The new Administration of President Ramos has repeatedly raised the issue of population control, and has indicated that the government will adopt an active policy promoting birth control, including the use of contraceptives. This announcement has drawn comment from the Catholic hierarchy, in which the moral condemnation of artificial means of birth control has been repeated, and the use of natural methods recommended. The Bishops have also pointed out that a "population control" policy is not an adequate response to the problems of poverty, and that people are unlikely to choose to restrict the size of their families until they are assured an adequate quality of life. This issue promises to dominate the relations of Church and State in the near future, and the debate is likely to become heated, and so it might be useful to consider what the Church has to say about the role and function of legislators, and what their attitude should be when morality issues are affected by law. In the following, I will present and discuss the Church's teaching on the relation of law and morality, as expressed in the documents of the Second Vatican Council. Secondly, I will review the way in which this teaching has inspired the Irish Hierarchy in its public statements on a series of legislative issues concerning moral matters, from the legalisation of contraceptives in the '70s to the proposal to introduce divorce which went to referendum in 1986. And finally I will suggest some general conclusions concerning law and morality.
How should a Catholic citizen, Congressman or Senator vote on issues relating to morality? How should a Catholic vote, e.g. on the legalisation of divorce, homosexuality, contraceptives? Are loyal members of the Church morally obliged to vote as their Bishop instructs them? Must a Catholic strive to ensure that the moral law is incorporated in the law of the land?

While the moral teaching on these matters is unambiguous, Catholic teaching in relation to legislation concerning these issues is nuanced. In its teaching, the Church insists that there is no obligation to translate the moral law into civil law. While there might be no question about the moral permissibility of such actions, their legal permissibility is open to review. In deciding what the law should be, Catholic teaching instructs each voter and legislator to vote according to their own judgement on the matter in question. But how can this be, especially when Catholic moral teaching leaves one in no doubt about the moral wrongness of using contraceptives, engaging in homosexual acts or getting divorced?

In its *Declaration on Religious Freedom*, the Vatican Council insisted that no one should be coerced in the matters of religious belief and practice. Even where persons would be mistaken or misguided in their religious convictions, respect for their dignity as human persons would require that they should be allowed to “exercise fully their own judgement and a responsible freedom in their actions, and should not be subject to the pressure of coercion . . .”¹ This teaching marked a significant development from the previously accepted position in the Church, according to which error had no rights, and that the only good State was one in which Catholic moral norms were enforced in civil law. While abandoning neither the claims of the Church to truth, nor the assertion of the duty of all to seek the truth and the true Church, the Council acknowledged that even an erroneous conscience possessed dignity and ought to be respected. “Freedom of this kind means that all should be immune from coercion on the part of individuals, social group and every human power so

that, within due limits, nobody is forced to act against his convictions nor is anyone to be restrained from acting in accordance with his convictions in religious matters in private or in public, alone or in association with others (801)."

The Second Vatican Council placed the principle of the freedom of conscience based on human dignity at the heart of its defence of the right of religious freedom. This right is expressed both negatively and positively: it includes a freedom from coercion to action against one’s convictions, and a liberty not to be prevented from acting in accordance with those convictions. The principle marked a breakthrough in the matter of the State’s attitude to religious freedom. But it can also be read as offering guidance in the appropriate attitude of the State to moral matters.² Transposed from the arena of religious freedom to that of morality, the principle requires that “no one should be made to act against his or her conscience nor restrained from acting in accordance with it ‘within due limits’.” State law on moral matters should not coerce anyone to act against their conscience, nor should the law prevent anyone from following their conscience, within due limits.

But what are the due limits indicated by the principle? The relevant due limits are those concerned with public order. To the extent that the common good will permit it, people’s freedom to act according to their own consciences should not be restricted, even in cases in which one might rightly hold the view that people were acting immorally. So if the question is whether people ought to be permitted by the law of the State to act according to their consciences, e.g., to use contraceptives, the appropriate arguments for and against should refer to the requirements of public order rather than to the intrinsic morality of the activity in question.

However, it might be argued as follows: the “common good” embraces the complete flourishing of every human being; and moral integrity is an element of complete flourishing; therefore the concern for the common good would require of the State to see to it that its citizens achieve complete flourishing including

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moral uprightnes$. The solution to this lies in another principle developed by the Vatican Council, namely, the principle of the autonomy of the secular. The State does have its interest in the flourishing of individuals, but not in an unrestricted sense. The State's interest is not in the "common good" in the full sense, but in "public order," that dimension of the common good which is of particular relevance to the well-being of society, and which it is able to affect through its appropriate instruments.

THE IRISH EXPERIENCE

Over the past twenty years, the Irish Catholic Hierarchy has been obliged to make public statements on issues of law and morality. An extensive Pastoral Letter on the issue of Divorce included a list of excerpts from other public statements. The common theme of all these statements is that it does not automatically follow from the fact that an action is immoral that it should be prohibited in law. A 1973 statement concerning the sale of contraceptives, a 1978 statement on family planning, a statement in the context of a 1983 constitutional amendment campaign to give the unborn constitutional protection, and a submission to a Government Forum in 1984 addressing constitutional problems, provide strong evidence of a consistent and explicit position. Their understanding of the function of the State and of civil law at the root of this position is that developed by the Second Vatican Council. The State is recognised as having its own legitimate interest in morality, education, the family, etc. in so far as these are elements of and contribute to public order. It was precisely on the level of concerns appropriate to legislators and the State that the Irish Catholic Bishops offered their weighty opinion on what was good for the country. Their statement that although the Catholic Church teaches that remarriage following divorce is impossible, "it does not follow from this alone that the laws of the State must embody this principle" (LL 185) comes from their recognition of the legitimate autonomy of the secular and its concerns. And in their 1973 statement on proposals to

3. *Love is for Life*. A Pastoral Letter issued on behalf of the Irish Hierarchy, Dublin, 1985, esp. pars. 185-189; also Appendix II.
change the law regarding the sale of contraceptives they said: "Those who insist on seeing the issue purely in terms of the State enforcing Catholic moral teaching, are therefore missing the point. . . . What the legislators have to decide is whether a change in the law would, on balance, do more harm than good, by damaging the character of the society for which they are responsible" (LL p. 94).

It was particularly in the context of the proposed introduction of divorce that the Irish Catholic Bishops clarified their position on such matters. There it became clear that the Church had contributions to make to the debate on two different levels, (1) on divorce as a practical option for individuals, both married Catholics and others; and (2) on legislation for a divorce as a practical option for the State. In their public statements on divorce, as on all other issues of legislation in regard to moral issues, the Irish Bishops drew this distinction. So rather than talking about "Catholic teaching on divorce," it would make more sense to talk about the two Catholic teachings on divorce. For the Bishops pointed out that there are different types of argument appropriate to the different issues, and furthermore by implication that it is misleading to confuse the argument types. The first level is often referred to as the moral level, confusingly, since decisions to be taken on the second level concerning the well-being of society and the State are also of a moral nature. The distinction is better made in terms of the subject whose good is at stake: on the first level divorce is considered as a practical option for individuals, whether Catholic or not. On this level, the Bishops taught, in continuity with Catholic tradition, that divorce is impossible in the strict sense, and wrong if exercised. They based this conclusion on arguments addressed to everyone, both Catholics and Non-Catholics, derived from an analysis of the nature of marriage and the marriage vows and from the incompetence of civil authorities to absolve one from marital vows (LL 181). Further arguments, based on an understanding of Marriage as Covenant and as Sacrament, symbolising the unity of Christ and his Church, were addressed to believers only.

The subject whose good is at stake on the second level is not the individual, but the social institution of marriage, society and even the State itself. Here too the Bishops were not in favour
of divorce as an option for the State in responding to the increasing incidence of marital breakdown. But not only was their manner of argument on this issue significantly different, they explicitly drew attention to this difference. "The Catholic Church teaches that remarriage following divorce is impossible; but it does not follow from this alone that the laws of the state must embody this principle" (LL 185). They addressed their arguments to voters and legislators precisely in their capacity as citizens and legislators with responsibility for the stability and public order of society and its basic institutions: would the introduction of divorce legislation in the Republic of Ireland contribute to public order and stability in society, or would it be more likely to undermine them? The Bishops adopted the latter position. They did not argue in terms of the nature of marriage or of marriage vows, they did not argue from authority, and they explicitly ruled out a deduction from the wrongness of divorce on the first level to its inappropriateness on the second. Instead they based all their arguments on practical experience and on estimations of the likely consequences of changes in the law (LL 190-212). They were aware of the differences in the interpretation of experience among serious and responsible commentators, and they were aware of the inconclusive nature of all prognoses.

One way in which this distinction was presented was in terms of private and public morality. The Bishops argued that while on the level of ‘private morality’ divorce is wrong, yet it could be acceptable on the level of ‘public morality’ if it could be shown to be compatible with the stability of the social institutions of marriage and the family. This distinction between ‘private’ and ‘public’ morality is not totally satisfactory. It has the advantage of emphasising that it is a matter of morality on both levels, but the disadvantage concerns the connotations of ‘private’. Morality on this level is not private in the sense of isolated matter, but has significant implications for one’s social relations. The Bishops themselves use this distinction in their 1973 statement (quoted LL p. 94), and in Love is for Life, par. 186. But whatever doubts about the deficiencies of this distinction, it does serve to highlight the distinctiveness of the concern for ‘public morality’. It underlines the intention of the Irish Bishops
to address their arguments to legislators because of the legislators’ responsibility to order social life so as to achieve public stability and harmony. It stresses their desire to deal with the question of what legal arrangements affecting matters of moral relevance would contribute to the stability of society and its basic institutions, and what would be detrimental to public order.

Many people, including many Catholics, found it difficult to absorb and even to accept this nuanced teaching. They were reluctant to abandon the old, clear system with which they were familiar: the Bishops’ job was to say what was right and wrong, and the civil law was obliged to conform. And many continued to interpret the Church’s pronouncements as if they were demands that the Catholic view be incorporated in the law. “Catholic” politicians especially were alarmed by this development, because it seemed to deprive them of their traditional constituency. If the Catholic Church is not asking that its moral teaching and its understanding of human institutions like marriage be incorporated in civil law, then there can be no “Catholic” political program as such. This does not mean that the Church will not speak out on political matters or on issues of justice and public morality. On the contrary: twin pillars of Pope John Paul II’s social teaching have been the requirement that the clergy not assume political office, but that Bishops speak out against inhumanity and injustice in social and political life as the Pope himself has often done. But if there is no “Catholic” political program the Church can no longer appear to give its blessing to certain politicians or political parties as offering such a “Catholic” policy. Therefore traditional parties or politicians who have long relied for their support on the fact that they represent “traditional (Catholic) values” are likely to find that support undermined if the Church’s teaching on law and morality is heard. I expect that this was a source of disquiet for many.

The new approach by the Hierarchy also seemed to challenge the traditional position of some Bishops and priests. On the new understanding, the Church through its ministers offers its reflections on issues of law and morality, not as unquestionable, Scripturally and Traditionally founded teaching, but as based on experience and on prognoses of consequences and therefore open to disagreement. This is the level of debate appropriate
to 'public morality' and to the concern for public order. But this kind of teaching requires a different stance and a different pedagogy than that traditionally associated with the preaching of the Gospel and the Church's binding teaching. It claims a very different weight for itself. And so it would not be surprising if many Bishops and priests feared that the new stance required of them on these 'public' issues would undermine their effective authority in teaching on doctrines and morals. The reluctance to relinquish some authority is based on the fear of losing all authority. It is understandable if this challenge to self-understanding is experienced as a threat, but it is regrettable if it effectively prevents the Church's teaching from being heard.

GENERAL IMPLICATIONS

The argument based on the principles enunciated by the Second Vatican Council and on the evidence of the public statements of the Irish Hierarchy is that the Church asks legislators to make law out of regard for public order. Not because of any responsibility in relation to what is morally prohibited or obligatory, but because of its duties in relation to public order, the State should make laws which may concern moral matters. For this reason, the interest of the State in the various moral issues will vary. The different issues which figure as moral have differing implications for public order. Abortion, divorce, contraception and homosexuality mark off points on a spectrum with differing degrees of significance for public order. The issue of the legalisation of abortion, for instance, raises two issues which are of particular relevance to the State, namely, the matter of life, and the matter of recognition. The State cannot be indifferent to the question of life; the protection of life is essential to its task, and without security for life there can be no society or State. As a matter of human life, abortion raises a serious political challenge. On the other hand, the question of recognition is fundamental for a State which espouses liberal principles. Committed to the protection of fundamental rights, the State must be clear on who is entitled to its protection. The State cannot afford to be ambiguous or undecided in according recognition to those entitled to its protection. And precisely for
this reason also, the issue of legalised abortion is of particular interest to the State.

The legalisation of divorce would also be of concern to the State and to Legislators but for other reasons. Where abortion affects a value which is essential to the survival of society and State, divorce affects an institution which is basic in society. Precisely because the stability of the family as an institution is of concern to society as a whole, the State must give particular attention to the issue of divorce. But it is not immediately clear how the introduction of divorce would affect the family as an institution in society: there is scope for disagreement in assessing the impact of divorce on public order. But it is precisely in relation to this question that the debate should be conducted, rather than simply concluding from the moral prohibition on divorce to its unacceptability as a legal measure in society.

Similarly for the legalisation of artificial means of contraception: the State’s concern will be primarily with the impact of this development on public order. Would the provision of artificial means of contraception in fact lead to a reduction in the rate of population growth, or does experience show that the program would be ineffectual without change in the economic circumstances? Would the easy availability of contraceptives encourage promiscuity and reinforce the tendency in society to victimize women? Would a population control program focused on artificial means of contraception communicate a devaluing of human beings? Would it underline the impression communicated in so many other ways that the people of the country are not valued? Would it contribute to widespread prejudice against the poor whereby they are alleged to be responsible for their own misery, thereby relieving the wealthy and powerful of responsibility? Would such a campaign mislead young people whose attitudes and aspirations in relation to sex, love and partnership are being formed?

Along the spectrum from abortion to contraception, the concern of the legislators will attend to (1) values essential to the nature and purpose of the State itself, (2) social institutions fundamental to the stability of the social fabric, and (3) ideas, attitudes and habits constitutive of a certain quality of public life. In all cases, discussion must focus on the likely effects of law
on these aspects of public order, and deliberation will consist of a weighing of the good and bad.

Of course, since the principle at the root of this teaching is the principle of freedom of conscience articulated by the Vatican Council, it also implies definite limits on what the State through its laws may require of people. Citizens ought not be prevented from acting in accordance with their conscience, within the due limits of public order. But at the same time, citizens ought not be coerced into acting in a manner which violates their conscience. Accordingly, any form of legislation in matters of contraception, divorce, etc. which compelled behavior opposed to the consciences of citizens would be unacceptable. A population control program which deprived parents of their civil liberties would be unacceptable. But there is still a considerable scope for legislation in regard to moral matters this side of those negative limits. This essay is an attempt to map out that territory.