

**Political authority and biopower.  
Personalist approach to common  
themes between the Compendium  
of the Social Doctrine of the Church  
(No. 377-427) and the French  
Constitution**

**La autoridad política y el biopoder.  
Enfoque personalista de los temas  
comunes entre el Compendio  
de la Doctrina Social de la Iglesia  
(núm. 377-427) y la Constitución  
francesa**

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**Abstract**

The legal dimension of bioethics, known as biolaw, occupies an important place in discussions on this topic. For them to be recognized,

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various French bioethics legislations require a competent political authority: the civil authority whose apex is the French Constitution (FC), as the legal act and the fundamental law that establish the organization and functioning of the state. However, in the field where we touch on the human person, on the values and the fundamental principles, religious authority, such the Social Doctrine of the Church (SDC), has a role to play. This is the reference of values through which human conscience can exercise itself freely in political, social, and economic realities. Hence, what are the possible common themes between the FC and the SDC and what can personalist bioethics contribute to reconciling the two sides?

*Keywords:* political authority, biopower, constitution, personne humaine.

## 1. Introduction

In France, since the creation of the world's first National Consultative Ethics Committee (CCNE) in 1983, there have been four successive bioethics laws: 1994, 2004, 2011 and 2021. These laws are part of what is known as biolaw, which is the legal expression of societal choices concerning issues relating to biomedical ethics. It's a matter of legislation being put in place by political authority, which is a manifestation of biopower. According to Michel Foucault, biopower is the possibility of power being exercised not only over the subjects of law, but over life itself (1). This is why bioethics, based on biopolitics, must be questioned in order to avoid societal subjectivism and remain at the service of respect for life. In this context, we wanted to examine the relationship between political authority and biopower, through possible common themes between the Social Doctrine of the Church (SDC) and the French Constitution (FC) of 1958 (2), in order to determine whether there is any possibility of an encounter between the two.

To approach this subject from the point of view of the SDC, we have chosen the 8th chapter (numbers 377-427) of the Compendium

of the Social Doctrine of the Church (CSDC) (3, pp. 212-239); this chapter deals with the theme of the Political Community. To enrich the texts of the SDC, it is important to have recourse to various ecclesial documents such as certain papal discourses and encyclicals (particularly Popes John Paul II, Benedict XVI and Francis), Second Vatican Council, Dicastery for the Doctrine of the Faith and the Synthesis of the SDC drawn up by Marc-Antoine Fontelle. In addition, the works of Chahine Hage Chahine and Francesco Brancaccio offer an important perspective on the question of the link between Church and State.

As for the FC, we refer to the “constitutionality block”, which is made up of four main texts: a) the entire Constitution of October 4, 1958, including its preamble. The latter refers to b) the Declaration of the Rights of Man and of the Citizen of 1789 (DDHC), c) the Preamble to the Constitution of 1946 (PC) and d) the Charter of the Environment of 2004.<sup>1</sup> To better understand the content of the Constitution and some laws in this area, several bibliographical sources are required: case law, legislative proposals and comments on the Constitution by specialized jurists such as Guy Carcassone *et al.* and Michel Lascombe *et al.*

In order to respond to the problem and provide a better ethical approach, each theme raised in the two parts will be followed, as far as possible, by an analysis from the point of view of Elio Sgreccia’s personalist bioethics.<sup>2</sup> Since personalist bioethics is based on Thomistic thought, recourse to the writings of Saint Thomas Aquinas is

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<sup>1</sup> The principles of these texts have been given constitutional value by decisions of the French Constitutional Council: decision no. 71-44 DC of July 16, 1971 for the DDHC, decision no. 81-132 DC of January 16, 1982 for the PC and decision no. 2005-205 of March 1, 2005 for the Charter of the Environment.

<sup>2</sup> Personalist bioethics, founded by Cardinal Elio Sgreccia (1928-2019), affirms the centrality of the human person in all spheres of society. Its fundamental basis is the principle of the ontologically founded dignity of the human person. This intangible dignity is intrinsically linked to being as a unique existence realized in the physicality of each individual. Four other principles flow from this fundamental principle:

- a) The principle of safeguarding physical life;
- b) The principle of freedom and responsibility;
- c) The principle of totality or the therapeutic principle;
- d) The principle of sociality and subsidiarity.

necessary to deepen certain points. The reflections of certain moralists and bioethicists —such as Marie Jo-Thiel, Jacques Suaudeau, Servais-Théodore Pinckaers and Annie Lamboley— complement Elio Sgreccia's approach. Jurist Alain Supiot's philosophy of law complements moral reflection to understand better some of the ethical problems.

The various themes are grouped into three main ideas: the nature of political authority [1], the link between political authority, the French motto and human rights [2], and the relationship between political authority and the people [3].

## 2. The nature of political authority

To better understand the biopower legally exercised by biolaw, it is essential to understand the nature of the political authority that wields it. In particular, we need to know the source of this authority, which gives it almost absolute power to decide what is and what is not appropriate in ethical matters [1.1]. But it is also a question of examining the purpose of this authority and the laws that flow from it [1.2].

### 2.1. *The source of political authority*

Clearly, the CSDC affirms that all authority comes from God, because it belongs to Him, the Creator who governs the whole universe and everything in it. Thus, all political authority is not absolute in itself, because it must refer to a higher authority, that of God.

However, this reference to divinity is totally absent from the FC. Indeed, in the introduction to the DDHC, we read that “the National Assembly recognizes and declares, in the presence and under the auspices of the Supreme Being, the following rights of Man and of the Citizen.” G. Carcassonne *et al.* comment on this reference to the Supreme Being as a “prudent formulation that respects the Christian

faith, satisfies the prevailing deism, does not insult possible atheism and, incidentally, gives the Declaration the necessary sacredness” (4, p. 429). On the other hand, M.A. Fontelle sees in this reference an explicit attempt to destroy “one of the fundamental laws of the Ancient Régime, in such a way that the promulgation of this Declaration condemned the immediate disappearance of the Monarchy and the Church” (5, p. 324).

On the one hand, there is the God of Christianity; on the other, there is the Supreme Being of the Enlightenment. The former refers to a divinity, the latter to natural religion based primarily on human reason and philosophical individualism. Two conceptions of the source of authority fuel this tension between the religious and civil realms in the assessment of bioethical legislation.

In this context, personalist bioethics proposes a reconciliation between the two conceptions. It refers to natural law as the source of political authority. Indeed, personalist bioethics specifies that natural law is the moral law “inherent in man’s conscience, innately identifiable at the first level of his consciousness, and thereafter being a rational norm [...] It is a universal and immutable law, just like human nature itself” (6, p. 148).

This solution has its origins in the thought of Thomas Aquinas, based on Aristotelian philosophy. Thomas Aquinas states that natural law is the expression of natural inclinations in the form of general, unquestionable precepts. By “natural”, he refers to that which is linked to the reasonable nature of the human being, and is therefore universal (7, q. 90 -91); by “inclination”, he means this “instinct of reason” (*instinctus rationis*) (7, q. 68, a. 2), the basis of every human act. Thomas Aquinas distinguishes five natural inclinations: the good, the preservation of being, the knowledge of truth, life in society and sexuality (7, q. 94, a. 2; 8, pp. 410-414). By transposing these five inclinations onto the personalist model, we can affirm that the good corresponds to fundamental rights, the preservation of being corresponds to respect for life, knowledge of the truth corresponds to the truth linked to conscience, life in society corresponds

to the principle of sociality and subsidiarity and sexuality corresponds to conjugal life between man and woman and all that follows from it (6, p. 170),

If political authority draws its power from this natural law, a balance is struck between the rational aspect (Enlightenment philosophy) and the Christian aspect, for whom natural law is a reflection of divine law (7, q. 91, a. 4). In both, the human person is at the center of their reflections.

## *2.2. The object of political authority*

The human person has and must always occupy a central place in political discourse, since it is the foundation and the end of every political community. In the SDC, as in the FC, the human person is not just a matter for the citizens of a particular country, or for the individuals of a particular ethnic group. The introduction to the DDHC is understood as a universal vocation, which is of course the case in the SDC, since the human person is characterized by a proper nature [1.2.1] and by a dignity [1.2.2] that must be safeguarded from all penalties [1.2.3].

### 2.2.1. Human nature

Church tradition, based on Thomas Aquinas, defines the human person as a “distinct [being] subsisting in intellectual nature” (9, d. 23 q. 1 a. 4 co). From this definition, we identify the two main characteristics of human nature: rationality and freedom (CSDC 384). Note that freedom is linked to rationality; in other words, to be free, we must have the intellectual capacity to make a deliberate choice<sup>3</sup>

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<sup>3</sup> We are not referring to capacity in the sense of the use of rationality, as being the exercise of reasoning, but rather to the possession of this capacity to reason as being part of human nature. In this sense, whether the realization of the act of reasoning is perfect, less perfect or never realized, the human being is always considered to be a reasonable being.

(10, ST III, q. 68, a. 12). These two characteristics are also two principal traits of God. As a result, human nature finds its full meaning and plenitude in its “openness to the Transcendent” (CSDC 384).

This is not the same conception in the CF. Commenting on the introduction to the DDHC, G. Carcassonne *et al.* assert that “nature itself [...] nevertheless has a creator called the *Supreme Being*” (4, p.429), without specifying who this *Being* is. In this context, the absence of God in the CF undoubtedly marks a break with a long philosophical and metaphysical tradition, to be replaced by the ideas of the Enlightenment, where individualism is the principal actor in all thought. As a result, we find ourselves anchored either in an intellectualist conception of an anthropological dualism of the human person and his nature, a conception that creates a kind of rivalry between body and soul; or in a materialist conception of a monism according to which man is reduced to his bodily aspect alone. This has a major impact on our understanding of the principle of human dignity.

### 2.2.2. Human dignity

The question of dignity is related to the human nature. It is rooted in the very essence of the being and in his personal traits found in no other earthly creature. Reason and freedom enable us to find the principal source of the dignity of the human person: God (CSDC 144).

CF’s recognition of human dignity can be found in two texts, according to M. Lascombe *et al.* (11, pp. 396-411). On the one hand, even without a direct mention of the “human person”, art. 1 of the FC agrees with the CSDC when it places “all citizens, without distinction of origin, race or religion” on an equal footing before the law. This shows that the French Republic does not recognize differences between people on the basis of what they are, but rather on the basis of what they do. A certain dignity is recognized. On the other hand, even though it dates back to 1946, the first paragraph of the PC is the basis of the constitutional decision which affirms that “safeguarding

the dignity of the human person against all forms of enslavement and degradation is a principle of constitutional value” (12).

But what do we mean by dignity? The facts show that this notion is confusing. For example, to die with dignity, the government proposed a “law to affirm free choice at the end of life and to ensure universal access to palliative care in France” in 2021 (13). Thus, in 2022 a citizens’ convention on the end of life (14) was launched, with the purpose of studying the possibility of legalizing euthanasia, which until then was prohibited and framed by “law no. 2016-87 of February 2, 2016. This created new rights for patients and people at the end of life (1)” known as the Claeys-Leonetti law. The same applies to voluntary termination of pregnancy (IVG). In the name of women’s dignity, which is linked to freedom, we authorize abortion even up to 14 weeks, an authorization enshrined in “law no. 2022-295 of March 2, 2022 aimed at reinforcing the right to abortion (1)”, and we would like to insert the right to abortion into the Constitution (15-17).

Personalist bioethics proposes that dignity is ontologically founded, i.e. intrinsically linked to the human being in his totality<sup>4</sup> (6, pp.107-133, 399-442, 582-585), a dignity that no one can take away. Concretely, in the case of euthanasia, for example, the dignity of a person at the end of life is neither subjective dignity (what the person feels within him/herself), nor deployed objective dignity (the feeling of solidarity in subjective dignity) (18), but quite simply the dignity of being a human being, even in its finitude and final moments. The same applies to the question of abortion and the embryo, which is considered a human being endowed with human dignity from the moment of conception (19,I,1).

### 2.2.3. Safeguarding human dignity and punishment

In the context of the political community, the question of punishing people who have committed offences clashes with that of

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<sup>4</sup> According to Elio Sgreccia, totality this refers to the three fundamental components of the human being: body, mind and soul.



safeguarding dignity. The CSDC and the FC affirm that punishment is necessary to protect the common good. However, a list of four principles is drawn up and must be respected. These are the principles of proportionality (CSDC 402, DDHC 8), respect for and safeguarding of human dignity and rights (CSDC 404, DDHC 8), presumption of innocence (CSDC 404, DDHC 9) and truth.

The difference lies in the latter principle. The CSDC insists on the “rigorous search for the truth” (CSDC 404), while the DDHC affirms that “no one may be accused, arrested or detained except in cases determined by law” (DDHC 7). However, in art. 9 of the DDHC and in relation to the criterion of presumption of innocence, the search for the truth risks being abandoned: “It is (the confession) that the judiciary too often seeks, in preference to the truth, which is less easy to establish” (4, p. 438), state G. Carcassonne *et al.* In a commentary on this article, M. Lascombe *et al.* state that it is up to the judge to establish that “the person, in the presence of his lawyer, acknowledges the facts of which he is accused [...] and must therefore verify not only the reality of the person’s consent but also its sincerity” (11, p.209). But sometimes the accused is innocent and at the same time forced to confess guilt. This confession, which takes on the appearance of truth, could be deceptive. Imagine a prisoner who, under the pressure of a threat to his family, confesses to a crime he did not commit. In the interests of justice, as the common good, he is sentenced to death. This is a double attack: on truth as a fundamental principle, and on life as a fundamental value and a fundamental right.

Shouldn’t we dig for the evidence to establish the “truth”? E. Sgreccia affirms that “it is truth that establishes the basis of the good” (6, p. 153). No common good, including justice, justifies taking a human life.

It is in this context, where the human person is the foundation of the political community and its end, that the French motto could be examined.

### 3. Political authority, the French motto and human rights

Is it by chance that this motto —Freedom/liberty [2.1], equality [2.2], fraternity [2.3]— of the French Republic occupies a prominent place in the CSDC? If the latter joins the CF through the three components of the motto, we may be surprised to discover that they are sometimes so diametrically opposed as to have an impact on the grasp of the notion of human rights [2.4].

#### 3.1. *Freedom (liberty)*

Freedom, a universal value, is linked to truth, justice and charity (CSDC 138-143, 198-208, 384). It derives from the natural law and is situated in the practice of goodness and love since, as “the principal characteristic of the intelligence and the will, it is a precious gift of God to man” (5, p. 307). According to the CSDC, freedom does not simply consist in doing this or doing that: according to Thomistic thought, on which Christian morality is based, every human act is not free by nature, but is ordered to an end (5, pp. 302-320). Otherwise, it would have no meaning and its morality could not be assessed.

For its part, art. 6 of the DDHC affirms that “freedom consists in being able to do everything that does not harm others”. This is a clear reference to the Kantian conception of individual freedom, which is limited only by the freedom of others. But who defines the freedom of others and the limits that must not be crossed? What are the rules for determining the forbidden zone and giving everyone the opportunity to enjoy their own freedom?

These questions depend on the type of freedom involved. Among the fundamental freedoms cited by the CSDC are freedom of conscience [2.1.1], freedom of expression [2.2.2] and religious freedom [2.2.3].

### 3.1.1. Freedom of conscience

The CSDC affirms that the “citizen is not obliged in conscience to follow the prescriptions of the civil authorities if they are contrary to the requirements of the moral order, to the fundamental rights of persons or to the teachings of the Gospel” (CSDC 399).

Art. 10 of the DDHC defends this freedom and underlines an important distinction between freedom of conscience and opinion. Opinion is an ideological order that can be changed according to context. Whereas conscience is a “no-rights zone” as conceived by G. Carcassonne *et al.*: “Conscience has always been free [...] because the power [authorities] could not fathom souls and flush out the offenses they would have liked to punish. Conscience is a lawless zone” (4, p. 439).

In the field of bioethics, this freedom of conscience is embodied in “conscientious objection or the duty to disobey” (20,21) and enshrined in law as a conscience clause in art. R4172-47 of the Public health code (PHC) applies to three types of medical acts: <sup>5</sup>

- a) Abortion, enshrined in “Law no. 75-17 of January 17, 1975 on the voluntary interruption of pregnancy”. This law, known as the “Loi Veil”, is incorporated into the PHC’s art. L. 2212-8;
- b) Sterilization for contraceptive purposes, enshrined in “law no. 2001-588 of July 4, 2001 on voluntary interruption of pregnancy and contraception (1)” and incorporated into the PHC’s art. L. 2123-1;
- c) Embryo research, established by “law no 2011-814 of July 7, on bioethics (1)” and inserted into the PHC’s art. 2151-7-1.

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<sup>5</sup> As a result, we speak of a double conscience clause:

- a) The general conscience clause, which gives doctors the right to refuse to perform a medical act, even if authorized, that is contrary to their personal or professional convictions.
- b) The specific conscience clause, which gives healthcare personnel the right to refuse to perform a specific medical act: abortion, contraceptive sterilization and embryo research.

Of these three acts, that of abortion poses an obstacle to freedom of conscience. In its 2017 report, the High Council for Equality between Women and Men (HCE) considers that the conscience clause constitutes an obstacle to a woman's freedom to dispose of her body, and that it should be removed from the PHC (22, p. 3). Such a recommendation was taken up again in August 2020 by the "Proposition of law no 3292 aimed at strengthening the right to abortion" to abolish the conscience clause specific to abortion. Such a recommendation was not retained in the final text but could be reconsidered should abortion be incorporated into the Constitution.

### 3.1.2. Freedom of expression

It mainly concerns the means of communication. The CSDC affirms that it must be at the service of the common good, and it cannot be separated from truth, justice and solidarity (CSDC 415); it must avoid ideology, the desire for profit and political control (CSDC 416); it must look after the person and the community as its ends.

This freedom of expression has constitutional value, as it is enshrined in art. 9 of the DDHC as a precious human right. It enables real pluralism, which must seek transparency (CSDC 414, DDHC 11). G. Carcassonne *et al.* note that "the use of freedom of communication can only become abusive when it comes into conflict with other constitutionally protected requirements" (4, p. 440).

However, freedom of expression is threatened when it comes to abortion. Law no. 93-121 of January 27, 1993 on various social measures, known as the Neiertz law, created the offence of obstructing abortion,<sup>6</sup> following various attacks on abortion centers. In this

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<sup>6</sup> The law sets out the changes to the PHC as follows (this is the original text):

"Art. L. 162-15. - The act of preventing or attempting to prevent a voluntary interruption of pregnancy or the preliminary procedures provided for in articles L. 162-3 to L. 162-8 will be punishable by a prison sentence of two months to two years and a fine of 2,000 F to 30,000 F [French franc], or by one of these two penalties only:  
– either by disrupting access to the establishments referred to in article L. 162-2 or the free movement of persons within these establishments;

context, such an offence is understandable. The aim is to protect the freedom of those who wish to carry out abortions. However, the situation changes when the “law n° 2017-347 of March 20, 2017 relating to the extension of the offence of hindering the voluntary interruption of pregnancy (1)” extends this offence to digital. As a result, any electronic or online channel suspected of misinforming about abortion is subject to prosecution.

In this regard, Family Planning wrote a letter to the Minister of Solidarity and Health, Olivier Véran, on January 17, 2021, demanding “that the proactive and targeted strategy of anti-choicers on social networks be legally recognized as a form of crime for obstructing abortion, as this is the effect it has in practice” (23) on the grounds that they offer false information on the medical and psychological consequences of abortion on their sites. Such a claim constitutes an infringement of freedom of expression, especially when it is based on scientific studies<sup>7</sup> providing the information on the possible consequences and risks of abortion.

### 3.1.3. Religious freedom

Considered a fundamental human right by the CSDC (421-423), religious freedom normally has constitutional value, as it is enshrined in art. 1 of the FC and art. 10 of the DDHC. The principle of secularism (in French: *Laïcité*) carries with it a dimension of neutrality with regard to religions; the State respects all religions without privileging any of

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– or by threatening or intimidating medical or non-medical staff working in these establishments or women seeking voluntary termination of pregnancy.

“Art. L.162-15-1. - Any association which has been duly registered for at least five years at the time of the event, and whose statutory purpose includes the defense of women’s rights to access contraception and abortion, may exercise the rights granted to civil parties in respect of the offences provided for in article L. 162-15 when the acts were committed with a view to preventing or attempting to prevent a voluntary interruption of pregnancy or the prior acts provided for in articles L. 162-3 to L. 162-8.”

<sup>7</sup> The scientific literature on the medical and psychological consequences of abortion is vast. Just take a look, for example, at the international medical database <https://pubmed.ncbi.nlm.nih.gov/>, which provides a long list of scientific articles on the subject.

them (4, p. 45) and citizens must respect the beliefs of others. We'll come back to this principle of secularism in the following pages.

In this context of the various types of freedom, personalist bioethics (6, pp. 144, 146, 151, 167, 628) reminds us that freedom, which is "a profound expression of each human being", in order to be authentic must:

- a) be aligned with intelligence, i.e. with the search for objective truth emanating from natural law;<sup>8</sup>
- b) be respect the right to safeguard one's own life and that of others. The latter right is justified by the principle of the "unavailability of the human body", as enshrined in art. 16 of the Civil Code (CC). For example, surrogate motherhood is prohibited in France by "law no. 94-653 of July 29, 1994 as a sign of respect for the human body", which introduces a new article into the CC stipulating that "any agreement concerning procreation or surrogate motherhood is null and void" (art. 16-7 CC). This prohibition covers the two aspects of the unavailability of the human body: the impossibility of selling one's body (renting or even disposing of it free of charge)<sup>9</sup> (24) and the impossibility of violating its integrity.<sup>10</sup> This principle constitutes an ontological and ethical foundation for all thinking that avoids relativism and thus guarantees the principle of freedom.

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<sup>8</sup> See the point 2.2 about ART.

<sup>9</sup> Proponents of GPA speak of "altruistic maternity", whereby the surrogate mother disposes of her body "free of charge" out of altruism. However, on May 31, 1991, the French Supreme Court (Cour de cassation) ruled that: "the agreement by which a woman undertakes, even gratuitously, to conceive and bear a child, only to abandon it at birth, contravenes both the public policy principle of the unavailability of the human body and that of the unavailability of the status of persons.

<sup>10</sup> The first paragraph of art. 16-3 of the CC states: "The integrity of the human body may only be infringed in the case of medical necessity for the person or exceptionally in the therapeutic interest of others." Since GPA does not meet this condition, it is considered an infringement of the surrogate mother's body, even if she gives her consent.

- c) be accompanied by the principle of responsibility, more precisely, moral responsibility. This consists of evaluating the options in question and responding according to the demands of conscience.

### 3.2. *Equality*

If dignity is the basis of equality between human beings, the CSDC (389) affirms that the political community must work for the common good in order to create an environment where all citizens are equal, particularly in the “effective exercise of human rights”.

In a similar context, the CF contains several references to the principle of equality. Art. 1 of the DDHC refers to this principle in general terms. In the first paragraphs of the CP, the principle of equality refers to non-discrimination, art. 3 to equality between women and men, and art. 11 to equality in the protection of health.

Whereas the principle of equality in the CSDC is rooted in ontologically grounded dignity, in the FC this equality is evoked rather from a legal standpoint: equal before the law. Two applications of this principle require our attention.

- a) On the one hand, the right of access to healthcare for all is an application of the constitutional principle of equality. The PHC guarantees this right in art. L. 1110-1 and L. 1110-3. Personalist bioethics thus joins the CF in asserting that health, as a “subordinate and consequential value of life”, must be respected and promoted for every person, in a manner proportionate to each person’s need and necessity (6, pp. 164-167). For example, all cancer patients are entitled to treatment, but it’s not the same for everyone.
- b) On the other hand, this principle has been invoked on several occasions to demand the opening up of assisted reproductive technology (ART) to all women, prohibited by law until August 2021. Indeed, this claim was based on the principle of non-discrimination based on sexual orientation, as affirmed

in 2015 by the HCE (25, p.19-22). On several occasions, the Council of State has affirmed that the principle of equality is not applicable in the case of ART for all women, because their situation is different from that of a heterosexual couple. The difference in situations necessitates a difference in treatment, which in no way constitutes discrimination (26,27). However, the Council of State's opinion was not enough to halt the promulgation of the August 2, 2021 law.

It is in this spirit that personalist bioethics considers that the principle of equality must be based, on the one hand, on the two notions of natural law and the justice attached to this law (28) and, on the other, on the principle of the unity<sup>11</sup> and the totality of the person, in order to avoid an ontological rupture and any ethical relativism (6, pp. 107-133, 399-442, 582-585). In this sense, equality cannot be approached as being mathematical or arithmetical in nature, based on a quantitative distribution of rights. Otherwise, law itself, in the name of some subjectivity, destroys the foundations of the protection of the common good as an objective good (28, pp. 9-13, 287-288, 304, 315-316).

### *3.3. Fraternity*

This principle is expressed through the two principles of solidarity and subsidiarity (CSDC 417-418). These are based on justice (CSDC 391), which enables everyone to enjoy their property and rights. However, the interpretation of paragraph 12 of the PC refers rather to “budgetary law for expenditure and fiscal law for revenue” (4, p. 458), to create a certain social justice or equity, particularly when it comes to national calamities. Solidarity, which aims to build human society (5, pp. 403-407), is more a matter of friendship, disinterestedness and gratuitousness (CSDC 390-391), not only when it comes

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<sup>11</sup> According to E. Sgreccia, unity is expressed through the intrinsic link between marriage and procreation, sexuality and procreation and sexuality and person.



to disasters, but also when it comes to any attack on a person, a group of people or even society as a whole. Solidarity is also a matter of subsidiarity, embodied in voluntary action and cooperation (CSDC 419-420).

Moreover, fraternity is a principle of constitutional value (FC art. 2). In particular, it is considered in the light of the freedom to provide humanitarian aid to others (11, pp. 519-520).

E. Sgreccia refers instead to the principle of sociality and subsidiarity, far from any social humanism. Sociality consists in the fact that an individual considers his or her life not only as a personal good, but also as a social good, since the human being is a social being by nature. This is reflected, for example, in the willingness to help others through organ or tissue donation. As for subsidiarity, personalist bioethics agrees with the CSDC and the CF that the community should “give more help where it is most needed” (6, pp. 170-171). In reality, however, this is often not the case. For example, how can we justify covering the full cost of ART or abortion -for non-medical necessity- when a consultation with a cardiologist is only covered “at 70% with a medical prescription or with a coordinated care plan, without which it is only at 30%” (29)?

In this context, Pope Francis declares that:

Fraternity is not merely the result of conditions of respect for individual freedoms, or even of a certain observed fairness. Although these are presuppositions that make it possible, they are not enough for it to emerge as an inevitable result. Fraternity has something positive to offer freedom and equality (30, § 103).

This statement by Pope Francis, and before him the whole of the SDC, is a warning against the individualism clearly found in the CF, an individualism that does not “make us freer, more equal, more brothers” (30, § 105). These three principles - liberty, equality and fraternity - are therefore intended to protect man’s natural rights. But which rights are they?

### 3.4. *Human Rights*

The question of human rights is central and is linked to that of the individual. It is important to clarify two ideas.

- a) On the one hand, the human rights defended by the SDC have nothing to do with those of the DDHC. The Church has three criticisms of the DDHC:
  - a. “to have spoken only of rights but not of the corresponding duties” (CSDC 389) (5, pp.330-334), since every right obliges a duty (for example, the right to life obliges the duty to protect it);
  - b. “to have based these rights on the nature of man as an absolute subject”, which favors individualism in the face of community such as the family and the state;
  - c. “having ignored God” (5, p. 324), replaced by the Supreme Being, whereas fundamental natural rights derive from God the Creator.
- b) On the other hand, whether we are talking about the SDC or the FC, “no one today can draw up an exhaustive list of rights and freedoms of constitutional value. It would only be possible to enumerate those which result from a formal proclamation or have been consecrated by constitutional jurisprudence when, and if, the opportunity was offered to it” (4, p. 425).

Of course, to enumerate all rights, the list could be long. But there are four natural and imprescriptible fundamental rights that must be preserved by every political association, according to art. 2 of the DDHC and the SDC (5, pp. 713-715). Two of these rights are common: property and liberty. For this second right, the SDC insists on religious freedom. As for the other two, the DDHC mentions the right to security and the right to resist oppression. The latter is one of the rights cited by the SDC not as a fundamental right, but as a means to be used as a last resort in the event of “certain, serious and prolonged violations of fundamental rights”

(CSDC 400-401). The two other natural and fundamental rights specific to the SDC are the right to work, considered a duty by paragraph 5 of the PC, and the right to life, which is nowhere to be found in the FC, the DDHC or the PC (with one exception, and without any explicit reference, in art. 66-1 of the FC, where the abolition of the death penalty is invoked). This is one of the reasons why “the Popes do not refer to the Declaration of 1789 but to that of 1948, since it tends to express the natural law” (5, p. 329).

What’s astonishing is that the right to life, as the main fundamental right that undergoes the various bioethical issues, is completely absent from the CF. It touches on two main issues: a) abortion and the right to life of the unborn child, and b) euthanasia and the duty not to commit an act of murder. In this context, the fundamental freedom supported by the CF may seem surprising when we fail to recognize that life is the fundamental value of all others.

Hence E. Sgreccia indicates that “to be free, one must be alive” (6, p. 167), since freedom presupposes the life it expresses and from which it draws its source (6, p. 144).

The relationship between political authority and the people is based on these natural rights.

## **4. Political authority and the people**

There is no political authority without the people, and there is no people without political authority, whatever its form. The relationship between the two is based on natural rights fulfilled by duties. Between SDC and CF, this relationship is expressed in participation in power [3.1] and in the notion of secularism [3.2].

### *4.1. Power participation*

“The subject of political authority is the people. It is they who transfer power to elected representatives and “retain the power to assert it” (CSDC 395). There is no doubt that the French Republic affirms

this principle. Article 2 of the Constitution states that “its principle is: government of the people, by the people and for the people”; and article 3 affirms that “national sovereignty belongs to the people, who exercise it through their representatives”. This already defines the characteristics of France: it is a Republic, as opposed to the Monarchy abolished in 1789, and it is a representative democracy whose power is held by the people. The CSDC specifies that “democracy is a ‘system’ and, as such, an instrument and not an end” (CSDC 407). This clarifies the basis for the exercise of power.

If power belongs to the people, it can only be applied through concrete instruments, including representation by elected representatives (CSDC 408-409; FC art. 3) and referendum (CSDC 413; FC art. 3, 11 and 89).

The CSDC adds a third instrument: political parties, which offer “citizens the effective possibility of contributing to the formation of political choices” (CSDC 413). However, even if they “contribute to the expression of suffrage” (FC, art. 4), they have no “real status” and their role “is rather contrasted”, especially when a party “finds its place all the better when it defines it in relation to a president or a presidential candidate” (4, pp. 55-56).

In such a system, the issue of biopower is expressed by Pope Benedict XVI. He affirms that there is a risk of the exercise of a certain “tyranny” of the majority by political authority, especially when “the dignity of man and humanity” are at stake (31). The government’s dependence on a political party carries the latter’s electoral program. And in the event that this program undermines human principles, values and rights as the Church understands them, the entire people will suffer the consequences, with the legislation of laws that run counter to morality. Law no. 2021-1017 of August 2, 2021 on bioethics (1)” is a case in point. The lack of consensus between the National Assembly and the Senate on the draft law prompted the government to invoke art. 45 of the Constitution, which confers the right of “final say” on the National Assembly. This gives the National Assembly the right to make final decisions

on legislation, without taking into account the opinions of the Senate. Another example currently in play is the plan to guarantee the right to abortion by enshrining it in the Constitution (32).

Hence the importance for the Church of continuing to defend the fundamental values and principles that concern the protection of human life. However, secularism could be an obstacle to this mission.

#### *4.2. Secularism*

Since the 1905 law on the separation of Church and State, the relationship between the two protagonists has often been unstable. While this separation was intended to ensure autonomy and independence, collaboration between these two institutions is tending to disappear, particularly in the context of bioethics.

Certainly, the Church's primary role is to "satisfy the spiritual demands of its faithful", which is part of the spiritual order; it must respect the "legitimate autonomy of the democratic order" (CSDC 424), itself part of the temporal order. It is in this sense that F. Daguet and G. Cottier do not hesitate to assert that while "the temporal domain is that in which justice must reign, the spiritual domain concerns the exercise of the theological virtues, and the latter neither absorbs nor suppresses the former" (33, p. 136). However, this autonomy does not mean total separation. Indeed, "insofar as the Church's so-called social doctrine [...] deals with wage-earning, enterprise and property, it is a fact that it is situated on the temporal plane" (34, p. 60).

Moreover, from the very first words of art. 1 of the FC, we can see that France is presented as a secular republic with a dimension of neutrality vis-à-vis religions, respecting them and respecting religious opinions (art. 4 and X of the DDHC). The separation of temporal and spiritual power in the name of secularism should normally lead to a distinction, not a divorce. On the other hand, the union between the two must not lead to confusion. Thus, C. Hage Chahine states that.

In the doctrine of ‘healthy and legitimate secularism’, the ‘duality of powers’ is understood to mean a spiritual (religious) power and a temporal (political) power that are distinct but associated, human life being ‘a permanent connection between religion and politics’ [...]. [...] What is contrary to secularism is not the union but the confusion of the two spheres, religious and civil (34, p. 57).

If union, and not uniformity, is legitimate to give a full meaning to the notion of secularism, the FC intends something else. In the name of this constitutional secularism (35, pp. 93-95), the Church is kept “out of all undertakings and affairs that concern real life, ‘the reality of life’” (34, p. 56), which constitutes an obstacle to any kind of cooperation, particularly in the field of bioethics. This was endorsed by President François Hollande in 2013. Indeed, when the National advisory committee on ethics (Comité consultatif national d’éthique, CCNE) was renewed, no religious person is no longer a committee member. These are clerics from the three monotheistic religions: Christianity, Judaism and Islam. From now on, religious representation will be limited to non-religious representatives of the “main philosophical and spiritual families”. This decision has provoked numerous reactions from “religious authorities who were not consulted with a view to renewal” (36). According to deputy S. Berrios, such a radical change threatens the usefulness, legitimacy, independence, credibility and neutrality of the CCNE (37).

However, in the field of bioethics, biopower must not be exercised in an absolute manner. Both religious and political authorities must seek the common good of citizens and focus on the human person and his dignity, defending his rights and showing him his duties. Collaboration (CSDC 425) is urgently required, while insisting that collaboration “implies neither fusion nor separation” (33, p. 332).

In this context, it’s important to remember that in the crucial questions that affect life, particularly in the biomedical world, it’s important to have an integral vision of the human person; this implies the importance of a place for his or her spiritual dimension,

which alone marks the transcendence of the person (6, pp. 124-128). It is pointless and absurd to deny the fact that “believers and unbelievers generally agree on this point: everything on earth must be ordered to man as its center and summit” (38, n. 12). The ontologically grounded rational discourse of personalist bioethics is a constant reminder of this.

## Conclusions

This thematic comparison between CSDC and CF in the light of personalist bioethics provides a panorama that shows that the exercise of biopower directly affects the human person and his dignity. This topic is the focus of current debates. Hence the following conclusions:

a) The political community as presented by the CLS must have as its end and only horizon the human person in his or her entirety; the common good being a means to this end. Pope Francis reminded us of this on June 15, 2013, in his address to French parliamentarians, affirming that the Church’s contribution to political life is made in “a more complete vision of the person and his destiny, of society and its destiny” (39).

b) It follows that the TCS and the political community have a common field of work: bioethics. The TCS seeks legal protection for the principles and values it defends; this framework falls within the competence of the political authority, whose actions are inspired by the few common values and principles to be found in the Constitution.

c) Despite the various convergences found between the SDC and the CF, the meeting between the two parties is “tangential” because of delicate and crucial divergences and disagreements. These differences are of a fundamental nature since they define the limits of political authority in moral terms. Specifically, they concern “negative precepts of natural law that are ‘universally valid’, ‘binding

without exception’, ‘always and in all circumstances’” (34, p. 94). In other words, in the words of Pope John Paul II, “the negative moral precepts [...] which prohibit certain acts [...] intrinsically evil, admit of no legitimate exception” (40, §67).

d) As long as the political community fails to recognize the place of natural law within the framework of positive law, as long as values and principles are treated in the light of a single legal interpretation without recourse to any other metaphysical, philosophical, ontological or moral possibility, the rapprochement between the CSD and the political community remains difficult.

e) In this context, the relationship between biopower and political authority is based primarily on a hedonistic materialist vision of the human person. Biopower seems to serve political projects based on individual desires. The evolution of biolaw shows that legislation is becoming increasingly permissive. This permissiveness is exercised either far from respect for ethical principles and values in the biomedical world, or through the manipulation of the notions that carry these principles and values. In this context, is it acceptable that the main object and end of both parties, the human person, should fall victim to a lack of consensus on fundamental notions?

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