

The Legal Language of the Culture of Death in Europe

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1 The Culture of Death

The legal language of the “Culture of death” is full of ambivalences. By its central terms it sends signals which produce life-accepting associations and at the same time mask its intentions against life. But before we examine the language the “Culture of death” uses, we have to take a closer look at the term “Culture of death” itself. In the Pontificate of John Paul II, and especially in his Encyclical about the value and the inviolability of human life, “*Evangelium Vitae*”, it plays a key role.¹ The term itself is a sort of hermaphrodite. It unites seemingly incompatible subjects. Everybody who uses the term must reckon with the objection, that it might better be called the “Unculture of death”. The term culture, from the Latin term “*colere*” (cultivate, care for), means formed by man in contrast to the uncultivated nature which often is opposed to man. But the term goes far beyond the cultivation. It also means the humanization of the society, the refinement of social relationships. In Catholic Social Doctrine it includes all human activity in economy and politics, in science and arts. By this cultivation, the Second Vatican Council declares in “*Gaudium et Spes*”, man unfolds the work of the Creator and not only pursues and develops things and society, but also himself.²

Death, in contrast, is the opposite of culture. It is part of nature which cannot be surmounted by human activity. So, “Culture of death” is a dense term. It combines incompatible things – culture, human activity and development, and death, the end of all activity. The term has nothing to do with *ars moriendi*, the art of dying undertaken by a mature person who faces death in a conscious and calm manner, or who even welcomes him as a sister as St. Francis of Assisi did. And it has nothing to do with murder or manslaughter, which have existed among people since Cain killed Abel, and which has always been cursed as a crime. “Culture of death” rather means certain behaviours on the one hand and social and legal structures on the other hand, which strive to make killing socially acceptable by camouflaging it as a medical

¹ John Paul II (1995), 24, 26, 28, 50, 64, 87, 95; cf. John Paul II (2003), 9, 95.

² II. Vaticanum (1965), 34–35, 53.

service or a social assistance, or by justifying it as promising research. The Culture of death wants to liberate this killing from the curse of being a crime. Over the last 40 years it has emerged and grown in Western societies. It includes bioethical issues which have existed since man has existed, such as abortion and euthanasia, as well as newer problems which arose since the development of artificial insemination in the 1970s, such as embryonic stem cell research, cloning, Preimplantation Genetic Diagnosis and assisted reproduction itself. It uses an ambivalent language which has a sedating effect on society.

The examples of the ambivalence of this language illustrated in what follows are taken from the German language. But I am sure that the “Culture of death” acts in a similar way in other languages. It uses terms that produce positive associations at first sight; for example, terms like human rights, dignity, freedom, choice, assistance, solidarity, health, therapy and self-determination. The positive associations produced by these terms are used to make killing acceptable. Only at second sight does it become clear that these terms are sleights of hand hiding the opposite: the disregard of the right to life and the dignity of those who do not have a voice, the assertion of the will of the strong against the weak, the clinical removal of the unborn and the dying people who are a burden on society. Not only are activist groups like the abortion lobby using these sleights of hand but also the legislatures and the courts.

2 Abortion

The legalization of abortion in the free part of Europe began in 1967 in Great Britain, a few years after the introduction of contraceptive hormone preparations (1960). The German *Bundestag* has made four great reforms of the criminal law on abortion (in 1974, 1976, 1992 and 1995), with the expressed objective of strengthening the protection of life and reducing the number of abortions. The last two reforms were called the “Pregnancy and family assistance law” (1992) and the “Pregnancy and family assistance amendment law” (1995). Both laws did not offer any assistance, either to pregnant women or to families or unborn children. They only serve the purpose of de facto legalizing the priority of the “right” to abort over the right of the child to live. The titles of the laws were sleights of hand. The same applied in Ireland: The law passed in July 2013, which legalized abortion for the first time, was called “Protection of Life during Pregnancy Act”. The fact that all the reforms in Germany failed to meet the expressed objective to improve the protection of life and to reduce the number of abortions, is shown by the abortion statistics, introduced in 1972 in the German Democratic Republic and in 1976 in the Federal Republic of Germany, and by the increasing social and judicial acceptance of abortion since the first reform 40 years ago.³

³ Spieker 2011, p. 17 et seqq.

In German society, the abortion lobby includes an organization which calls itself “Pro Familia” and which is part of the worldwide pro-abortion organization Planned Parenthood. These names are sleights of hand too. The objective of these organisations is not helping families or supporting planned and responsible parenthood but the legalization of abortion. “Pro Familia” for example disseminates leaflets which describe the medical procedure of an abortion in language where every indication of the child (or respectively the embryo) is avoided. The procedure of the abortion is described as “suction of pregnancy tissue”, as “removing the contents of the uterus” or, in relation to chemical abortion, as “expulsion of the pregnancy”.⁴ This language is stultification in the guise of information.

The German criminal law on abortion takes a special form in order to realize the “Culture of death”. In Paragraph 218 of the German Penal Code (StGB) it prohibits abortion as a criminal offence, but in Paragraph 218a StGB it regulates the decriminalizing exceptions. The exceptions defeat the rule. A person who wants to have an abortion has no difficulties finding a physician willing to perform the procedure funded by taxes. At the centre of these exceptions is so-called pregnancy counselling. Abortion during the first 12 weeks after conception will not be punished if a woman provides the physician with a certificate that she has received advice at least three days before having the abortion. The dialectical cleverness of this counselling regulation consists in the fact that the advice certificate documents advice given in favour of protecting the life of the unborn child which at the same time is the necessary condition for an abortion which officially remains illegal, but is not liable to prosecution. The fact that the pregnant woman has a right to receive the advice certificate even without having manifested her reasons for considering abortion has been established by the German Federal Constitutional Court in a judgment of 27 October 1998.⁵ The advice certificate converts the criminal act of killing an innocent person into a medical service. It is the basis of a contract under civil law between the abortionist and the pregnant woman for the purpose of killing her child. So, for the abortionist it is a license to kill. It grants the priority of the self-determination-right of the pregnant woman over the right of her unborn child to live. In society’s perception the criminal law on abortion has become an abortion law. The abortion statistics, also a particularity of German criminal law, serve more to camouflage than provide information. They are published once a quarter and every March for the previous year, mostly with a reassuring undertone that the number of abortions has decreased again. The “Culture of death” knows how to avoid discussing the demographic reasons for the reduction and the abortions not included in the statistics on the one hand, and on the other hand the total number of abortions reported to the Federal Office for Statistics since statistics have been kept (up to 31 March 2015: 5,712,114).

⁴ Familienplanungszentrum Pro Familia Hamburg (2004), p. 6, 13–15.

⁵ German Federal Constitutional Court (Bundesverfassungsgericht), 1 BvR 2306/96 (judgment of 27 October 1998) para 218 et seqq. – *Bayerisches Schwangerenhilfenergänzungsgesetz, ambulanter Schwangerschaftsabbruch* (in BVerfGE 98, 324).

This dialectical regulation of pregnancy counselling also brought the Catholic Church in Germany into a state of deep conflict. The majority of the German bishops and Catholic lay people defended this regulation against the concerns of *Pope John Paul II* and the Prefect of the Congregation for the Doctrine of the Faith, *Joseph Cardinal Ratzinger*, with the argument that it offered the chance to convince a pregnant woman considering abortion to have her baby. The critics of the counselling regulation objected that by participating in this counselling system the Church was drawn into the “Culture of death”. The Church must not provide counselling as a legal condition for abortion. After a four year struggle with the German bishops, in September 1999 *Pope John Paul II* ordered that the Church’s counselling offices were no longer allowed to issue the certificate.⁶ But the conflict and the continuing provision of pregnancy counselling with the certificate, offered by the association of Catholic lay persons “*Donum Vitae*”, is paralyzing the Catholic church in Germany today, on the protection of unborn life, compared to the churches in many other countries, for example Poland, Ireland, Spain, Italy and the USA. There are neither pro-life-secretaries nor co-operation with the pro-life movement nor support for the yearly March for Life in Berlin. The “Week for life”, celebrated every year together with the Lutheran Church in Germany, has degenerated to a simple invitation to “Be friendly to each other”. Public support for the petition “One of us”, organized all over the European Union in order to improve the legal protection of the embryo, which was given by *Pope Francis* on 12 May 2013⁷, was not of interest to the German Bishops’ Conference.

On the international level the legalization of abortion is propagated by several sub-organizations of the United Nations. Here, the sleight of hand the “Culture of death” uses is the right of reproductive health. This term was used for the first time in the Action Programme of the World Population Conference 1994 in Cairo. The 1995 World Conference on Women in Beijing also took it up. But it is also true that both conferences still retained the statement that abortion is not a method of family planning. The action programmes of these conferences do not have the character of binding international law but only of recommendations. But in the fight to legalize a right of reproductive health, including the right to abortion, in international law, several sub-organizations of the UNO and NGOs are active, like the Human Rights Council, the United Nations Population Fund (UNFPA), the World Health Organization (WHO), and the Committee on the Elimination of Discrimination against Women (CEDAW) which plays a central role in the fight to legalize abortion, and does as a new organization UN-Women, the “Entity for Gender Equality and the Empowerment of Women”, founded on 2 July 2010. And like an engine behind these organizations stands the International Planned Parenthood Federation whose action programme gives absolute priority to that fight. The argumentation of these organizations uses another sleight of hand. It is called maternal mortality. They claim that maternal mortality is especially high if abortion is “unsafe”. Unsafe

⁶ Spieker 2008, p. 132 et seqq.

⁷ Francis, speech at the Regina Coeli, 12 May 2003, *L’Osservatore Romano* (German), 17 May 2003, p. 1.

abortions are illegal abortions; that is why they say that the reduction of maternal mortality requires the legalization of abortion. At the UN General Assembly on 24 October 2011, these demands were controversially discussed and rejected, not least by the representative of the Holy See, Archbishop *Francis Assisi Chullikatt*.⁸

3 Euthanasia

Concerning euthanasia, the “Culture of death” has a few more problems in Germany than in some neighbouring states like the Benelux countries – at least with regard to the legislature. During the National Socialist Dictatorship euthanasia had been realized to a large extent. It aimed at the removal of the disabled, the incurably ill and weak people whose lives were considered to be unworthy of life and a burden for the people’s community. Their killing was declared an act of love and compassion or, as *A. Hitler* himself described it in a decree of 1939, a mercy death. But German society has fewer problems with euthanasia, if it is not called euthanasia but “active assisted dying”. In surveys this form of “assisted” dying is regularly supported by about two thirds of the population. At the beginning of 2013, the German *Bundestag* for the first time discussed draft legislation concerning assisted suicide. The liberal Minister of Justice only wanted to prohibit commercial assistance to suicide. Such a partial prohibition would *eo ipso* have legalized every non-commercial assistance to suicide – a typical strategy of the “Culture of death”: under the guise of prohibiting killing, the legalization of killing is proposed and commercial organizations of assisted suicide quickly changed their legal status into charitable associations. Up to 2014, however, no law has been passed. But the German *Bundestag* started a new discussion in the autumn of 2014. The minister of health of the Christian Democratic Party intends to prohibit any businesslike assistance to suicide. *G. D. Borasio, R. J. Jox, J. Taupitz* and *U. Wiesing* presented a bill in August 2014 to legalise assisted suicide by medical doctors, close relatives and friends in a new § 217 StGB.⁹

The main argument the “Culture of death” is using to promote euthanasia is the right of self-determination. Everybody has the right to decide on his death himself. *H. Küng* and *W. Jens* call that “dying with dignity”.¹⁰ Nobody, as the liberal deputy *D. Marty* from Switzerland said at the Council of Europe, had “the right to impose the duty to continue life under unbearable suffering or agony on a terminally ill or dying person, if he himself had insistently expressed his wish to end it”.¹¹ It becomes a “violation of human dignity” *P. Hintze* argues, if the protection of human life is changed into a state compulsion to suffering.¹² That is why assisted suicide should be legalized. Euthanasia is a logical consequence of

⁸ Spieker 2014b, p. 111 et seqq.

⁹ Borasio et al. 2014.

¹⁰ Jens and Küng 1995.

¹¹ Council of Europe, Doc. 9898, para 61.

¹² Hintze et al. 2014, p. 2.

assisted suicide.¹³ The Parliamentary Assembly of the Council of Europe has not followed this suggestion up to now. The “Culture of death” suggests that euthanasia serves the relief of suffering and the realization of the right of self-determination. It eliminates suffering by eliminating the suffering person. It ignores the prohibition of killing innocent persons and so undermines one of the conditions of legitimacy of constitutional democracy. In order to present euthanasia as an exercise of self-determination and even as a service to the common good, the “Culture of death” also uses some auxiliary arguments. A first additional argument has an anthropological character: the capacity to communicate is declared a constituting characteristic of human existence. If the ability to communicate has been extinguished or is no longer perceptible at first sight, as in the case of someone in a vegetative state or with certain forms of dementia, that person consequently is no longer considered to be a human being and his killing is no longer considered as the killing of a human being. That is why every adult, as a sociologist says, should deposit “a living will” in case of total or partial loss of his capacity to communicate, by which the persons responsible for his care are bound.¹⁴ Another anthropological auxiliary argument is the definition of patients who are not able to communicate as “human Non-Persons” or “sentient property”.¹⁵ This allows “Non-Persons” to be dealt with as you deal with objects.

Finally, the “Culture of death” uses additional demographic and financial arguments when talking about euthanasia and assisted suicide. With a really brutal frankness they invite the vulnerable to commit an “altruistic suicide” and declare it a “last human act of solidarity”. They say it is true that a person willing to commit suicide should take the negative consequences of self-killing on his social surrounding into consideration. But it could be expected from him that “in case of an incurable and highly care-intensive disease he senses the emotional burden, the utilization of time and financial burden of his existence for his family and friends. We are not only responsible for the negative social consequences when we depart this world but of course also for those of continuing our life.”¹⁶ Such invitations to commit socially beneficial suicide destroy the relationship between the physician and the patient. The patient turns from a suffering subject who receives compassion and solidarity from society into an object which is a burden for society. So, it is not the patient who can expect compassion from society but society which expects compassion from the patient. “Who wants to continue life under those circumstances? That way, the right to self-killing inevitably becomes a duty to do it.”¹⁷ Where living-on is only one of two legal options everybody is forced to justify why he places the burden of his living-on on someone else’s shoulders.¹⁸

The practice of euthanasia in the Netherlands and Belgium shows that the idea that euthanasia is available only in the case of a voluntary, informed and insistent

¹³ Spieker 2014a.

¹⁴ Feldmann 1990, p. 236.

¹⁵ Smith 2005.

¹⁶ Fenner 2007, p. 210; von Lewinski 2008, p. 186–204.

¹⁷ Spaemann 1997, p. 20.

¹⁸ Rau 2001, p. 27–28.

wish expressed by the patient is an illusion, as is the idea that the physicians would fulfil the legal duty to inform the regional controlling commissions about all euthanasia cases. Although the percentage of patients who have been killed without their consent, in 2001 still about 20 per cent, seems to have decreased according to the latest inquiry in 2010 by about half, it is a great problem.¹⁹ And the fact that euthanasia also is administered without any consent can be proven by the Groningen Protocol from 2004, which allows the killing of severely disabled new-born and seriously ill children in their first year of life. Here, the “Culture of death” uses the term “after birth abortion”. This example highlights two facts: On the one hand the term maintains the illusion that the killing of new-born children is not euthanasia because legal euthanasia requires consent which new-born babies are *eo ipso* not able to give, and on the other hand it relies on the acceptance of abortion. In 2012, A. Giubilini and F. Minerva argued the case for extending the “after birth abortion” to healthy new-born babies because they still do not have the moral status of a person. “Merely potential people cannot be harmed by not being brought into existence . . . since non-persons have no moral rights to live, there are no reasons for banning after-birth abortions.”²⁰ These experiences from the Netherlands show how euthanasia changes the self-conception of health professions and destroys the confidence of the patient in the physician. Physicians and nurses who become killing engineers – a new profession for which the Swiss Academy of Medical Sciences recommends separate professional training for the purpose of quality assurance – encounter distrust among the patients. Already in 2001, when the draft legislation was discussed in the Dutch Parliament, the Dutch Bishops had warned against this development.²¹ The so-called “Credo-Card”²² demonstrates this distrust. Instead of extending the radius of self-determination, the legalization of euthanasia increases the fear of heteronomy.

4 Embryonic Stem Cell Research, PGD and PND

In 2000, a wide bioethical debate started concerning problems of biomedicine arising from artificial insemination, after J. Thomson at the University of Wisconsin-Madison in 1998 for the first time succeeded in isolating embryonic stem cells. The aim of this research is to develop from embryonic stem cells, which are able to develop in an appropriate media into tissue and organs, therapies for up to now incurable diseases. But extracting a stem cell line means the destruction of the em-

¹⁹ Onwuteaka-Philipsen et al. 2012, p. 4–5. Although the authors speak of 9 percent, almost 25 percent of the doctors who killed their patients via euthanasia did so without consulting neither the patients, nor their relatives, nor other doctors. For the figures in former years cf. Spieker 2011, p. 54–55.

²⁰ Giubilini and Minerva 2012, p. 3.

²¹ Cf. Simonis 2002, p. 152.

²² The Credo-Card is a document containing the owner’s name and the inscription “Maak mij niet dood, Dokter” (don’t kill me, doctor), thus expressing that in case of inability to express oneself, the owner does not want euthanasia.

bryo. Embryonic stem cell research uses the so-called spare or orphaned embryos produced during assisted reproduction. The objection of bioethics and constitutional law that no therapy, not even the most promising, may justify the killing of an embryo, even the one with little chance of being transferred into the uterus, encounters opposition. The “Culture of death” uses not only the promise of new therapies for until today incurable diseases but also some linguistic distinctions which give the impression that spare embryos are not legal subjects protected by the constitutional warranty of human dignity and the right to life, but objects that are available to serve society and research as a resource. The embryo *in vitro*, that is an embryo outside the uterus, is “human life”, but still not a human, not even a “becoming human”.²³ According to this view, it is not an embryo but a “pre-embryo”. It has an “abstract”, but no “concrete” possibility of becoming a human.²⁴ All these distinctions serve the purpose of denying to embryos the dignity of human life and protection of their right to live, and create from that basis property claims by society for research and therapeutic projects. As in the debate about euthanasia the “Culture of death” uses anthropological auxiliary arguments: the ability to communicate and to feel or develop personal interests are declared the constituting characteristics of human existence. The embryo *in vitro*, they say, does not live under communicative circumstances, is no “partner for discourse”,²⁵ has no interests,²⁶ and has no feelings.²⁷ Consequently, it is not a person and has no rights. The result: it is allowed to consume embryos as a resource, which means to kill them. The European Court opposed a pioneering effort of the “Culture of death”, in its judgment *Brüstle v. Greenpeace*. It denied an attempt to patent embryonic stem cells for scientific research because every fertilised human ovum is a human embryo. Therefore, a procedure which requires the destruction of a human embryo is not patentable.²⁸

Preimplantation Genetic Diagnosis (PGD) allows embryos produced in the laboratory to be examined for certain dispositions to disease or disabilities and, in case of positive findings, to exclude them from being transferred into a uterus. PGD thus opens the door to a deadly selection of undesired embryos. It is permitted in many countries. When legalized in Germany on 7 July 2011, the “Culture of death” used especially many sleights of hand to hide the objective of the deadly selection. First of all they spoke of “Ethics of helping”.²⁹ The definition which advocates of the legalization of PGD used already masks its core: the deadly selection. The PGD, they say, is “an instrument in the scope of artificial insemination which gives information about diseases of the fertilized ovum before it is implanted into the uterus”.³⁰

²³ Fischer 2001; Fischer 2002, p. 11 et seqq.; Kreß 2001, p. 230 et seqq.

²⁴ Zypries 2003, p. 6.

²⁵ Gerhard, interview, *Die Welt*, 5 July 2001.

²⁶ Kersting 2001.

²⁷ Merkel 2001, p. 64.

²⁸ Case C-34/10, *Brüstle* (ECJ 18 October 2011), cf. Gärditz 2012, p. 87 et seqq.

²⁹ Hintze, parliamentary debate, 14 April 2011 (protocol n° 17/105, p. 11948–9) and 7 July 2001 (protocol n° 17/120, p. 13876).

³⁰ Flach, parliamentary debate, 14 April 2011 (protocol n° 17/105, p. 11945).

They claim it is a modern medical diagnosis to reduce severe health risks.³¹ It gives parents with inherent genetic defects the opportunity to “have a healthy baby”.³² That is why the legislature does not have the right to refuse the couples in question from accessing PGD because we do not “just (tolerate) other forms of suffering but treat them and find therapies against them”.³³ The ethics of helping or curing ignores the price we have to pay for this “diagnosis”: the deadly selection of the embryos. It ignores the constitutional protection which grants every embryo after conception the protection of human dignity, the right to life and the prohibition of discrimination.

Since 1970 also developments in prenatal diagnostics (PND) full of linguistic sleights of hand have changed the experience of pregnancy for many women.³⁴ According to an inquiry of the German Centre of Health Information, about two thirds of pregnant women accept PND because they believe that the PND contributes to having a healthy baby.³⁵ They do not accept their child until the PND has certified that their child is medically normal. They suppress their natural tendency to be happy and to protect the child and are manoeuvred into a hardly tolerable distance from their pregnancy and their own child. “A life under the delusion of optimization. From the beginning. At any cost. Especially parents feel this pressure. They shall be perfect parents of perfect children.”³⁶ It is claimed that PND averts dangers for life and health of mother and child. Not uncommonly, it “serves a eugenic mentality”.³⁷ Often, the only possibility of averting any dangers for the health of the child is an abortion. The “Culture of death” generally hides that fact behind terms like prevention, prophylactic measures, and avoidance of genetic anomalies or induced birth.³⁸ It is not permitted to speak about abortion. That is why an abortion after PND because of a severe disability of the embryo in the 23rd pregnancy week must be called a delivery, according to a judgment of the German Federal Labour Court of 15 December 2005. The court agreed with a mother who had brought a suit against the dismissal by her employer with the argument, inducing a premature labour was a “delivery”.³⁹ That is why she had the right to receive maternal protection and, in consequence, protection against dismissal. The employer referred to the fact that an abortion was no delivery and so the dismissal was legal. The court forced him to revoke the dismissal.

³¹ Leutheusser-Schnarrenberger, parliamentary debate, 14 April 2011 (protocol n° 17/105, p. 11970).

³² Cf. the motives in the draft bill for legalisation, Bundestag, bulletin n° 17/5451, p. 8.

³³ Reimann, parliamentary debate, 7 July 2011 (protocol n° 17/120, p. 13879); von der Leyen, parliamentary debate, 7 July 2011 (protocol n° 17/120, p. 13909).

³⁴ Spieker 2012, p. 261 et seqq.

³⁵ Bundeszentrale für gesundheitliche Aufklärung 2006, p. 41.

³⁶ Hey 2012, p. 14.

³⁷ John Paul II (1995), 63.

³⁸ Beck-Gernsheim 1995, p. 124.

³⁹ German Federal Labour Court (Bundesarbeitsgericht), 2 AZR 462/04 (Judgment of 15 December 2005) (in NZA 2006, 994–997).

5 The Culture of Life

“Walk as children of light!” in order to create a cultural change. This invitation is the title of the final paragraph in the Encyclical *Evangelium Vitae* which is dedicated to the Culture of life. Of course, at the beginning of this process of renewal we have to expose the sleights of hand of the “Culture of death”. But then further steps must follow. The fight between a “Culture of death” and the Culture of life must “develop a deep, critical sense”. It is an illusion “to think that we can build a true culture of human life if we do not help the young to accept and experience sexuality and love and the whole of life according to their true meaning and in their close interconnection.”⁴⁰ If the banalisation of sexuality, against which Paul VI in *Humanae Vitae* had already warned, is at the beginning of a disregard for unborn life and at the beginning of a “Culture of death”, then the testimony of the beauty and richness of sexuality as a mutual complete gift, the observance of the biological laws which are inscribed in the human person, education in natural methods of regulating fertility and the discovery of the coherence between charity and truth stand at the beginning of the Culture of life. Self-giving, not self-determination is the key to achieving a fruitful life. This is valid not only for married couples. *Jesus Christ* lived that in exemplary manner 2000 years ago. In the Eucharist it becomes present every day. That is what the Council underlined in *Gaudium et Spes* 24. For *John Paul II* and *Benedict XVI* this truth guided their Pontificates; and also for *Pope Francis*, in his still young Pontificate. “Do not be afraid!” to proclaim that.

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