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ARTICLE

“SOCIAL LOVE” AS A VISION FOR ENVIRONMENTAL LAW: *LAUDATO SI’* AND THE RULE OF LAW

Lucia A. Silecchia[†]

I. INTRODUCTION

In the years of his still-young papacy, Pope Francis has often spoken and written about ecological responsibility, addressing both the Catholic and global communities in his exhortations on environmental matters.¹ In June of 2015, he released his most extensive exposition on these issues in his encyclical letter, *Laudato Si’: On Care for Our Common Home*.² In this wide-

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1. The impact of Pope Francis’ teaching on ecological issues has not been confined to the Catholic community. See generally George Mason University Center for Climate Change Communication & Yale Program on Climate Change Communication, *The Francis Effect: How Pope Francis Changed the Conversation About Global Warming* (Nov. 2015), <http://environment.yale.edu/climate-communication/article/the-francis-effect/> (exploring Pope Francis’ impact on public perception of climate-related issues); Alessandro Spina, *Reflections on Science, Technology and Risk Regulation in Pope Francis’ Encyclical Letter Laudato Si’*, 4 EUR. J. RISK REG. 579 (2015) (noting that *Laudato Si’* “has been accompanied by wide public attention”).

2. Pope Francis, Encyclical Letter, *Laudato Si’: On Care for Our Common Home* (May 24, 2015), http://w2.vatican.va/content/francesco/en/encyclicals/documents/papa-francesco_20150524_enciclica-laudato-si.html [hereinafter *Laudato Si’*]. Since this encyclical was released, many commentators, not surprisingly, have weighed in on it and its implications. One of the most notable was a speech by Cardinal Peter Turkson, President of the Pontifical Council for Justice and Peace, who spoke about *Laudato Si’* at Boston College on September 28, 2015. See Cardinal Peter K.A. Turkson, President, Pontifical Council for Justice and Peace, *Our Common Home: An Ethical Summons to Tackle Climate Change* (Sept. 28, 2015), http://en.radiovaticana.va/news/2015/09/29/cardinal_turkson_catholic_institutions_and_climate_change/1175534. For additional commentary on *Laudato Si’* from a wide range of religious and political perspectives, see generally Rowan Williams, *Embracing Our Limits: The Lessons of Laudato Si’*, 142 COMMONWEAL, Oct. 29, 2015, at 12; Anna Rowlands, *Laudato Si’: Rethinking Politics*, 16 POL. THEOLOGY 418 (Sept. 2015); C. Z. Peppard, *Pope Francis and the Fourth Era of the Catholic Church’s Engagement with Science*, 71 BULLETIN OF THE ATOMIC SCIENTISTS 31 (2015); Dawn Carpenter, *Laudato Si’ and the Social Mortgage*, ZENIT (July 2, 2015), <http://zenit.org/articles/laudato-si-and-the-social-mortgage/>; R.R. Reno, *The Weakness*

ranging encyclical, Pope Francis expressed a fascinating paradox with respect to law and ecology.

On the one hand, *Laudato Si'* contains a stunningly enthusiastic endorsement of a strong local, national and, in particular, international legal system empowered to impose strict environmental and economic controls as a way to foster ecological improvement. This proposes an indispensable and expanded role for a robust, binding, and, even, intrusive legal framework to address environmental issues. On the other hand, *Laudato Si'* also includes a profound, nearly desperate plea for personal conversion, arguing that this is the only way to foster enduring and proper relationships between God, each other, and creation—relationships that form the indispensable and critical foundation for responsible ecological stewardship.

This tension about, and ambivalence toward, the role, *vel non*, of law and legal authority is worth exploring in any attempt to articulate a Christian vision of the role of the state in protecting natural resources and applying law to the resolution of environmental problems.³ What follows is a discussion of *Laudato Si'*'s proposed Christian vision of the limits on and promise of law as an instrument to advance peace with Creator, creation and each other.⁴

of *Laudato Si'*, FIRST THINGS (July 1, 2015), <http://www.firstthings.com/web-exclusives/2015/07/the-weakness-of-laudato-si>; Anthony Annett, *The Next Step: How Laudato Si' Extends Catholic Social Teaching*, 142 COMMONWEAL, Aug. 14, 2015, at 19; Michael Löwy, *Laudato Si'—The Pope's Anti-Systemic Encyclical*, 67 MONTHLY REVIEW 50 (Dec. 2015); Joseph F.C. DiMento, *Laudato Si'*, 57 ENV'T: SCI & POL'Y FOR SUSTAINABLE DEV. 9 (2015); *Everything is Connected: The Challenge & Hope of "Laudato Si'"*, 142 COMMONWEAL, July 10, 2015, at 5; John Copeland Nagle, *Pope Francis, Environmental Anthropologist*, 28 REGENT U. L. REV. 7 (2015).

3. While Pope Francis intended *Laudato Si'* for a worldwide audience, he noted that he also hoped to speak in a particular way about Christian moral obligations. See, e.g., *Laudato Si'*, *supra* note 2, at para. 64:

[A]lthough this Encyclical welcomes dialogue with everyone so that together we can seek paths of liberation, I would like from the outset to show how faith convictions can offer Christians, and some other believers as well, ample motivation to care for nature and for the most vulnerable of their brothers and sisters.

4. It should be noted that Pope Francis is not the first Pope to speak of environmental responsibility. Most notably, his two immediate predecessors were also greatly concerned about responsible environmental stewardship. See Pope John Paul II, *Peace with God the Creator, Peace with All of Creation* (Jan. 1, 1990), http://w2.vatican.va/content/john-paul-ii/en/messages/peace/documents/hf_jp-ii_mes_19891208_xxiii-world-day-for-peace.html. Prior to that, Pope Paul VI also addressed these issues in Pope Paul VI, *A Hospitable Earth for Future Generations: Message to the Stockholm Conference on Human Environment* (June 1, 1972), <http://faculty.theo.mu.edu/schaefer/ChurchonEcologicalDegradation/documents/AHospitableEarthforFutureGenerations.pdf>. Naturally, these earlier papal statements have

also been widely commented on. I have previously written about some of the basic themes to be found in these teachings. See generally Lucia A. Silecchia, *Environmental Ethics from the Perspective of NEPA and Catholic Social Teaching: Ecological Guidance for the 21st Century*, 28 WILLIAM & MARY ENVTL. L. & POL'Y REV. 659 (2004); Lucia A. Silecchia, *Discerning the Environmental Perspective of Pope Benedict XVI*, 4 J. CATH. SOCIAL THOUGHT 227 (2007); Lucia A. Silecchia, *The Preferential Option for the Poor: An Opportunity and a Challenge for Environmental Decision-Making*, 5 U. ST. THOMAS L. REV. 87 (2008); Lucia A. Silecchia, *The Call to Stewardship: A Catholic Perspective on Environmental Responsibility*, in AMERICAN LAW FROM A CATHOLIC PERSPECTIVE 213 (Ronald J. Rychlak ed., 2015).

See also Most Reverend Thomas G. Wenski, *The Challenge of Climate Change and Environmental Justice: A Distinctive Catholic Contribution*, 23 NOTRE DAME J.L. ETHICS & PUB. POL'Y 497 (2009); Daniel P. Scheid, *The Common Good: Human or Cosmic?*, 9 J. RELIGION & SOC'Y SUPPLEMENT SERIES 5 (2013). In recent years, a spate of books discussing Catholic and papal teachings on ecology have also been released. For selected publications in the field, see DAVID CLOUTIER, *WALKING GOD'S EARTH: THE ENVIRONMENT AND CATHOLIC FAITH* (2014); GREEN DISCIPLESHIP: CATHOLIC THEOLOGICAL ETHICS AND THE ENVIRONMENT (Tobias Winright ed., 2011); WOODEENE KOENIG-BRICKER, *TEN COMMANDMENTS FOR THE ENVIRONMENT: POPE BENEDICT XVI SPEAKS OUT FOR CREATION AND JUSTICE* (2009); SARAH MCFARLAND TAYLOR, *GREEN SISTERS: A SPIRITUAL ECOLOGY* (2007); DAWN M. NOTHWEHR, *FRANCISCAN THEOLOGY OF THE ENVIRONMENT: AN INTRODUCTORY READER* (2002); AND GOD SAW THAT IT WAS GOOD: CATHOLIC THEOLOGY AND THE ENVIRONMENT (Drew Christiansen & Walter Grazer eds., 1996); EMBRACING EARTH: CATHOLIC APPROACHES TO ECOLOGY (Albert Lachance & John E. Carroll eds., 1994); PRESERVING THE CREATION: ENVIRONMENTAL THEOLOGY AND ETHICS (Kevin W. Irwin & Edmund D. Pellegrino eds., 1994); CHARLES M. MURPHY, *AT HOME ON EARTH: FOUNDATIONS FOR A CATHOLIC ETHIC OF THE ENVIRONMENT* (1989); ROGER D. SORRELL, *ST. FRANCIS OF ASSISI AND NATURE: TRADITION AND INNOVATION IN WESTERN CHRISTIAN ATTITUDES TOWARD THE ENVIRONMENT* (1988). In addition, conferences and websites have sprung up as well to provide study resources on the link between Catholic social thought and ecological questions. See, e.g., *Environment/Environmental Justice Program*, UNITED STATES CONFERENCE OF CATHOLIC BISHOPS, <http://www.usccb.org/issues-and-action/human-life-and-dignity/environment/index.cfm> (website on environmental and ecological questions maintained by the United States conference of Catholic Bishops); THE FORUM ON RELIGION AND ECOLOGY AT YALE, <http://fore.yale.edu> (website of the interreligious Forum on Religion and Ecology at Yale).

Pope Francis' recent encyclical will certainly generate additional commentary. Recently, for example, the AMERICAN JOURNAL OF INTERNATIONAL LAW featured a symposium on Pope Francis' encyclical that included many different perspectives. The papers are available in *Symposium: The Pope's Encyclical and Climate Change Policy*, AJIL UNBOUND, (Nov. 25, 2015), <https://www.asil.org/blogs/ajil-unbound>. They include Daniel Bodansky, *Should We Care What the Pope Says About Climate Change?*, AJIL UNBOUND (Nov. 25, 2015); Dale Jamieson, *Theology and Politics in Laudato Si'*, AJIL UNBOUND (Nov. 25, 2015); Ileana M. Porras, *Laudato Si', Pope Francis' Call to Ecological Conversion: Responding to the Cry of the Earth and the Poor—Towards an Integral Ecology*, AJIL UNBOUND (Nov. 25, 2015); Lincoln L. Davies, *Energy, Consumption, and the Amoralism of Energy Law*, AJIL UNBOUND (Nov. 25, 2015); Lavanya Rajamani, *The Papal Encyclical & the Role of Common but Differentiated Responsibilities in the International Climate Change Negotiations*, AJIL UNBOUND (Nov. 25, 2015); Dinah Shelton, *Dominion and Stewardship*, AJIL UNBOUND (Nov. 25, 2015).

Although the focus of the paper is immediately directed toward *Laudato Si'*, it is more broadly an inquiry into an age-old question for all: what is the promise and what is the peril of relying on law as a means to accomplishing a goal, and what are the limitations of law that must be respected.

The paper begins with a discussion of Pope Francis' seeming enthusiasm for reliance on the *legal regime* for environmental protection. It then explores the opposite side of this coin: the need for *personal conversion* and responsibility as the approach to living in harmony with Creator, creation, and each other.⁵ Finally, the paper will focus on a concept that Pope Francis calls "social love."⁶ Although *Laudato Si'* does not flesh this out too deeply, this concept has the potential to be a bridge between personal conversion and force of law.

A. *Laudato Si'* and the Role of Law

Laudato Si' is, at its heart, a profoundly faith-based commentary on life in the modern world and the obligations that faith imposes on the way in which the problems of the present age are to be navigated. It is not a narrowly structured encyclical focused exclusively on climate—although that is its popular perception.⁷ Rather, included within its "breathtakingly ambitious"⁸ pages is a wide-ranging and "eclectic"⁹ discussion of economic, social, moral, legal, psychological, political and, even, architectural woes,¹⁰ as well as

5. Indeed, this is consistent with the approach adopted by Pope Francis, who himself stated that he aimed to "advance some broader proposals for dialogue and action which would involve each of us as individuals, and also affect international policy." *Laudato Si'*, *supra* note 2, at para. 15.

6. *Id.* at para. 231.

7. See Spina, *supra* note 1, at 579 ("The encyclical has a much more profound and ambitious goal: it aims to discuss the relationship between man and nature."); *id.* at 580 (noting *Laudato Si'*'s "vast intellectual reach" and observing, "it covers many contemporary issues related to the use of the environment, including waste management or urban design . . .").

8. Nagle, *supra* note 2, at 9.

9. Bodansky, *supra* note 4, at 127 (stating that *Laudato Si'* is "eclectic in its tone and analysis, combining a prosaic discussion of externalities, risk-benefit analysis, the circular economy, and the need for 'enforceable' international agreements, with vivid, apocalyptic language . . . and spiritually-oriented sections . . .").

10. This interdisciplinary approach was an intentional one. See, e.g., *Laudato Si'*, *supra* note 2, at para. 63 ("If we are truly concerned to develop an ecology capable of remedying the damage we have done, no branch of the sciences and no form of wisdom can be left out, and that includes religion and the language particular to it. The Catholic Church is open to dialogue with philosophical thought; this has enabled her to produce various syntheses between faith and reason."). See also Turkson, *supra* note 2 ("Elected politicians, public

commentary on ecological concerns that range far beyond simply climate concerns.¹¹

However, *Laudato Si'* is also a practical reflection on the ways in which these problems are to be addressed.¹² Thus, Pope Francis devotes a great deal of his encyclical not only to addressing the *substantive* requirements of an ethical environmental perspective, but also to the practical and procedural: *how* is this to be accomplished, attained or achieved? What are the proper tools, systems, and sources of authority to employ and deploy in responding

servants, research scientists, educators, business and religious leaders, shapers of culture and public opinion, are playing important roles in shaping humanity's response (or lack of response) to the environment."); Löwy, *supra* note 2, at 50 ("Pope Francis's 'ecological encyclical' is an event which—whether taken from a religious, ethical, social, or political point of view—is of planetary importance."); Nagle, *supra* note 2, at 9-10 (noting that *Laudato Si'* "surveys a sweeping range of environmental and social problems. Along the way, it relies on anthropology, theology, science, economics, politics, law, and other disciplines.") (citations omitted); *id.* at 23 ("Beyond those environmental problems, the Encyclical also targets a similarly broad range of social problems, such as overcrowded cities, flawed transportation systems, and the need to protect labor.") (citations omitted); *Everything is Connected*, *supra* note 2, at 5 ("At over 37,000 words, Pope Francis's *Laudato Si'* is one of the longest encyclicals in the church's history. It covers a lot of ground. Among the topics addressed: banking regulation, gender theory, urban planning, Sabbath observances, Trinitarian theology, and the saying of grace before meals (the pope recommends it).").

11. See Annett, *supra* note 2, at 20, observing the broad scope of *Laudato Si'*'s ecological analysis and noting that:

Climate change is not even the whole story. There is also the acidification of the oceans, depletion of freshwater resources, rapid deforestation, large-scale pollution caused by chemicals and fossil fuels, and a dramatic degradation of ecosystems and loss of biodiversity. It is remarkable that *Laudato Si'* touches directly on many of these issues, displaying a keen awareness of the scale and complexity of the environmental crisis. It also places this crisis within a larger context.

See also Bodansky, *supra* note 4, at 127 (noting that *Laudato Si'* "addresses virtually the entire litany of environmental problems—loss of biodiversity, hazardous chemicals and wastes, marine pollution, replacement of virgin forests with monoculture plantations, and lack of access to clean drinking water, among others . . ."); Nagle, *supra* note 2, at 22-23 ("Of course, climate change is addressed, but so are other environmental problems such as air pollution, water pollution, and the loss of biodiversity.") (citations omitted). *But see* Nagle, *supra* note 2, at 10 ("*Laudato Si'* is not really even an environmental encyclical in that the natural environment does not play the starring role. Rather, it is an encyclical about humanity.").

12. However, it has been observed that "the Encyclical is far less powerful in its explication of the proper solutions to our environmental problems than it is in its diagnosis of those problems." Nagle, *supra* note 2, at 33. This is a fair critique, and one that is not surprising given the Pope's sphere of expertise and the difficulties that plague any effort to propose meaningful, detailed ecological solutions.

to ecological threats? In doing this, Pope Francis wades into a question all must confront when trying to articulate a vision for ecological responsibility.

In *Laudato Si'*, Pope Francis articulates a positive role for legal institutions and for the role of law on a local, national, and international level. Throughout, “[t]he Encyclical is peppered with references to the need for more laws and regulation, better implementation, more enforcement, and better compliance.”¹³ Indeed, in reading through *Laudato Si'*, it is easy to get the impression that Pope Francis views law as, perhaps, the only force strong enough and comprehensive enough to serve as a bulwark against an economic system that he believes has been destructive of human and natural ecology.¹⁴ In his statements on law and its role in ecological matters, Pope Francis invites all people to consider the proper role of law—a matter of particular concern to Christian writers and advocates who have long contemplated the correct use of authority and the force of government in pursuit of the common good. This is not a new question, but an age-old quandary.

With respect to substantive law, Pope Francis certainly advocates a role—and, in his view, an expansive role—for law in the creation of explicit environmental controls through the mechanisms of environmental laws and regulations that curb dangers,¹⁵ incentivize beneficial conduct, and penalize violations.¹⁶ He proposes specific, explicitly environmental measures that can address significant environmental challenges. In *Laudato Si'*, and in his other commentaries on ecological questions, Pope Francis articulates proposals with a greater degree of specificity than one would expect from a religious

13. Porras, *supra* note 4, at 141.

14. *See id.* (“Unlike unconstrained free-market capitalism and the technocratic paradigm, our legal structures are not viewed as part of the problem or as one of the social structures that have contributed to our present crisis. On the contrary, law is presented as oppositional and virtuous . . .”).

15. *See, e.g., Laudato Si'*, *supra* note 2, at para. 29 (“Underground water sources in many places are threatened by the pollution produced in certain mining, farming and industrial activities, especially in countries lacking adequate regulation or controls.”).

16. *See e.g., Laudato Si'* *supra* note 2, at para. 26 (“There is an urgent need to develop policies so that, in the next few years, the emission of carbon dioxide and other highly polluting gases can be drastically reduced, for example, substituting for fossil fuels and developing sources of renewable energy. Worldwide there is minimal access to clean and renewable energy.”).

leader, as opposed to a policymaker.¹⁷ Indeed, as one commentator observed, Pope Francis "speaks with remarkable specificity"¹⁸ in *Laudato Si'*.

In addition to explicitly focused environmental laws, Pope Francis also sees the need to advance ecological protection by addressing a number of related substantive areas of law rather than those focused narrowly and distinctly on ecology. First, he urges greater attention to international human rights law as a way of ensuring that basic human dignity is respected in the face of environmental burdens.¹⁹ A robust protection of international human rights—including rights to water, food security, health, safety, information, participation, and life itself—would directly and indirectly require that greater attention be paid to environmental protection.²⁰ Indeed, the relationship between the two is reciprocal: to protect certain basic human rights, protection of the natural world is essential. However, it is also true that by more zealously defending basic human rights, protection of the environment will, naturally, have to follow since certain basic rights to the essentials of life depend on a healthy environment.

17. Some of the most well-known and most highly publicized of Pope Francis's recent commentaries on ecological questions came in speeches and addresses during his visit to the United States in 2015. See generally Pope Francis, Address of the Holy Father to the Joint Session of the United States Congress (Sept. 24, 2015), http://w2.vatican.va/content/francesco/en/speeches/2015/september/documents/papa-francesco_20150924_usa-us-congress.html; Pope Francis, Address of the Holy Father at the Meeting with the Members of the General Assembly of the United Nations Organization (Sept. 25, 2015), http://w2.vatican.va/content/francesco/en/speeches/2015/september/documents/papa-francesco_20150925_onu-visita.html. However, these are merely two of the opportunities Pope Francis has taken in his speeches, writings and travels to highlight the importance he attaches to ecological questions. The Catholic Climate Covenant organization has compiled an anthology of some of Pope Francis's statements on this topic. See *Pope Francis has spoken out strongly about ecology. His encyclical is based on Catholic values and ideas.*, CATHOLIC CLIMATE COVENANT, http://www.catholicclimatecovenant.org/pope_francis (last visited Apr. 19, 2016).

18. DiMento, *supra* note 2, at 10.

19. See, e.g., *Laudato Si'*, *supra* note 2, at para. 30 ("Yet access to safe drinkable water is a basic and universal human right, since it is essential to human survival and, as such, is a condition for the exercise of other human rights. Our world has a grave social debt towards the poor who lack access to drinking water, because they are denied the right to a life consistent with their inalienable dignity." (italics in original)).

20. Many have written about the link between environmental protection and human rights. See, e.g., Rebecca M. Bratspies, *Human Rights and Environmental Regulation*, 19 N.Y. U. ENVTL. L. J. 225 (2012) [hereinafter Bratspies, *Human Rights*]; Rebecca Bratspies, *Do We Need a Human Right to a Healthy Environment?*, 13 SANTA CLARA J. OF INT'L L. 31 (2015) [hereinafter Bratspies, *Healthy Environment*].

Second, Pope Francis also cites the urgent need to reduce international corruption as well,²¹ urging not only creation of new laws but also the need to develop a culture that respects laws already in place.²² Absent this, the best of laws will come to naught, as they will go unenforced or unfairly enforced. In addition, without addressing the problem of corruption, respect for the rule of law will be undermined, and funds or resources intended to address environmental needs will be misdirected to corrupt leaders and never achieve the benefits for which they were, in good faith, intended. Indeed, “in many settings, the rule of law is a sorry fiction, with an administrative elite exploiting public process to advance private interest; and even in less corrupt environments, the law loses credibility when the social order manifestly fails to protect the poorest.”²³

Third, and more controversially, Pope Francis also strenuously supports the use of law to enact economic regulations that he anticipates could be beneficial to ecological protection.²⁴ He has said, for example,

“Civil authorities have the right and duty to adopt clear and firm measures in support of small producers and differentiated production. To ensure economic freedom from which all can effectively benefit, restraints occasionally have to be imposed on those possessing greater resources and financial power.”²⁵

21. See e.g., *Laudato Si'*, *supra* note 2, at para. 55 (“Some countries are gradually making significant progress, developing more effective controls and working to combat corruption.”).

22. See e.g., *Laudato Si'*, *supra* note 2, at para. 142 (“A number of countries have a relatively low level of institutional effectiveness, which results in greater problems for their people while benefiting those who profit from this situation. Whether in the administration of the state, the various levels of civil society, or relationships between individuals themselves, lack of respect for the law is becoming more common. Laws may be well framed yet remain a dead letter. Can we hope, then, that in such cases, legislation and regulations dealing with the environment will really prove effective? We know, for example, that countries which have clear legislation about the protection of forests continue to keep silent as they watch laws repeatedly being broken.”).

23. Williams, *supra* note 2, at 14.

24. See, e.g., DiMento, *supra* note 2, at 9 (noting, “[f]or some the message will be dismissed as extreme, for this 74-page opus is in parts a quite radical document. It summarizes what many in the activist environmental community have been preaching for years.”); Löwy, *supra* note 2, at 52 (“Always connecting the ecological question with the social question, Francis insists on the necessity of radical measures and profound changes in order to confront this double challenge.”).

25. *Laudato Si'*, *supra* note 2, at para. 129. See also *id.*, para. 177 (“There is a growing jurisprudence dealing with the reduction of pollution by business activities. But political and institutional frameworks do not exist simply to avoid bad practice, but also to promote best

This would expand the reach of the law into the marketplace, reflecting Pope Francis' skepticism about an unregulated market and his belief in the need for a strong regulatory regime as a counterbalance.²⁶ Interestingly, he strongly rejects using the law to create a system of carbon credits as an economic incentive for environmental efforts, reluctant to use the law to create positive incentives in this manner.²⁷

Some, although not all, of the economic reforms he advocates involve laws with respect to measures that address material poverty²⁸ and its causes:

It is essential to seek comprehensive solutions which consider the interactions within natural systems themselves and with social systems. We are faced not with two separate crises, one environmental and the other social, but rather with one complex crisis which is both social and environmental. Strategies for a solution demand an integrated approach to combating poverty, restoring dignity to the excluded, and at the same time protecting nature.²⁹

practice, to stimulate creativity in seeking new solutions and to encourage individual or group initiatives.”).

26. See Annett, *supra* note 2, at 20 (“*Laudato Si*’ is deeply suspicious of the classical liberal emphasis on individual autonomy and promotion of self-interest as the prime motivating force of economic interaction.”); Reno, *supra* note 2, at 4 (“Francis advances strong, often comprehensive criticisms of the secular technological project that drives modern capitalism.”).

27. See *Laudato Si*’, *supra* note 2, at para 177. See Löwy, *supra* note 2, at 52 (“The concrete methods proposed by the techno-finance oligarchy, the so-called ‘carbon markets’ for example, are perfectly inefficient. Pope Francis’s scathing critique of this false solution is one of the most important arguments contained in the encyclical.”); Nagle, *supra* note 2, at 33 (“Francis reserves much of his greatest scorn for how the global market economy facilitates environmental harm. His criticism of cap-and-trade systems shows that he even opposes the use of the marketplace to respond to environmental harms.”) (citations omitted); Bodansky, *supra* note 4, at 129 (“[W]hile the Pope’s emphasis on the moral dimensions of climate change is salutary, it comes at the expense of his treatment of the economic and technological dimensions of the issue. This is perhaps most apparent in the encyclical’s dismissal of emissions trading . . .”). The morality of various market controls and incentives was the subject of a recent debate and commentary in Leslie Carothers et al., *The Morality of Market Mechanisms*, 46 ELR 10006 (I 2016), papers.ssrn.com/so13/cf_dev/AbsByAuth.cfm?per_id=625430#show2723996.

28. See Clive Hamilton, *The Sacrament of Creation: What Can We Expect from Pope Francis’ Ecological Encyclical?*, ABC RELIGION & ETHICS (Mar. 3, 2015), <http://www.abc.net.au/religion/articles/2015/03/03/4190521.htm> (“Politically and theologically, Francis’ starting point is always solidarity with the poor . . . [H]e consistently links ecological decline to the immiserisation of the poor and vulnerable . . .”).

29. *Laudato Si*’, *supra* note 2, para. 139. See also *id.* at para. 157 (“Finally, the common good calls for social peace, the stability and security provided by a certain order which cannot

In this sense, he again advocates a broad reach for the law. His proposals would involve the authority of the legal system in the pursuit of economic welfare in an expansive way that implicates spheres far beyond the strictly ecological.

Finally, and in what is possibly the most distinctly Catholic or Christian element of Pope Francis' encyclical, he speaks throughout *Laudato Si'* of the need to protect the right to life, lamenting that legalized abortion—often advocated in the interest of environmental protection via population control—is a profound threat to human ecology.³⁰ In this, he acknowledges that law can be misused in a morally coercive way to advance a view of environmental progress that denies the fundamental dignity of the human person.³¹ He urges that the law instead be used to protect those who are particularly vulnerable because they are at the earliest stage of their lives. This is one use of the law to prevent attacks on human dignity in a way that Pope Francis argues lies at the center of what he perceives to be a profound crisis. He pins much of the blame for ecological woes on what he calls a “throwaway” culture.³² In some respects, this is in accord with secular commentators who see careless consumption leading to the waste that pollutes. But, Pope Francis reminds readers that people, too, can be the victims of a “throwaway” culture. When this happens, it is the vulnerable unborn and others who are weak, who become the most likely targets.³³ The

be achieved without particular concern for distributive justice; whenever this is violated, violence always ensues. Society as a whole, and the state in particular, are obliged to defend and promote the common good.”); Annett, *supra* note 2, at 19 (“In essence, [*Laudato Si'*] suggests that our responsibilities extend across time as well as space, and that they include the entirety of creation. *Laudato [S]i'* thus develops a broader notion of solidarity—solidarity not only within generations but also between generations, and solidarity not only with our fellow human beings but with the whole earth and all its creatures.”).

30. See, e.g., *Laudato Si'*, *supra* note 2, at para. 90 (“[M]ore zeal is shown in protecting other species than in defending the dignity which all human beings share in equal measure.”). See also *id.* at para. 157 (“Underlying the principle of the common good is respect for the human person as such, endowed with basic and inalienable rights ordered to his or her integral development.”).

31. See Nagle, *supra* note 2, at 18 (“Francis is especially worried about sacrificing the most vulnerable groups of humanity in our zeal to care for the environment.”).

32. *Laudato Si'*, *supra* note 2, at para. 22.

33. See Williams, *supra* note 2, at 13 (“[W]hat Pope Francis has to say about the rights and dignities of the unborn is seamlessly connected with the dangers of a culture of ‘disposability’ in which the solid presence of those others who do not instantly appear to contribute to our narrowly conceived well-being can so readily be forgotten.”). See also Porras, *supra* note 4, at 137 (“Francis takes the analysis one step further, emphasizing the intimate connection between the culture’s utilitarian attitude to things and its attitude to people. A throwaway culture is one that fails to recognize the core dignity of human beings or the

law can encourage this in direct and subtle ways, and Pope Francis condemns both.

As a structural legal matter, Pope Francis respects traditional subsidiarity—the importance of resolving problems, with wisdom, at the level best suited to handling the problem.³⁴ He references “the serious responsibility of international *and* local policy,”³⁵ suggesting that there is important legal work best done on many levels of government. In this, he invites consideration of structural legal and political decision-making in the same way in which secular legal commentators identify subsidiarity as an important organizing principle for environmental law.³⁶

With respect to the lowest levels of political authority, Pope Francis sees the wisdom and value of addressing problems locally, noting that:

Attempts to resolve all problems through uniform regulations or technical interventions can lead to overlooking the complexities of local problems which demand the active participation of all members of the community. New processes taking shape cannot always fit into frameworks imported from outside; they need to be based in the local culture itself.³⁷

In a similar vein, he notes that “[t]here are no uniform recipes, because each country or region has its own problems and limitations.”³⁸ While this is in keeping with the wisdom of subsidiarity, it is also consistent with the ecological reality that different localities have different, specific

intrinsic value of nature, and treats both as available for our use and exploitation, to be enjoyed, wasted and discarded as soon [as] we have no further use for them.” (citations omitted)).

34. See, e.g., *Laudato Si'*, *supra* note 2, at para. 157 (speaking of the importance of advancing “the overall welfare of society and the development of a variety of intermediate groups, applying the principle of subsidiarity. Outstanding among those groups is the family, as the basic cell of society.”). But see Nagle, *supra* note 2, at 40 (“Subsidiarity is a Catholic innovation, which makes it surprising that Francis pays relatively little attention to it in the Encyclical.” (citation omitted)).

35. *Laudato Si'*, *supra* note 2, at para. 16 (emphasis added).

36. Pope Francis is, certainly, not the only one to ponder the importance of subsidiarity in the environmental context. Many secular commentators have done so as well. See, e.g., Jack Tuholske & Mark Foster, *Solving Transboundary Pollution Disputes Locally: Success in the Crown of the Continent*, 92 OR. L. REV. 649 (2014); Josephine van Zeben, *Subsidiarity in European Environmental Law: A Competence Allocation Approach*, 38 HARV. ENVTL. L. REV. 415 (2014).

37. *Laudato Si'*, *supra* note 2, at para. 144. See Nagle, *supra* note 2, at 40 (noting that “[t]he Encyclical expresses a particular affinity for local environmental laws.”).

38. *Laudato Si'*, *supra* note 2, at para. 180.

environmental woes. While it is certainly true that environmental harms travel and that there is a place for broad initiatives, it is also undeniable that various locations—due to their topography, geology, level of industrialization, degree of economic development, and the presence, *vel non*, of particularly fragile natural resources—have needs that differ greatly and require innovation and diversity to address. Thus, Pope Francis views strong local environmental regimes with considerable support.

In keeping with subsidiarity, Pope Francis also recognizes that there is an important role for non-governmental organizations (NGOs), regional associations, and other political entities as well, noting that:

Because the enforcement of laws is at times inadequate due to corruption, public pressure has to be exerted in order to bring about decisive political action. Society, through non-governmental organizations and intermediate groups, must put pressure on governments to develop more rigorous regulations, procedures and controls. Unless citizens control political power—national, regional and municipal—it will not be possible to control damage to the environment. Local legislation can be more effective, too, if agreements exist between neighbouring communities to support the same environmental policies.³⁹

In addition, there is an important role to be played by educational institutions, churches, civic groups, and community associations with respect to addressing ecological issues, and Pope Francis certainly does not ignore them.

However, with respect to ecological issues in particular, Pope Francis seems more enthusiastic about international law than one would expect, declaring that “global consensus is essential for confronting the deeper problems, which cannot be resolved by unilateral actions on the part of individual countries.”⁴⁰ While respecting general principles of subsidiarity, he warns that:

39. *Id.* at para. 179. *See also id.* at para. 181 (expressing fear that “in the absence of pressure from the public and from civic institutions, political authorities will always be reluctant to intervene, all the more when urgent needs must be met.”); *id.* at para. 166 (“Worldwide, the ecological movement has made significant advances, thanks also to the efforts of many organizations of civil society. It is impossible here to mention them all, or to review the history of their contributions. But thanks to their efforts, environmental questions have increasingly found a place on public agendas and encouraged more far-sighted approaches.”); *id.* at para. 179 (“[W]hile the existing world order proves powerless to assume its responsibilities, local individuals and groups can make a real difference.”).

40. *Id.* at para. 164.

Enforceable international agreements are urgently needed, since local authorities are not always capable of effective intervention. Relations between states must be respectful of each other's sovereignty, but must also lay down mutually agreed means of averting regional disasters which would eventually affect everyone. Global regulatory norms are needed to impose obligations and prevent unacceptable actions, for example, when powerful companies or countries dump contaminated waste or offshore polluting industries in other countries.⁴¹

Indeed, he points to concrete examples of environmental progress achieved by specific international environmental laws, saying:

Among positive experiences in this regard, we might mention, for example, the Basel Convention on hazardous wastes, with its system of reporting, standards and controls. There is also the binding Convention on international trade in endangered species of wild fauna and flora, which includes on-site visits for verifying effective compliance. Thanks to the Vienna Convention for the protection of the ozone layer and its implementation through the Montreal Protocol and amendments, the problem of the layer's thinning seems to have entered a phase of resolution.⁴²

In this way, he singles out the types of large-scale problems that he believes require international legal solutions,⁴³ and he expresses the belief that such international legal intervention is needed to respond to global environmental threats. This is particularly true in the many circumstances in which Pope

41. *Id.* at para. 173. In the particular issue of addressing oceanic pollution, Pope Francis is particularly insistent on a role for the global community when he says:

Let us also mention the system of governance of the oceans. International and regional conventions do exist, but fragmentation and the lack of strict mechanisms of regulation, control and penalization end up undermining these efforts. The growing problem of marine waste and the protection of the open seas represent particular challenges. What is needed, in effect, is an agreement on systems of governance for the whole range of so-called "global commons."

Id. at para. 174.

42. *Id.* at para. 168.

43. Pope Francis is not the first Catholic leader to argue that there are situations in which a global response is critical. See generally Peppard, *supra* note 2, at 35 ("Catholic social teaching's doctrines of justice and dignity developed a global scope. Economic, social, and environmental patterns were recognized as transcending national boundaries, reforming ethical obligations for Catholics worldwide." (citations omitted)).

Francis believes that environmental harm is linked to human rights harms.⁴⁴ With respect to legal institutions on this expansive international level, Pope Francis praises the fact that “[t]he worldwide ecological movement has already made considerable progress and led to the establishment of numerous organizations committed to raising awareness of these challenges.”⁴⁵ In particular, he says:

We cannot fail to praise the commitment of international agencies and civil society organizations which draw public attention to these issues and offer critical cooperation, employing legitimate means of pressure, to ensure that each government carries out its proper and inalienable responsibility to preserve its country’s environment and natural resources, without capitulating to spurious local or international interests.⁴⁶

The role of international law to address environmental problems—indeed, to address any problem—is controversial as it raises many questions about national autonomy, large bureaucracies,⁴⁷ unenforceability, and large-scale conflicts between blocks of nations with vastly different interests and goals.⁴⁸ Pope Francis does not address these drawbacks in any considerable detail.

44. This link is being written about more often by secular commentators as well as religious leaders. See Bratspies, *Healthy Environment*, *supra* note 20, at 34 (“[C]limate change increasingly interferes with the realization of fundamental, internationally recognized human rights—including the right to life, to health, to culture, to food, to self-determination, to property, and to development.”). The United Nations, as well, has explored these concerns. See generally Office of the U.N. High Comm’r for Human Rights, Rep. of the Office of the U.N. High Comm’r for Human Rights on the Relationship Between Climate Change and Human Rights, U.N. Doc. A/HRC/10/61 (Jan. 15, 2009), <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G09/103/44/PDF/G0910344.pdf?OpenElement>. See also United Nations Environment Programme, *Climate Change and Human Rights*, (Dec. 10, 2015), <http://unep.org/newscentre/Default.aspx?DocumentID=26856&ArticleID=35630&l=en#>.

45. *Laudato Si*, *supra* note 2, at para. 14.

46. *Id.* at para. 38.

47. Others have also observed the serious risks inherent in placing too much authority in the hands of an international bureaucracy. See, e.g., Reno, *supra* note 2, at 5 (noting that what Pope Francis proposes for international regulation “requires armies of technocrats with reams of data-laden reports. It presumes a global bureaucracy of unprecedented size and power. It’s a vision of human self-mastery on a global scale—technocracy on steroids.”).

48. Pope Francis is, of course, keenly aware of these differences between nations, and much of the encyclical grapples with the theme of “common but differentiated responsibilities” as the paradigm for decision-making. Rajamani, *supra* note 4, at 142. Yet, at the same time, “[a] fundamental theme running through the remarkable 192-page Papal

However, he is highly critical of the way in which legal mechanisms have succeeded, to date, on the international level, lamenting:

It is remarkable how weak international political responses have been. The failure of global summits on the environment make it plain that our politics are subject to technology and finance. There are too many special interests, and economic interests easily end up trumping the common good and manipulating information so that their own plans will not be affected.⁴⁹

Indeed, this criticism is addressed at the enterprise of international law more generally—and not simply in the environmental law context. Thus, the same problems that Pope Francis laments in the environmental law arena are likely to also arise with respect to international law's attempts to accomplish other tasks such as maintaining peace, preventing human rights abuses, protecting vulnerable people, safeguarding basic freedoms, and fostering advancements in health, security, development and welfare of both material and intangible kinds.⁵⁰

Interestingly, however, Pope Francis does not abandon his enthusiasm for international law as a theoretical method for resolving international legal matters. His criticism appears, instead, directed to its practical implementation, which is an entirely different critique. Because Pope Francis seems so surprisingly optimistic about the *potential* for international law to do good, its failure to achieve this potential seems to fill him with greater disappointment than would exist were his hopes not so high. He is disappointed, for example, that:

Encyclical . . . is the notion of solidarity—between nations and peoples, and between and within generations." *Id.* at 142.

49. *Laudato Si'*, *supra* note 2, at para. 54. He further denounced economic protectionism as a driving force in national environmental policy (as opposed to international) when he commented that, "[i]n response to electoral interests, governments are reluctant to upset the public with measures which could affect the level of consumption or create risks for foreign investment." *Id.* at para. 178.

50. Others have observed this as well. *See generally* Bratspies, *Healthy Environment*, *supra* note 20, at 42 ("[T]here is perhaps no bigger gap between 'law as it is' . . . and 'law as it should be' . . . than the distance between the articulation of human rights in treaties and agreements and their realization on the ground."). *See also id.* at 47 ("By design, many environmental treaties are long on aspirations but short on specifics. When treaties do include specific, enforceable obligations, those obligations are typically procedural rather than substantive. Moreover, even when multilateral environmental agreements do contain specific obligations, they often fail to identify the consequences that should attach to a breach. Multilateral environmental agreements are remarkably silent on how breaches of treaty obligations should be addressed. In many agreements, the legal machinery that would enable compensation, reparation or sanctions is entirely absent." (citation omitted)).

We lack leadership capable of striking out on new paths and meeting the needs of the present with concern for all and without prejudice towards coming generations. The establishment of a legal framework which can set clear boundaries and ensure the protection of ecosystems has become indispensable; otherwise, the new power structures based on the techno-economic paradigm may overwhelm not only our politics but also freedom and justice.⁵¹

More pointedly, prior to the Conference of the Parties held in Paris in November-December, 2015, he noted, “recent World Summits on the environment have not lived up to expectations because, due to lack of political will, they were unable to reach truly meaningful and effective global agreements on the environment.”⁵² His factual assessment is likely correct, although it is a matter of prudential judgment as to whether this inability to achieve such global agreements is a positive or negative result.

After the Paris Climate Agreement was finalized,⁵³ Pope Francis’ reaction to it was more optimistic—albeit cautiously optimistic—than his legal

51. *Laudato Si*, *supra* note 2, at para. 53. In a particular way, he was critical of the interest in carbon credits as a solution to the ecological crisis, fearing that “[t]he strategy of buying and selling ‘carbon credits’ can lead to a new form of speculation which would not help reduce the emission of polluting gases worldwide.” *Id.* at para. 171.

52. *Laudato Si*, *supra* note 2, at para. 166. *See also id.* at para. 169 (critiquing the “Rio + 20” conference for having “issued a wide-ranging but ineffectual outcome document. International negotiations cannot make significant progress due to positions taken by countries which place their national interests above the global common good.”); *id.* at para. 167 (discussing the mixed impact of international environmental law) (“The 1992 Earth Summit in Rio de Janeiro is worth mentioning. It proclaimed that “human beings are at the centre of concerns for sustainable development.” Echoing the 1972 Stockholm Declaration, it enshrined international cooperation to care for the ecosystem of the entire earth, the obligation of those who cause pollution to assume its costs, and the duty to assess the environmental impact of given projects and works. It set the goal of limiting greenhouse gas concentration in the atmosphere, in an effort to reverse the trend of global warming. It also drew up an agenda with an action plan and a convention on biodiversity, and stated principles regarding forests. Although the summit was a real step forward, and prophetic for its time, its accords have been poorly implemented, due to the lack of suitable mechanisms for oversight, periodic review and penalties in cases of non-compliance. The principles which it proclaimed still await an efficient and flexible means of practical implementation.” (citations omitted)).

53. Full information about the Paris COP 21 may be found at *Paris 2015 UN Climate Change Conference*, UNITED NATIONS ENVIRONMENT PROGRAMME, <http://web.unep.org/climatechange/cop21/highlights>. Predictably, the outcome of the conference was widely reported. *See, e.g.*, Coral Davenport, *Nations Approve Landmark Climate Accord in Paris*, N.Y. TIMES (Dec. 12, 2015), http://www.nytimes.com/2015/12/13/world/europe/climate-change-accord-paris.html?_r=0.

assessment in *Laudato Si'* appeared to be. The day after the Paris Climate accord was agreed to, Pope Francis commented:

The climate conference has just ended in Paris with the adoption of an agreement, which many are defining as historic. Its implementation will require concerted commitment and generous dedication by each one. With the hope that it may guarantee special attention to the most vulnerable populations, I urge the entire international community to continue with solicitude the path taken, in a sign of solidarity that will become more and more active.⁵⁴

The Paris Climate accord⁵⁵ adopted broad aspirational principles⁵⁶ and asked nations to develop their own “nationally determined contributions,”⁵⁷ with strict reporting requirements,⁵⁸ financial support to developing nations,⁵⁹ technology transfer,⁶⁰ and technical processes for implementation.⁶¹ In doing this, it reflected a recent change in approach to climate negotiations, perhaps in response to decades of ineffective efforts. Under the regime adopted in Paris, each nation proposed its own reductions, and it was the net sum of these individual proposals that accounts for the predicted reduction in greenhouse gas emissions that would result. One commentator described this as a “fundamental paradigm shift that has been underway in the climate regime for nearly a decade. A shift from a prescriptive to a facilitative approach, from Annex-based differentiation to self-differentiation, and from the provision of support to developing countries for climate action to sharing of the costs of climate action.”⁶² It remains to be seen whether this approach will be beneficial, efficient or

A report on the highlights of the Paris Accord can be found at HISTORIC PARIS AGREEMENT ON CLIMATE CHANGE, <http://newsroom.unfccc.int/unfccc-newsroom/finale-cop21/>.

54. Pope Francis, *Angelus* (Dec. 13, 2015), http://w2.vatican.va/content/francesco/en/angelus/2015/documents/papa-francesco_angelus_20151213.html.

55. Framework Convention on Climate Change, *Adoption of the Paris Agreement*, Draft Decision CP.21, GE.15-21932(E), FCCC/CP/2015/L.9/ Rev. 1 (Dec. 12, 2015), <https://unfccc.int/resource/docs/2015/cop21/eng/l09r01.pdf> [hereinafter “Paris Agreement”].

56. Paris Agreement, *supra* note 55, Preamble and Annex.

57. *Id.* at II (12) and Annex, Article 4.

58. *Id.* at III (27) and Annex, Article 4 (8-12).

59. *Id.* at III (53-65) and Annex, Article 9.

60. *Id.* at III (66-71) and Annex, Article 10.

61. *Id.* at III (103-105).

62. Rajamani, *supra* note 4, at 146.

effective. However, it did draw on principles of subsidiarity to a greater extent than traditional climate agreements had.

Interestingly, in the context of subsidiarity, Pope Francis points out that the need for international law is driven not by political considerations or even ecological ones. Rather, he posits that the need for strong international law is driven by economic considerations. He wrote:

The twenty-first century, while maintaining systems of governance inherited from the past, is witnessing a weakening of the power of nation states, chiefly because the economic and financial sectors, being transnational, tends to prevail over the political. Given this situation, it is essential to devise stronger and more efficiently organized international institutions, with functionaries who are appointed fairly by agreement among national governments, and empowered to impose sanctions.⁶³

Given the experience with international law's frequent inefficacy, this reliance on international law to respond to environmental concerns efficiently and effectively seems to be unrealistic as it "talk[s] in relatively expansive terms about the role of the state as a positive agent for facilitating ecological change."⁶⁴ More importantly, the hostility and opposition of the international legal regime to many other values that many people of faith—including the Catholic Church—hold dear, also calls into question the ability of international law to do so in an ethical and morally acceptable way. Indeed, "there is a vast literature that critiques law's productive complicity in supporting and promoting the very social evils that Francis and Catholic social doctrine deplore."⁶⁵

It is, perhaps, in light of this, that Pope Francis also acknowledges that the ability of the legal system to solve ecological problems has inherent limitations. Often, "even the best mechanisms can break down when there are no worthy goals and values, or a genuine and profound humanism to serve as the basis of a noble and generous society."⁶⁶ It is because of this that

63. *Laudato Si'*, *supra* note 2, at para. 175.

64. Rowlands, *supra* note 2, at 419.

65. Porras, *supra* note 4, at 141. *See also id.* ("Francis' seemingly uncritical acceptance of the virtuous character of our legal structures, will undoubtedly strike many as naïve and unwarranted.")

66. *Laudato Si'*, *supra* note 2, at para. 181. Thus, the question of legality is not the only question to be considered since "[h]onesty and truth are needed in scientific and political discussions; these should not be limited to the issue of whether or not a particular project is permitted by law." *Id.* at para. 183. *See also* Spina, *supra* note 1, at 583 (lamenting that "there is a problem of effectiveness of the legal measures adopted as the law remains in some cases

he couples his analysis of legal institutions and the role of law with a plea for personal conversion.⁶⁷

B. *Laudato Si' and Personal Conversion*

*"Many things have to change course, but it is we human beings above all who need to change."*⁶⁸

*"[T]he ecological crisis is also a summons to profound interior conversion."*⁶⁹

Pope Francis supplements his call for legal reform with a call to personal conversion—in much the same way as his predecessors did⁷⁰ and consistent with the Christian ideal of individual responsibility to Creator, for neighbor, and towards the common good. He remarked that "a healthy relationship with creation is one dimension of overall personal conversion, which entails the recognition of our errors, sins, faults and failures, and leads to heartfelt repentance and desire to change."⁷¹ He says that sin is a factor in environmental misconduct, as it is in all wrong-doing. Thus, it is something to be overcome in the interest of conversion since "violence present in our hearts, wounded by sin, is also reflected in the symptoms of sickness evident in the soil, in the water, in the air and in all forms of life."⁷²

Because of the emphasis he places on personal sin as a factor in ecological degradation, Pope Francis calls his readers to a deep and profound recognition of sin in this context as it would be recognized in other contexts.⁷³ Relying on biblical passages often analyzed by his predecessors, he laments:

'dead letter' and second the Pope stresses that, even when laws can be effectively enforced, there are cultural and educational factors of human behaviour that laws cannot capture.").

67. See also Williams, *supra* note 2, at 14 ("Battling about legal controls is pointless unless we are able to persuade people of the human richness of a culture informed by that radical openness to meaning that is ready to leave behind the calculations of profit and public utility as the only tests of success and political viability.").

68. *Laudato Si'*, *supra* note 2, at para. 202 (emphasis added).

69. *Id.* at para. 217 (emphasis added).

70. *Id.* at para. 6 ("Pope Benedict asked us to recognize that the natural environment has been gravely damaged by our irresponsible behaviour.").

71. *Id.* at para. 218.

72. *Id.* at para. 2. See also *id.* at para. 8 ("Patriarch Bartholomew has spoken in particular of the need for each of us to repent of the ways we have harmed the planet . . .").

73. See Nagle, *supra* note 2, at 10 ("Francis rightly condemns how sin distorts our understanding of ourselves and the world in which we live.").

The creation accounts in the book of Genesis contain, in their own symbolic and narrative language, profound teachings about human existence and its historical reality. They suggest that human life is grounded in three fundamental and closely intertwined relationships: with God, with our neighbour and with the earth itself. According to the Bible, these three vital relationships have been broken, both outwardly and within us. This rupture is sin. The harmony between the Creator, humanity and creation as a whole was disrupted by our presuming to take the place of God and refusing to acknowledge our creaturely limitations.⁷⁴

As part of this conversion, Pope Francis calls his readers to be in right relationships with each other, as he is firmly convinced that it is in the breakdown of sacred human relationships that harm against the created world arises: “Disregard for the duty to cultivate and maintain a proper relationship with my neighbour, for whose care and custody I am responsible, ruins my relationship with my own self, with others, with God and with the earth.”⁷⁵

Drawing on the opposition of Christianity to moral relativism, he makes the moral claim that harm to creation and the harm that we cause to each other are “ultimately due to the same evil: the notion that there are no indisputable truths to guide our lives, and hence human freedom is limitless.”⁷⁶ He warns that an exaggerated sense of human autonomy prevents us from understanding that all of our acts—and omissions—can have a deep and profound impact on others.

74. *Laudato Si'*, *supra* note 2, at para. 66. *See also id.* at para. 67 (“We are not God. The earth was here before us and it has been given to us. This allows us to respond to the charge that Judaeo-Christian thinking, on the basis of the Genesis account which grants man “dominion” over the earth (cf. *Gen* 1:28), has encouraged the unbridled exploitation of nature by painting him as domineering and destructive by nature. This is not a correct interpretation of the Bible as understood by the Church. Although it is true that we Christians have at times incorrectly interpreted the Scriptures, nowadays we must forcefully reject the notion that our being created in God’s image and given dominion over the earth justifies absolute domination over other creatures.”).

75. *Id.* at para. 70. *See also* Nagle, *supra* note 2, at 10 (“Francis stresses the relational character of environmental issues that turn on the relationship between the natural world, human cultures, humanity, and God. Environmental harm . . . results when we misunderstand or abuse those relationships.”).

76. *Laudato Si'*, *supra* note 2, at para. 6.

Yet, in an encyclical that is profoundly pessimistic in most respects, on occasion, Pope Francis expresses hope that changes of heart will be possible and can lead to benefits to the created world, each other, and ourselves:

If we approach nature and the environment without this openness to awe and wonder, if we no longer speak the language of fraternity and beauty in our relationship with the world, our attitude will be that of masters, consumers, ruthless exploiters, unable to set limits on their immediate needs. By contrast, if we feel intimately united with all that exists, then sobriety and care will well up spontaneously.⁷⁷

As individuals, Pope Francis invites a personal examination of the many ways in which individual choices on how to live life have profound ramifications beyond what might easily be anticipated. He notes, "[h]umanity is called to recognize the need for changes of lifestyle, production and consumption, in order to combat this warming or at least the human causes which produce or aggravate it."⁷⁸ Thus, on a small, individual scale, *Laudato Si'* calls for this rich self-examination. It is also a call to recognize "our human responsibility for nature"⁷⁹ and fulfill our "duty to cultivate [our] abilities in order to protect it and develop its potential."⁸⁰

However, this call to personal conversion with respect to ecology is not limited to the natural world, as this would be shallow and ultimately ineffective.⁸¹ It must be accompanied by a new and robust Christian love for

77. *Laudato Si'*, *supra* note 2, para. 11.

78. *Id.* at para. 23. *See also id.* at para. 50 ("To blame population growth instead of extreme and selective consumerism on the part of some, is one way of refusing to face the issues."); *id.* at para. 203 ("[P]eople can easily get caught up in a whirlwind of needless buying and spending. Compulsive consumerism is one example of how the techno-economic paradigm affects individuals."); *id.* ("Amid this confusion, postmodern humanity has not yet achieved a new self-awareness capable of offering guidance and direction, and this lack of identity is a source of anxiety. We have too many means and only a few insubstantial ends."); *id.* at para. 209 ("An awareness of the gravity of today's cultural and ecological crisis must be translated into new habits. Many people know that our current progress and the mere amassing of things and pleasures are not enough to give meaning and joy to the human heart . . .").

79. *Laudato Si'*, *supra* note 2, at para. 78.

80. *Id.*

81. This is a theme that Pope Francis has articulated on other many occasions other than in the pages of *Laudato Si'*:

Each of us has a personal responsibility to care for creation, this precious gift which God has entrusted to us. . . . [N]ature is at our disposal, to enjoy and use properly. Yet it also means that we are not its masters. Stewards, but not masters. . . . Respect for nature also calls for recognizing that man himself is a fundamental

each other, beginning in the sacred domain of the family⁸² and extending outward to embrace all, including those we will never know. As Pope Francis warns, “[e]verything is connected. Concern for the environment thus needs to be joined to a sincere love for our fellow human beings and an unwavering commitment to resolving the problems of society.”⁸³ Likewise, he warns:

[W]e cannot presume to heal our relationship with nature and the environment without healing all fundamental human relationships. Christian thought sees human beings as possessing a particular dignity above other creatures; it thus inculcates esteem for each person and respect for others. Our openness to others, each of whom is a “thou” capable of knowing, loving and entering into dialogue, remains the source of our nobility as human persons. A correct relationship with the created world demands that we not weaken this social dimension of openness to others, much less the transcendent dimension of our openness to the “Thou” of God. Our relationship with the environment can never be isolated from our relationship with others and with God. Otherwise, it would be nothing more than romantic individualism dressed up in ecological garb, locking us into a stifling immanence.⁸⁴

Beyond healing relationships with each other, *Laudato Si’* also urges all to develop more fully a relationship with God that will be a source of inspiration to the work of stewardship in all aspects of life: “Believers themselves must

part of it. . . . [T]here is also need of that human ecology which consists in respect for the person

Pope Francis, Address to European Parliament (Nov. 25, 2014), http://en.radiovaticana.va/news/2014/11/25/pope_francois_address_to_european_parliament/1112318.

82. See, e.g., *Laudato Si’*, *supra* note 2, at para. 213 (“In the family we receive an integral education, which enables us to grow harmoniously in personal maturity. In the family we learn to ask without demanding, to say “thank you” as an expression of genuine gratitude for what we have been given, to control our aggressivity and greed, and to ask forgiveness when we have caused harm. These simple gestures of heartfelt courtesy help to create a culture of shared life and respect for our surroundings.”). See also *id.* at para. 162 (“Men and women of our postmodern world run the risk of rampant individualism, and many problems of society are connected with today’s self-centred culture of instant gratification. We see this in the crisis of family and social ties and the difficulties of recognizing the other.”).

83. *Id.* at para. 91. See also *id.* at para. 92 (“We have only one heart, and the same wretchedness which leads us to mistreat an animal will not be long in showing itself in our relationships with other people.”).

84. *Id.* at para. 119.

constantly feel challenged to live in a way consonant with their faith and not to contradict it by their actions. They need to be encouraged to be ever open to God's grace and to draw constantly from their deepest convictions about love, justice and peace."⁸⁵

The call to personal conversion is, certainly, one of the greatest challenges of *Laudato Si'*. Indeed, "[t]he Pope's emphasis on the need for a moral transformation suggests that the encyclical is ultimately concerned not just with the environment but with the human soul."⁸⁶ In some respects, it is easy to hail a challenging papal document when it sets forth what *others* should do—what legal institutions, governments, large corporations, and wealthy entities should do to respond. But the provisions of *Laudato Si'* that call for personal conversion to a more sober lifestyle have received less attention. This is certainly predictable, as they are provisions addressed to all and cannot be easily dismissed as commands to "the other." At their core, they ask for conversion and an honest assessment of relationships with others, attachments to material comforts, and the willingness to make sacrifices in the interest of others.⁸⁷

C. "Social Love": A Bridge Between the Public and the Personal

[S]elf-improvement on the part of individuals will not by itself remedy the extremely complex situation facing our world today. . . . Social problems must

85. *Id.* at para. 200. *See also id.* at para. 205 ("Human beings, while capable of the worst, are also capable of rising above themselves, choosing again what is good, and making a new start, despite their mental and social conditioning. We are able to take an honest look at ourselves, to acknowledge our deep dissatisfaction, and to embark on new paths to authentic freedom. No system can completely suppress our openness to what is good, true and beautiful, or our God-given ability to respond to his grace at work deep in our hearts. I appeal to everyone throughout the world not to forget this dignity which is ours. No one has the right to take it from us.").

86. Bodansky, *supra* note 4, at 130. *See also* Williams, *supra* note 2, at 15 (noting that *Laudato Si'* "has clear and provocative things to say about our environmental responsibility and our current cultural malaise in this regard, but, by grounding its environmental critique in a critique of the soul of the contemporary developed world, it presents a genuinely theological vision with implications in several distinct areas."); Jamieson, *supra* note 4, at 122 (describing *Laudato Si'* as "primarily a work of moral theology focusing on the human relationships to God and nature.").

87. Or, as has been observed, "[T]he Pope clearly does not believe that economics or technology can provide an answer to the climate change problem; solving climate change will require a moral and cultural revolution, a return by people to a simpler lifestyle." Bodansky, *supra* note 4, at 129.

*be addressed by community networks and not simply by the sum of individual good deeds.*⁸⁸

*Because the stakes are so high, we need institutions empowered to impose penalties for damage inflicted on the environment. But we also need the personal qualities of self-control and willingness to learn from one another.*⁸⁹

Laudato Si' makes the case for both an active role for the law and an important need for personal conversion. A long-running tension in legal matters has always been to determine the appropriate line between what can be achieved by individual morality and when the coercive force of law is required to supplement and incentivize individual moral decisions. There is no easily determined place for the line to be drawn between these domains. Where it should lie is a decision that every legal system must consider, with a full understanding of the moral weaknesses of individuals as individuals—and as those who institute, implement and enforce the law.

However, with respect to the Christian response to ecological problems, Pope Francis proposes a concept that bridges the gap between the two. He speaks of “social love”⁹⁰ when he says:

Love, overflowing with small gestures of mutual care, is also civic and political, and it makes itself felt in every action that seeks to build a better world. Love for society and commitment to the common good are outstanding expressions of a charity which affects not only relationships between individuals but also “macro-relationships, social, economic, and political ones”

88. *Laudato Si'*, *supra* note 2, at para. 219 (emphasis added).

89. *Id.* at para. 214 (emphasis added).

90. *Id.* at para 231. In another place, Pope Francis refers to this as “civic and political love.” *Id.* at para 228. Another commentator speaks of another concept, “substantive practice of love,” which appears to be closely related:

[*Laudato Si'*’s] most profound presence is in the fundamental insight that the root of the ecological crisis lies in the failure to accept the idea of limits, and the truth of a Creator-creature relation. Unless and until we can accept the notion of politics and economics marked by an acceptance of limits—understood as a substantive practice of love rather than just a logic of deprivation—then, it will be difficult to turn away from our current course of ecological travel.

Rowlands, *supra* note 2. See also Porras, *supra* note 4, at 138-39 (“To respond adequately . . . , according to Francis, decisive action must emerge from ecological conversion, which comports both a profound interior conversion, and a community conversion [C]onversion is also a journey, rather than a one-time event [E]cological conversion is a process: there is work to be done and old habits are hard to break.”).

Social love is the key to authentic development . . . [S]ocial love moves us to devise larger strategies to halt environmental degradation and to encourage a "culture of care" which permeates all of society. When we feel that God is calling us to intervene with others in these social dynamics, we should realize that this too is part of our spirituality, which is an exercise of charity and, as such, matures and sanctifies us.⁹¹

Through this concept, he argues that ideal of Christian love can have both a personal *and* a public side. Thus, rather than view ecological reform as either a matter of pure legal authority or one confined solely to individual moral conversion, Pope Francis suggests that the divide between these is fluid and that the moral conversion of the individual has a profound impact on the legal regime and policy-making that govern a society.

In many ways, this is not a novel notion:

The fact is that values have public dimensions and that's what makes them values rather than preferences. The sharp distinction often drawn between public policy and private morality is a false one. Values inform our policy goals and create the soil which makes it possible for policies to be enacted.⁹²

These values can motivate action that will benefit ecology on the macro-scale by fostering public policy that will do so. However, it also has a critically important private side that can lead to the right relations that will develop into a correct human ecology.⁹³ Pope Francis expresses this in a number of ways that may reflect the greatest deal of optimism to be found in what

91. *Laudato Si'*, *supra* note 2, para 231.

92. Jamieson, *supra* note 4, at 125.

93. Earlier in his papacy, Pope Francis developed a closely related theme in his first encyclical, *Lumen Fidei* ("The Light of Faith"). There, he taught:

At the heart of biblical faith is God's love, his concrete concern for every person, and his plan of salvation which embraces all of humanity and all creation, culminating in the incarnation, death and resurrection of Jesus Christ. Without insight into these realities, there is no criterion for discerning what makes human life precious and unique. Man loses his place in the universe, he is cast adrift in nature, either renouncing his proper moral responsibility or else presuming to be a sort of absolute judge, endowed with an unlimited power to manipulate the world around him.

Faith, on the other hand, by revealing the love of God the Creator, enables us to respect nature all the more, and to discern in it a grammar written by the hand of God and a dwelling place entrusted to our protection and care.

Pope Francis, *Lumen Fidei*, para. 54-55 (June 29, 2013), http://w2.vatican.va/content/francesco/en/encyclicals/documents/papa-francesco_20130629_enciclica-lumen-fidei.html.

otherwise sounds like quite a pessimistic encyclical on insurmountable problems. He says, “[w]e must regain the conviction that we need one another, that we have a shared responsibility for others and the world, and that being good and decent are worth it.”⁹⁴

Pope Francis turns to Biblical tradition⁹⁵ to explore this concept of social love, noting that there is a long tradition that links care for the human community, the created world, and legal obligations in an intimate way:

All it takes is one good person to restore hope! The biblical tradition clearly shows that this renewal entails recovering and respecting the rhythms inscribed in nature by the hand of the Creator. We see this, for example, in the law of the Sabbath. On the seventh day, God rested from all his work. He commanded Israel to set aside each seventh day as a day of rest, a *Sabbath* Similarly, every seven years, a sabbatical year was set aside for Israel, a complete rest for the land . . . , when sowing was forbidden and one reaped only what was necessary to live on and to feed one’s household Finally, after seven weeks of years, which is to say forty-nine years, the Jubilee was celebrated as a year of general forgiveness This law came about as an attempt to ensure balance and fairness in their relationships with others and with the land on which they lived and worked.⁹⁶

94. *Laudato Si'*, *supra* note 2, at para. 229. This theme of unity between individual and community was also noted by Cardinal Turkson:

Individual homes are not isolated, each on its own planet. They are located within a single, worldwide common home. The encyclical is about the implications of living together in a common home.

. . . .

[T]he fullness of faith should inspire every aspect of individual and communal life, and inspire all efforts to make the world more loving and just. Since public policies are one instrument by which to transform the world, and since both persons and institutions have a civic responsibility to participate in public life, it follows that Catholics must bring their faith to bear on political matters.

Turkson, *supra* note 2. *See also* Porras, *supra* note 4, at 136 (describing *Laudato Si'* as “a call to ecological conversion: a call addressed not only to individuals but also to individuals-in-community.”) (citations omitted).

95. *See also* Turkson, *supra* note 2 (noting that “[t]he Christian commitment to care for our common home is as old as Genesis itself.”).

96. *Laudato Si'*, *supra* note 2, para 71. *See also id.* at para 68 (“This responsibility for God’s earth means that human beings, endowed with intelligence, must respect the laws of nature and the delicate equilibria existing between the creatures of this world The laws found in the Bible dwell on relationships, not only among individuals but also with other living beings.”).

This suggests that a love that creates proper relationships between individuals cannot remain purely private; its manifestation in the public square and in the setting of the rules that govern society as a whole mandate a more public "social love."

Thus, in Biblical times, the love that should motivate proper relationships between individuals ultimately became manifested in the laws governing such things as the Sabbath and the sabbatical and jubilee year customs. At the same time, however, these rules were not created out of nothingness. They were based and strongly rooted in the personal love of God and love of neighbor. Indeed, then as now, "[e]very law embodies moral value. Law is not just prescriptive or deterrent, but also has symbolic effect and communicates the ethics and ideals of society."⁹⁷ Without that foundation, there would be no reasonable expectation that the laws so enacted would be geared to the good rather than that which is oriented toward God.

Hence, when he speaks of "social love" Pope Francis points toward a love that unites the personal love of the individual and the love that, ideally, should motivate the structures that govern public life. This is an ideal that will so often be unattained because it is undertaken by flawed individuals who have neither perfect knowledge nor perfect love.⁹⁸ However, by setting it as a model, Pope Francis speaks of a higher level for public policy making—not merely in ecological matters but in all things.⁹⁹

Likewise, he focuses on the fact that "social love" manifests itself in a greater sense of solidarity with others—motivated not by legal bonds or imposed fraternity, but by "the conviction that we are one single human family."¹⁰⁰ Just as within one's own individual family, it is personal love that

97. Davies, *supra* note 4, at 147.

98. Indeed, the question of realistic expectations is an important one. See Rowlands, *supra* note 2 (noting that critics of *Laudato Si'* "feel that Francis is variously too optimistic about the human capacity for politics to express *caritas*, too naïve in channeling rather than challenging the tendency towards apocalyptic anxiety that marks the age, and too pessimistic about technology and markets as mechanisms for poverty alleviation.").

99. In speaking of ecological issues but, by analogy, to broader public issues, Pope Francis further elaborated:

The existence of laws and regulations is insufficient in the long run to curb bad conduct, even when effective means of enforcement are present. If the laws are to bring about significant, long-lasting effects, the majority of the members of society must be adequately motivated to accept them, and personally transformed to respond. Only by cultivating sound virtues will people be able to make a selfless ecological commitment.

Laudato Si', *supra* note 2, para 211.

100. *Id.* at para 52. See also *id.* at para 219 ("The ecological conversion needed to bring about lasting change is also a community conversion.").

can accomplish great tasks, Pope Francis argues that this same love can accomplish much social good if the affection shown to those we know can be translated to a larger love and affection to the greater human family. Indeed, the “greater” human family includes both present generations from whom we are separated by distance, and future generations from whom we are separated by time.

Pope Francis also indicates that when alleviating the conditions in the physical environment are impossible, social love can go a great deal towards mitigating the harms that may come from environmental woes – whether those are problems in the physical or natural environments. As he comments:

The feeling of asphyxiation brought on by densely populated residential areas is countered if close and warm relationships develop, if communities are created, if the limitations of the environment are compensated for in the interior of each person who feels held within a network of solidarity and belonging. In this way, any place can turn from being a hell on earth into the setting for a dignified life.¹⁰¹

D. Conclusion

*I would like to enter into dialogue with all people about our common home.*¹⁰²

In *Laudato Si'*, Pope Francis began a dialogue—a multi-faceted dialogue, to be sure, and one that invites the expertise of many.¹⁰³ He also proposes this dialogue with a discouraging pessimism. Indeed, “the tone of *Laudato Si'* is dire. The rhetoric of crisis runs throughout the document.”¹⁰⁴ Of particular interest for those involved in law, however, he poses a fundamental and foundational question for all people of faith concerned about all fields of public policy: what is the role of law in solving technical, scientific, political and moral questions? He expresses both great faith in and disappointment about the role law has played and can play in addressing such questions. At the same time, he urges a powerful role for personal conversion as an irreplaceable precondition for any progress toward solving the problems of our day. As a bridge between these, he proposes “social love,” a way in which the purely private conversion can be translated onto the larger scale and, in that way, can fill a gap with “civic and political love.”¹⁰⁵

101. *Id.* at para 148.

102. *Id.* at para 3.

103. See DiMento, *supra* note 2, at 10 (noting that *Laudato Si'* “calls for dialogue and does not assert that the Church and religion have the answers.”).

104. Reno, *supra* note 2, at 4.

105. *Laudato Si'*, *supra* note 2, para 228.