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**BEST PRACTICES:
LAWS PROTECTING HUMAN LIFE AND THE FAMILY
AROUND THE GLOBE**

*Jane Adolphe**
*Michael Vacca***

This paper explores global best practices concerning laws promoting life and the family. It will be divided into two Parts. Part I will give an overview of Category A laws that protect the right to life internationally and domestically, such as laws prohibiting or restricting abortion, the destruction or manipulation of embryos, euthanasia and/or physician assisted suicide, and so forth. Part II will give an overview of Category B laws, which protect the rights of the family both internationally and domestically. The latter domestic laws will discuss marriage between one man and one woman, and other laws promoting the responsibilities and rights of parents to protect and educate their children, divorce reform measures, the rights of the mother and their pre-born children, and improvements in adoption laws as well as family assistance.

This Paper has two annexes. Annex I presents model legislation from different parts of the world: United States, Ireland, Hungary, Honduras, Uganda, and Chile. In providing these laws, the intent is not to promote the overall activities of a particular government or State, nor is it to endorse every law the respective State has enacted. In specific regard to choices concerning the model legislation, the following selection criteria has been used: 1) the legislation, in many cases, is general enough to be adapted to various different situations in different States; 2) the legislation covers both Category A laws which directly protect the life of the human person and Category B laws which safeguard the human person by strengthening the family; 3) the legislation covers a broad range of issues essential to the protection of the right to life and the rights of the family; and 4) lastly, some legislation represents a good of example a very particular response to the needs of a specific problem which may arise in other countries. For example, in the United States of America where abortion is legal, the legislation chosen seeks to limit abortion to the greatest extent possible. In a country where abortion is illegal, such incremental limitations are unnecessary.

Annex II offers a list of some non-governmental organizations, faith-based groups, and governmental reports that contribute to building a culture of life, faith, and family by informing and educating the public. For example, some States have legislation on requiring a woman to view an ultrasound, while in other countries, there is no such legislation but rather non-governmental organizations are freely

providing such services. Hopefully this paper can serve as a resource for politicians and encourage them to work with faith-based groups and non-governmental organizations.

PART I. OVERVIEW OF LAWS DIRECTLY PROTECTING THE HUMAN PERSON

A. *Category A: International Law Protecting the Rights of the Human Person*

It is well known that the sources of international law are - in no particular order - treaties (e.g. covenants, conventions, protocols or charters), customary international law and general principles. As a preamble to the discussion that follows, it is noteworthy that there are efforts to create so-called “new human rights” by reinterpreting treaties through non-binding recommendations in General Comments of United Nations Treaty Bodies, Reports of United Nations Special Rapporteurs, decisions of regional and national courts, and even principles drafted by individuals.¹ Consequently, it is essential to return to the written text of a treaty keeping in mind the international principles of interpretation.²

Treaties are to be interpreted by State parties in “good faith” and “in accordance with the ordinary meaning” of the terms in their “context and in . . . light of [the treaty’s] object and purpose.”³ Articles 31(2)(a) and (b) of the Vienna Convention on the Law of Treaties (VCLT) emphasizes that the “context” is comprised of the text, including the preamble and annexes, and any agreement made relating to the Treaty by all parties and any instrument made by one party; undoubtedly, this last point includes reservations or interpretative declarations of

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¹ See generally INT'L COMM'N OF JURISTS, SEXUAL ORIENTATION, GENDER IDENTITY AND INTERNATIONAL HUMAN RIGHTS LAW: PRACTITIONERS GUIDE NO. 4 (2009), available at <http://icj.wpengine.netdna-cdn.com/wp-content/uploads/2009/07/sexual-orientation-international-law-practitioners-Guide-2009-eng.pdf>; UNIV. OF NOTTINGHAM HUMAN RIGHTS LAW CTR., JURISPRUDENTIAL ANNOTATIONS TO THE YOGYAKARTA PRINCIPLES (2007), available at <http://www.yogyakartaprinciples.org/yogyakarta-principles-jurisprudential-annotations.pdf>.

² Vienna Convention on the Law of Treaties arts. 31–32, May 23, 1969, 1155 U.N.T.S. 331.

³ *Id.* art. 31, ¶ 1.

State parties.⁴ Article 32 of the VCLT provides recourse to supplementary means of interpretation to confirm or to determine a meaning when the general rule articulated in Article 31 of the VCLT “leaves the meaning ambiguous or obscure” or “leads to a result which is manifestly absurd or unreasonable.”⁵ In brief, every State Party should interpret treaties in light of the international principles taking into consideration their reservations and interpretative declarations.

The Universal Declaration of Human Rights, considered by many scholars to bind States based on international customary law, sets out the basic legal anthropology of human rights. It acknowledges the human person, male and female, noting the “equal rights of men and women.”⁶ The UDHR prohibits discrimination on the grounds of sex;⁷ as does the International Covenant on Civil and Political Rights (ICCPR),⁸ which also recognizes “the equal right of men and women” to the enjoyment of all civil and political rights.⁹ The International Covenant on Economic, Social and Cultural Rights (ICESCR) also prohibits discrimination on the basis of sex¹⁰ as does the Convention on the Rights of the Child (CRC).¹¹ Moreover, the UDHR recognizes “*the inherent dignity and . . . equal and inalienable rights of all members of the human family.*”¹² This preamble paragraph is echoed in the ICCPR,¹³ the ICESCR.¹⁴ In addition, both Covenants, clearly assert that “*rights derive from the inherent dignity of the human person.*”¹⁵ In addition, the UDHR also recognizes that rights are co-relative with duties; a principle that is strongly reaffirmed in the ICCPR and ICESCR.¹⁶ In brief, the three documents do not grant rights but merely acknowledge rights, recognize that

⁴ *Id.* art. 31, ¶¶ 2(a)-(b).

⁵ *Id.* art. 32 (Arguably these principles of interpretation are part of customary international law and should be used by treaty bodies, Special Rapporteurs, and others to properly interpret the same, which in turn, would diminish disingenuous and self-serving or ideologically-based interpretations).

⁶ Universal Declaration of Human Rights, G.A. Res. 217 (III) A, pmb. para. 5 [hereinafter UDHR].

⁷ *Id.* art. 2, ¶ 1.

⁸ International Covenant on Civil and Political Rights, G.A. Res. 2200 (XXI) A, U.N. GAOR, 21st Sess., Supp. No. 16, U.N. Doc. A/6316 (1966), art. 2, ¶ 1 [hereinafter ICCPR].

⁹ *Id.* art. 3.

¹⁰ International Covenant on Economic, Social and Cultural Rights, G.A. Res. 2200 (XXI) A, U.N. GAOR, 21st Sess., Supp. No. 16, art. 2, ¶ 2 [hereinafter ICESCR].

¹¹ Convention on the Rights of the Child, G.A. Res. 44/25, art. 2(1), U.N. Doc. A/RES/44/25 (Nov. 20, 1989), available at <http://www2.ohchr.org/english/law/crc.htm> [hereinafter CRC]. See also, Signs of Our Times, United Nations CRC – the first 20 countries (193 in total), available at <http://ourtimes.wordpress.com/2008/08/10/first-ratifications-of-the-crc/>

¹² UDHR, *supra* note 6, pmb. para. 1.

¹³ ICCPR, *supra* note 8, pmb. para. 1.

¹⁴ ICESCR, *supra* note 10, pmb. para. 1.

¹⁵ *Id.* pmb. para. 2; ICCPR, *supra* note 8, pmb. para. 2.

¹⁶ UDHR, *supra* note 6, arts. 1, 29 (e.g., the individual has duties to other individuals and to the community); see also ICCPR, *supra* note 8, pmb. para. 5; ICESCR, *supra* note 10, pmb. para. 5.

rights are co-relative with duties, and ground rights and duties in inherent human dignity.

The principle that “rights derive from the inherent dignity of the human person,” found in the two Covenants,¹⁷ is inextricably linked to article 1 of the UDHR: “[a]ll human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood.”¹⁸ This means that each human being, by the mere fact of being human, is a person, that is, by nature “free . . . endowed with reason and conscience” and relational.¹⁹ Following this line of reasoning, one might infer that each human being or human person, in relation with self and others, is personally responsible to seek the truth, and respond to the interior call to do good. Arguably, the term inherent dignity refers to the “unique excellence of personhood,” the innate value of the person as “‘someone’ and not merely ‘something,’ . . . an absoluteness not found in other beings.”²⁰ This “gives rise to specific moral requirements,”²¹ that is, certain things ought not to be done to any human person, such as slavery and torture, and certain other things ought to be done for every human person, such as recognition as a person before the law.²² This last point, in turn, implies that a human person also acquires dignity when he or she acts in accordance with right reason, that is, in doing those things he or she ought to do and refraining from other things he or she ought not to do. For example, a person has inherent dignity as a human person, which must be respected, but not his act of rape, which is wrong and criminal.

Before turning to the next section of this paper, a word should be said about the term “born,” within the phrase, “All human beings are born free and equal in dignity and rights,” in Article 1 of the UDHR.²³ Since human persons are “not [physically] born into equal circumstances,” the term “born” arguably refers to a “moral birth”—a “deeper moral quality,” which no human person, political body, or social body could possibly grant.²⁴ This understanding is consistent with the overall text, which includes references to “inherent” and “inalienable” in the preamble.²⁵

¹⁷ ICCPR, *supra* note 8, pmb. para. 2; ICESCR, *supra* note 10, pmb. para. 2.

¹⁸ UDHR, *supra* note 6, art. 1.

¹⁹ *Id.*

²⁰ Thomas D. Williams, *What is Thomistic Personalism?*, 7 ALPHA OMEGA 163, 190 (2004).

²¹ *Id.*

²² See MICHAEL J. PERRY, *THE IDEA OF HUMAN RIGHTS: FOUR INQUIRIES* 13 (1998).

²³ UDHR, *supra* note 6, art. 1.

²⁴ JOHANNES MORSINK, *THE UNIVERSAL DECLARATION OF HUMAN RIGHTS: ORIGINS, DRAFTING AND INTENT* 291–93 (1999).

²⁵ UDHR, *supra* note 6, pmb. para. 1.

To buttress the argument that “birth” does not refer to a physical birth one might consider the American Convention on Human Rights which protects the child from the moment of conception.²⁶ One might also argue that this position is consistent with the proper interpretation of the plethora of right to life provisions in international law. For example, the ICCPR recognizes the “*inherent right to life*” and then prohibits States from carrying out the death penalty on pregnant women.²⁷ By necessary implication, the reason for this prohibition is “precisely because she is carrying in her womb an innocent human being;”²⁸ there is not just one life at stake, but two. Moreover, the UDHR recognizes “[e]veryone has the right to life, liberty and security of person” and ensures that States give “[m]otherhood and childhood . . . special care and assistance.”²⁹

Moreover, the ICESCR acknowledges that “[s]pecial protection should be accorded to mothers during a reasonable period before and after childbirth.”³⁰ Furthermore, the ICESCR recognizes that all children have the right to enjoyment of the highest attainable standard of physical and mental health, and State Parties are to work especially hard to “reduce stillbirth-rate and infant mortality” as well as promote “healthy development of the child.”³¹

Lastly, the CRC, which binds 193 States, affirms the right to life of the child “before as well as after birth,” who is, in turn, defined as “every human being below the age of eighteen.”³² Like the UDHR, ICCPR and the ICESCR, the CRC requires States parties to respect and ensure the child’s rights without discrimination of any kind including “sex” and “birth.”³³ The “*inherent right to life*” is protected as well as the child’s “*survival and development*” to the maximum

²⁶ American Convention on Human Rights, art. 4, ¶ 1, Nov. 22, 1969, O.A.S.T.S. No. 36, available at http://www.hrcr.org/docs/American_Convention/oashr4.html (“Every person has the right to have his life respected. This right shall be protected by law and, in general, from the moment of conception. No one shall be arbitrarily deprived of his life.”); see Ligia M. De Jesús, *Post Baby Boy v. United States developments in the Inter-American system of human rights: inconsistent application of the American Convention’s protection of the right to life from conception*, 17 L. & BUS. REV. AM. 435 (2011) (for an understanding of how this provision is being correctly and incorrectly interpreted); see also Ligia M. De Jesús, *Revisiting Baby Boy v. United States: Why the IACHR Resolution did not Effectively Undermine the Inter-American System on Human Rights’ Protection of the Right to Life from Conception*, 23 FLA. J. INT’L L. 221 (2011); Ligia M. De Jesús, *La Convención Americana sobre Derechos Humanos: piedra angular del derecho a la vida del no nacido en Latinoamérica y el Caribe* [The American Convention on Human Rights: Cornerstone of the Unborn’s Right to Life in Latin America and the Caribbean], 1 REVISTA INTERNACIONAL DE DERECHOS HUMANOS 109 (2011).

²⁷ ICCPR, *supra* note 8, art. 6 ¶¶ 1, 5.

²⁸ JUDE IBEGBU, RIGHTS OF THE UNBORN IN INTERNATIONAL LAW 119 (2000).

²⁹ UDHR, *supra* note 6, arts. 3, 25, ¶ 2.

³⁰ ICESCR, *supra* note 10, art. 10(2) (emphasis added).

³¹ *Id.* art. 12(2).

³² CRC, *supra* note 11, art. 1 (emphasis added).

³³ *Id.* art. 2. (it is noteworthy, that the UDHR, ICCPR and ICESCR, together, are commonly referred to as the International Bill of Human Rights).

extent possible³⁴ and States are obliged to provide the “highest attainable standard of health... pre-natal and post-natal.”³⁵

B. Category A: Domestic Law Protecting the Rights of the Human Person

1. Personhood Laws

In countries, such as the United States, where abortion has been legalized,³⁶ there have been various initiatives to recognize the legal personhood of the unborn in order to provide the same protection afforded to other legal persons. Since 1973, the United States Congress has heard various “Human life Amendments” that would amend the American Constitution to protect the pre-born child.³⁷ In addition, there is the personhood movement that works to ensure that every human being is recognized as a person before the law.³⁸ For example, a 2009 draft law in Georgia, argued, “[a] living in vitro human embryo is a biological human being who is not the property of any person or entity.”³⁹ Also in Georgia, the following was proposed, “...the term ‘child’ shall include a human embryo.”⁴⁰ The same year, South Carolina’s draft law stated, “[t]he right to life for each born and preborn human being vests at fertilization.”⁴¹ In 2010, a draft law in Arizona proposed, “[a] person shall not intentionally or knowingly engage in ...

³⁴ *Id.* art. 6(1)-(2).

³⁵ *Id.* art 24 arts. 1, 2(d) (it is noteworthy, that the aforementioned arguments have been recently argued in the Holy See’s Second Periodic Report to the Committee on the Rights of the Child, according to the state reporting obligations under the CRC).

³⁶ *See* *Roe v. Wade*, 410 U.S. 113 (1973) (held that there is a right to privacy in the U.S. Constitution “broad enough to encompass a woman’s decision whether or not to terminate her pregnancy.” *Id.* at 153. It further affirmed, “With respect to the State’s important and legitimate interest in potential life, the ‘compelling’ point is at viability. This is so because the fetus then presumably has the capability of meaningful life outside the mother’s womb.” *Id.* at 163. Accordingly, states were not permitted to prohibit abortion before viability, and even after viability, there is a “health” exception, which requires that a woman have access to abortion when it is necessary to “preserve the life or health of the mother.” *Id.* at 163-64.); *see also* *Planned Parenthood v. Casey*, 505 U.S. 833 (1992) (reaffirming that there is a right to an abortion under the U.S. Constitution and rejecting *Roe*’s trimester framework and adopts the undue burden standard as the “appropriate means of reconciling the State’s interest with the woman’s constitutionally protected liberty.” *Id.* at 876.).

³⁷ *See, e.g.*, Nat’l Comm. for a Human Life Amendment, *Human Life Amendment Highlights: United States Congress (1973-2003)*, NCHLA.Org (Feb. 06, 2004), <http://www.nchla.org/datasource/ldocuments/HLAhghlts.pdf>.

³⁸ *See* PERSONHOODEUCATION.ORG, <http://personhoodeducation.org/legal-resources/> (last visited Nov. 13, 2012) (this organization is responsible for various initiatives); Personhood.net, <http://www.personhood.net> (last visited Nov. 13, 2012); *But see* Resolve: The National Infertility Association, *Resolve’s Policy on “Personhood” Legislation*, RESOLVE.ORG, <http://www.resolve.org/about/personhood-legislation.html> (last updated Apr. 2012) (a contrary view).

³⁹ *Resolve, supra* note 38 (cf. Georgia, SB 169, 2009).

⁴⁰ *Id.* (cf. Georgia, HB 388, 2009).

⁴¹ *Id.* (cf. South Carolina, S. 450, 2009).

nontherapeutic research that ... results in the injury, death or destruction of an in vitro human embryo."⁴² In 2012, in Virginia and Oklahoma the proposed legislation provided that "...the term 'unborn children'" included "*the offspring of human beings from the moment of conception until birth at every stage of biological development.*"⁴³ Also, in 2012, a draft law in Oklahoma proposed, "...the term 'persons' ... applies to every human being from the beginning of the biological development of that human being....Only in vitro fertilization and assisted reproduction that kills a person shall be affected by this section."⁴⁴

2. Abortion Prohibitions or Restrictions

There are bans on procured abortions⁴⁵ and emergency contraception,⁴⁶ since some countries protect the pre-born child in their laws. For example, Chile and Honduras protect the unborn child in their Constitutions referring to him or her as "*one who is about to be born*"⁴⁷ and the Hungarian Constitution recognizes a human person "*from the moment of conception*".⁴⁸

⁴² *Id.* (cf. Arizona, SB 1307, 2010).

⁴³ *Id.* (cf. Virginia, HB1 and Oklahoma, SB 1433, 2012).

⁴⁴ *Id.* (cf. Oklahoma, HJR 1067, 2012).

⁴⁵ *See, e.g.* Cod. pen., arts. 342-45 (Chile), available at <http://www.servicioweb.cl/juridico/Codigo%20Penal%20de%20Chile%20libro2.htm> ("The one that maliciously causes an abortion will be punished The person that violently causes an abortion, although he/she did not have the specific purpose/intention of causing an abortion, will be punished The woman that self-causes her abortion, or authorizes that another person cause it, will be punished The healthcare worker who, exceeding his faculties, causes an abortion or cooperates in it, will be punished."); *see also* Offenses Against the Person Act (Act No. 58/1861) (Ir.) available at <http://www.cirp.org/library/legal/UKlaw/oap1861/> (this legislation provides that abortion is a felony, whether self-inflicted or inflicted by another person. Furthermore, even the attempt to procure an abortion that fails because the woman is not, in fact, pregnant is a felony); Penal Code Act of Uganda, arts. 141-143, 212 (2012), available at http://www.wipo.int/wipolex/en/text.jsp?file_id=170005 (Article 141 criminalizes the attempt to perform an abortion; Article 142 criminalizes self-induced abortion; Article 143 criminalizes the supplying or procuring of drugs for an abortion; and 212 criminalizes the action of preventing a child from being born when a woman is about to deliver the child); Código Penal, art. 126 (1985) (Honduras), available at http://www.oas.org/juridico/MLA/sp/hnd/sp_hnh-int-text-cp.pdf (reformed by Decree 191-96 of October 31, 1996 where the reforms were later published in the official journal La Gaceta ("Abortion is the death of a human being at any time during pregnancy or during birth") on February 8, 1997 and became effective 20 days after its publication, on February 28, 1997); Ligia M. De Jesus, Defending the Human Right to Life in Latin America, Protection of Prenatal Life in Honduras: A Token of Central America's Strong Pro-Life Identity 63, 69-70, Aul.org, <http://www.aul.org/wp-content/uploads/2012/07/honduras-la.pdf>.

⁴⁶ *See, e.g.*, Jodi Jacobson, *Honduran Supreme Court Upholds Most Sweeping Ban on Emergency Contraception Anywhere*, RHREALITYCHECK.ORG (Feb. 14, 2012, 12:35 PM), <http://www.rhrealitycheck.org/Article/2012/02/14/honduran-supreme-court-upholds-complete-ban-on-emergency-contraception-0>.

⁴⁷ *See, e.g.*, *Constitucion Polictica de la Republica de Chile* [C.P.] art. 19 (Chile), available at http://www.oas.org/dil/esp/Constitucion_Chile.pdf ("The law protects the life of the one who is about to be born. The judge, hence, by request of any person or by himself, will take all the precautions that he considers necessary to protect the life of the unborn, in case he thinks this life is in danger"); *see also* *Constitucion de la Republica*

There is also recent case law protecting the right to life of the unborn. For example, in 2012, five Justices of the Supreme Court of Alabama challenged *Roe v. Wade*'s position on personhood⁴⁹ in the special concurrence that rejected the viability standard adopted in *Roe v. Wade*.⁵⁰ In the same year, eight members of the South Korean Court of Last Appeal upheld a law allowing jail time for cases of illegal abortion and acknowledged the right to life of the fetus.⁵¹

There are also restrictions on abortion, for example, bans on: partial birth abortions,⁵² or abortions post viability, or abortions based on certain gestational

de Honduras art. 67 (1982), available at http://www.honduras.net/honduras_constitution2.html ("The one who is about to be born, shall be considered born for anything that favors him [or her] within the limits established by law.").

⁴⁸ See, e.g., The Fundamental Law of Hungary, art. II (25 April 2011), available at <http://www.mkab.hu/download.php?d=65> ("Human dignity shall be inviolable. Every human being shall have the right to life and human dignity; the life of the foetus shall be protected from the moment of conception.").

⁴⁹ Mark H. Bonner & Jennifer A. Sheriff, *A Child Needs a Champion: Guardian Ad Litem Representation for Prenatal Children*, WM. & MARY J. WOMEN & L. (forthcoming 2013) (manuscript at 32) (on file with authors) [hereinafter Bonner] (citing *Hamilton v. Scott*, No 1100192, 2012 Ala. LEXIS 66, 35 (Sup. Ct. Ala., 2012) (Parker, Stuart, Bolin, and Wise, concurring specially) ("Roe's statement that unborn children are not 'persons' within the meaning of the Fourteenth Amendment is irrelevant to the question whether unborn children are 'persons' under state law. Because the Fourteenth amendment 'right' recognized in *Roe* is not implicated unless state action violates a woman's 'right' to end a pregnancy, the other parts of the superstructure of *Roe*, including the viability standard, are not controlling outside abortion law.").

⁵⁰ Bonner, *supra* note 49 (manuscript at 32-3) ("Roe's viability rule was based on inaccurate history and was mostly unsupported by legal precedent. Medical advances since *Roe* have conclusively demonstrated that an unborn child is a unique human being at every stage of development. And together, Alabama's homicide statute, the decisions of this Court, and the statutes and judicial decisions from other states make abundantly clear that the law is no longer, in Justice Blackmun's words, 'reluctant . . . to accord legal rights to the unborn.' For these reasons, Roe's viability rule is neither controlling nor persuasive here and should be rejected by other states until the day it is overruled by the United States Supreme Court.").

⁵¹ Ben Johnson, *South Korea high court recognizes unborn's 'right to life'*, LIFESITENEWS.ORG (Aug. 27, 2012, 5:13 PM), <http://www.lifesitenews.com/news/high-court-recognizes-unborns-right-to-life-in-south-korea> ("The eight members of the Republic of Korea's court of last appeal upheld a law allowing jail time for doctors and midwives who perform illegal abortions, on the grounds that they were tasked with preserving life. Since 1953, South Korea has made abortion illegal except in cases of [f] rape, incest, severe maternal health risks, or profound birth defects. However, in practice, that ban has rarely been enforced in recent decades, and the country has an extremely high abortion rate. The court's August 23 ruling acknowledged that, while pregnancy is a life-altering event for the mother, 'the right to life is also acknowledged for the fetus.' Jailing those who perform illegal abortions is not excessive, because doing so expresses 'censure against people like midwives, who are charged with protecting the fetus's life, performing a procedure that takes away the fetus's life. The fetus is itself a separate living being, and will very probably grow into a human being barring any special circumstances,' the ruling stated.").

⁵² See, e.g., Federal Partial Birth Abortion Ban Act of 2003, 18 U.S.C. § 1531 (2003) (it should be noted that in *Gonzales v. Carhart*, 550 U.S. 124 (2007), the U.S. Supreme Court ruled that the Federal Partial Birth Abortion Ban is neither void for vagueness nor does it impose an undue burden on a woman's constitutionally protected right to have an abortion due to being overbroad or lacking a health exception); see also The Partial Birth Abortion Ban Act of 2008, 10 Guam Code Ann. § 91A102 (2008); see also Alabama Partial Birth Abortion Ban Act of 1997, ALA. CODE §26-23B-5 (1975); The Woman's Right to Know Act, FLA. STAT. ANN. § 390.0111 (West 2011) (prohibits, *inter alia*, abortion in the third trimester unless it is necessary to save the life or preserve the health of

ages, or fetal pain,⁵³ or public policy and fundamental human rights, such as sex selection, genetic deformity, or disability.⁵⁴ Lastly, some laws ensure that women have access to accurate information and to a certain length of time to reflect before an abortion can be procured (e.g. 24 to 48 hours).⁵⁵ Such right to information may include statistics that establish a link between abortion and breast cancer, on the one hand, and abortion and traumatic stress syndrome, on the other hand; other information may include the probable gestational age of the child, the development of the child, and alternatives to abortion such as adoption as well as government assistance to carry the baby to term.⁵⁶

In addition, there are parental consent laws requiring minors to first obtain at least one parent's consent or receive a judicial waiver before they can obtain an abortion, unless its an emergency to save the life or health of the minor.⁵⁷ Moreover, some restrictions pertain to whom may perform abortions, for example, requiring only a physician.⁵⁸ Furthermore, reporting requirements exist which require abortion providers to submit information to government agencies, for example, the number of abortions,⁵⁹ precise medical conditions that made the abortion necessary, and verification that the abortion was needed to preserve the pregnant woman's health⁶⁰ - since statutes typically contain exceptions for the life and health of the mother.⁶¹ It is noteworthy, that in many cases the term "health" for the purposes of these statutes may or may not be defined and may be

the pregnant woman); *Choice for Women v. Butterworth*, 54 F. Supp. 2d 1148 (S.D. FLA, 1998); LA REV. STAT. ANN. § 40:1299.35.4 (2012) (deemed the Act void for vagueness); Partial Birth Abortion Ban, N.M. STAT. ANN. § 30-5A-3 (West 1978) (prohibits partial birth abortion except when the life of the mother is threatened or she is at risk of great bodily harm due to a physical disorder, illness, or injury); Partial Birth Abortion Ban Act, Mich. Comp. Laws Ann. § 750.90h (West 2012) (does not ban partial birth abortion when the mother's life is threatened).

⁵³ See, e.g., 720 Ill. Comp. stat. ann. 510/6 (West 1975); Alabama Pain Capable Unborn Child Protection Act, ALA. CODE § 26-23B-5 (1975); Pain Capable Unborn Child Protection Act, OKLA. STAT. ANN. tit. 63, §1-745.5 (West 2011); IDAHO CODE ANN. § 18-505 (West 2011); See also Americans United for Life, *Model Legislation Women's Health Defense Act*, AUL.ORG, 380-86 (2011), http://www.scribd.com/fullscreen/50052692?access_key=key-hs2enfvcjsjquhqo3q7c (based on the protection of women's health posed by abortion, especially after the first trimester, and the existence of fetal pain, this legislation, *inter alia*, prohibits abortion at or after 20 weeks gestation).

⁵⁴ See Americans United for Life, *supra* note 53, at 393-400 (it is based on the principle of non-discrimination and the equal dignity of all human persons, regardless of their medical condition, this legislation prohibits sex-selective abortion, abortions performed because the unborn child has Down's Syndrome, and abortions performed because the unborn child has a genetic abnormality).

⁵⁵ Bonner, *supra* note 49 (manuscript at 49-50) (citing 25 State laws).

⁵⁶ *Id.* at 49 (citing 35 State laws).

⁵⁷ *Id.* at 50 (citing 40 State laws).

⁵⁸ *Id.* (citing 38 State laws).

⁵⁹ *Id.* (citing 40 State laws).

⁶⁰ *Id.* at 48-9 (citing 35 State laws).

⁶¹ *Id.* at 48 (citing 46 State laws).

interpreted to include the broad exception “mental health”⁶² rather than something more limited such as substantial and irreversible impairment of major bodily functions.⁶³ Lastly, some laws regulate any or all aspects of the abortion industry such as requiring abortion clinics to be licensed⁶⁴ or meet the basic requirements as other medical facilities.

3. *No Abortion, especially in Cases of Rape*

In 2012, a Judge of the Argentine High Court, issuing an injunction prohibiting an abortion on a trafficking victim, arguing:

It is not right to palliate one of the victims by suppressing the life of the other...It is not possible to repair damage by causing another, greater, and absolutely irreversible damage. If the mother needs to repair the trauma she has suffered by cutting herself off completely from the child conceived, she will be able to do so as soon as the child is born, by means of the institution of adoption, but she cannot do so by means of eliminating him from the face of the Earth.⁶⁵

The decision was overturned by the Supreme Court based on a common misunderstanding that abortion is the only option for rape victims.

Abortion is not a mother’s only option. While maternal-fetal conflict issues in cases of rape is a serious matter,⁶⁶ there is assistance. One might argue that

⁶² *Id.* (citing 6 State laws).

⁶³ *Id.* (citing 7 State laws).

⁶⁴ *See, e.g.*, Ind. Code Ann. § 16-21-2-11 (2012); Ariz. Admin. Code § R9-10-1503 (2012); *see also* Utah Code Ann. § 26-21-6.5 (2012)

⁶⁵ Matthew Cullinan Hoffman, *Another Worse Offense Does Cure Rape, Argentinian Judge rules in Pro-life Decisions*, LIFE SITE NEWS (October 11, 2012), available at <http://www.lifesitenews.com/news/another-worse-offense-does-not-cure-rape-argentinian-judge-rules-in-pro-life/> (“A judge [Myrian Rustan de Estrada] in the Argentine capital of Buenos Aires has issued an injunction prohibiting an abortion that was scheduled on a woman who was claimed to be a sex trafficking victim, noting that two wrongs won’t make a right”); *but see Argentine high Court authorizes abortion for rape victim* (October 12, 2012), available at <http://latino.foxnews.com/latino/lifestyle/2012/10/12/argentine-high-court-authorizes-abortion-for-rape-victim/>.

⁶⁶ POPE JOHN PAUL II, *Crossing the Threshold of Hope*, 206–07, Vittorio Messori ed., Jenny McPhee & Martha McPhee trans. (1994). The term “maternal-fetal conflict” is a term being used in the United States. It recognizes that pregnancy is a relationship but does not suggest that the unborn child is an aggressor. On this latter point the words of Pope Paul II are timely. “A child conceived in its mother’s womb is never an unjust aggressor; it is a defenceless being that is waiting to be welcomed and helped. It is necessary to recognize that, in this context, we are witnessing true human tragedies. Often the woman is the victim of male selfishness, in the sense that the man, who has contributed to the conception of the new life, does not want to be burdened with it and leaves the responsibility to the woman, as if it were “her fault” alone. So, precisely when the woman most needs the man’s support, he proves to be a cynical egotist, capable of exploiting her affection or weakness, yet stubbornly resistant to any sense of responsibility for his own action. . . . Therefore, in firmly rejecting “pro choice” it is necessary to become courageously “pro woman,” promoting a choice that is truly in favor of women. It is precisely the woman, in fact, who pays the highest price, not only for her motherhood, but even more for its destruction, for the

mothers are also in conflict with their teenage daughters but disputes must be resolved peacefully and with the involvement of intermediary communities and State assistance. For example, many religious organizations operating around the world support women in bringing their children to term under difficult and often traumatic circumstances.⁶⁷ They welcome pregnant girls and women to live with them as guests at their convents for the duration of the pregnancy and offer practical assistance, providing items for expectant mothers, new or used maternity clothes, gift cards, in addition to help with travel, housing, school, and job opportunities.⁶⁸ crisis pregnancy centers and non-profit organizations are run by people of good will. They too assist pregnant women with practical issues as well as physical, and emotional concerns while encouraging the continuation of a pregnancy.⁶⁹

If such resources do not exist in a given country then certainly States should promote their development. In this way, States would resist collaborating or perpetuating the view that the raped woman or the pregnancy or the baby itself is the problem. In other words, to advocate for the termination of pregnancy is tantamount to joining forces with those who would marginalize pregnant women and the innocent child conceived in rape by facilitating the elimination of the so-called “stigma (s).”

In addition, States should be promoting and facilitating, where appropriate, the adoption of children by married man-woman couples, while respecting the rights of the natural parents and the best interests of the child.⁷⁰ In addition, there should be

suppression of the life of the child who has been conceived. The only honest stance, in these cases, is that of radical solidarity with the woman. It is not right to leave her alone.”

⁶⁷ See, e.g., *About Us*, SISTERS OF LIFE, <http://sistersoflife.org/about-the-sisters-of-life> (The Sisters of Life is a contemplative and active Catholic religious community founded for the protection and promotion of the sacredness of every human life. They also host religious retreats to provide hope and healing for women suffering from what AI might refer to as “complications” of abortion); see also *Villa Maria Guadalupe*, SISTERS OF LIFE, <http://sistersoflife.org/villa-maria-guadalupe/retreats>.

⁶⁸ *Id.*

⁶⁹ See, e.g., Frederica Mathews-Green, REAL CHOICES, 210 (1997) (providing contact information for several pregnancy care organizations); see also, A Woman’s Right to Know, <http://www.awomansrighttoknowok.org>; see also Priests for Life Canada, Pro-Life Canada Index, <http://users.webhart.net/vandee/prolife.shtml> (providing links to pro-life groups and resources in Canada) (This last website provides a link to Crisis Pregnancy Centres in Canada which is available at <http://www.pregnancycentres.org>). Usually staffed by volunteers, these centers offer a broad range of services such as pregnancy tests, counselling, fetal development and postnatal medical care, legal aid, assistance in obtaining housing, maternity clothes, baby clothes, baby equipment, financial support, information about adoption services, and even advice regarding education and employment. *Resource Directory*, A WOMAN’S RIGHT TO KNOW, <http://www.awomansrighttoknowok.org/resources.php>.

⁷⁰ See, e.g., Utah Parties to Adoption Law, Utah Code Ann. § 78-30-1 (2000) (in particular sec. 3.b, which is the 2000 amendment (2000 Utah Laws c. 208 5) Section 3.a provides: “A child may be adopted by ii) an single adult, except as provided in subsection 3.b... A child may not be adopted by a person who is cohabiting in a relationship that is not a legally valid and binding marriage under the laws of this state.” For purposes of this subsection 3.b, “cohabiting means residing with another person and being involved in a sexual relationship with that person”)

alternatives to those family planning methods that harm women and/or preborn children. For example, access to proven fertility awareness-based methods for the family that has responsibly decided to delay pregnancy should be available. This includes the symptoms-based, calendar-based and/or breastfeeding methods, *inter alia*. In addition, these same methods can assist those families which require assistance to target the most fertile time for conceiving a child.⁷¹

Moreover, women should know that legal abortion is not safe for the mother or the child. That complications may arise—and often do—is a fundamental point rooted in experience and right reason. A woman’s cervix, “which nature has designed to remain closed to protect the developing . . . fetus, must be forcibly opened. Then, her womb, which is designed to nurture life, must be penetrated, suctioned, and scraped.”⁷² Consequently, every legally and illegally induced

(Utah Code Ann. § 78-30-1 was amended in 2008); *see also* Scott H. Clark, *Married Person Favored as Adoptive Parents: The Utah Perspective* 15 J. Law & Fam. Stud. 203 (2003) (a good about the changes to the legislation).

⁷¹ *See, e.g., the Billings Ovulation Method*, <http://www.thebillingsovulationmethod.org/>; *see also* <http://www.woomb.org/bom/lit/teach/index.html> (the website devoted to teaching the method); *see also* The Creighton Model Fertility Care System <http://www.creightonmodel.com/> (the modification of the Billings Ovulation Method); *see also* *NaProTECHNOLOGY—A Major Breakthrough In Monitoring and Maintaining a Woman's Reproductive and Gynecological Health*, NAPRO TECHNOLOGY, <http://www.naprotechnology.com/> (last visited Oct. 19, 2012); *see also* Pope Paul VI Institute for the Study of Human Reproduction and the National Center for Women's Health in Omaha, Nebraska <http://www.popepaulvi.com/> (Regarding the work being done there).

⁷² *See generally* Theresa Burke & David C. Reardon, FORBIDDEN GRIEF: THE UNSPOKEN PAIN OF ABORTION, 114 (2002) [hereinafter Burke & Reardon]; *see also* Elizabeth Ring-Cassidy & Ian Gentiles, WOMEN'S HEALTH AFTER ABORTION: THE MEDICAL AND PSYCHOLOGICAL EVIDENCE, 1 (2d ed. 2003) [Ring-Cassidy & Gentiles] (Compiles scientific and technical data that refutes the commonly held assumption that induced abortion is safe and “almost risk free”). On the contrary, there are “clear hazards to women’s physical and psychological health,” which raises the question whether a woman’s right to informed consent is being fully respected by the medical community. *Id.* (These effects are connected with Post-Traumatic Stress Disorder (“PTSD”). PTSD which generally involves two major elements: first, a traumatic event either witnessed or experienced pertaining to actual or threatened death; second, physical injury with an accompanying response of intense fear, helplessness, or horror. *Id.* at 109–10. It also involves three types of symptoms: hyperarousal (inappropriate fight-or flight defense mechanisms, such as anxiety attacks, angry outbursts, and difficulties sleeping), intrusion (reliving the traumatic experience), and constriction (numbed emotions or altered behavior patterns to avoid whatever is associated with the trauma). *Id.* The typical experience of PTSD following abortion is summed up as an initial state of numbness while psychologically trying to integrate the traumatic experience. Later symptoms, which may not appear for months or even years, include irritability, depression, an unreasoned sense of guilt for having survived while others did not, memory impairment or trouble concentrating, and difficulties relating emotionally to other people. Nightmares, flashbacks to the traumatic scene, and overreaction to noises or situations that remind one of the trauma are also common. *Id.* at 111; *see also* John J. Dillon, A PATH TO HOPE (1990) (providing assistance to parents of aborted children and offering guidelines and advice to those who work as counsellors and ministers); *see also* Pam Koerbel, ABORTION'S SECOND VICTIM (AMG Publishers, rev. ed. 1991) (discussing the effects of abortion, which the author, who underwent an abortion, argues have been overlooked or denied by society); POST-ABORTION SYNDROME: ITS WIDE RAMIFICATIONS (Peter Doherty ed., 1995); *see also* VICTIMS AND VICTORS (David C. Reardon et al. eds., 2000) (assaulting the commonly held belief that most pregnant rape victims seek abortion and that the abortion,

abortion is an act of violence on the woman. It is the premature breach of a woman's internal system that has been activated and transformed to carry out the function of sustaining and nourishing a developing human being. Consequently and unsurprisingly, any violation of the integrity of a woman's internal system can lead to serious "complications" of a physical, psychological, and emotional nature, including haemorrhaging, infection, sterility, depression, hyper-arousal, flashbacks, numbed emotions, and suicide.⁷³ Some refer to these effects as "Post Abortion Syndrome," "Post Abortion Stress," or "Trauma Disorder."⁷⁴ The topic is not a popular one given the money involved in the manufacturing and sale of contraception and the procurement of abortion. However, many organizations now offer healing for women who had endured an abortion.⁷⁵

Furthermore, the use of abortion as a "remedy" for victims of sexual violence raises particular health problems for this group of women, since many who have experienced abortion, have described it as surgical rape.⁷⁶ Consequently, pushing abortion as a remedy for women with a history of sexual abuse or rape places them in specific danger,⁷⁷ opening them up to further trauma with corresponding psychiatric problems.⁷⁸

Rather, States should be compiling lists of best practices for assisting pregnant mothers in crisis, such as in cases of coercion, rape, extreme poverty, *inter alia*. The list should include those activities carried out by crisis pregnancy centers, faith-based organizations, and other intermediary organizations.⁷⁹

when obtained, is a satisfactory solution); *see also* *Abortion: Some Medical Facts*, NAT'L RIGHT TO LIFE, <http://www.nrlc.org/abortion/ASMF/asmf.html> (follow "Is Abortion Safe?" hyperlink).

⁷³ Ring-Cassidy & Gentiles, *supra* note 72, at 217.

⁷⁴ *Id.* at 113–14. (One of the author's patients described her experience as follows: "I was fully awake, no pills given, or shots. I lay there with tears rolling down my face. The room was cool. My tears felt like fire on my face, cutting it, slice by slice, tear by tear. My hands were wet with sweat; my right hand squeezed the counselor's thin, cold hand as though squeezing the life out of her. My left hand lay fisted, clenched tightly on my vibrating stomach as the abortion occurred. It felt as though someone was raping me with a 15-Amp canister vacuum hose with no mercy as I lay there helpless, crying calmly, as if agreeing to be raped").

⁷⁵ *See, e.g., Villa Maria Guadalupe*, *supra* note 67; *see also* *About Us*, RACHEL'S VINEYARD, <http://www.rachelsvineyard.org/aboutus/ourstory.htm> (offering post-abortion healing ministry at various sites in the United States, Canada, Portugal, Australia, and New Zealand); *see also* ABORTION RECOVERY INTERNATIONAL, <http://abortionrecovery.sectorlink.org>; *see also* *Resources*, HOPE AFTER ABORTION, <http://www.hopeafterabortion.com/hope.cfm?sel=resources>.

⁷⁶ *See* Burke & Reardon *supra* note 72.

⁷⁷ *Id.*

⁷⁸ *Id.*

⁷⁹ *See, e.g., CARE NET*, available at: <https://www.care-net.org/> (crisis pregnancy center); *see also* HEART BEAT INTERNATIONAL, <http://www.heartbeatinternational.org/>; *see also* THE NATIONAL INSTITUTE OF FAMILY AND LIFE ADVOCATES, <http://www.nifla.org/about-us-history.asp> (Centres are within and without USA established to defend the rights of these centres and to promote their work).

4. *No Abortion, due to coercion, force and violence*

As mentioned above, international law requires States to provide special attention to both mothers and children, and abortion does not assist either of them. Dr. Burke and Dr. Reardon argue that there is a plethora of evidence to suggest that many women proceed with an abortion due to feelings of helplessness “*to resist or change the circumstances that are ‘forcing’ them to choose abortion,*” even when they consider abortion to be a type of murder.⁸⁰ Indeed, issues pertaining to coerced and forced abortions have become key concerns.

In October 2012, Monsignor José Daniel Falla Robles, Secretary General of the Columbian Conference of Bishops, recently argued at the annual National Women’s Encounter that in the majority of cases “women feel compelled to abort because of deplorable circumstances due to a lack of sexual and affective formation, mistreatment and abandonment, and various forms of social and familial pressure.”⁸¹

He echoes the words of Pope John Paul II, who came to the same conclusion.

“[o]ften the woman is the victim of male selfishness, in the sense that the man, who has contributed to the conception of the new life, does not want to be burdened with it and leaves the responsibility to the woman, as if it were ‘her fault’ alone. So, precisely when the woman most needs the man’s support, he proves to be a cynical egotist, capable of exploiting her affection or weakness, yet stubbornly resistant to any sense of responsibility for his own action.”⁸²

Scholar Ernest Caparros gives two vivid incidents involving coercion in his paper on “Disordered Manhood”.⁸³ He relates the story that while cohabiting with a man, a woman became pregnant and “desired to give birth to their child, but the man convinced her that the timing was not right,” instead he proposed an abortion and promised to marry her - she complied, underwent the abortion and he abandoned her.⁸⁴ The reaction of Caparros to this tragic set of facts is enlightening:

⁸⁰ Burke & Reardon, *supra* note 72, at 112-13, 116-17, 314 (Dr. Burke supports this assertion with her personal work with women who have had abortions as well as statistics regarding many more abortions. She also relates how her clients describe abortion as fearful or horrifying, while others recount having an overwhelming feeling of “helplessness.”)(emphasis added).

⁸¹ *Il Sostegno alla maternità per sconfinare l’aborto* in L’OSSERVATORE ROMANO in Venerdì October 12, 2012, p. 5; see also Matthew Cullinan Hoffman, *VIDEO: Catholics Assaulted, Spray-painted and Spit upon as they defend Cathedral from Feminists* (Oct. 11, 2012), available at <http://www.lifesitenews.com/news/video-catholics-assaulted-spat-upon-and-spray-painted-as-they-defend-cathed>.

⁸² POPE JOHN PAUL II, *supra* note 66.

⁸³ ERNEST CAPARROS, *A Disordered View of Manhood and its Effect on the Idea of Womanhood*, Issue 2, 8 AVE MARIA LAW REVIEW 293, 295 (2010) [hereinafter Caparros].

⁸⁴ *Id.*

“I was shocked as I read the very striking account of the man’s manipulation of the woman.”⁸⁵ Caparros recounts another situation where a teenage girl was murdered after disclosing her pregnancy to three teenage boys, who had each “enjoyed promiscuous relations with her, and then conspired to end her life and that of her child.”⁸⁶

In Canada, there is plenty of evidence to indicate that women have been coerced to abort enduring pressure from members of their family, friends, and partners including from emotional, financial, and physical violence.⁸⁷ In response, a Canadian Member of Parliament sponsored a private member’s bill C-510, which would have prevented forced and pressured abortions by making it illegal to coerce women into an abortion through threats of violence, withdrawal of financial resources, or denial of a place to live. Unfortunately, the bill was defeated; it was also known as “Roxanne’s Law” named after a woman had been beaten to death after refusing to abort her child.⁸⁸ The United States has responded with the enactment of Feticide Laws. See discussion *infra*.

In China, recent cases of forced abortion and its gruesome aftermath are available to all who have access to the internet. In one case, a young woman lays next to her dead child ripped from her womb at 7 months.⁸⁹ In response to such cases, the European Parliament issued a resolution opposing forced abortion and all forms of coercion, emphasizing the “*free, responsible and informed decisions about childbearing*” and “*how any form of coercion has no part to play.*”⁹⁰

⁸⁵ *Id.*

⁸⁶ *Id.*

⁸⁷ STEVEN ERTELT, *Canadian Woman in Forced Abortion Ordeal, Parliament Votes Soon*, LIFESTE NEWS (November 26, 2010), available at <http://www.lifenews.com/2010/11/26/int-1698/>.

⁸⁸ See STEVEN ERTELT, *Canada PM Harper Child for Vote on Forced Abortion Bill*, LIFESITE NEWS (August 21, 2012), available at <http://www.lifenews.com/2010/12/21/int-1723/>; see also Susan Delacourt, *Tory MP Introduces “Coerced Abortion Bill,”* THESTAR.COM (April 15, 2010), available at <http://www.thestar.com/orintArticle/795652>.

⁸⁹ See the Video of the two victims of violence the young Chinese mother and her dead aborted 7 month pre-born child <http://www.theglobeandmail.com/news/news-video/video-chinese-woman-forced-to-have-abortion-at-7-months/Article4267076/>.

⁹⁰ *European Parliament Resolution on the forced abortion scandal in China* (2012/2712(RSP), available at <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//NONSGML+MOTION+P7-RC-2012-0388+0+DOC+PDF+V0//EN> (The preamble noted: “A. whereas on 2 June 2012 a seven-months-pregnant woman, Feng Jianmei, was abducted and underwent a forced abortion in Zhenping county (Shanxi province), sparking a wave of indignation and condemnation in China and around the world; B. whereas abortions beyond six months are illegal under Chinese law; whereas the Ankang municipal government conducted an investigation which concluded that officials in Zhenping county had used ‘crude means’ and ‘persuaded’ Ms Feng to abort the foetus; whereas the report stated that this decision had violated her rights; whereas the Ankang municipal government has announced punishments for local planning officials involved in the case, including sacking; C. whereas, according to the investigation, local officials had asked Ms Feng’s family for a ‘guarantee deposit’ of RMB 40 000, which according to her husband was a fine for having a second child; whereas local authorities had no legal grounds for collecting such a deposit; whereas Ms Feng was forced to sign a consent form to terminate her pregnancy because

5. Civil and/or criminal liability for the death of an unborn child

Although, abortion is legal in the United States,⁹¹ mothers who harm their prenatal children may be held criminally responsible for child abuse. For example, the Supreme Court of South Carolina upheld the conviction of a woman for homicide by child abuse after her viable unborn child was stillborn as the result of her cocaine use during pregnancy.⁹² Mothers may also be liable for civil penalties for harming prenatal children; in several states, courts may find pregnant women negligent when their child tests positive for drugs after birth.⁹³ Moreover, pregnant women who abuse drugs or alcohol can be involuntarily committed to a treatment facility⁹⁴ and courts have also found the drug abuse by expectant mothers constitutes child abuse.⁹⁵

Third parties, such as the mother's boyfriend or partner, may be criminally liable for the harm of prenatal children under "feticide statutes" that criminalize the killing of prenatal children outside the context of abortion.⁹⁶ For example, Michigan's statute MCL § 750.90(a) punishes an individual for causing a

she would not pay the fine, and was kept in the hospital by guards; D. whereas, as a result of China's one-child policy, illegal sex-selective abortions are widespread, creating an imbalance between the numbers of men and women.").

⁹¹ See *Roe v. Wade*, 410 U.S. 113 (1973).

⁹² BONNER, *supra* note 49, at 40-1 (cf. *State v. McNight*, 576 S.E.2d 168 (S.C., 2003) (in reaching its decision, the court interpreted S.C. Code Ann. § 16-3-85(A), which requires the defendant to 'causes the death of a child under the age of eleven while committing child abuse or neglect, and the death occurs under circumstances manifesting an extreme indifference to human life,' to include a pregnant woman who uses cocaine knowing the harm it would cause to her unborn child. The court based its decision on *Whitner v. State*, in which the South Carolina upheld a conviction for criminal neglect for a woman who used cocaine while pregnant, ruling that a prenatal child was a "child" for the purpose of the statute. In *Whitner*, the court reasoned: 'It strains belief for Whitner to argue that using crack cocaine during pregnancy is encompassed within the constitutionally recognized right of privacy. Use of crack cocaine is illegal, period. No one here argues that laws criminalizing the use of crack cocaine are themselves unconstitutional. If the State wishes to impose additional criminal penalties on pregnant women who engage in this already illegal conduct because of the effect the conduct has on the viable fetus, it may do so. We do not see how the fact of pregnancy elevates the use of crack cocaine to the lofty status of a fundamental right'").

⁹³ *Id.* at 33-4 (cf. "ARK. CODE ANN. § 12-18-103(13)(B)(i)(a) (2011) ('Neglect' shall also include:

(a) Causing a child to be born with an illegal substance present in the child's bodily fluids or bodily substances as a result of the pregnant mother's knowingly using an illegal substance before the birth of the child") (the authors also cite another 9 state laws).

⁹⁴ *Id.* at 34 (cf. S.D. CODIFIED LAWS § 34-20A-63 (2011) ("An intoxicated person who: ... [i]s pregnant and abusing alcohol or drugs; may be committed to an approved treatment facility for emergency treatment").

⁹⁵ *Id.* at 36 (cf. "*In re Baby Boy Blackshear*, 736 N.E.2d 462, 465 (Ohio 2000) (A judge in Ohio similarly ruled that a newborn showing drugs in his or her initial toxicology screen is per se an abused child; *In re Benjamin M.*, 310 S.W.3d 844, 850-51 (Tenn. Ct. App. 2009) recently interpreted the applicable child abuse statute and observed that it "reflects an intent that actions before a child is born can constitute abuse to a child that is born injured by those actions. When a child is born alive but injured, the pre-birth timing of the actions is not dispositive").

⁹⁶ *Id.* at 24 (cf. *State v. Merrill*, 450 N.W. 2d 318 (Minn. 1009) (noting that fetal homicide statutes seek to protect the potentiality of human life without impinging directly or indirectly on a pregnant woman's privacy rights).

miscarriage or stillbirth with malicious intent toward the fetus or embryo.⁹⁷ A violation of MCL § 750.90(a) is punishable by life imprisonment.⁹⁸ Many states have adopted similar provisions, either providing for feticide as a separate crime or defining “person” for purposes of their homicide statutes as including the unborn, though not all include all stages of development.⁹⁹ Other state courts have interpreted “person” and “child” in their homicide statutes to include unborn children.¹⁰⁰ Twenty-seven States have homicide laws that recognize prenatal children as victims throughout the entire period of prenatal development and nine additional states have homicide laws that recognize prenatal children as victims during part of the period of prenatal development.¹⁰¹

In addition, third parties who harm prenatal children have also been held liable for civil penalties. For example, a court in Mississippi ruled that a prenatal child is a person for the purpose of recovering damages after the wrongful death of a sibling.¹⁰² In an Alabama case, the unanimous Supreme Court of Alabama held

⁹⁷ *Id.* (cf. MICH. COMP. LAWS 750.90(a) (2011) (providing in pertinent part: “If a person intentionally commits conduct proscribed . . . against a pregnant individual, the person is guilty of a felony . . . if all of the following apply: (a) The person intended to cause a miscarriage or stillbirth by that individual or death or great bodily harm to the embryo or fetus, or acted in wanton or willful disregard of the likelihood that the natural tendency of the person’s conduct is to cause a miscarriage or stillbirth or death or great bodily harm to the embryo or fetus. (b) The person’s conduct resulted in a miscarriage or stillbirth by that individual or death to the embryo or fetus.”); *see also* MICH. COMP. LAWS 750.90(b) (2011) (punishes an individual for harming or killing a fetus or embryo during an intentional assault against a pregnant woman without regard to the individual’s intent or recklessness toward the fetus or embryo); *see also* MICH. COMP. LAWS 750.90(c) (2011) (punishes an individual for harming or killing a fetus or embryo during a grossly negligent act against a pregnant woman without regard to the individual’s state of mind toward the fetus or embryo”).

⁹⁸ *Id.*

⁹⁹ *Id.* at 24-5 (cf. citing 28 State laws: in particular, “ARK. CODE ANN. § 5-13-201(a)(5)–(6) (2011) (battery includes harming a fetus); N.C. GEN. STAT. § 14-18.2 (2011) (injury to pregnant woman resulting in miscarriage/stillbirth results in guilt of a felony one class higher than the underlying crime against the woman); *see also* TEX. PENAL CODE ANN. § 19.06 (2010) (stating that the homicide provisions do not apply to unborn children only in certain circumstances); *see also* VT. STAT. ANN. tit. 13, § 101 (2011) (criminalizing abortions committed by a third party); *but see* COLO. REV. STAT. § 18-3-101 (2010) (defining ‘person’ for purposes of homicide as someone born); HAW. REV. STAT. § 707-700 (2011) (defining “person” for purposes of homicide as someone born); MO. REV. STAT. § 565.300 (2011) (defining infanticide as including only born or partially born infants); OR. REV. STAT. § 163.005 (2009) (defining ‘human being’ as including only those born and alive); *cf.* *Commonwealth v. Booth*, 564 Pa. 228 (Pa. 2001) (holding that Pennsylvania’s homicide by vehicle statute did not apply to unborn children”).

¹⁰⁰ *Id.* at 25 (cf. *State v. Ard*, 332 S.C. 370 (S.C. 1998) (holding that the words ‘person’ and ‘child’ in South Carolina’s homicide statute applied to viable fetuses both for the purpose of criminal charges and as an aggravating circumstance”).

¹⁰¹ *Id.* (cf. *State Homicide Laws That Recognize Unborn Victims*, NATIONAL RIGHT TO LIFE COMMITTEE (May 27, 2011), http://www.nrlc.org/Unborn_Victims/Statehomicidelaws092302.html”).

¹⁰² *Id.* at 17 (cf. *Fizer v. Davis (In re Estate of Davis)*, 706 So. 2d 244 (Miss. 1998).

that a mother could recover in a wrongful death action against negligent medical doctors for the pre-viability death of her son.¹⁰³

6. Bioethical Considerations

Some States have banned or restricted any and/or all forms of assisted reproduction,¹⁰⁴ including in-vitro fertilization,¹⁰⁵ surrogate motherhood,¹⁰⁶ human cloning,¹⁰⁷ or the extraction of embryonic stem cells¹⁰⁸ or the use of embryos for

¹⁰³ *Id.* At 32 (cf. *Hamilton v. Scott*, No. 1100192, 2012 Ala. LEXIS 66 (Sup. Ct. Ala., May 18, 2012)). (In so ruling, the Court relied on words familiar from the U.S. Declaration of Independence, but found in the Alabama Constitution itself thus being law in Alabama: ‘...[T]he Declaration of Rights in the Alabama Constitution...states that ‘all men are equally free and independent; that they are endowed by their Creator with certain inalienable rights; that among these are life, liberty and the pursuit of happiness.’ Ala. Const. 1901 §1 (emphasis added). These words, borrowed from the Declaration of independence (which states that ‘[w]e hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable rights, that among these are Life, Liberty, and the pursuit of Happiness’) affirm that each person has a God-given right to life”).

¹⁰⁴ There are, to be sure, legitimate moral means of assisting in human procreation which do not give rise to the exploitation of embryos. By “assisted reproduction,” I refer to those methods which do not assist the ordinary method of conceiving a child, i.e., through vaginal intercourse, but which, instead, replace the ordinary method of conceiving a child, such as, for instance, in vitro fertilization, which exposes a child conceived in this way to the harm of living outside his/her mother’s womb. See http://press.thelancet.com/netherlands_euthanasia.pdf (statistics in regard to the Netherlands); commentary, LIFESITENEWS, <http://www.lifesitenews.com/blog/the-lancet-proves-euthanasia-deaths-are-rising-in-the-netherlands>.

¹⁰⁵ Judgment number 2000-02306 of the Constitutional Chamber of the Costa Rican Supreme Court prohibiting assisting reproduction (March 15, 2000) (However, the Inter-American Court of Human Rights is currently hearing a challenge to Costa Rica’s In-Vitro Fertilization Ban See: Case No. 12.361, Gretel Artavia Murillo et al. (Inter-American Court of Human Rights Costa Rica IVF case)); see also Gewebesicherheitsgesetz-GSG 19.3.2008 (Austria).

¹⁰⁶ In the USA, the first was the case of *In re Baby M*, 537 A.2d 1227, 109 N.J. 396 (N.J. 1988) (first case in the USA ruling on the validity of surrogacy where the legal parentage of a baby was in question) (William Stern and his wife, Elizabeth Stern, entered into a surrogacy agreement with Mary Beth Whitehead who, according to the terms of the agreement, was inseminated with William Stern’s sperm, would bring the pregnancy to term, relinquish parental rights in favor of William’s wife, Elizabeth, and hand over the baby. After the birth, however, Mary Beth breached the contract when she changed her mind, and decided to keep the child. In response, William and Elizabeth Stern sued to be recognized as the child’s legal parents. The Supreme Court of New Jersey court eventually ruled that the surrogacy contract was invalid based on public policy, recognized Mary Beth Whitehead as the child’s legal mother, and sent the matter to Family Court ordering it to determine whether Whitehead, as mother, or Stern, as father, should have legal custody of the infant, using the conventional ‘best interests of the child’ analysis. In the end, Stern was awarded custody, with Whitehead having visitation rights.); see also La. R.S. 9:2713 (2012) (legislative ban on surrogate motherhood); see also Burns Ind. Code Ann. § 31-20-1-1 (legislative ban on surrogate motherhood); see also 2012 NJ S.B. 2032 (legislative ban on surrogate motherhood).

¹⁰⁷ See, e.g., United Nations Declaration on Human Cloning (nonbinding and bans human cloning); see also The Fundamental Law of Hungary, Article 3(1)(3), available at <http://www.mkab.hu/download.php?d=65>; See also, Constitution of the State of Michigan of 1963 § 27(1); see also Cal Health & Saf Code § 24185 (2012); see also Conn. Gen. Stat. § 19a-32d(b); see also N.D.C.C. § 12.1-39-02 (North Dakota Century Code); see also 105 CMR § 960.007 (Code of Massachusetts Regulations).

research or transplant purposes,¹⁰⁹ or the cryopreservation of embryos, their manipulation or otherwise exploitation.¹¹⁰

7. Euthanasia and/or assisted suicide¹¹¹

Some States ban or restrict euthanasia and/or physician assisted suicide.¹¹² In those countries where it is legal, legislation has been introduced to place limits on the same. For example, States have restricted funding,¹¹³ others have enacted laws requiring the written and witnessed consent of the person to be euthanized or

¹⁰⁸ See, e.g., Law Num. 20.120 (Chile) (Article 6) Cf. <http://www.leychile.cl/Navegar?idNorma=253478> (in Spanish); Mo. Const. Art. III, § 38(d) (2012) (Missouri Constitution); see also 63 Okl. St. § 1-270.2 (2012) (Oklahoma Statutes).

¹⁰⁹ See, e.g., Embryo Protection Law (1990) (Germany); see also The Dickey-Wicker Amendment (DWA), Pub. L. No. 111-8, § 509(a)(2), 123 Stat. 524, 803 (2009) (prohibited the federal funding of research creating embryos for research purposes or the federal funding of research destroying human embryos, including, inter alia, embryonic stem cell research. However, *Sherley v. Sebelius*, 644 F.3d 388 has significantly limited the Dickey-Wicker Amendment by affirming that it does not preclude federal funding on research which uses pre-existing embryonic stem cells, but only on the future extraction of stem cells which necessitates the destruction of embryos); see also 45 CFR 46.204 (Code of Federal Regulations) (Provides protection for human fetuses and women by setting forth conditions for research on them as subjects. There is no reason the same protection could not be extended, by analogy, to embryos, which would arguably ban embryonic stem cell research.); See 42 USCS § 289g (United States Code Service) (The protections which apply to fetal research under this legislation should be extended to research on embryos).

¹¹⁰ See, e.g., Italian Law 40/2004.

¹¹¹ The essential distinction between euthanasia and assisted suicide is that the former involves the direct killing of a patient, whereas the latter assists the patient to kill him or herself. Rita L. Marker and Cathi Hamlon, *Euthanasia and Assisted Suicide: Frequently Asked Questions*, <http://www.patientsrightsCouncil.org/site/frequently-asked-questions/> (last visited 30 July 2012). Since the state has a duty to protect the human person, this distinction between killing and assisting one to kill him or herself is a distinction without a difference; for a state to permit a person to assist in the death of another innocent person is as much a violation of its duty to protect the human person as it is for a state to permit a person to kill another innocent person.

¹¹² Fla. Stat. § 765.309 (2012); Oklahoma Advance Directive Act, 63 Okl. St. § 3101.2 (2012); RSA 137-J:10 (2012) (New Hampshire Revised Statutes Annotated) (such legislation may not fully ban euthanasia or physician assisted suicide since withholding food and water may be considered as a natural means of death, rather than what it really is, a form of euthanasia or assisted suicide, Cf. Congregation for the Doctrine of the Faith: Responses to Certain Questions of the United States Conference of Catholic Bishops Concerning Artificial Nutrition and Hydration, http://www.vatican.va/roman_curia/congregations/cfaith/documents/rc_con_cfaith_doc_20070801_risposte-usa_en.html). It is important to note that in *Vacco v. Quill*, 521 U.S. 793, the U.S. Supreme Court ruled that the state of New York's prohibition on assisted suicide did not violate the Equal Protection Clause of the 14th Amendment of the U.S. Constitution. Furthermore, in *Wash. v. Glucksberg*, 521 U.S. 702, the U.S. Supreme Court ruled that the state of Washington's prohibition against causing or aiding a suicide did not violate the Due Process Clause of the 14th Amendment of the U.S. Constitution. Thus, states may prohibit assisted suicide and euthanasia without running afoul of the U.S. Constitution.

¹¹³ See, e.g., 42 U.S.C. § 14401; 45 CFR 1643.3.

assisted in dying, while still others have established preconditions that the person possess an incurable medical disease.¹¹⁴

8. *Right to conscientious objection*

Some States have enacted laws to protect the conscience rights of health professionals, for example, the right not to prescribe certain products, including contraception,¹¹⁵ or to provide certain services such as abortion,¹¹⁶ or to participate in a medical procedure, such as in vitro fertilization¹¹⁷ or end of life procedures.¹¹⁸ Other States have protected the conscience rights of pharmacists not to dispense abortifacients and contraceptives.¹¹⁹ More recently, laws have been enacted to protect the rights of civil and religious officials from having to perform “same sex marriages” which violate their conscience.¹²⁰ Lastly, some States have ensured respect for the rights of parents to opt their child out of classes or education

¹¹⁴ See, e.g., Oregon Death with Dignity Act, ORS 127.800-995; see also The Belgian Act on Euthanasia of May 28th, 2002.

¹¹⁵ See, e.g., Mississippi Code Ann. § 41-41-215; see also Tennessee Code Ann. 68-34-104; see also Washington RCW 48.43.065; see also Idaho Code § 18-611; see also Florida 2003 Stat. XXIX 381.0051; see also Colorado Rev. Stat. 25-6-102.

¹¹⁶ See, e.g., S.C. Code Ann. § 44-41-50 (2011) (South Carolina Code Annotated) (provides that medical employees cannot be forced to recommend, perform, or assist in the performance of an abortion); see also Miss. Code Ann. § 41-107-5 (Mississippi Code of 1972 Annotated) (provides comprehensive protection for healthcare providers not limited only to abortion, but also encompassing other objectionable procedures such as in vitro fertilization); see also Rev. Code Wash. (ARCW) § 70.47.160 (2012); see also 16 Del. C. § 2508(e) and (g) (2012) (Delaware Code Annotated); For, a partial and insufficient protection of the conscience rights of health care providers as regards end of life care and advanced directives see: Cf. 755 ILCS 40/35 (2012) (Illinois Compiled Statutes Annotated) and Wyo. Stat. § 35-22-408(e) and (g) Wyoming Statutes Annotated, wherein both statutes require health care providers who conscientiously object to a medical procedure to assist in the transfer of the patient to another institution that will comply with the patient’s wishes.

¹¹⁷ See, e.g., Miss. Code Ann. § 41-107-5 (Mississippi Code of 1972 Annotated) (provides comprehensive protection for healthcare providers not limited only to abortion, but also encompassing other objectionable procedures such as in vitro fertilization).

¹¹⁸ Illinois Compiled Statutes Annotated, *supra* note 53 (partial protection of the conscience rights of health care providers, with particular reference to end of life care and advanced directives is given in) (Cf. 755 ILCS 40/35 (2012) (Illinois Compiled Statutes Annotated); Wyo. Stat. § 35-22-408(e) and (g) Wyoming Statutes Annotated, *supra* note.).

¹¹⁹ See, e.g., Mississippi Code Ann. § 41-41-215; see also South Dakota Codified Laws § 36-11-70; see also Georgia Admin. Code § 480-5-.03; Tennessee Code Ann. 68-34-104; Washington RCW 48.43.065; Idaho Code § 18-611; Florida 2003 Stat. XXIX 381.0051; Colorado Rev. Stat. 25-6-102

¹²⁰ Prince Edward Island Marriage Act, RSPEI 1988, c M-3 s 11.1, as amended by An Act to Amend the Marriage Act, SPEI 2005, 12, §7 (It should be noted, the societal problem of not providing conscience rights for marriage registrars/officers does not go away when the law compels such registrars/officers to solemnize same-sex unions. In fact, in jurisdictions which do not safeguard conscientious objection for marriage registrars, “the issue of objecting marriage officers has nevertheless surfaced in the indirect guise of employment discrimination claims.” Canadian Journal of Human Rights, Vol. 1, No. 1, pp. 127-164, 147, 2012.)

programs, which violate their religious and moral convictions.¹²¹ The law of Honduras, for example, provides that “[p]ublic servants are ensured an individual right to conscientious objection as a fundamental right integral to the right to freedom, respect for physical and moral integrity and the right to religious freedom.”¹²²

PART II. OVERVIEW OF LAWS DIRECTLY PROTECTING THE FAMILY

A. *Category B: International Laws Protecting the Rights of the Family*

Once again for those States that should be transforming their international obligations into domestic law the following duties are worth noting. Article 16.3 of the UDHR protects the natural family: “*The family is the natural and fundamental group unit of society and is entitled to protection from society and the State*”. Article 23.1 of the ICCPR employs the same wording, while article 10.1 of the ICESCR is more demanding: “*The widest possible protection and assistance should be accorded to the family, which is the natural and fundamental group unit of society, ...*”.

The natural family is defined as the consensual union of marriage between one man and one woman who are of marriageable age and who fully and freely give their consent. In the original French version of art.16.1 of the UDHR *one man and one woman is expressly stated, “[a] partir de l’âge nubile, l’homme et la femme, sans aucune restriction quant à la race, la nationalité ou la religion, ont le droit de se marier et de fonder une famille. Ils ont des droits égaux au regard du mariage, durant le mariage et lors de sa dissolution*”. While in the ICCPR, Article 23.2 reads, “[t]he right of men and women of marriageable age to marry and to found a family shall be recognized. No marriage shall be entered into without free and full consent of the intending spouses.”

The natural family is deeply united with the rights and duties of parents. Indeed, following a discussion of the right to marry and found a family, Article 26 of the UDHR states, “[p]arents have a prior right to choose the kind of education that shall be given to their children.” The reference to “*prior right*” acknowledges

¹²¹ See, e.g., A.R.S. § 15-102 (Arizona Revised Statutes); see also Fla. Stat. § 1002.20 (Florida Statutes); 8 VAC 20-620-10 (Virginia Administrative Code); cf. 20 USCS § 1232g (United States Code Service); For a helpful summary of the U.S. Supreme’s Court’s strong and repeated recognition of parental rights, see Christopher J. Klicka, Esq., Decisions of the United States Supreme Court Upholding Parental Rights as “Fundamental,” available at <http://www.hslda.org/docs/nche/000000/00000075.asp> (last visited 16 October 2012); see also, e.g., CALIFORNIA STATES SCHOOLS COALITION, QUESTION & ANSWER GUIDE ON THE CALIFORNIA’S PARENTAL OPT-OUT Statutes, available at <http://www.casafeschools.org/OptOutQA.pdf>.

¹²² Honduras Public Servants Code of Ethics Article 32, available at http://www.tsc.gob.hn/Normativa%20Vigente/codigo_de_conducta_etica_del_servidor_publico.pdf.

the principle of subsidiary; since parents give life to the child, they have the primary and inalienable duty and right to educate their child, and in conformity with their moral and religious convictions. Those who are called to collaborate with parents, such as teachers, school administrators, and state authorities, do so in a delegated manner and therefore in close collaboration with parents.

According to the two 1966 Covenants (ICCPR and ICESCR), parents have the right to choose schools or even home schooling in order to educate their child, in keeping with their moral and religious convictions.¹²³ This implies the right to ensure that their child is not compelled to attend classes, such as sex-education courses, which are not in agreement with their own moral and religious convictions; and the right to ensure that a compulsory system of education is not imposed by the State from which all moral and religious formation is excluded. In the end, recognition of the parents' prior right to choose their child's education reaffirms the principle of integral human procreation, which is, in essence, an exercise of responsible procreation of the spouses, where the father and the mother accepts to love, nurture, educate, guide, and accompany the child throughout his or her entire developmental process.

B. *Category B: Domestic Laws Protecting the Rights of the Family*

1. *Protecting the Natural Family*

Domestic laws should recognize the natural family as a subject of human rights, which cannot be treated in the same way as other objectively different groups or groupings without constituting an act of manifest discrimination.¹²⁴ Recent constitutional amendments or newly enacted legislation, in the United States for example, define family, as one man and one woman based on marriage.¹²⁵ In some countries, legislation regarding civil unions or domestic partnerships have been avoided, but in other countries, where recognized, good practices dictate that these relationships should not be given the same legal protections that benefit married couples. In other words, laws should not convey

¹²³ See ICCPR, *supra* note 8, at art. 18; ICESCR, *supra* note 10, at art. 13.

¹²⁴ See, e.g. the 1995 Constitution of Uganda, *available at* http://www.uganda.at/Geschichte/verfassung_der_republik_Uganda_2008.pdf (wherein it refers to the phraseology in the UDHR, ICCPR, and the ICESCR, *supra* note 33 herein: "The family is the natural and basic unit of society and is entitled to protection by society and the state").

¹²⁵ See, e.g., The Fundamental Law of Hungary Article L, *available at* <http://www.mkab.hu/download.php?d=65> ("Hungary shall protect the institution of marriage, understood to be the conjugal union of a man and a woman established by their voluntary decision, and the family as the basis of the nation's survival"); see, e.g., The Defence of Marriage Act, HR 3396, *available at* <http://www.gpo.gov/fdsys/pkg/PLAW-104publ199/html/PLAW-104publ199.htm> (defines marriage as a union between one man and one woman) (The act is currently before the courts on a constitutional challenge).

the message that marriage is equivalent to domestic partnerships by providing almost the same remedies upon dissolution. Lastly, to avoid confusion *de facto* unions or cohabitation should not be referred to as “marriage-like”.¹²⁶

In the United States, some States recognize covenant marriage, a special contract authorized by law, which has the force of law similar to ordinary contracts for prospective spouses who promise to take reasonable steps to preserve natural marriage.¹²⁷ This contract begins at the moment of marital difficulties, and lasts until the rendering of a divorce judgment, save for exceptional circumstances such as sexual abuse of a spouse or a child. Covenant marriage differs from other State marriage laws in that it requires pre-marital counseling, reasonable efforts to preserve the marriage, and restricted grounds for divorce or a lengthy separation period prior to divorce.¹²⁸

One might query whether States should permit spouses to reaffirm the indissolubility of natural marriage pursuant to State law in their marriage contracts, in cases where the State law has not granted a “right to a divorce”. Reluctance to enforce such terms, on the grounds that it would amount to specific performance, could possibly be overcome. For example, state law could require that the parties include a clause giving access to civil annulment procedures for lack of consent or other fundamental grounds and to provide for separate maintenance in certain cases, such as abuse or adultery. Separate maintenance would permit the spouses to alter their residential arrangements and organize support and custody arrangements while remaining married.¹²⁹ Even though only a minority of citizens would likely take advantage of such legislation, the State has an important role to

¹²⁶ Jane Adolphe, *Chapter 18: The Principles and Canada’s Beyond Conjugal Report: The Move Towards the Abolition of State Marriage Laws*, RECONCEIVING THE FAMILY (Robin Fretwell Wilson, ed., 2006) [hereinafter “Adolphe”].

¹²⁷ Adolphe, *supra* note 126, (cf. Katherine Shaw Spaht, *The Last One Hundred Years: The Incredible Retreat of Law from the Regulation of Marriage*, 63 LA. L. REV. 243, 302 (2003) (describing Covenant Marriage as a state-authorized pre-nuptial option “which permits spouses to contract for a stronger form of marriage, imposing the legal obligation to submit to counseling prior to divorce and a more restricted ‘right’ to divorce”)); *see also* Katherine Shaw Spaht, *Revolution and Counter-Revolution: The Future of Marriage in the Law*, 49 LOY. L. REV. 1, 49 (2003); *see* LA. REV. STAT. ANN. §§ 9:272-309 (2000); ARIZ. REV. STAT. ANN. § 25-901-04 (2000); ARK. CODE ANN. §§ 9-11-801-11 (2002) (providing examples of legislation in three states that have enacted covenant marriage laws including Louisiana (1997), Arizona (1998), and Arkansas (2001)), *see* DiFonzo, *Toward a Unified Field Theory*, at 954 n.145 (For a more extensive list of Articles pertaining to covenant marriage).

¹²⁸ Adolphe, *supra* note 126, (cf. Craig W. Dallan, *The Likely Impact of the ALI Principles of the Law of Family Dissolution on Property Division*, BYU L. REV. 891, 917. (2001) (For a discussion of the fault versus no-fault divorce debate); *cf.* Peter Nash Swisher, *Reassessing Fault Factors in No-Fault Divorce*, 31 FAM. L.Q. 269 (1997); Barbara Bennett Woodhouse & Katharine T. Bartlett, *Sex, Lies, and Dissipation: The Discourse of Fault in a No-Fault Era*, 82 GEO. L. J. 2525 (1994); Katherine Shaw Spaht, *Louisiana’s Covenant Marriage: Social Analysis and Legal Implications*, 59 LA. L. REV. 63 (1998); DiFonzo, *Toward a Unified Field Theory*, *supra* note 127).

¹²⁹ Adolphe, *supra* note 126 (cf. Unlike divorce, the separation agreement does not cut off the marriage relationship); *see, e.g.*, MICH. COMP. LAWS § 552.7 (1971).

play in protecting and assisting marriage. Such a law would have an important pedagogical purpose for the public.¹³⁰

A noteworthy example of taking into consideration the natural family in assessing new legislation is Ronald Reagan's "Executive Order 12606 on The Family:" which calls on the Executive to analyze proposed Federal Legislation through a series of questions directed toward protecting and strengthening the natural family.¹³¹ Healthy marriage initiatives have also been integrated as part of welfare reform, in the United States.¹³²

2. Domestic Violence

Child protection laws should include three important standards: 1) the law should provide a clear and reasonable standard for State intervention such as proven abuse, negligence, or violence; 2) the law should apply the best interests of the child, preferably with some objective criteria, to award temporary or permanent custody; and 3) the law should acknowledge the basic principle of reunification of the family through special programs for its individual members and the family as a whole. Such reunification efforts could have time limits taking into consideration

¹³⁰ Adolphe, *supra* note 126 (cf. See George, *Law and Culture*, *supra* note 34: discussing the law and culture interrelationship); see also Katherine Shaw Spaht, *Covenant Marriage Seven Years Later: Its As Yet Unfulfilled Promise* (forthcoming) (making the same point that marriage needs to be reinforced by the law).

¹³¹ Ronald Reagan, Exec. Order No. 12606 C.F.R. (1987); Gerhard Peters and John T. Woolley, *The American Presidency Project*, <http://www.presidency.ucsb.edu/ws/?pid=34750>; see LAW COMMISSION OF CANADA REPORT, BEYOND CONJUGALITY, <http://www.cga.ct.gov/2002/olrdata/jud/rpt/2002-R-0172.htm> (For a contrary methodology which does not protect marriage but is developed to include "other close personal relationships"); see also Jane Adolphe, *The Principles and Canada's "Beyond Conjugal" in Report: The Move toward Abolition of State Marriage Laws*, RECONCEIVING THE FAMILY: CRITIQUE ON THE AMERICAN LAW INSTITUTE'S PRINCIPLES OF THE LAW OF FAMILY DISSOLUTION 365 (Robin Fretwell Wilson, ed., 2006) (For an adaptation of the methodology presented in *Beyond Conjugal* to assist countries deciding whether the State should acknowledge various unions to be eligible for State benefits, while at the same time, desiring to protecting the natural family).

¹³² Patrick Fagan, Robert Patterson, & Robert Rector, *Marriage and Welfare Reform: The Overwhelming Evidence That Marriage Education Works*, THE HERITAGE FOUNDATION BACKGROUNDER, No. 1606 (October 5, 2002), <http://www.policyarchive.org/handle/10207/bitstreams/8384.pdf> ("To help meet that goal, President George W. Bush wants to set aside \$300 million per year for specific programs to strengthen marriage as part of the reauthorization of welfare reform. These programs would teach relationship skills to unmarried couples at the time of pregnancy, with the goal of helping couples develop healthy marriages. The programs would also provide marriage-skills training to low-income married couples to help those couples improve their relationships and avoid marital breakup"); Norval D. Glenn et al., *Why Marriage Matters: Twenty-One Conclusions from the Social Sciences*, 5 AMER. EXPERIMENTAL Q. 34, 36 (2002), available at www.amexp.org/aeqpdf/AEQv5/aeqv5n1/AEQv5n1various.pdf (assessing the effect of marriage on families, economics, physical health of both parents and children, mental health, crime, and domestic violence, when compared with single-parent, divorced, or cohabitating arrangements, and concluding that "[m]arriage is an important social good, associated with an impressively broad array of positive outcomes for children and adults alike" but that "[c]ohabitation is not the functional equivalent of marriage").

the psychological bond that might develop between the child and his or her temporary caregiver.

Many States appoint guardians *ad litem* to represent the best interests of unborn children in cases of abuse or neglect. In specific regard to this topic, the work of Professor Bonner and Jennifer Sheriff, Esq. is seminal and timely. They discuss, for example, German law that expressly recognizes guardians for prenatal children: “[i]f it is to be assumed that a child needs a guardian upon birth, then even before the birth of the child a guardian may be appointed. The appointment takes effect on the birth of the child.” However, this legislation is of little effect if such an appointment does not actually take effect until after the child is born.¹³³

Bonner and Sheriff study the USA in great detail. They cite a New Jersey statute that explicitly allows for a petition for state services on behalf of an unborn child in need of state services, where it appears that the child’s safety or welfare will be endangered if such services are not provided.¹³⁴ The State of Wisconsin has legislatively overruled a Supreme Court decision in specifically providing for guardians *ad litem* to be appointed for prenatal children in need of legal representation. It gives the government jurisdiction over prenatal children “*alleged to be in need of protection or services*” if and when a prospective mother “*habitually lacks self-control in the use of alcohol beverages, controlled substances or ... exhibited to a severe degree, to the extent that there is a substantial risk that the physical health of the unborn child, and of the child when born, will be seriously affected or endangered unless the expectant mother receives prompt and adequate treatment for that habitual lack of self-control.*”¹³⁵ Additionally, Wisconsin Assembly Bill 292 provides for the appointment of a guardian *ad litem* “*for any unborn child alleged or found to be in need of protection or services.*”¹³⁶ “*Unborn child*” is defined in this statute as “*a human being from the time of fertilization to the time of birth.*”¹³⁷

They review legislation, which allows for the appointment of guardians *ad litem* to represent the best interests of unborn children in other cases as well. Nearly all American state legislatures, as well as the District of Columbia, have adopted a specific statutory provision for appointment of guardians *ad litem* for

¹³³ *Id.* (cf. Bürgerlichen Gesetzbuches [BGB] [Civil Code], Jan. 2, 2002, Bundesgesetzblatt, Teil I [BGBl. I] 42, §1773, 1774 (Ger.)).

¹³⁴ *Id.* (cf. N.J. STAT. ANN. § 30:4C-11 (2011) (“Whenever it shall appear that any child within this State is of such circumstances that the child’s safety or welfare will be endangered unless proper care or custody is provided, an application setting forth the facts in the case may be filed with the Division of Youth and Family Services The provisions of this section shall be deemed to include an application on behalf of an unborn child when the prospective mother is within this State at the time of application for such services”)).

¹³⁵ *Id.* (cf. WIS. STAT. § 48.133 (2011)).

¹³⁶ *Id.* (cf. WIS. STAT. § 48.235(1)(e)–(2) (2011)).

¹³⁷ *Id.* (cf. WIS. STAT. § 48.02(19) (2011)).

prenatal children in trust and or probate proceedings.¹³⁸ Many states allow guardian *ad litem*s for prenatal children in other contexts relating to: property interests;¹³⁹ illegal compensation for adoption;¹⁴⁰ interests at the time of the father's death;¹⁴¹ non-probate interests;¹⁴² questions before the courts,¹⁴³ including orphan's court;¹⁴⁴ detention of a pregnant women and girls;¹⁴⁵ and appointment of grandparents as guardians *ad litem*.¹⁴⁶

Bonner and Sheriff highlight cases where guardians *ad litem*s for prenatal children have been appointed in petitions of minors for abortions without parental consent.¹⁴⁷ Courts have also appointed guardians *ad litem* to represent prenatal children of an incompetent pregnant mother when the mother's guardian petitions for her to have an abortion.¹⁴⁸ The mother herself can petition for protection of her

¹³⁸ *Id.* (citing 42 state laws and noting that 75 ILL. COMP. STAT. 5/20-5 (2011) (provides for appointment of guardians *ad litem* for persons 'not in being' in probate cases); W. VA. CODE § 42-1-8 (2011) (unborn can inherit as if born.)).

¹³⁹ *Id.* ("MASS. GEN. LAWS ch. 79, § 30 (2011) (eminent domain cases); N.H. REV. STAT. ANN. REV. STAT. ANN. § 498-A:23 (2011) (eminent domain cases); N.C. R. CIV. P. 17 (2011) (*in rem, quasi in rem*, probate, and other cases affecting an interest in property); N.C. GEN. STAT. § 35A-1343 (2011) (administration of the unborn's estate); OHIO REV. CODE ANN. § 2307.131 (2011) (cases in which the unborn has a future interest); 20 PA. CONS. STAT. § 8305 (2011) (cases in which the unborn has a property interest); VA. CODE ANN. § 8.01-94 (2011) (cases involving sale of real estate)").

¹⁴⁰ *Id.* (*cf.* 720 ILL. COMP. STAT. 525/4.1 (2011)).

¹⁴¹ *Id.* (*cf.* LA. CIV. CODE ANN. art. 252 (2011)).

¹⁴² *Id.* (*cf.* MICH. COMP. LAWS § 600.2045 (2011)).

¹⁴³ *Id.* (*cf.* MISS. R. CIV. P. 17 (2011)).

¹⁴⁴ *Id.* (*cf.* 20 PA. CONS. STAT. § 751 (2011)).

¹⁴⁵ *Id.* (*cf.* WIS. STAT. § 48.20, .203(2011)).

¹⁴⁶ *Id.* (*cf. In re Guardianship of Baby K.*, 188 Misc. 2d 228 (Surr. Ct. N.Y. 2001)).

¹⁴⁷ *Id.* (*In re Anonymous*, 720 So. 2d 497 (Ala. 1998); Helena Silverstein, *In the Matter of Anonymous, a Minor: Fetal Representation in Hearings to Waive Parental Consent for Abortion*, 11 CORNELL L. J. & PUB. POL'Y 69, 87 (2001) ("Including the first case of guardianship appointment, there have been at least 17 instances in which minors, seeking to waive parental consent, have been questioned by an appointed representative of the fetus"); *but see In re T.W.*, 551 So.2d 1186 (Fla. 1989) (Trial court appointed guardian *ad litem* for a prenatal child in juvenile petition for abortion without parental consent. The GAL for the prenatal child appealed the granting of the minor's petition. The Florida Supreme Court stated, "we find that the appointment of a guardian ad litem for the fetus was clearly improper").

¹⁴⁸ *Id.* (*Lefebvre v. North Broward Hosp. Dist.*, 566 So.2d 568 (Fla. Ct. App. 1990); *In re Estate of D.W.*, 134 Ill. App. 3d 788 (Ill. App. Ct. 1985) (appellate court does not discuss the appropriateness of the trial court's appointment of a guardian ad litem for the fetus of a mentally incompetent woman whose mother/guardian wanted to consent to her abortion); *but see In re D.K.*, 204 N.J. Super. 205, 213-14 (N.J. Super. Ct. Ch. Div. 1985) (holding that the appointment of a guardian ad litem for the fetus of a schizophrenic woman was inappropriate and that the guardian had no standing to bring an incompetency petition before the court); *In re Klein*, 145 A.D.2d 145, 147 (N.Y. App. Div. 1989) (holding that a person's application to be the guardian *ad litem* for the non-viable fetus of a mentally incompetent woman whose husband was appointed her guardian to assent to her abortion was properly denied because such a fetus was not a recognized person for the purpose of such proceedings)).

prenatal child, for example, when a pregnant mother is being abused by her husband, putting the unborn child at risk.¹⁴⁹

Bonner and Sheriff also underline the parents' responsibility to protect their prenatal children and discuss the cases where medical treatment has been ordered for unborn children when parental action has been wanting. For example, courts have ordered blood transfusions¹⁵⁰ and caesarean sections¹⁵¹ to protect the life or health of prenatal children. Moreover, judicial decisions have required a mother to undergo treatment that will save the life of her unborn child when the procedure would also help the mother, or when the risk of harm to the mother's own health would be minimal.¹⁵²

Some States protect women from violence by enacting laws that criminalize all types of domestic violence, including stalking; such laws may also require access to protection shelters and hotlines as well as special police and prosecutorial support for victims (e.g. "zero tolerance" arrest and prosecution policies, protection of victims and witnesses).¹⁵³

¹⁴⁹ *Id.* (Gloria C. v. William C., 124 Misc. 2d 313 (N.Y. Fam. Ct. 1984) (the court reasoned that since State law protected the unborn child from negligent acts of third parties, it protected against intentional acts, too. The court also found that similar protection was provided in New York's tort, public health and welfare, criminal, and estate and trust law)).

¹⁵⁰ *Id.* (Raleigh Fitkin-Paul Morgan Mem'l Hosp. v. Anderson, 201 A.2d 537 (N.J. 1964) (ordering a blood transfusion over the objections of the mother in the event that it was necessary to save the life of the unborn child); Hoerner v. Berntinato, 171 A.2d 140 (N.J. Juv. & Domestic Relations Ct. 1961) (awarding custody to the county welfare department for purposes of administering a blood transfusion); *In re Application of Jamaica Hospital*, 491 N.Y.S.2d 898 (N.Y. Sup. Ct. 1985) (ordering a blood transfusion to protect the life of an 18-week-old unborn child over the objections of the mother); *contra*, *People v. Brown (In re Brown)*, 294 Ill. App. 3d 159 (Ill. App. Ct. 1998) ("In conclusion, the circuit court erred in appointing a temporary custodian for Fetus Brown with the authority to consent to blood transfusions for Darlene Brown and erred in appointing the public guardian as guardian ad litem for Fetus Brown").

¹⁵¹ *Id.* (*Pemberton v. Tallahassee Mem. Regional Med. Ctr., Inc.*, 66 F. Supp. 2d 1247, 1250 (N.D. Fl. 1999) (holding that the State's interest in protecting the unborn child's life superseded the mother's right to refuse a caesarean section); *Jefferson v. Griffin Spalding Cnty. Hosp. Auth.*, 274 S.E.2d 457 (Ga. 1981) (authorizing the county hospital to perform a Caesarean section on the mother of a 39-week-old unborn child in the event she presented herself to the hospital); *but see People v. Doe (In re Doe)*, 260 Ill. App. 3d 392, 393 (Ill. Ct. App. 1994) ("[W]e hold that ... a woman's competent choice to refuse medical treatment as invasive as a cesarean section during pregnancy must be honored, even in circumstances where the choice may be harmful to her fetus").

¹⁵² *Id.* (For example, in *Pemberton v. Tallahassee Mem. Regional Med. Ctr., Inc.*, 66 F. Supp. 2d 1247 (N.D. Fl. 1999), in granting the hospital's motion for summary judgment, the trial court reasoned that ordering the caesarian section against the mother's wishes was proper to save the life of her child. *Id.* In so ruling, the court explained, "The balance tips far more strongly in favor of the state in the case at bar, because here the full-term baby's birth was imminent, and more importantly, here the other sought only to avoid a particular procedure for giving birth, not to avoid giving birth altogether. Bearing an unwanted child is surely a greater intrusion on the mother's constitutional interests than undergoing a caesarean section to deliver a child that the mother affirmatively desires to deliver. Thus the state's interest here was greater, and the mother's interest less, than during the third trimester situation addressed in *Roe*. Here, as there, the state's interest outweighed the mother's" *Id.* at 1251-2).

¹⁵³ From my experience working for the Crown Prosecutor's Office in Calgary Alberta, Canada, for example, some police departments had developed a "must charge" policy since most victims did not want their abusers charged.

3. Parental rights

The basic proposition recognized in international law is that parents have the right to provide for the moral, educational, and religious formation of their children.¹⁵⁴ The Hungarian Constitution provides: “*Parents shall have the right to choose the upbringing to be given to their children.*”¹⁵⁵

State legislation provides for a parental right to home school children,¹⁵⁶ for parental opt outs in public and/or private schools, especially for sex education, and for parental consent whenever minors engage in certain forms of harmful or potentially harmful behavior, including abortion.¹⁵⁷ In the United States, laws provide for the exercise of the parental right to choose schools through school vouchers.¹⁵⁸

4. Divorce Reform

In Ireland, legislation protects the institution of marriage by conditioning civil divorce on certain requirements, in cases where there is no reasonable prospect of a reconciliation between the spouses and the spouses have lived apart for a period of

Then the prosecutor’s office had a policy to not withdraw the charges on mere request of the victim. In addition, rules of evidence had been adapted to allow a prosecutor to treat the victim/witness as a hostile witness, when she refused to testify or related a different story under oath than that which was contained in her original statement to the police. At this point, the prosecutor could attempt to enter the written statement she gave to the Police at the time of the assault for the truth of its contents.

¹⁵⁴ See, e.g., U.N., *Universal Declaration on the Rights of the Child*, art. 26 ¶ 3 (1948) [hereinafter UDRC] (“Parents have a prior right to choose the kind of education that shall be given to their children”); see also *The International Covenant on Economic, Social and Cultural Rights*, art. 13 ¶ 3 (1996) (“The State Parties . . . undertake to have respect for the liberty of parents . . . to choose for their children schools, other than those established by the public authorities, which conform to such minimum education standards as may be laid down or approved by the State and to ensure the religious moral education of their children in conformity with their own convictions”); see also *California Safe Schools Coalition, Question & Answer Guide On California’s Parental Opt-Out Statutes: Parents’ and Schools’ Legal Rights And Responsibilities Regarding Public School Curricula*, <http://www.casafeschools.org/OptOutQA.pdf> (California’s Parental Opt-out Legislation).

¹⁵⁵ The Fundamental Law of Hungary, art. XVI (1), (2), available at <http://www.mkab.hu/download.php?d=65>.

¹⁵⁶ UDRC, *supra* note 154 (“Parents have a prior right to choose the kind of education that shall be given to their children.”); see also The 1966 International Covenant on Economic, Social and Cultural Rights, art. 13.3 provides: “The State Parties . . . undertake to have respect for the liberty of parents . . . to choose for their children schools, other than those established by the public authorities, which conform to such minimum education standards as may be laid down or approved by the State and to ensure the religious moral education of their children in conformity with their own convictions;” see HOME SCHOOLING LEGAL DEFENCE FUND IN CANADA, <http://homeschoolcanada.ca/canadian-homeschool-laws/> (Homeschooling laws in Canada).

¹⁵⁷ See, e.g., Wisc. Stat. § 48.375; see also N.D.C.C. § 14-02.1-03.1; see also Okla. Stat. tit. 63 § 1-740.2-3; see also Parental Notice of Abortion Act, Fla. Stat. § 390.01114.

¹⁵⁸ See, e.g., SCHOOLCHOICES.ORG, <http://www.schoolchoices.org/roo/vouchers.htm> (discussion about school vouchers); see also RETHINKINGSCHOOLS.ORG, http://www.rethinkingschools.org/special_reports/voucher_report/v_chur142.shtml (discussion about the issues).

time equal to four of the last five years prior to the institution of the divorce proceedings.¹⁵⁹

In the United States, there is a “divorce reform movement.”¹⁶⁰ For example, a number of non-governmental organizations have come together on various initiatives. The non-governmental organization “Americans for Divorce Reform” maintains a website with information on the Counseling Period Act¹⁶¹ and marriage education requirements.¹⁶² There is also legislation recognizing the negative effects of divorce on spouses and especially children, for example, laws promoting marriage preparation, marriage counseling, and mediation and others limiting divorce to fault based grounds as opposed to no-fault divorce systems, or some combination of the two regimes.¹⁶³

The issue of fault and no fault divorce has been greatly discussed. The notion of fault is an important way to educate the greater public about the deleterious effects of such conduct. If fault is tied to the concept of obligation and marriage is an institution with inherent duties, then non-recognition of fault will lead to non-recognition of these responsibilities. This, in turn, will undermine the institution of marriage. Having said that, fault based grounds were once thought to render divorce acrimonious to the detriment of children; this reason has since been described as erroneous in “[t]he Report of the Special Joint Committee on Child Custody and Access: For the Sake of the Children.”¹⁶⁴ Consequently, there are initiatives to abolish certain grounds and to institute more appropriate ones.¹⁶⁵ It is

¹⁵⁹ Constitution of Ireland, 41(3), available at <http://www.constitution.ie/reports/ConstitutionofIreland.pdf>.

¹⁶⁰ See, e.g., American Divorce Reform, *Divorce Reform*, <http://www.divorcereform.org/>; see also <http://www.reformdivorce.org/why-is-divorce-reform-needed.html>.

¹⁶¹ See *id.* (It “[g]ives couples a common language to communicate early warning signals, helps them repair marriages before it’s too late, [gives a] waiting period [which] varies from 6 months to 2 years, depend[s] on [whether there are] children and mutual consent, based on existing laws in Maryland, Illinois, Pennsylvania, New Jersey & Puerto Rico, but with new twist - puts waiting period BEFORE decision to divorce, wait starts with notice/request for help, NOT by leaving or filing for divorce, does not encourage “fault” divorce - applies equally to fault and no-fault, replaces archaic “cruelty” laws, procedures; [and] piggybacks on existing system for domestic violence restraining orders.” There are, however, exceptions when the counselling period is not required, for example, post conviction of a “violent crime in family,” post “restraining order for family violence,” and “imprisonment or institutionalization, . . . if those are divorce grounds in the state”).

¹⁶² See *id.* (The following is an example of statutory language, “ Any marriage counseling or education required before divorce may be provided by any of the providers listed in Section 4(a), or by licensed behavioral health professionals, psychologists, social workers, marriage and family therapists, psychiatrists, pastoral counselors, certified family life educators, or professional counselors, but not by a therapist who is treating or has treated one of the spouses separately. The individual parties may undergo it separately and need not both choose the same program or provider”).

¹⁶³ See, e.g., *id.*

¹⁶⁴ *The Report of the Special Joint Committee on Child Custody and Access: For the Sake of the Children, Parliament of Canada, FOR THE SAKE OF THE CHILDREN 3 (1998).*

¹⁶⁵ See American Divorce Reform, *supra* note 160 (“Most states still have several “fault” grounds for divorce, and most reformers do not propose to change them. But: a) In the 15 or so states where all fault grounds have been

noteworthy, that the Justice Department of Canada has devoted a website to the topic with an emphasis on joint exercise of parental responsibilities post-divorce.¹⁶⁶

On the matter of divorce and remarriage, the Catholic Church has taken a heroic stand in defence of the family, calling divorce “a grave offense against the natural law” which “claims to break the contract, to which the spouses freely consented, to live with each other till death.”¹⁶⁷ Regardless of the civil law’s recognition, the contracting of a new marriage by a divorced individual “adds to the gravity of the rupture” and places the remarried spouse “in a situation of public and permanent adultery.”¹⁶⁸ The Church views divorce as nothing short of a “plague on society”¹⁶⁹ which introduces a contagious disorder into all areas of human life. Consequently, it argues that society and the State must assist spouses to realize the fullness of their marriage bond.¹⁷⁰

However, having said that, the Catholic Church does not consider divorce inherently evil since it recognizes certain situations where it might be justified: “*If civil divorce remains the only possible way of ensuring certain legal rights, the care of the children, or the protection of inheritance, it can be tolerated and does not constitute a moral offense.*”¹⁷¹ Consequently, a civil lawyer, especially a Catholic one, will need to carefully discern which case it can represent a client, on a case-by-case basis, and with the principles of formal and material cooperation in mind.¹⁷²

abolished, some such grounds will have to be reinstated. b) A few states have certain fault grounds that are a joke, which judges routinely use as a substitute for no-fault, sometimes without allowing any evidence to be presented by the defence. It is impossible to tell which ones these are from looking at a state’s statutes -- you would have to consult divorce lawyers in each particular state about this. These need to be pared back, reformed or removed entirely. c) Also, in all states, once restrictions on no-fault divorce are put in place, perhaps some additional fault grounds, reflecting social change for the worse in recent decades, should eventually be enacted, usually by borrowing from other states or countries”); *see also* Crouch & Crouch, *Grounds for Divorce in the United States*, <http://patriot.net/~crouch/50states/> (It is noteworthy that it maintains a site on divorce fault grounds in the USA available at <http://patriot.net/~crouch/adc/grounds.html>) (It also maintains sites in other countries).

¹⁶⁶ *See* Department of Justice of Canada, *Divorce Reform and the Joint Exercise of Parental Authority: The Quebec Civil Law Perspective*, available at http://www.justice.gc.ca/eng/pi/fcy-fea/lib-bib/rep-rap/2001/2000_3b/p3.html.

¹⁶⁷ *Catechism of the Catholic Church* 2384 [hereinafter CCC].

¹⁶⁸ *Id.*

¹⁶⁹ CCC, *supra* note 167, at 2385.

¹⁷⁰ *Gaudium et spes* 52; FC 33, 69ff.

¹⁷¹ *See, e.g.*, CCC, *supra* note 167, at 2383 (“The separation of spouses while maintaining the marriage bond can be legitimate in certain cases provided for by canon law”) (emphasis added).

¹⁷² *Address of Pope John Paul II to the Tribunal of the Roman Rota*, (January 2002), available at http://www.vatican.va/holy_father/john_paul_ii/speeches/2002/january/documents/hf_jp-ii_spe_20020128_roman-rot_en.html; *see generally* Patrick Quirk, *Marriage, Divorce, and the Catholic Lawyer*, 14 Bond L.R. 414 (2002).

5. *Adoption Reform*

Adoption laws, in Western States, are creatures of statute; adoption is an exception to the natural family and natural parenthood, where children have a bond with their mother and father both biologically and emotionally. Adoption has the effect of terminating the biological parents rights and thereby ending the child's biological bond for his or her parents while creating emotional or psychological bonds with the adoptive parents. The underlying assumption is that married biological parents are more likely to better care for their own children. This is not to say, of course, that adoptive parents cannot or do not love their adopted children, but rather that nature does assist parents in knowing that the spouses have procreated and now must care for a new human person, namely their child.

In many countries, adoption is a long and complicated process which operates inefficiently encumbered with unnecessary delays, and obstacles. Consequently, there are many non-governmental organizations and governmental agencies working on adoption reform issues.

As noted, termination of parental rights was traditionally required. In some countries stepparent adoption is now permitted where the biological parent need not dissolve his or her rights. In other countries, some non-governmental organizations recommend open adoption, where a biological mother and/or father is known by the child and the adoptive parents; others promote access to adoption documents, in cases where they remain sealed.¹⁷³ These latter movements address the yearning of those who seek to know their biological mother or father or at least their heritage, which in turn, may be interpreted as a reaffirmation of the natural family and the fact that adoption is exceptional.

Concerns have been raised about who should be permitted to adopt. When adoption statutes were first enacted, in the Western world, efforts were made to place a child in a home with a married couple, but in time single persons were eventually permitted to adopt presumably with the understanding that they could marry in the future. Adoption to single persons, however, in certain cases has presented dangers for children. In Utah, for example, after considering statistics, which showed that a child was more likely to be abused when adopted by a single woman cohabiting with a partner, this State amended its law to give precedence to married couples, and to prevent children from being adopted by a single person cohabitating with another.¹⁷⁴

¹⁷³ See, e.g., *Adoption Reform for Open Adoption*, <http://www.openadoption.org/bbetzen/adoprefm.htm>; see also *Reform Adoption*, <http://reformadoption.com/USA/ByState/states.shtml>; see also *Heritage Foundation: Promoting Adoption Reform*, <http://www.heritage.org/research/reports/1996/05/bg1080nbsp-promoting-adoption-reform>.

¹⁷⁴ See *supra* note 70.

The issue of same-sex adoption has also been debated and banned in some States for reasons associated with the best interests of the child.¹⁷⁵ Unfortunately, Catholic Charities, working in the area of child welfare for centuries, have been forced to close in the face of legislation contending that such organizations are unjustly discriminating against persons living out homosexual tendencies when they refuse to facilitate adoption of children to such couples based on child welfare concerns.¹⁷⁶

6. Family Assistance

Some States provide direct public assistance to families in the form of tax breaks or baby bonuses.¹⁷⁷ Others require employers to provide maternity leave to pregnant employees¹⁷⁸ and to prohibit discrimination against pregnant women.¹⁷⁹ Still others ensure a minimum family-wage to assist parents in providing for their children, while others promote an appropriate family-work-rest balance, including flexible working hours and remote working opportunities to allow for stay-at-home parenting possibilities, with particular promotion of, and attention to, the work of

¹⁷⁵ See Mark Regnerus, *How Different are the adult Children of Parents who have same-sex relationships? Findings from the New Family Structures Study*, Vol.41, Issue 4, SOCIAL SCIENCE RESEARCH 752 (July 2012); see also Peter Sprigg, *Issue Brief on New Study on Homosexual Parents Tops All Previous Research: Children of Homosexuals Fare Worse on Most Outcomes*, <http://www.frc.org/issuebrief/new-study-on-homosexual-parents-tops-all-previous-research> (review done of the study by Heritage Research Council); see, e.g., Dr. Byrd, *Children Need both a Mother and a Father*, <http://narth.com/docs/needboth.html>; Dr. Bryd, *Gender Complementarity and Child Rearing: Where Science and Tradition Agree* in 6 S. J. QUINNEY COL.L. J. L. & FAM. STUDIES, No. 2, <http://narth.com/docs/gendercomplementarity.html>; Dr. Byrd, *Dual-Gender Parenting Optimal Child Rearing*, <http://narth.com/docs/optimal.html>; see also Matthew Cullinan Hoffman, *Gay 'Marriage' not a Right, Prohibiting Gay Adoption Not 'Discrimination': European Court*, in LIFESITE NEWS (Mar 16, 2012), available at <http://www.lifesitenews.com/news/gay-marriage-not-a-right-prohibiting-gay-adoption-not-discrimination-europe/>; see also *Experts WorldWide find Gay Adoption Harmful to Children*, LIFESITE NEWS (May 31, 2005), available at <http://www.lifesitenews.com/news/archive/ldn/2005/may/05053106>.

¹⁷⁶ See, e.g., Laurie Goodstein, *Illinois Catholic Charities Close Over Adoption Rule*, THE BOSTON GLOBE (Dec. 29, 2011), <http://www.bostonglobe.com/news/nation/2011/12/29/illinois-catholic-charities-close-rather-than-allow-same-sex-couples-adopt-children/Km9RBLkpKzABNLJbUGhvJM/story.html>; see also Martin Beckford, *Last Catholic Adoption Agency Faces Closure after Charity Commission ruling*, THE TELEGRAPH (Aug. 19, 2010, 7:01AM BST), available at <http://www.telegraph.co.uk/news/religion/7952526/Last-Catholic-adoption-agency-faces-closure-after-Charity-Commission-ruling.html>.

¹⁷⁷ See *Child and Family Benefits*, CANADA REVENUE AGENCY, <http://www.cra-arc.gc.ca/bnfts/menu-eng.html> (last modified Sep. 25, 2012) (information on the Canada Child Tax Benefit).

¹⁷⁸ See, e.g., 21 L.P.R.A. § 4567 (Laws of Puerto Rico Annotated); see also 29 L.P.R.A. § 467; see also The Maternity and Parental Leave etc. Regulations (United Kingdom, 1999); see also Parental Leave Act (Sweden, 1995).

¹⁷⁹ See, e.g., U.S. Family and Medical Leave Act, 29 USC, Ch. 28; see also

Utah Code § 34A-5-106; see also NYCL § 296 (Consolidated Laws of New York); see also Conn. Gen. Stat. § 46a-60 (Formerly Sec. 31-126).

the mother in the home as having inherent value for the family and for society.¹⁸⁰ Legislation or policies may also include provisions for public assistance such as school vouchers for education whether public, private or religious.¹⁸¹ Some States choose to fund or assist the family indirectly through financial assistance to non-governmental organizations, which in turn, assist women, children and the family in crisis.

Some laws ensure decent housing commensurate to family size in a physical environment that provides efficient and effective public services.¹⁸² Other legislation provides access to the highest standard of health care possible, including pre-natal and post-natal care.¹⁸³ It may include appropriate assistance to the family to care for its most vulnerable members, including disabled persons, dependent adults and seniors.¹⁸⁴ It may promote the extended family system *per se*, as a benefit to society on the grounds that it constitutes a source of solidarity, mutual assistance, and transmission of authentic values as well as proven traditions. Other legislation facilitates family-unity in cases where it has been compromised, including situations regarding immigration, emigrant work, refugees, and detained or imprisoned persons.¹⁸⁵ Many States explicitly and implicitly acknowledge the child's right to a family¹⁸⁶ in recognizing the need for special protection and care, such as foster-care or adoption in a suitable natural family, for orphans of living or dead parents.¹⁸⁷

CONCLUSION

This paper has explored select best practices from around the world concerning laws promoting life and the family. Part I gave an overview of what is described as Category A types of law and legislation wherein the right to life of the pre-born child is protected and promoted such as laws prohibiting or restricting abortion, the destruction or manipulation of embryos, euthanasia and/or physician assisted suicide. Part II reviewed Category B types of legislation that seek to protect the

¹⁸⁰ See, e.g., The Fair Labor Standards Act, 29 U.S.C. 201; National Minimum Wage (NMW) 1998 (United Kingdom); see also Employment Relations (Flexible Working Arrangements) Amendment Act 2007 (New Zealand), available at <http://www.legislation.govt.nz/act/public/2007/0105/latest/whole.html>; Law 39/1999 (Spain). However, some of the legislation that promotes family-work-rest balance and flexible working arrangements, especially for parents, is oriented towards gender equality rather than the best interests of the child.

¹⁸¹ See *supra* note 64.

¹⁸² See, e.g., 42 USCS § 12704; see also 42 USCS § 1437f; see also 62 P.S. § 2992.2; see also 30-A M.R.S. § 4753.

¹⁸³ CRC, *supra* note 11, at art. 24 1, 2 (d).

¹⁸⁴ See *Canada Child Disability Benefit*, <http://www.cra-arc.gc.ca/bnfts/dsblty-eng.html>.

¹⁸⁵ See, e.g., 2 USCS § 13891; see also Tex. Gov't Code § 501.099 (2012); see also Cal. Pen. Code § 2601.

¹⁸⁶ See, e.g., 13 Del. C. § 1103; see also 2005 Fla. Stat. 63.022e(3).

¹⁸⁷ See, e.g., *supra* note 70.

rights of the family, based on the marriage between one man and one woman, and include references to laws promoting the responsibilities and rights of parents to protect and educate their children, divorce reform measures, the rights of the mother and their pre-born children, improvements in adoption laws as well as giving increased family assistance.

There are two annexes. Annex I presents model legislation from different parts of the world, such as the United States, Ireland, Hungary, Honduras, Uganda, and Chile. As previously noted, in providing these laws, the paper is not promoting the overall activities of the government of the particular State, nor is it promoting every law the respective State has enacted. Annex II lists non-governmental organizations, faith based groups and some governmental reports which are easily accessible via the internet which contribute to building a civilization of love, life, faith and family that will inevitably educate the public to support the various legislative initiatives discussed herein.

ANNEX I:
MODEL LEGISLATION FOR CATEGORY A AND CATEGORY B

THE UNITED STATES

| NAME OF LEGISLATION | EXPLANATION OF LEGISLATION | ACCESS TO LEGISLATION |
|---------------------------------------|--|---|
| Women's Health Defense Act | Based on the protection of women's health posed by abortion, especially after the first trimester, and the existence of fetal pain, this legislation, inter alia, prohibits abortion at or after 20 weeks gestation. | Americans United for Life, <i>Defending Life</i> (2011), http://www.scribd.com/fullscreen/50052692?access_key=key-hs2enfvcjquhqo3q7c (cf. pgs. 380-386) |
| Partial-Birth Abortion Ban Act | Based on the danger which partial-birth abortion poses for women, the state's interest in protecting all human life, including the unborn, and the lack of a clear and bright distinction between partial-birth abortion and infanticide, this legislation prohibits partial-birth abortion unless it is necessary to save a woman's life. | Americans United for Life, <i>Defending Life</i> (2011), http://www.scribd.com/fullscreen/50052692?access_key=key-hs2enfvcjquhqo3q7c (cf. pgs. 387-392) |

**Abortion Act of [year
this legislation is
passed]**

Based on the principle of non-discrimination and the equal dignity of all human persons, regardless of their medical condition, this legislation prohibits sex-selective abortion, abortions performed because the unborn child has down syndrome, and abortions performed because the unborn child has a genetic abnormality.

Americans United for Life, *Defending Life* (2011), http://www.scribd.com/fullscreen/50052692?access_key=key-hs2enfvcjsjquhqo3q7c (cf. pgs. 393-400)

Woman's Right to Know Act

Based on the importance of the decision to have an abortion and the failure of the abortion industry to self-regulate, this legislation is intended to ensure that women considering abortion receive complete information on abortion and its alternatives, and that all abortions are performed only after the woman has given voluntary and fully informed consent to the abortion procedure; furthermore, this legislation requires that hospitals or other licensed facilities in which abortions occur report each abortion to the State.

Americans United for Life, *Defending Life* (2011), http://www.scribd.com/fullscreen/50052692?access_key=key-hs2enfvcjsjquhqo3q7c (cf. pgs. 401-413)

**Perinatal Hospice
Information Act**

Based on the evidence that parents are more prepared for the death of an unborn child with a lethal fetal anomaly when they give birth to the child and take advantage of perinatal hospice as opposed to aborting the child, this legislation requires the voluntary and informed consent of a woman prior to an abortion, which means that at least 24 hours before an abortion, the physician must inform the woman that perinatal hospice services are available and offer this care as an alternative to abortion, and, furthermore, that the woman contemplating abortion is given a list of perinatal hospice programs available.

Americans United for Life, *Defending Life* (2011), http://www.scribd.com/fullscreen/50052692?access_key=key-hs2enfvcjsjquhqo3q7c (cf. pgs. 420-423)

Unborn Victims of Violence Act of 2004

This act provides that killing an unborn child is a federal crime and a separate crime from killing the mother, even if the killer did not know that the woman he attacked was pregnant and even if the killer did not intend to kill or inflict bodily damage on the unborn child.

<http://www.gpo.gov/fdsys/pkg/PLAW-108publ212/pdf/PLAW-108publ212.pdf>

Parental Consent for Abortion Act

Since parents often possess information essential to the physician's exercise of medical judgment concerning a minor, and since parents aware that their minor daughter has had an abortion may better ensure that she receives adequate post-abortive medical attention, this legislation requires the consent of one parent prior to an abortion, subject to limited exceptions such as when the minor daughter has been sexually abused by one of her parents or legal guardians.

Americans United for Life, *Defending Life* (2011), http://www.scribd.com/fullscreen/50052692?access_key=key-hs2enfvcjquh3q7c (cf. pgs. 438-444)

Defense of Marriage Act (DOMA)

(Please note that this legislation is particularly appropriate for federal states where all the power is not entrusted solely to a centralized state. Instead, power is decentralized and sometimes exercised at a lower level)

This Act defines marriage for purposes of federal law as the legal union of one man and one woman as husband and wife; it also prevents each of the 50 U.S. states from being forced to recognize as valid “same-sex marriage,” even if “same-sex marriage” is legal in another state or other states.

<http://www.gpo.gov/fdsys/pkg/BILLS-104hr3396enr/pdf/BILLS-104hr3396enr.pdf>

UGANDA

| NAME OF LEGISLATION | EXPLANATION OF LEGISLATION | ACCESS TO LEGISLATION |
|---|---|---|
| The Children Act | This comprehensive legislation ensures the best interests/welfare of children in various contexts. | http://ugandaemb.org/The_Children_Act.pdf |
| The Penal Code Act | Article 137 prevents keeping a place of any kind for purposes of prostitution; 139 prohibits prostitution; 141 criminalizes the attempt to perform an abortion; 142 criminalizes self-induced abortion; 143 criminalizes the supplying or procuring of drugs for an abortion; and 212 criminalizes the action of preventing a child from being born when a woman is about to deliver the child. | http://www.wipo.int/wipolex/en/text.jsp?file_id=170005 |
| Constitution of the Republic of Uganda, 1995 | Of relevance, XIX provides, “The family is the natural and basic unit of society and is entitled to protection by society and the state”; Chapter 4 20(1) provides, “Fundamental rights and freedoms of the individual are inherent and not granted by the state”; 22(2) provides, “No person has the | http://www.uganda.at/Geschichte/verfassung_der_republik_Uganda_2008.pdf |

right to terminate the life of an unborn child except as may be authorized by law”; 29(1)(c) provides that every person shall have the right to “freedom to practice any religion and manifest such practice which shall include the right to belong to and participate in the practices of any religious body or organization in a manner consistent with this Constitution”; 31(5) provides, “Children may not be separated from their families or the persons entitled to bring them up against the will of their families or of those persons, except in accordance with the law”; 34(1) provides, “Subject to laws enacted in their best interests, children shall have the right to know and be cared for by their parents or those entitled by law to bring them up.”

CHILE

| NAME OF LEGISLATION | TRANSLATION OF LEGISLATION | ACCESS TO LEGISLATION |
|--|---|---|
| <i>Constitucion Politica de Chile</i> Artículo 19/ Constitution of Chile Article 19 | The Constitution ensures/guarantees to all persons: 1) The right to life and to physical and mental integrity. The law protects the life of one who is about to be born. | http://www.oas.org/dil/esp/Constitucion_Chile.pdf |
| <i>Codigo Penal articulo 342</i>/Criminal Code Article 342 (1-3) | <p>The one that maliciously causes an abortion will be punished:</p> <p>With “presidio mayor en su grado medio” (type of penalty in terms of years in jail), if he/she causes the abortion by exercising force upon the person of the pregnant woman;</p> <p>With “<i>presidio menor en su grado maximo</i>” (less quantity of penalty) if, although he/she does not use force, he/she acts without the woman’s permission/authorization;</p> <p>With “presidio menor en su grado medio” (even less penalty), if the woman authorizes the abortion.</p> | http://www.servicioweb.cl/juridico/Codigo%20Penal%20de%20Chile%20libro2.htm |

Codigo Penal
343/Criminal Code
Article 343

The person that violently causes an abortion, although he/she did not have the specific purpose/intention of causing an abortion, will be punished with a minimum to medium term of imprisonment, if the pregnancy state was evident or if he/she/this person (the one who caused the abortion) was already aware of the pregnancy.

<http://www.servicioweb.cl/juridico/Codigo%20Penal%20de%20Chile%20libro2.htm>

Codigo Penal
344/Criminal Code
Article 344

The woman that self-causes her abortion, or authorizes that another person cause it, will be punished with imprisonment in its maximum degree. If she does any of the above things in order to hide her dishonor, she will be punished with a medium (lesser) term of imprisonment.

<http://www.servicioweb.cl/juridico/Codigo%20Penal%20de%20Chile%20libro2.htm>

Codigo Penal
345/Criminal Code
Article 345

The healthcare worker who, exceeding his faculties, causes an abortion or cooperates in it, will be punished with the penalties established in Article 342, increased by one degree.

<http://www.servicioweb.cl/juridico/Codigo%20Penal%20de%20Chile%20libro2.htm>

Codigo Civil Articulo
75/Civil Code Article
75

The law protects the life of the one who is about to be born. The judge, hence, by request of any person or by himself, will take all the precautions that he considers necessary to protect the life of the unborn, in case he thinks this life is in danger. Every punishment of the mother, by which the life or health of the unborn could be in danger, must be delayed until after childbirth.

http://www.chilein.com/c_civil3.htm

Codigo del Trabajo
Articulo 202/Labor
Code Article 202

During the pregnancy period, the woman who usually works in jobs that are considered by the authority as harmful to her health, must be switched into another job that it is not considered harmful, without any salary reduction.

http://www.dt.gob.cl/legislacion/1611/Articles-59096_recurso_1.pdf

For this purpose, this law understands, in particular, that the following jobs are harmful for the pregnant woman's health:

The one that forces her to lift up or push heavy weights;
The one that demands of her a physical effort, including the act of standing up for a long time;
The one that is done during the night;
The one that is done in extraordinary working hours;
The one that the authority declares inconvenient for the pregnancy.

HONDURAS

| NAME OF LEGISLATION | TRANSLATION OF LEGISLATION (IF APPLICABLE) | ACCESS TO LEGISLATION |
|--|--|---|
| <i>Constitucion Republica de Honduras Articulo 67/Constitution of the Republic of Honduras Article 67</i> | The one who is about to be born, shall be considered born for anything that favors him [or her] within the limits established by law. | http://www.honduras.net/honduras_constitution2.html |
| <i>Constitucion Republica de Honduras Articulo 65/Constitution of the Republic of Honduras Article 65</i> | The right to life is inviolable. | http://www.honduras.net/honduras_constitution2.html |
| <i>Codigo de la ninez y la adolescencia Articulo 12/Code of Childhood and Adolescence Article 12</i> | Every human being has the right to life from the moment of its conception. The State will protect this right by means of the adoption of measures necessary to protect pregnancy, birth and later development of the person, so that they are carried out in conditions compatible with human dignity. | https://docs.google.com/document/pub?id=1hWj-2sdsJbst2pVkynQDxDBSPtdb_foDS9ISF3OkE5Q |

Criminal Code of 1985 Article 126, reformed by Decree 191-96 of October 31, 1996. (The reforms were later published in the official journal *La Gaceta* on February 8, 1997 and became effective 20 days after its publication, on February 28, 1997)

Abortion is the death of a human being at any time during pregnancy or during birth. Whoever intentionally causes an abortion shall be punished:

With three (3) to six (6) years imprisonment if the woman consented to it;

With six (6) to eight (8) years of imprisonment if the agent worked without the mother's consent and without using violence or intimidation; and
With eight (8) to ten (10) years of imprisonment if the agent used violence, intimidation, or deceit.

Criminal Code of 1985 Article 128, reformed by Decree 144-83

The woman who produces her abortion or consents for another to cause it will be sanctioned with 3 to 6 years imprisonment [*The Criminal Code of 1985 established a lesser penalty of 2-3 years imprisonment*]

Cf. Defending the Human Right to Life in Latin America, Ligia M. De Jesus, Protection of Prenatal Life in Honduras: A Token of Central America's Strong Pro-Life Identity, <http://www.aul.org/wp-content/uploads/2012/07/honduras-la.pdf> pgs. 69-70; Criminal Code of 1985 available at: http://www.oas.org/juridico/MLA/sp/hnd/sp_hnd-int-text-cp.pdf

Cf. Defending the Human Right to Life in Latin America, Ligia M. De Jesus, Protection of Prenatal Life in Honduras: A Token of Central America's Strong Pro-Life Identity, <http://www.aul.org/wp-content/uploads/2012/07/honduras-la.pdf> pg. 70; Criminal Code of 1985 available at: http://www.oas.org/juridico/MLA/sp/hnd/sp_hnd-int-text-cp.pdf

Decree 13-85 of February 13, 1985, derogated Articles 130 and 131 of the Criminal Code of 1985, thus criminalizing all abortions without exception. (Articles 130 and 131 of the Criminal Code of 1985 allowed for abortion in the following cases: rape, mental disability of the mother, when the mother is a minor under 15 years of age, when the mother's life is in jeopardy or for the benefit of a "seriously affected state of health or threat to it caused by gestation...", "prevent the birth of a potentially defective being")

Criminal Code of 1985 Article 132, reformed by Decree 144-83

Decree 13-85 provides in pertinent part, Given that Articles 130 and 131 of the Criminal Code that would become effective on March 13 of the current year are unconstitutional, because they flagrantly violate constitutional guarantees contained in Articles 65, 67, and 68 of the Republic's Constitution; Given that the National Congress may, among others, create a decree, interpret, reform and derogate law; Therefore Decrees: Article 1 – to derogate Article 130 and 131 of the Criminal Code, Volume 2, Specialized Section, Title 1, Crimes Against Life and Bodily Integrity, Chapter 2, Abortion.

Whoever causes an abortion through acts of violence, even unintentionally, while being aware of the victim's state of pregnancy, will be sanctioned with 4 to 6 years imprisonment. *[The Criminal Code of 1985 established a lesser penalty of 1 to 2 years imprisonment]*

<http://www.angelfire.com/ca5/mas/HON/PEN/REF/r01.html>

Cf. Defending the Human Right to Life in Latin America, Ligia M. De Jesus, Protection of Prenatal Life in Honduras: A Token of Central America's Strong Pro-Life Identity, <http://www.aul.org/wp-content/uploads/2012/07/honduras-la.pdf> pg. 70; Criminal Code of 1985 available at: http://www.oas.org/juridico/MLA/sp/hnd/sp_hnd-int-text-cp.pdf

**Public Servants Code
of Ethics Article 32**

Provides in pertinent part:
Public servants are ensured an individual right to conscientious objection as a fundamental right integral to the right to freedom, respect for physical and moral integrity and the right to religious freedom

http://www.tsc.gob.hn/Normativa%20Vigente/codigo_de_conducta_etica_del_servidor_publico.pdf

IRELAND

| Name of Legislation | Explanation of Legislation | Access to Legislation |
|---|---|---|
| Constitution of Ireland Article 40(3)(3°) | This constitutional provision provides extensive protection to the unborn child, although it has been interpreted by the Supreme Court of Ireland as allowing for abortion when a pregnant woman is at risk of suicide in <i>X v Attorney General</i> 1 IR 1, 1992. | http://www.constitution.ie/reports/ConstitutionofIreland.pdf |
| Offenses Against the Person Act 1861 Sec. 58 | This legislation provides that abortion is a felony, whether self-inflicted or inflicted by another person. Furthermore, even the attempt to procure an abortion that fails because the woman is not, in fact, pregnant is a felony under this act. | http://www.cirp.org/library/legal/UKlaw/oap1861/ |
| Maternity and Infant Care Scheme | The Department of Health has confirmed that the Maternity and Infant Care Scheme does provide insurance for unborn children in cases where they require medical treatment. | Cf. http://www.hse.ie/eng/services/Find_a_Service/maternity/combinedcare.html |

| | | |
|--|---|---|
| Employment Equality Act 1998 37(1)(a) and (b) | This legislation critically provides that religious, educational or medical institutions may protect their religious ethos without violating anti-discrimination law. | http://www.irishstatutebook.ie/pdf/1998/en.act.1998.0021.pdf |
| Constitution of Ireland Article 41(1) and (2) | This legislation critically protects the family and motherhood by giving them an elevated status in constitutional law. | http://www.constitution.ie/reports/ConstitutionofIreland.pdf |
| Constitution of Ireland Article 41(3) | This legislation critically protects the institution of marriage by conditioning civil divorce on certain requirements, i.e., that there is no reasonable prospect of a reconciliation between the spouses and that the spouses have lived apart for a period of time equal to four of the last five years prior to the institution of the divorce proceedings. | http://www.constitution.ie/reports/ConstitutionofIreland.pdf |

Exhibit G:
Constitution of Ireland
Article 42

This legislation protects the right of parents to educate their children in accord with their own convictions, including by home schooling their children, subject to certain regulations provided by the state to ensure that children receive a minimum level of education.

<http://www.constitution.ie/reports/ConstitutionofIreland.pdf>

HUNGARY

| NAME OF LEGISLATION | TRANSLATION OF LEGISLATION | ACCESS TO LEGISLATION |
|--|--|---|
| The Fundamental Law of Hungary Avowal of National Faith | We are proud that one thousand years ago our king, Saint Stephen, built the Hungarian state on solid foundations, and made our country a part of Christian Europe. | http://www.mkab.hu/download.php?d=65 |
| The Fundamental Law of Hungary Article L | Hungary shall protect the institution of marriage, understood to be the conjugal union of a man and a woman established by their voluntary decision, and the family as the basis of the nation's survival. Hungary shall support the commitment to have children. | http://www.mkab.hu/download.php?d=65 |
| The Fundamental Law of Hungary Article 1(1) | The inviolable and inalienable fundamental rights of man shall be respected. It shall be the primary obligation of the State to protect these rights. | http://www.mkab.hu/download.php?d=65 |

| | | |
|--|--|---|
| The Fundamental Law of Hungary Article II | Human dignity shall be inviolable. Every human being shall have the right to life and human dignity; the life of the foetus shall be protected from the moment of conception. | http://www.mkab.hu/download.php?d=65 |
| The Fundamental Law of Hungary Article 3(1) and (3) | No one shall be subjected to torture, inhuman or degrading treatment or punishment, or be held in servitude. Trafficking in human beings shall be prohibited. Practices aimed at eugenics, the use of the human body or its parts for financial gain, and the cloning of human beings shall be prohibited. | http://www.mkab.hu/download.php?d=65 |

**The Fundamental Law
of Hungary Article VII
(1) and (2)**

Everyone shall have the right to freedom of thought, conscience and religion. This right shall include the freedom to choose or change one's religion or other conviction, and the freedom to manifest or abstain from manifesting, to practice or teach, either alone or in community with others, in public or in private, one's religion or other conviction through religious acts or ceremonies, or in any other way.

The State and the churches shall operate separately. Churches shall be autonomous. The State shall cooperate with the churches for the attainment of community goals.

<http://www.mkab.hu/download.php?d=65>

**The Fundamental Law
of Hungary Article XV
(1)**

Everyone shall be equal before the law. Every human being shall have legal capacity.

<http://www.mkab.hu/download.php?d=65>

| | | |
|---|---|---|
| The Fundamental Law of Hungary Article XVI (1) and (2) | Every child shall the right to the protection and care necessary for their proper physical, intellectual and moral development; Parents shall have the right to choose the upbringing to be given to their children. | http://www.mkab.hu/download.php?d=65 |
|---|---|---|

ANNEX II:

SELECT BIBLIOGRAPHY OF NGOS, FAITH-BASED GROUPS AND GOVERNMENTS

a. Personhood Legislation

- Personhood USA
- *See opposing view point:* Resolve: The National Infertility Association.

b. Abortion

- **Legislative statistics regarding abortion**
 - United Nations, Dept. Economic and Social Affairs, Population Division, World Abortion Policies
 - *Instituto de Política Familiar* (Spain)
- **Pro-Life Organizations**
 - International Human Life International (inside and outside USA)
 - Priests for Life (Offices within and outside of USA)
 - Parliamentary Network for Critical Issues (USA)
 - Rachel's Vineyard (healing the pain of abortion) (offices within and outside of USA)
 - Americans United For Life (USA)
 - Life Site News (Canadian)
 - Sisters for Life (USA)
 - Crisis Pregnancy Centers (e.g. Care Net, Heart Beat International, The National Institute of Family and life Advocates)
 - Mexico's National Pro-Life Committee ¹⁸⁸

¹⁸⁸ Matthew Cullinan Hoffman, Mexico's National Pro-Life Committee saving Tens of Thousands of unborn children, in LifeSiteNews.com, June 17, 2011 at <http://www.lifesitenews.com/news/mexicos-national-pro-life-committee-saving-tens-of-thousands-of-unborn-child/> ("Mexico's largest pro-life organization, the National Pro-Life Committee (Comité Nacional Provida), saves thousands of unborn children every year, thanks to an impressive operation that includes mobile units equipped with ultrasound equipment, an internet outreach program, and walk-in facilities in all the major cities of the country"). See also Matthew Cullinan Hoffman, Mexican Pro-Life Leader

- Alliance Defending Freedom (Offices within and without the USA)

(iii) Bioethical Considerations

- Bioethics Defense Fund (USA)
- National Catholic Bioethics Centre (USA)
- Anscombe Bioethics Center (England)

(iv) Euthanasia and/or assisted suicide¹⁸⁹

- IFSPH (International Federation For Spina Bifida & Hydrocephalus)
- Discomfort and Pains in Newborns
- *See also:* the NGOs listed under bioethical considerations

(v) Right to conscientious objection

- Beckett Fund For Religious Liberty (USA)
- Alliance Defending Freedom (Offices within outside the USA)
- Concerned Women for America (USA)

7. Definition of family

- United States Conference of Bishops
- Institute for Marriage and Public Policy (USA)
- Institute for the Study of Marriage, Law and Culture (Canada)
- Marriage Ministry through the Catholic Dioceses

Victorious Following Eight Years of Legal Attacks, in LifeSiteNews.com, June 29, 2012 at <http://www.lifesitenews.com/news/mexican-pro-life-leader-victorious-following-eight-years-of-legal-attacks-b>

¹⁸⁹ The essential distinction between euthanasia and assisted suicide is that the former involves the direct killing of a patient, whereas the latter assists the patient to kill him or herself. Rita L. Marker and Cathi Hamlon, *Euthanasia and Assisted Suicide: Frequently Asked Questions*, <http://www.patientsrightscouncil.org/site/frequently-asked-questions/> (last visited 30 July 2012). Since the state has a duty to protect the human person, this distinction between killing and assisting one to kill him or herself is a distinction without a difference; for a state to permit a person to assist in the death of another innocent person is as much a violation of its duty to protect the human person as it is for a state to permit a person to kill another innocent person.

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- Institute for American Values, Center for Marriage and families (USA)
- Marriage Movement: Statement of Principles (USA)
- The National Organization for Marriage (USA)
- *See* Secular resource on the Rutgers website: Same-Sex Marriage a Selected Bibliography of the Legal Literature, both Pro and Con (international)

8. **Domestic Violence and other forms of Exploitation of Children**

- Response of the Catholic Church to abuse of minors available on the Vatican website
- United States Conference of Bishops on topics of domestic violence and abuse of children
- International Catholic Child Bureau (Switzerland)
- Pontifical Gregorian University, Center for Child Protection (Italy)

9. **Parental rights**

- Parental Rights Organization (USA)
- Home School Legal Defence Association (Canada and USA)
- National Father's Association of American (USA)
- Child Support Laws State by State (USA)
- National Association for Research and Therapy on Homosexuality (NARTH) on Parenting and Family

10. **Divorce Reform**

- American Divorce Reform (USA)
- Department of Justice on Divorce reform (Canada)

11. **Adoption**

- Adoption Reform for Open Adoption

- Reform Adoption (USA)
- Heritage Foundation (USA)

(XI) Family Assistance

- Heritage Foundation (USA)
- Family Research Institute (USA)
- Focus on the Family (Canada and USA)
- National Association for Research and Therapy on Homosexuality (USA)
- Instituto de Política Familiar, La Familia, Desafío para una Nueva Política (Spain)