in the succeeding section what makes Christian morals specially important and necessary as a mode of theological reflection in Bioethics hospital group or committee discussions⁴⁷⁴.

⁴⁷¹ Though faith is above reason, there can never be any discrepancy between faith and reason. Since the same God who reveals mysteries and infuses faith has bestowed the light of reason on the human mind, God cannot deny himself, nor can truth ever contradict truth. Cf. VATICAN COUNCIL I, *Dei Filius* (DS 3017).

⁴⁷² JOHN PAUL II, Encyclical Letter, *VS* n° 18.

⁴⁷³ “Por eso dice el Papa con toda precisión que *«la vida moral se presenta como la respuesta debida a las iniciativas que el amor de Dios multiplica en favor del hombre. Es una respuesta de amor»* (*VS* n° 10): es la actividad de la fe. De ahí que no sea aún acorde con la propuesta evangélica la actitud «heroica» de quien pretende conseguir el bien basándose en su propia capacidad de cumplir lo prescrito por las normas: «ningún esfuerzo humano, ni siquiera la observancia más rigurosa de los mandamientos, logra “cumplir” la Ley... El cumplimiento sólo puede lograrse como un don de Dios: es el ofrecimiento de una participación en la Bondad divina que se revela y se comunica en Jesús, aquél que el joven rico llama con las palabras ‘maestro bueno’» (*VS* n° 11)”. J. A. MARTINEZ CAMINO, *«La Fe que actúa...»* (*Gál* 5,6): *Fe y Razón en la Veritatis Splendor...*, op. cit., p. 388.

⁴⁷⁴ The need to impart the specifically Christian moral reflections in the Hospital Ethics Committees is encouraged, “con el fin de estudiar, informar y formar en lo que atañe a las principales cuestiones de biomedicina y derecho, relativas a la promoción y a la defensa de la vida, sobre todo en las que guardan mayor relación con la moral cristiana y las directrices del Magisterio de la Iglesia... es una aportación específica que deben dar también las universidades, particularmente las católicas, y los Centros, Institutos y *Comités de bioética*”(italics mine). JOHN PAUL II, Encyclical letter, *Evangelium Vitae*, n° 98.

C. Dichotomy between the «order of ethos» and the «order of salvation»

Christian moralists and bioethics experts like R. McCormick and B. Mitchell delve deeply on the relationship between bioethics and Christian moral theology. In the name of secular and pluralistic society, they tried to examine whether Christian morals in bioethics questions and dilemmas could really help provide solutions that are universally applicable. Does Christian morals have normative content, or is it just one form of theological-moral aid which is recommendable for reflections only among the Christian HEC patients and doctors? Is there really a sharp distinction between an «ethical order», which would be human in origin and of value for this work alone, and an «order of Salvation», for which certain intentions and interior attitudes regarding God and neighbor would be simply supportive?⁴⁷⁵

Our present discussion is centered on the recognition of Christian moral values as an important aid in the bioethics moral discussions. R. McCormick and B. Mitchell recognize the need of faith and reason and Christ's teachings in applying Christian morals. B. Mitchell, for instance, is convinced that Christian morals deals with the «order of salvation» because it occupies a superior position with deeper moral insight. What worries him though is how to formulate reasonable arguments which would be acceptable even among non-Christians who recognize only the «order of ethos». He finds difficulty in providing arguments connecting the «order of salvation» with the «order of ethos». Additionally, he believes that any compromise in connecting these two orders by using typically "pluralist" method of resolving issues such as through utilitarian calculus, votation or consensus, are not always convincing and at times, even dangerous or unsatisfactory. As we can presently observe, most "pluralist" HEC set-ups are in fact, functioning along this line: application of moral values (including objective Christian values) in decision-making subjected to consensus.

However, we are convinced that Christian moral theological reflection or perspective is not exclusive to HECs composed of Christian followers but rather, is also applicable to all types of people in secular HEC groups. There should be no real break between what theology (viewed in the order of salvation) can supernaturally offer and what bioethics (viewed from the order of ethos) can humanly perceive. But how?

R. McCormick's ideas complement B. Mithell's unsettled and unresolved enigma regarding the relationship between the order of ethos and the order of salvation. As we can recall, in solving this bioethics and Christian moral inquiry, R. McCormick first described how human reason understands faith in such a way that this same faith illuminates and influences our moral reflections. Then, Christian faith in morals does not have a distinct moral content that is different from those found in natural moral law and achieved by human reasoning alone. However, he insists that it has its specificity only in so far as it motivates or influences man in becoming more humanly perfect through Christ's moral teachings and examples. R. Gulla describes R. McCormick's position as follows:

«Its claims is that the content of Christian and non-Christian morality at the level of concrete norms and values is substantially the same. Stated boldly, this means that the fact of being a Christian offers no specific content to the moral solutions of human problems which are

⁴⁷⁵ Cf. JOHN PAUL II, Encyclical letter *VS* n° 37.

not also available to the non-Christians. What Christian faith does is to provide a distinctive context in which one lives a moral life, a religious motivation for living morally, a self-understanding informed by faith and a specific religious intentionality, namely union with God»⁴⁷⁶.

R. McCormick's differentiation between the Christian moral specificity and content versus the natural moral law is but a dichotomous outlook between the «order of salvation» and the «order of ethos». This generally differentiating outlook situates us then, to explain in greater detail, R. McCormick and companion's theory regarding what they meant by Christian moral specificity and content. Proponents of this theory are popularly called "revisionists" or "new moralists" by adhering to the concepts of autonomous morality, or theonomy based on the categorical and transcendental levels, and Christian convictions that generically function as merely invitational or motivational. We shall discuss these one by one.

1. *Fundamental points of the New Morality*

a. *Moral autonomy within the theological context*

The Revisionist thesis defends the notion that man exercises human freedom or autonomy in choosing what is for him is good or evil, even if his choice does not conform to God's Will or to what is objectively good and evil. There seems to be an opposition between God's mandate and man's exercise of full freedom. Hence, J. Fuchs, F. Böckle and R. McCormick among others, thought that there should be a way of solving this tension in a way that respects both positions. One of the most common theological explanation along this line accentuates on man's full capacity to reason out, and his freedom to choose what he perceives as good⁴⁷⁷. This means that man's capacity to choose really ascertains his rational nature, and is in fact an important factor in maintaining his dignity⁴⁷⁸. Thus, these two capacities make him morally autonomous. «Autonomous», because as M. Rhonheimer explains:

«Moral autonomy is equivalent to affirming that the distinction between the «good» and «evil» is in principle, something accessible to man's natural reasoning and for this, is not necessary that it be preceded by revelation of moral norms»⁴⁷⁹.

⁴⁷⁶ R. GULA, *Reason Informed by Faith: Foundations of Catholic Morality*, Paulist Press, New York 1989, pp. 47-48.

⁴⁷⁷ "El hombre, como ser racional, existe como fin en sí mismo, no como un medio que pueda emplearse discrecionalmente para este o aquel propósito. La naturaleza racional se manifiesta en la autodeterminación de la voluntad. La libertad de la voluntad permite que la voluntad pueda pasar de la heterodeterminación a la autodeterminación. Es la «voluntad pura» del «yo inteligible» que se da la ley a sí misma... Según esto, la autonomía moral es autodeterminación de la voluntad, al margen de cualquier fin, por la ley universal de la razón. «Autonomía» no significa arbitrariedad de la subjetividad individual, sino vinculación a la propia ley de la razón, que le impone una obligación incondicional. La existencia de la autonomía moral consiste en que el hombre tiene la capacidad y el destino de medirse por la validez universal de sus propias máximas". F. BÖCKLE, *Valores y fundamentación de normas*, in R. SCHERER, R. WALTER (eds.), *Fe cristiana y sociedad moderna*, vol. 12, Madrid 1986, p. 61.

⁴⁷⁸ Cf. JOHN PAUL II, Encyclical letter, VS n° 39-40.

⁴⁷⁹ M. RHONHEIMER, *Autonomía y teonomía moral según la encíclica «Veritatis Splendor»*, in G. DEL POZO ABEJON (ed.), *Comentarios a la «Veritatis Splendor»*, BAC, Madrid 1994, p. 547.

However, the revisionist theologians are likewise aware that this autonomy is not at all alienated from God but is rather, very much related to Him. This proposition has led them this time, to think along the line of «autonomous theonomy». Rhonheimer therefore observes that these revisionist theologians who want to maintain the presence of theological role within man's «autonomous» capacity would hold to this refined recourse and thereby argue that,

«Autonomous theonomy of human creative reason is a paradox which on one side gives the moral subject an undeniable autonomy without which, “absolute morality” cannot be given him, and on the other side, the simultaneous maintenance of the creature's total dependence with respect to his creator»⁴⁸⁰.

But supposing that these two aspects are non-contradictory, how can man really and absolutely maintain his «autonomy» before the dictates of God's moral law which he himself feels obliged to follow? Among many, Böckle proposes one solution:

«Man is ordained since the foundation of created reality, in receiving a new law of grace, a new direction which leads him toward a divine perfection towards God. Thomas made a thesis to the effect that theonomy in accordance with creation and redemption is united with that of autonomy based from it. The legitimacy of theonomy in ethics eliminates the contradiction that states that a conditioned subject is obliged unconditionally by himself or by other conditioned subject»⁴⁸¹.

This means that man's moral autonomy is rooted in God's original plan in which from the beginning, man is left alone to determine what is good for himself, such that, exercising personal responsibility through the course of history and multiplicity of cultures, he may renovate them as the need arise⁴⁸². These new moralists claim that since creation, it has been God's grace and divine Will that all human creatures exercise their full freedom in determining what is good for themselves. Theologians seem to maintain a balance between God (Theonomy) as his source and man's independent (autonomy) moral claims. In effect, man becomes the sole author of his moral norms because it is presumed that through God's grace and divine Will it was originally and automatically given to him in this manner: let man create his own moral law.

b. Moral Autonomy in the Christian context: its specificity

Ratzinger noted that the new Christian moralists do not deny the role of theological truths of Revelation and Magisterium in bioethics discussions. But given that HEC ought to be applied to peoples of all types of culture and religion in the American society, there is a need to explain the continuity and specificity between what the Christian faith holds as «good life» and what is generally recognized as such by people who do not adhere to the Christian faith but nevertheless want to live a moral life⁴⁸³.

⁴⁸⁰ *Ibid.*, (personally translated to English), p. 545.

⁴⁸¹ F. BÖCKLE, *Valores y fundamentación de normas*, (personally translated to English) in R. SCHERER, R. WALTER (eds.), *Fe Cristiana y Sociedad Moderna*, Madrid 1986, p. 72.

⁴⁸² Cf. G. HÖVER, *Autonomie*, in *Lexikon für Theologie und Kirche*, 3rd ed., 1993; See also M. RHONHEIMER, *Autonomía y teonomía...*, *op. cit.*, p. 548.

⁴⁸³ Cf. K. ANATOLIOS, *Christian Ethics and Christian Faith*, in “Communio” (summer 1995) 242.

In a pluralistic ambiance consisting of Christian and non-Christian individuals, Revisionists wanted to supply both of them adequate and convincing answers to the notion of the continuity and specificity of Christian morality and the «autonomous theonomy». They respond by distinguishing two levels of morality⁴⁸⁴. J. Fuchs⁴⁸⁵ mentioned that categorical level is formed by norms, virtues or values of particular content like justice, charity, fidelity, etc. The other is the transcendental level which evidently surpasses the categorical phase because it considers man in his totality by deriving it, for instance, from the Scriptures or the Christian components of faith and morals such as those which refer to love, redemption, sacraments, imitation of Christ, etc.⁴⁸⁶. Once these levels are differentiated, these theologians affirm that the categorical level has a materially and totally human moral (*humanum*)⁴⁸⁷ content that is normative, universally applicable and valid to all men at all times. On the other hand, transcendental moral level as R. McCormick also indicates⁴⁸⁸ is something generic, formal or contextual. In other words, it is a «particular attitude» or «specific intention» because for them, it:

«refers to a full, personal decision that is made, and refers concretely to an actual presence in the particular attitude and conduct of various spheres of life; a living, conscious presence in the daily shaping of life and the world, so that this daily life in its manifold particularity - whatever is distinctively Christian or simply human - represents at the same time and in its depths the living, conscious and free actualization of the decisiveness of Christian intentionality»⁴⁸⁹.

As a consequence of this differentiation, they synthesize it into the following moral concepts: The «*humanum*» is the categorical morality which gives a concrete, normative and universal moral value to all human beings: level according to the *order of ethos*. The transcendental «*Christianum*» are just particular attitudes or values which some men (especially faithful Christians) may intentionally apply, motivating and influencing them in the light of the Absolute God which of course, should still be materially and substantially concretized in the «*humanum*»: level according to the «order of salvation»⁴⁹⁰. The «*humanum*» is the concrete moral norms *for all men*, while the

⁴⁸⁴ Cf. JOHN PAUL II, Encyclical letter, VS n° 65.

⁴⁸⁵ «It is already clear that we must distinguish two elements of Christian morality. They are basically different from each other, yet belong together, and constitute Christian morality in their unity and interpretation. On the one hand there is the particular categorical conduct, in which categorical values, virtues and norms are realized –values, virtues and norms of different categories, such as justice, faithfulness, and purity–. On the other hand, there are transcendental attitudes and norms, which inform various ethical categories and go beyond them, virtues such as faith, love, allowing oneself to be redeemed, living as a sacramental person, following Christ, etc. Such transcendental attitudes and norms refer to and involve, obviously, not only one's conduct in a specifically human person in his or her entirety. It is the whole human person, as person, who gives her or himself in faith and love, in imitation of Christ, in surrender to Christ who died and rose again". J. FUCHS, *Personal Responsibility and Christian Morality*, Georgetown Univ. Press, Washington 1983, p. 55.

⁴⁸⁶ Cf. S. PINCKAERS, *Las Fuentes de la Moral Cristiana...*, *op. cit.*, p. 145.

⁴⁸⁷ Cf. J. FUCHS, *Personal Responsibility...*, *op. cit.*, pp. 57-63.

⁴⁸⁸ To compare Fuchs and McCormick's views, see chapter three of part 2.

⁴⁸⁹ J. FUCHS, *Personal Responsibility...*, *op. cit.*, p. 56.

⁴⁹⁰ «If we abstract from the decisive and essential element of Christian morality in its categorical orientation and materiality, it is basically and substantially a *humanum*, that is a morality of genuinely being human... Our reflection about the genuinely human and genuinely Christian dimensions of Christian morality derives basically from the fact that believers must translate their living faith –that is, their Christian intentionality- into concrete living and manifest it in their lives. This is the reality of human person, but the

«*Christianum*» belongs only to the level of intentionality and, in this case, may *only be applied to Christian followers*.

But where is the specificity of Christian morality in the «*humanum*»? They say that it is found precisely in the «Christian context» or «Christian intentionality» as earlier described⁴⁹¹. Therefore, there is no doubt that moralists with revisionist viewpoint do not deny the Christian specificity in morals⁴⁹². All they only want is to show that this Christian intentionality does not have any material moral content, implying that it does not have a universal nor normative value but is nevertheless recommendable for reflection insofar as it serves as a model, attitude or intention of becoming Christ's follower through his particular teachings on perfection⁴⁹³.

c. Imitation or following of Christ as the transcendental sense of Christian morals

Another fundamental concept of new moral theology approach is to consider Christian morals in itself, not as a moral doctrine but rather as a mode of following a particular person, Jesus Christ, who taught and worked as renovator of men who is not a moralist himself⁴⁹⁴. This implies that Christ's works and teachings is a specific manner of reaching perfection that will merely serve as an inspirational model. Moreover, to them there is nothing materially new that is added from Christ's life and works although they also stress the point (and they do not deny) that Christ's teachings may specifically contribute «formally or generically», as a kind of motivating factor in living a «new man in the kingdom of God»⁴⁹⁵.

human person in the manner and situation in which that person experiences and know himself as believing. We must therefore speak in turn of the *humanum* and the *Christianum* morality, of its norms and values". *Ibid.*, pp. 58-59.

⁴⁹¹ J. Fuchs mentioned Rigali's observation that the American moralists C. Curran and R. McCormick formulate a relatively similar conviction that Christian specificity is found in its Christian moral order of intentionality. He says: "Rigali notes that the American moral theologian Charles Curran holds the thesis that, as far as content is concerned, there is no specifically Christian morality, while his fellow countryman and ethician, Richard McCormick, holds that there is only one moral order -i.e., the Christian. Rigali observes that despite differences of formulation, both theologians are of the same opinion". *Ibid.*, p. 69; See also N. J. RIGALI, *New Epistemology and the Moralist*, in "Chicago Studies", 11 (1972) 237-244.

⁴⁹² For more details, see T. LOPEZ, G. ARANDA, *Lo específico de la moral cristiana I*, in "ScrTh" 7 (1975) 687-767, and *Lo específico de la moral cristiana II*, in "ScrTh" 8 (1976) 663-682.

⁴⁹³ "No one doubts that there is a truly Christian morality, not only in the sense that we can present a morality acceptable to and to be accepted by Christians, but also in the sense that Christian Morality has its specificity, its *proprium*. The problem can only lie in what sense one can respond to the question, Is there a Christian morality?" J. FUCHS, *Personal Responsibility...*, *op. cit.*, p. 72-73.

⁴⁹⁴ "Non era un nuovo codice morale ciò che l'umanità doveva aspettarsi da Cristo, ma la redenzione, la trasformazione del vecchio uomo in quello nuovo, dell'uomo della carità del Figlio per il Padre. In funzione primaria la missione di Cristo non era l'insegnamento della distinzione particolareggiata fra opere buone e cattive, era la redenzione che ci fa uomini del Regno. Il compito di Cristo non era l'insegnamento della morale, era la creazione dell'uomo che produce le opere buone come 'frutto' della sua novità". J. FUCHS, *Vocazione e speranza*, in "Seminarium" 3 (1971) 494; see also R. GARCIA DE HARO, *La Sabiduría Moral Cristiana*, Eunsa, Pamplona 1986, p. 30.

⁴⁹⁵ "Dos son así los elementos esenciales de esta nueva formulación de la moral: de una parte, en su contenido, la moral cristiana nada añadiría a la común a todos los hombres. De otra, sin embargo, significaría un paso en el progreso ético: no por su contenido, sino por cambiar el sentido mismo de la

2. *Its practical consequences in Hospital Bioethics Committees*

It is now clear that these moral revisionists have made a scholarly exposition of Christian moral specificity in order that moral theological reflection might be acceptable in any bioethics discussion, and which may be concretely used as valid argument to explain its important role in the HEC discussions and forums. Although various theologians have indeed tried their best to harmonize Christian morals based on the Christian moral order, with the ethical order in a pluralistic-secular world, these concepts contain flaws or breaches from the authentic Catholic Church moral teachings. As can be noted in recent years⁴⁹⁶, these new Christian moralists' views have caused a much heated debate in the academic world. As a consequence, some daring moves to adopt this theological reasoning were implemented in many American bioethical groups and institutions. Because of the remarkable fundamental concepts they articulately portrayed, as discussed previously, this approach seems worthy to advocate and use, because it apparently explains the Christian moral theological role we are searching for: that which imparts Christian morals to all men of goodwill, of varied cultures and religions, in the bioethics discussions. Evidently, the Church has been keenly observing this conjecture. And despite the various open discussions⁴⁹⁷ still going on, the recent encyclical *Veritatis Splendor* provides better insights in discerning this fundamental moral issue.

a. *Autonomy and theonomy in moral theological reflections*

From the fundamental moral issues which VS propounds, let us pose a practical bioethics inquiry: How can those who are involved in bioethics forums feel a sense of moral freedom in choosing what is best for them, if everybody is not Christian? M. Rhonheimer's commentary on the encyclical *Veritatis Splendor* may help us understand conceptually the aforementioned practical supposition. He first situates us in the analysis of theonomy and autonomy in line with the encyclical document's teachings, and then provides an evaluation of how this same document has indicated the existence of some conceptual flaws or drawbacks if understood in a different manner, quite typical of the Revisionist moral theology we have just discussed.

It is certain that VS does not attempt to resolve all of the various fundamental concepts implied in the revisionist's morality. However, Rhonheimer says that it provides us of some concrete solutions based on two basic irrefutable moral truths: that the human

moralidad frente al legalismo anterior. No habría renovado lo *material* de la moralidad, sino lo *formal*; no el *contenido* de lo que hay que hacer, sino la persona que lo ha de hacer: lo que califica al discurso de la montaña no es propiamente una cierta *nueva doctrina moral cristiana* y sobrehumana, sino más bien el *hombre nuevo* de aquel Reino de Dios, que el mismo Cristo lleva y crea". R. GARCIA DE HARO, *La Sabiduría...*, *op. cit.*, p. 31.

⁴⁹⁶ For more historical details see: D. COMPOSTA, *Tendencias de la teología moral en el postconcilio Vaticano II*, in G. DEL POZO ABEJON, *Comentarios...*, *op. cit.*, pp. 301-340; J. C. HARVEY, *A Brief History of Medical Ethics from the Roman Catholic Perspective: Comment on the Essays of Fuchs, Demmer, Cahill, and Hellwig*, in E. PELLEGRINO et al. (eds.), *Catholic Perspectives on Medical Morals*, Kluwer Academic Publishers, Dordrecht 1989, pp. 129-143.

⁴⁹⁷ See comments by E. MOLINA, *La Encíclica «Veritatis Splendor»...*, *op. cit.*, pp. 141-144; Attacks against the principles layed down by VS written in essays by moralists like M. Theobald, J. Fuchs, E. Chiavacci, M. Vidal, R. McCormick, A. Auer and B. Häring is compiled in the recent book, D. MIETH (ed.), *La teología moral ¿en fuera de juego? Una respuesta a la encíclica «Veritatis Splendor»*, Herder, Barcelona 1994.

person is autonomous, and that man as creature of God follows a determined moral order⁴⁹⁸. *Veritatis Splendor* states that:

«The rightful autonomy of practical reason means that man possesses in himself his own law, received from the Creator. Nevertheless, the autonomy of reason cannot mean that reason itself create values and moral norms. Were this autonomy to imply a denial of participation of the practical reason in the wisdom of the divine Creator and Lawgiver, or were it to suggest a freedom which creates moral norms, on the basis of historical contingencies or the diversity of societies and cultures, this sort of alleged autonomy would contradict the Church's teaching on the truth about man»⁴⁹⁹.

The document speaks of autonomy of reason in the similar fashion as natural law. Its relationship is observable if natural law is seen not as an object which natural reason understands, but rather as practical and directive judgment of action emitted and mandated by reason itself, with respect to good or evil⁵⁰⁰. In like manner, it can be affirmed that “natural law is none other than human reason itself which commands us to do good and counsels us not to sin”⁵⁰¹.

Another important affirmation which can be drawn from the Church document just cited is the truth behind the concept of human autonomy as «participated theonomy»: a characteristically human quality of reason, whereby it is capable of referring and participating in the truth, precisely because of its dependence on the Divine reason⁵⁰². Indeed, *VS* states:

«the wonderful depth of the sharing in God's dominion to which man has been called: they indicate that man's dominion extends in a certain sense over man himself»⁵⁰³.

This means that man can exercise his autonomous reasoning or self-determination with dignity whenever he participates in the Divine Wisdom, who is infinitely transcendent: *Deus semper maior*⁵⁰⁴.

But despite these affirmations as clearly stated in the document, we are also warned of the existence of some skewed interpretations derived from these notions. The corrections and clarifications exposed by the recent Church document will be of great

⁴⁹⁸ “Con la *VS* no pretende soluciones simplistas y tampoco se pretende solucionar los problemas de una ética normativa, pero sí mostrar el marco para unos intentos de solución, que resulta irrenunciable de acuerdo con dos datos fundamentales: 1) La persona humana es autónoma, es decir, es sujeto responsable de sus acciones y de su propio perfeccionamiento moral, que por una autodeterminación propia de su esencia tiende al bien; ella puede discernir entre el bien y el mal por su propia inteligencia. 2) Hay para el hombre un «orden del bien» fundamental «orden moral», que es creación de Dios, es decir determinado «teonómicamente» y que, en cuanto tal, se halla objetivamente dado de antemano y a la autonomía humana se le ha encomendado hacerlo efectivo”. M. RHONHEIMER, *Autonomía y teonomía...*, op. cit., p. 550.

⁴⁹⁹ JOHN PAUL II, Encyclical letter, *VS* n° 40.

⁵⁰⁰ Cf. M. RHONHEIMER, *Autonomía y teonomía...*, op. cit., pp. 551-552.

⁵⁰¹ JOHN PAUL II, Encyclical letter, *VS* n° 44.

⁵⁰² “El hecho de que esa referencia a la verdad, propia de la razón práctica, que en el concepto de «razón creadora» se pierde, tiene su fundamento precisamente en la dependencia de la razón humana respecto de la razón divina, esto es, en su carácter teónomo”. M. RHONHEIMER, *Autonomía y teonomía...*, op. cit., p. 552..

⁵⁰³ JOHN PAUL II, Encyclical letter *VS*, n° 38.

⁵⁰⁴ Cf. *Ibid.*, n° 41.

help to our current understanding of the real validity of Christian moral theological reflection whenever the search for the fundamental role in the bioethics forums within a secular and pluralistic American medical community is sought for. Let us identify some of these points furthermore.

VS warns that the concept «autonomous theonomy» whereby it speaks of an autonomous creative capacity of reason, which we shall call «creative reasoning» in moral reflection, should not presume that there was a God who abandoned us alone in order that we might exercise the full freedom of determining what is good or evil for us (similar to H. T. Engelhardt's and F. Böckle's views as commented earlier). On the contrary, "the God of the Bible and of the Faith is precisely the provident God who does not abandon man along with his freedom with his independent norms"⁵⁰⁵. Man's self-determination in moral reasoning should not diverge from God's Wisdom and benevolence because:

«Man's genuine moral autonomy in no way means the rejection but rather the acceptance of the moral law, of God's command. Human freedom and God's law meet and are called to intersect, in the sense of man's free obedience to God and of God's completely gratuitous benevolence towards man. Hence obedience to God is not, as some would believe, a heteronomy, as if the moral life were subject to the will of something all-powerful, absolute, extraneous to man and intolerant of his freedom»⁵⁰⁶.

M. Rhonheimer opines that to conserve the correct interpretation of the aforementioned Church's statement, it is also important to stress the fact that man's creative reasoning, though autonomous with respect to God's moral laws, should not be confused as man's mere inclination or openness to the good (as R. McCormick's thesis wanted to point out), which implicitly undermines God's proper *ordinatio* towards the good⁵⁰⁷. If God were not to order and lead us towards the Good, if He just wanted to create us and leave us without His direct ordering in achieving the Good, then this God would not be the God who is Good. This assertion would then be contradictory and untenable.

From the above mentioned Church exposition (in VS) through Rhonheimer's explicative comments, we can say that nobody, whether he be a Christian or not, should fear the presence and continued assistance of the Divine Providence who leads us towards Himself, and is the ultimate Good. So, whenever man searches for the moral answer to some particular bioethics dilemmas, he can practice his real autonomy in deciding his actions, while at the same time, sense his dependence upon God's ordering, manifested and perceived in the natural moral law. Thus, it is essential that man exercises his autonomous reasoning not solely because he is inclined or open to God, but also because he

⁵⁰⁵ M. RHONHEIMER, *Autonomía y teonomía...*, op. cit., p. 557 (English translation, mine).

⁵⁰⁶ JOHN PAUL II, Encyclical letter VS, nº 41.

⁵⁰⁷ "La concepción de una razón creadora, teónomamente fundada, implica, pues, que la ley eterna no contiene ninguna *ordinatio* de los actos humanos a su propio fin, sino que esta *ordinatio* más bien se ha dejado a cargo de la autonomía de la criaturas. Pero esta idea, desde el punto de vista metafísico, es sencillamente insostenible. Dicho más claramente, tal concepción equivaldría a afirmar que en Dios se da una libertad que no representa ya una ordenación del bien. Esto implicaría admitir en la sabiduría divina, en la que se encuentra la ley eterna, «apertura» como indeterminación. Tal implicación sería de hecho inevitable, puesto que, como resulta incuestionable, la ley eterna es una dimensión a la que se ha llegado por vía de inferencia". M. RHONHEIMER, *Autonomía y teonomía...*, op. cit., p. 559.

is genuinely and morally autonomous: that he reflects and accepts as his own, God's moral law⁵⁰⁸. If these concepts are understood rightly, the relationship between the reflection in the realm of theological-moral order, and in the ethical order can be harmoniously achieved when we concretize it in the bioethics forums and discussions.

b. Christian moral specificity

The other Revisionist's notion that affects the problematic question regarding the role and the real necessity of Christian theological reflection in the bioethics committees, forums and discussions is over the inquiry on: Is there a specific moral content binding to all men, or is it limited only among Christian faithful? This question has a practical importance to us because the denial of Christian specificity and moral content has in fact led them to think that perhaps,

«new moral problems like genetic manipulation, sterilization, euthanasia, just distribution of goods (salaries), etc., are not found nor do they receive adequate answers from the Christian message. So, confronted by this situation, anyone might either assume it with resentment, or accept it with critical spirit. It was then proposed, to search a human good with independence – that which does not mean outright opposition against Faith and the Magisterium, but rather, by focusing it solely in man himself in order that this ethics be valid for all»⁵⁰⁹.

It can be observed that this Christian moral identity and specificity crisis in bioethics is very much related to the Christian social doctrinal crisis since the post-Vatican II epoch in which the Church, in the face of attacks, defended Her

«right always and everywhere to proclaim moral principles, even in respect of the social order, and to make judgments about any human matter in so far as this is required by fundamental human rights or the salvation of souls»⁵¹⁰.

There is no need to go deep into this concrete socio-doctrinal case⁵¹¹. But at least in general terms we can say that we presently experience a Christian bioethics doctrinal

⁵⁰⁸ VS also stresses the idea that when human participates in God's Law, Wisdom and Providence, "he does not originally possess such 'knowledge' as something properly his own, but only participates in it by the light of natural reason and of Divine Revelation, which manifest to him the requirements and the promptings of eternal Wisdom". JOHN PAUL II, Encyclical letter, VS n° 41.

⁵⁰⁹ E. MOLINA, *La Encíclica «Veritatis Splendor»...*, op. cit., p. 142 (English translation, mine).

⁵¹⁰ CODE OF CANON LAW, n° 747, 2; JOHN PAUL II, Encyclical letter VS, n° 27.

⁵¹¹ For example, the Church firmly declares that in view of Her rich experience in Humanities. (in PAUL VI, *Discourse in the United Nations Organization General Assembly*, 1965. AAS 57 n° 878); She is convinced that Christian moral theological teachings are capable of giving concrete and valid moral judgments drawn from Evangelical reflections. *Octagesimo Adveniens* or *Centessimus Annus* stated that Christians are called to, and are capable in deducing from the light of the Gospel and through the teaching Magisterium of the Church, "principles for reflection, norms of judgment and guidelines for action", (in PAUL VI, Encyclical letter *Octagesima Adveniens*, May 2, 1971, n° 4; JOHN PAUL II, Encyclical letter *Centessimus Annus*, May 1, 1991, n° 43) without limiting themselves solely on general principles (in PAUL VI, Encyclical letter *Populorum Progressio*, March 26, 1967, n° 42). It also made it clear that Christian moral theological reflection achieves a concrete role when it participates in a spirit of dialogue with the other human sciences: because these sciences may understand some aspects of truth while Christian moral reflection on the other hand, concretely proposes a global vision of man and the whole of humanity (Cf. D. COMPOSTA, *Tendencias de la teología moral en el postconcilio Vaticano II*, in G. DEL POZO ABEJON, *Comentarios...*, op. cit., p. 452).

identity crisis: there exists a new discipline⁵¹² that seeks to dichotomize ethical anthropology and biomedical issues by recognizing generic transcendence and sanctity of human life and yet doubting if there are really concrete or specific contents in Christian morals. This is not an entirely new fundamental question. Although we are aware of many Church teachings explaining the specific Christian social moral dimensions in our contemporary world, we shall try to concretize this discussion by limiting ourselves to bioethics issues and the novelty which the recent document *Veritatis Splendor* has imparted to us as our reference point.

The document warns us of a pernicious error by some theologians who wish to solve the necessity of giving Christian theological reflection but in a manner different from the Church's teaching. It declares that:

«In their desire, however, to keep the moral life in a Christian context, certain moral theologians have introduced a sharp distinction, contrary to Catholic doctrine, between an *ethical order*, which would be human in origin and of value for *this world* alone, and an *order of salvation*, for which only certain intentions and interior attitudes regarding God and neighbor would be significant. This has then led to an actual denial that there exists, in Divine Revelation, a specific and determined moral content, universally valid and permanent. The word of God would be limited to proposing an exhortation, a generic parenthesis, which the autonomous reason alone would then have the task of completing with normative directives which are truly "objective", that is adapted to the concrete historical situation. Naturally, an autonomy conceived in this way also involves the denial of a specific doctrinal competence on the part of the Church and her Magisterium with regard to particular moral norms which deal with the so-called "human good". Such norms would not be part of the proper content of Revelation, and would not in themselves be relevant for Salvation»⁵¹³.

This Church document has indicated that the moral teachings derived from the Word of God (Scriptures) have a significant and concrete moral content. Moreover, these concrete Christian moral contents are universally valid, objective and permanent. These characteristics are based on the proposition that whatever is materially found and reasonably accessible through human ethical reasoning (order of ethos) must be related intrinsically with Christian morals (order of salvation), without a dichotomous break or contradiction between them. A moral autonomy in the Christian context which seeks to answer moral problems based fundamentally on what they call normative human ethics, and a separate order of salvation whose concrete moral norms is merely its being influential, intentional or motivational, are not feasible neither from the practical, ethico-philosophical nor theological viewpoints⁵¹⁴.

From the practical point of view, it is not possible to accept the absence of Christian moral concreteness and specificity reducing the Church's theological teachings on moral issues into just one of the various voices or opinions that contribute something "nice" in

⁵¹² "Esta disciplina está en vías de elaborar un estatuto epistemológico propio y autónomo respecto a tal biología: precisamente porque la biología molecular no entra en la cuestión de la sacralidad de la vida, le corresponde a la bioética poner remedio a la excesiva sectorialidad de la antropotécnica". D. COMPOSTA, *Tendencias de la teología moral en el postconcilio Vaticano II*, in G. DEL POZO ABEJON, *Comentarios...*, op. cit., p. 339.

⁵¹³ JOHN PAUL II, Encyclical letter, *VS* nº 37.

⁵¹⁴ Cf. M. RHONHEIMER, *Autonomía y teonomía...*, op. cit., pp. 572-576. See also from the same author: *Ethics of Norms and the Lost of Virtues*, in "Anthropotes" 9/2 (1993) 231-243.; *Intrinsically Evil Acts and the Moral Viewpoint: Clarifying a Central teaching of «Veritatis Splendor»*, in "The Thomist" 58/1 (1994) 1-39.

bioethics discussions⁵¹⁵. Affirming the Christian moral specificity and concreteness certainly establishes its objectivity and universal validity, *semper et pro semper*⁵¹⁶.

Veritatis Splendor does not delve in a detailed manner into this question⁵¹⁷. However, M. Rhonheimer's commentary on this particular Church's position will help us elucidate the reasons behind such propositions, and consequently see the significant contrast which the New Moralists' perspective has attempted to propagate in bioethics field.

From the ethico-Philosophical viewpoint, he stresses the idea that when man acts, he forms along with his act an indissoluble intentional unity⁵¹⁸. This means that there is but only one sphere of human act in him: that which proceeds from the human will (his heart). It therefore implies that there is no moral mode of rationality, factors related to rectitude of action, deliberation of what is good, or attainment of its objective, exclusively suited to the ethical level (*human ethos*). On the other hand, the moral intention, motivation, will of the heart, or factors which makes one a good person, is solely found in the *ethos of salvation*⁵¹⁹.

Analyzing from a theological perspective, he comments that these two levels of *ethos* cannot be totally separated although it would be understandable that the *human ethos*, whose morality is fundamentally derived from the human reasoning, should be a «subjunction» of the Christian ethos (*ethos of salvation*) whose ultimate course is nonetheless founded on the Revelation⁵²⁰. So, he added that there is indeed an *ethos* that is specifically Christian which is concretely different from what is merely human. This conviction is based on the fact that man from the beginning, was incapable of complete

⁵¹⁵ Cf. M. RHONHEIMER, *Autonomía y teonomía...*, op. cit., pp. 571-572.

⁵¹⁶ Cf. JOHN PAUL II, Encyclical letter, VS n° 51-53.

⁵¹⁷ Prior to the VS statements regarding the Christian moral specificity, we can find some scholarly works about this topic in S. PINCKAERS, *Las Fuentes...*, op. cit., p. 139-283, wherein he studies them by drawing its sources from St. Paul's moral doctrine, the Sermon of the Mount and the Our Father, and an analysis of St. Thomas Aquinas' moral theology; or G. GRISEZ, *Christian Moral Principles*, Chicago, 1983; or R. GARCIA DE HARO, *Vida Cristiana, Eunsa*, Pamplona 1992.

⁵¹⁸ VS judges wrong the attempt in separating man's intention from his action when it said: "In some authors this division tends to become a separation when they expressly limit moral «good» and «evil» to the transcendental dimension proper to the fundamental option, and describe as «right» or «wrong» the choices of particular «innerwardly» kinds of behavior: those, in other words, concerning man's relationship with himself, with others and with the material world. There thus appears to be established within human acting a clear disjunction between two levels of morality". JOHN PAUL II, Encyclical letter VS n° 65.

⁵¹⁹ "El fundamento filosófico-ético: Consiste en el hecho de que el hombre, cuando actúa, representa una unidad intencional indisoluble. Sólo hay una esfera de actuación del hombre; es decir, todo acto humano procede, en todos sus niveles, de la *voluntad* humana (su «corazón»). Es falso suponer implícitamente que en el plano del *ethos* mundano, intramundaneamente por así decir, se encuentran la racionalidad, la ponderación de bienes, la atención a lo objetivo, etc., factores que deciden sobre la «rectitud de las acciones»; y en el plano del *ethos* de salvación, las intencionalidades, voluntad y corazón, es decir, los factores que deciden sobre la «bondad de la persona». M. RHONHEIMER, *Autonomía y teonomía...*, op. cit., p. 573.

⁵²⁰ "El fundamento teológico: Consiste en que, desde un punto de vista cristiano, es imposible distinguir sin más entre *ethos* de salvación y *ethos* mundano como hace la teoría de la «moral autónoma en el contexto cristiano». Lo que sí es posible es distinguir en el plano de lo humano un *ethos de la razón* como «subconjunto» de un *ethos* cristiano, que en última instancia tiene su fundamento en la revelación. Pero eso implica precisamente que también el «*ethos* mundano» sería parte *constitutiva del ethos* cristiano de salvación". *Ibid.*, pp. 574-575.

happiness but has later on gained access through the Revelation, which was concretely and totally fulfilled through Christ's grace⁵²¹.

V. BRIEF RÉSUMÉ

The use of Christian theological reflection in all types of HEC forums, Catholic-oriented or not, can be validly employed by bearing in mind the following points:

□ Dichotomous concepts in morals, typical of contemporary era's secular morality, is the root cause of skepticism in rendering Christian moral perspectives in the American HEC discussions.

□ Harmony between faith and reason is achieved by promoting a sincere interdisciplinary dialogue between theology and bioethics. Antagonistic or heterogeneous attitudes can be avoided by recognizing faith's competence, and natural reason's contributions and limitations.

□ There is a need to apply supernatural theology to support a genuine moral approach: morality lived out to the fullest.

□ Although various theologians have indeed tried their best to harmonize Christian moral order with humanistic ethical order to explain its justification to HEC discussions and forums, the Church has nevertheless indicated that the moral view which tries to make a sharp distinction between the order of ethos and the order of salvation leading to actual denial of Divine Revelation, or its concrete, permanent and universal validity, is erroneous. God's moral ordination or salvific direction in man's concomitant autonomous moral life is not limited to mere exhortation or motivation. Christian moral reflection is not simply a voice which says nice things in bioethics forum. The rational mode of attaining the good (human ethos) and the intentions or motives which makes one person a good person (found in the ethos of salvation) has an indissoluble intentional unity. The human ethos whose morality is fundamentally derived from human reasoning, should be a subjunction of the Christian ethos whose ultimate recourse is found in the Revelation. To achieve this unity a harmonious reflexive consideration of these two should hence, be rendered in bioethics forums.

⁵²¹ R. García de Haro views the specificity of Christian morals is concretized not so much through a vague imitation of Christ's actions or ideas, but rather, through an intimate transformation of our life as a fruit of the vital union with Christ through his grace. He said: "La vida cristiana consiste en unírnos a Cristo y tomarle como modelo: en su seguimiento e imitación. Cristo es el principio y el modelo de la actividad moral cristiana tanto en el orden natural como sobrenatural. El se ofrece como dechado no sólo a los cristianos sino a todos los hombres... [pero] este seguimiento e imitación de Cristo no consiste, pues, según la doctrina católica, en una mera copia externa y vaga –a distancia de siglos– de sus gestos e ideas, sino que es el resultado de una transformación íntima, de una comunicación e infusión de su misma vida, que se ha de reflejar luego en toda la conducta. Es fruto de la unión vital con Cristo por la gracia". R. GARCIA DE HARO, *La Sabiduría...*, op. cit., p. 38.

PART TWO: CHAPTER 5

Theological Contributions in the HECs

I. GENERAL PRESENTATION

This chapter deals with a couple of practical bioethics cases which exemplify two of the three traditional functions of the HEC (rendering case consultations, forming hospital directives or policies and providing education). One case comes from a secularly-oriented HEC, and the other, from a Catholic-run HEC group. Through a comprehensive analysis of these two HEC bioethics cases, we endeavor to explore some factors whereby theological reflections or perspectives may be satisfactorily delivered to any of the two commonly encountered HEC moral orientations. This presentation attempts to identify and specify some of the important theological contributions which can be readily made available in the HEC discussions whether they be held in secularly or religiously motivated groups. In this manner, it shall show how theological views can validly enter into bioethics discussions in whatever HEC type of organization that genuinely promotes a spirit of dialogue in their search for the best possible moral advice, directive formulation, and education to various people of diverse cultures, beliefs and moral outlooks.

II. Case I: “Prolonging Life Issues” Using HEC Case Consultation in a secular-motivated HEC

A. Case description

A case consultation to an HEC⁵²² was done because of ethical conflict of interest regarding a 22-year old mongoloid but happy girl who one day, fell ill necessitating

⁵²² This is an abridged account of an actual Ethics Committee at work, taken from a published section without a specified author entitled: *Is Dying Better than Dialysis for a Woman with Down Syndrome?*, in “CQ of Healthcare Ethics”, 3 (1994) 270-271.

dialysis to save her life. The mother, acting as her immediate representative in decision making, supported by the other family members, as well as the patient's attending physician, wanted to withhold dialysis treatment to this Down syndrome and kidney patient. However, the patient's nephrologist thought that dialysis should be given instead. The following is the case report presented to the hospital ethics committee:

Lilian T. is a 22-year old woman with Down Syndrome, who is cared for by her mother, has lived all her life in a small town, and is a quiet, cooperative, and happy individual. Her main pleasures revolve around a steady routine that includes sewing in a sheltered workshop 5 days each week. She experienced no medical problems except for mild kidney failure and repeated bouts of pneumonia until recently when she had a particular severe case of pneumonia that led to complete kidney failure and some liver damage. Her kidney failure has resulted in pericardial effusion that, without dialysis, will probably result in her death within a few weeks. If she does receive dialysis, her prognosis for living will be another 10-20 years, when it would be expected that she will die from the usual complications of Down Syndrome.

In this state of illness, it was shown that Lilian has no sign of comprehending the fact that her current illness is life threatening, even though it has been explained to her in clear and simple terms on a number of occasions. She is described as accepting treatment cooperatively but she becomes restless and complains loudly when undergoing an uncomfortable procedure, such as placement of an intravenous line.

Her family consists of her mother and a younger sister. Her father left the family when she was 6 years old. She also has an uncle who is very fond of her and visits often.

Lilian's mother has gone through a painful soul-searching process to try to decide whether to approve dialysis for her daughter or to let her die. She has discussed this at length with the other family members and her priest. They are unanimous that dialysis should not be imposed on the patient because they feel it would cause her quality of life to diminish to an intolerable level. Lilian is quite dependent on routine, and all family members agree that to disrupt this routine with dialysis would only serve to make her miserable. They are also concerned about the pain that dialysis could cause. They wanted to minimize the amount of pain the patient has to withstand because she does not understand the reason for the pain and is frightened by it.

Lilian's mother loves her very much, has been doing what she feels is best for her daughter, at considerable financial and emotional cost to herself and the rest of the family, has always been protective of her, and genuinely grief stricken at the thought of losing her. But still feels that for her, dying is better than dialysis.

Dr. Jackson, Lilian's attending physician and has care for her for many years, would think that although he would choose dialysis for Lilian, in cases such as this, this decision should be left to the family.

Dr. Reed is Lilian's nephrologist. She strongly argues for the position that the patient should not be denied dialysis just because she is mentally-retarded. If another patient had the same medical condition but did not have Down Syndrome, the question of whether or not to dialyze would not have arisen. To fail to dialyze Lilian, she counters, is discriminatory on the basis of a disability and is morally offensive and legally culpable.

Both physicians come to the ethics committee requesting help in deciding whether or not to follow the family's wishes.

B. The HEC-at-work and the recommendation over the case

This case was presented to a particular HEC for deliberation. A forum was formed involving Lilian's mother, an uncle, Dr. Jackson and Reed and two nurses caring for Lilian, a kidney patient who is an experienced dialysis receiver, and a social worker. It was verified that the diagnosis and long term prognosis of the proposed dialysis treatment

is good. The discussion was fundamentally centered on the burden of dialysis: that it would cause a moderate disruption to the patient's life, and that, the travel time to go to the nearby hospital for such sessions is about 90 minutes. Additionally, one member (a dialysis woman patient and doctor by profession) commented that her dialysis is beneficial and that her life is worth the disruption caused by such treatment. Thus, she recommended to Lilian's mother not to deny her daughter the right to dialysis treatment despite her mental retardation.

The HEC recommended two options. The first was to institute dialysis on a trial basis with the possibility of discontinuing it later, if for any reason the therapy seemed excessively burdensome to the patient or if her medical condition deteriorated such that the burdens outweighed the benefits. The second option was to postpone a final decision regarding dialysis but to aggressively pursue education of the family about the actual experience/benefits of dialysis, and afterwards, whatever be the family's final choice shall be accepted as ultimate decision.

The result of the HEC discussion was the following: the mother accepted the recommendations but preferred the second option because she insisted being frightened by the change in Lilian's routine caused by the dialysis, and that when asked by a social worker what would she feel if her daughter dies, she said: "it would leave a big hole in all our lives... but could not justify keeping her alive and miserable just to fill that hole"; Other HEC members said that dying of renal failure was not an uncomfortable way to die; the nurses felt that life would be worth saving and that they would get discouraged for not fulfilling their professional duties by letting her die despite of the available means of treatment. However, there was a unanimous opinion that the family should learn more about the dialysis such that after this move, they have to keep the family's decision as ultimate and final.

Lilian's mother met for a lengthy discussion with the physician who also is a kidney patient and experienced dialysis receiver. They talked about the impact of dialysis on a patient's life. Two days later, the whole family met with the dialysis team at the neighboring city hospital to explore the procedure more thoroughly. Once more, the family went through a process of weighing all the pros and cons. Finally, the family decided against dialysis for Lilian. She died of renal failure two weeks later ⁵²³.

C. Comments

From the above case discussion, let us condense the important bioethical issues: Insofar as Lilian's illness is concerned, the ethical question is whether or not being a disabled Down Syndrome patient (incompetent in giving a responsible and informed consent) is protected to exercise the right to adequate treatment (following the Civil Right Statutes and Rehabilitation and Disabilities Act) in this case, forgoing or providing dialysis.

Insofar as the mother is concerned, we are dealing with an ethical issue which is called the «principle of substituted judgment» in favor of the patient's best interest⁵²⁴.

⁵²³ Cf. *Ibid.*, pp. 275-276.

⁵²⁴ "Because the rule that allows patients to make their own healthcare decisions is designed to serve the interest of autonomy, legal and ethical analysts have agreed that any alternative decision-making

The «patient's best interest» can be assessed completely whenever a competent patient declares his medical desires for himself⁵²⁵. Since Lilian is incompetent since birth, there is no way to assess her preferred values in full. Actually, substituted judgment is permitted in some circumstances whenever someone has to make the decision due to the incompetence of the patient concerned. Thus, there is no doubt in this case, that the mother, who knows her daughter's values and interests at least as much as anyone else, who is closest to her, and who has always shown her tender loving care, is by standard, the appropriate substitute to her daughter's best interest.

A bioethics commentator, Robert L. Schwartz, opines that the mother's decision to forgo dialysis should be questioned due to the lack of interest on an important basis or standard of substituting judgment for the patient's best interest. According to R. Schwartz:

«The generally applied substantive decision making standard requires the decision that is in the "best interest" of the patient... [which presumes] that the maintenance of life is virtually always in the best interest of the patient and that we must choose to preserve life over any alternative to be faithful to the "best interest" standard»⁵²⁶.

He argues then that «preservation of life» is one of the gold standard in protecting the patient's best interest when substituted judgment is carried out⁵²⁷. He based this standard from the legal positions which happened in the Missouri court defending Nancy Cruzan's life, or the Alabama case whereby it was ruled that a brain-dead child should be sustained in artificial life-support even against parents' wishes.

It is more evident then, that the HEC deliberation in our case did not deal too much along the value of preserving life as the major point of ethical discussion to the extent that, in my observation and that of Schwartz's, this ethical value occupied a secondary place in the HEC forum. The value of life issue, at least for Schwartz, is legally important, and is considered a gold standard in applying the substituted judgment.

One can appreciate the clear and reasonable manner on how they conducted the HEC forum. We find convincing arguments from the manner how the membership and participation were held, through the logical ethical analysis of the case. For instance, I observe that they used a utilitarian method in solving this ethical dilemma, because the

process applied when a patient is unable to make a healthcare decision should serve the patient's autonomy, to the extent it is possible to do so". *Ibid.*, p. 272.

⁵²⁵ "A patient's autonomy interest is served when the values, desires, and individual concerns that patient form the basis of the decision made for the patient... A court may recognize any person who understands the values of the patient and authorize that person to act as guardian or conservator of the patient for healthcare decision-making purposes, and may appoint an agent (called an attorney in fact) to make decisions for them when they become incompetent". R. L. SCHWARTZ, *Commentary: Is Dying Better than Dialysis for a Woman with Down Syndrome?*, in "CQ of Healthcare Ethics", 3 (1994) 272.

⁵²⁶ *Ibid.*, p. 273.

⁵²⁷ In this case, Schwartz thinks that the mother is carried away by her best interest rather than for her daughter's (patient's) best interest. Dialysis for him, is "a process that is part of a regular routine for hundreds of thousands of Americans". So, what is best he says, is to try out the dialysis first and see the consequences it has for Lilian. If Lilian becomes alright, then fine. If the patient becomes, from the mother's judgment, more miserable, then, the solution resides in respecting the substituted judgment. Cf. *Ibid.*, p. 274.

analysis is based upon the «efficiency» and «beneficence»⁵²⁸ of the available treatment to a disabled and incompetent child by weighing its consequences⁵²⁹ to the patient's quality of life and the mother's way of life.

But going back from the case's description, it was mentioned that the mother underwent a soul-searching process in trying to decide about her daughter's condition by discussing it with the family and her priest. Nevertheless, the absence of a priest or a theologian can be noticed in this secularly composed HEC. The fact that the mother has gone to see her priest is a factor that warrants the participation of these persons. This comment then, rests on the fact that an HEC as in this case, also needs to be backed up by more profound foundation (more significant than by just listening to the nurses' opinion affected by professional emotions) especially in evaluating fundamental moral issues such as the value of life itself. The evaluation must not only be done along legal perspectives (as Schwartz validly mentioned), but also along a theological point of view. HEC members, especially the Christian participants, may provide this theological viewpoint or perspective. A theologian's presence may be appropriately called for as resource person for this topic.

Although there may be different ways to ethically solve this issue, this section shall attempt to draw out some points where theological perspective can enter into this particular discussion. And in this manner, it shall demonstrate the different contributions which theological views may share in bioethics arguments along the line of the «value of life».

D. Theological contributions

Questions about prolonging life, or when to allow the death of the patient to come are commonly encountered bioethics issue yet often considered along legal perspectives in many American court cases, as Schwartz has earlier mentioned. Despite those legal aids and contributions in regulating the ways and means to prolonging life or allowing death to come, the theological perspective may help acquire a deeper understanding and more responsible recommendation in the HEC decision making. D. Brodeur and K. O'Rourke once said:

«A study of the history and theology of the Catholic teaching on this issue may help to develop a consensus among those who accept the teaching of the Church, as well as among those who primarily follow the ethical norms of our pluralistic society»⁵³⁰.

⁵²⁸ Beneficence means the duty to do what is good or in the best interest of another.

⁵²⁹ A commentary led by Marcy Luedtke from their St. Mary's Hospital HEC in Rhinelander, Wisconsin said that this ethical question falls under the principle of proportionality described as: "the balancing of benefits and burdens in examining the various immediate and long-term consequences of action, i. e., what is the burden to this family? How is she going to perceive this procedure? How will the pain and disruption affect her?..." Cf. M. LUEDTKE, *Commentary: Is Dying Better than Dialysis for the Woman with Down Syndrome*, in *St. Mary's Hospital Bioethics Committee, Rhinelander, Wisconsin*, in "CQ of Healthcare Ethics", 3 (1994) 274-275.

⁵³⁰ K. D. O'ROURKE, D. BROUDEUR, *Medical Ethics: Common Ground for Understanding*, vol. 2, The Catholic Association of the United States, St. Louis, MO 1989, p. 120.

Thus, this section shall deal on the various Catholic theological arguments and reflections regarding the value of human life. Particularly, it will discuss a bioethics issue on when it is morally acceptable to prolong the life of a disabled or critically-ill patient by utilizing theological arguments and reflections. The use of these theological perspectives, applied in the HECs is aimed at showing that theological moral viewpoint can satisfactorily and adequately serve the HEC's pluralistic objectives and functions.

1. Brief biblical meaning of human life

In the previous chapter, we have already explained about the Scripture's importance and role in the theological analysis. Taking this for granted, we shall now see how the Word of God can help us understand the meaning of man's dignity and the value of human life.

There are numerous biblical quotations to support the scriptural teachings on the meaning and purpose of human life. But what is noticeable is that starting from the Old to the New testament writings, the Scripture has undergone a gradual pedagogical explanation of the meaning of human life⁵³¹. God has been helping us to understand little by little who we really are, and what value our human life has in this world and in the world to come⁵³². This section is not an exegetical run-down of these biblical passages; rather, by citing out few of them⁵³³ we hope to demonstrate that human life is really a gift and valuable good coming from God which is to be justly conserved and respected.

For instance, the beginning narrative passages of the first chapter of the Book of Genesis relates to us God's sharing of his Love and Goodness by creating and giving us human life. While we in return, are moved to reciprocally acknowledge this gift by respecting it and fostering or generating human life. Hence, in general terms, it teaches us God's loving authorship and sharing in His living creation: which is manifested by giving us life, and which on the other hand, requires man's reciprocal relationship with/for another person, and with/towards his Creator.

⁵³¹ "Our understanding of what it means to be a human person has not remained static, but has grown with the growth of the revelation which is represented in the Bible and in the Faith of the Church. Current understanding of the nature of man has evolved beyond that to be found in the Old and New testament or even in the earliest teachings of the Church... It is clear that the bible writers intended to say the most important things about the human person for the sake of his or her relationship with God. All other subsequent attempts to understand the human person would have to be evaluated in the light of that relationship... It becomes important, and still is, for the Church to show how the teachings of the Bible concerning the nature of man are not inconsistent with new methods of thought, if they are used properly". D. G. MCCARTHY, E. J. BAYER, J. A. LEIES (eds.), *Handbook on Critical Life Issues*, Pope John Center, Massachusetts 1988, pp. 14-15.

⁵³² "El hombre está llamado a una plenitud de vida que va más allá de las dimensiones de su existencia terrena, ya que consiste en la participación de la vida misma de Dios. Lo sublime de esta vocación sobrenatural manifiesta la grandeza y el valor de la vida humana incluso en su fase temporal. En efecto, la vida en el tiempo es condición básica, momento inicial y parte integrante de todo el proceso unitario de la vida humana. Un proceso que, inesperada e inmerecidamente, es iluminado por la promesa y renovado por el don de la vida divina, que alcanzará su plena realización en la eternidad". JOHN PAUL II, Encyclical letter, *Evangelium Vitae* n° 2.

⁵³³ For instance, the Encyclical *Evangelium Vitae* is exegetically structured and systematically composed utilizing numerous biblical passages and commentaries supporting the meaning and value of human life.

It also indicates that man's life is noble and great because he was created in the likeness or image of God (*Gen.* 1, 26-27), and that each man is made for other human persons also⁵³⁴. Man in effect, is a special creature because of the following factors: he is made in God's image making him capable of relating himself with his Creator as his life's author and preserver, and with the rest of humankind for having the same dignity as himself. Additionally, he is made sublime and honored because God chose to place human beings in this relationship of power over all things (*Gen* 2,19-20 and 1,28)⁵³⁵.

Later on in the Old Testament narrative, it emphasizes man's life to be intimately related with that of respecting other human beings' lives⁵³⁶. For instance: the precept which says "thou shall not kill" or "You shall not bear hatred for your brother in your heart... Take no revenge and cherish no grudge against your fellow countrymen. You shall love your neighbor as yourself" (*Lev* 19, 17-18).

It is interesting to mention at this point that love and care for the others is an essential relational factor in manifesting his respect for the life and dignity of his neighbors, as explained by the document *Evangelium Vitae* from Cain's words: "Am I my brother's keeper?" (*Gen* 4, 9).

«Yes, each man is "his brother's keeper", because God confides man for man. And viewed from this task, God also gives to each man the freedom which processes an *essential relational dimension*»⁵³⁷.

The scripture did not only focus our attention on the «person-other persons-God relationship». It also explains the integral constitutive relationship of man's life: that it is a unity of body and soul, *corpore et anima unus*⁵³⁸. God has given each one of us the constituents of a whole human living person worth the reverence and dignity proper to

⁵³⁴ "The necessity for a genuine relationship with God is mirrored in the human person's need for a genuine relationship with other human beings. The human person is most himself or herself when he or she is in relationship with others. «God created man in his image; in the divine image he created him; male and female he created them» (*Gen* 1, 27)". D. G. McCARTHY, E. J. BAYER, J. A. LEIES (eds.), *Handbook on Critical Life Issues...*, *op. cit.*, pp. 16-17.

⁵³⁵ "So the Lord God formed out of the ground various wild animals and various birds of the air, and he brought them to the man to see what he would call them" (*Gen* 2, 19); "Be fertile and multiply; fill the earth and subdue it" (*Gen* 1, 28).

⁵³⁶ The encyclical *EV* relates and explains the Cain and Abel narrative (*Gen* 4, 2-16).

⁵³⁷ "Sí, cada hombre es «guarda de su hermano», porque Dios confía el hombre al hombre. Y es también en vista de este encargo que Dios da a cada hombre la libertad, que posee una *esencial dimensión relacional*". JOHN PAUL II, Encyclical letter, *EV* n° 19.

⁵³⁸ This term is a Vatican II formulation (on «the constitution of man» in *Gaudium et Spes* n° 14) originating from the Scriptures. It is from here that the fundamental demand in ethics regarding the personal dignity of the human body is established. A. Sarmiento remarks: "El cuerpo y el alma son dos coprincipios constitutivos del hombre, una única persona. La participación en el Ser de Dios que, creado a su «imagen», le corresponde al hombre, tiene lugar tanto a través del cuerpo como del alma. El hombre participa de la condición de «imagen de Dios» –es persona– gracias a su espíritu: en la espiritualidad está la razón de su subsistencia; pero la condición de «imagen de Dios» –de persona– es propia también e inseparable de la corporeidad. Es la 'totalidad del hombre' lo que se designa como persona". A. SARMIENTO, G. RUIZ-PÉREZ, J.C. MARTÍN, *Ética y Genética: Estudio Ético sobre la Ingeniería Genética*, Euns, Pamplona 1993, pp. 22-23; see also JOHN PAUL II, *35th General Assembly of the World Medical Association*, in *Insegnamenti di Giovanni Paulo II*, VI/2, Editrice Vaticana, Rome 1983, p. 922.

his being: he who is made of both human body and soul whereby the consequence of its separation is the privation of life, called death⁵³⁹.

In the New Testament, Jesus Christ elevates these fundamental points to another remarkable moral teaching. D. McCarthy comments:

«[other] elements of human life are part of a relationship which God wishes the human person to have, a covenant or bond which God wishes to share with the human person. The full nature of this bond was to be revealed only with appearance of Jesus in Israel's last days. The New Testament is concerned with unfolding what Christ shows to each human being about how it means to be a person. Indeed, Jesus makes it possible for each of us not only to know what it is to be a person but actually to be one»⁵⁴⁰.

Hence, an important feature of Christ's teaching about human life is that he radically taught us the concrete and *personal* reality of life because He (as the second Person of the Blessed Trinity) personally revealed and announced Himself as the Way, the Truth and the Life (cf. *Jn* 14, 6)⁵⁴¹. For instance, Jesus personally taught us the way to salvation while we confront concrete human experiences in life⁵⁴², i. e., by courageously facing each person's demands of suffering, fear, limitations, sinfulness and death. He insists on conversion (*Lc* 5, 31-32), love for God and for others⁵⁴³. *Evangelium Vitae* says:

«The commandments of God to protect the life of man has more profound aspect in the demands of love and reverence towards the person and his life. This is the teaching which St. Paul, by echoing Jesus' words (cf. *Mt* 19, 17-18) guides the Roman Christians: "For thou shalt not commit adultery; thou shalt not kill; thou shalt not steal; thou shalt not covet; and if there is any other commandment, it is summed up in this saying: *Thou shalt love thy neighbor as thyself*. Love does no evil to a neighbor. Love therefore is the fulfillment of the Law". (*Rom* 13, 9-10)»⁵⁴⁴.

⁵³⁹ Example of biblical descriptions are: the union of flesh (*basar*), and Blood (*dam*) signifies life/spirit (*nepes* or *ruah*). Cf. *Dt* 12, 23; *Zech* 12, 1; *Is* 38, 16; *Ps* 78, 39.

⁵⁴⁰ D. G. MCCARTHY, E. J. BAYER, J. A. LEIES (eds.), *Handbook on Critical Life Issues...*, *op. cit.*, p. 21.

⁵⁴¹ «En realidad, el *Evangelio de la vida* no es una mera reflexión, aunque original y profunda, sobre la vida humana; ni sólo un mandamiento destinado a sensibilizar la conciencia y a causar cambios significativos en la sociedad; menos aún una promesa ilusoria de un futuro mejor. El *Evangelio de la vida* es una realidad concreta y personal, porque consiste en el anuncio de la persona misma de Jesús, el cual se presenta al apóstol Tomás, y en él a todo hombre, con estas palabras: «Yo soy el Camino, la Verdad, y la Vida». JOHN PAUL II, Encyclical letter, *EV* n° 29.

⁵⁴² «En Jesús, «Palabra de vida»..., el Evangelio de la vida abarca así todo lo que la misma experiencia y la razón humana dicen sobre el valor de la vida, lo acoge, lo eleva y lleva a término». *Ibid.*, n° 30.

⁵⁴³ «Jesus sees the human person as we have seen that person pictured in the Jewish Scriptures. An important change, however, is Jesus' call to face courageously our limitations, fears, and sinfulness, and His offer of a change in ourselves, from the very roots of our being up... In revealing Himself as the restorer of our freedom to respond worthily to God, what does Jesus reveal to us? He reveals His Love... This means that one cannot be a person without being called to be in a communion of love with others». D. G. MCCARTHY, E. J. BAYER, J. A. LEIES (eds.), *Handbook on Critical Life Issues...*, *op. cit.*, pp. 21-22.

⁵⁴⁴ «El mandamiento de Dios para salvaguardar la vida del hombre tiene su aspecto más profundo en la exigencia de veneración y amor hacia cada persona y su vida. Ésta es la enseñanza que el apóstol Pablo, haciéndose eco de la palabra de Jesús (cfr *Mt* 19, 17-18), dirige a los cristianos de Roma: «En efecto, lo de: No adulterarás, no matarás, no robarás, no codiciarás, y todos los demás preceptos, se resumen en esta formula: *Amarás a tu prójimo como a ti mismo*. La caridad es, por tanto, la ley en su plenitud» (*Rom* 13, 9-10).» JOHN PAUL II, Encyclical letter *EV*, n° 41.

From the Old testament's teachings of God's authorship on human Life and His creation according to his image and likeness, through New testament's proclamation by Jesus Christ regarding human person's dignity founded in Love for God and others, form the main pillars to deeper understanding of the inviolable and sacred character of human life⁵⁴⁵.

Let us discuss further some recent doctrinal moral teachings based from the Scriptural affirmations but this time, applied in our concrete case discussion: on the theological perspectives about prolonging life in critical health care.

2. *Theological teachings on prolonging life*

In the past four centuries, there were already some theologians who started questioning how much effort one should exhaust to preserve life. "Would it be a sin to reject efforts to prolong life if those efforts involved grave suffering, prohibitive expenses, or other serious burdens? Are there situations when choosing to avoid pain, suffering, or economic burden would bring about death only indirectly? In the sixteenth century, theologians began to discuss the questions: When would it not be suicide to allow oneself to die? When would it not be euthanasia to allow another to die?"⁵⁴⁶

In a way, these ethical inquiries can be translated in our contemporary situation as, «the ethical questions regarding prolonging life in critical healthcare issues».

Let us take for instance the work (*relectio*) of the Spanish Dominican, Francisco de Vitoria⁵⁴⁷. First, he considered life as valuable and regarded food and nourishment as necessary for one who is sick. However, he did not think that it a mortal sin if it would result into too much effort or impossibility for a gravely sick person to eat. Second, he thought that drugs may be used to prolong life.

In considering the lawfulness of abstaining from specific food even if death would result, Francisco de Vitoria said:

«It is one thing not to protect life and it is another not to destroy it. One is not held to protect his life as much as he can. Thus one is not held to use or eat food which are the best or most expensive even though they are the most healthful. Just as one is not held to live in the most healthful place neither must one use the most healthful foods. If one uses food which men commonly use and in quantity which customarily suffices for the preservation of strength, even though one's life is shortened considerably, one would not sin. One is not held to employ all

⁵⁴⁵ Cf. SACRED CONGREGATION FOR THE DOCTRINE OF FAITH, Instruction *Donum Vitae*, (Feb. 22, 1987), Intro., 5: AAS 80 (1988), 76-77; CATHECHISM OF THE CATHOLIC CHURCH, n° 2258.

⁵⁴⁶ K. D. O'ROURKE, D. BROUDEUR, *Medical Ethics: Common Ground...*, op. cit., p. 121.

⁵⁴⁷ A *Relectio* is a set of lectures Francisco de Vitoria, a preeminent theologian in the University of Salamanca, would give at the beginning of the school year. In one of his *Relectio*, he said: "If a sick man can take food or nourishment with a certain hope of life, he is required to take food as he would be required to give it to one who is sick. However, if the depression of spirits is so severe and there is present grave consternation in the appetitive power so that only with the greatest effort and as though through torture can the sick man take food, this is to be reckoned as an impossibility and therefore, he is excused, at least from moral sin". FRANCISCO DE VITORIA, *Relectio IX: de Temperantia*, 1587: Critical edition, vol. 3, Imprenta La Rafa, Madrid 1933-1935.

means to conserve life but it is sufficient to employ the means which are intended for this purpose and which are congruous»⁵⁴⁸.

According to the observations made by K. D. O'Rourke and D. Brodeur⁵⁴⁹ regarding Vitoria's judgment of the case, there are some moral theological norms that are still operative in the present Catholic teaching. These are: 1) A moral obligation to prolonging life was assumed, but it did not hold in all circumstances. Vitoria sought to be more specific about this obligation by asking, what means would be used to prolong life when one is not ill, and what means should be taken to prolong life when one suffers from a fatal disease. 2) A means to prolong life need not be used if it is ineffective, if its effect is doubtful, or if it involves a grave burden for the person in question. To be judged effective, a medicine or procedure had to prolong life for a "significant length of time." A means could be effective and, at the same time, involve a grave burden to the patient – for example, eating expensive food or moving to a more healthful climate. 3) Artificial and natural means to prolong life should be evaluated according to the same principles: are the means effective, or do they cause a grave burden? 4) The burden or inconvenience involved in prolonging life includes the psychic and economic burdens as well as the physical burden.

If we were to apply this list of ethical norms to our concrete HEC case study regarding Lilian's condition and her mother's interest, we could perhaps arrive at a better moral judgment, precisely because a higher value was considered right from the very beginning: the defense and protection of the valuable human life not only from its pure ethical view but also by bearing in mind the theological perspective of the case.

3. Recent developments on the concept of ordinary and extraordinary/proportionate and disproportionate means

The term «ordinary and extraordinary means» results from a profound development in the comprehension of aforementioned moral theological issues of our time⁵⁵⁰. Fr. Gerald Kelly in the 1950's used this term in defending the use of artificial nutrition and hydration, stating that the intravenous feeding is an «ordinary means» to prolong life and added that it could be considered extraordinary for a particular patient if he or she is not profiting «spiritually» from it⁵⁵¹.

In 1980, the Vatican issued a document regarding the use of this term⁵⁵². It explains in the document that the word ordinary is not simply a «common» means to prolong life, nor the word extraordinary as mere «expensive, difficult to obtain or inconvenient to arrange for the average person», but rather, «ordinary» may mean morally obligatory, while «extraordinary» may mean morally optional. These terms may also similarly mean

⁵⁴⁸ *Ibidem*.

⁵⁴⁹ Cf. K. D. O'ROURKE, D. BROUDEUR, *Medical Ethics: Common Ground...*, *op. cit.*, p. 123.

⁵⁵⁰ For instance, the theologian D. Bañez (1604) spoke about extraordinary means being "optional". Cardinal de Lugo (1660) firmly established the terms «ordinary» and «extraordinary».

⁵⁵¹ Cf. G. KELLY, *The Duty to Preserve Life*, in the "Theological Studies", (June 1950) 218.

⁵⁵² Cf. SACRED CONGREGATION FOR THE DOCTRINE OF FAITH, *Vatican Declaration on Euthanasia*, (June 26, 1980), in "Origins", 10/10 (Aug. 14, 1980) 154-157.

«proportionate» or «disproportionate» means⁵⁵³. In secularist's terminology, they prefer to use «burdens» and «benefits» when referring to equivalent idea.

Since the time of Pope Pius XII, this term has won prestige especially with the description which says that the ordinary and extraordinary means should require: «the circumstances of persons, places, times and cultures»⁵⁵⁴.

Applying then the Pope's description to our case, it is logical that such circumstances (those referable to the mother's preference and Lilian's condition) should be considered. These circumstances may mean the conditions of ethical judgment based upon the effectiveness or gravity of burden for a particular patient. Or in a more modern medical context, «extraordinary or ordinary means» may also signify, distinguishing whether a medical therapy is situated within the «standard» health care or verified to produce «good prognosis»⁵⁵⁵. Almost all these factors, it seems to me, have been discussed in the HEC forum we are analyzing. But why is it that in spite of the established good prognosis that Lilian would have had through the use of dialysis, the mother still opted to deny her this standard treatment? Could it be possible that nothing, or very little was dedicated in viewing the benefits or values of Lilian's life despite her mongoloid condition and present kidney problem?

4. Rules on proxy or substituted judgment

If the mother, acting according to her judgment, decides what is «good» for her daughter, we call this as the «proxy consent» or «substituted judgment». O'Rourke and D. Brodeur say:

«The Church's traditional teaching, then, calls on the individual to decide what is ineffective, what constitutes a significant time, and what is too burdensome. The theologians presumed that if one is unable to decide for oneself, a relative or friend should decide. This is called "proxy consent" or "substituted judgment". Persons close to the one needing help are presumed to be moral agents for the incompetent person because they love the patient and will determine what is of benefit to the patient. If this presumption is proven false, others, even the courts, should make the ethical decisions for incompetent patients»⁵⁵⁶.

⁵⁵³ "Over the years, the terms also were used in a specific ethical sense to signify whether a particular means to prolong life was morally obligatory (ordinary) or morally optional (extraordinary), for a particular person. Used in the generic sense, the terms signified whether the medicine or procedure in question was readily available for the average person. Used in the specific sense, the terms denoted whether the means to prolong life would be effective and without grave burden for a particular person. In theological writings, the terms "ordinary means and extraordinary means" were often used interchangeably. A medicine or surgical procedure could be designated as ordinary in a generic sense but as extraordinary when applied to a particular patient... In 1980 the Church Magisterium spoke again on the matter of prolonging life. The document did not change the traditional teaching in any way, but sought to clarify it by stating: the terms "ordinary" and "extraordinary" are less clear today; therefore the terms "proportionate" and "disproportionate" means might be more accurate". K. D. O'ROURKE, D. BROUDEUR, *Medical Ethics: Common Ground...*, *op. cit.*, pp. 123-124.

⁵⁵⁴ PIUS XII, *The Prolongation of Life*, in "The Pope Speaks", 4/4 (1958) 343.

⁵⁵⁵ Cf. K. D. O'ROURKE, D. BROUDEUR, *Medical Ethics: Common Ground...*, *op. cit.*, p. 125.

⁵⁵⁶ *Ibid.*, p. 128. Although Lilian has never been a competent patient, Pope Pius XII indicated that the proxy may act upon presumed will. It stated: "The rights and duties of the family depend upon the presumed will of the unconscious patient if he is of age and *sui juris* (having full legal right or capacity).

The proxy's obligation is to make sure that judgments are carried out according to patient's best interest. To apply this rule, first, (as Schwartz mentioned earlier) the gold standard for such obligation is to protect and preserve life when it is possible by presupposing the obligation of providing «comfort care»: a manifestation of genuine health care for the patient's valuable life. Second, G. M. Atkinson mentioned that «comfort care» should also include the spiritual goal of life⁵⁵⁷. We shall discuss these two points briefly.

5. *Comfort for critical care*

The main aims of medical health care are to cure, to treat and to comfort. Patients who have good prognosis to standard treatment need these three basic assistance. On the other hand, the life of fatally ill persons need not be prolonged using useless medical means, although it does not imply that they should be neglected of patient care or comfort, be it physical or spiritual⁵⁵⁸. The life of an ill person, whether he be in critical or non-critical condition should be respected by everyone. And the respect for one's life means avoiding through an act of omission or commission anything which is intended in merely shortening his life; or if he is in agony, by providing comfort, both physically and spiritually. This health care and comfort for the critically ill can be based from Christian charity which John Paul II invited everyone to perform. He said that we are called to act as «good Samaritans» to those who suffer from illness, physically and spiritually⁵⁵⁹.

Let us apply this to our case. Lilian's condition was not a totally fatal case. It was shown that if the standard kidney treatment (dialysis) were administered, it could have provided a good prognosis. Nevertheless, it was mentioned earlier that there were reasons to believe that Lilian suffered pain from the injections and similar treatments. My impression is that «comfort care», done by easing pain caused by the dialysis procedures can be actually provided without any technical difficulty. At least, comfort care by alleviating pain (intended not to completely eradicate it), is more respectful of Lilian's valuable life than letting her die. Providing comfort to Lilian's apparent but mild pain is an act of genuine caring, loving and comforting similar to the attitude exemplified in the parable of the «good Samaritan». This generosity is what we know as «Christian charity».

Where proper and independent duty of the family is concerned, they usually are bound only to use ordinary means". PIUS XII, *The Prolongation of Life*, in "The Pope Speaks", 4/4 (1958) 343.

⁵⁵⁷ Cf. G. M. ATKINSON, *Theological History of Catholic Teaching on Prolonging Life*, in D. MCCARTHY, A. MORACZEWSKI (eds.) in *Moral Responsibility in Prolonging Life Decisions*, Pope John XXIII Center, St. Louis 1981.

⁵⁵⁸ "Occorre innanzitutto richiamare il rispetto della vita e della dignità del morente quando, nonostante le cure prestate, la morte non sembra più evitabile. La presenza della sofferenza anche in fase terminale, mentre dovrà stimolare tutto l'impegno per lenire il dolore e per sostenere lo spirito del morente, non dovrà consentire mai «azioni o omissioni che per natura loro o nelle intenzioni di chi le pone abbiano come scopo quello di abbreviare la vita per risparmiare la sofferenza, al paziente o ai parenti» (Dichiarazione sull'eutanasia della Congregazione per la dottrina della fede, 5 maggio, n° 11)". JOHN PAUL II, *Il Ricorso all'eutanasia è abdicazione della scienza: Ai partecipanti ad un Corso di studio sulle «preleucemie umane»*, Nov. 15, 1985, n° 5.

⁵⁵⁹ The need to comfort the ill from physical and spiritual suffering is compared to the good deeds of the Good Samaritan by John Paul II: "Buon Samaritano è ogni uomo che si ferma accanto alla sofferenza di un altro uomo, qualunque essa sia". JOHN PAUL II, *Ciascuno di noi è chiamato ad essere il Buon Samaritano, Ai partecipanti al IV Congresso mondiale di broncologia*, June 11, 1984 in D. TETTAMANZI (ed.), *Chiesa e bioetica*, Massimo, Milan 1988, pp. 219-220.

Now, let us suppose that the mother would feel «miserable» in seeing her daughter «suffer» while receiving dialysis. To justify the forgoing of Lilian's dialysis just to comfort disproportionately, the mother who feels horrified seeing her child suffer from mild pain, is far from acting according to the patient's interest. Lilian's best interest is presumed to be grounded in protecting her more valuable life. Denying Lilian's dialysis shows the relative preference in favor of the mother rather than upon the daughter's best interest. With this attitude, it is almost certain that the mother was more concerned on how she might have a more comfortable life (easing her personal misery), freed from the obligation or burden of taking care and sending Lilian to dialysis throughout her life by just letting her die as a consequence of forgoing dialysis.

The mother's conclusive attitude to forgo dialysis to Lilian may not be surprising because the HEC members did not focus their discussion on the value of patient's life. They missed to project the importance of respecting the value of life and were unfortunately confined within the discussions involving the physical and material burden of dialysis. The HEC members could have also imparted through *theological perspectives, the value of human life* and the merits of giving comfort and care to the ill by explaining, for instance, the meaning of Christian charity like the one demonstrated by the good Samaritan⁵⁶⁰.

6. *Spiritual concern for life*

Bioethics discussions should also look after the spiritual well-being of the patient. Obviously, this spiritual concern can be adequately rendered through the provision of a theological reflection in various moral inquiries. In as much as the human body is important in medicine and health care, so is the soul because this same body is intimately united to the soul which is the principle of human life. Human life is based on the unity of body and spirit⁵⁶¹. In other words, respect for human life is manifested by honoring the intrinsic values of the two integral constituents of life –body and spirit–. If we are concerned with the bodily needs of the patient, wherefore must we neglect the needs of the soul?

Hence, what place does our concern for patient's spiritual needs in health care ethics of human life have? What spiritual needs and how can we offer them to critically ill patients? Is there a priority over the bodily needs? These important theological questions

⁵⁶⁰ In this thesis, it is not intended to make an exposé of what Christian charity consists of. However, there are at least three particular truths which can help us understand the content of Christian love: 1) that every person must be valued as a unique, irreplaceable member of the human community based from the respect for his human dignity in the community; 2) that every person must be encouraged to play a role in the common life and fully share its fruits; and 3) that all persons must be helped to realize their full potentials for his total human and supernatural perfection. Cf. B. ASHLEY, K. D. O'ROURKE, *Health Care Ethics: A Theological Analysis*, The Catholic Health Association of the United States, St. Louis 1982, pp. 195-196.

⁵⁶¹ «L'unità sostanziale tra lo spirito e il corpo, e indirettamente col cosmo, è così essenziale che ogni attività umana, anche la più spirituale, è in qualche modo permeata e colorita dalla condizione corporea; mentre il corpo dev'essere a sua volta governato e finalizzato dallo spirito. Non c'è dubbio che le attività spirituali dell'uomo promanano da un centro individuale personale, che è predisposto secondo il corpo a cui lo spirito è sostanzialmente unito». JOHN PAUL II, *La sperimentazione in Biologia deve contribuire al bene integrale dell'uomo: Ai partecipanti ad un Convegno della Pontificia Accademia delle Scienze*, Oct. 23, 1982, n° 3.

are also to be considered in the HEC discussions. In virtue of the reality of the unified constituent of man just mentioned, spiritual concern should have a priority over the biological needs: nevertheless, it also warns against defiling them when this «subordination» is seen along the dualist's viewpoint.

«The great importance of this principle for medical ethics is that it establishes a norm for setting priorities when one human value must be subordinated to another... this hierarchy of values in terms of the biological, psychological, ethical, and spiritual dimensions of human personality. The spiritual and ethical values have higher priority than the psychological and biological values, but such priority must not be understood *dualistically* as if the lower can simply be sacrificed to the higher values. Rather, in the human person there is a mutual interdependence of the body and the soul, the lower and the higher»⁵⁶².

If man should be considered as a unity of body and soul, what is the core of the spiritual value in man's moral life?

St. Thomas, Francisco de Vitoria⁵⁶³, or Juan Cardinal de Lugo and Alphonsus Liguori⁵⁶⁴ discussed the importance of man's spiritual value in the moral aspect. They insisted that the moral measure of all human activity is whether it leads to God as the final end and ultimate happiness⁵⁶⁵. Therefore, human life is inseparably united to his bodily and spiritual life and that human life should be directed as much as possible, towards the fulfillment of his final or ultimate end who is God.

This theological notion was concretely applied by Pope Pius XII in biomedical moral issues when he declared the criteria regarding the use of ordinary and extraordinary means. He wanted to emphasize the importance of the spiritual aspect whenever criteria are applied to this method. Pope Pius XII, in 1957 explained the spiritual importance in bioethics decision making with the following words:

«Normally [when prolonging life] one is held to use only ordinary means –according to the circumstances of persons, places, times and cultures– that is to say, means that do not involve any grave burdens for oneself or another. A more strict obligation would be too burdensome for most people and would render the attainment of a higher, more important good too difficult. *Life, health, all temporal activities are in fact subordinated to spiritual ends.* On the other hand, one is not forbidden to take more than the strictly necessary steps to preserve life and health, as long as he does not fail in some more serious duty»⁵⁶⁶.

The recent document *Evangelium vitae*, which teaches primarily in the defense of human life, also reminded us of the need for spiritual help even in times of sickness and sufferings⁵⁶⁷. It emphasizes that while we are concerned of the possible cure or alleviation

⁵⁶² B. ASHLEY, K. D. O'ROURKE, *Health Care Ethics: A Theological Analysis...*, *op. cit.*, p. 198.

⁵⁶³ Cf. FRANCISCO DE VITORIA, *Relectio IX, de Temp. 1*, in *Relectiones Theologicae*, Lugduni 1578, Trans. in Cronin, pp. 48-49.

⁵⁶⁴ Cf. ST. ALPHONSUS LIGUORI, *Theologia Moralis*; J. DE LUGO, *Disputationes Scholasticae et Morales*, Vives, Paris 1868-1869.

⁵⁶⁵ "Secundum quod eis utendum est propter ultimum finem", ST. THOMAS AQUINAS, *S. Th.* II-II q. 65 a. 1.

⁵⁶⁶ PIUS XII, *The Prolongation of Life...*, *op. cit.*, p. 343.

⁵⁶⁷ "Incluso en el momento de la enfermedad, el hombre está llamado a vivir con la misma seguridad en el Señor y a renovar su confianza fundamental en Él, que «cura todas las enfermedades» (cf. *Ps* 103/102, 3). Cuando parece que toda expectativa de curación se cierra ante el hombre... también entonces el creyente

from medical assistance, there is also a need to offer possible spiritual benefits or «spiritual cure» because God, who is the source of health, is capable in curing all types of illness whether they be physical or spiritual⁵⁶⁸. Above all, spiritual assistance is essential when one is approaching death from critical or fatal illness because it will help him maintain hope in reaching his ultimate end (God).

E. Moral theological perspective governing case I

The following points are some of the gathered, concrete theological contributions regarding the case that are valid in HEC forums.

□ Human life is a fundamental good. The dignity of man is primarily manifested in the respect for life even in moments of sickness or in conditions whereby the person who by mental incapacity cannot exercise or has lost the freedom of deciding for himself. There are many biblical accounts defending the dignity of life.

□ Killing is objectively evil and contrary to the fundamental value of life. On the other hand, respecting life with the intention of prolonging it, may depend on the proper ethical and theological analysis of the ordinary or extraordinary/ proportionate or disproportionate means available. There is no list of human actions or medical procedures which can be permanently fixed to label as «always» ordinary or extraordinary. The “circumstances, places, times, and cultures” must be considered in the administration of these medical procedures. However, if these «morally good means» are out-rightly judged ineffective or futile, the obligation of prolonging life ceases.

□ Persons have the obligation to preserve the life of others based from the invitation to practice the act of love or charity (such as the Christian call to be like the good Samaritan).

□ If possible, the patient should decide what is best for himself following the dictates of good conscience. If this is not possible, a proxy may stand in the name of the «patient’s best interest». The gold standard for the proxy’s consideration of the patient’s best interest is the unselfish desire of protecting the patient’s life.

□ Inasmuch as human life is not only composed of physical body, but rather, is integrally united with the soul, the spiritual aspect of human life is therefore, also important, and at times, temporal or physical life may be subordinate to it.

III. Case II: “Contraception and abortion Issues” using HEC Policy development in a Catholic-run HEC

está animado por la fe inquebrantable en el poder vivificante de Dios. La enfermedad no lo empuja a la desesperación y a la búsqueda de la muerte, sino a la invocación llena de esperanza”. JOHN PAUL II, Encyclical letter, *EV* n° 46.

⁵⁶⁸ “La misión de Jesús, con las numerosas curaciones realizadas, manifiesta cómo Dios se preocupa también de la vida corporal del hombre. «Médico de la carne y del espíritu» (San Ignacio de Antioquía, Carta a los Efesios, 7,2)”. JOHN PAUL II, Encyclical letter, *EV* n° 47.

A. Hospital Policy description

Erlich H. Lowey, an HEC member and ethicist, questions the Catholic hospital's policy which prohibits the use of contraceptive hormone to rape victims that are brought in the emergency room⁵⁶⁹. Let us consider this case in detail⁵⁷⁰:

1. Case Policy presentation

A rape victim was admitted in a Catholic-run emergency room. The standard of care in treating rape victims throughout the country includes supplying hormones that appear to prevent ovulation and may also interfere with implantation of fertilized egg. For a number of years, this hospital's emergency room has these hormones materially available but has not ever been used to rape victim cases because the compassionate way these patients have been treated in the emergency room is to receive adequate medical treatment while at the same time, abiding by the hospital's policy that prohibits the administration of hormone therapy. If the patient does not wish to comply with this policy, she is brought to its doors to be referred to another hospital of their choice.

The hospital in this case is Catholic-run and is located in a predominantly Catholic diocese in the United States. Hormone prescription by physicians belonging to this institution is forbidden due to the existence of the «emergency room policy» issued by the bishop's office. The reason behind why the hospital conforms with the policy's restriction against hormone prescription to rape victims is based on the moral theological grounds. Since they want to always protect the rights of the unborn, (although it is less likely that the raped woman turn pregnant), they firmly believe that hormone therapy might produce abortifacient effects and in which case, this possibility affects them by «matter of faith». Moreover, this Catholic-oriented HEC explicitly declares in their «Statement of Purpose» that they are entirely committed in following the moral vision of the Church.

However, an HEC bioethics member challenges the existing policy. For him, what matters more is not so much on what the faith says, and much less, to defend it. Rather, he said that the psychological trauma suffered by the patient and the need for providing optimum compassion are more important elements in considering rape management. He contends that women who have been raped psychologically feel violated, shamed, and “dirty” and have the need to feel secure, understood and “cleansed”. The full range of services for rape victims may vary depending upon their needs and desires but at the very least offers a number of interventions, including the use of hormone therapy to prevent ovulation or implantation. He says that ethics committees in religious institutions, like in all other hospital ethics committees, must represent many points of view: they should serve the public as well as the hospital and are not in place merely to defend a particular

⁵⁶⁹ Cf. E. H. LOEWY, *Institutional Morality, Authority, and Ethics Committees: How Far Should Respect for Institutional Morality Go?*, in “CQ of Healthcare Ethics”, 3 (1994) 578-584.

⁵⁷⁰ A summary of a bioethics HEC case written by: E. H. LOEWY, *Institutional Morality, Authority, and Ethics Committees: How Far Should Respect for Institutional Morality Go?*, in “CQ Healthcare Ethics”, 3 (1994) 578-584.

faith or follow the theological view dictated to them by the Church⁵⁷¹. In other words, he is convinced that in a real HEC forum, members should not act as mere care-takers of a particular faith and theological view but rather, as protector of patient's needs by supplying her all possible means in which hormone administration should be one of them.

The aforementioned practical case lucidly elucidates the actual condition occurring in the American bioethics health care system. What place does theological reasoning occupy in the HEC forums? Does theological moral perspective used by the Catholic-run hospital have a real and valid contribution in HEC policy formulation?

2. HEC member's disagreement to theologically-based hospital policy

E. Lowey is a renowned bioethics consultant and member of a Catholic HEC organization that abides by the approved Hospital Ethical Directives for Catholic Hospitals. He thinks that an ethics committee requires, that individuals making up this committee must always represent diverse views and opinions intended to represent the various interests of the communities they serve⁵⁷². He does not like the idea of using the HEC as a defender of an institution's «faith convictions».

Thus, E. Lowey finds difficulty in recognizing the motive behind religiously based ethics committees. He doubts how a theologically-based policy can validly and freely maintain their institutionally regulated policy while at the same time, tolerant with the various opinions from other constituents with opposing views. In HECs with «partisan» or «religious/theological» orientation such as the Catholic HECs, he doubts the effective role of theology because for him, HEC forums that are based on theological perspectives produce “deep-seated ethical quandaries, especially in shaping policy, [such that they] are often unavoidable”⁵⁷³.

In his article, he provided us the Statement of Purpose of the HEC where he participates:

Role and purpose:

The committee functions to assist the Administrator to ensure the fidelity of the health care facility to the ethical principles upon which it is founded. The Ethics Committee fulfills this role through education, policy development and specific case consultation informed by Catholic ethical principles which govern every activities of the... Healthcare System.

⁵⁷¹ P. Hofmann opines that religiously directed Hospital has the prerogative to decide which procedure they want to administer basing it from religious values and principles. Although he thinks that this problem is more properly solved in the hospital governing body, he sees that HECs should not be coerced to rationalize a unilaterally imposed decision. Cf. P. B. HOFMANN, *Response to «Institutional Morality, Authority, and Ethics Committees»*, in “CQ of Healthcare Ethics”, 4 (1995) 99.

⁵⁷² “Are ethics committees in religious institutions constituted to defend institutional morality or are they to approach problems from a wider perspective?; and must the religious beliefs of an institution dictate which of a range of medically accepted services are to be made available to patients who seek hospital services? Ethics committees in religious institutions, like all hospital ethics committees, must represent many points of views: they serve the public as well as the hospital and are not in place to defend faith. They are, in other words, not “morals committees” here to safeguard one point of view”. E. H. LOEWY, *Institutional Morality, Authority...*, *op. cit.*, p. 578.

⁵⁷³ Cf. *Ibid.*, p. 578-584.

Membership and Composition:

Members are chosen first of all because of professional competence in their respective disciplines. The diversity of individuals and disciplines enables the committee to understand the needs of patients, the roles of various health care professions and the working of the facility itself in the delivery of health care. Members are expected to conduct their professional affairs in a manner consistent with Catholic ethical principles. In other words, members are expected to share the belief that Catholic ethical principles give beneficial direction to health care providers without in any way compromising the standards and integrity of their profession. Members must be willing to be educated further in the oral teaching of the Church as they concern health care and willing to assist in the education of others. Members are expected to be willing to reflect upon the relationship between Catholic ethical principles and the various disciplines and activities which are involved in the delivery of health care. Through the activities of the committee, members are expected to assist the administrator to further the mission of the sisters.

He challenges the institution's Catholic hospital directive, the HEC's rules abiding with it, and the emergency rooms' policy. He desires a justification of a contrary opinion which allows the use of hormones as an added option of choice to rape victims in this Catholic hospital's emergency room. He believes that it is morally permissible because the standard care in treating rape victims in other non-Catholic hospitals includes supplying hormones that appear to prevent ovulation and at times, may interfere with implantation of fertilized egg. He says:

«The full range of services for rape victims may vary depending upon their needs and desires but at the very least offers a number of interventions, including the hormone therapy that will prevent ovulation *and at times also prevent implantation*. This therapy has more than merely a physical function: it helps many patients feel "cleansed" and, psychologically at least, relieved. How such problems are managed initially may have long-lasting psychological effects»⁵⁷⁴.

E. Lowey recognizes some «reasonable means» not to give hormones to these patients. Some of the following means are: to refer the patient to another hospital that is willing to accept her choice in receiving hormone therapy; or letting the doctor write a blank prescription for such hormone and let the patient decide for herself; or do everything like rape counseling, except giving hormone. But despite these available options, he insists that there should be a real need to expand these enumerated alternatives by adding one more in the list: to abrogate the policy which prohibits the use of hormones, and consequently, to include drug therapy as one of the standards of treatment available, similar to any other hospitals in the vicinity. He said:

«The theory that ethically [they], must inform institutional policy concerning the services to be made available would be: "When a service is offered to the community, the service and its components must conform to the standard of care established by and in the medical community". If one agrees to this statement, then not offering and making readily accessible any component would mean that such service ought not to be offered. The question then becomes What is meant by "offering" and by "making available"? These definitions will differ depending on the conditions we are speaking about. The question also becomes, in an ethically relevant sense, what is meant by "caring for people"? For rape victims, the psychological component must of necessity change the nature of the meanings of "caring", "being available", and "offering"»⁵⁷⁵.

⁵⁷⁴ The italics are mine to emphasize, that in cases whereby there is a possibility of implantation, it means that fertilization and conception has occurred. Therefore, hormone application which «prevents implantation» may definitively cause abortion. *Ibid.*, p. 579.

⁵⁷⁵ *Ibid.*, pp. 580-581.

In short, he holds the idea that HEC should not be tied down from any «restrictive policy» if we are convinced that an authentic HEC is shaped by diverse opinions for the sake of medical needs of the community. For him, restrictive hospital policy barring the use of hormones to rape victims, should be challenged because this HEC policy must follow a more fundamental principle of offering and making available such services to patients in a similar way as in other hospitals. He furthermore mentioned that a rape victim who suffers psychologically from it is in need of all possible and available services in which one of these, must include the use of contraceptive hormone. He challenged the policy because it is «sectarian». In other words, he thought that an HEC which is concerned only in protecting religious principles laid down in their policy (in this case, the hospital directive of Catholic ethical principles) is not fair.

B. Comments

1. *Policy on hormone prohibition to rape victims: a policy based from the Ethical and Religious Directives (ERD) with theological perspective*

We can observe three important fact in our case presentation. First, the Catholic hospital administration and HEC were formed and intended to serve the administration's founding principles: «to apply all the adequate standards of professional competence to healthcare delivery but always under the guidance of the Catholic ethical principles»⁵⁷⁶. Second, we are also aware that the institution is confronted by an ethical situation involving a rape victim whereby there exists a theologically-based general policy prohibiting the use of hormones as standard treatment to such patients. Hormone therapy, as explicitly declared by E. H. Loewy, is considered contraceptive and at times, abortifacient. And third, the hormone restrictive policy was not put into question, nor requested to be repealed by the rape victim patient concerned, but rather, was challenged by an ethicist and member of the aforementioned hospital HEC.

From these three observations, the case clearly indicates that the hospital follows the general guideline outlined by the «Revised Ethical Religious Directives for Catholic Health Care Services». It is certain that the HEC's «Statement of Purpose», as well as the concrete «emergency room policy to rape victims» were derived from this guideline. It is likewise presumed that members should abide by the ruling specified in this general guideline. In other words, this particular Catholic-run hospital follows an general directive (ERD) from which all other internal policies and guidelines (HEC guideline and emergency room policy) are based. Similarly, the general directives (ERD), is primarily derived from the Catholic ethical principles and doctrine. These ethical principles are no other than those which are founded in the Catholic moral theology, which means: «the upholding of a value rooted in a dimension of reality contained in the Christian Gospel,

⁵⁷⁶ See the «Statement of Purpose» as mentioned earlier. Consequently, E. Loewy comments: «The statement is quite clear. In issues that come before it, the committee is to «assist the administrator» in applying the principles that guide the Church in its mission. «Assisting» must be «informed by Catholic ethical principles». Clearly, members are to set aside their backgrounds or personal beliefs and operate within a purely sectarian frame of reference that may or may not be their own». *Ibid.*, p. 582.

interpreted by the Church in its life of faith, and authoritatively formulated by the pope and the bishops»⁵⁷⁷.

2. *Reasons behind the application of a hormone restrictive policy based on a theological perspective*

Our case deals with the specific policy issued by an HEC prohibiting the use of hormones in the emergency room in cases involving rape victims because the drug is believed not simply being contraceptive, but that it can also cause abortion if it happens that the woman is fertile during the time of aggression.

A wide range of inquiries are implied as to whether the policy against hormone therapy in the Catholic hospital emergency room should be repealed or not: a problem on procedural policy development; arguments on legal, psychological or social grounds; or problems involving strictly ethical and theological issues⁵⁷⁸. Moreover, a wider moral dilemma can implicate our discussions not so much upon the usual case of how to protect the patient's interest, but rather, on the problem involving an HEC member's opposing interest. Thus, in order to limit our discussion, we wish to set aside the socio-legal consequences, procedural questions about the policy development and implementation, or dilemmas as to who has the right to repeal the existing restrictive policy on available therapy –the patient's or the HEC member–, etc. We shall focus our analysis in examining whether or not hormone restrictive therapy among rape victims is ethically and theologically valid. What are the theological factors, bases and contributions why this particular hospital is maintaining the implementation of the restrictive emergency policy of not administering hormones to rape victims?

We will try to explain the theological groundwork of the policies implemented in our case's Catholic-run HEC set-up to find out how theological arguments can really contribute in shaping and giving a firm foundation in the setting-up and implementation of this hospital policy or HEC guideline. But let us anticipate this discussion by indicating briefly the medical aspect which may affect our succeeding moral discussions.

3. *A general medical perspective regarding rape victims and the use of hormones*

It is generally admitted that rape victims have a very low chance of conception after aggression due to the anti-ovulatory effect caused by physical and psychological trauma⁵⁷⁹. Even though the chances of conception are statistically low, getting pregnant deserves serious concern, not only because it is personally embarrassing (psychologically) but also, that it may imply a burdensome obligation whose

⁵⁷⁷ B. ASHLEY, K. D. O'ROURKE, *Health Care Ethics...*, *op. cit.*, p. xv.

⁵⁷⁸ We should be reminded that the topic regarding the ethical and theological questions as to whether ethics committees in religious institutions are constituted to defend particular types of morality (i.e., Christian morals), or should these problems be approached in a secular and wider perspective, have been explained in chapter four.

⁵⁷⁹ Cf. S. MAHKORN, W. DOLAN, Sexual Assault and Pregnancy, in T. HILGERS, D. HORAN, D. MALL (eds.), *New Perspectives on Human Abortion*, University publications of America, MD 1981.

responsibility should not be hers to bear since the sexual relation she incurred is not a real fruit of responsible and willful act of conjugal love⁵⁸⁰.

Hence, from the medical point of view, there are available means to prevent conception such as the following: curettage, vaginal douche, intrauterine douche and hormone therapy. Many Catholic moralists prefer to use the first three methods although they are proven ineffective, medically speaking. For instance, vaginal and intrauterine douches may cleanse the said areas, but cannot reach the fallopian tubes where fertilization really takes place. Spermatic-fallopian penetration requires between 5 to 30 minutes after the intercourse⁵⁸¹. Such maneuvers may result insufficient to guarantee non-conception.

Hormone therapy on the other hand, may seem most effective to prevent conception. Most of the available hormone treatments are steroid or steroid-based drugs which act by suppressing ovulation, and temporarily maintaining the patient in infertile period⁵⁸². Even though this drug is highly effective as contraceptive method, it is not certain however, if these drugs may prevent ovulation at all times. Thus, it leaves doubts to probable «skips» in anti-ovulation, and the consequent possibility of getting the ovum fertilized⁵⁸³. And once fertilization occurs due to this same hormonal effect, it may further on prevent uterine implantation resulting into abortifacient effect⁵⁸⁴.

4. Catholic moral principles applied in the ERD, HEC and policies

We have just explained E. Lowey's «psychological argument» in favor of the victim's options and «benefits», as an argumentative defense to repeal the aforementioned policy. The Catholic HEC policy's argument, however, is directed under the hospital's ERD on Catholic ethical principles. Specifically, it deals with Catholic moral theological perspectives about the care for the beginning of life, and defense against transgressions resulting from abortion and contraception.

⁵⁸⁰ Cf. B. ASHLEY, K. D. O'ROURKE, *Health Care Ethics...*, op. cit., p. 291.

⁵⁸¹ Cf. D. FORDNEY-SETTLAGE, M. MOTOSHIMA, S. TREDWAY, *Sperm Transport from the External Cervical Os to the Fallopian Tubes in Women: A Time and Quantitation Study*, in «Fertility and Sterility», 24 (Sept. 1973) 655-661.

⁵⁸² DES (diethylstilbestrol) is estrogen-based, and has a high degree of producing abortion. Cf. M. NOTELOVITZ, D. BARD, *Conjugated Estrogen as a Post Ovulatory Interceptive*, in «Contraception» 17 (1978) 443-454; progesterone-based contraceptive generally have lesser chance of producing abortion, while RU-486 is largely abortive.

⁵⁸³ «En general, se puede decir que la píldora [i. e., contraceptivos hormonales] actúa en muchas ocasiones como un verdadero anticonceptivo, pero que en su eficacia para impedir una gestación, también participa, aunque en menor medida, su acción antiimplantatoria, su capacidad de alterar el moco cervical, y su posibilidad de modificar la progresión del óvulo por la trompa... De todas formas se puede afirmar que la eficacia media de la píldora oscila entre 0.1 y 0.5% de embarazos por 100 mujeres año. Es decir de cada 1.000 parejas que utilizaran la píldora y tuviera relaciones sexuales durante un año, se podrían quedar embarazadas entre 1 y 5 mujeres». J. AZNAR-LUCEA, J. MARTINEZ DE MARIGORTA, *La procreación humana y su regulación: 100 preguntas y respuestas*, Instituto Pontificio Juan Pablo II, Edicep, Valencia 1996, pp. 38-39.

⁵⁸⁴ Cf. M. NOTELOVITZ, D. BARD, *Conjugated Estrogen...*, op. cit., 443-454.

Since the HEC policy is linked with the hospital's ERD, let us then examine the ERD directive carefully. Part four of the recently revised Ethical and Religious Directives for Catholic Health Care Services (ERD), covers directives 45 through 51 which specifically declare the respect and protection of the unborn human life⁵⁸⁵. The statements indicated here are based from two fundamental Church teachings:

First, the ERD declaration explicitly express the commitment to protect and defend human dignity in the same manner as on how the Church understands it. As J. DeBlois and K. O'Rourke comment:

«Part four begins with a reaffirmation of the Church's steadfast commitment to human dignity. Realizing that the human being is created in the image of the Creator God and is destined for union with God, the Church calls for the utmost respect for every human life from the moment of conception onward. Church teaching has consistently rejected the suggestion that an embryo has no moral status. Once fertilization takes place, human life is present and must be respected "in an absolute way"»⁵⁸⁶.

Second, the document defends the Church's position regarding family and marriage covenant because for them, it is here where real human life originates. It states that human beings are created in the image of God; that such human beings are fruits of marriage and conjugal love; and that it is a way of sharing in God's creative power. Since the transmission of human life (persons made in the image of God) is an act of procreative power God has given and shared to man and wife, then, the couple have to be open to transmit it. This living gift of conception, which results from the couple's openness in the transmission of life, is evidently a human being, a new human person who should be treated as possessing human life, and who demands absolute respect. Pope John Paul II says:

«In its most profound reality, love is essentially a gift; and conjugal love, while leading the spouses to the reciprocal "knowledge" which makes them "one flesh", does not end with the couple, but it makes them capable of the greatest possible gift, the gift by which they become cooperators with God for giving life to a new human person»⁵⁸⁷.

These two fundamental Church moral principles from which part four of ERD's policies was based, and also where the «restrictive policy against hormone therapy to rape victims» was derived, are the foundations of the hospital HEC's firm conviction for not using contraceptives/ abortifacients to any patient including rape victims. We shall discuss this gradually as we go along.

⁵⁸⁵ Cf. NATIONAL CATHOLIC CONFERENCE OF BISHOPS, *Ethical and Religious Directives for Catholic Health Care Services*, in "Origins", (Dec. 15, 1994) 449-462.

⁵⁸⁶ "Church teaching on respect for the dignity of the person stands in clear contrast to the prevalent secular notion that people... On the other hand, the introduction to Part 4 says that life demands respect simply because it is human life. It is respect for the dignity of the human person that "inspires as abiding concern for the sanctity of life". Directives 45 through 51 specifically defend respect and protection to unborn human life. J. DEBLOIS, K. D. O'ROURKE, *Care for the Beginning of Life: The Revised Ethical and Religious Directives, Discuss Abortion, Contraception, and Assisted Reproduction*, in "Health Progress", 76/2 (Sept.-Oct. 1995) 36. See also, SACRED CONGREGATION FOR THE DOCTRINE OF FAITH, *Instruction on Respect for Human Life in Its Origin and On the Dignity of Procreation*, Ignatius Press, San Francisco 1987, p. 12.

⁵⁸⁷ JOHN PAUL II, *The Christian Family in the Modern world*, in AUSTIN FLANNERY (ed.), *Vatican Council II: More Post Conciliar Documents*, vol. 2, Costello Publishing, Northport, New York 1982.

5. *Convenience of participation by a trained person in moral theology in interpreting theologically-based policies*

J. DeBlois and K. O'Rourke affirmed that the presence of an HEC theologian or person with sufficient moral theology training is greatly convenient. His presence in the interaction or dialogue with the other members of the HEC can help the group understand the various theological realities in the clinical setting in a deep and precise manner. In a similar manner, the theologians should associate themselves with the clinicians or other members of the HEC panel regarding the clinical cases so as to arrive at holistic ethical-theological decision. Both authors said:

«Appropriate interpretation and application of the directives in Part 4 often require an understanding of theological realities that may be unfamiliar to clinicians and others in the healthcare setting. Such persons may need to consult with a trained theologian or ethicist when trying to interpret and apply a given directive. For example,... the action consistent with the principle of double effect (directive 47 and 48), healthcare professionals should consult with person knowledgeable about the Catholic moral tradition... All those concerned with beginning of life issues should be educated in both the theological ethical and the clinical dimension of care giving. Such training is particularly important for ethics committee members charged with educating all those associated with the Catholic health ministry about the ERD and the teaching that informs them»⁵⁸⁸.

Applying this observation to our actual case, the question arises: is the HEC member's (ethicist's) «psychological reasoning» in order to repeal a policy prohibiting hormone treatment to rape victims morally adequate, while not considering serious importance to «theological reasons» behind the aforementioned policy, such as on the protection and respect of the human life of the unborn?

The participation of a theologian or a person trained in analyzing bioethical issues with theological perspective in the HEC may be essential to clarify such questions. K. O'Rourke mentioned for example, that the Church teaching which seeks to reinforce the dignity of the marital relationship may be helpful in some situations, but is not sufficient in cases of rape victims. On the other hand, there is a need to explain the theological basis for protecting the life of the unborn even in circumstances like rape victims. For this reason, he said that it is important to realize that the ERD is only a part of the broader moral tradition of the Church and that we must refer to this broader teaching to resolve such questions. The assistance of a well trained moral theologian is thus essential in such cases⁵⁸⁹.

Therefore, what are the theological perspectives and contributions which need to be analyzed for a broader understanding of the moral teachings of the Church regarding our case? They may refer to reflections that refer to the dignity of marital relationship and the protection of the beginning of life. And in practical and methodological terms, they refer to the theological questions regarding contraception and abortifacients.

⁵⁸⁸ They furthermore add: "The nature of the material addressed in Part 4 should lead ethics committees in Catholic healthcare to educate themselves and ensure they understand the issues. Moreover, ethics committees should carry out ongoing educational activities to promote better understanding of the issues and help shape organizational policy and practice in ways that promote the goods and values in question". J. DEBLOIS, K. D. O'ROURKE, *Care for the Beginning of Life*,... *op. cit.*, p. 37.

⁵⁸⁹ *Ibid.*, p. 38.

C. Theological Contributions

In a Catholic-run hospital and HEC, hormone administration is prohibited for use in the emergency room because it is believed that it can likely cause abortion when given to a rape victim who is most likely in the fertile period at the time of aggression⁵⁹⁰. This prohibition is alluded to in the ERD declaration which states that the human being is a gift from God. Created in the image of the Creator and destined for union with Him, he is to be respected from the very moment of conception. This section will present the basis of these theological conviction through the Church's theological teachings on the topics regarding the defense in favor of human dignity and respect for the human life from the moment of conception.

Although the case refers to the HEC member's interest and has nothing to do with the patient's personal complaint against the policy, it will however include some theological contributions which might be helpful in the moral assessment of the patient's side: the theological perspective on how to positively cope with rape victims. It shall explain the evil of rape insofar as it is an attempt against conjugal love and dignity of the woman. The moral question about the use of contraception in this rape situation shall be also discussed.

1. *Moral theological response to rape victims*

Rape, which is motivated by hostile impulses and abuse for sexual pleasure by an aggressor against helpless and pitiful women, is a crime of violence that is commonly encountered in the United States. These women suffer tremendously from physical, psychological, social, and moral tensions. To support such unfortunate victims, available treatments are available, as Lowey enumerated earlier⁵⁹¹. Nevertheless, a controversy remains over the use of hormone therapy as an added form of treatment. B. Ashley and K. O'Rourke said: for rape victim's treatment,

⁵⁹⁰ As alluded to earlier, E. H. Lowey in our particular case acknowledges the abortive effect of hormone therapy due to its secondary capacity of preventing implantation if fertilization has just occurred.

⁵⁹¹ In the early 1970's there were other methods used to prevent conception in rape victims like the following: curettage, vaginal douche or intrauterine douche. Today, from both medical and moral points of view, none of these methods seem to be acceptable. In general, Catholic health care facilities have the following responsibilities to rape victims: "They should prepare and carefully observe a protocol for the treatment of rape victims in which the first concern is respect for the dignity of the woman, regardless of her character or socioeconomic condition. This should include both medical and counseling help to reduce the harm she has unjustly suffered and should shield her as much as possible from embarrassment. The protocol should include 1) medical efforts to determine whether pregnancy is at all possible. 2) DES (diethylstilbestrol) or similar steroids of anti-ovulant drugs may not be used with the intention of suppressing ovulation unless the physicians responsible have been convinced by reliable research that these drugs have a significant antioviulatory effect and it is doubtful that fertilization has already occurred (McCarthy, 1977). Because such treatment is controversial, if the woman herself or the medical staff objects on the grounds of a conscientious desire not to risk abortion, their consciences should be respected. Hospitals should be aware that, depending upon state laws, they may be liable to legal suit if they fail to provide a rape victim with the opportunity to avoid pregnancy. Consequently, if a Catholic hospital believes in conscience that it is unable to provide treatment which can be established as adequate in the local courts, it should make sure that victims can be promptly referred to their own physicians for whatever antipregnancy treatment themselves choose". Cf. B. ASHLEY, K. D. O'ROURKE, *Health Care Ethics: A Theological Analysis...*, op. cit., p. 292.

«preventing pregnancy, raises special ethical problems. Since it is highly probable that the woman is in the sterile portion of her cycle and because of the trauma of rape has an anti-ovulatory effect (Mahkorn and Dolan, 1981), the chances of conception after rape are very low statistically. But becoming pregnant is a very serious concern to the victim and she deserves every help that medical professionals can give her, provided that help is ethical»⁵⁹².

Obviously, a contraceptive drug like any hormone therapy that outrightly act as abortifacient as well is for them, unethical⁵⁹³. The impossibility of using this drug despite the pitiful condition of the rape victim are based on the theological propositions we shall now discuss.

2. Abortive Hormone therapy and the respect for the beginning of human life «Life at the very moment of conception»

The meaning of human life and its dignity from the theological point of view was discussed in the first part of this chapter. This time, we shall analyze the Church's basis for defending this dignity of human life *even from the very beginning of conception*.

The concept that all human life is created by God and whose Creative power produces the child in the mother's womb is typically Jewish.

«The parents play only an instrumental role in this creative process, so that from the beginning a direct I-Thou relation exists between the Creator and the human being whom he is creating just as truly as he created Adam. Several of the prophets of Israel express the profound religious conviction that it was God who formed them in their mother's womb for a special purpose»⁵⁹⁴.

Moreover, as a result of deeper Jewish understanding of the Torah, rabbinical opinion holds that the «infusion of the human soul» during conception is what enhances the respect and dignity for the life of the unborn. They believe that when a Jewish mother starts carrying a «living soul», the child is destined for the Kingdom of God⁵⁹⁵ and consequently, must be respected. Since an unborn child possesses human life with a soul worthy of respect, Jewish justice demands (tooth for a tooth, eye for an eye in *Exod* 21,

⁵⁹² *Ibid.*, p. 291.

⁵⁹³ Of course, this judgment can be said only if the hormone is clearly abortive and/or contraceptive, «unless the physicians responsible have been convinced by reliable research that these drugs have a significant antioovulatory effect and it is doubtful that fertilization has already occurred (McCarthy, 1977)», as mentioned earlier in the footnote.

⁵⁹⁴ B. ASHLEY, K. D. O'ROURKE, *Health Care Ethics: A Theological Analysis...*, *op. cit.*, p. 228.

⁵⁹⁵ «Jewish thought in practical ethics, however, has been dominated by the legislation of the Torah, which became normative for post-Biblical Judaism. The Torah inculcates a high respect for human life. [However] in conflict situations where the life of the mother is endangered, the rabbis believed that the child could be considered an «unjust aggressor» or «pursuer» against whom the woman could defend herself. Hence, in such cases, induced abortion was permitted, and the child was not considered to have a full right to life until birth, or «when the head emerges» (Cf. *Exod.* 21, 22)». *Ibid.*, p. 229. Catholic theology however, does not consider an unborn child that endangers the mother's life as unjust aggressor, neither formally nor materially. Robert Barry argues: «If the baby were a threat to the mother, the worst it could be would be a material threat because the baby is incapable of intentional, deliberate and willful action... But even if the child was a material aggressor, that would not necessarily mean that it could be deliberately, willfully and directly killed». See, R. BARRY, *Thomson and Abortion*, in *Abortion: A New Generation of Catholic Responses*, Pope John Center, Massachusetts 1992, p. 164.

23-25) that nobody can take away someone's life lest by the same rigor of justice, he is also condemned to die. Thus, rabbis prohibit infanticides and require the Jews to accept martyrdom rather than to kill the innocent child⁵⁹⁶. *Evangelium vitae* affirms in some extent this fundamental scriptural fact⁵⁹⁷.

Jesus' teachings also stress God's love for the «little ones» because these children are privileged in the Father's Kingdom (cf. *Mc* 9,33-37). However, in the practical exhortation, the Sacred Scripture did not say anything about voluntary abortion, and thus, does not contain any direct and specific condemnation. However, Church tradition⁵⁹⁸ explicitly forbids it, as testified by a third century Christian writing, the *Didache*⁵⁹⁹. Noonan Jr. says that the *Didache*'s direct abortion prohibition is

«an almost absolute value throughout the history of the Christian Church»⁶⁰⁰.

According to many scholars, the respect for the unborn child was accepted almost by everybody but was intensely put into danger when controversies resulted from Greek philosophical thought over the theoretical problems as to when is the human soul infused into the body⁶⁰¹. Since the beginning, Christian theologians respected the life of the unborn, but certainly with varied emphasis⁶⁰² depending upon the level of philosophical understanding and limitation of available scientific data of those times. Some arguments, though philosophically correct, are now held as insufficient due to an inadequate or restrained scientific correlation⁶⁰³. Thus, being aware of such insufficiencies in protecting and defending the life of the unborn, many recent scholars are obviously delving deeper into numerous investigations and gradually producing relevant progress both from within the theological-philosophical and scientific-empirical fields. Roman Catholic Moral

⁵⁹⁶ Cf. *Ibid.*, pp. 228-229.

⁵⁹⁷ «La vida humana es sagrada e inviolable en cada momento de su existencia, también en el inicial que precede al nacimiento. El hombre, desde el seno materno, pertenece a Dios que lo escruta y conoce todo, que lo forma y lo plasma con sus manos, que lo ve mientras es todavía un pequeño embrión informe y que en él entrevé el adulto de mañana, cuyos días están contados y cuya vocación está ya escrita en el «libro de la vida» (cf. *Ps* 139/138, 1. 13-16). Incluso cuando está todavía en el seno materno –como testimonian numerosos textos– (*Jer* 1, 4-5; *Ps* 71/70, 6; *Is* 46, 3; *Iob* 10, 8-12; *Ps* 22/21, 10-11), el hombre es término personalísimo de la amorosa y paterna providencia divina». JOHN PAUL II, Encyclical letter, *EV* n° 61.

⁵⁹⁸ Among others, there are testimonies coming from Tertulian and Athenagoras. Cf. *Ibidem*.

⁵⁹⁹ Cf. *Ibidem*.

⁶⁰⁰ J. T. NOONAN, JR., *The Morality of Abortion: Legal and Historical Perspectives*, Harvard Univ. Press, Cambridge 1970, pp. 1-59.

⁶⁰¹ «One difficulty arose from contact with Greek thought and took the form of the question, When is the human soul infused into the body? Platonists believed that this human animation was at conception, but the Aristotelians, more concerned with biological processes, were of the opinion that it could not be at conception when the embryo is (as they thought) simply, unformed menstrual blood, but be at about 40 to 60 days of pregnancy when the fetus has definite organic form. Those influenced by Stoic philosophy even believed it was only at birth that the child breathed the «vital spirit». B. ASHLEY, K. D. O'ROURKE, *Health Care Ethics: A Theological Analysis...*, op. cit., p. 230.

⁶⁰² St. Thomas for example, respects the life of unborn 1 to 2 months of gestation, on the time where he believes that ensoulment with the fetus takes place. Cf. ST. THOMAS AQUINAS, *S. Th.* I, q. 76, a. 3, ad 4-6.

⁶⁰³ Cf. «animación retardada» in A. SARMIENTO, G. RUIZ-PEREZ, J. MARTÍN, *Ética y Genética...*, op. cit., pp. 70-71.

Theology has taken far reaching studies in which the Church has later on, provided certain declarative truths to help us understand with certainty and assurance the morality on the concept of, respect for, and protection of life of the unborn.

The declaration on Procured Abortion issued by the Congregation for the Doctrine of Faith (1974) and the statements by the bishops of the United States Conference of Catholic Bishops in 1974, established the condemnation of abortion and infanticides. The Vatican II declaration affirms that life is a fundamental right of every human person⁶⁰⁴. The 1974 declaration says:

«The right to life remains complete... The right to life is not less to be respected in the small infant just born than in the mature person. In reality, respect for human life is called for from the time the process of generation begins. From the time that the ovum is fertilized, a life is begun which is neither that of the father nor the mother. It is rather the life of a new human being with his or her own growth. It would never be made human if it were not human already»⁶⁰⁵.

The rejection of the justification of abortion in Pius XI's *Casti Connubii*, the teachings on contraception and abortion in Pope Paul VI's *Humane Vitae*, and the definition and application of these moral teachings in the documents of John Paul II's pontificate (*Donum Vitae*, *Familiaris Consortio*, *Mulieris Dignitatem*, *Canon Law*, *Catechism of the Catholic Church*, and recently, the encyclical *Evangelium Vitae*), are but examples of the various magisterial teachings with deep theological content that can be applied in our bioethics discussions on the questions about contraception and abortion⁶⁰⁶. We do not intend to make an exhaustive analysis of each of the Church's teachings, but at least we can show that the availability of these well-analyzed documents with strong theological argumentative stance can be validly used in bioethics discussions such as in HECs.

Donum Vitae, for instance, expanded the fundamental notion regarding the value and right to respect human life pioneered by the document on Procured Abortion by stating that from the first moment of his existence, the unconditional respect which is morally due to being a human being, body and soul in its totality and unity, has to be guaranteed with all the rights proper of a living human person. It declares:

«Human beings must be respected and treated as persons from the moment of conception»⁶⁰⁷.

⁶⁰⁴ Cf. VATICAN COUNCIL II, Pastoral Constitution, *Gaudium et Spes* n° 11-12.

⁶⁰⁵ Furthermore, it says: "This declaration expressly leaves aside the question of the moment when the spiritual soul is infused. There is not a unanimous tradition on this point and authors are as yet in disagreement. For some it dates from the first instance, for others it could at least precede implantation. It is not within the competence of science to decide between these views. It is a philosophical problem from which our moral affirmation remains independent for two reasons: 1) supposing a belated animation, there is still nothing less than a human life preparing for and calling for a soul in which the nature received from the parents is completed; 2) on the other hand it suffices that this presence of the soul be probable in order that the taking of life involves accepting the risk of killing a human being, who is not only waiting for, but already in possession of his or her soul". SACRED CONGREGATION FOR THE DOCTRINE OF FAITH, *Declaration on Procured Abortion*, (Trans. in Osservatore Romano, Dec. 5, 1974), n° 11-12, 19.

⁶⁰⁶ Cf. JOHN PAUL II, Encyclical letter, *EV* n° 62.

⁶⁰⁷ SACRED CONGREGATION FOR THE DOCTRINE OF FAITH, Instruction *Donum Vitae*, (Feb. 22, 1987) I, 1: AAS 80 (1988), 78-79.

In fact, *Evangelium Vitae* reaffirms this aforementioned doctrine. Moreover, it developed a deeper understanding of its value and importance: every human person's life is an incomparable worth that has to be protected from grave dangers especially that of the innocent life of the unborn⁶⁰⁸. Hence, this document explicitly condemns direct abortion without any exception from whatever circumstances, means, nor finality⁶⁰⁹. Such declaration is based upon the conviction that life is valuable, and to kill especially an innocent human being is an abominable crime against God, an intrinsic evil that directly falls against the Divine precept: Thou shall not kill⁶¹⁰. The elimination of a fetus or an embryo for whatever motive, is thus, never morally justified. Furthermore, it can be deduced from here that, in whatever circumstances (such as in our case, rape patient), nobody, not even the victim herself, nor the doctor, healthcare personnel, bioethicists, lawyers, friends, etc., have the right to provide direct abortion as a means aimed at "helping" the patient cope with the psychological, physical, physiological tensions caused by sexual aggression.

3. *Hormone therapy and contraception*

Our case analysis has explicitly indicated the two possible effects of hormone therapy: primarily, to intend not to conceive. A secondary effect may be the possibility of ovulation and danger of abortion due to anti-implantation effect. But supposing that a similar hormonal drug is administered to provide a temporal sterilization which is «totally and uniquely contraceptive» and free from any danger of ovulation or fertility that might result into abortive effects. What are some of the theological principles adduced to by some theologians who opine that this supposed, contraceptive but non-abortive type of hormonal therapy may be used in rape patients?

In analyzing this problem, we have previously noted that the existence of hormonal drugs which claims to be purely contraceptive but not abortive, are still medically and pharmaceutically uncertain, because as of present, the best known progesterone-based

⁶⁰⁸ "La presente Encíclica, fruto de la colaboración del Episcopado de todos los Países del mundo, quiere ser pues una confirmación precisa y firme del valor de la vida humana y de su carácter inviolable, y al mismo tiempo, una acuciante llamada a todos y a cada uno, en el nombre de Dios: ¡Respetar, defender, amar y servir a la vida, a toda vida humana!" JOHN PAUL II, Encyclical letter, *EV* n° 5.

⁶⁰⁹ "Por tanto, con la autoridad que Cristo confirió a Pedro y a sus Sucesores, en comunión con todos los Obispos –que en varias ocasiones han condenado el aborto y que en la consulta citada anteriormente, aunque dispersos por el mundo, han concordado unánimemente sobre esta doctrina–, declaro que el aborto directo, es decir, querido como fin o como medio, es siempre un desorden moral grave, en cuanto eliminación deliberada de un ser humano inocente. Esta doctrina se fundamenta en la ley natural y en la Palabra de Dios escrita: es transmitida por la Tradición de la Iglesia y enseñada por Magisterio ordinario y universal. Ninguna circunstancia, ninguna finalidad, ninguna ley del mundo podrá jamás hacer lícito un acto que es intrínsecamente ilícito, por ser contrario a la Ley de Dios, escrita en el corazón de cada hombre, reconocible por la misma razón, y proclamada por la Iglesia". JOHN PAUL II, Encyclical letter, *EV* n° 62.

⁶¹⁰ "Es cierto que anticoncepción y aborto, desde el punto de vista moral, son males específicamente distintos: la primera contradice la verdad plena del acto sexual como expresión del amor conyugal, el segundo destruye la vida de un ser humano. La anticoncepción se opone a la virtud de la castidad matrimonial, el aborto se opone a la virtud de la justicia y viola directamente el precepto divino «no matarás»". Cf. *Ibid.*, n° 13.

hormone may incur 0.1-0.5% pregnancy per 100 womenyears⁶¹¹. *Evangelium Vitae* warns us of the pernicious attempts of those people with «contraceptive mentality» who wish to justify the use of an effective and sure contraceptives as a “means to avoid a greater evil of abortion”. The objection to this mentality is:

«... looking closely, it reveals that this is in reality false. In effect, it might be that there are many who would recourse to contraceptives in order to avoid the temptation to abort. But the inherent counterpart of the “contraceptive mentality” –largely different from the paternal and maternal exercise of responsibility, respecting the full significance of conjugal act– is such that they are precisely even more tempting to use in the event that an unwanted life is conceived»⁶¹².

In other words, since contraception and abortion are two different «evils», some people attempt to justify the use of hormone therapy by arguing that this contraceptive method is certainly much better than committing a graver crime like abortion. Or, they contend that this «means» is more effective in preserving socio-personal dignity by avoiding unwanted pregnancy, or bearing burdensome responsibility against the will of rape victims.

According to Church doctrine, abortion and contraception are two specifically distinct evil acts by virtue of their diverse natures and moral weight. However, it insists that they are intimately related because they are like fruits coming from one and the same tree: –While abortion is intended in destroying human life and goes directly against the Divine command, “not to kill”, the use of contraception on the other hand contradicts the complete truth behind the human expression of conjugal sexual act and virtue of matrimonial chastity⁶¹³.

«Contraceptive mentality» literally speaking, is therefore no other than an attempt to radically prevent any conception of new human life by breaking the fundamental meaning of matrimonial chastity and true expression of conjugal love. Due to these moral weight, the Church declares it as specifically an evil act. However, «contraceptive mentality» may not necessarily include the same force as when a legitimate couple regulates conception according to the «mentality» how the Church views it. The Church says that the difference lies

«from responsible exercise of paternity and maternity which should respect the full meaning of conjugal act»⁶¹⁴.

«Contraceptive mentality» bears an “irresponsible” maternal and paternal exercise when it lacks the full meaning of conjugal act such as by preventing having a child. On the other hand, «regulation of conception» is completely different, despite the use of the

⁶¹¹ Cf. J. AZNAR-LUCEA, J. MARTINEZ DE MARIGORTA, *La procreación humana...*, *op. cit.*, p. 39.

⁶¹² “... mirándolo bien, se revela en realidad falaz. En efecto, puede ser que muchos recurran a los anticonceptivos incluso para evitar después la tentación del aborto. Pero los contravalores inherentes a la «mentalidad anticonceptiva» –bien diversa del ejercicio responsable de la paternidad y maternidad, respetando el significado pleno del acto conjugal– son tales que hacen precisamente más fuerte esta tentación, ante la eventual concepción de una vida no deseada”. JOHN PAUL II, Encyclical letter, *EV* n° 13.

⁶¹³ Cf. *Ibidem*.

⁶¹⁴ “... del ejercicio responsable de la paternidad y maternidad, respetando el significado pleno del acto conjugal”. *Ibidem*.

sterile period that may occasion in not producing a child. Where is the difference? This differentiation was first alluded to in a broader sense by Pope Paul VI in the *Humanae Vitae*, which says that matrimonial act done in chaste intimacy between legitimately married couple is honest and dignified whenever conjugal love is expressed with the intention of maintaining open the transmission of life even in a regulated way⁶¹⁵. This means that the responsible attitude to matrimonial act remains «honest and respectful» even if they recourse to moments of infertile periods given them by nature, as a means to regulate procreation. This may be so, as long as for grave reasons, first they do not totally exclude possible fertility and such method does not prevent the natural ordering of the process generation. Hence, «regulation of conception» by natural means certainly respects the dignity of matrimonial act, chastity and responsibility in conjugal love because first, it is open to transmission of life. Second, it is done while respecting the natural process of generation⁶¹⁶.

4. *Hormone contraceptive for rape victims*

Unfortunately, in rape victims, the woman concerned is not expressing any human expression of voluntary love, nor is she really participating in a «conjugal» act in a proper sense of the word. If this is not present, does she have any obligation to open herself to transmission of life even if the responsibility and consequences of sexual act (aggression) is not at all fruit of her voluntary decision and love? What is then the moral position of using a «purely contraceptive-non abortive hormone» in such rape patients?

It seems clear that she is not responsible for the act done against her (in fact, she suffered the loss of dignity), nor is she responsible for the consequence of such sexual act because she did not have the full exercise of freedom. Is she morally justified receiving this special contraceptive hormone?

The presence and participation of a theologian or someone with sound and competent Catholic theological viewpoint is needed to help us in evaluating better this moral question, and arrive at a broader consideration or refined moral decision of the case. It would not be surprising also that this inquiry would end up in an HEC case consultation. Let us present here, a Catholic moralists' theological reflection in solving this concrete moral question.

Ignacio Carrasco de Paula believes that permanent sterilization (not in the case of hormonal contraceptive), whose immediate object is to directly destroy the generative

⁶¹⁵ In the section of *Humanae Vitae*, regarding the Respect for the nature and finality of matrimonial act, it states: “Estos actos, con los cuales los esposos se unen en casta intimidad, y a través de los cuales se transmite la vida humana, son, como ha recordado el Concilio, «honestos y dignos», y no cesan de ser legítimos si, por causas independientes de la voluntad de los cónyuges, se prevén infecundos, porque continúan ordenados a expresar y consolidar su unión. De hecho, como atestigua la experiencia, no se sigue una nueva vida de cada uno de los actos conyugales. Dios ha dispuesto con sabiduría leyes y ritmos naturales de fecundidad que por sí mismos distancian los nacimientos. La Iglesia, sin embargo, al exigir que los hombres observen las normas de la ley natural interpretada por su constante doctrina, enseña que cualquier acto matrimonial «*quilibet matrimonii usus*» debe quedar abierto a la transmisión de la vida”. PAUL VI, Encyclical letter, *Humanae Vitae* n° 11.

⁶¹⁶ In differentiating regulation of conception from contraception, it says: “In priore, coniuges legitime facultate utuntur sibi a natura data; in altera vero, idem impediunt, quominus generationis ordo suos habeat naturae processus”. *Ibid.*, n° 16.

capacity may not substantially modify the ethical nature of an action. Completely preventing the generative capacity to conceive is illicit because for him, this end does not justify the means. Moreover, he says that personal motives are not enough to purify the will in converting this person permanently infertile, altering gravely the sexual capacity. But if and whenever a sexual act is done outside of marriage resulting from grave sexual perversion, rape and sexual violence, Carrasco de Paula thinks that contraceptive pills may be licitly administered as form of «temporal sterilization»⁶¹⁷. He argues that since the essential connection between love and procreation is broken, or rather, non-existent, she may not be obliged to consent to conceiving a child. On the contrary, she even has a grave responsibility of making use of morally licit means to avoid pregnancy. Hormonal therapy that has a temporal sterilizing effect⁶¹⁸ may be one of them.

He judges sexual aggression (rape) to be void of any true meaning of sexual act and is hence, not properly an expression of conjugal love since she experienced it against her freewill. Additionally, outside the law of matrimony, chastity was broken not due to her fault but to her being the victim. For these reasons, she is not responsible nor obliged to consent to bear a child not generated from a loving and free act at all⁶¹⁹.

These aforementioned arguments may coincide perfectly well with the words of the Magisterium (*EV* and *HV*) by bearing in mind what was taught to us: Contraceptive mentality is a mentality whereby the full meaning of conjugal act and the responsible exercise of paternity and maternity (of procreation) are directly opposed. Carrasco de Paula in the first place firmly denies that the sexual act in rape is a conjugal act. It is, in fact, a sexual aggression rather than a true conjugal act. Thus, it does not fall under the opposition held by those who advocate contraceptive mentality. The same holds true to the second proposition: since she is not exercising maternal responsibility by virtue of not maritally related to the man, then, she has no corresponding obligation whatsoever to procreate. The non-existence of these elements would therefore mean that she may receive contraceptives, not because she would intend to prevent it through a «contraceptive mentality», but simply to procure «temporal sterility» from sexual aggression she pitifully suffered. This is, of course, with the condition that the hormone acting as temporal sterilize is not in any way, abortifacient.

⁶¹⁷ “[En el caso de que] una mujer que ha padecido violencia... o ante la amenaza de sufrir violencia y en ausencia de otros remedios menos radicales, podría ser lícito a una esterilización temporal”. I. CARRASCO DE PAULA, *Esterilización anticonceptiva*, in A. POLAINO-LORENTE, *Manual de Bioética General*, Rialp, Madrid 1994, p. 234.

⁶¹⁸ “Por esterilización anticonceptiva se entiende aquella acción que tiene como objeto propio e inmediato destruir o bloquear, definitiva o temporalmente, la facultad generativa de una persona. Esto no quiere decir que cualquier medida que haga imposible la procreación deba considerarse directamente antiprocreativa... En uno y otro caso la esterilización puede ser: 1) funcional, lo que generalmente se obtiene con sustancias que alteran la fisiología del aparato reproductor dejando intacta su estructura anatómica; o 2) orgánica, cuando se lesiona esa estructura mediante intervención quirúrgica, etc. La alteración funcional de ordinario es temporal o reversible”. I. CARRASCO DE PAULA, *Esterilización anticonceptiva...*, *op. cit.*, pp. 227.

⁶¹⁹ “Una mujer que ha padecido violencia, no está obligada a consentir la concepción de una criatura que no habría sido generada por un acto amoroso y libre, sino todo lo contrario. Además, pueden existir casos que impongan la obligación moral de tomar medidas para evitar el embarazo”. *Ibid.*, p. 234.

D. Moral theological perspectives governing case II

The following are the concrete theological contributions we gathered from the discussion, which may be validly used in HEC forums.

□ Rape victims need all the physical, psychological, spiritual, social and personal assistance. There are various medical means to achieving these services but not everything may be morally justified. The hormonal therapy is put in question due to some theological implications regarding contraception and abortion.

□ Contraception and abortion are two specifically distinct evils. Abortion intends to destroy human life and goes directly against Divine command, «thou shall not kill». Contraception, on the other hand, contradicts the complete truth behind the human expression of conjugal sexual act and virtue of matrimonial chastity.

□ Regarding the danger of abortion as a proximate or remote secondary effect of hormone therapy, it is not morally admissible based on the theological conviction that from the very moment of conception, life has begun. The newly conceived human life should be respected and whose dignity should be defended from the moment of fertilization because from this time, God has created a human being in his Image and Likeness which constitutes a unity of both body and soul.

□ Human beings must be respected and treated as persons from the moment of conception. One fundamental right of a person is his right to life. To deprive one's life, even in the state of the unborn (elimination of a fetus or an embryo for whatever motive) is a direct transgression against the Divine precept known to all men in the natural law, «Thou shall not kill». Hormone therapy which produces abortive effect cannot be used as means in "helping" rape patient cope with the psychological, physical, physiological, social tensions caused by sexual aggression.

□ Regarding contraception and hormone therapy, *Evangelium Vitae* for instance warns us of the «contraceptive mentality» understood as a radical attempt to prevent conception of new human life by breaking the fundamental meaning of matrimonial chastity and true expression of conjugal love.

□ Matrimonial act is chaste when intimately done by two legitimately married couple. Conjugal love is honest and dignified when it is expressed with paternal and maternal responsibility. This responsibility is also expressed by the intention of maintaining open the transmission of life.

□ Rape is a sexual act from sexual aggression. The victim lacks marital consent and conjugal love. Chastity was broken not for her offense but for being the victim. Since from the start, she has been deprived of freewill and true conjugal love, then, she has no maternal responsibility that would oblige her to bear a child. Hormonal contraceptive, or in a more delicate manner of using the term, «hormonal therapy as temporal sterilizer», may be morally permissible, provided that there is assurance that there is no abortifacient secondary effect whatsoever.

E. HEC recommendation to case II

The seven points listed above is a brief description of the concrete theological perspectives that can be validly used in the HEC forums. There is another question that remains to be commented, at least in passing: How should we solve E. Lowey's complaint regarding his consternation for the existence of the hormonal restrictive HEC policy for rape victims?

□ The Hospital Emergency room policy prohibiting hormone therapy to rape patients must still be respected. As we have seen, E. Lowey's psychological argument is insufficient to justify its repulsion. A theological perspective must also be considered, not because the hospital nor the HEC are protectors of the institution's faith convictions, but rather, that this perspective can give us a wider view of the truth. A theological truth of much bearing is supported upon the protection of the unborn human life from the moment of conception.

□ Insofar as Lowey is aware of the abortive effect of his hormonal therapy and that presently, there is no protective assurance from abortifacient's secondary effect, then, the aforementioned theological truth which the policy adopts has to be respected.

□ Hospital policies, although based from theological arguments, are not dogmas. They may be revised according to the circumstances available. For instance, if and when medicine and pharmacology is now able to provide a hormonal drug free from abortifacient secondary effect, then, by following I. Carrasco de Paula's views, it may be permitted as «temporal sterilizer» for rape victims. The HEC's policy developmental function is once again necessary to form a forum, study and discuss the appropriateness in revising it while always maintaining the fundamental theological truth intact.

CONCLUSIONS

Two parts of this thesis have been dedicated to investigate in depth the moral validity of the existence of a well-organized ethics group called the American Hospital Ethics Committees, and the justification for their use of Christian theological perspective in resolving bioethics issues in the clinics. We have analyzed the following issues: Is the use of HEC as special ethics group in hospital institutions ethically valid? If so, can theological reflection be validly used in all types of HEC forum and discussion in a pluralistic society? Based on our bioethics and moral theology research, the following points can be affirmed:

1. The initial part of the study describes the term HEC, as a multi-disciplinary group in the healthcare services established to assist the people in resolving clinico-moral issues encountered in the hospital. HEC is a relatively new organizational entity. It started as a loose and informal organization in which later on, has become officially known as «HEC» in the field of bioethics. It is a term commonly employed in the hospitals when ethical solutions to clinical dilemmas are sought for.

2. It was observed that whenever the patients, doctors, family members or the society are confronted with difficult clinical problems brought about by technological advances in medicine, corresponding ethical questions arise. There is a feeling of helplessness and obscurity in making moral decisions on bioethics issues. Hence, the need for a mutual cooperation to come up with ethical solutions to clinical dilemmas surged spontaneously among themselves. The idea was to organize a group of persons with sufficient intellectual and moral criteria to give necessary advices. Another noble ideal which impelled them to act was the need to adequately know the benefits and harms of the rapidly advancing medical technology and their ethical repercussions.

A significant factor that led to the establishment of HEC was the realization of the need to set-up an organization capable of distinguishing what is legal from what is ethical. In other words, in a society strongly marked by juridical rights and obligations, confusion reigned in attempts to differentiate legal options from moral solutions. People perceived being protected only if the law permits. However, they also knew that the law cannot assume every aspect of clinico-moral questions. This predicament motivated them to establish an HEC to help them formulate morally upright decisions without necessarily resorting to juridical interventions.

Another factor that led them to set up HECs is the existence of various and complicated ethical models/approaches in bioethics discussions. They needed the assistance of competent individuals to adopt them.

3. HEC became more in demand when they had proven their capacity to assist people with moral problems resolve their difficulties without ending in court. Nevertheless, this newly constituted ethics committees were little by little absorbed in the various legal proceedings and state interventions. From then on, various ethics committees began getting immersed in juridical matters like the legalization of some policies, prognostic committees, review boards, case proceedings, presidential commissions and directives. The shift from non-legal to legally-oriented views is traced to the growing public and social interest in the government's role of protecting their citizen's autonomous rights in bioethics issues, or to the increasing emphasis on juridical and secularly-oriented moral views.

4. However, an important observation can be learned from this developmental course. The aforementioned situation resulted into the existence of two major American HEC groups: the HECs of pluralistic-secularist approach and the HECs motivated by Christian ideals, as exemplified by the Catholic hospital ethics committees. The basic difference noted is the following:

The Catholic Hospital Ethics Committees are primarily motivated by delivering Catholic healthcare moral reflections to persons involved in the clinico-moral issues. In contrast to this, the secular-pluralistic groups are more concerned on how to resolve ethical questions through legal recourse. Moreover, this group is particularly characterized by allowing disparity in moral views, as Engelhardt described it. The non-existence of a fixed moral principle is, according to him, the ethical fabric of a secular pluralism.

On the other hand, the ethical model or approach employed by the Catholic HECs is based on the Moral Doctrine of the Catholic Church. To facilitate the use of this approach in a legalistic ambience, the bishops provided a set of guidelines for the members of the Catholic hospitals, known as the «Ethical and Religious Directives for the Catholic Health Facilities». Ever since the Directives was approved by the U.S. law, it has helped and guided the hospital administrators and health care personnel in applying the Catholic moral principles without fear of legal barriers.

5. The difference between the two groups can be readily detected from the functional priority they adopt. It was found out that the «big three» functions are common to all of them: education, policy development and consultation or case review. The function of the case consultation has produced a highly controversial issue in the HECs.

Aside from these three conventional HEC functions, the Catholic HECs include, with equal importance, the theological perspective role in the clinical moral discussions. Many non-catholic or secularist groups reject the use of this function because they feel that this would influence, limit or prejudice the autonomous decisions of the individuals. Moreover, they think that using this function would provoke «partisan or particularistic» theological viewpoint which does not seem to be always universally valid or applicable.

The rendering of moral-theological perspective is considered as an added yet integral function readily offered by almost all Catholic-run HECs. First, they argue that Christian values are commonly acceptable in the American society, and it is not at all strange in delivering theological reflection to anyone who is in need of moral advice. Second, to deny someone from gaining access to moral theology is to go contrary to what pluralism

in the right sense of the word really is. And third, this function may be applicable also to non-Catholics because every human person's conscience acts as the voice of God assisting him in distinguishing the good from evil, a voice always present in his nature. Hence, the use of rendering theological reflection in any Catholic bioethics forum is for them, justified. As a matter of fact, the Catholic HECs adopted a theological approach of Christo-centric ethical model in their delivery of moral services. This was formally carried out through the provision of the State-recognized Hospital Ethics Directives approved by the American Catholic Bishops. More extensive assessment on the use of theological reflections in HEC shall be done when we conclude the second part of the thesis.

6. In view of this theological function, it is necessary to explain the relevant role of the theologian. This section demonstrates the difficulty people have encountered in searching for an adequate explanation and justification for the moral theologian's involvement in the HEC. However, it was proven that the theologian's task is always relevant whenever a recourse to Divine Revelation and Tradition is applied, when there is a need to find ethical solutions beyond the reach of pure logical reasoning, and most especially when moral questions need competent elucidation and clarification of notions on man's transcendental aspects of his relation to himself, to others and to God.

7. The second chapter of part one aims to examine the doctor's and patient's opinions regarding the ethical validity of using the HEC in bioethics issues. Based on gathered sources from the doctor's point of view, it seems that the HEC involvement in the clinical bioethics discussions challenges his medical commitment/competence as the sole person responsible to provide healthcare to his patients. He sees the HEC as a possible interference in his personal decision. At times, he feels as much competent in ethical as in medical matters.

The ethical evaluation we discussed explores the doctor's competence in medical field and yet expounds that medical competence is distinct from bioethical expertise. A doctor may be a medical expert and at the same time capable of making ethical judgment. Nevertheless, since nobody is an expert in everything, the doctor's medical capability and bioethics knowledge cannot take away his responsibility to seek a deeper and broader ethical assistance from other competent persons who are not necessarily doctors, but are experts in the moral field. Here, the HEC comes into the picture.

The moral basis of HEC's involvement with doctors can be demonstrated in two major points: 1) the competence of doctors in medical sciences as a science is not autonomous. Medical science is operative (since medicine is also an art), because such knowledge is not confined to assisting the patient's physical needs but embraces also his spiritual or moral needs. Thus, the doctors need to count on the support of other sciences like the humanities, allowing for the role of HECs; 2) when the doctors' works involve moral questions, the ethical dimension of the problem should be differentiated from technical dimension. This implies that doctors should not consider the patients as mere objects or machines, while they on the other hand work only as *homo faber*. The doctor should manifest his concern for his patient as a person and not as a machine. Thus, he must seek the aid of people competent in ethics or morals in which the HEC can readily offer.

8. There is a need for doctors to live the virtue of prudence. The virtue of prudence makes a doctor capable of discerning or foreseeing the most appropriate measure for the perfection of a concrete action. This demands the discernment of appropriate measures to be carried out by seeking other competent people's advice. The need for seeking other wisemen's advice gives ethical credence to HEC's establishment and consultative role. In fact, «seeking counsel from elders» is a virtuous act recommended by the Hippocratic oath, and is practically applied in contemporary medicine. Moreover, Christian tradition is replete of testimonies on the importance of this virtue in exercising ethical decisions.

9. Patient-doctor relationship is not exclusive between the two of them. Pope Pius XII asserted that doctors do not have a right separate or independent from that of the patients and the society. The doctor has a personal responsibility to his patients, just as he has to himself and to the society. Thus, his clinico-moral decision does not rebound exclusively to himself. And as in this case, paternalism, which advocates patient's passive cooperation, should be avoided.

The doctor's moral responsibility also requires that he counts on the help and participation of other persons not necessarily of the same profession but are competent enough in moral issues. The participation of a competent group or «third party» like the HEC is ethically permissible. As T. Beauchamp and J. Childress stated, there are compelling moral reasons why physicians should consider persons like spouses, parents, guardians or committees as important and who cannot be ignored. Doctors of contemporary medicine must adopt an institutional role in bioethics issues. An HEC, being an institutional group, can give the doctor this specific assistance.

10. As regards the patient's ethical problems and the HEC's ethical existence, the following can be concluded:

It was generally observed that many patients welcome the services offered by the HEC especially when this assists them resolve ethical problems and protects their ultimate medical desires if one day they fall incompetent. However, they fear HEC's interference, and pose some doubts if HEC's decision would remain ethically right if such decision or recommendation does not coincide with their expressed will.

Evidently, this problem is not easy to resolve because the ethical root of this type of patient's attitude can be traced to the current over-emphasis on «autonomous rights» or «right to self-determination» in the clinics, as has been graphically described by the three prominent American bioethics authors, T. Beauchamp and J. Childress, and H. T. Engelhardt.

For instance, T. Beauchamp and J. Childress described American concept of personal autonomy in bioethics as the governance of one's rules of conduct in absence of exterior constraint, and with the ability to voluntarily fix a course of action. Thus, patient autonomy is marked by his capacity to choose and formulate convictions devoid of any formal or exterior coercion, with the condition that when actualized, he does not harm the autonomy of others. Applied in a secularist, pluralist and legalist society, this concept, says H. T. Engelhardt, produce disparity in moral views that often lead to moral disputes. To solve this problem, H. T. Engelhardt suggested that patients should exercise his free consent by authorizing, usually under legal grounds, (such as the use of advance directives or the patient's self determination act) one person or a group of persons like the HEC to

carry-out his preferred medico-ethical choice. Where is the limit to the patient's autonomy? Can the HEC ethically and validly go against the preferred choice of the patient? The HEC can validly and ethically disagree with the patient's choice by bearing in mind the guideline given by the President's Commission for the Study of Ethical Problems which says that HECs should only give non-binding consultative recommendations and not legally binding or obligatory decisions. Second, in HECs with concrete ethical convictions (like the Catholic-oriented HECs), hospital policies may be implemented.

11. All of the above observations and affirmations adequately express the ethical validity of setting-up HECs as a vehicle to impart moral advises or decisions, education and formulations to various people within the hospital. With the hope of having accomplished this first part of the investigation, the second part of the investigation is directed to the HEC's role of rendering theological reflection or perspective in the bioethics discussions/forums. The following points can be affirmed:

12. It was observed that there are two general groups of HECs existing in the USA: the Secularist-oriented group and the Religious-oriented group (specifically the Catholic-motivated HECs). These two HEC groups are generally similar in their ethical objectives and organizations except that the secular-oriented group do not always claim to provide theological perspectives in their moral HEC forums. On the other hand, Catholic-run HECs are motivated by the conviction that Catholic moral perspective plays an integral part in the moral analysis of bioethics issues of the HEC. But why are there two HEC orientations? Why is theological reflection not entirely admissible on the part of secularly-oriented groups? Secularism is certainly the cultural condition that provoked doubts and skepticism to the role and contribution of rendering Christian perspectives in bioethics forums. Secular arguments propounded by our four selected American Bioethics authors are analyzed to give us concrete descriptions of this type of moral thinking. Although this collection is not an exhaustive investigation reflecting the whole picture of American secularism, we can nevertheless adequately describe it by following our authors' viewpoints:

13. G. P. Schner recognizes both the "relationship" as well as the non-reconcilability between moral-theological perspective and the medical sciences. He believes that theological reflection consists of two elements: those which empirical science has immediate access, and those which does not have access to it (like transcendental truths of faith, grace, sin) because they lack distinct clarity or certainty. The possible means to relate theological reflection with medical ethics is by employing common anthropological vocabulary, or by using metaphor to rationally explain the scriptural foundations or by gathering religious experiences as data for empirical analysis. Schner's secularist's ideas are derived from the excessive emphasis on empirical rationality.

14. H. T. Engelhardt, on the other hand, is convinced that God and theological perspective have a special place in bioethics especially when man searches for his moral transcendence like the meaning of pain, suffering, disease or death. However, he says that the rendering of theological perspective about God has to be in the form of a «nameless god» to maintain the secular-pluralistic orientation: a bioethics aimed at giving moral arguments that are universally valid, and which do not claim prior divine moral authority.

15. Despite these two authors' propositions, B. Mitchell recognizes the importance of giving theological reflection of Christian perspective in bioethics discussions because for him, Judeo-Christian moral traditions have firm and well-grounded philosophical and theological foundations/arguments. However, he recommends its use only to Christian followers like the Catholic-run HECs. He is afraid that if this perspective is used in secularly-oriented HECs, the Christian moral integrity might be compromised when subjected to pluralistic method of utilitarian calculus or consensus.

16. R. A. McCormick proposed a way to make Catholic theological perspective also acceptable in a secular-pluralistic ambiance. He said that the concept of «reason informed by faith» can be understood in this way: faith is a basic human value derived from man's natural inclination to God, which McCormick calls «belief». On the other hand, this belief is «culturally conditioned» such that it influences his moral conduct. The belief in the Sacred Scriptures is considered as «Christian story», which is but a part of Christian culture. Thus, Christian «faith», for being a part of culture, would certainly «influence» man's reasoning and moral conduct. He furthermore explained that the Christian moral perspective influences man only as a kind of light, support or motivation: a generic and contextual view of moral life, which cannot be universally binding. What is essential to moral good is the normative value which is found in the natural law. Thus, he argues that since moral norms are found in the natural law, there are no other moral norms distinctly Christian except that it gives us generically Christian perspective. Neither Christ's moral teachings and examples have anything new since they are already contained in the natural law. Nevertheless, he said that these Christian theological perspectives may be worthwhile in bioethics issues as general guidelines in living a more perfect life especially for Christian followers.

17. After the exposition of the different levels of secular mentalities regarding the use of Christian theological perspectives in bioethics committees, a critical analysis is done by providing adequate explanations favoring the Church's moral stance.

Most secularists agree (Lovin, Nelson, etc.), that at least in practical terms, there exists a relationship between the notion of morality and the concept of God. However, there is still an on-going search to describe and explain what kind of relationship these two concepts (concretely, between bioethics and Christian morals) should be considered to assure holistic arguments acceptable to both secularly and religiously-oriented HECs. Recent post-Vatican II secular and Christian authors (e.g., the four analyzed authors, Gustafson, Hauerwas) have attempted to provide possible steps towards a holistic approach – a way of justifying theological reflection in a secularized bioethics mentality. Although these authors have contributed much in clarifying bioethics in relation to Christian moral perspectives, this study have nevertheless tried to demonstrate some inadequate notions in the secularist mentality that could result to more confusion rather than to a deeper relational understanding between the two. Arguments using Catholic fundamental theology is used in refining such deficiencies and adequately justify the offering of theological perspectives to bioethics group discussions like HECs.

18. Generally, the root cause of secular skepticism on moral theological role and contribution is the dichotomous way of viewing things. A dichotomy in the concept of faith and reason, dichotomy between supernatural and the natural truths, and dichotomy between the order of ethos and the order of salvation.

Schner's position which focuses on the need for purely rational or empirical methodology as the sole means to relate theological reflection is untenable because scientific/empirical reasoning is limited. There are transcendent truths which cannot be reached by plain reasoning nor be subjected to scrutiny using this method. Although this argument seems old to us, *Veritatis Splendor* reiterates this danger because it perceives a turn-around of this misconception, but dressed in another manner. The document insists that empirical observations, though many times reasonable, need not be the sole measure to primordial questions like what is good, or what must be done to have eternal life (cf. VS n° 111). Empirical reasoning is limited to some degree and cannot function autonomously. It certainly contributes to a deeper human comprehension of things but it should coherently function with theology in a spirit of interdisciplinary context – a harmonious dialogue between the two.

Dichotomous distinction between supernatural and natural theology as proposed by H. T. Engelhardt to justify the relationship of theological perception with Christian and secular bioethics is also found untenable in three main points: first, bioethics and mere natural theology, though valid, is insufficient because of man's incapacity to know higher truths on the living, personal God who is source of grace, and retributor of eternal life; second, man, by experience and historical fact, have fallen into sin which makes him weak, prone to error and failure. Higher truths regarding himself and God can only be achieved with God's supernatural help through Revelation. Supernatural theological reflections through revelation is a concrete mode of achieving deeper comprehension of moral life; third, man is impelled not simply to do what is good but also to practice love and service to others, freely lived out to the fullest. This interior urge is a call to perfection which presupposes dependence on supernatural truth concretely given to us in Christ's new law of love called Christian morals. Theological perspective of a «nameless god» can hardly offer concrete supernatural and theological moral perfection as is found in Christ's teachings.

B. Mitchell and R. McCormick did not deny the relationship of Christian moral reflection in bioethics issues. B. Mitchell's preoccupation that Christian moral perspective might be compromised if such theological convictions are subjected to consensus in secular-pluralist HEC groups is understandable. To avoid this problem, let each HEC function exclusively according to their group's ethico-theological views. In fact, this is the present HEC set-up: one group with secular orientation, and another group with Christian perspective.

R. McCormick's analysis to make Christian theological perspective validly applicable to bioethics issues in a secular society was a remarkable pursuit. However, his revisionist's viewpoints (mentioned in the earlier discussion) which resulted to the dichotomous distinction between the order of ethos and the order of salvation have made such propositions inadequate when analyzed according to the light of the recent church teaching (VS) and to some other Catholic theologian's views. VS mentioned that the moral concept according to the order of ethos, (i.e., norms through natural reasoning), and order of salvation (i.e., Christian morals) have no dichotomous break and are not contradictory. The notion which states that only moral norms demanded by natural law (through pure human reason) are universally valid, while those revealed by Christ called «Christian morals» are merely motivational, influential or supportive, cannot be sustained. Thus, the Church concretely warned those people who desire to keep theological perspective of moral life in a Christian context to be also adequately convincing within secular context,

not to introduce a sharp distinction contrary to Catholic doctrine: between the ethical order, which would be human in origin and valuable for this world alone, and the order of salvation for which only certain intentions and interior attitudes regarding God and neighbor would be significant (cf. VS n° 37). Attempts to justify Christian morals in secular bioethics situations should bear in mind this concrete Church's guiding principle due to three main reasons: on the practical level, it affirms that Christian moral specificity is really capable of contributing concrete morality and not simply some sort of «significant intentions or attitudes» regarding God and neighbor. Christian morals in bioethics forums are not merely “nice opinions or voices” available in the clinico-moral reflections which would not concretely affect his personal moral life in relation with God and men and his salvation; on the ethico-philosophical level, it stresses the idea that man's acts form an indissoluble unity. His rectitude of action towards the good (found in the human ethos) is in reality, intimately united to his moral intention (motivation) thus, transforming him into a good person (found in the ethos of salvation); and on the theological level, it demonstrates that there is no sharp distinction between these two levels and that they are not radically the same because human reasoning should be a «subjunction» of Christian ethos (ethos of salvation) fully accessible only through God's revelation in Christ.

19. The above concluding expositions therefore serve to justify the use of Christian theological reflection/perspective in bioethics issues in the HEC forums. The ultimate section of the thesis deals with the applications of some Christian theological perspectives in two selected HEC set-ups demonstrating their concrete contributions.

The first case, featuring a secularly-oriented HEC involving «prolonging life issue», illustrated the adequacy of offering theological perspectives even in secular-pluralistic ambiance. In fact, application of this perspective could dramatically improve a supposedly secular-oriented final option into a better, broader and more responsible moral decision. The concrete theological contributions utilized in this case-study was focused on the following: human life is a fundamental good because God is the origin of his life, and his dignity is based on the similar characteristics of God; killing is an objective evil; other persons may assume the obligation to preserve other's life (through proxy's task in protecting patient's best-interest) as a noble act of Christian charity; the obligations which presumes prolonging life depends in some way to ethical and theological analysis of ordinary and extraordinary means; although physical and temporal aspects of one's life are important, spiritual life should be also considered.

20. The second case which features a Catholic-oriented HEC involving «Catholic-based hospital policy prohibiting hormone therapy to rape victims», has the following theological role and contributions: together with the medical, psychological, social, and personal assistance given to raped patients, spiritual counsel should be offered as well. The use of theological perspective would help preclude possible attempts against the life of an unborn child. In this case-study, theological perspective confronts specifically the use of artificial contraception or abortifacient effects of hormones. Insofar as it provokes killing of possible human life that could have begun from the moment of conception, hormone therapy is judged as immoral and non-applicable even to rape victims. Deep theological perspectives on conjugal love and sexual act are likewise essential to understand better the moral convenience or inconvenience of using «purely contraceptive» hormonal therapy (if ever it exists) to victims of sexual aggression. HEC

with theological views is thus necessary in order to promote more responsible moral decisions.

21. These two cases have clearly demonstrated, although not in an exhaustive manner, some theological contributions they offer in bioethics forums. At the same time, we can conclude that theological perspective/reflection can be adequately used not only in the Catholic-oriented HECs but also to HECs of secular-pluralist orientation.

22. As an overall conclusion, we can therefore say that the establishment of HECs and their use in bioethics issues are ethically valid. The function of offering Catholic theological perspectives can be employed not exclusively among people of similar faith convictions, but also among those non-Christians or groups of different moral views. An HEC that promotes an authentic and sincere moral dialogue must be open to well founded transcendent moral reflections, like the Catholic moral perspectives. Thus, HECs which already have theological perspectives as integral part of their organizational functions have all the moral reasons and basis to establish and employ them. On the other hand, HECs with secular-pluralistic motivations have to recognize the moral validity and supports we have just expounded so that they may openly accept and readily offer theological dimensions in every bioethics issue and discussion.

23. Granted that the practical establishment of HECs and the possibility of offering theological perspective in bioethics discourse is resolved, can the use of the HEC and the theological perspective mandatory to all people?

As regards the use of HEC in the search for morality in bioethics issues, it can be affirmed once more that the utility of these organized bioethics groups is highly recommendable but in all cases, their decisions must remain advisory and never mandatory. But what use can these advice or recommendations have if after all, they are non-binding? The biggest contribution of the HEC is its ability to impart in a broader and collegial way, in a competent and responsible manner the different positive moral views that may be possible to adopt to achieve an optimum moral recommendation of the concrete clinical cases.

Moreover, should the rendering of theological perspective be mandatory or also advisory in HEC forums? In the same way that HEC in itself cannot impose its services to anyone who rejects bioethical assistance, likewise, the rendering of theological perspectives cannot be obligatory except for Christians who, by their supposed moral commitments should abide by the Christian criteria in their moral decisions. Non-Christians who live the spirit of authentic dialogue certainly need this assistance. However, they are neither obliged nor legally bound. In the case of theologians and competent Christian moralists within the HEC organization, they need to exercise more prudence in presenting non-obliging recommendations most especially whenever they deal with non-Christians in the HEC.

24. Even with this investigation, still there are other factors open for deeper analysis and further research. For instance, what type of ethical and theological moral system (methodology) can be recommended for HEC use to guarantee the promotion of high moral standard? What factors are necessary to achieve a competent, honest and upright theological discourse? In cases of disparity of moral views among HEC members, is there

a way aside from seeking agreement by consensus which is protective of the demands of Christian morals? These questions may be recommended for future investigation.

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