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## ADDRESS

### ON DOING JUSTICE & WALKING HUMBLY WITH GOD: CATHOLIC SOCIAL THOUGHT ON LAW AS A TOOL FOR BUILDING JUSTICE

*Lucia Ann Silecchia\**

It is my pleasure to welcome you to the eighth annual Mirror of Justice Lecture. I am honored to speak to you and appreciate your sharing this occasion with me. A couple of thoughts before I begin my lecture . . . or, to paraphrase a speaker I heard this summer, let me say a few things before I start to talk.<sup>1</sup>

Last April, when Jim Sullivan, the Guild of Catholic Lawyers' past president, invited me to prepare this lecture, several thoughts went through my mind.

The first was deep joy. Not just at having the opportunity to give this lecture, although this is an honor for which I am truly grateful. But, joy to be working in a community that, in our many different ways, recognizes the importance of considering ethical and religious issues as part of legal thought. All too often, lawyers may be tempted to ignore such considerations as irrelevant or fear them as unwelcome complications in the relentless pursuit of the rational. But, I have always believed that the practice of law requires not merely a trained tongue and a sharp mind but also a thoughtful heart and an inquiring soul. So it was with great joy

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1. Paraphrased from Charles E. Daye, *Discovering Academic Culture*, Speech at the AALS Workshop for New Law Teachers (July 25, 1996).

that I welcomed the opportunity to explore such complex issues in this legal community.<sup>2</sup>

In addition to joy, however, the other feeling I had was one best described as anticipatory stage fright. When one has the opportunity to deliver a lecture on religion and law to an audience such as this one, the range of topics from which to choose can be overwhelming. So, I spent much time trying to decide what to make the subject of this talk. Then I realized that the best speeches are not always those that begin with a brilliant conclusion—although it is always nice if they end there, and end there fairly quickly after they begin! Instead, the best speeches I have ever heard are those that begin with an interesting question. So, in this lecture I would like to explore with you an interesting question without any promise of a brilliant answer.

That question, stated briefly, is: what is the view developed in modern Catholic social thought about the role of law as a tool to achieve social justice? Or, stated differently, what is the promise and peril we face by looking to our legal system to achieve justice as justice is defined in Catholic social thought? In my discussion, I will not be approaching this issue as either a philosopher or a theologian, for I have been trained to be neither of those. Rather, my thoughts are those of a Catholic and a lawyer, because I have been challenged to be both of these. I hope that this will be the beginning of a fruitful discussion of this topic and an invitation to those of all faiths to explore the connection between the value of justice that we share, and the tool of the law that we are privileged to serve.

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I have entitled my remarks, “On Doing Justice and Walking Humbly with God.” This is, of course, an allusion to the familiar words of the prophet Micah—“do justice, . . . love kindness, and . . . walk humbly with your God.”<sup>3</sup> I find these words to be an appropriate title because they are words familiar to all of us who have ever spent any time on our law school lawn and observed them carved into this building. More importantly, though, I find these words instructive because they are deeply etched into my thoughts about the law’s role in achieving justice. For, in these lines—“do justice . . . and walk humbly with your God”—my very

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2. On a personal note, I welcomed the Guild’s invitation to study the contribution of my own Catholic faith to social thought. Although in some way these contributions have long affected the way in which I view the law, this has been the first opportunity I had to explore them in any formal way. And, I have appreciated that opportunity a great deal.

3. *Micah* 6:8 (The New Oxford Annotated Bible).

private obligation to walk humbly with my God marries the very public obligation of my chosen profession to seek justice.

This link between religious tradition and the obligation to seek justice is not merely a personal reflection of my own. Rather, this connection is the cornerstone of Catholic social thought.<sup>4</sup> Long ago, the scriptures

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4. However, this link may not always have been as self-evident as it may now appear. A threshold question to be answered before creating a body of social teaching is: what is the interest of the Catholic Church—or any church—in the legal and temporal affairs of this world at all? Traditionally, and even in the present era, the Church has had to respond to the criticism that religion should concern itself with the affairs of the next world and leave the affairs of this one to civil authority. Yet, the mission of the Church has necessitated involvement in the affairs of this world. The social encyclicals, from their earliest days, have justified this connection and elaborated on its necessity. See Pope Leo XIII, *Rerum Novarum* (May 15, 1891) [hereinafter *Rerum Novarum*], reprinted in PROCLAIMING JUSTICE & PEACE: PAPAL DOCUMENTS FROM *RERUM NOVARUM* TO *CENTESIMUS ANNUS* 15, 27 (Michael Walsh & Brian Davies eds., 1991) [hereinafter PAPAL DOCUMENTS] (“It must not be thought that the Church’s great concern with the care of souls leads her to neglect the affairs of this earthly and mortal life.”); Pope John XXIII, *Mater et Magistra* (May 15, 1961) [hereinafter *Mater et Magistra*], reprinted in PAPAL DOCUMENTS, *supra*, 81, 84 (“[A]lthough the Church’s first care must be for souls, how she can sanctify them and make them share in the gifts of heaven, she concerns herself too with the exigencies of man’s daily life, with his livelihood and education, and his general, temporal welfare and prosperity.”); *id.* (“When [Christ] said, ‘I am the way, and the truth, and the life,’ ‘I am the light of the world,’ it was doubtless man’s eternal salvation that was uppermost in his mind, but he showed his concern for the material welfare of his people when, seeing the hungry crowd of his followers, he was moved to exclaim: ‘I have compassion on the multitude.’” (footnotes omitted)); *id.* at 119 (“The Church has the right and obligation not merely to guard ethical and religious principles, but also to declare its authoritative judgment in the matter of putting these principles into practice.”); Second Vatican Council, *Gaudium et Spes* (Dec. 6, 1965) [hereinafter *Gaudium et Spes*], reprinted in PAPAL DOCUMENTS, *supra*, 157, 195 (“Christians, on pilgrimage toward the heavenly city, should seek and think of those things which are above. This duty in no way decreases, rather it increases, the importance of their obligation to work with all men in the building of a more human world.”); *id.* at 209 (“[A]t all times and in all places, the Church should have true freedom to preach the faith, to teach her social doctrine, to exercise her role freely among men, and also to pass moral judgement in those matters which concern public order when the fundamental rights of a person or the salvation of souls requires it.”); Pope Paul VI, *Evangelii Nuntiandi* (Dec. 8, 1975) [hereinafter *Evangelii Nuntiandi*], reprinted in PAPAL DOCUMENTS, *supra*, 284, 296 (“[E]vangelization would not be complete if it did not take account of the unceasing interplay of the gospel and of man’s concrete life, both personal and social.”); *id.* at 297 (“[W]hen preaching liberation and associating herself with those who are working and suffering for it, the Church is certainly not willing to restrict her mission only to the religious field and dissociate herself from man’s temporal problems. Nevertheless she reaffirms the primacy of her spiritual vocation and refuses to replace the proclamation of the kingdom by the proclamation of forms of human liberation . . . .”); Pope John Paul II, *Redemptor Hominis* (Mar. 4, 1979), reprinted in PAPAL DOCUMENTS, *supra*, 323, 335 (“[T]he Church considers an essential, unbreakably united element of her mission this solicitude for man, for his humanity, for the future of men on earth and therefore also for the course set for the whole of development and progress.”); Pope John Paul II, *Centesimus Annus* (May 1, 1991) [hereinafter *Centesimus Annus*], reprinted in PAPAL DOCUMENTS, *supra*, 432, 475

admonished that "faith by itself, if it has no works, is dead."<sup>5</sup> Catholic social thought has developed as a way to manifest the life of faith to a world that, "with its lights and shadows,"<sup>6</sup> is desperately in need of good works.

A core tenet of Catholic social thought is that striving for justice in this world is essential. Indeed, for lawyers seeking authority, Canon 222 of the *Code of Canon Law*, describing the obligations of the laity, states that they "are . . . obliged to promote social justice."<sup>7</sup> However, while Catholic social thought is quite clear in articulating socially just *ends*, it is less directive on the specific *means* that should be taken toward those ends. Instead, human reason, creativity, and informed conscience are entrusted with selecting the tools with which justice should be built. One such tool is law. While not the only tool nor, perhaps, even the most im-

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("[T]he social message of the Gospel must not be considered a theory, but above all else a basis and a motivation for action."); *id.* at 474 (observing that the Church "has always sought to be from the beginning of her existence, walking together with man through history"); *see also* Pope Paul VI, *Octagesimo Adveniens* (May 14, 1971) [hereinafter *Octagesimo Adveniens*], reprinted in PAPAL DOCUMENTS, *supra*, 245, 247.

The Church, in fact, travels forward with humanity and shares its lot in the setting of history. At the same time that she announces to men the good news of God's love and of salvation in Christ, she clarifies their activity in the light of the gospel and in this way helps them to correspond to God's plan of love and to realize the fullness of their aspirations.

*Id.*

5. POPE JOHN PAUL II, THE GOSPEL OF LIFE [EVANGELIUM VITAE] 154 (1995) [hereinafter EVANGELIUM VITAE] (quoting *James* 2:14-17).

6. *Id.* at 50.

7. 1983 CODE c.222, § 2; *see also id.* c.225, § 2 ("Each lay person in accord with his or her condition is bound by a special duty to imbue and perfect the order of temporal affairs with the spirit of the gospel; they thus give witness to Christ in a special way in carrying out those affairs and in exercising secular duties."). *Gaudium et Spes* taught that this obligation requires meeting the responsibilities of being "Citizens of Two Cities," the Temporal and the Eternal. *Gaudium et Spes*, *supra* note 4, at 184; *see also* Pope John XXIII, *Pacem In Terris* (Apr. 11, 1963) [hereinafter *Pacem in Terris*], reprinted in PAPAL DOCUMENTS, *supra* note 4, at 125, 152 ("[E]ach one of us is required to make his own contribution to the universal common good. Daily is born in on us the need to make the reality of social life conform better to the requirements of justice."); *Gaudium et Spes*, *supra* note 4, at 184-85.

They are mistaken who, knowing that we have here no abiding city but seek one which is to come, think that they may therefore shirk their earthly responsibilities. For they are forgetting that by the faith itself they are more obliged than ever to measure up to these duties, each according to his proper vocation. Nor, on the contrary, are they any less wide of the mark who think that religion consists in acts of worship alone and in the discharge of certain moral obligations, and who imagine they can plunge themselves into earthy affairs in such a way as to imply that these are altogether divorced from the religious life. This split between the faith which many profess and their daily lives deserves to be counted among the more serious errors of our age.

*Id.*

portant one, I have no doubt that law has a significant role to play in achieving justice. Defining the perils and promise of that role is what I ask you to join me in doing.

Before exploring what Catholic social thought teaches on law's role in attaining justice, there is a threshold question to answer. That question is: what is justice? As any architect will tell you, one must have a blueprint for what is being built before it makes sense to select the tools for building that structure. And so, before asking what the law can do to build justice, it is essential to explore what justice is, and how we will know it when we see it.

Throughout history, the task of defining justice has been undertaken by most human enterprises—be they governments, legal systems, political movements, philosophies, or religious traditions. The Catholic Church has been an active participant in this quest to articulate a vision of justice.<sup>8</sup> Over the past century, a series of documents<sup>9</sup> on Catholic social thought has been written to explicate what has been generically referred to as “the social question.”<sup>10</sup> In doing so, of course, these documents have grappled with defining justice. Naturally, the question of

8. For fuller background on the development of modern Catholic social thought, see AMBROSE M. CROFTS, *CATHOLIC SOCIAL ACTION: PRINCIPLES, PURPOSE & PRACTICE* (1936); JOHN FRANCIS CRONIN, *CATHOLIC SOCIAL ACTION* (1948); GERALD DARRING, *A CATECHISM OF CATHOLIC SOCIAL TEACHING* (1987); CLETUS F. DIRKSEN, *CATHOLIC SOCIAL PRINCIPLES* (1961); PETER HENRIOT, *CATHOLIC SOCIAL TEACHING: OUR BEST KEPT SECRET* (1988); FRED KAMMER, *DOING FAITH JUSTICE: AN INTRODUCTION TO CATHOLIC SOCIAL THOUGHT* (1991); JOHN P. KLEINZ, *THE DEVELOPMENT OF CATHOLIC SOCIAL DOCTRINE FROM POPE LEO XIII TO POPE JOHN PAUL II* (1979); LEON MCKENSIE, *DESIGNS FOR PROGRESS: AN INTRODUCTION TO CATHOLIC SOCIAL DOCTRINE* (1968); MICHAEL NOVAK, *CATHOLIC SOCIAL TEACHING AND LIBERAL INSTITUTIONS: FREEDOM WITH JUSTICE* (2d ed. 1989); DANIEL A. O'CONNOR, *CATHOLIC SOCIAL DOCTRINE* (1956); *ONE HUNDRED YEARS OF CATHOLIC SOCIAL THOUGHT: CELEBRATION AND CHALLENGE* (John A. Coleman, ed., 1991); MICHAEL J. SCHUCK, *THAT THEY MIGHT BE ONE: THE SOCIAL TEACHINGS OF THE PAPAL ENCYCLICALS* (1991); MELVIN J. WILLIAMS, *CATHOLIC SOCIAL THOUGHT: IT'S APPROACH TO CONTEMPORARY PROBLEMS* (1950); William J. Bryon, *The Future of Catholic Social Thought*, 42 *CATH. U. L. REV.* 557 (1993).

9. Most of the documents I will be discussing are papal documents, particularly encyclical letters addressed to the worldwide Church. These encyclicals are supplemented on the more local level by pastoral letters and other documents written by bishops to address problems specific to their country or region.

10. Pope Paul VI, *Populorum Progressio* (Mar. 26, 1967) [hereinafter *Populorum Progressio*], reprinted in *PAPAL DOCUMENTS*, *supra* note 4, at 221, 223; see also POPE JOHN PAUL II, *THE SPLENDOR OF TRUTH [VERITATIS SPLENDOR]* 7 (1993) [hereinafter *VERITATIS SPLENDOR*] (“At all times, but particularly in the last two centuries, the Popes, whether individually or together with the College of Bishops, have developed and proposed a moral teaching involving the *many different spheres of human life*. In Christ's name and with his authority they have exhorted, passed judgment and explained.”).

social justice was not first discovered with the modern social encyclicals. Instead, the relationship of religious values to social questions is as ancient as those values and those questions themselves. While the scope of this discussion is limited only to the social encyclicals of the past century, this limitation is not intended to diminish in any way the ancient roots and traditions upon which those encyclicals build.

In 1891, Pope Leo XIII promulgated the first great social encyclical, *Rerum Novarum* ("Of New Things"). This so-called "Magna Charta"<sup>11</sup> of Catholic social teaching focused on the rights of workers and the exploitation of the labor force. At the time it was first issued, *Rerum Novarum* attracted a great deal of attention—and, indeed, criticism—for questioning basic social assumptions of its day and challenging both radical socialism and unbridled capitalism. *Rerum Novarum* was also a bold assertion by the Catholic Church that while its primary role is clearly religious ministry, this role does not preclude, and sometimes requires, intervention in the temporal affairs of this world.<sup>12</sup>

A brief look at Catholic social thought since 1891 demonstrates that over the past century these social encyclicals have responded to a wide variety of social issues—and they continue to question basic social assumptions. After *Rerum Novarum* grappled with labor, its progeny explored other questions. They tackled economic justice, human rights, international relations, urbanization, class conflict, ecology, evangelization, ecumenism, consumerism, education, and the age-old questions of the origin of human life and the authorship of human death.

If one reads through these encyclicals as a whole, a complex but consistent definition of justice can be gleaned. Although the specific social issues addressed in each encyclical vary, their underlying vision of justice is remarkably consistent. As I see it, justice as defined in Catholic social thought has three essential features: dignity, freedom, and charity. And, without all three of these, a society cannot call itself just.

What does it mean to say that a society has dignity, freedom, and charity?

Dignity I place first because the Church's social teachings have consistently "put the dignity of the person at the center of her social mes-

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11. Pope Pius XI, *Quadragesimo Anno* (May 15, 1931) [hereinafter *Quadragesimo Anno*], reprinted in PAPAL DOCUMENTS, *supra* note 4, at 41, 52. For a fuller discussion of *Rerum Novarum*, see LEWIS WATT, CATHOLIC SOCIAL PRINCIPLES: A COMMENTARY ON THE PAPAL ENCYCLICAL RERUM NOVARUM (1930).

12. See *Rerum Novarum*, *supra* note 4, at 39 ("As for the Church, whatever the time and circumstance, her aid will never be looked for in vain.")

sages.”<sup>13</sup> This innate dignity is expressed by granting to all a set of basic human rights that apply consistently regardless of time or place.

In 1961, Pope John XXIII’s encyclical, *Mater et Magistra* (“Mother and Teacher”), explicitly annunciated a detailed list of basic rights to which all people are entitled by virtue of their human dignity. As you reflect on this inventory of basic rights, you might ask yourself some of the same questions about them that I have asked myself. For example, how are these rights similar to and different from the rights we have enshrined in our secular American Constitution? Why are “positive” rights—the right to receive a benefit—more prevalent in Catholic social thought than in American legal thought? The latter has traditionally directed more of its energy to protecting “negative” rights—the right to prevent infliction of a harm—rather than to positive rights.

These basic human rights as articulated by Pope John XXIII include:

Man has the right to live. He has the right to bodily integrity and to the means necessary for the proper development of life, particularly food, clothing, shelter, medical care, rest, and, finally, the necessary social services. In consequence, he has the right to be looked after in the event of ill-health; disability stemming from his work; widowhood; old age; enforced unemployment; or whenever through no fault of his own he is deprived of the means of livelihood.

Moreover, man has a natural right to be respected. He has a right to his good name. He has a right to freedom in investigating the truth and . . . to freedom of speech and publication, and to freedom to pursue whatever profession he may choose. He has the right, also, to be accurately informed about public events.

He has the natural right to share in the benefits of culture, and hence to receive a good general education . . . .

Also among man’s rights is that of being able to worship God in accordance with the right dictates of his own conscience, and to profess his religion both in private and in public . . . .

Human beings also have the right to choose for themselves the kind of life which appeals to them: whether it is to found a family . . . or to embrace the priesthood or the religious life . . . .

. . .

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13. *Centesimus Annus*, *supra* note 4, at 474-75; see also CATECHISM OF THE CATHOLIC CHURCH 468 (1994) (“Social justice can be obtained only in respecting the transcendent dignity of man.”).



In the economic sphere, it is evident that a man has the inherent right not only to be given the opportunity to work, but also to be allowed the exercise of personal initiative in the work he does . . . .

...

A further consequence of man's personal dignity is his right to engage in economic activities suited to his degree of responsibility. The worker is likewise entitled to a wage that is determined in accordance with the precepts of justice . . . .

... [Man] has the right to the private ownership of property . . .

...

Men . . . have the right to meet together and to form associations with their fellows . . . .

...

... [E]very human being has the right to freedom of movement and of residence within the confines of his own state. When there are just reasons in favour of it, he must be permitted to emigrate to other countries . . . .

Finally, man's personal dignity involves his right to take an active part in public life, and to make his own contribution to the common welfare of his fellow citizens . . . .

As a human person he is entitled to the legal protection of his rights, and such protection must be effective, unbiased, and strictly just.<sup>14</sup>

That's a tall order! Yet, it has been consistently reiterated that the "transcendent dignity"<sup>15</sup> of humanity requires that this set of fundamental rights be recognized as the first prerequisite for justice.

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14. *Pacem in Terris*, *supra* note 7, at 129-31. A less detailed, but fairly similar description of these basic human rights is found in *Gaudium et Spes*:

[W]hatever is opposed to life itself, such as any type of murder, genocide, abortion, euthanasia or willful self-destruction; whatever violates the integrity of the human person, such as mutilation, torments inflicted on body or mind, attempts to coerce the will itself; whatever insults human dignity, such as subhuman living conditions, arbitrary imprisonment, deportation, slavery, prostitution, the selling of women and children; as well as disgraceful working conditions, where men are treated as mere tools for profit, rather than as free and responsible persons; all these things and others of their like are infamies indeed. They poison human society, but they do more harm to those who practise them than those who suffer from the injury. Moreover, they are a supreme dishonor to the creator.

*Gaudium et Spes*, *supra* note 4, at 175.

15. CATECHISM OF THE CATHOLIC CHURCH, *supra* note 13, at 468.

The second element of justice that I gleaned from Catholic social thought is freedom. Freedom is a tricky concept. Over time, as the social encyclicals consistently tout the importance of freedom, they have had to respond to the twin dangers of totalitarianism and licentiousness. From opposite directions, both of these threaten true freedom and directly jeopardize justice. Yet, freedom has been called “an inalienable requirement of the dignity of the human person.”<sup>16</sup> Indeed, in his 1993 encyclical, *Veritatis Splendor* (“The Splendor of Truth”), Pope John Paul II observed that, indeed, “there can be no morality without freedom.”<sup>17</sup> Thus, while freedom is doubtless a prerequisite for true justice, defining freedom is far from easy.

It is well-known in secular jurisprudence that freedom cannot be defined merely as my absolute right to do whatever I want.<sup>18</sup> A better definition of freedom is more nuanced and balanced. In several encyclicals, “freedom” is mentioned together with “truth.” For example, *Evangelium Vitae* (“The Gospel of Life”), says: “The ability to attain truth and freedom are human prerogatives.”<sup>19</sup> This leads me to believe that freedom is directly linked with truth. If freedom cannot be merely my right to do what I *want* to do, it might better be defined as my right to be entirely free to discern the truth and then free to do that which truth tells me I *must* do.

This notion of freedom rejects totalitarianism which denies its subjects the freedom to seek truth or coerces them against doing what truth tells them they should. At the same time, this definition of freedom does not create a license for individuals to do entirely as they please.

Thus, freedom is the essential second prong of justice. Not only does it accord individuals the freedom to which their dignity entitles them. It also ensures that, if they exercise their freedom perfectly, they would never be unjust to others because the truth that they freely discover will tell them not to. Naturally, this is easier said than done. Just as I found torts to be a perpetual search for that non-existent “reasonable person,” this definition of freedom mandates a search for the even more elusive “perfectly virtuous person.” Yet, the reality that this is a difficult ideal does not prevent me, an optimist, from thinking it is worth striving for.

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16. *Id.* at 431 (“The right to the exercise of freedom, especially in moral and religious matters, is an inalienable requirement of the dignity of the human person.”).

17. VERITATIS SPLENDOR, *supra* note 10, at 55.

18. In the secular world, one of the most famous illustrations of this concept can be found in Justice Frankfurter's famous admonition that “[o]ne cannot yell ‘fire’ in a crowded theater.” *Bridges v. California*, 314 U.S. 252, 296 (1941) (Frankfurter, J., dissenting).

19. EVANGELIUM VITAE, *supra* note 5, at 62 (emphasis omitted).

If we succeed in attaining dignity and freedom, the final ingredient for a truly just society is charity. Indeed, charity is distinct from dignity and freedom because it binds the other two together and makes them perfect.<sup>20</sup> Why is charity—or, indeed, love—essential for true justice? In some ways charity greatly simplifies the definition of justice. As Pope John Paul II commented, “We are just to a person if we love him.”<sup>21</sup> This echoes the deceptively simple challenge of Christ, who taught that the entire law is satisfied in the love of God and the love of neighbor.<sup>22</sup>

Besides its role in simplifying the task of creating justice and directing it to its logical outcome, charity also describes the spirit which should underlie the pursuit of dignity and freedom. Back in 1931, Pope Pius XI recognized this, writing that: “[J]ustice alone can, if faithfully observed, remove the causes of social conflict but can never bring about 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.”<sup>23</sup> A similar sentiment is echoed more recently in the observations that “the fruit of love . . . goes beyond what justice can provide,”<sup>24</sup> and “[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.”<sup>25</sup>

20. In a sense, it could quite truthfully be said that charity should *not* be considered an element of justice. Because charity requires so much *more* than “mere” justice would demand, in a paradoxical way the strictly “just” thing to do may not be the “charitable” thing. It is this that makes “charity” the unique ingredient in creating a just society.

21. POPE JOHN PAUL II, *CROSSING THE THRESHOLD OF HOPE* 201 (1994).

22. *Matthew* 22:37-40 provides:

[Jesus] said . . . ‘You shall love the Lord your God with your whole heart, with your whole soul, and with all your mind.’ This is the greatest and the first commandment. The second is like it: ‘You shall love your neighbor as yourself.’ On these two commandments the whole law is based, and the prophets as well.

*Matthew* 22:37-40 (Saint Joseph Edition of the New American Bible). Further, *Luke* 10:25-28 provides:

[A] lawyer stood up . . . [and said], ‘Teacher, what must I do to inherit everlasting life?’ Jesus answered him, ‘What is written in the law? How do you read it?’ He replied: ‘You shall love the Lord your God with all your heart, with all your soul, with all your strength, and with all your mind; and your neighbor as yourself.’ Jesus said, ‘You have answered correctly. Do this and you shall live.’

*Luke* 10:25-28 (Saint Joseph Edition of the New American Bible); see also *Mark* 12:29-31 (Saint Joseph Edition of the New American Bible) (“Jesus replied . . . ‘[Y]ou shall love the Lord your God with all your heart, with all your soul, with all your mind, and with all your strength.’ This is the second, ‘You shall love your neighbor as yourself.’ There is no other commandment greater than these.”).

23. *Quadragesimo Anno*, *supra* note 11, at 77.

24. *Gaudium et Spes*, *supra* note 4, at 210.

25. Pope John Paul II, *Dives in Misericordia* (Nov. 30, 1980), reprinted in PAPAL DOCUMENTS, *supra* note 4, 342, 349; see also *Gaudium et Spes*, *supra* note 4, at 206

Thus, charity is the third key component of what I perceive the Catholic vision of justice to be. In some ways, the requirements of dignity and freedom are subsumed under it. In other ways, dignity and freedom are enlightened and enlivened by it.

If the quest for justice can be viewed as a quest for a society imbued with dignity, freedom, and charity, we can turn to the second part of this discussion and explore what law's role is in achieving such a vision of justice. I said before that I am an optimist, and I am. But, even I recognize that much work still remains for those who seek justice.

As we strive toward building justice what tools should we use? Is law one of them? As I mentioned, Catholic social thought has not been entirely explicit on the exact means to the noble end of justice. Rather, selecting these means is left to the informed discernment of people of good will. It must be this way. While the core tenets of justice remain timeless and universal,<sup>26</sup> the exact means of achieving them effectively may vary depending on time and place.

When articulating a vision of justice and suggesting the means to that end, the Catholic vision does not link itself with any political system or regime.<sup>27</sup> Instead, the Church has explicitly rejected such a role. In the

("There is no better way to establish political life on a truly human basis than by fostering an inward sense of justice and kindness, and of service to the common good.")

26. The difficulty and promise of using timeless principles for timely problems was acknowledged in *Octagesimo Adveniens*:

The gospel is not out of date because it was proclaimed . . . in a different socio-cultural context. Its inspiration, enriched by the living experience of Christian tradition over the centuries, remains ever new for converting men and for advancing the life of society. It is not however to be utilized for the profit of particular temporal options, to the neglect of its universal and eternal message.

*Octagesimo Adveniens*, *supra* note 4, at 248; see also Pope John Paul II, *Sollicitudo Rei Socialis* (Dec. 30, 1987) [hereinafter *Sollicitudo Rei Socialis*], reprinted in PAPAL DOCUMENTS, *supra* note 4, 392, 395 (stating that "continuity and renewal are a proof of the perennial value of the teaching of the church").

27. See *Centesimus Annus*, *supra* note 4, at 469 ("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."); *Sollicitudo Rei Socialis*, *supra* note 26, at 397 (describing the Church's "awareness . . . of her mission of 'service,' a mission distinct from the function of the state even when she is concerned with people's concrete situation"); *Populorum Progressio*, *supra* note 10, at 226 ("Founded to build the kingdom of heaven on earth rather than to acquire temporal power, the Church openly avows that the two powers—Church and State—are distinct from one another; that each is supreme in its own sphere of competency."); *Gaudium et Spes*, *supra* note 4, at 209 ("The Church, by reason of her role and competence, is not identified in any way with the political community nor bound to any political system. She is at once a sign and a safeguard of the transcendent character of the human person."); *id.* ("The Church and the political community in their own fields are autonomous and independent from each other. Yet both, under different titles, are de-

words of Pope John Paul II's 1987 encyclical *Sollicitudo Rei Socialis* ("On Social Concern"): "[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."<sup>28</sup> Given this position, it would not be seemly for there to be detailed legislative or judicial guidance in the social encyclicals.

Nevertheless, over time various encyclicals have suggested a role for many different institutions in the pursuit of justice. There is reference—and rightly so—to the role that the Church itself, schools, popular culture, employers, families, media, medical professionals, scientists, and manufacturers have in building justice.

In addition, there is discussion of law's specific role as a tool in pursuing justice.<sup>29</sup> I must confess to searching for such a role with a bit of self-interested concern. I, or we, are in a profession often accused of contributing to injustice. Two millennia ago, Christ himself had harsh words for our ranks when he admonished, "woe to you who are lawyers."<sup>30</sup> Indeed, I have seen some translations that have reported this statement as "woe to you who are teachers of the law."<sup>31</sup> For obvious reasons, I resist accepting the latter as an accurate translation! Naturally, I was eager to discern whether the law which we have made our profession has a specific role in advancing the justice of which we speak and for which we hope.

I am happy to report to you that I did find in the social teachings a very real and—at the risk of sounding naive—a truly inspiring role for law as a tool for achieving justice. I also, in fact, found encouragement for living a life of faith by pursuing admittedly secular professions. For example, the Vatican II Apostolic Constitution, *Gaudium et Spes* ("Joy and Hope"), urged that there be "no false opposition between professional and social activities on the one part, and religious life on the other."<sup>32</sup> Similarly, the encyclical *Mater et Magistra* admonished, "[I]et [no one] . . . imagine that a life of activity in the world is incompatible

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voted to the personal and social vocation of the same men.").

28. *Sollicitudo Rei Socialis*, *supra* note 26, at 423.

29. Naturally, in all the encyclicals, this discussion of "law" is inextricably intertwined with the discussions of politics and the state.

30. *Luke* 11:46 (The Holy Bible, Douay Rheims Version).

31. *Luke* 11:46 (The Good News Bible, Catholic Study ed.); *see also Luke* 11:46 (Saint Joseph Edition of the New American Bible) ("Woe to you lawyers also.").

32. *Gaudium et Spes*, *supra* note 4, at 185.

with spiritual perfection.”<sup>33</sup> This suggests to me that a life in law—while clearly in and of this world—is not at all incompatible with a wholehearted, faith-filled devotion to justice.<sup>34</sup>

Now that I have finished the pep talk for our profession and the potential for good that law holds, what exactly *is* the specific role envisioned for law in achieving that potential? I mentioned at the beginning of my remarks that I am approaching this question as a lawyer and as a Catholic. I should also say that I reflected on this issue as an American. Thus, I often took for granted the legal system in which we live. However, part of the challenge was continually reminding myself that the Catholic social encyclicals are not specifically intended for an American audience nor to one made up exclusively of representative democracies. Instead, by definition, they are directed to a universal audience.<sup>35</sup>

Thus, when Catholic social teachings describe a role for law in pursuing justice, we face a two part challenge: first, discerning *what* that role is and, second, exploring in a practical way *how* that role plays out in our particular legal system. I happen to believe that, at its best, our democratic system is compatible with the Catholic vision for law’s role in advancing justice. But, that is not to say that there do not remain particular challenges to reconciling the two.<sup>36</sup> I hope that as I discuss a framework in which to consider the law’s role, you will consider the practical application of these principles.

The role that the social encyclicals describes for law as a tool for advancing justice is one that I would describe as superficially inconsistent yet internally coherent. Law is described with a curious mix of cautious restraint and respectful enthusiasm. The social teachings posit that law should be used wisely and well where it is most effective and necessary.

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33. *Mater et Magistra*, *supra* note 4, at 122.

34. See *Rerum Novarum*, *supra* note 4, at 29 (“It will always be necessary to find people who will devote themselves to public affairs, make the laws, dispense justice, and by their counsel and authority administer affairs of state and the conduct of war. Such people have a leading part to play and ought to be accorded pre-eminence in every state.”); *Gaudium et Spes*, *supra* note 4, at 208, 219-20 (referring to “the very noble art of politics,” it can be said that “Christians cannot yearn for anything more ardently than to serve the men of the modern world ever more generously and effectively”).

35. See *Populorum Progressio*, *supra* note 10, at 226 (“[S]ince the Church does dwell among men, she has the duty ‘of scrutinizing the signs of the times and of interpreting them in the light of the gospel’ . . . . [S]he offers man her distinctive contribution: a *global* perspective on man and human realities.” (emphasis added)).

36. These challenges were alluded to in *EVANGELIUM VITAE*, *supra* note 5, at 127-28 (“Democracy cannot be idolized to the point of making it a substitute for morality or a panacea for immorality. Fundamentally, democracy is a ‘system’ and as such is a means and not an end . . . . But the value of democracy stands or falls with the values which it embodies and promotes.”).

However, where it is not the best tool to advance justice, law best helps ensure it by doing nothing to interfere with its achievement through the use of better tools. Hence, understanding the role of law as envisioned in Catholic social thought requires understanding what law does best. In the basic scheme outlined in the social encyclicals, I discerned five areas in which the law was perceived to have an appropriate role to play. Uniting all five of these areas is the way in which they advocate law's value as a tool to advance justice by advancing the common good.<sup>37</sup>

The first and the primary role that the social encyclicals contemplate for the civil law is to be a reflection of an eternal moral law.<sup>38</sup> Catholic

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37. Indeed, quite consistently throughout the encyclicals, a great deal of attention is paid to the notion that it is to advance the common good that government has its origins, authority, and most noble purpose. See CATECHISM OF THE CATHOLIC CHURCH, *supra* note 13, at 465 ("The common good presupposes *respect for the person* as such . . . . Second, the common good requires the *social well-being* and *development* of the group itself . . . . Finally, the common good requires *peace*, that is, the stability and security of a just order."); *id.* at 473 ("Law is a rule of conduct enacted by competent authority for the sake of the common good."); *id.* at 468 ("Social justice is linked to the common good and the exercise of authority."); *Pacem in Terris*, *supra* note 7, at 136 ("The attainment of the common good is the sole reason for the existence of civil authorities. In working for the common good, therefore, the authorities must obviously respect its nature, and at the same time adjust their legislation to meet the requirements of the given situation."); *id.* at 141 ("[E]ven when it regulates the relations between states, authority must be exercised for the promotion of the common good. That is the primary reason for its existence."); *Octagesimo Adveniens*, *supra* note 4, at 264 ("Political power, which is the natural and necessary link for ensuring the cohesion of the social body, must have as its aim the achievement of the common good."); *Quadragesimo Anno*, *supra* note 11, at 55 ("[P]ublic authority, under the guiding light always of the natural and divine law, can determine more accurately upon consideration of the true requirements of the common good."); *id.* at 49 ("Just freedom of action must, of course, be left both to individual citizens and families, yet only on condition that the common good be preserved and wrong to any individual be abolished.").

38. This link between the human law and the divine is a frequent theme in the social encyclicals. See CATECHISM OF THE CATHOLIC CHURCH, *supra* note 13, at 475 ("The natural law, the Creator's very good work, provides the solid foundation on which man can build the structure of moral rules to guide his choices. [I]t provides the necessary basis for the civil law with which it is connected."); *id.* ("The natural law, present in the heart of each man and established by reason, is universal in its precepts and its authority extends to all men. It expresses the dignity of the person and determines the basis for his fundamental rights and duties."); *EVANGELIUM VITAE*, *supra* note 5, at 74 ("[W]hen it comes to the natural world, we are subject not only to biological laws but also to moral ones, which cannot be violated with impunity."); *id.* at 129 ("[T]here is a need to recover the basic elements of a vision of the relationship between civil law and moral law, which are put forward by the Church, but which are also part of the patrimony of the great juridical traditions of humanity." (emphasis omitted)); *id.* at 131 ("The doctrine on the necessary conformity of civil law with the moral law is in continuity with the whole tradition of the Church." (emphasis omitted)); *VERITATIS SPLENDOR* *supra* note 10, at 59 ("[T]he natural moral law has God as its author, and . . . man, by the use of reason, participates in the eternal law, which it is not for him to establish."); *id.* at 63 ("The moral law has its

social thought on what law can best accomplish is based on a lengthy tradition of a “relationship between civil law and moral law.”<sup>39</sup> This tradition teaches that changeable human laws are at their best when they reflect an unchangeable law often described as “being written on the human heart.”<sup>40</sup> This tradition is, of course, the natural law tradition that is a crucial underpinning of Catholic legal thought.

Natural law theory can take more time than you have and much more expertise than I have to explore in any meaningful way. But, there is an analogy that I found helpful in describing what this doctrine suggests law’s role should be. This analogy described a ring with a seal or a crest engraved on it. This was likened to the natural, moral, or eternal law. Then, this image on the ring was described as being pushed against wax—leaving its imprint behind. That wax is, of course, the civil law which in the natural law view should take its image from the imprint of the eternal.<sup>41</sup>

Thus, the first role envisioned for law in building justice is to serve as a mirror that reflects basic moral truths and ensures that the justice served by those moral truths is translated into concrete and enforceable human form.<sup>42</sup> This raises a number of challenging practical questions particularly, I think, for Americans. These include discerning the basic tenets of the moral law;<sup>43</sup> handling disagreement respectfully;<sup>44</sup> considering the

origin in God and always finds its source in him: at the same time, by virtue of natural reason, which derives from divine wisdom, it is a properly human law.” (emphasis omitted); *Rerum Novarum*, *supra* note 4, at 19 (“[Man] can govern himself by his own foresight and judgment, subject always to the eternal law, the guidance of God whose providence extends to all things.”); *id.* at 20 (“[T]he civil laws, which, when they are just, receive their binding force from the natural law.”).

39. EVANGELIUM VITAE, *supra* note 5, at 129 (emphasis omitted).

40. VERITATIS SPLENDOR, *supra* note 10, at 9.

41. See CATECHISM OF THE CATHOLIC CHURCH, *supra* note 13, at 474 (quoting Saint Augustine).

42. See VERITATIS SPLENDOR, *supra* note 10, at 67 (“The natural law enters here as the human expression of ‘God’s eternal law.’”).

43. Connected to this is, of course, the modern skepticism that arises in response to the notion that there *are* principles that can form the basis of such a natural law. As a threshold matter, “the question is asked: do the commandments of God, which are written on the human heart and are part of the Covenant, *really* have the capacity to clarify the daily decisions of individuals and entire societies?” VERITATIS SPLENDOR, *supra* note 10, at 9 (emphasis added).

44. Throughout, the encyclicals recognize the difficulty in articulating principles for resolving political disputes. See *Octagesimo Adveniens*, *supra* note 4, at 266 (“In concrete situations, and taking account of solidarity in each person’s life, one must recognize a legitimate variety of possible options. The same Christian faith can lead to different commitments.”). *Gaudium et Spes* echoed a similar theme:

[I]t happens rather frequently, and legitimately so, that with equal sincerity some of the faithful will disagree with others on a given matter . . . . Hence it is



consequences of conscientious objection from unjust laws,<sup>45</sup> and distin-

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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.

*Gaudium et Spes*, *supra* note 4, at 185; *id.* at 207 (“[T]he people who come together in the political community are many and diverse, and they have the right to prefer divergent solutions. If the political community is not to be torn apart while everyone follows his own opinion, there must be an authority to direct the energies of all citizens towards the common good.”); *id.* at 208 (“[Christians] must recognize the legitimacy of different opinions with regard to temporal solutions, and respect citizens, who . . . defend their points of view by honest methods.”). This point also received extensive discussion in *Mater et Magistra*:

Differences of opinion in the application of principles can sometimes arise even among sincere Catholics. When this happens, they should be careful not to lose their respect and esteem for each other. Instead, they should strive to find points of agreement for effective and suitable action, and not wear themselves out in interminable arguments, and, under pretext of the better or the best, omit to do the good that is possible and therefore obligatory.

*Mater et Magistra*, *supra* note 4, at 119.

Perhaps the most practical advice on dispute resolution came in *Gaudium et Spes*, *supra* note 4, at 219 (asking that “there be unity in essentials; freedom in doubtful matters; and in all things charity”). A similar theme was echoed by Cardinal Joseph Bernardin:

[O]ur style of religious witness should constantly be a testimony to the theological virtue of charity, which in turn produces the civic virtue of civility . . . . We should vigorously oppose conclusions we find unwise or immoral; we should vigorously pursue objectives that are essential for human life and dignity. But we should also be known for the way in which our witness leavens public life with a spirit of fairness, respect, restraint and a search for common ground among contending positions.

Cardinal Joseph Bernardin, *Remaining a Vigorous Voice for Life in Society*, Address delivered at Georgetown University (Sept. 9, 1996), in 26 *ORIGINS* 237, 239 (Sept. 26, 1996).

45. The difficulty of responding—or conscientiously deciding *not* to respond—to a civil law that violates tenets of the natural law is a challenge addressed repeatedly in the social encyclicals. See *CATECHISM OF THE CATHOLIC CHURCH*, *supra* note 13, at 541 (“The citizen is obliged in conscience not to follow the directives of civil authorities when they are contrary to the demands of the moral order, to the fundamental rights of persons or the teachings of the Gospel.”); *EVANGELIUM VITAE*, *supra* note 5, at 134 (“In the case of an intrinsically unjust law . . . it is . . . never licit to obey it.”); *id.* at 135 (“The passing of unjust laws often raises difficult problems of conscience for morally upright people with regard to the issue of cooperation . . . . Sometimes the choices which have to be made are difficult; they may require the sacrifice of prestigious professional positions or the relinquishing of reasonable hopes of career advancement.”); *id.* at 136 (“Christians, like all people of good will, are called upon under grave obligation of conscience not to cooperate formally in practices which, even if permitted by civil legislation, are contrary to God’s law.”); *Gaudium et Spes*, *supra* note 4, at 207 (“[P]olitical authority . . . must always be exercised within the limits of the moral order and directed towards the common good . . . . When authority is so exercised, citizens are bound in conscience to obey . . . . [B]ut, it is legitimate for them to defend their own rights and the rights of their fellow citizens against the abuse of this authority.”).

guishing unchangeable essentials<sup>46</sup> from those questions on which there can, should, or must be legitimate political debate.<sup>47</sup>

Closely connected is a second role for law, and one of its most important, both within domestic regimes and internationally. That role is to serve as a safeguard for fundamental human rights.<sup>48</sup> We reflected on that list of rights earlier.<sup>49</sup> In his 1963 encyclical, *Pacem in Terris* ("Peace on Earth"), Pope John XXIII stated, "The chief concern of civil authorities must therefore be to ensure that these rights are recognized, respected, co-ordinated, defended and promoted."<sup>50</sup> When it comes to safeguarding this core set of rights, law is a particularly potent tool.

This is especially true in places where there is an imbalance of power, and an unbiased legal system may be the only force strong enough to support those who are weakest and contain those who are strongest. For, as Pope John Paul II urged in *Centesimus Annus* ("One Hundred Years"), "the more that individuals are defenseless within a given society, the more they require the care and concern of others, and in particular the intervention of governmental authority."<sup>51</sup> Thus, a second great role envisioned for the law is to be an impartial guardian of fundamental rights—particularly for those least able to guard those rights for themselves.

Law also has a third critical role, albeit a more mundane one. That is the job of creating and maintaining civil order, a prerequisite for peace and justice. "[T]he common good requires 'peace,' that is, the stability and security of a just order."<sup>52</sup> It is peace and stability that make it possible for those in a just society to live without fear of chaos and with con-

46. See *EVANGELIUM VITAE*, *supra* note 5, at 128 ("The basis of these values cannot be provisional and changeable 'majority' opinions, but only the acknowledgment 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.").

47. It is this distinction that may be the most difficult to make in the American system. *VERITATIS SPLENDOR* expressed this difference: "While exchanges and conflicts of opinions may constitute normal expressions of public life in a representative democracy, moral teaching certainly cannot depend simply upon respect for a process." *VERITATIS SPLENDOR*, *supra* note 10, at 168.

48. See *EVANGELIUM VITAE*, *supra* note 5, at 130 ("The real purpose of civil law is to guarantee an ordered social coexistence in true justice . . . . Precisely for this reason, civil law must ensure that all members of society enjoy respect for certain fundamental rights which innately belong to the person, rights which every positive law must recognize and guarantee.").

49. See *supra* text accompanying notes 13-15.

50. *Pacem in Terris*, *supra* note 7, at 137 (emphasis added).

51. *Centesimus Annus*, *supra* note 4, at 440.

52. *CATECHISM OF THE CATHOLIC CHURCH*, *supra* note 13, at 465 (emphasis omitted).

fidence that their expectations will be respected. Thus, in the mundane rules of traffic regulations,<sup>53</sup> deed recordation, and building codes there is a foundation for order. This can make it easier for those in society to enjoy the collective benefit of stability and security. This makes the more active pursuit of good possible since energy need not be directed toward controlling chaos.

One of my favorite descriptions of law in this mundane and undramatic role is taken from *Evangelium Vitae*. There it was said that “a state ruled by law [is] a community in which the ‘reasons of force’ are replaced by the ‘force of reason.’”<sup>54</sup>

This role of law as a tool to maintain peace and order is envisioned on the international level as well as the domestic. In its ability to regulate relationships among states, international law has at least some potential in creating stability and order in the worldwide arena.<sup>55</sup> Again, in our complex world, the absence of disorder, wherever possible, makes it more likely that good can be actively pursued.

Law’s fourth role is that of channeling resources toward those projects that advance justice but require coordinated efforts or substantial resources. The social teachings, beginning most forcefully in *Rerum Novarum*,<sup>56</sup> place a high premium on the right to private ownership of property and roundly condemn social collectivism.

Yet, as *Gaudium et Spes* observes, “The complex circumstances of our day make it necessary for public authority to intervene more often in social, economic and cultural matters in order to bring about favourable

53. Indeed, traffic regulations are themselves specifically mentioned in *Gaudium et Spes*:

Many in various places even make light of social laws and precepts, and do not hesitate to resort to various frauds and deceptions in avoiding just taxes or other debts due to society. Others think little of certain norms of social life, for example those designed for the protection of health, or laws establishing speed limits; they do not even avert to the fact that by such indifference they imperil their own life and that of others. Let everyone consider it his sacred obligation to esteem and observe social necessities as being among the primary duties of modern man.

*Gaudium et Spes*, *supra* note 4, at 176-77.

54. *EVANGELIUM VITAE*, *supra* note 5, at 33-34.

55. See *Quadragesimo Anno*, *supra* note 11, at 65 (“[S]ince the various nations largely depend on one another in economic matters and need one another’s help, they should strive with a united purpose and effort to promote by wisely conceived pacts and institutions a prosperous and happy international cooperation in economic life.”).

56. *Rerum Novarum*, *supra* note 4, at 31 (“Particular attention must now be given to certain very important matters. At the head of the list is the duty to use the strength and protection of the law to safeguard private possessions.”).

conditions which will give more effective help to citizens and groups.”<sup>57</sup> For example, it was suggested that in an agricultural society, such intervention might include “roads; transportation; means of communication; drinking water; housing; health services; . . . education; religious and recreational facilities; and the supply of modern installations and furnishings for the farm residence.”<sup>58</sup>

Naturally, accomplishing any of these projects involves the law—from the tax code authorizing funding sources, to the health codes setting minimum safety standards. The role that the law should play in this area will necessarily vary depending on a particular society’s needs. Nevertheless, there is a role here for the law and lawyers to help realize necessary and just advances.

The fifth role contemplated for law is to provide a just mechanism for dispute resolution.<sup>59</sup> Thus far, I have been speaking primarily of law as a legislative matter. I do not mean to do this at the expense of discussing the law’s role in advancing justice from the judicial perspective. While there is a legislative role in setting standards and principles, law is also a way of resolving disputes justly—either among individuals or between individuals and a government. Without the law to serve this dispute resolution function well and fairly, the best legislative work can be quickly undone if there is no system for correcting violations of just statutes. Such a system must exist because:

One of the principle duties of any government . . . is the suitable and adequate superintendence and co-ordination of men’s respective rights in society. This must be done in such a way (1) that the exercise of their rights by certain citizens does not obstruct other citizens in the exercise of theirs; (2) that the individual, standing upon his own rights, does not impede others in the performance of their duties; (3) that the rights of all be effectively safeguarded, and completely restored if they have been violated.<sup>60</sup>

Indeed, *Rerum Novarum* stated over a century ago that “[t]he public authority must enable every individual to maintain his right by providing for the prevention and punishment of transgressions.”<sup>61</sup> More recently, *Pacem in Terris* explained “a state judicial system which conforms to the

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57. *Gaudium et Spes*, *supra* note 4, at 208.

58. *Mater et Magistra*, *supra* note 4, at 104.

59. In such a system of dispute resolution, “justice must be administered impartially, and judges must be wholly incorrupt and uninfluenced by the solicitations of interested parties.” *Pacem in Terris*, *supra* note 7, at 139.

60. *Id.* at 137.

61. *Rerum Novarum*, *supra* note 4, at 30.

principles of justice and rightness . . . is highly conducive to the attainment of the common good.”<sup>62</sup> Hence, a very powerful way in which the law may advance justice is by laying the foundation for an effective and fair method of resolving disputes. I am not entirely sure that a litigious and overly aggressive adversary system meets the requirements of justice.<sup>63</sup> But, nevertheless, I assure you that there is a vocation for litigators as well as legislators!

What then, are the limits of law as a tool to achieve justice? I spoke earlier of “peril and promise.” The “promise” of advancing justice through law is an exciting prospect. It is driven by the law’s ability to express eternal laws, defend basic human rights, maintain tranquility, marshal resources to develop initiatives for the common good, and ensure the realization of rights through a fair system of dispute resolution. This is not an exhaustive view of law’s capacity for good, but it includes five areas in which law is well-suited to employment in the pursuit of justice.

I believe the “peril” of law as a tool to achieve justice requires caution about two things: first, the need to respect the principle known as subsidiarity and, second, the reality that law is no substitute for individual virtue.

Subsidiarity is a principle woven throughout the social encyclicals since *Rerum Novarum*. A technical definition of this principle is found in *Centesimus Annus*, explaining 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 and help to coordinate its activity with the activities of the rest of society.”<sup>64</sup>

Stated more practically, the doctrine of subsidiarity recognizes that all are members of many communities. All are individuals first, but also members of families, neighborhoods, work communities, social and cultural groups, religious organizations, political associations, and local governmental entities, to name but a few. The principle of subsidiarity urges that the common good and justice are often best served when these “lower” communities are given the initial responsibility for pursuing them.<sup>65</sup>

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62. *Pacem in Terris*, *supra* note 7, at 139.

63. For interesting insights into the complex ethics of advocacy, see generally THOMAS L. SHAFFER, *ON BEING A CHRISTIAN AND A LAWYER* (1981).

64. *Centesimus Annus*, *supra* note 4, at 470.

65. See *Mater et Magistra*, *supra* note 4, at 102 (“There will always remain . . . a vast field for the exercise of human sympathy and the Christian charity of individuals . . .

Law can play a significant role in ensuring freedom and support for these “lesser” communities. The danger is that, over time, laws may overwhelm such communities and take from them the tasks for which they are best suited. Subsidiarity, like natural law, can be the source of lengthy discussion, particularly when one begins to consider what it means in practical application. For now, however, I would ask you to consider it and explore the impact that law may have on it, both positively and negatively.

The centrality of subsidiarity to Catholic social teachings is rooted, I believe, in two things—one practical and one philosophical. Practically speaking, it is a view that lesser communities are often the ones best able to fill the needs of justice—and fill them quickly. Naturally, if these small communities are themselves unjust or in need, then more extensive legal intervention may be needed.<sup>66</sup> With all due respect for subsidiarity,

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[T]he efforts of individuals, or of groups of private citizens, are definitely more effective in promoting spiritual values than is the activity of public authority.”); *Centesimus Annus*, *supra* note 4, at 442 (“[T]he social nature of man is not completely fulfilled in the state, but is realized in various intermediary groups, beginning with the family and including economic, social, political and cultural groups which stem from human nature itself and have their own autonomy, always with a view to the common good.”); *id.* at 470 (“A community of a higher order should not interfere in the internal life of a community of lower order, depriving the latter of its functions, but rather should support it in case of need and help to coordinate its activity with the activities of the rest of society, always with a view to the common good.”); *Octagesimo Adveniens*, *supra* note 4, at 264 (“[Political power] does not . . . deprive individuals and intermediary bodies of the field of activity and responsibility which are proper to them and which lead them to collaborate in the attainment of this common good.”); *Quadragesimo Anno*, *supra* note 11, at 63 (“The supreme authority of the State ought, therefore, to let subordinate groups handle matters and concerns of lesser importance, which would otherwise dissipate its efforts greatly.”); *Gaudium et Spes*, *supra* note 4, at 208 (“Rulers must be careful not to hamper the development of family, social or cultural groups, not that of intermediate bodies or organizations, and not to deprive them of opportunities for legitimate and constructive activity.”). *Populorum Progressio* provides:

It is for the public authorities to establish and lay down the desired goals, the plans to be followed, and the methods to be used in fulfilling them; and it is also their task to stimulate the efforts of those involved in this common activity. But they must also see to it that private initiative and intermediary organizations are involved in this work. In this way they will avoid total collectivization and the dangers of a planned economy which might threaten human liberty and obstruct the exercise of man’s basic human rights.

*Populorum Progressio*, *supra* note 10, at 231.

66. The need for such intervention does, naturally, vary depending upon the conditions of any given society in any given time, and the complexity of the late twentieth century may make this need more pressing. See *Gaudium et Spes*, *supra* note 4 at 208 (“The complex circumstances of our day make it necessary for public authority to intervene more often in social, economic and cultural matters in order to bring about favorable conditions which will give more effective help to citizens and groups in their free pursuit of man’s total well-being.”).

an underfunded local school may need help doing justice for children, and an international agreement may be the only way to tackle a complex environmental dilemma.<sup>67</sup> However, if a small community is able to solve a problem justly, it is often most effective to let it do so.

The more philosophical reason for subsidiarity is a belief that extensive intervention can harm individuals and subsidiary groups. It may threaten their freedom to do what is truly in the common good.<sup>68</sup> More dangerously, it may weaken the recognition of personal responsibility for justice and blame for injustice. As *Gaudium et Spes* warned, "Citizens . . . must be careful not to attribute excessive power to public authority . . . lessening in this way the responsible role of persons, families and social groups."<sup>69</sup>

Thus, the doctrine of subsidiarity does not mean that law is by definition incompatible with justice. It does, however, suggest a proper limit

67. Such legal intervention may also be justifiable at times within the family, the smallest and most private subsidiary "community":

It follows that to want to see the state's power arbitrarily at work within the intimacy of households is to make a great and pernicious mistake. Of course, when a family happens to be in a state of great distress, helpless and utterly unable to escape from its predicament, it is right that its pressing need be met by public aid . . . . Similarly, when within a family there is grave dispute about mutual rights, it is the public authority to insist upon each party giving to the other its due. In doing this the state does not rob citizens of their rights, but rather strengthens them and supports them as it should. However, rulers must stop at this point.

*Rerum Novarum*, *supra* note 4, at 21.

68. See CATECHISM OF THE CATHOLIC CHURCH, *supra* note 13, at 460 ("Excessive intervention by the state can threaten personal freedom and initiative."); *Mater et Magistra*, *supra* note 4, at 92 ("[H]owever extensive and far reaching the influence of the State on the economy may be, it must never be exerted to the extent of depriving the individual citizen of his freedom of action. It must rather augment his freedom while effectively guaranteeing the protection of his essential personal rights.").

69. *Gaudium et Spes*, *supra* note 4, at 208; see also EVANGELIUM VITAE, *supra* note 5, at 126 (warning of consequences when "[i]ndividual responsibility is . . . turned over to the civil law, with a renouncing of personal conscience"); *id.* at 160 ("In a [democracy] . . . the sense of personal responsibility in the consciences of individuals invested with authority may be weakened. But no one can ever renounce this responsibility . . . which calls that person to answer to God, to his or her own conscience and to the whole of society for choices which may be contrary to the common good."); *Centesimus Annus*, *supra* note 4, at 470 ("By intervening directly and depriving society of its responsibility, the social assistance state leads to a loss of human energies and an inordinate increase of public agencies which are dominated more by bureaucratic ways of thinking than by concern for serving their clients."); *Octagesimo Adveniens*, *supra* note 4, at 265 ("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.").

for the law and cautions against overreliance on a legal scheme to do that which others may be capable of doing more directly.

The second caution about law's role in advancing justice is an old one, and that is the caution that law is no substitute for individual virtue and kindness. In the Gospels there is a poignant conversation between Christ and a rich young man.<sup>70</sup> That young man asks earnestly and eagerly: "Teacher, what good must I do to possess everlasting life?"<sup>71</sup> Christ told the young man that he should keep the commandments, keep the law. The young man responds, and we can assume honestly, that he *has* kept the law.<sup>72</sup> Christ then told him: "If you seek perfection, go, sell your possessions, and give to the poor. You will then have treasure in heaven. Afterward, come back and follow me."<sup>73</sup> I find this discussion to be poignant and sad because the young man walked away disappointed, unable to accept the challenge to do more than merely comply with the law. This is, I think, the second great limitation on the law as a tool to achieve justice.

Law is a wonderfully powerful tool to set a minimum. But, it is unable to set out the maximum. It is far more than devotion to the legal minimum that is needed to create true justice. It has been said that, "the Law is holy, spiritual, and good, yet still imperfect. Like a tutor it shows what must be done, but does not itself give the strength, the grace . . . to fulfill it."<sup>74</sup> Law can set a limit, but true justice requires that law be seen as a beginning and not as an end.<sup>75</sup> As was very beautifully described in *Evangelium Vitae*:

[N]egative moral precepts have an extremely important positive

70. See *Matthew* 19:16-22. This conversation is also recounted in *Mark* 10:21 and *Luke* 18:22 (Saint Joseph Edition of the New American Bible). This account is referenced extensively in *VERITATIS SPLENDOR*, *supra* note 10, at 12-40.

71. *Matthew* 19:16 (Saint Joseph Edition of The New American Bible).

72. See *id.* 19:17-20.

73. *Id.* 19:21.

74. CATECHISM OF THE CATHOLIC CHURCH, *supra* note 13, at 476 (footnotes omitted).

75. See *EVANGELIUM VITAE*, *supra* note 5, at 85 ("When laws are [d]etached from this wider framework . . . [they are] destined to become nothing more than . . . obligation[s] imposed from without, and very soon we begin to look for [their] limits and try to find mitigating factors and exceptions."); *Rerum Novarum*, *supra* note 4, at 24 ("[T]he Church, with Jesus Christ for teacher and guide, seeks persistently for more than justice. She warns men that it is by keeping a more perfect rule that class becomes joined to class in the closest neighbourliness and friendship."); *Evangelii Nuntiandi*, *supra* note 4, at 298 ("[T]he best structures and the most idealized systems soon become inhuman if the inhuman 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.").



function. The "no" which they unconditionally require makes clear the absolute limit beneath 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*.<sup>76</sup>

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As we strive to "embrace the entire horizon of the good" by building justice, I am confident that there is an important, although not unlimited, role for law. Catholic social teaching was once described by Pope John XXIII as being a doctrine, "the light of which is truth, justice its objective, and love its driving force."<sup>77</sup> He went on to say: "It is not enough merely to formulate a social doctrine. It must be translated into reality."<sup>78</sup>

Translating justice into reality for our modern world is a daunting task. Catholic social thought, for me, makes this task a bit more daunting because while it answers my questions, it also questions my answers about how to accomplish that task. We are now facing a time that Pope John Paul II has called "filled with uncertainties but also with promises—uncertainties and promises which appeal to our imagination."<sup>79</sup> In these

76. EVANGELIUM VITAE, *supra* note 5, at 138; *see also Octagesimo Adveniens, supra* note 4, at 255:

Legislation is necessary, but it is not sufficient for setting up true relationships of justice and equality. In teaching us charity, the gospel instructs us in the preferential respect due to the poor and the special situation they have in society: the more fortunate should renounce some of their rights so as to place their goods more generously at the service of others. If, beyond legal rules, there is really no deeper feeling of respect for and service to others, then even equality before the law can serve as an alibi for flagrant discrimination, continued exploitation and actual contempt.

*Id.*

77. *Mater et Magistra, supra* note 4, at 118.

78. *Id.*; *see also Centesimus Annus, supra* note 4, at 475 ("Christ's words, 'as you did it to one of the least of these my brethren, you did it to me,' (*Matthew 25:40*) were not intended to remain a pious wish, but were meant to become a concrete life commitment. Today more than ever, the church is aware that her social message will gain credibility more immediately from the witness of actions than as a result of its internal logic and consistency."); *Populorum Progressio, supra* note 10, at 241 ("No one is permitted to disregard the plight of his brothers living in dire poverty, enmeshed in ignorance and tormented by insecurity. The Christian, moved by this sad state of affairs, should echo the words of Christ: 'I have compassion on the crowd.'").

79. *Centesimus Annus, supra* note 4, at 433. As the end of the millennium approaches, recent papal documents have provided a retrospective on the nature of the century through which we have just come. *See id.* ("[T]his is also an invitation to 'look around' at the 'new things' which surround us and in which we find ourselves caught up, very different from the 'new things' which characterized the final decade of the last cen-

times, the task of building justice requires the minds and hearts of many workers wielding different tools in different ways. For those whose tool of trade is law there is a particular challenge.

It has been said, “woe to you who are lawyers.” I’d like to leave you with the thought that, for those who do justice and walk humbly with God there can also be true “joy to you who are lawyers.” You hold in your hands a powerful tool from which to build justice. Catholic social thought offers guidance on how to use that tool wisely and well. Equally important, it challenges all who work with law to reach for a more perfect understanding of what justice is and how to bring it to a world that longs for it and for the peace<sup>80</sup> it brings.

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ture.”). These reflections suggest very mixed feelings about the twentieth century. *Compare* EVANGELIUM VITAE, *supra* note 5, at 29 (“The twentieth century will have been an era of massive attacks on life, an endless series of wars and a continual taking of innocent human life.”), *and*, On the Coming of the Third Millennium [Tertio Millennio Adventiente], APOSTOLIC LETTER 25-26 (Pope John Paul II, Nov. 10, 1994) (describing “the profoundly disturbing experiences of the Twentieth Century, a century scarred by the First and Second World Wars, by the experience of concentration camps and by horrendous massacres”), *with id.* at 59 stating:

There is also need for a better appreciation and understanding of *the signs of hope present in the last part of this century*, even though they often remain hidden from our eyes. *In society in general*, such signs of hope include: scientific, technological and especially medical progress in the service of human life, a greater awareness of our responsibility for the environment, efforts to restore peace and justice wherever they have been violated, a desire for reconciliation and solidarity among different peoples.

This paradox is echoed again in EVANGELIUM VITAE, *supra* note 5, at 31-32:

On the one hand, the various declarations of human rights and the many initiatives inspired by these declarations show that at the global level there is a growing moral sensitivity, more alert to acknowledging the value and dignity of every individual as a human being . . . . On the other hand, these noble proclamations are unfortunately contradicted by a tragic repudiation of them in practice.

*Id.*

80. See *Centesimus Annus*, *supra* note 4, at 436 (“[P]eace is built on the foundation of justice.”); *Gaudium et Spes*, *supra* note 4, at 210 (“[P]eace is likewise the fruit of love, which goes beyond what justice can provide.”).

