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Catholic Social Teaching and Its Impact on American Law: Some Observations on the Past and Reflections on the Future

Lucia A. Silecchia

I. Introduction

In recent years, greater attention has been paid to the influence of Catholic social teaching as a contributor to legal debates in American society, as scholars seek to understand the contribution that this tradition can make to help address the complex political, moral, and social issues that confront the modern world.¹ The papacy of a politically knowledgeable, prolific, and peripatetic pope has brought the message of Catholic social thought to bear on social questions around the globe.² More locally, American bishops have, in recent decades, issued pastoral letters and statements on such fundamental moral questions as the sanctity of human life,³ the gravity of war and peace,⁴ environmental

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¹ For an extensive, classical discussion of this question, see e.g., CHARLES D. SKOK, *PRUDENT CIVIL LEGISLATION ACCORDING TO ST. THOMAS AND SOME CONTROVERSIAL AMERICAN LAW* (1967) (exploring relationships between law and the Catholic tradition, with particular emphasis on the teaching of St. Thomas Aquinas), and GEORGE V. DOUGHERTY, *THE MORAL BASIS OF SOCIAL ORDER ACCORDING TO ST. THOMAS* (1941) (discussing teachings of St. Thomas Aquinas with regard to the interrelationships between justice, religion, and the social order).

² The particular impact of Pope John Paul II's papacy on democratic political systems is studied more fully in George Weigel, *Catholicism and Democracy in the Age of John Paul II*, 4 *LOGOS* 36 (2001).

³ See, e.g., NATIONAL CONF. OF CATHOLIC BISHOPS, *LIVING THE GOSPEL OF LIFE: A CHALLENGE TO AMERICAN CATHOLICS* (1998) [hereinafter *LIVING THE GOSPEL OF LIFE*] and NATIONAL CONF. OF CATHOLIC BISHOPS, *FAITHFUL FOR LIFE: A MORAL REFLECTION* (1995). See also UNITED STATES CONF. OF CATHOLIC BISHOPS, *A MATTER OF THE HEART* (2002).

⁴ See, e.g., NATIONAL CONF. OF CATHOLIC BISHOPS, *THE HARVEST OF JUSTICE IS SOWN IN PEACE* (1993); NATIONAL CONF. OF CATHOLIC BISHOPS, *THE CHALLENGE OF PEACE: GOD'S*

responsibility,⁵ economic justice,⁶ and the responsibility of individuals and governments to assist the most vulnerable among us both nationally⁷ and globally.⁸ The American bishops have also explored the scope of responsibility for Catholic citizens as participants in political affairs.⁹ Undergirding this activity has been, of course, the Church's tradition of social teaching as explained most fully in the past century through a series of social encyclicals that articulate essential moral principles to guide decisions on social policy.¹⁰

As it has developed, Catholic social teaching clearly envisions a role for the Church to play in shaping society. This teaching is conscious

PROMISE AND OUR RESPONSE (1983) [hereinafter *THE CHALLENGE OF PEACE*]; NATIONAL CONF. OF CATHOLIC BISHOPS, *SOWING WEAPONS OF WAR* (1995); and Bishop Wilton D. Gregory, *Statement on War with Iraq* (March 19, 2003). See also Kenneth D. Wald, *Religious Ethics and Public Opinion: The Impact of the Bishops' Peace Pastoral*, 52 *REV. POLITICS* 112 (1992) (evaluating efficacy of bishops' statement on peace).

⁵ See, e.g., UNITED STATES CONF. OF CATHOLIC BISHOPS, *GLOBAL CLIMATE CHANGE: A PLEA FOR DIALOGUE, PRUDENCE, AND THE COMMON GOOD* (2001), and NATIONAL CONF. OF CATHOLIC BISHOPS, *RENEWING THE EARTH* (1992).

⁶ See, e.g., NATIONAL CONF. OF CATHOLIC BISHOPS, *ECONOMIC JUSTICE FOR ALL* (1986). This statement was evaluated at length in Charles E. Curran, *Ethical Principles of Catholic Social Teaching Behind the United States Bishops' Letter on the Economy*, 7 *J. BUS. ETHICS* 413 (1988). The extent to which the bishops' economic teaching is intended to have widespread effect is evaluated at length in Jeremy Waldron, *Religious Contributions in Public Deliberations*, 30 *SAN DIEGO L. REV.* 817 (1993).

⁷ See, e.g., NATIONAL CONF. OF CATHOLIC BISHOPS, *RENEWING U.S. LEADERSHIP IN REFUGEE PROTECTION* (2001).

⁸ See, e.g., UNITED STATES CONF. OF CATHOLIC BISHOPS, *MILLENNIUM CHALLENGE ACCOUNT: A PROPOSED CONCEPTUAL APPROACH FOR ELIGIBILITY* (2002), and NATIONAL CONF. OF CATHOLIC BISHOPS, *A JUBILEE CALL FOR DEBT FORGIVENESS* (1999).

⁹ See UNITED STATES CONF. OF CATHOLIC BISHOPS, *FAITHFUL CITIZENSHIP: CIVIC RESPONSIBILITY FOR A NEW MILLENNIUM* (1999) [hereinafter *FAITHFUL CITIZENSHIP*] (copy on file with the author).

¹⁰ This tradition is, in turn, deeply rooted in scriptural teachings that date back several millennia. See UNITED STATES CATHOLIC CONF., *SHARING CATHOLIC SOCIAL TEACHING: CHALLENGES AND DECISIONS 1* (1998) [hereinafter *SHARING CATHOLIC SOCIAL TEACHING*], ("Catholic social teaching is a central and essential element of our faith. Its roots are in the Hebrew prophets who announced God's special love for the poor. . . . It is founded on the life and words of Jesus Christ."); Robert J. Araujo, S.J., *Christian Social Thought and American Public Policy: A Dialogue Between the Laity and the American State*, 35 *J. CHURCH & STATE* 751, 754 (1993) ("The general themes of social justice and fair play and how people ought to live with one another are major topics addressed in the Old and New Testament."); *Id.* at 759. ("The examination of Scripture illustrates that the teachings of Jesus addressed questions about justice which you see in our contemporary world."). See also Avery Cardinal Dulles, *Catholic Social Teaching and American Legal Practice*, 30 *FORDHAM. URB. L.J.* 277, 279 (2002) ("It seems safe to say that no other institution has developed a body of social teaching rivaling that of the Catholic Church in depth, coherence, and completeness.").

that the Church's ultimate responsibility is not a worldly one, and it leaves considerable discretion to the judgment of the laity with regard to implementation.¹¹ Yet, in spite of this, the Church's social teaching posits a role for itself that is active, optimistic, and increasingly ecumenical and global in perspective. The United States is, clearly, subject to the influence of this teaching. The interplay between Catholic social teaching and American law is a fascinating, complex, and, at times, tense relationship—a relationship to which these reflections are directed.

The first part of this discussion will explore how leading Church documents define the proper scope of influence for Catholic social teaching. After this brief background, the discussion will turn to reflection on the impact that Catholic social teaching has had on American law and politics. Most importantly it will focus on and explore three obstacles that have been barriers to a greater role for Catholic social thought in American legal and political discourse.

II. The Role of Catholic Social Teaching as Articulated by the Social Encyclicals

Over the years, the Church has developed a vision of its role in advancing its social teaching through law and other social institutions. As explained eloquently by Pope John XXIII, "the Church's teaching on social matters . . . has truth as its guide, justice as its end, and love as its driving force."¹² This proposition—that a religious body should have a share in the affairs of this world—was not entirely self-evident nor uncontroversial.¹³ The Church set out to establish that, although she is

¹¹ See notes 76-89, *infra*, and accompanying text.

¹² See POPE JOHN XXIII, *MATER ET MAGISTRA* (1961), *reprinted in* CATHOLIC SOCIAL THOUGHT: THE DOCUMENTARY HERITAGE ¶ 226, at 120-121 (David J. O'Brien & Thomas A. Shannon eds., 1992) [hereinafter CATHOLIC SOCIAL THOUGHT].

¹³ See POPE JOHN PAUL II, *CENTESIMUS ANNUS* (1991), *reprinted in* CATHOLIC SOCIAL THOUGHT, *supra* note 12, ¶ 1, at 439. Pope John Paul II explains:

In Pope Leo XIII's time, [the] concept of the church's right and duty was far from being commonly admitted. Indeed, a two-fold approach prevailed: one directed to this world and this life, to which faith ought to remain extraneous; the other directed toward a purely other-worldly salvation, which neither enlightens nor directs existence on earth. The Pope's approach in publishing *Rerum Novarum* gave the church citizenship status.

Id. ¶ 5, at 443.

a religious institution, she nevertheless has a legitimate role to play in the legal and social arenas of the earthly world.¹⁴

This theme has been developed extensively in encyclical teachings but, perhaps, nowhere as eloquently as in *Gaudium et Spes* which declared that:

Christians, on pilgrimage toward the heavenly city, should seek and savor the things that are above. This duty in no way decreases, but rather increases, the weight of their obligation to work with all men in constructing a more human world.¹⁵

¹⁴ The Church laid claim to this social expertise from the very earliest of the modern encyclicals. See POPE LEO XIII, *RERUM NOVARUM* (1891), reprinted in *CATHOLIC SOCIAL THOUGHT*, *supra* note 12, ¶ 13, at 19. (“[T]he Church uses its efforts not only to enlighten the mind, but to direct by its precepts the life and conduct of men.”); *Id.* ¶ 18, at 21 (“The things of this earth cannot be understood or valued rightly without taking into consideration the life to come, the life that will last forever.”). See also POPE PIUS XI, *QUADRAGESIMO ANNO* (1931), reprinted in *CATHOLIC SOCIAL THOUGHT*, *supra* note 12, ¶ 41, at 50–51 (noting “it is our right and our duty to deal authoritatively with social and economic problems”); *MATER ET MAGISTRA*, *supra* note 12, ¶ 239, at 122 (“[I]t is the Church’s right and duty not only to safeguard principles relating to the integrity of religion and morals, but also to pronounce authoritatively when it is a matter of putting these principles into effect.”); POPE JOHN PAUL II, *SOLICITUDO REI SOCIALIS* (1987), reprinted in *CATHOLIC SOCIAL THOUGHT*, *supra* note 12, ¶ 8, at 398 (calling the Church’s social doctrine “an application of the word of God to people’s lives and the life of society, as well as to the earthly realities connected with them”).

In an historical discussion, it has been noted that “[d]uring the Catholic Church’s long history of involvement in temporal affairs, large-scale social, political, and legal issues have often been within the sphere of its competence and control. . . . Although it has not had . . . widespread sociopolitical dominance for centuries, and no longer seeks it, the church continues to be concerned institutionally and intellectually with the welfare of the whole of humanity and the world, as though both were within its care.” Angela C. Carmella, *A Catholic View of Law and Justice*, reprinted in *CHRISTIAN PERSPECTIVES ON LEGAL THOUGHT* 255, 256 (Michael W. McConnell et. al. eds., 2001). See also *id.* at 259 (“[A]ny [secular] influence it has in temporal matters is a by-product of its religious ministry.”) and Dulles, *supra* note 11, at 278 (“The Bible holds out to us not only the vision of individual salvation, but also the vision of a society of peace and love.”).

¹⁵ SECOND VATICAN COUNCIL, *GAUDIUM ET SPES: PASTORAL CONSTITUTION ON THE CHURCH IN THE MODERN WORLD* (1965), reprinted in *CATHOLIC SOCIAL THOUGHT*, *supra* note 12, ¶ 57, at 203, [hereinafter *GAUDIUM ET SPES*]. See also *RERUM NOVARUM*, *supra* note 14, ¶ 23, at 25 (“Neither must it be supposed that the solicitude of the Church is so occupied with the spiritual concerns of its children as to neglect their interests temporal and earthly.”); *GAUDIUM ET SPES*, *supra*, at ¶ 39, at 189 (“[T]he expectation of a new earth must not weaken but rather stimulate our concern for cultivating this one.”); *Id.* ¶ 40, at 189 (“[T]he earthly city and the heavenly city penetrate each other.”); POPE PAUL VI, *OCTOGESIMA ADVENIENS* (1971), reprinted in *CATHOLIC SOCIAL THOUGHT*, *supra* note 12, ¶

That is, the Church has articulated a vision that suggests that it is precisely concern for religious matters that should justify, mandate, and motivate involvement in the affairs of this world. In the very earliest of the modern encyclicals, *Rerum Novarum*, Pope Leo XIII wrote, "Neither must it be supposed that the solicitude of the Church is so occupied with the spiritual concerns of its children as to neglect their interests, temporal and earthly."¹⁶ This link was elaborated on much more fully in recent times. In *Mater et Magistra*, for example, Pope John XXIII wrote:

Hence, although Holy Church has the special task of sanctifying souls and of making them sharers of heavenly blessings, she is also solicitous for the requirements of men in their daily lives, not merely those relating to food and sustenance, but also to their comfort and advancement in various kinds of goods and in varying circumstances of time.¹⁷

He went on to say that:

Realizing all this, Holy Church implements the commands of her founder, Christ, who refers primarily to man's eternal salvation when he says, 'I am the Way, and the Truth, and the Life' and elsewhere 'I am the Light of the World.' On other occasions, however, seeing the hungry crowd, he was moved to exclaim sorrowfully, 'I have compassion on the crowd,' thereby indicating that he was also concerned about the earthly needs of mankind.¹⁸

Similar themes have been echoed in all the major encyclicals that have followed, as the Church links her salvific mission to the task of providing guidance on the affairs of this world.¹⁹ Two of the greatest examples

1 at 265 ("The Church . . . travels forward with humanity and shares its lot in the setting of history.") and POPE PAUL VI, *EVANGELII NUNTIANDI* (1971), *reprinted in CATHOLIC SOCIAL THOUGHT*, *supra* note 12, ¶ 1, at 303, ¶ 29, at 313 ("[E]vangelization would not be complete if it did not take account of the increasing interplay of the Gospel and of man's concrete life, both personal and social.").

¹⁶ *RERUM NOVARUM*, *supra* note 14, ¶ 23, at 25.

¹⁷ *MATER ET MAGISTRA*, *supra* note 12, ¶ 3, at 84.

¹⁸ *Id.* ¶ 4, at 84. *See also* *CENTESIMUS ANNUS*, *supra* note 13, ¶ 57, at 481 ("Christ's words, 'as you did it to one of the least of these my brother, you did it to me' . . . were not intended to remain a pious wish but were meant to become a concrete life commitment.").

¹⁹ *See* *MATER ET MAGISTRA*, *supra* note 12, ¶ 222, at 120 ("[T]he social teaching proclaimed by the Catholic Church cannot be separated from her traditional teaching regarding man's life."); *GAUDIUM ET SPES*, *supra* note 15, ¶ 4, at 167 ("[T]he Church has always had the duty of scrutinizing the sign of the times and of interpreting them in light of the gospel."); *OCTOGESIMA ADVENIENS*, *supra* note 15, ¶ 1, at 265 ("The Church . . . travels forward with humanity and shares its lot in the setting of history."); *SYNOD OF BISHOPS, JUSTICE IN THE WORLD*, *reprinted in CATHOLIC SOCIAL THOUGHT*, *supra* note 12, at

of this can be found in those places where the Church asserts basic human rights, and where she asserts that to be legitimate, civil laws must conform to unchanging moral principles against which they will be judged.

In *Gaudium et Spes*, for example, the Church set forth a detailed list of basic human rights. Far more extensive than the American Bill of Rights, this listing embodied the negative freedoms *from* harm common in civil lists of rights. However, it also went further and listed affirmative rights *to* the tangible and intangible goods of the world. It summarized human rights as including the requirements that:

[T]here must be made available to all men everything necessary for leading a life truly human, such as food, clothing, and shelter; the right to choose a state of life freely and to found a family; the right to education, to employment, to a good reputation, to respect, to appropriate information, to activity in accord with the upright norm of one's own conscience, to protection of privacy, and to rightful freedom in matters religious too.²⁰

Although the listing clearly articulated a right to freedom of religion,²¹ the rest of the listing is entirely secular in nature. This asserted, in very clear terms, that Catholic social teaching claims for itself the

288, 289 (1971) ("Action on behalf of justice and participation in the transformation of the world fully appear to us as a constitutive dimension of the preaching of the Gospel."); *Id.* at 294 ("The Church has received from Christ the mission of preaching the Gospel message, which contains a call to man to turn away from sin to the love of the Father, universal brotherhood, and a consequent demand for justice in the world."); *SOLLICITUDO REI SOCIALIS*, *supra* note 14, ¶ 41, at 424 ("[T]he Church is an 'expert in humanity,' and this leads her necessarily to extend her religious mission to the various fields in which men and women expend their efforts in search of the always relative happiness which is possible in this world, in line with their dignity as persons.") and *CENTESIMUS ANNUS*, *supra* note 13, ¶ 5, at 443 ("[T]o teach and to spread her social doctrine pertains to the church's evangelizing mission and is an essential part of the Christian message, since this doctrine points out the direct consequences of that message in the life of society.").

²⁰ *GAUDIUM ET SPES*, *supra* note 15, ¶ 26, at 181. Pope John Paul II also outlined basic human rights in *Centesimus Annus* in which he listed those rights:

Among the most important of these rights, mention must be made of the right to life, an integral part of which is the right of the child to develop in the mother's womb from the moment of conception; the right to live in a united family and in a moral environment . . . ; the right to develop one's intelligence and freedom in seeking and knowing the truth; the right to share in the work which makes wise use of the earth's material resources, and to derive from that work the means to support oneself and one's dependents; and the right freely to establish a family. . . . [T]he source and synthesis of these rights is religious freedom.

CENTESIMUS ANNUS, *supra* note 13, ¶ 47, at 474.

²¹ *Id.*

authority to articulate basic fundamental rights and to assert the non-negotiable obligation of civil authority to defend and protect those rights.²²

Later the Church's teachings on the relationship between moral law and civil law were developed more fully. One can find in *Evangelium Vitae* the most thorough explication of the complex and, at times, contentious relationship between the moral law and positive civil law. In keeping with the Church's natural law tradition, *Evangelium Vitae* explains that "[t]he doctrine on the necessary conformity of civil law with the moral law is in continuity with the whole tradition of the Church."²³ It goes on to warn that a law that violates the moral order is, in fact, not "law" at all:

The basis of these values cannot be provisional and changeable 'majority' opinions, but only the acknowledgement of an objective moral law which, as the 'natural law' written in the human heart, is the obligatory point of reference for civil law itself.²⁴

This reiterates the much earlier declaration in *Rerum Novarum* that "the laws and judgment of men must give place to the laws and judgment of Christ,"²⁵ a declaration echoed countless other times in the Church's social teachings.²⁶

²² See also JUSTICE IN THE WORLD, *supra* note 19, at 294 ("[T]he Church has the right, indeed the duty, to proclaim justice on the social, national, and international level, and to denounce instances of injustice, when the fundamental rights of man and his very salvation demand it.").

²³ POPE JOHN PAUL II, *EVANGELIUM VITAE*, ¶ 72, at 118 (Daughters of St. Paul) (1995). See also *id.* ¶ 62, at 102 (noting that "no law whatsoever can ever make licit an act which is intrinsically illicit").

²⁴ *Id.* ¶ 70, at 115. It has been observed that *Evangelium Vitae* "raised the philosophical stakes by arguing that democracies risked self-destruction if objectively moral wrongs were installed as constitutional 'rights.'" Weigel, *supra* note 2, at 51.

²⁵ *RERUM NOVARUM*, *supra* note 14, ¶ 19, at 23.

²⁶ See, e.g., GAUDIUM ET SPES, *supra* note 14, ¶ 79, at 221 (noting "the permanent binding force of universal natural law and its all-embracing principles"). See also Carmella, *supra* note 14, at 262. See also *id.* (observing that "the search for objective moral principles remains important and necessary in the church's social thought. For if no intelligible moral order exists, then the transcendent worth of all persons cannot be acknowledged and promoted.") and *id.* at 269-270 ("A Catholic analysis and critique of the civil or positive law . . . starts from the premise that there is a natural law written on the human heart that is intelligible through reason, and knowable without revelation against which all civil law is measured."); Robin W. Lovin, *Church and State in an Age of Globalization*, 52 DEPAUL L. Rev. 1, 4 (2002) (summarizing classical view of St. Thomas Aquinas that "[a] law that is not ordered toward the common good is not a law, and the one who promulgates such a law is not a legitimate ruler, but a tyrant").

Thus, the Church articulates three aspects of its role in the shaping of law and society. First, it asserts a legitimate role for the Church in worldly affairs. Next, it confirms its authority and responsibility to articulate the minimal human rights and protections required for the creation of a just order. Finally, in keeping with the natural law tradition, it argues that a law is not legitimate unless it is consistent with unchangeable moral values.

Yet, at the same time that the Church lays claim to such a voice in shaping the laws that govern peoples, it simultaneously imposes two significant limits on the scope and sphere of its influence.

First, Catholic social teaching cautions against over-reliance on civil law as a way to advance justice. Church teaching advocates the use of law to safeguard human rights through compliance with moral law and supports the use of law to provide fair and just ways for maintaining civil order and providing for the general welfare. Indeed, it urges that “[t]he Christian has the duty to take part in . . . the organization and life of political society.”²⁷ Yet, the Church’s social teaching also warns that law not be viewed as the sole tool for advancing the common good. Rather, it cautions “that the law must not undertake more, nor go further, than is required for the remedy of the evil or the removal of the danger.”²⁸

Because, as *Octogesima Adveniens* teaches, “[t]he domain of politics is wide and comprehensive, but it is not exclusive,”²⁹ the Church’s teaching is directed to all the institutions that can shape society. These include, but are not limited to, families, religious communities, schools, social and fraternal organizations, private charitable organizations, lay professionals in all fields, and, in some ways most importantly, individuals.³⁰

²⁷ OCTOGESIMA ADVENIENS, *supra* note 15, ¶ 24, at 274. *Octogesima Adveniens* goes on to state the importance of politics, noting that “[p]olitical power . . . is the natural and necessary link for ensuring the cohesion of the social body.” *Id.* ¶ 46, at 282.

²⁸ RERUM NOVARUM, *supra* note 14, ¶ 29, at 28.

²⁹ OCTOGESIMA ADVENIENS, *supra* note 15, ¶ 46, at 282.

³⁰ In a powerful expression of the place of the individual in advancing the social good, Pope Paul VI wrote:

It is not enough to recall principles, state intentions, point to crying injustices, and utter prophetic denunciations; these words will lack real weight unless they are accompanied for each individual by a livelier awareness of personal responsibility and by effective action. It is too easy to throw back on others responsibility for injustices, if at the same time one does not realize how each one shares in it personally, and how personal conversion is needed first.

Id. ¶ 48, at 284.

The Church urges that all of these components of society work tirelessly to advance the principles of social justice and resist the temptation to rely solely on law toward that end. Indeed, it is telling that this body of doctrine is not called “Catholic *legal* teaching,” but is, instead, called “Catholic *social* teaching.” This implies the need to look beyond law for social advancement—a theme echoed often by modern popes. In 1931, Pope Pius XI warned, in *Quadragesima Anno*, that while “[j]ustice alone can, if faithfully observed, remove the causes of social conflict, [it] can never bring about a union of minds and hearts. . . . If this bond is lacking, the best of regulations come to naught, as we have learned by too frequent experience.”³¹ Pope John Paul II echoed a similar sentiment when he warned, in *Dives in Misericordia*, “[t]he experience of the past and of our own time demonstrates that justice alone is not enough . . . if that deeper power, which is love, is not allowed to shape human life in its various dimensions.”³² This caveat should not imply that law is a tool to be ignored in the effort to build justice.³³ However, it is not always the only or best way to do so. As Pope John Paul II reasoned in *Evangelium Vitae*,

[N]egative moral precepts have an extremely important positive function. The “no” which they unconditionally require makes clear the absolute limit below which free individuals cannot lower themselves. At the same time they indicate the minimum . . . from which they must start out in order to say “yes” over and over again, a “yes” which will gradually embrace the entire horizon of the good.³⁴

Thus, the first caveat is that Catholic social teaching—while often directed toward the law—is not limited to it.

³¹ See also *id.* ¶ 142, at 76 (noting that it is “the charity of Christ [] which alone has power to incline men’s hearts and wills firmly and gently to the laws of equity and justice”).

³² POPE JOHN PAUL II, *DIVES IN MISERICORDIA*, ¶ 12 (1980). See also *JUSTICE IN THE WORLD*, *supra* note 20, at 293 (“[L]ove implies an absolute demand for justice, namely a recognition of the dignity and rights of one’s neighbor. Justice attains its inner fullness only in love.”) and *EVANGELI NUNTIANDI*, *supra* note 15, ¶ 36, at 316 (“[T]he best structures and the most idealized systems soon become inhuman if the . . . inclinations of the human heart are not made wholesome, if those who live in these structures or who rule them do not undergo a conversion of heart and of outlook.”).

³³ Indeed, in *Rerum Novarum*, Pope Leo XIII, argued an important role for the State and identified its “first duty . . . should be to make sure that the laws and institutions the general character and administration of the commonwealth, shall be such as to produce of themselves public well-being and private prosperity.” *RERUM NOVARUM*, *supra* note 14, ¶ 26, at 26.

³⁴ *EVANGELIUM VITAE*, *supra* note 23, ¶ 75, at 123.

The second limitation that Church teaching places on its influence is one particularly relevant to the American experience. The Church has consistently disavowed a desire to adopt allegiance to specific political parties or systems of government. This renunciation of such a role has been consistent throughout the modern encyclicals. For example, in *Gaudium et Spes*, the Second Vatican Council declared:

The role and competence of the Church, being what it is, she must in no way be confused with the political community nor bound to any political system. For she is at once a sign and a safeguard of the transcendent character of the human person. . . . In their proper spheres, the political community and the Church are mutually independent and self-governing. Yet by a different title each serves the personal and social vocation of the same human beings.³⁵

Likewise, in *Centesimus Annus*, Pope John Paul II noted:

The church respects the legitimate autonomy of the democratic order and is not entitled to express preferences for this or that institutional or constitutional solution. Her contribution to the political order is precisely her vision of the dignity of the person revealed in all its fullness in the mystery of the incarnate Word.³⁶

The Church sees its place as neither beholden to nor bound by any particular order. Instead, while contributing a moral framework of law and policy making, Catholic social teaching remains hospitable to a

³⁵ GAUDIUM ET SPES, *supra* note 15, ¶ 76, at 218. *See also id.* ¶ 42, at 191 (noting that the Church “is bound to no particular form of human culture, nor to any political, economic, or social system”); *Id.* at 216 (“[T]he choice of government and the method of selecting leaders are left to the free will of citizens.”); *Id.* ¶ 74, at 216 (“The practical ways in which the political community structures itself and regulates public authority can vary according to the particular character of a people and its historical development.”); POPE PAUL VI, POPULORUM PROGRESSIO (1967), *reprinted in* CATHOLIC SOCIAL THOUGHT, *supra* note 12, ¶ 1, at 240, ¶ 13, at 243 (“Founded to establish on earth the kingdom of heaven and not to conquer any earthly power, the Church clearly states that the two realms are distinct, just as the two powers, ecclesiastical and civil, are supreme, each in its own domain.”) and OCTOGESIMA ADVENIENS, *supra* note 15, ¶ 24, at 274 (noting that, with respect to forms of governance, “[v]arious models are proposed, some are tried out, none of them gives complete satisfaction and the search goes on between ideological and pragmatic tendencies”).

³⁶ CENTESIMUS ANNUS, *supra* note 13, ¶ 47, at 475. *See also* SOLLICITUDO REI SOCIALIS, *supra* note 14, ¶ 41, at 424:

[T]he Church does not propose economic and political systems or programs, nor does she show preference for one or the other, provided that human dignity is properly respected and promoted, and provided she herself is allowed the room she needs to exercise her ministry in the world.

wide variety of political regimes and parties.³⁷ This respectful distance from the civil sphere reflects the Church's understanding that Caesar is to be given a wide berth in his realm of competence as long as his laws do not interfere with the Church's prerogatives nor trample on the dignity and rights of peoples.³⁸

III. The Impact of Catholic Social Teaching on American Law and Politics.

With this very brief background on the Church's vision of her role in shaping law, and the self-imposed limitations on that role, it is possible to reflect on the influence that it has had on American law in the past, and to offer some reflections on the role of that influence in the future.³⁹

A. Historical Reflections

It is clear that there are aspects of Catholic social teaching that, historically, have had a great impact on American law and policy.⁴⁰ In many ways, the most dramatic debut of the Catholic Church in legal

³⁷ See, e.g., QUADRAGESIMO ANNO, *supra* note 14, ¶ 2, at 42, ¶ 10, at 44 (noting that the classic *Rerum Novarum* "sought help neither from liberalism nor socialism").

³⁸ Christopher T. Carlson, *Church and State: Consistency of the Catholic Church's Social Teaching*, 35 CATH. LAW. 339, 347 (1994) ("The Church judges a particular law, course of conduct, or omission on whether it is in discord or harmony with justice, human rights, or man's attainment of an eternal home."); and Carmella, *supra* note 14, at 267 ("Determining what aspects of the common good are properly within the state's function, and what should be left to civil society may vary from culture to culture, but that function always includes the maintenance of public peace, public morality, and minimum standards of justice.").

³⁹ Indeed, the American bishops themselves have been forced to reflect on this issue as they plan for the future role to be played by Catholic social teaching in modern life and observe the necessity to provide more extensive education to Catholic laity in this area. See SHARING CATHOLIC SOCIAL TEACHING, *supra* note 10 (reporting American bishops reflections on the role of Catholic social teaching in American life). In the modern context, for an excellent collection of essays on the role of Catholic teaching in various political contexts, see generally THE CATHOLIC CHURCH, MORALITY, AND POLITICS (Charles E. Curran & Leslie Griffin, eds. 2001); PRINCIPLES OF CATHOLIC SOCIAL TEACHING (David A. Boileau, ed. 1994) and WHEN CONSCIENCE AND POLITICS MEET: A CATHOLIC VIEW (PROCEEDINGS OF THE WETHERSFIELD INSTITUTE) (1992) [hereinafter WHEN CONSCIENCE AND POLITICS MEET].

⁴⁰ Indeed, much has been written about application of Catholic social teaching in various substantive contexts. See, e.g., Terry Coonan, *There Are No Strangers Among Us: Catholic Social Teaching and U.S. Immigration Law*, 40 CATH. LAW. 105 (2000) (addressing impact of Catholic social teaching on American immigration law); Michael Scaperlanda, *Who Is My Neighbor?: An Essay on Immigrants, Welfare Reform, and the Constitution*, 29 CONN. L. REV. 1587, 1612-1624 (1997) (exploring Catholic social teaching *vis a vis* immigration policy); Dennis P. McCann, *Catholic Social Teaching and the*

and political affairs was connected to the natural bond felt between the American Catholic Church and its many working class immigrant members.⁴¹ Unlike many European nations in which the Catholic Church and its leaders had been involved in affairs of state for centuries, the Catholic Church was, in many ways, an outsider to the American legal and political system in the eighteenth and much of the nineteenth centuries.⁴² Naturally, there were prominent Catholic leaders who involved themselves in the political and social debates of their time. But, because of its small population, the early American Catholic Church was not, as it was in Europe, a highly influential player in many legal and political affairs. Furthermore, underlying currents of anti-Catholic sentiment and suspicion curbed the ability of what many saw as a “foreigners” church to take a major role on the national stage.⁴³

Economics of Health Care Management, 6 CHRISTIAN BIOETHICS 231 (2000) (discussing relationship between Catholic social teaching and health care); Robert A. Destro, *The Religious Foundations of Civil Rights Law and the Study of Law and Religion in an Interdisciplinary Framework*, 5 J.L. & REL. 39 (1987) (studying connections between religion and civil rights law); Kenneth R. Himes, *Rights of Entitlement: A Roman Catholic Perspective*, 11 NOTRE DAME J. L., ETHICS & PUB. POL'Y 507 (1997) (exploring Catholic perspective on public assistance programs) and William W. Garnett, *Christian Witness, Moral Anthropology, and the Death Penalty*, 17 NOTRE DAME J. L., ETHICS & PUB. POL'Y 541 (2003) (studying impact of religious perspectives on death penalty debate).

⁴¹ For a helpful historical overview of the connections between Catholicism and early American political life, see generally TIMOTHY A. BYRNES, CATHOLIC BISHOPS IN AMERICAN POLITICS 11-34 (1991).

⁴² See, e.g., JOHN COURTNEY MURRAY, S.J., WE HOLD THESE TRUTHS: CATHOLIC REFLECTIONS ON THE AMERICAN PROPOSITION 20 (1960) (noting that in the United States “the Protestant was the native and the Catholic the immigrant, in contrast to Europe where the Catholic first held the ground and was only later challenged”); James M. Powell, *Catholics and American Politics: Exploding the Myths*, AMERICA, August 3, 1996 at 8 (noting that while “[p]rior to the Civil War, Catholics played only a minor role in U.S. politics,” all this changed when “[i]mmigration completely altered the Catholic role in politics”); Winnifred Fallers Sullivan, *Indifferentism Redux: Reflections on Catholic Lobbying in the Supreme Court of the United States*, 76 NOTRE DAME L. REV. 993, 994 (2001) (“For most of American history, Catholics have not been understood to occupy a central part in the history of American religion. Until quite recently in fact, as recently perhaps as the 1970’s, American Catholics were a footnote to the story of American religion because ‘American religion’ was assumed to mean mainstream Protestant Christianity.”); and A. James Reichley, *Religion and the Future of American Politics*, 101 POL. SCI. Q 23, 32 (1986) (“The Catholic hierarchy, while socially influential, up to the 1950’s generally maintained a low profile in politics.”).

⁴³ See Bishop John Ireland, *Catholicism and Americanism* (August 11, 1913), reprinted in THOMAS J. MASSARO & THOMAS A. SHANNON, AMERICAN CATHOLIC SOCIAL TEACHING 25, 30-31 (2002), observing:

However, whether by coincidence or providence, the late nineteenth century saw a new wave of American immigration at the same time that saw the birth of the modern social encyclicals defining the role and responsibility of the Church as a participant in social affairs. Immigrating from many predominantly Catholic countries such as Italy, Ireland, and Poland, and settling in predominantly urban areas, it was natural for these new waves of immigrants to embrace their old faith in their new country and, in turn, for that Church to play a pastoral role in improving their plight.⁴⁴ This launched the Church's activity in two large-scale early efforts that brought Catholic social principles to bear on American law and policy. The first was the involvement of late nineteenth-century Catholic leaders in advocating the rights of Catholics to educate their children as they saw best, and the second was the involvement of Catholic leaders in the labor movements of the early twentieth century.

With regard to the former, the Church championed the preeminence of the family as the primary unit of society.⁴⁵ Catholic social teaching consistently defends the family from impermissible intrusions by state authority.⁴⁶ Indeed, as taught in *Rerum Novarum*, “the idea, then, that the civil government should, at its own discretion, penetrate and pervade the family and the household, is a great and pernicious mis-

The charge is made, if not anti-American, the Catholic Church is un-American—it is in America an alien institution. More definitely the charge is this: the Catholic Church does not bear the stamp, “Made in America.” It is un-American to go across the Atlantic or the Pacific for aught that America uses or needs—even for its religion.

See also Reichley, *supra* note 42, at 32 (“Until quite recently, the Catholic Church in America regarded itself as an ‘immigrant’ Church.”).

⁴⁴ See *RERUM NOVARUM*, *supra* note 14, ¶ 24, at 25 (noting that “the Church intervenes directly in the interest of the poor, by setting on foot and keeping up many things which it sees to be efficacious in the relief of poverty”).

⁴⁵ See, e.g., *RERUM NOVARUM*, *supra* note 14, ¶ 9, at 18 (calling the family “a true ‘society,’ anterior to every kind of State or nation, with rights and duties of its own, totally independent of the commonwealth”); *GAUDIUM ET SPES*, *supra* note 15, ¶ 52, at 200 (“The family is the foundation of society.”); POPE JOHN PAUL II, *LABOREM EXERCENS: ON HUMAN WORK* (1981) in *CATHOLIC SOCIAL THOUGHT*, *supra* note 12, ¶ 10, at 364 (“[T]he family constitutes one of the most important terms of reference for shaping the social and ethical order of human work.”) and *SHARING CATHOLIC SOCIAL TEACHING*, *supra* note 10, at 4–5 (“The family is the central social institution that must be supported and strengthened, not undermined.”).

⁴⁶ *RERUM NOVARUM*, *supra* note 14, ¶ 10, at 18 (stating that if a family, by associating with a state, “experienced at the hands of the State hindrance instead of help, and found their rights attacked instead of being protected, such associations were rather to be repudiated than sought after”).

take.⁴⁷ In light of this, Church teaching asserts the rights of parents to make all those decisions central to the raising of their children. Essential to this group of decisions is the prerogative of parents to educate their children in accordance with their values and beliefs.⁴⁸

Often, the Church faced situations in which the educational system in particular communities was, in the view of Catholic parents, biased against their religious beliefs, hostile to their immigrant status, or both.⁴⁹ The Church thus involved itself in advocating the rights of parents to establish and then educate their children in a system of religious schools that were more supportive of their beliefs. To a large extent, this involvement was successful, and it resulted in the creation of an extensive parochial school system. More importantly, however, it provides a powerful example of how American Catholic leaders were able to translate a core tenant of Catholic social tradition—the primacy of family—into concrete legal action.

In addition, most Catholic immigrants were members of the working class. Because of this, the Church publically endorsed legal measures to prevent the exploitation of workers and supported nascent union movements that collaborated in this mission.⁵⁰ It paid particular attention to

⁴⁷ *Id.* ¶ 11, at 18.

⁴⁸ See Richard H. Tierney, S.J., *The Needy Family and Institutions* (October 27, 1914), reprinted in *CATHOLIC SOCIAL TEACHING*, *supra* note 12, at 39, 40 (“The family is the social unit, the basis of civil society . . . [C]ivil society can interfere with the control and education only so far as may be necessary to prevent neglect of parental duty in these matters. The control and education of offspring pertain to parents by a natural right emphasized, at least indirectly, by a positive divine command.”); and *FAITHFUL CITIZENSHIP*, *supra* note 9, at 9 (“The education of children is a fundamental parental responsibility. . . . All parents—the first most important educators—should have the opportunity to exercise their fundamental right to choose the education best suited to the needs of their children.”).

⁴⁹ Sullivan, *supra* note 42, at 994 (“Religion was expelled from public schools, not because of hostility to religion, but because of hostility toward Catholics and fear that Catholics would demand and be given equal time and money. The Roman Catholic school system developed in response to this Protestant attitude.”).

⁵⁰ See, e.g., BYRNES, *supra* note 41, at 18 (“Given that the vast majority of immigrant Catholics belonged to the working class, this . . . came to require episcopal support of organized labor.”); William F. Ryan, S.J., *Has Catholic Social Teaching Had Significant Influence? Reflections on a Century-Old Tradition*, 23 *EGLISE ET THEOLOGIE* 13, 18 (1992) (noting the Catholic Church’s “generally friendly and supportive stance toward labor unions”); *RERUM NOVARUM*, *supra* note 14, ¶¶ 36-38 at 32-34 (outlining benefits and roles of labor unions and workers’ associations); *QUADRAGESIMO ANNO*, *supra* note 14, ¶ 33, at 48 (observing, with approval, that after *Quadragesimo Anno*, “the clergy and many of the laity devoted themselves everywhere with admirable zeal to the creation

those aspects of the workplace that were perceived to be detrimental to the health, safety, and morals of vulnerable children or those that were harmful to family life.⁵¹ The timing of the Church's involvement in labor causes is directly tied to the waves of Catholic immigration to the United States. However, it is likely not mere coincidence that this involvement came on the heels of *Rerum Novarum*, the first great social encyclical that championed the rights and dignity of the working class, railed against their exploitation,⁵² and asserted that "public administration must duly and solicitously provide for the welfare and the com-

of . . . unions, which in turn became instrumental in building up a body of truly Christian workingmen"); *GAUDIUM ET SPES*, *supra* note 15, ¶ 68, at 212 ("Among the basic rights of the human person must be counted the right of freely founding labor unions."); *LABOREM EXERCENS*, *supra* note 45, ¶ 20, at 380-382 (discussing benefits of, and rights to unions while, at the same time, warning of potential abuses); and *CENTESIMUS ANNUS*, *supra* note 13, ¶ 7, at 444 (discussing "the church's defense and approval of the establishment of what are commonly called trade unions").

⁵¹ This concern with the impact of working conditions on such intangibles as employees' faith and morals was articulated clearly in *Rerum Novarum*, which warned of situations in which:

[C]ircumstances were such that among the laboring population the ties of family life were relaxed; if religion were found to suffer through the workmen not having time and opportunity to practice it; if in workshops and factories there were dangers to morals through the mixing of the sexes or from any occasion of evil; or if employees laid burdens upon the workmen which were unjust or degraded them with conditions that were repugnant to their dignity as human beings; finally, if health were endangered by excessive labor, or by work unsuited to sex or age - in these cases there can be no question that, within certain limits, it would be right to call in the help and authority of the law.

RERUM NOVARUM, *supra* note 14, ¶ 29, at 28. *See also Id.* ¶ 33, at 30-31 (discussing particular concerns arising with respect to child labor); and *QUADRAGESIMO ANNO*, *supra* note 14, ¶ 135, at 72-73:

The mind shudders if we consider the frightful perils to which the morals of workers . . . and the virtue of girls and women are exposed in modern factories; if we recall how the present economic situation and above all the disgraceful housing conditions pose to the family tie and family life; if we remember the insuperable difficulties placed in the way of a proper observance of the holy days.

⁵² *See, e.g., Introduction* in *CATHOLIC SOCIAL THOUGHT*, *supra* note 12 (noting that while *Rerum Novarum* "initially received only limited attention in the United States . . . [l]ater, during the progressive era of Theodore Roosevelt and Woodrow Wilson, a few Catholic reformers, led by John A. Ryan, drew on the encyclical to encourage Catholic support for social reform"); *Id.* ("In the 1930's . . . a significant number of priests, religious, and lay people found support for union organizing, social action and New Deal politics in Catholic social teaching, now supplemented by Pope Pius XI's 1931 encyclical *Quadragesimo Anno*."); *QUADRAGESIMO ANNO*, *supra* note 14, ¶ 12, at 44 (claiming that *Rerum Novarum* was "welcomed by Christian workingmen, who felt themselves vindicated and defended by the highest authority on earth, and by all those devoted men whose concern it had long been to better the conditions of labor. . . . All of these men have ever held the encyclical in the highest esteem."); and *id.* ¶ 28, at 47 (noting that as a consequence of *Rerum Novarum*, "there has arisen a new branch of jurisprudence

fort of the working people, or else that law of justice will be violated which ordains that each shall have its due.”⁵³

This involvement of the Church in labor concerns may have been more diffuse than its involvement in education initiatives because the range of issues involved in the labor movement was far broader. However, this activity was important in establishing the Church’s position in national political discourse. While many of the disputes regarding education could be resolved on the local level by local bishops, labor was an issue national in scope. This brought the influence of Catholic teaching to bear on a national, highly-visible stage. In addition, it tapped into the Church’s teachings on labor—the social issue to which late nineteenth and early twentieth century Catholic social thought paid the most direct attention.

While their involvement in these two issues may have marked the debut of the Catholic Church as a direct participant in American political and legal life, this was the mere prelude to further activity in this field. Since then, there has, undeniably, been a very public and significant contribution of the Church’s social teaching to American legal and political developments.

On a practical level the Catholic Church in the United States—as well as in many other nations—is the single largest non-governmental provider of social services.⁵⁴ This has provided the Church with hands-on experience in applying its social theories in such areas as health care, education, social service, immigration policy, and drug treatment. As a result, when these issues are subject to legal regulation or policy initiatives, the Catholic Church is a participant not merely as an aloof theorist, but also as an experienced provider of services.⁵⁵ This expands

unknown to earlier times, whose aim is the energetic defense of those sacred rights of the workingman”).

⁵³ *RERUM NOVARUM*, *supra* note 14, ¶ 27, at 26.

⁵⁴ This practical aspect of the Church’s social mission was noted in John Paul II, *EVANGELIUM VITAE*, *supra* note 23, ¶ 27 at 49, in which Pope John Paul II rejoiced in the fact that: “[T]he Church has always been in the front line in providing charitable help: so many of her sons and daughters . . . have consecrated and continue to consecrate their lives to God, freely giving of themselves out of love for their neighbor, especially for the weak and needy.”

⁵⁵ See *FAITHFUL CITIZENSHIP*, *supra* note 9, at 5 (“Our community also brings broad experience in serving those in need. The Catholic community educates the young, cares for the sick, shelters the homeless, feeds the hungry, assists needy families, welcomes

the scope of its expertise and its ability to participate as an informed party to social and legal debate. As the American bishops explained:

The history of the Church reveals a long tradition of defending those living in poverty, supporting charitable institutions, and promoting justice. Many religious orders were established on the principles of sharing the goods of the earth with the poor and of recognizing the essential dignity of human persons without regard to their economic or social status. In most parts of the world, the first hospitals, orphanages, schools, and social service centers were founded by the Church. . . . Faithful to this tradition, the Catholic Church in the United States now sponsors the largest voluntary network of social services, health care and education in the United States. As a result of the Church's efforts, greater recognition has been given to the inviolability of human life, the sanctity of marriage, the dignity of women, and the value of human worth.⁵⁶

In addition, the Church's social teaching has made it the leader in the defense of the life of the very youngest and the very oldest members of American society. This issue—central to the Church's teaching on human life and dignity—has, in recent years, been the single most visible issue on which the Church has been in the forefront.⁵⁷ While the right to life is by no means an exclusively Catholic question as it is often portrayed,⁵⁸ it is undeniable that the Church is by far the largest of the consistently vocal advocates on this question.⁵⁹ Because of the high

refugees, and serves the elderly. . . . [W]e have the practical expertise and everyday experience to enrich public debate.”).

⁵⁶ UNITED STATES CONF. OF BISHOPS, *IN ALL THINGS CHARITY: A PASTORAL CHALLENGE FOR THE NEW MILLENNIUM* 4 (1999). See also *id.* at 9-15 (describing charitable activities of Catholic priests, religious orders, lay associations, Catholic Charities, the Catholic Campaign for Human Development, and Catholic Relief Services).

⁵⁷ See, e.g., BYRNES, *supra* note 41, at 57 (calling *Roe v. Wade* an event that “thrust abortion onto the national political stage, and in time, gave rise to political developments that brought the Catholic hierarchy more actively into national electoral politics”); and Reichley, *supra* note 42, at 33 (“In January 1973, the Supreme Court decision establishing a virtually unlimited right to abortion brought the church hierarchy openly and vigorously into national politics.”).

⁵⁸ See *LIVING THE GOSPEL OF LIFE*, *supra* note 3, at 3. (“The inherent value of human life, at every stage and in every circumstance, is not a sectarian issue any more than the Declaration of Independence is a sectarian creed.”).

⁵⁹ See William Bentley Bell, *The Effect of Judicial Decisions on Catholics in WHEN CONSCIENCE AND POLITICS MEET*, *supra* note 39:

Orthodox Catholics, in the 1950's, 1960's, and 1970's were almost the sole opponents of abortion and its legalization. They, more than any other body of citizens today, are chiefly identified in the public consciousness as defenders of the right to life. *Roe v. Wade* and its successor decisions inevitably propelled orthodox Catholics not merely into resistance to the abortion movement but to the all-out war against it. It is the Catholic presence in that war, more than any other presence, which has produced a wave of specifically anti-Catholic media expression.

profile and volatile nature of this issue on the American political landscape, and because this issue surfaces in every election cycle rather than sporadically, the Church is, by definition, thrust into the very heart of American legal debate. It is the debate over human life that keeps the Church most visibly involved in the political arena—and thus in the legal realm as well.⁶⁰

In addition, the American bishops have issued pastoral statements on other pressing and controversial legal and political issues which have garnered significant attention in their own rights. Unlike the papal encyclicals, written for the global community, the statements of the American bishops are more narrowly written to reflect conflicts and opportunities unique to this country. Two in particular generated much debate—and controversy—in their respective fields. First, *Economic Justice for All*⁶¹ explored the complex moral issues related to the economic system, and the particular problems to which the American capitalist system is particularly vulnerable. The other was *The Challenge of Peace*⁶² which explored the question of warfare, weapons, nuclear proliferation, and obstacles to peace. Both of these documents placed American Church leaders in the heart of divisive political debate. More recently, American Church leaders have spoken forcefully on two high-profile, politically charged issues: the morality of the war in Iraq and the nature and definition of marriage.

Documents and statements such as these have enhanced the range of issues on which the Catholic Church has spoken. They have also increased the visibility of the Church as a participant in a range of issues. These ambitious projects have helped raise the profile of Catholic social teaching—a very important advance for a field often called the Church’s “best kept secret.” Whether these have had a direct bearing on law is less clear.

⁶⁰ See Weigel, *supra* note 2, at 57, evaluating the difficulty in describing the impact of the Church’s advocacy on this issue:

On the one hand . . . the Church and its allies have kept the abortion issue alive when virtually every other center of culture formation has declared the issue resolved, in favor of abortion on demand . . . ; on the other hand, the laws in favor of a freestanding abortion license remain in force.

⁶¹ *ECONOMIC JUSTICE FOR ALL*, *supra* note 6.

⁶² *THE CHALLENGE OF PEACE*, *supra* note 4.

B. Limitations on the Impact of Catholic Social Teaching on American Law

In spite of all of these ways in which Catholic social teaching has affected American law and society,⁶³ reflection on the future reveals some significant obstacles to having Catholic social thought play its full prophetic role in the modern American legal system. Three in particular are worth examining as the future of Catholic social thought in American life is considered. These three are:

- (1) the general ambivalence toward the use of religious arguments in American political discourse;
- (2) the fact that Catholic social teaching is deliberately written in broad strokes that lay out basic principles, but contain very few specific policy recommendations; and, perhaps most importantly
- (3) Catholic social teaching is internally consistent and cohesive but it is wildly inconsistent with the way in which legal issues are currently arrayed in American politics.

1. Ambivalence toward Religious Influence in American Law

The first obstacle to the full impact of Catholic social thought in American legal life is one already addressed at length and with great insight by others.⁶⁴ That obstacle is the profound ambivalence of American society to the use of religious arguments in public life and legal discourse. Indeed, this ambivalence is reflected in the very basic origins of the American government. At the same time that freedom from an imposed religious state was enshrined in the American Constitution, it was clear that the Founders openly embraced free religious

⁶³ See Carlson, *supra* note 38, at 339 (“The Catholic Church has played a significant role in society by exerting a Christian influence on the political and social order.”).

⁶⁴ For a fuller discussion of the compatibility of religious arguments to democratic life, see, e.g. Michael J. Perry, *Why Political Reliance on Religiously Grounded Morality Is Not Illegitimate in a Liberal Democracy*, 36 WAKE FOREST L. REV. 217 (2001). As Perry notes, “the proper role of religious faith in the public life of the nation is one of the most controversial issues in the United States today.” *Id.* at 218. See also Reichley, *supra* note 43, at 23 (exploring the role played by religion in American political life) and James E. Wood, Jr., *The Prophetic Role of Religion in Society*, 30 J. CHURCH & ST. 219 (1988) (exploring paradox of having both strong secular and religious traditions in American history).

practice, religious values, belief in the divine, and confidence in the existence of objective truths.⁶⁵

This ambivalence continues today.⁶⁶ The same society that fondly recalls the participation of religious groups in the civil rights and anti-war movements⁶⁷ reacts with more reserve when contemplating the participation of religious groups in consideration of family or pro-life

⁶⁵ See, e.g., WE HOLD THESE TRUTHS, *supra* note 42, at ix:

To our Fathers, the political and social life of man did not rest upon such tentative empirical hypotheses as the positivist might cast up. . . [T]hey thought the life of man in society under government is founded on truths, on a certain body of objective truth, universal in its import, accessible to the reason of man, definable, defensible . . . [T]he American Proposition rests on the more traditional conviction that there are truths; that they can be known; that they must be held; for if they are not held, assented to, consented to, worked into the texture of institutions, there can be no hope of founding a true City in which men may dwell in dignity, peace, unity, justice, well-being, freedom.

See also *id.* at 28 (arguing that the Declaration of Independence articulates “a truth that lies beyond politics; it imparts to politics a fundamental human meaning. I mean the sovereignty of God over nations as well as over individual men”); *id.* at 30 (“[T]he American political community was organized in an era when the tradition of natural law and natural rights was still vigorous.”); *Id.* at 37 (“The philosophy of the Bill of Rights was also tributary to the tradition of natural law, to the idea that man has certain original responsibilities precisely as man, antecedent to his status as citizen. . . . [T]hey are not granted by government and they cannot be surrendered to government.”); and Reichley, *supra* note 42, at 23 (“The founders of the Republic drew on religious values and rhetoric in forming the new nation.”).

⁶⁶ See Araujo, *supra* note 10, at 751. (“In contemporary American society, there persists a conflict or tension between those who publicly rely on their religious views and persons who believe in a ‘strict separation’ between church and state.”); Scott C. Idleman, *The Role of Religious Values in Judicial Decision Making*, 68 IND. L. J. 433, 434 (1993) “[R]eligion is frequently perceived as an inappropriate source of values in the policy-making or law-making process, including adjudication.”) and *Id.* at 442 (“[R]eligion and religious values . . . are generally viewed as illegitimate sources from which to draw in the judicial decision-making process.”).

⁶⁷ See Kent Greenawalt, *Religion and American Political Judgments*, 36 WAKE FOREST L. REV. 401 (2001) (“During the civil rights movement, church leaders helped to arouse the conscience of the country and religious individuals put their bodies on the line. Religious groups played a major role in opposition to the Vietnam War, and they have also led the fight against a liberal abortion law.”) and *Id.* at 403 (“Those possessing [religious] insight should draw the appropriate conclusions and support political candidates and parties who reach the same conclusions. Many political liberals respond that this view improperly mixes religion and politics, but most liberals did not object when liberal religious leaders struggled for civil rights and publicly opposed the Vietnam War.”); Henry J. Hyde, *Keeping God in the Closet: Some Thoughts on the Exorcisms of Religious Values from Public Life*, 1 NOTRE DAME J. L. ETHICS & PUB. POL’Y 33, 37 (1984) [hereinafter *God in the Closet*] (“[T]he clergy were revered when they marched at Selma, joined the anti-war sit-ins and helped boycott lettuce; they are reviled when they speak against abortion.”).

issues.⁶⁸ The same country whose currency proclaims “in God we trust” and whose Congress opens its sessions with prayer, is a country whose press sharply criticizes Catholic clergy for preaching on moral issues with legal implications.⁶⁹ The same American population that is described by all statistics as being deeply religious⁷⁰ is also one that is more comfortable with keeping religious beliefs private.⁷¹

Many scholars have debated the constitutionality of mixing religious beliefs with secular policy-making, and many philosophers have re-

⁶⁸ See Idleman, *supra* note 66, at 452:

[A] double standard appears to exist regarding the perception of religious participation in public life. . . . [R]eligious participation in public life is apparently acceptable, even encouraged, on certain issues or when religion supports certain viewpoints—for example, when religious groups oppose nuclear proliferation or favor more social welfare programs—but it is forbidden on certain other issues or when religion supports certain other viewpoints—for example, when religious groups oppose legalized abortion or euthanasia. As an illustration, one need only compare the praise given to religious groups or leaders for participating in the civil rights movements of the 1960’s to the criticism and often harsh treatment given to religious groups and leaders for participating in the anti-abortion movement of the 1980’s and 1990’s.

⁶⁹ See *God in the Closet*, *supra* note 67, at 40-41 (“[M]any of the same voices who hailed the American Bishops as ‘prophetic’ when they tacitly endorsed the nuclear freeze now find the Bishops ‘scary’ when the issues turns to abortion. This is hypocrisy.”).

⁷⁰ See, e.g., Henry Hyde, *Keeping the Promise of America in CATHOLICS IN THE PUBLIC SQUARE* 63 (Thomas Patrick Melady, ed. 1995) [hereinafter *THE PUBLIC SQUARE*] (noting the “undeniably religious character of our people”); BYRNES, *supra* note 41, at 5 (noting that the United States “is quite simply one of the most religious nations in the world”); and Greenawalt, *supra* note 67, at 406 (“[M]ore than ninety percent of our citizens identify themselves as religious.”); Russell Kirk, *Church Establishments and American Catholics*, in *WHEN CONSCIENCE AND POLITICS MEET*, *supra* note 39, at 13, 20 (“Of the American people, about half are in communion with some church, or at least attend services with some regularity; while of the other half of the population, few are consciously hostile toward religion. If anywhere in the world Christian belief might be expected to inform public policy, it is in this country.”).

⁷¹ See, e.g., *WE HOLD THESE TRUTHS*, *supra* note 42, at 21 (observing that secularists in the United States have “traditionally had no quarrel with religion as a ‘purely private matter,’ as a sort of essence or idea or ambient aura that may help to warm the hidden heart of solitary man”); Idleman, *supra* note 66, at 450 (“Public life goes on without religion, although large numbers of Americans remain religiously faithful in private.”); Dulles, *supra* note 10, at 277 (“In contemporary American culture there is a widespread assumption that religion is something private . . . and that it ought not to affect the way one acts in the public square.”); and *Id.* at 284 (“Some Americans seem to feel that religion is so divisive a topic that it ought not to show itself on the public square. People have a right to be religious, they assert, so long as they keep their piety to themselves and do not urge their beliefs on others.”).

flected on the tension between private morality and public life. This ambivalence has, in turn, reduced the ability of Catholic social teaching—or, indeed, the social teaching of any denomination—to be a full participant in the raging social and legal debates of our day. Unfortunately, this exclusion of religious values from the public square greatly impoverishes American legal discourse.⁷² A democratic society flourishes best when ideas are presented, freely debated on their merits, and honestly voted on by those who have legislative authority to pass law.⁷³

As a realistic matter, on many matters of critical importance today, it would be difficult for a religious legislator or, for that matter, for a

⁷² See Perry, *supra* note 64, at 219, quoting Sen. Joseph Lieberman who remarked:

It would truly be a sad thing if the religious and moral convictions upon which the American experiment was founded could now somehow be considered a danger to free society, such that those who would bring these convictions to bear upon [the] nation's public life would be denied a voice in debating and resolving issues of public policy.

See also Idleman, *supra* note 66, at 465 (lauding the values of providing “the opportunity for all citizens of all philosophical persuasions to participate in the law-making process, to have their views considered by lawmakers, and, if ultimately successful, to have their values reflected in the laws under which they must live”); *id.* at 465 (“[E]xclusion of religion from the law-making process not only generates its own form of intolerance and denies religious citizens the opportunity to meaningfully shape public policy, it also sends the message to these citizens that their beliefs . . . do not merit serious consideration.”); David Hollenbach, S.J., *Contexts of the Political Role of Religion: Civil Society and Culture*, 30 SAN DIEGO L. REV. 877, 895-96 (1993) (“For a society to try to exclude religious narratives and symbols from public life simply because they are identified with religion would be to impoverish itself intellectually and culturally. This would deprive society of one of its most important resources for a more publicly shared cultural self-understanding.”); Marci A. Hamilton, *Religion in the Public Square: Free?*, 42 WM. & MARY L. REV. 823, 864 (2001) (“Churches are the most powerful human structure to challenge the assumptive power of the state, and should not be barred from speaking out frankly at these crucial moments in American politics not only for the sake of their members, but equally for the sake of nonmembers who have the right to know who is wielding the levers of power.”); and John A. Coleman, *Public Religion and Religion in Public*, 36 WAKE FOREST L. REV. 279, 293-298 (2001) (exploring contributions religious perspectives can bring to public life); LIVING THE GOSPEL OF LIFE, *supra* note 3, at 8 (“[D]emocracy is not served by silence . . . Real pluralism depends on people of conviction struggling vigorously to advance their beliefs by every ethical and legal means at their disposal.”).

⁷³ See, e.g., Hyde, *supra* note 70, at 62-70, 63 (“[D]espite the continuing hysteria in the elite culture and the prestige press, most Americans have come to understand that . . . the systematic stripping of religion and religiously-based moral values from American public life—is profoundly undemocratic.”); Greenawalt, *supra* note 67, at 406-407 (discussing “inclusive” view of religion’s role in politics, centered on the view that “[a] full airing of all those views will enrich everyone’s understanding”); and FAITHFUL CITIZENSHIP, *supra* note 9, at 4 (“Our nation is enriched and our tradition of pluralism enhanced when religious groups contribute to the debate over the policies that guide the nation.”).

religious voter, to make an honest assessment of solutions without consulting his or her religious values for guidance.⁷⁴ For example, one who supports increased funding for impoverished children's health care may support that argument with economic evidence that funds saved in preventative care result in reduced costs on curative care. One may support that argument with medical evidence that good healthcare in a child's early years is essential for good health as an adult. One may even support that argument with an undefined romantic sentimentality in favor of young children. All of these arguments are readily welcomed and accepted in the public square and can be asserted boldly by a legislator presenting a legal initiative for such increased spending.

But, if that same legislator were to present the same initiative but justify it based on the principles of Catholic teaching that urge a special preferential option for the poor and vulnerable, he or she would risk being viewed with suspicion or accused of injecting mere personal morality into a matter of public policy.⁷⁵ This results in a system in which religious views are not observed with mere neutrality but are viewed as less legitimate than other points of view. As long as this attitude persists, it will be difficult for Catholic social teaching to be fully valued in the marketplace of ideas.

⁷⁴ See Greenawalt, *supra* note 67, at 409 ("Most people would be hard put to try to carry out a program of excluding their deepest religious convictions from their political judgments."); Idleman, *supra* note 66, at 435 ("[T]he broader one's definition of 'religious,' or the more liberal one's conception of religiousness, the more significant the notion of excluding religious values from judicial decision making becomes."); Randy Lee, *The Immutability of Faith and the Necessity of Action*, 66 *FORDHAM L. REV.* 1455, 1456 (1998) ("For the lawyer . . . who believes that religion is a relationship that penetrates her life, 'bleaching out' one's religion cannot be an option."); Stephen L. Carter, *The Religiously Devout Judge*, 64 *NOTRE DAME L. REV.* 932, 934 (1989) ("[N]ot many people believe any longer that judges are capable of putting to one side all of their preconceptions when they set down to deliberate."); and *Id.* at 940 ("Religious faith is not something that can be shrugged off like an unattractive article of clothing.").

⁷⁵ This dichotomy is explored more fully in Carter, *supra* note 74, at 937:

In a nation that prides itself on cherishing religious freedom, it is something of a puzzle that a Communist or a Republican may try to have his world view reflected in the nation's law, but a religionist cannot; that one whose basic tool for understanding the world is empiricism may seek to have her discoveries taught in the schools, but one whose basic tool is Scripture cannot; that one whose conscience moves him to doubt the validity of the social science curriculum may move to have it changed, but one whose religious convictions moves her to doubt the validity of the natural science curriculum may not.

See also id. at 942 ("Many citizens enter into public debate on the basis of assumptions that they are unwilling to have challenged. Sometimes they win, sometimes they lose, but only if they base their assumptions on a religious understanding is their point of view entirely excluded from public dialog.").

Legislators—Catholic or not—who see wisdom or truth in Catholic social teaching are faced with three equally unattractive options. They may disregard all that they learn from this teaching and reach decisions based on any and all influences except this religious one. However, it may simply be impossible to isolate that which one has come to believe through religious faith from that which one has come to believe through other influences.⁷⁶ Thus, this is an untenable option. In the alternative, these legislators may take what they have learned from Catholic social thought and reach their decision influenced by it, but refrain from articulating religious belief as a rationale. This, too, is undesirable because it is, quite simply, dishonest and not the free and open discourse that should be welcomed in the public square. Finally, a legislator may honestly and openly disclose the influence of religious belief on decision-making. Unfortunately, however, the ambivalence toward religion's role will often devalue these arguments—either generally on all issues or, perhaps more unfairly, selectively as to some issues.

For Catholic social teaching to have a true and meaningful impact on American law and policy, this ambivalence must be overcome by a willingness to let ideas be put forth openly and honestly, without undue disadvantage to religious perspectives. In a pluralistic society, it is possible and, indeed, likely, that many will not find religious arguments to be persuasive.⁷⁷ That, however, is far more desirable than finding them absent from meaningful public debate—an approach that currently impoverishes the debate on fundamental moral questions.⁷⁸

2. The Broad Scope of Catholic Social Teaching

A second aspect of Catholic social teaching that is one of its greatest strengths is also, ironically, one of the things that can undermine its

⁷⁶ See, e.g., Robert P. Casey, *Reconciling Faith with American Life*, in THE PUBLIC SQUARE, *supra* note 70, at 72 (“[T]he obligation of a public official is to do what he thinks is right, to follow his own conscience, whether that conscience is formed by religious faith, experience, the natural law, common sense, or all of the above, as is often the case.”).

⁷⁷ See Perry, *supra* note 64, at 230 (“Because of the role that religiously grounded moral beliefs inevitably play in the political process, . . . it is important that such beliefs, no less than secular moral beliefs, be presented in public political argument so they can be tested there.”).

⁷⁸ For a now classic, and in-depth analysis of the hostility of the American political and legal systems to religious perspectives, see generally STEPHEN L. CARTER, *THE CULTURE OF DISBELIEF* (1993).

ability to have a broad impact on American law. Catholic social teaching, for the most part, sets out broad principles and moral values to guide the development of law, but it leaves to lay expertise the challenge of translating those broad values into specific law and political initiatives.⁷⁹ There are some issues on which the Church's social teaching sets forth specific policy and programmatic recommendations. These, however, are few and far between. This is based on the view that "it does not belong to the Church, insofar as she is a religious and hierarchical community, to offer concrete solutions in the social, economic, and political spheres for justice in the world. Her mission involves defending and promoting the dignity and fundamental rights of the human person."⁸⁰

So, for example, the Church preaches the principle of subsidiarity, consistently teaching that problems should be resolved at the lowest level capable of effectively doing so.⁸¹ Yet, Catholic social teaching does not enumerate with specificity which issues are to be resolved at which level. Instead, it is left to lay policy-makers to wisely and honestly assess the proper place to resolve difficult legal and policy questions.⁸²

⁷⁹ See John M. Garvey, *The Pope's Submarine*, 30 SAN DIEGO L. REV. 849, 858-59 (1993) ("The Church's bishops are not by training or occupation its best informed members on questions of politics, science, social science, or even theology. The laity are expected to make practical, prophetic, and scholarly contributions.").

⁸⁰ JUSTICE IN THE WORLD, *supra* note 19, at 294.

⁸¹ See, e.g., QUADRAGESIMO ANNO, *supra* note 14, ¶ 79, at 60 ("[I]t is an injustice and at the same time a grave evil and a disturbance of right order to transfer to the larger and higher collectivity functions which can be performed and provided for by lesser and subordinate bodies."); MATER ET MAGISTRA, *supra* note 12, ¶ 117, at 103 ("[T]he principle of subsidiarity . . . is to be strictly observed."); *Id.* ¶ 152, at 109 ("[T]hose in authority should favor and help private enterprise in accordance with the principle of subsidiarity, in order to allow private citizens themselves to accomplish as much as is feasible."); GAUDIUM ET SPES, *supra* note 15, ¶ 75, at 217 ("[C]itizens, both as individuals and in association should be on guard against granting government too much authority and inappropriately seeking from it excessive conveniences and advantages); OCTOGESIMA ADVENIENS, *supra* note 15, ¶ 46, at 282 (reiterating that politics should not "deprive individuals and intermediary bodies of the field of activity and responsibility which are proper to them"); and CENTESIMUS ANNUS, *supra* note 13, ¶ 48, at 476 (warning that "a community of a higher order should not interfere in the internal life of a community of a lower order, depriving the latter of its functions, but rather should support it in case of need"). For further discussion of the implications of subsidiarity, see generally Robert K. Vischer, *Subsidiarity as a Principle of Governance: Beyond Devolution*, 35 IND. L. REV. 103 (2001) (exploring modern practical implications of subsidiarity doctrine). See also Carmella, *supra* note 15, at 267-269 (discussing complex policy implications of subsidiarity doctrine).

⁸² See, e.g., *Introduction*, *supra* note 12, at 6 ("[S]ocial, political, and economic problems are the special concern of the laity. They are uniquely qualified to describe what

Likewise, in one sentence, Pope John Paul II said both that “workers should be assured the right to strike”⁸³ and that “a strike remains . . . an extreme means.”⁸⁴ Yet, lay decision-makers are charged with deciding what factors to weigh in determining if a strike is abusive or “extreme.” Similarly, Catholic social teaching sets forth broad teachings on such diverse issues as property rights, tax equity, environmental stewardship, health care, and immigration. Catholic leaders have testified before Congress in debates concerning these issues and have developed detailed statements on them. However, the Church’s social teaching is not to be seen as a “think tank” from which emerge detailed policy proposals and programs.⁸⁵ Instead, “[h]er contribution to the political order is precisely her vision of the dignity of the person revealed in all its fullness in the mystery of the Incarnate Word.”⁸⁶

Indeed, because Catholic social teaching is global in perspective and not created specifically for the United States, it cannot be overly concerned with parochial policy-making.⁸⁷ As Pope Paul VI observed in *Octogesima Adveniens*:

[I]t is difficult for us to utter a unified message and to put forward a solution which has universal validity. Such is not our ambition, nor is it our mission. It is up to the Christian communities to analyze with objectivity the situation which is proper to their own country, to shed on it the light of the Gospel’s unalterable words and to draw principles of reflection, norms of judgment and directives for action from the social teaching of the Church. . . . It is up to these Christian communities, with the help of the Holy Spirit, in communion with the bishops who hold responsibility and

in fact is going on and to evaluate what should be done.”); and GAUDIUM ET SPES, *supra* note 15, ¶ 43, at 192 (“Secular duties and activities belong properly although not exclusively to laymen. . . . [A]cting as citizens of the world . . . they will observe the laws proper to each discipline, and labor to equip themselves with a genuine expertise in their fields.”).

⁸³ LABOREM EXERCENS, *supra* note 45, ¶ 20, at 381.

⁸⁴ *Id.* He went on to warn that the right to strike “must not be abused. It must not be abused especially for ‘political’ purposes.” *Id.*

⁸⁵ See, e.g., Araujo, *supra* note 10, at 765 (“While the history of the Catholic Church’s social teachings consistently promotes the social responsibility essential to community life, it does not define in a systematic fashion how an individual American’s responsibility toward others is to be implemented.”) and Dulles, *supra* note 11, at 286 (“Church teaching does not give detailed answers . . . but it lays down some important principles that should not be disregarded.”).

⁸⁶ CENTESIMUS ANNUS, *supra* note 13, ¶ 47, at 475.

⁸⁷ In *Octogesima Adveniens*, Pope Paul VI commented on both the global and local nature of the issues facing the Church’s attention, noting that while there are “problems . . . particular to each part of the world . . . but at the same time they are common to all mankind.” OCTOGESIMA ADVENIENS, *supra* note 15, ¶ 2, at 265.

in dialogue with other Christian brethren and all men of good will, to discern the options and commitments which are called for in order to bring about the social, political, and economic changes seen in many cases to be urgently needed.⁸⁸

This respectful attitude toward the vocation of politician and law-maker and the desire to defer to it should, and in many ways, does, enhance the ability of Catholic teaching to have an impact on law and legislation. By offering its expertise in moral and ethical questions as a complement to rather than as a substitute for lay wisdom in legal affairs, the Church creates the possibility for legal results reached as the product of contributions from both of these traditions.

Unfortunately, however, this also means that the Catholic social tradition is not capable of being reduced to quick sound-bites or easy summary. Instead, it is nuanced and subtle in its approach. As a result, it can be difficult to easily translate these social principles to legal reality.⁸⁹ This places on law-makers the responsibility to carefully study Catholic social teaching and understand its principles before being able to apply it easily or facily to the problems they address. Indeed, as *Gaudium et Spes* itself noted:

[E]nlightened by Christian wisdom and giving close attention to the teaching authority of the Church, let the layman take on his own distinctive role.

Often enough, the Christian view of things will itself suggest some specific solution in certain circumstances. Yet it happens rather frequently, and legitimately so, that with equal sincerity some of the faithful will disagree with others . . . [S]olutions proposed by one side or another may easily be confused with the Gospel message. Hence it is necessary for people to remember that no one is allowed in the aforementioned situations to appropriate the Church's authority for his opinion. They should always try to enlighten one another through honest discussion, preserving mutual charity and caring above all for the common good.⁹⁰

⁸⁸ *Id.* ¶ 4, at 266.

⁸⁹ See Carmella, *supra* note 14, at 271:

Though the church's social teachings quite boldly proclaim many rights and duties and offer sophisticated social critique and reconstruction, they give no blueprint to answer these questions relating to the precise specification of the state's political-legal function. The silence is intentional, to respect national differences and give flexibility for problem solving.

⁹⁰ GAUDIUM ET SPES, *supra* note 15, ¶ 43, at 193. A similar sentiment was expressed by Pope Paul VI in *Octogesima Adveniens* when he commented, "[O]ne must recognize a legitimate variety of possible options. The same Christian faith can lead to different commitments." OCTOGESIMA ADVENIENS, *supra* note 15, ¶ 50, at 284. See also CENTESIMUS ANNUS, *supra* note 13, ¶ 43, at 471 ("The church has no models to present; models that are real and truly effective can only arise within the framework of different historical situations, through the efforts of all those who responsibly confront concrete problems

However, in a fast-paced political world where decisions are often made quickly, it is more difficult to transform this more philosophical and sociological moral framework into concrete action. This can, in turn, make Catholic teaching on many issues difficult to translate into particular law and legislation—hence reducing its impact.

3. Inconsistency of Catholic Social Teaching with Modern American Political Life

The third aspect of Catholic social teaching that makes it more difficult to translate into American law is that teaching's uneasy relationship to the current landscape of American politics. This is, perhaps, its greatest challenge. As mentioned earlier, the Church's social teaching advocates independence from alliances with political parties and systems.⁹¹ This remarkable freedom can and does leave the Church at liberty to preach social teachings that are logically consistent according to its moral precepts. As summarized recently by the bishops of the United States, "[W]e believe every candidate, policy and political platform should be measured by how they touch the human person; whether they enhance or diminish human life, dignity, and human rights; and how they advance the common good."⁹² Yet, this framework leads the Catholic Church to advocate positions largely inconsistent according to the current array of American political alignments.⁹³ For example, even

in all their social, economic, political and cultural aspects, as these interact with one another.") and *Id.* ¶ 47, at 475 ("The church respects the legitimate authority of the democratic order and is not entitled to express preferences for this or that institutional or constitutional solution.").

⁹¹ See discussion in notes 35-38, *supra*. See also Ireland, *supra* note 43, at 36 ("There is in America no Catholic political party, nor should there be. As a matter of course, were a special issue raised in which rights of Catholics were menaced, the conscience of Catholics were compelled to defend those rights on the ground of American fair play itself. That—and nothing more.").

⁹² FAITHFUL CITIZENSHIP, *supra* note 9, at 4.

⁹³ See BYRNES, *supra* note 41, at 114 ("Catholic bishops had staked out a new political position for themselves by developing an agenda that sharply diverged from the platforms of both political parties."); Hollenbach, *supra* note 72, at 882 ("[T]he Roman Catholic tradition has been suspicious both of social theories extolling the primacy of the state and of theories granting primacy to the market. At the same time, this tradition has rejected individualistic understandings of freedom. In fact, its rejection of an individualistic understanding of the self is the source of its suspicion of both liberal contract theories of politics and *laissez faire* models of economic life."); Paul Perl & Jamie S. McClintock, *The Catholic "Consistent Life Ethic" and Attitudes Toward Capital Punishment and Welfare Reform*, 62 SOCIOLOGY OF RELIGION, Sept. 22, 2001, at 275 ("Because it combines a 'conservative' position on abortion with 'liberal' positions on many other policy areas, the [Catholic] ethic lies almost completely outside the realm

the most cursory look at the two major political parties reveals, of course, that neither party is both opposed to abortion and opposed to the death penalty. Neither party fully embraces with equal vigor both the Catholic teaching on the traditional family⁹⁴ and on the preferential option for the poor.⁹⁵

In many ways, this reality is the greatest strength of Catholic social teaching. By remaining un beholden to either party, the Church is able to challenge both to provide a fuller manifestation of a just society.⁹⁶ As the Catholic Bishops Conference observed, “[w]e must challenge all parties and every candidate to defend human life and dignity, to pursue greater justice and peace, to uphold family life, and to advance the common good.”⁹⁷ As an outsider to traditional partisan politics, the Church can remain a critical commentator, and need not worry about altering its message to win votes or political victory.⁹⁸ Instead, it retains the freedom to speak its views on a wide range of issues and to let

of mainstream political culture and is rejected by most elites of both the right and the left.”) and *Id.* (“[A]side from opposition to euthanasia, the positions with which the bishops have attempted to link abortion opposition are understood as ‘liberal’ in the context of broader American political culture.”).

⁹⁴ See CENTESIMUS ANNUS, *supra* note 13, ¶ 39, at 468 (declaring that, in defining a family, “we mean the family founded on marriage, in which the mutual gift of self by husband and wife creates an environment in which children can be born and develop their potentialities, become aware of their dignity and prepare to face their unique and individual destiny”).

⁹⁵ The preferential option for the poor has been announced in numerous social encyclicals. See, e.g., RERUM NOVARUM, *supra* note 14, ¶ 29, at 28 (“[W]hen there is a question of protecting the rights of individuals, the poor and helpless have a claim to special consideration.”) and SOLLICITUDO REI SOCIALIS, *supra* note 14, ¶ 39, at 422 (“By virtue of her own evangelical duty, the Church feels called to take her stand beside the poor.”).

⁹⁶ Indeed, in the long term, this may make Catholic voters more influential since “the Catholic vote is critical to both parties.” See Powell, *supra* note 42, at 8. In the short term, however, “the cultural and ethnic unity of American Catholics, deliverable as solid blocks of voters, the ultimate political argument in a democracy has massively declined.” J. Bottum, *The Moral Coherence of the Catholic Politician*, CRISIS, July/August 2003, at 25.

⁹⁷ FAITHFUL CITIZENSHIP, *supra* note 9, at 3.

⁹⁸ See Wood, *supra* note 64, at 224 (arguing that keeping religion and politics separate “makes possible a genuinely prophetic role of religion by freeing it of institutional alliances with the state that would modify or mute its prophetic voice”) and *id.* at 225 (“The Church that is relatively free of institutional alliances and entanglements with the state is one that is most favored to be able to carry out the prophetic role of religion in society through its free and authentic witness.”).

the consequences fall where they may.⁹⁹ This, of course, is very different from the process followed by any political party engaging in platform drafting. There, principles and practicality can clash and result in a platform that reflects a mix of both genuine principles and compromises struck in the interest of electability.

This counter-cultural aspect of Catholic teaching—a framework internally consistent but politically inconsistent—is something which should, and often does, enhance its credibility. However, this can also, at least in the short term, reduce that teaching’s impact on American law.¹⁰⁰

Because the teachings have something in them to favor—and disfavor—views from nearly every political persuasion, Catholic social teaching has often been invoked selectively by those of every perspective to support their views.¹⁰¹ Politics are replete with examples of those who will tout Catholic social teaching on disarmament, but distance themselves from Catholic teaching on euthanasia,¹⁰² or those who will recite with enthusiasm the Church’s respect for private property¹⁰³ while downplaying its admonitions that private property bears a social mortgage that mandates respect for the universal destination of

⁹⁹ See, e.g., BYRNES, *supra* note 41, at 4 (“The Second Vatican Council envisioned the church as challenger and critic of modern culture.”); GAUDIUM ET SPES, *supra* note 15, ¶ 76, at 219 (asserting that “it is always and everywhere legitimate for her to preach the faith with true freedom, to teach her social doctrine, and to discharge her duty among men without hindrance. She also has the right to pass moral judgments, even on matters touching the political order.”); and FAITHFUL CITIZENSHIP, *supra* note 9, at 6 (“The Catholic approach to faithful citizenship begins with moral principles, not party platforms.”).

¹⁰⁰ See Perl & McClintock, *supra* note 93, at 275:

American Catholic Bishops have advocated a combination of issue positions that is unique within American political culture. The “consistent life ethic” combines opposition to abortion with liberal stances on other issues conceptualized as life-affirming. Based on evidence that very few people hold this combination of attitudes, previous researchers have concluded that the Bishops’ advocacy has had little or no success.

¹⁰¹ See, e.g., Casey, *supra* note 76, at 72 (“[W]e see in the national liberal and conservative politics of our country a temptation to ignore the serious demands of conscience. . . . It seems to me that both ends of the political spectrum tend to fall prey to different sets of temptations.”).

¹⁰² The Church’s teaching on euthanasia is developed most fully in EVANGELIUM VITAE, *supra* note 23, ¶¶ 63-65, at 104-08. There, Pope John Paul II declared, “I confirm that euthanasia is a grave violation of the law of God, since it is the deliberate and morally unacceptable killing of a human person.” *Id.* ¶ 65, at 107-08.

¹⁰³ See RERUM NOVARUM, *supra* note 14, ¶ 7, at 16 (“[T]o say that God has given the earth to the use and enjoyment of the universal human race is not to deny that there can be private property.”); *Id.* ¶ 7, at 17 (“[P]rivate ownership is according to nature’s

goods.¹⁰⁴ This uneasy relationship can interfere with the *full* integration of the *total* message of Catholic teaching into American political discourse. Consequently, a body of doctrine that was developed to challenge all to a more just view of life can also lull into complacency those who accept part of it but resist the challenge and the discomfort inherent in realizing that neither party neatly captures the full range of Catholic social teaching consistently or completely.¹⁰⁵

law.”); *Id.* ¶ 8, at 17 (calling private ownership “preeminently in conformity with human nature, and . . . conducive in the most unmistakable manner to the peace and tranquility of human life”); *id.* ¶ 35, at 32 (“[P]rivate ownership must be held sacred and inviolate.”); QUADRAGESIMO ANNO, *supra* note 14, ¶ 45, at 52 (“[T]he right to own private property has been given to man . . . by the Creator himself, not only in order that individuals may be able to provide for their own needs and those of their families, but also that by means of it, the goods which the Creator has destined for the human race may truly serve this purpose.”); MATER ET MAGISTRA, *supra* note 12, at 86 (“Private property . . . is a natural right possessed by all, which the State may by no means suppress.”); *Id.* ¶ 109, at 101 (“[T]he right of private property . . . is permanently valid.”); *Id.* ¶ 121, at 104 (“[T]he right of private ownership is clearly evident in the Gospels.”); GAUDIUM ET SPES, *supra* note 15, ¶ 71, at 214 (“Private ownership or some other kind of dominion over material goods provides everyone with a wholly necessary area of independence and should be regarded as an extension of human freedom.”); LABOREM EXERCENS, *supra* note 45, ¶ 14, at 371 (reasserting “the right to private property, even when it is a question of the means of production.”); and CENTESIMUS ANNUS, *supra* note 13, ¶ 30, at 461 (noting that the right to private property “is fundamental for the autonomy and development of the person”).

¹⁰⁴ See, e.g., RERUM NOVARUM, *supra* note 14, ¶ 7, at 17 (“[T]he earth, though divided among private owners, ceases not thereby to minister to the needs of all.”); MATER ET MAGISTRA, *supra* note 12, ¶ 19, at 87 (“[T]here is from nature a social aspect to private property.”); *Id.* ¶ 119, at 103 (“[I]n the right of private property there is rooted a social responsibility.”); GAUDIUM ET SPES, *supra* note 15, ¶ 71, at 214 (“By its very nature, private property has a communal purpose of earthly goods. If this social quality is overlooked, property often becomes an occasion of greed and of serious disturbances.”); POPULORUM PROGRESSIO, *supra* note 35, ¶ 23, at 245 (“[P]rivate property does not constitute for itself an absolute and unconditional right. No one is justified in keeping for his exclusive use what he does not need when others lack necessities.”); LABOREM EXERCENS, *supra* note 45, ¶ 14, at 371 (“The right to private property is subordinated to the right to common use, to the fact that goods are meant for everyone.”); *Id.* ¶ 14, at 372 (“[T]he position of ‘rigid’ capitalism continues to remain unacceptable, namely the position that defends the exclusive right to private ownership of the means of production as an untouchable ‘dogma’ of economic life.”); SOLICITUDO REI SOCIALIS, *supra* note 14, ¶ 42, at 426 (“[T]he goods of this world are originally meant for all. The right to private property is valid and necessary, but it does not nullify the value of this principle.”); *Id.* (describing the “social mortgage” which accompanies private property); CENTESIMUS ANNUS, *supra* note 13, ¶ 30, at 461 (“[T]he possession of material goods is not an absolute right.”); and *Id.* (declaring that private ownership of goods “is subordinated to their original common destination as created goods, as well as to the will of Jesus Christ. . .”).

¹⁰⁵ Indeed, the Catholic Bishops themselves noted this when they observed, “Sometimes it seems few candidates and no party fully reflect our values. But now is not a

Two temptations can thus arise to undermine the influence of Catholic social teaching on American political discourse—the discourse from which flows so much of American law. For some, the temptation may be to selectively reduce Catholic social teaching to merely those words or phrases that support one’s legal perspective while ignoring those that do not.¹⁰⁶ This denies the depth and breath of that teaching. For others, the temptation may be to ignore Catholic social teaching entirely to avoid being accused of the inconsistency or hypocrisy that can come with selective use of the Church’s teaching. This excludes the Catholic perspective from public debate.

In light of this political reality and the way in which legal issues have become arrayed politically, the relationship between the Church’s teachings on the dignity of human life and the rest of its social teaching warrants particular attention. This is a source of great political tension and, in reality, it is likely to be impossible for the full impact of Catholic social teaching to be appreciated in its full range unless the raging questions on human life and dignity are resolved in American law in a way consistent with Catholic social teaching.

There is a richness and a fullness in Catholic social teaching that spans a broad range of issues. However, the Church has consistently placed the sanctity of human life at the forefront of her teachings. A declaration to this effect may be found in nearly all documents articulating the Church’s social vision.¹⁰⁷ It is the innate dignity of the person

time to retreat.” FAITHFUL CITIZENSHIP, *supra* note 9, at 3; *Id.* at 4 (“Our moral framework does not easily fit the categories of right or left, Democrat or Republican. Our responsibility is to measure every party and platform by how its agenda touches human life and dignity.”).

¹⁰⁶ Bottum, *supra* note 96, at 20, 22. (“[P]oliticians can find a Catholic theologian to provide grounds for allowing almost any political position.”).

¹⁰⁷ See, e.g., MATER ET MAGISTRA, *supra* note 12, ¶ 194, at 116 (“[A]ll must regard the life of man as sacred, since, from its inception, it requires the action of God the Creator.”); GAUDIUM ET SPES, *supra* note 15, ¶ 51, at 199-200 (“God, the Lord of life, has conferred on men the surpassing ministry of safeguarding life—a ministry which must be fulfilled in a manner which is worthy of man. Therefore, from the moment of its conception, life must be guarded with the greatest care, while abortion and infanticide are unspeakable crimes.”); JUSTICE IN THE WORLD, *supra* note 19, at 289 (calling life “man’s highest good”); SHARING CATHOLIC SOCIAL TEACHING, *supra* note 10, at 1-2 (“Catholic social teaching is based on and inseparable from our understanding of human life and dignity. . . . Every person, from the moment of conception to natural death, has inherent dignity and a right to life consistent with that dignity.”); *Id.* at 4 (“Our belief in the sanctity of human life is the foundation of all the principles of our social teaching.”); Dulles, *supra* note 10, at 282-83 (“The first principle, the dignity of human

which is the foundation of the rest of the Church's social teaching, and "a consistent ethic of life should be the moral framework from which to address all issues in the political arena."¹⁰⁸ Hence, while arguing on the one hand that all social issues constitute a seamless web,¹⁰⁹ the Church also asserts that, without respecting the right to life, all the other social goods of the world rest on a shaky foundation.¹¹⁰

persons, rules out all laws that violate personal rights, beginning with the most fundamental, the right to life. . . . According to Catholic social teaching, the God-given right to life extends to the unborn. Hence, there can be no such thing as a right to abort or a right not to be born."); *EVANGELIUM VITAE*, *supra* note 23, ¶ 71, at 117 ("[C]ivil law must ensure that all members of society enjoy respect for certain fundamental rights which innately belong to the person. First and fundamental among these is the inviolable right to life of every innocent human being."); *Id.* (stating that civil law "can never presume to legitimize as a right of individuals . . . an offence against other persons caused by the disregard of so fundamental a right as the right to life"); *FAITHFUL CITIZENSHIP*, *supra* note 9, at 5 ("Because of our faith in Jesus Christ, we start with the dignity of the human person."); and *Id.* at 6 ("The conviction that human life is sacred and that each person has inherent dignity that must be respected in society, lies at the heart of Catholic social teaching."); *LIVING THE GOSPEL OF LIFE*, *supra* note 3, at 7 ("[F]or citizens and elected officials alike, the basic principle is simple: we must begin with a commitment never to intentionally kill, or collude the killing, of any innocent human life . . . In other words, the choice of certain ways of action is always and radically incompatible with the love of God and the dignity of the human persons created in His image.").

¹⁰⁸ *FAITHFUL CITIZENSHIP*, *supra* note 9, at 6.

¹⁰⁹ See Perl & McClintoch, *supra* note 93, *passim*, for further discussion on the "seamless web" theory and the role of Joseph Cardinal Bernadin in articulating it.

¹¹⁰ See *MATER ET MAGISTRA*, *supra* note 12, ¶ 215, at 119 ("[W]hatever the progress in technology and economic life, there can be neither justice nor peace in the world so long as men fail to realize how great is their dignity, for they have been created by God."); *EVANGELIUM VITAE*, *supra* note 23, at 5 (declaring "the sacred value of human life from its very beginning until its end" and that "[u]pon the recognition of this right, every community and the political community itself are founded"); *id.* ¶ 101, at 159-60:

It is impossible to further the common good without acknowledging and defending the right to life, upon which all the other inalienable rights of individuals are founded and from which they develop. A society lacks solid foundation when, on the one hand, it asserts values such as the human dignity of the person, justice and peace, but then, on the other hand, radically acts to the contrary by allowing or tolerating a variety of ways in which human life is devalued and violated. . . . Only respect for life can be the foundation and guarantee of the most precious and essential goods of society, such as democracy and peace.

See also *FAITHFUL CITIZENSHIP*, *supra* note 9, at 6 ("Calls to advance human rights are illusions if the right to life itself is subject to attack."); *LIVING THE GOSPEL OF LIFE*, *supra* note 3, at 3 ("[A]bortion and euthanasia have become preeminent threats to dignity because they directly attack life itself, the most fundamental human good and the condition for all others."); *Id.* at 8, arguing that while Catholic decision makers must advocate for human dignity across a wide range of issues:

The political array in the United States often pits the right to life against other aspects of Catholic social teaching, and can place those who are influenced by Catholic social teaching in a quandary.¹¹¹ Catholic social teaching is aimed toward the fullness of human dignity in all its aspects. If life itself, the minimal level of dignity is not respected, then reaching this fullness of dignity is, by definition, unattainable. Yet, once this minimum is achieved, it betrays Catholic teaching to stop there and fail to move beyond the minimum. Hence, the challenge for Catholic social teaching—and the challenge for its influence on American law—is profound.

In order to move American law toward its vision of the fullness of human dignity, it must steadfastly and vocally advocate those legal and social initiatives that defend life. This is a difficult mandate in a society hostile to its perspective. This challenge may often involve a harsh conflict with those who, in good faith and with enthusiasm, steadfastly support other aspects of Catholic social teaching.¹¹² At the same time, while it pushes for the threshold, foundational protection of life, the

Being “right” in such [other] matters can never excuse a wrong choice regarding direct attacks on innocent human life. Indeed, the failure to protect and defend life in its most vulnerable stages renders suspect any claim to the “rightness” of positions in other matters affecting the poorest and least powerful of the human community. If we understand the human person as . . . the living house of God . . . then those latter issues fall logically into place as the crossbeams and walls of that house. All direct attacks on innocent human life, such as abortion and euthanasia, strike at the house’s foundation. These directly and immediately violate the human person’s most fundamental right—the right to life. Neglect of these issues is the equivalent of building our house on sand.

¹¹¹ This also raises a significant pastoral challenge for Catholics religious leaders. See James Hitchcock, *Catholics in the Public Square*, in *WHEN CONSCIENCE AND POLITICS MEET*, *supra* note 39:

The Church has of course remained firmly opposed to abortion, and has invested a great deal of moral capital and energy in the struggle against it. But the theory conventionally called the “seamless garment” . . . has effectively undercut that commitment at numerous points. . . . [I]t has left Catholics with no meaningful guidance in determining their votes, since they usually face a choice between candidates both of whom seem to address some of the “life issues,” as the Church bureaucracy defines them, but not others.

More importantly, the “seamless garment” formula, and the entire thrust of Catholic social teaching as defined at the national level, makes the abortion issue seem anomalous. . . . In countless ways American Catholics have been encouraged by their national leaders to view the world essentially through the glasses of the left wing of the Democratic Party, a view in which abortion inevitably seems an oddity at best, and ultimately a terrible misjudgment.

¹¹² See *LIVING THE GOSPEL OF LIFE*, *supra* note 3, at 7 (“There is such a wide spectrum of issues involving the protection of human life and the promotion of human dignity. Good people frequently disagree on which problems to address, which policies to adopt . . .”).

Church must also challenge those who support its teaching on this issue to acknowledge that the full dignity of humanity does not allow the complacency that can come with discounting significant aspects of the rest of Catholic social teaching.¹¹³

IV. Conclusion

The Catholic church is the single largest religious denomination in the United States.¹¹⁴ Its social teaching has been centuries in the making, with roots that are philosophical and theological as well as inspirational, historical, and sociological.¹¹⁵ Yet, there have been some obstacles that have limited its ability to influence American law. As Catholic social teaching becomes more widely studied and discussed, its potential to influence American law can only increase. Many years ago, the earliest of the social encyclicals were addresses only to Catholic bishops. They were then addressed only to Catholics. Now, however, Catholic social encyclicals are addressed to all of “good will.”¹¹⁶ As the

¹¹³ See *id.* at 8 (“Opposition to abortion and euthanasia does not excuse indifference to those who suffer from poverty, violence, and injustice. Any politics of human life must work to resist the violence of war and the scandal of capital punishment. Any politics of human dignity must seriously address issues of racism, poverty, hunger, employment, education, housing, and health care. Therefore, Catholics should eagerly involve themselves as advocates in all these areas.”).

¹¹⁴ See Thomas Melady, *Introduction*, in *THE PUBLIC SQUARE*, *supra* note 70 (noting that “The Catholic community currently comprises around twenty-five percent of the American population.”) and Garvey, *supra* note 79, at 849 (“Catholics are the largest denomination in the United States. . . . The Catholic church also asserts more authority over its members . . . than most American sects do.”). For an international perspective, see Weigel, *supra* note 2, at 37 (“[T]he Catholic Church is the largest religious community on the planet, numbering some 1.1 billion adherents.”).

¹¹⁵ See *God in the Closet*, *supra* note 67, at 44. (“American Catholics are in a privileged position to make enormously useful contributions to the development of . . . public philosophy. We are the inheritors of a two thousand year old tradition of careful thought about the relationship between personal conscience and public policy.”).

¹¹⁶ *Rerum Novarum*, for example was addressed to “Our Venerable Brethren, All Patriarchs, Primates, Archbishops and Bishops of the Catholic World, In Grace and Communion with the Apostolic see.” See *RERUM NOVARUM*, *supra* note 14, at 14. *Quadragesimo Anno* was addressed to this same group plus “All the Faithful of the Catholic World.” *QUADRAGESIMO ANNO*, *supra* note 14, at 42. *Mater et Magistra* was addressed to “Our Venerable Brothers, the Patriarchs, Primates, Archbishops, Bishops, and Other Local Ordinaries in Peace and Communion with the Holy See, and to All the Clergy and Faithful of the Catholic World.” *MATER ET MAGISTRA*, *supra* note 12, at 84. *Populorum Progressio*, however, was a landmark in that it was addressed “To the Bishops, Priests, Religious, the Faithful, and to All Men of Good Will.”, *POPULORUM PROGRESSIO*, *supra* note 35, at 240 (emphasis added). In *Centesimus Annus*, the audience included “All Men

audience for these encyclicals has broadened, the Church has expressed optimism that its social message can have a broader, more universal impact.¹¹⁷ This optimism is justified when one reflects on the ways in which the Church's participation in American legal debate has grown over the past century. However, as we reflect on the future, it is important to address those challenges that face the United States as it tries to make its law more fully reflect the hopes and aspirations of Catholic social teaching.

In anticipation of the dawn of this new century, Pope John Paul II wrote, "we can already glimpse the third millennium of the Christian era, so filled with uncertainties but also with promises—uncertainties and promises which appeal to our imagination and creativity, and which reawaken our responsibility . . . to show the way."¹¹⁸ The "responsibility . . . to show the way" is a weighty one for those who strive to advance the ideals of Catholic social teaching and implement them in American law. However, Catholic social teaching also expresses great confidence in human "imagination and creativity" and the hope that, when directed toward law, there is a role for that teaching in the building of a more just world.

and Women of Good Will," *CENTESIMUS ANNUS*, *supra* note 13, at 439 (emphasis added), while *Evangelium Vitae*, more recently, was addressed most simply to "The Bishops, Priests, and Deacons, Men and Women Religious, Lay Faithful, and *All People* of Good Will." *EVANGELIUM VITAE*, *supra* note 23 (emphasis added).

¹¹⁷ See Araujo, *supra* note 10, at 778 ("The social teachings of the Church are not a parochial command; they are a universal inspiration to do more of the better for the individual and for society in the world."); Dulles, *supra* note 10, at 279 ("Unlike the Church's strictly doctrinal teaching, which is addressed specifically to believers, Catholic social teaching is directed to all persons of good will, including those of any or no religion. It presupposes only that its addressees are interested in building a just and peaceful society on earth."); and Weigel, *supra* note 2, at 36 (calling development of Catholic social teaching to be "of interest beyond the formal boundaries of the Catholic Church and engage the concerns of Protestants, Jews, Muslims, and all men and women of goodwill who are concerned about the future of democracy").

¹¹⁸ *CENTESIMUS ANNUS*, *supra* note 13, ¶ 3, at 440.