

CATHOLIC HEALTH CARE AND THE AFFORDABLE CARE ACT: A MATTER OF SOCIAL JUSTICE

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Introduction

With over a billion members, the Catholic Church is the largest Christian denomination in the world. It also manages twenty-six percent of all health facilities worldwide.¹ In the U.S., where one in six patients is treated at a Catholic hospital, the Catholic health care network is the largest group of nonprofit health care providers in the country.² With more than 600 hospitals and 1,400 long-term care and other health related facilities,³ Catholic health care has been a powerful presence in the U.S. for a long time. The Sisters of Charity were the first religious community to staff a hospital when, in 1823, they started working at the Baltimore Infirmary. In 1832, the Daughters of Charity began administering Charity Hospital in New Orleans one of the nation's first hospitals when it opened in 1736. The nuns continued to manage the facility for over 150 years.⁴ Over

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¹ "Catholic Hospitals Comprise One Quarter of World's Healthcare, Council Reports," CATHOLIC NEWS AGENCY, http://www.catholicnewsagency.com/news/catholic_hospitals_represent_26_percent_of_worlds_health_facilities_reports_pontifical_council/ (Feb. 10, 2010).

² *Catholic Health Care in the United States*, THE CATHOLIC HEALTH ASS'N OF THE UNITED STATES, http://www.chausa.org/docs/default-source/general-files/cha-us-health-care-at-a-glance_january-2015.pdf?sfvrsn=0 (last updated Jan. 2015).

³ *About*, THE CATHOLIC HEALTH ASS'N OF THE UNITED STATES, <http://www.chausa.org/about/about> (last updated Jan. 2015).

⁴ See generally CHRISTOPHER J. KAUFFMAN, *MINISTRY & MEANING: A RELIGIOUS HISTORY OF CATHOLIC CARE IN THE UNITED STATES* (1995) (providing an in-depth look at the vital role Catholic nuns played in health care).

the years, Catholic health care facilities have continued not only to provide excellent medical care but also to actively participate in pastoral care, medical ethics, and public policy.

Catholic health care matters. Why? Because the Catholic Church bears witness to the human condition in an unparalleled way. In this article, I will show how Catholic social teaching, with its interpretive framework of meaning and unique understanding of the world, brings its vision of social justice to the realm of health care. I will then use Catholic social justice teaching to critique the Affordable Care Act.

I. The Importance of Vision

Most Christians are familiar with the circumstances surrounding St. Paul's conversion. Paul, also known as Saul, persecuted Christians. One day, while traveling along the road to Damascus, suddenly a bright light flashed around him. He fell down; and then, heard the voice of Jesus. Upon opening his eyes he was blind. Although his sight returned three days later, his life was never the same.⁵ From that point on, St. Paul saw the world in a completely different way because he underwent a conversion. The word *conversion* is related to the Greek word *metanoia* which means "changing one's mind." If you think about it, we change our minds when we see things differently just like St. Paul did who, after his fall and temporary blindness, saw the world and his place within it in a completely new way.

A. Why the Church's Vision is Relevant

The way in which we view the world influences our values. The Catholic Church has a vision of the world and a particular understanding of life that has a richness unmatched by philosophy, law, and the social sciences. Critics of religion often argue that Christian beliefs should play no role in public discourse because they

⁵ *Acts* 9:1-19.

derive from a story (the Christian narrative) that has no “rational basis” and is not believed by all in our pluralistic society.⁶ One of the problems with this argument is that it implies that some independent secular reasoning exists that is superior to theological thought. Theologians and religious ethicists point out, however, that many principles that dominate public debates in the U.S. like equality, freedom, and private property rights come out of a complicated set of political, philosophical, and legal traditions which are rooted in basic assumptions about human nature that also cannot be proven.⁷

In fact, all logical reasoning in the humanities and social sciences relies on at least one underlying premise, or starting point, from which the rational conclusions emerge and move forward. These underlying premises, often notions about human nature, human rights, or the origin of government, have no factual or scientific basis either. For instance, let us examine the philosophy of John Locke who had profound influence over U.S. political philosophy. Locke’s claim that people have a right to life, liberty, and property is founded on his underlying premise that the state of nature is a state of liberty. People are born not only free, but also equal.⁸ Natural freedom, therefore, comes from natural equality; and, government is the result of a social contract where people in the state of nature conditionally agree to establish a government and

⁶ Over the last few years a movement, sometimes referred to as the “New Atheist Movement,” has emerged. Its adherents argue that religious beliefs should be countered, criticized and challenged. Several books have been written in support of this movement. *See, e.g.*, RICHARD DWORKIN, *THE GOD DELUSION* (2008); SAM HARRIS, *THE END OF FAITH: RELIGION, TERROR, AND THE FUTURE OF REASON* (2005); CHRISTOPHER HITCHENS, *GOD IS NOT GREAT: HOW RELIGION POISONS EVERYTHING* (2009).

⁷ *See* ROBERT VEATCH, *THE FOUNDATIONS OF JUSTICE: WHY THE RETARDED AND THE REST OF US HAVE CLAIMS TO EQUALITY* 93 (1986); LISA CAHILL, *Can Theology Have a Role in ‘Public’ Bioethical Discourse?* 20 *THE HASTINGS CENTER REPORT (THEOLOGY, RELIGIOUS TRADITIONS, AND BIOETHICS)* “”11 (1990).

⁸ JOHN LOCKE, *SECOND TREATISE OF GOVERNMENT* ¶ 4 (Dover Thrift, 2002). There is much debate, however, about Locke’s views on women’s rights and the rights of slaves. He argues that husbands have authority over their wives and, he owned stock in a slave trading firm. There are several fine biographies of Locke, *see, e.g.*, ROGER WOOLHOUSE, *LOCKE: A BIOGRAPHY* (2007).

transfer some of their rights to the government in order to better ensure the stable, comfortable enjoyment of their lives, liberty, and property.⁹

Of course, there is no scientific proof that “a state of liberty” ever existed. Locke merely uses this idea to argue his political theory. Many philosophers do this. Another example is the contemporary American political philosopher John Rawls’ theory of justice.¹⁰ He argues that if people are placed behind a “veil of ignorance” where they consider an imaginary society in which they live and in which they do not know who they would be in the society, they would agree on certain principles. These principles, an equality of liberties and an inequality of wealth, would be acceptable upon the condition that the less wealthy are better off than they otherwise would be if everyone had equal amounts of wealth.¹¹

Again, as with Locke, there is no way we can prove that Rawls’s theory is correct. In fact, we could not possibly replicate the circumstances under which a “veil of ignorance” could even occur. Still, we tend to accept Rawls’s conclusion that justice is equality. Georgetown University professor of medical ethics, Robert Veatch, contends that there are many philosophers who cannot build an independent argument for that conclusion. They merely assume this relationship. Veatch insists “when philosophy pushes back far enough, it eventually reaches the point where reasons can no longer be given.”¹² At some point there is a foundational premise for an argument based upon what Veatch refers to as “faith statements.” Faith statements are assumptions that cannot be defended with further reasons.¹³ He suggests that philosophers use faith statements all of the time so “the world cannot be divided into theologians who accept on faith that justice is equal and tough-minded philosophers

⁹ For an excellent analysis of John Locke’s philosophy see Robert A. Goldwin, *John Locke*, in *HISTORY OF POLITICAL PHILOSOPHY* 476-512 (Leo Strauss & Joseph Cropsey eds., 3rd ed., 1987).

¹⁰ JOHN RAWLS, *JUSTICE AS FAIRNESS: A RESTATEMENT* (Erin Kelly ed., 2001).

¹¹ *Id.* at 42-43.

¹² VEATCH, *supra* note 7, at 93.

¹³ *Id.*

who reject all such faith moves. Instead, it is divided between one group made up of theologians and philosophers who accept by assumption—by faith—the premises leading to equality and another group who accept on faith premises leading away from it.”¹⁴

The point is both theology and philosophy must use underlying premises to make important rational arguments and to justify the rational conclusions that follow. While these premises cannot be proven scientifically, it does not mean the arguments that flow from them are valueless. Nor does it mean that all premises and the conclusions that follow them are equal. Instead, we must carefully consider the premises, the related arguments, and the conclusions in order to ascertain the truth. This is no easy task; it requires careful consideration. For this very reason the Catholic Church has vigilantly honed its social justice teaching for centuries continuing to do so today.

Why is the Catholic Church’s vision important? Christian ethicist James Gustafson once remarked that “theology might not provide answers you like to accept, but it can force questions you ought to be aware of.”¹⁵ Catholic social justice teaching provides unique ways of understanding the world and special avenues of meaning which offer valuable alternatives to the ways in which social justice issues are framed, analyzed and debated. The human condition, beleaguered by life and death, suffering and loss, vulnerability and limitations, is disheartened when facing a world of unanswered questions. The Church’s vision can act as a guide illuminating the rocky, narrow path that can enlighten us.

B. How the Church Gets Its Moral Vision

Catholic moral theology is informed by four sources: scripture, tradition, other secular disciplines, and experience. I will provide a summary of each of them.

¹⁴ *Id.* at 95.

¹⁵ James Gustafson, *Theology Confronts Technology and the Life Sciences*, COMMONWEAL, June 16, 1978, at 389.

1. Scripture

Church teaching is formed by both the explicit teaching of Jesus and by his example as told to us through stories or parables. Scripture is not, however, a formula that can be easily applied to every moral problem. We cannot simply cite a biblical chapter and verse to resolve our challenges. Instead, scripture must be used in such a manner that it is integrated critically into moral reflection.

In his book, *Reason Informed by Faith: Foundations of Catholic Morality*, Richard Gula, a priest and former professor of Moral Theology (as well as my academic advisor), brilliantly explains the critical use of Scripture by laying out the four steps necessary to carefully discern its meaning.¹⁶

a. The Exegetical Task

The exegetical task involves determining the meaning of the text in its original form. Scripture is no different from any other writing in that historical, cultural, and linguistic influences limit our ability to completely understand the objective meaning of the text. So, a thorough exegetical analysis of the text is the first step. This entails trying to understand the historical circumstances surrounding the writing of the text such as the author's identity, the community for whom the text was written, the literary structure of the text, and the socio-economic context within which it was written. While we can never determine the absolute objective meaning of a text, the exegetical task will help us begin to interpret what scripture is telling us. And while it is an important task, we need to keep in mind that many contemporary problems and issues did not exist during biblical times and, therefore, are not addressed in the Bible.

¹⁶ RICHARD M. GULA, *REASON INFORMED BY FAITH: FOUNDATIONS OF CATHOLIC MORALITY* 165-184 (1989).

b. The Hermeneutical Task

After establishing the original meaning of the text as fully as possible, the next step is to explore the hermeneutical meaning. This requires interpreting the text and applying it to today's world. In order to do so "we must look on the text not as a collection of words with a fixed meaning limited to its own historical context, but as having the power to speak to us who have new questions and a new context of understanding."¹⁷ When we attempt to interpret scripture we are trying to apply words from the past, from hundreds of years ago, to situations in a contemporary world that people living during biblical times could not have possibly imagined. Moreover, the authors of the texts are not the only ones who are time-bound to presuppositions. We must keep in mind that there is no such thing as a completely objective interpretation. Our own contemporary presuppositions shape our interpretations of the Bible.¹⁸

c. The Methodological Task

Next, we must determine how we are going to use scripture within the different kinds of moral reflection. Gula looks to theologian James Gustafson's typology of the various ways the Bible has been used in moral reflection.¹⁹ He suggests that some people see scripture as "revealed morality" that serves as a guide for decision-making and behavior. Others see scripture as "revealed reality" that offers a framework for the moral life by assisting in interpreting God's actions in the world which helps us make moral decisions. With references to absolute laws as sources of moral reasoning, examples of Catholic documents that use the revealed morality

¹⁷ *Id.* at 168.

¹⁸ WILLIAM SPOHN, WHAT ARE THEY SAYING ABOUT SCRIPTURE AND ETHICS? 54-55 (1995).

¹⁹ James Gustafson is a well-known Protestant Christian ethicist. For more details about his typology see JAMES M. GUSTAFSON, THEOLOGY AND CHRISTIAN ETHICS 129-138 (1979).

method are *Humanae Vitae* (On the Regulation of Birth, 1968)²⁰ and *Persona Humana* (Declaration on Certain Questions Concerning Sexual Ethics, 1975).²¹ With its use of biblical images, such as covenant and community, to inform moral reasoning, the U.S. Catholic bishops' letter on the economy, called *Economic Justice for All* (1986)²² uses the revealed reality method. In fact, Vatican II's document *Gaudium et Spes* (Pastoral Constitution on the Church in the Modern World, 1965) recommends using the revealed reality approach for interpreting scripture when the document says "the Church has always had the duty of scrutinizing the signs of the times and of interpreting them in the light of the gospel."²³

d. The Theological Task

Finally, the theological task tries to determine how to combine scripture with the three other sources (tradition, the secular disciplines, and experience) of moral vision in order to make moral decisions.

2. Tradition

The word *tradition* comes from the Latin word *traditio* which means a "handing on." In essence, traditions are ideas, rituals, and ways of life that are passed on to new generations. The idea of tradition is best described in Pope Paul VI's Constitution *Dei Verbum* (*Dogmatic Constitution on Divine Revelation*, 1965):

²⁰ Pope Paul VI, *Encyclical Letter Humanae Vitae*, LIBRERIA EDITRICE VATICANA (1968).

²¹ Sacred Congregation for the Doctrine of Faith, *Declaration Persona Humana*, LIBRERIA EDITRICE VATICANA (1975).

²² U.S. Catholic Bishops, *Economic Justice for All: Pastoral Letter on Catholic Social Teaching and the U.S. Economy*, NATIONAL COUNCIL OF CATHOLIC BISHOPS (1986).

²³ Second Vatican Council, *Pastoral Constitution Gaudium et Spes*, LIBRERIA EDITRICE VATICANA ¶ 4 (Dec. 7, 1965).

This tradition which comes from the Apostles developed in the Church with the help of the Holy Spirit. For there is a growth in the understanding of the realities and the words which have been handed down. This happens through the contemplation and study made by believers, who treasure these things in their hearts (see Luke, 2-19,51) through a penetrating understanding of the spiritual realities which they experience, and through the preaching of those who have received through Episcopal succession the sure gift of truth.²⁴

In other words, the Church sees tradition as the living conservation of Christ's words which are continually recalled, interpreted, and renewed through the community as our living faith. It acts as a social witness for the Gospels.

The key means of conveying tradition is the practice of what eventually came to be called "magisterium." The magisterium is the teaching authority of the Church. Made up of the pope, the bishops, and the Roman congregations who represent the pope, the magisterium is guided by the Holy Spirit and is the bearer of tradition ensuring that the Good News is passed on from generation to generation. More importantly, the church views both scripture and tradition as authoritative. Here, we look to *Dei Verbum* for enlightenment: "Consequently it is not from Sacred Scripture alone that the Church draws her certainty about everything which has been revealed. Therefore both sacred tradition and Sacred Scripture are to be accepted and venerated the same sense of loyalty and reverence."²⁵

While it is important to note that the magisterium provides the formal expression of the Church's teachings, Vatican II reminds us, the magisterium itself must reflect the "sense of the faithful" so that the "teaching Church" (*ecclesia docens*) is not separate from the

²⁴ Pope Paul VI, *Encyclical Letter Dogmatic Constitution Dei Verbum*, LIBRERIA EDITRICE VATICANA ¶ 8 (Nov. 18, 1965).

²⁵ *Id.* ¶ 9.

“learning Church” (*ecclesia discerns*).²⁶

3. Secular Disciplines

Just as scripture and tradition inform ethics, so too do secular disciplines such as philosophy, the social and physical sciences, history, and literature. From early on, philosophy has been the dominant discipline in Catholic ethics with the work of St. Thomas of Aquinas (1225-1274) viewed as particularly influential. Many fine, detailed books have been written about St. Thomas whose work is rooted in the philosophy of Aristotle.²⁷ So for the purposes of this article, I will provide merely a short summary of natural law, one of the dominant theories of his vast and complex body of work.

St. Thomas’s *Summa Theologiae*, written between 1266-1273, is set within the context of the *exitus et reditus* principle: all things come from God and all things return to God. He argues that there are four different kinds of law. The first kind is eternal law, or God’s wisdom, which comes directly from God and is the source of all creation.²⁸ Second, divine law is the portion of eternal law revealed to us by God.²⁹ Examples of divine law are the Ten Commandments³⁰ and the Great Commandment³¹ that asks us to love God with all our heart soul and mind. Third, there is human law, sometimes called positive law, which governs public life and promotes the common good.³² And finally, there is natural law, a

²⁶ Pope Paul VI, *Encyclical Letter Dogmatic Constitution Lumen Gentium*, LIBRERIA EDITRICE VATICANA ¶ 37 (Nov. 21, 1964).

²⁷ See, for example, READINGS IN MORAL THEOLOGY NO. 7: NATURAL LAW AND THEOLOGY (Charles E. Curran & Richard A. McCormick eds., 1991); JEAN PORTER, NATURAL & DIVINE LAW: RECLAIMING THE TRADITION FOR CHRISTIAN ETHICS (1999); GULA, *supra* note 16, at 220-249; Stephen J. Pope, *Natural Law and Christian Ethics*, in THE CAMBRIDGE COMPANION TO CHRISTIAN ETHICS 77-95 (Robin Gill ed., 2001).

²⁸ ST. THOMAS AQUINAS, SUMMA THEOLOGIAE I-II q. 91, a. 1.

²⁹ *Id.* at I-II, q. 91, a. 4.

³⁰ *Exodus* 20:3-17.

³¹ *Matthew* 22:36-40.

³² AQUINAS, *supra* note 28, at I-II, q. 91, a. 3.

“kind of ‘reasoning’ which ‘faith’ informs” and which helps us return to God.³³

Natural law is essential for understanding Catholic ethics because it is used to show that morality applies everywhere and for everyone. It can be a difficult concept to comprehend. A natural law approach to morality teaches that faith does not replace reason but rather informs it in such a manner that people from differing traditions can come into dialogue and reach an agreement on what values are essential to being human and how these values should be applied. How does natural law do this? Because all humans have the ability to reason, we can use our reason and attempt to understand and evaluate what God desires for us and therefore, what constitutes ethical behavior.³⁴ The magisterium has used natural law as a basis for many teachings.³⁵

4. *Experience*

Finally, scripture, tradition, and the secular disciplines are enriched by our reflection on our own experiences. Human experience embodies the historical and cultural background of our judgments. It reflects how we apply moral rules to the particular situation depending upon specific circumstances. Gula uses the example of lying to illustrate the importance of experience in moral reasoning. We can see the negative aspects of lying before we put together arguments about what makes lying wrong. In short, “we discover moral value through our experience of living in relationship with self, others, God, and the world.”³⁶ So ethics must closely consider what human experience teaches us about the human condition.

³³ GULA, *supra* note 16, at 220, 224.

³⁴ AQUINAS *supra* note 28, at I-II, q. 91, a. 2.

³⁵ Recently there has been some debate in the Church about the role of natural law theory in contemporary theology. See John J. Conley, *Has Natural Law Died?* AMERICA (Dec. 22-29, 2014), available at <http://americamagazine.org/issue/has-natural-law-died>.

³⁶ GULA, *supra* note 16, at 243.

C. The Moral Vision of Social Justice

Now that I have discussed the four sources of moral theology that inform the Church, the next question I will answer is how do we define Catholic social justice? Beginning with St. Augustine and St. Thomas Aquinas and continuing to the papacy of Benedict XVI, the meaning of social justice has been refined and nuanced in order to address ever-changing societal problems and circumstances.³⁷ Over time, several major principles have come to define social justice. In this next section I will discuss the evolution of these principles.³⁸

1. St. Augustine and St. Thomas Aquinas

St. Augustine of Hippo (354-430) made major contributions to Catholic social justice teaching with his ideas about civil society. He viewed people as social beings who choose to live in a political society because they are able to flourish there. Not only do humans thrive in a political society, but the virtue of justice is the glue that holds society together. In his book, *City of God*, Augustine defines justice as giving God what is due Him, or in essence, loving God and having our lives directed toward Him.³⁹ Without justice “there is no longer the welfare of the people . . . bound together by a common recognition of rights, and a mutual cooperation for the common good.”⁴⁰ Augustine defines the common good as a “common pursuit”

³⁷ The current pope, Francis, has only served in the papacy since March of 2013. At the time of this writing, he has not yet released any social encyclicals but has discussed social justice in other documents. I will mention some of his comments on economic systems later, *see infra* note 188.

³⁸ For a more detailed discussion of the evolution of Catholic social justice teaching *see* MARY J. McDONOUGH, CAN A HEALTH CARE MARKET BE MORAL? A CATHOLIC VISION OF HEALTH CARE 11-32 (2007).

³⁹ David Hollenbach, *The Common Good Revisited*, 50 THEOLOGICAL STUDIES 81 (1989).

⁴⁰ AUGUSTINE, CITY OF GOD 74 (1958). Much of Augustine’s ideas about justice are found in this book which was written in response to the barbarian Goth invasion of Rome in 410 A.D. Roman pagans tended to blame Rome’s defeat on the influence of Christianity. Augustine was asked to refute the charge that

that unites humankind.⁴¹ In essence, he connects justice, the common good, and Christianity.

Earlier I discussed St. Thomas Aquinas and natural law theory. Another major contribution St Thomas made to Catholic social justice teaching is his insight into political society. His philosophy is grounded in the Aristotelian view that human nature is communitarian so the good of the community is directly linked to the good of the individual person.⁴² In contrast to social contract theory, he did not believe people give up their individual freedom to live in a political society nor did he view the state as coercive. Instead, St. Thomas saw political society as necessary because the family cannot provide everything required to sustain life. A larger community is needed to supply food, clothing, shelter, protection and other requisite goods and services. People, therefore, perfect their humanity via political society, through and within the community.⁴³ The importance of the community is essential to St. Thomas's thinking on justice. What holds society together and gives it moral character is the social obligation which arises from the very nature of society. More importantly, one's social obligation is more important than one's individual desires. The whole of the community is more important than any specific interest of an individual member.

St. Thomas also argued that justice is a virtue, a very important one because it is essential for directing human action toward the common good. He uses the classical definition of justice which is "to pay what is due."⁴⁴ But he gives it priority among the virtues because justice is both a general virtue and an individual virtue.⁴⁵ It is a general virtue because it directs us toward the common good.⁴⁶ It is also an individual virtue because it governs

Christianity was responsible for Rome's decline. He concluded that Rome was never a true Commonwealth and that the only Commonwealth that embodies justice is the City of God.

⁴¹ *Id.* at 470.

⁴² AQUINAS, *supra* note 28.

⁴³ *Id.* at III, q. 41, a. 1.

⁴⁴ *Id.* at II-II, q. 58, a. 1.

⁴⁵ *Id.* at II-II, q. 58, a. 12.

⁴⁶ *Id.* at II-II, q. 58, a. 6.

dealings between individual people.⁴⁷ St. Thomas also argues that there are two species of justice: distributive and commutative. Distributive justice deals with the distribution of public goods; and, commutative justice governs specific dealings between individuals such as contractual agreements.⁴⁸

Both St. Augustine and St. Thomas Aquinas enunciated important foundations for Catholic social justice teaching. We will see the fruit of their ideas ripen into what will eventually become modern Catholic social thought.

2. *Modern Catholic Social Thought*

Modern Catholic social thought developed in response to vast economic, political, and social changes in the world. After the Reformation, new Christian denominations emerged breaking up the cohesive medieval civilization that had dominated much of Europe. This new world order created a sense of individualism rooted in autonomy changing the individual's relationship to the larger society. Personal opinions and choices became much more important. Now an individual could choose among competing religious factions based upon what she/he believed. An emphasis on theories promoting individual rights created a major change in social ethics. The philosophy of thinkers like Thomas Hobbes and John Locke dominated European political thought.⁴⁹ Now, the individual, rather than the society, became the focus.⁵⁰

By the mid-19th century, major political changes began to rattle Europe. In 1848, Karl Marx and Frederick Engels published

⁴⁷ *Id.* at II-II, q. 58, a. 2.

⁴⁸ AQUINAS, *supra* note 28, at II-II, q. 61, a. 1.

⁴⁹ It is interesting to note that Hobbes and Locke each presented very different ideas of human nature. Yet both theories emphasized individual rights by claiming that the individual has certain innate rights that society should not disregard.

⁵⁰ In the medieval framework an individual's obligation arose from her/his state of life. In the social contract framework, obligations originated from positive law which had to be agreed upon by individuals. The latter creates the scenario where conflicts between the individual and society can arise.

one of the most influential documents of the century. The *Communist Manifesto* challenged the social, economic, and religious status quo. European anticlericalism and nationalism were also on the rise and, in 1870, the Papal States were lost. Economically, the world had been transformed. The Industrial Revolution brought fundamental changes in agriculture, manufacturing, transportation, and economic policies. Large numbers of people moved from rural areas into urban centers creating high unemployment rates and housing shortages. With the adoption of the factory system and its long workdays and work weeks, very low wages, and unsanitary conditions, came serious concerns over working conditions and child labor.⁵¹ Against this background, Pope Leo XIII⁵² wrote an encyclical that is the foundation for modern Catholic social teaching.

a. Rerum Novarum

Contemporary Catholic teaching about justice began with *Rerum Novarum* (On the Condition of Labor).⁵³ Leo XIII's encyclical marked the beginning of an official body of systematic authoritative social teaching in encyclicals. Published in 1891, the document tried to persuade Catholics to focus on social issues instead of on divisive political issues dominating the world. The encyclical contains several elements influential in Catholic justice theory. Foremost is Leo XIII's emphasis on the inherent dignity of the human being. This notion was certainly not new, but the concept of human dignity, deriving from the conviction that all people are created in the image of God,⁵⁴ had often been ignored. Moreover, for long time the Catholic Church rejected the increasingly popular human rights movement. Pope Pius VI⁵⁵ had even criticized the

⁵¹ For an excellent description of the difficulties facing factory workers see E. ROYSTON PIKE, *HARD TIMES: HUMAN DOCUMENTS OF THE INDUSTRIAL REVOLUTION* (1969).

⁵² Papacy 1878-1903.

⁵³ Pope Leo XIII, *Encyclical Letter Rerum Novarum*, LIBRERIA EDITRICE VATICANA (May 15, 1891).

⁵⁴ *Genesis* 1:26-27.

⁵⁵ Papacy 1775-1799.

French Revolution's fundamental human rights document, *Declaration of the Rights of Man and of the Citizen*.⁵⁶ By denouncing the declaration for its secular notions of individual freedoms such as freedom of religion and freedom of conscience, Pius VI rejected individual human rights.⁵⁷ His actions set the Church on a path antagonistic toward secular concepts of rights that continued until Leo XIII reversed course.

Toward the beginning of *Rerum Novarum* Leo XIII writes the following: "Man is older than the State."⁵⁸ This statement sets the tone for his teaching about human dignity. People are never merely instruments of the political order. Instead, the purpose of political and social institutions is to serve people, not the other way around. While Leo XIII expressly rejects socialism and argues that private property is necessary for human survival,⁵⁹ he also declares that the government has a duty to serve its citizens in accordance with the common good for "whatever the general interest of any particular class suffers, or is threatened with evils which can in no other way be met, the public authority must step in to meet them."⁶⁰

Not only does Leo XIII call on the government to uphold the common good but he fuses the concept of human dignity with his theory of social institutions.⁶¹ Building on St. Thomas's concept of commutative justice, he argues that workers have certain duties such as to perform the work agreed-upon, to refrain from injuring property, and to refrain from rioting. But they also have certain specific rights such as the right to a just wage, the freedom to enter into employment contracts, and the right to organize unions.⁶² In

⁵⁶ This document, approved by the French National Assembly in 1789, defines individual and collective rights as universal ones. It is considered one of the most important documents on human rights in history.

⁵⁷ THOMAS BOKENKOTTER, *CHURCH AND REVOLUTION: CATHOLICS IN THE STRUGGLE FOR DEMOCRACY AND SOCIAL JUSTICE* 12-13 (1998).

⁵⁸ Leo XIII, *supra* note 53, ¶ 6.

⁵⁹ *Id.* ¶ 3-7.

⁶⁰ *Id.* ¶ 28.

⁶¹ For a detailed discussion of Leo XIII's theory of social institutions see DAVID HOLLENBACH, *CLAIMS IN CONFLICT* 43-50 (1979).

⁶² Leo XIII, *supra* note 53, ¶ 28-39.

order to uphold these rights, workers must be able to freely execute private and fair agreements while at the same time they have an obligation to uphold such agreements.⁶³

The role of social relationships is key to Leo XIII's understanding of justice for he insists that the good of the community, rather than the good of particular individuals, should be the ultimate goal of all of society's members: "All citizens, without exception, can and ought to contribute to that common good in which individuals share so profitably to themselves."⁶⁴ So rights are viewed within the context of the social nature of human beings. Moreover, while social contract theorists focus on negative rights, such as Locke's notion of the right to protect one's property, *Rerum Novarum* views justice in light of not only negative rights but also as positive acts by various sectors of society that actively promote the common good instead of merely helping individuals.

b. Quadragesimo Anno

In 1931, in honor of the 40th anniversary of *Rerum Novarum*, Pope Pius XI⁶⁵ issued his encyclical *Quadragesimo Anno* (The Reconstruction of the Social Order).⁶⁶ Like Leo XIII, Pius XI served during a time of political and social tension. A worldwide economic depression had cast a cloud over the lives of millions. Anti-clerical movements gained ground in Mexico and Spain and the Soviet Union promoted religious intolerance. With Mussolini in power in Italy and Stalin in the Soviet Union, and with Hitler on the rise in Germany, left and right ideologies gained political power in many countries.

In *Quadragesimo Anno* Pius XI continues to nuance the Church's definition of justice by introducing the concept of social justice. He argues that certain economic structures not only deny

⁶³ *Id.* ¶ 34.

⁶⁴ *Id.* ¶ 27.

⁶⁵ Papacy 1922-1939.

⁶⁶ Pope Pius XI, *Encyclical Letter Quadragesimo Anno*, LIBRERIA EDITRICE VATICANA (May 15, 1931).

people basic necessities but they also treat people as a means to an end which denigrates human dignity.⁶⁷ Therefore, not only is the distribution of public goods within society important but the relationship between people and society, known as social justice, is critical.⁶⁸ Social justice deals with the relationship between the individual and the common good. It governs the creation of public goods as well as the development of institutional organizations ordered to uphold the common good. Social justice requires individuals to contribute to the creation and maintenance of these institutions while at the same time exercising their rights within certain parameters. It also calls on governments to guarantee and to protect the rights of their citizens.

Pius XI made another major contribution to Catholic social thought with his discussion of what is known as the principle of subsidiarity. Rooted in the idea that the state exists for the well-being of its citizens and their families, subsidiarity has been part of almost every major Catholic social document since the release of *Quadragesimo Anno*. The principle of subsidiarity is based on the idea that a higher or larger organization should not interfere in the lives of the individual or the family if a lower or smaller organization can fulfill basic needs. In other words intermediaries should provide assistance whenever it is possible, and the government should only intervene when it is necessary and for the purposes of guaranteeing distributive and social justice.⁶⁹

Building upon the work of St. Augustine, St. Thomas Aquinas, and Leo XIII, Pius XI emphasizes the relational aspects of justice. Human dignity is found within interdependent relationships so justice is not merely distributive or commutative. Rather, it is a system of social organizations that allow people to develop. And, this development can occur only within a mutually interdependent community.

⁶⁷ HOLLENBACH, *supra* note 61, at 51.

⁶⁸ *Id.* at 55.

⁶⁹ Pope Pius XI, *supra* note 66, ¶ 79.

c. Pius XII

Pius XII,⁷⁰ the pope during World War II, attempted to stay neutral when fascist Italy entered the war. Regardless of whether he did enough to stop Nazi atrocities, he spoke more often and in a more systematic manner on “the moral roots of social, political, and economic order than had any of his predecessors.”⁷¹ While Leo XIII saw no distinction between society and the state, Pius XII envisioned the state as only one of several parts of society, the part that defends rights and promotes freedom. Moral theologian Charles Curran summarizes this change in vision as follows: “No longer is the state understood in terms of the relationship between *principes* and the untutored multitudes. The rulers are representatives of the people, and the people are responsible citizens.”⁷²

Now human dignity is intrinsically at the heart of the organization itself instead of a mere ideal for which the government should strive. And, it is promoted through the satisfaction of certain conditions for human rights. In his Christmas Address of 1942, Pius XII sums up human dignity as:

respect for and the practical realization of the following fundamental personal rights; the right to maintain and develop one’s corporal, intellectual and moral life and especially the right to religious formation and education; the right to worship God in private and public and to carry on religious works of charity; the right to marry and achieve the aim of married life; the right to conjugal and domestic society; the right to work, as the indispensable means toward the maintenance of family life; the right to free choice of a state of life, and hence, too, of the priesthood or religious life; the right to the use of material goods in keeping with his duties and social

⁷⁰ Papacy 1939-1958.

⁷¹ HOLLENBACH, *supra* note 61, at 56.

⁷² CHARLES CURRAN, *MORAL THEOLOGY: A CONTINUING JOURNEY* 181 (1982).

limitations.⁷³

Pius XII insists that every individual has the right to live under a governmental system that protects these rights. In other words, the role of government is to promote the common good through the defense of human rights. By linking the government, the common good, and human rights, Pius XII made a significant contribution to the Catholic justice tradition. From his papacy onward, human rights are inevitably linked to social interdependence, to the common good as defined by human rights, and to the recognition that human rights are socially interconnected.

d. John XXIII

John XXIII's⁷⁴ first encyclical on Catholic social teaching was *Mater et Magistra* (Christianity and Social Progress)⁷⁵ issued in 1961 to commemorate the 70th anniversary of *Rerum Novarum*. Again, the world was rapidly changing and facing political turmoil. The automobile, the airplane, and television had radically altered communication and transportation. The average education levels of many were increasing. Colonized nations were seeking independence and tensions between the Western world and communist Soviet Union and China created the Cold War.

In *Mater et Magistra* John XXIII continues to nuance the concept of human dignity and its relationship to the common good. He emphasizes that human dignity exists within the actuality of social interdependence. He calls this idea "socialization." Socialization is "the multiplicity of social relationships, that is, a daily more complex interdependence of citizens, introducing into their lives and activities many and various forms of associations."⁷⁶ He goes on to say that interdependence requires more involvement in

⁷³ Pope Pius XII, *Christmas Address 1942*, in 2 THE MAJOR ADDRESSES OF POPE PIUS XII 54 (Vincent A. Yzermans ed., 1961).

⁷⁴ Papacy 1958-1963.

⁷⁵ Pope John XXIII, *Encyclical Letter Mater et Magistra*, LIBRERIA EDITRICE VATICANA (May 15, 1961).

⁷⁶ *Id.* ¶ 59.

people's personal lives by public authorities in areas such as health care, education, career choice, and assistance for the disabled.⁷⁷ Moreover, human dignity and human rights should be the highest concern of Catholic social teaching because "the cardinal point of this teaching is that individual men are necessarily the foundation, cause, and end of all social institutions."⁷⁸

On Holy Thursday 1963, in the midst of the Second Vatican Council, and only two months before his death, John XXIII issued *Pacem in Terris* (Peace on Earth).⁷⁹ Influenced by the United Nations' groundbreaking document affirming the dignity and worth of all people, "The Declaration of Human Rights" (1948), *Pacem in Terris* is considered "the most complete and systematic list of these human rights in the modern Catholic tradition."⁸⁰

While encyclicals are generally addressed to the world's Catholic bishops, John XXIII chose, instead, to write to "all men of good will."⁸¹ He goes on to lay out a list of rights derived from human dignity. They include rights related to sustaining life, such as the rights to food, clothing, shelter, health care, and assistance in cases of illness, old age, and unemployment; religious rights; rights regarding family life, including the rights to have a family and the necessities required for raising a family; economic rights, such as the right to work, to a just wage, and to humane working conditions; and, political rights such as the rights to vote and to have access to a judiciary to protect these rights.⁸² It is important to note, however, that these rights have corresponding duties. For example, the right to life has a duty to preserve it.⁸³ The right to a decent standard of living is correlated with a duty to live it "becomingly."⁸⁴

The rights contained in *Pacem in Terris* were not new in

⁷⁷ *Id.* ¶ 60.

⁷⁸ *Id.* ¶ 219.

⁷⁹ Pope John XXIII, *Encyclical Letter Pacem in Terris*, LIBRERIA EDITRICE VATICANA (Apr. 11, 1963).

⁸⁰ HOLLENBACH, *supra* note 61, at 66.

⁸¹ John XXIII, *supra* note 79, at Salutation.

⁸² *Id.* ¶ 11-27.

⁸³ *Id.* ¶ 29.

⁸⁴ *Id.*

Catholic thought. Yet, the express manner in which John XXIII addresses each one is a departure from tradition. But the most important thing about the encyclical is the way in which it clearly defines human dignity in terms of human rights. Human dignity is completely interrelated with the political, social, and economic structures of society. It is not sufficient that institutions merely fulfill the basic requirements of human dignity. Instead, they are required to organize all political, social, and economic structures in such a way that they promote and protect human dignity. No longer is the individual viewed as a part of economic and social life. Rather, people are the *purpose* of economic and social life. In order to promote human dignity, therefore, basic human rights must be upheld.

e. The Second Vatican Council

On January 25, 1959, John XXIII announced he was planning to call an ecumenical council. Vatican I had taken place almost 100 years before. The stated purpose of Vatican II was to promote the unity of all Christian people. The Second Vatican Council made several major contributions to Catholic justice theory. One of the most important was a change in methodology. Up until Vatican II, natural law was the major source for Catholic social principles. During Vatican II the Church moved away from a natural law methodology and toward an approach based on biblical revelation and historical consciousness.

Gaudium et Spes (Pastoral Constitution on the Church in the Modern World),⁸⁵ written in 1965, is a perfect example of this new approach. According to the document itself, it examines social and political issues “in light of the gospel and of human experience.”⁸⁶ Using this new methodology, *Gaudium et Spes* nuances the Church’s understanding of human dignity. The document argues that human nature is conditioned by history, and that development of humankind is influenced by historical and social structures. *Gaudium et Spes*

⁸⁵ Second Vatican Council, *supra* note 23.

⁸⁶ *Id.* ¶ 46.

acknowledges, though, that this approach can be problematic because it creates moral uncertainty.⁸⁷ On the one hand, people try to commit to religious values by shutting out the world. On the other hand, ever-changing historical and social changes create confusion about the definitions and limitations of such values. This tension is, in essence, a form of human sinfulness because “man is split within himself.”⁸⁸ The appropriate response to this problem is to recognize that human vulnerability to historical and social structures differentiates people from mere things.⁸⁹ Vulnerability is what makes us human. So while human dignity is viewed through historical and social structures, these structures must be ordered properly to ensure that dignity is protected.

Finally, *Gaudium et Spes* expressly introduces the notion of stewardship to Catholic social thought.⁹⁰ Prior to Vatican II, stewardship was merely an implicit theme in Catholic teaching. The Council, however, chose to define and to highlight its importance. While discussing human dominion over nature, the Council emphasizes the interconnectedness of the modern world and asks the following question: “How should all these things be used?”⁹¹ The answer is:

Man is able to love the things themselves created by God, and ought to do so. . . . Grateful to his Benefactor for these creatures, using and enjoying them in detachment and liberty of spirit, man is led forward into a true possession of the world as having nothing, yet possessing all things.⁹²

In other words, humankind has been entrusted to use God’s creation in a prudent and unselfish manner. The world’s resources

⁸⁷ *Id.* ¶ 63.

⁸⁸ *Id.* ¶ 13.

⁸⁹ HOLLENBACH, *supra* note 61, at 72-3.

⁹⁰ The concept of stewardship originates in *Genesis* 1:26 where humankind is called upon to have responsibility over God’s creation: “Let them have dominion over the fish of the sea, and over the birds of the air, and over the cattle, and over every creeping thing that creeps upon the earth.” *Id.*

⁹¹ Second Vatican Council, *supra* note 23, ¶ 33.

⁹² *Id.* ¶ 37.

are for the benefit of all and justice requires the responsible use of these resources.

f. Paul VI

Paul VI⁹³ made several important contributions to Catholic justice theory. In 1967 he issued his encyclical *Populorum Progressio* (On the Development of Peoples).⁹⁴ Focusing on development, he argues that development encompasses more than mere economic success. Instead, the term is an integral idea that includes a full range of human capabilities. He suggests that there is a “Christian vision of development” which gives every individual a right to fulfill his or her God-given vocation.⁹⁵ In order to do so, certain conditions that contribute to human dignity must be met. These conditions include basic material necessities, access to education and culture, and freedom from oppressive social structures.⁹⁶ Not only do individuals have a right to individual development but every individual has a duty to contribute to the greater common good of the community.⁹⁷ On a larger scale, wealthier nations have the responsibility to help poor nations achieve the integral development of their citizens.⁹⁸

Paul VI’s Apostolic Letter *Octogesima Adveniens* (A Call to Action)⁹⁹ was issued in 1971 in celebration of the 80th anniversary of *Rerum Novarum*. His main purpose for writing the document was to clarify the relationship between the Church and government. He continues to refine the meaning of human dignity by declaring that equality and a right to participation are fundamental.¹⁰⁰ Prior to

⁹³ Papacy 1963-1978.

⁹⁴ Pope Paul VI, *Encyclical Letter Populorum Progressio*, LIBRERIA EDITRICE VATICANA (Mar. 26, 1967).

⁹⁵ *Id.* ¶ 14-21.

⁹⁶ *Id.*

⁹⁷ *Id.* ¶ 17.

⁹⁸ *Id.* ¶ 44.

⁹⁹ Pope Paul VI, *Apostolic Letter Octogesima Adveniens*, LIBRERIA EDITRICE VATICANA (May 14, 1971).

¹⁰⁰ *Id.* ¶ 22.

Octogesima Adveniens no Catholic document had advocated for the right to participate in social, economic, and political decisions, and none had emphasized notions of equality so strongly. Paul VI argues that all people have the right to be involved in the processes that influence their lives, and that they should become more politically active because the lack of participation in society by large numbers of people is truly unjust.¹⁰¹

But probably Paul VI's most important contribution to justice theory is his notion of preferential treatment of the poor. Helping the poor and vulnerable was certainly not new concept within Catholicism. The Bible is full of references calling for us to aid the less fortunate.¹⁰² Paul VI was, however, the first pope to emphasize the idea in a powerful document. In *Octogesima Adveniens*, the plight of the poor takes on new meaning. Now we are not just called to help the less fortunate but we are required to do so even if those who are more fortunate must surrender some of their rights so the poor can live with dignity:

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.¹⁰³

Since then, the preferential treatment of the poor has become a mainstay of Catholic social teaching.

¹⁰¹ *Id.* ¶ 12.

¹⁰² In the Old Testament, caring for the weak and poor is a dominant theme. In the New Testament, Jesus announces that the poor are blessed in the Sermon on the Mount. Jesus also often identifies with the poor and the oppressed. In his Second Letter to the Corinthians, St. Paul states that helping the poor of Jerusalem is an indication of love. 2 *Corinthians* 8:8. In the Book of James, the poor are the chosen ones. James 2:5-6. Preferential treatment of the poor is also a major theme in liberation theology; *see, e.g.*, GUSTAVO GUTIERREZ, *A THEOLOGY OF LIBERATION: HISTORY, POLITICS, SALVATION* (Sister Caridad Inda & John Eagleson eds. & trans., 15th Anniversary Ed. 1973).

¹⁰³ Paul VI, *supra* note 99, ¶ 23.

g. John Paul II

John Paul II's¹⁰⁴ major contribution to Catholic social justice teaching is found in his views on economic systems. He addresses this issue in three encyclicals. In the first, *Laborem Exercens* (On Human Work)¹⁰⁵ issued in 1981, he argues that the problem with capitalism is that it places a priority on the objective meaning of work, the products made by labor, over the subjective meaning of work, the realization of human fulfillment that results from the work. He calls the priority of the objective meaning of work over the subjective meaning of work "the error of early capitalism" which occurs whenever human labor is viewed only according to its economic purpose.¹⁰⁶ When this happens people are regarded as commodities: "Man is treated as an instrument of production."¹⁰⁷ John Paul II then defends four traditional rights of labor: the right to find suitable employment; the right to a fair wages; the right to a labor process that respects human dignity; and the right to form unions.¹⁰⁸

John Paul II continues his critique of capitalism in *Sollicitudo Rei Socialis* (The Social Concern of the Church).¹⁰⁹ Here he acknowledges that private property is necessary but adds that "the goods of this world are *originally meant for all*" so private property is "under a 'social mortgage' which means that it has an intrinsically social function False"¹¹⁰ He also mentions the lack of development in many poor countries. He blames both liberal capitalism and communism. He proposes his vision of a global common good as a solution to the problem. This vision consists of: the preferential treatment for the poor; the recognition that private property is under

¹⁰⁴ Papacy 1978-2005.

¹⁰⁵ Pope John Paul II, *Encyclical Letter Laborem Exercens*, LIBRERIA EDITRICE VATICANA (Sept. 14, 1981).

¹⁰⁶ *Id.* ¶ 13.

¹⁰⁷ *Id.* ¶ 7.

¹⁰⁸ *Id.* ¶ 16-23.

¹⁰⁹ Pope John Paul II, *Encyclical Letter Sollicitudo Rei Socialis*, LIBRERIA EDITRICE VATICANA (Dec. 30, 1987).

¹¹⁰ *Id.* ¶ 42.

a social mortgage; the affirmation of freedom and human rights; and, the necessity for developing countries to take responsibility for their own destinies.¹¹¹

John Paul II's final social ethics encyclical, *Centesimus Annus* (On the Hundredth Anniversary of *Rerum Novarum*),¹¹² provides the Church with guidelines for judging market economies. Written in view of the major political and economic changes across Eastern Europe in other parts of the world in 1989, the document tries to analyze these changes. He criticizes capitalism on several grounds. He argues that it does not treat workers well, that it creates a system whereby the state becomes an advocate for the rich while ignoring the needs of the poor, and it cultivates consumerism because of a mistaken emphasis on possessing things instead of being a virtuous individual.¹¹³

Capitalism, however, does have some positive attributes. It is based on human freedom and contains an implicit duty to use that freedom responsibly. It is also very efficient and responsive to many human needs.¹¹⁴ John Paul II's ideal economic system would retain the positive characteristics of capitalism while at the same time uphold the tenets of Catholic social teaching such as protecting the poor and promoting human dignity.¹¹⁵

h. Benedict XVI

In July of 2009, Benedict XVI¹¹⁶ issued his only social encyclical *Caritas in Veritate* (Charity in Truth).¹¹⁷ He covers a wide array of issues including globalization, labor, technology, and the

¹¹¹ *Id.* ¶ 41-45.

¹¹² Pope John Paul II, *Encyclical Letter Centesimus Annus*, LIBRERIA EDITRICE VATICANA (May 1, 1991).

¹¹³ *Id.* ¶ 8, 10, 36.

¹¹⁴ *Id.* ¶ 32.

¹¹⁵ *Id.* ¶ 42.

¹¹⁶ Papacy 2005-2013.

¹¹⁷ Pope Benedict XVI, *Encyclical Letter Caritas in Veritate*, LIBRERIA EDITRICE VATICANA (June 29, 2009).

environment. Published during the financial crisis, Benedict XVI offers his view of social responsibility in the age of globalization; a social responsibility that encapsulates his theology of Christian love. He reminds us that Catholic social teaching is rooted in justice and the common good.¹¹⁸ Benedict XVI gives high accolades to Paul VI's *Populorum Progressio*, with its call for economic development, but acknowledges that today we need a "new humanistic synthesis" to deal with global problems.¹¹⁹

While the world often values power and wealth, Benedict XVI insists that the intrinsic value of every person is at the heart of Christianity. He reminds us that because we are created in the image of God, which is Trinitarian in nature, we are relational beings.¹²⁰ So we must promote policies and conditions that reflect "communion and the sharing of goods."¹²¹ Moreover, the "scandal of glaring inequalities" that continue to exist today is the result of dysfunctional relationships between institutions which do not mirror Christian charity. Institutions and policies should cultivate both justice and the communion that envelops service to others, solidarity, and the common good.¹²²

D. Summary of the Catholic Vision of Justice

From the writings of St. Augustine and St. Thomas to the work of Benedict XVI, Catholic social teaching's vision of justice has evolved tremendously. It is difficult to summarize this vision but I will attempt to do so by describing five central themes that characterize the Catholic social justice tradition.¹²³

¹¹⁸ *Id.* ¶ 6.

¹¹⁹ *Id.* ¶ 21.

¹²⁰ *Id.* ¶ 54.

¹²¹ *Id.* ¶ 42.

¹²² *Id.* ¶ 22.

¹²³ These principles are developed in McDONOUGH, *supra* note 38, at 32-34.

1. Human Dignity

The starting place for evaluating justice is human dignity. Because all people are created in the image of God, they have innate and inalienable value. The recognition of the moral worth of every person is the foundation for a just society. Everything is measured against the impact it will have on human dignity. No single list of rights can possibly define human dignity. New ways of understanding the concept continually emerge through new analyses of economic, political, and social patterns of human interactions which constantly change because human nature is conditioned by history.

Nonetheless, the following definitive conclusions about human dignity can be made. First, everyone has a right to full human development which means that certain basic conditions must be met so people can reach their full potential. These conditions, or rights, include, but are not limited to, rights to food, clothing, shelter, medical care, education, and religious expression. Second, in order to achieve these rights, people must be able to participate in the economic, political, and social processes that affect their lives. Justice will not tolerate marginalization. Finally, everyone must be viewed and treated as fundamentally equal. Any form of discrimination is unjust.

2. Social Interdependence

We must recognize and pay attention to the ever-increasing interdependence of people and their communities in the contemporary world. Justice cannot be understood apart from the reality of a labyrinth of social relationality. No one lives a completely independent life. People are created by a triune God. They are social beings who flourish within communities consisting of social structures necessary for human existence. Not only is the distribution of public goods within society important, but so is the relationship between the person and society. Within this context the three forms of justice enter to play. Distributive justice oversees the

allotment of societal goods, commutative justice regulates dealings between individuals, and social justice governs the relationships between the individual and society.

3. The Common Good

The good of the community is more important than the good of the individual. Given the reality of social interdependence, it is particularly important that all sectors of society actively promote the common good rather than privileging any single individual. While often difficult to characterize, one of the best definitions of the common good is found in *Gaudium et Spes* which describes it as:

[T]he sum of those conditions of social life which allow social groups and their individual members relatively thorough and ready access to their own fulfillment, today takes on an increasingly universal complexion and consequently involves rights and duties with respect to the whole human race. Every social group must take account of the needs and legitimate aspirations of other groups, and even of the general welfare of the entire human family.¹²⁴

Simply put, the common good consists of certain human rights and duties to promote and protect human dignity.

4. Special Obligation to the Poor and Vulnerable

Mandates to help the poor and vulnerable are found throughout the Gospel. From the early beginnings of Christianity, the Church has been committed to helping the less fortunate. Much of its social teaching is directed toward the creation of a more humane world, a world founded on just social structures. In order to create such a world, the poor and vulnerable need special attention. Difficult economic conditions, discriminatory practices, and other

¹²⁴ Second Vatican Council, *supra* note 23, ¶ 26.

forms of marginalization create circumstances under which the poor and vulnerable are unable to develop in the full human sense. Not only are they often excluded from participating in the political, economic, and social processes that affect their lives, but their basic material needs, such as sustaining levels of food and adequate shelter, are often not met. Under such conditions people cannot develop to their full capacities. Justice requires that the Church, and society as a whole, make special efforts to guarantee that the poor and vulnerable are able to attain full human dignity.

5. Stewardship

Implicit in most Church documents is the underlying concept that all life and all of the Earth's resources are gifts from God intended to benefit all of humankind. People, therefore, have an obligation to care for these gifts and see that they are distributed in a fair and responsible manner.

II. A Catholic Vision of Health Care

A. Brief History of the Catholic Church's Involvement in Health Care

The Catholic Church's long relationship with health care has evolved through two distinct avenues: pastoral medicine and moral theology.¹²⁵ The tradition of pastoral medicine investigates the interface of medicine and theology.¹²⁶ In pre-Christian times healing was usually identified with the priest or shaman whose status as "holy men" gave them the job of healing the sick. Hippocrates was the first person to establish medicine as a skill based on rational observation, diagnosis, and prescription thereby distinguishing

¹²⁵ For a more detailed discussion of the history of the Catholic Church's involvement in health care see McDONOUGH, *supra* note 38, at 55-63.

¹²⁶ For a good overview of the history of pastoral medicine see DAVID F. KELLY, *THE EMERGENCE OF ROMAN CATHOLIC MEDICAL ETHICS* (1979).

healing from a priestly ministry. But as Christianity spread across the Roman Empire, the teachings of the Gospels influenced physicians. The New Testament is filled with healing stories. In fact, the largest group of miracle stories in the New Testament involves cures. Jesus heals the blind,¹²⁷ cures lepers,¹²⁸ enables a paralytic to get up and walk,¹²⁹ and actually raises Lazarus from the dead.¹³⁰ He also commissions his apostles to heal the sick.¹³¹ Early Christian physicians took His call to heart and began to see themselves and the medical profession as a vocation where they could “be a Christlike service of salvific healing.”¹³² In order to emulate Jesus, these early Christian doctors believed medical treatment must be equitable, available for free to the poor, and include spiritual counseling.

Up until the first half of the 7th century, the majority of physicians were laymen. But that changed with the collapse of the Roman Empire when Christian structures began to take over medicine. Between the 7th and 12th centuries lay doctors were rare. Monasteries cared for the ill providing essential medical centers in Europe. This began to change, however, in the 12th and 13th centuries with the establishment of a large medical school at Salerno, Italy, the formation of medical faculties at urban universities, and a series of ecclesiastical decrees that forbade the practice of medicine by religious orders.¹³³ Although ordained people continued working in the medical profession throughout the Middle Ages and into contemporary times, laypeople dominated the profession more and more.

Within the realm of moral theology, the Church has been very vocal in the development of medical ethics. As early as the 15th and 16th centuries, the confessors’ manuals addressed the obligations

¹²⁷ *John* 9:1-12.

¹²⁸ *Matthew* 8:1-4.

¹²⁹ *Mark* 2:1-12.

¹³⁰ *John* 11:1-44.

¹³¹ In *Luke* 10:9 Jesus tells his apostles that whenever they enter a town they should “heal the sick in it and say to them, ‘The kingdom of God has come near to you.’” Similar instructions are given in *Matthew* 10:1.

¹³² KELLY, *supra* note 126, at 48.

¹³³ *Id.* at 50-51.

of physicians.¹³⁴ In the U.S., several Catholic theologians have made significant contributions to the development of medical ethics.¹³⁵ The Catholic Health Association of the United States (CHA), established in 1915, is a health ministry that oversees U.S. Catholic health care organizations.¹³⁶ They wrote the original code of ethics that eventually became the standard and mandatory ethics code for all Catholic health care institutions in the U.S.¹³⁷

B. The Affordable Care Act

“The Patient Protection and Affordable Care Act” (ACA) was signed into law by President Obama in March of 2010.¹³⁸ The law itself is lengthy and complex. It has been incredibly controversial and has met several court challenges. I will begin this section with an analysis of the U.S. health care system prior to the passage of the ACA. Then I will discuss the successes of, and subsequently, the shortcomings of the ACA from a Catholic social justice perspective.

¹³⁴ While the manuals themselves were not devoted specifically to medical issues, these topics arose under certain headings. For example, under the heading of the fifth commandment, “thou shalt not kill,” issues such as abortion, euthanasia, and sterilization are discussed. There is also a special section on the obligations of physicians and other medical personnel which include specific obligations to follow safe medical practices, avoid harmful practices, and obtain the proper skills necessary for the profession.

¹³⁵ The first American work on the topic of ethics in medicine was written by a Jesuit professor at Creighton Medical College. *See* CHARLES COPPENS, SJ, *MORAL PRINCIPLES AND MEDICAL PRACTICES: THE BASIS OF MEDICAL JURISPRUDENCE* (1897). Other distinguished Catholic theologians in this field include Gerald Kelly, SJ; Richard McCormick, SJ; Charles Curran, Philip Keane, SS; Margaret Farley; Lisa Cahill; and Edmund Pellegrino.

¹³⁶ *About*, CATHOLIC HEALTH ASS’N OF THE UNITED STATES, <http://www.chausa.org/about/about> (last visited July 2, 2015).

¹³⁷ *See* UNITED STATES CONFERENCE OF CATHOLIC BISHOPS, *ETHICAL AND RELIGIOUS DIRECTIVES OF CATHOLIC HEALTH CARE SERVICES* (2009), *available at* <http://www.usccb.org/issues-and-action/human-life-and-dignity/health-care/upload/Ethical-Religious-Directives-Catholic-Health-Care-Services-fifth-edition-2009.pdf>.

¹³⁸ 42 U.S.C. §18001 et seq. (2010).

1. *Health Care Access Before the ACA:
A Failure of Social Justice*

What did the U.S. health care system look like before the ACA? When I think about the system's inequities prior to the passage of the new law, I am reminded of the Gospel story of the healing at Bethesda.¹³⁹ In this story, Jesus is in Jerusalem when he comes upon a pool with five porticoes. Here he sees "a multitude of invalids—blind, lame, paralyzed" who have come to experience the healing power of the water. Next to the pool is a man who has been sick for 38 years. Jesus asks him, "Do you want to be healed?" The man responds, "Sir, I have no man to put me into the pool when the water is stirred up; and while I am making my way, someone else steps down ahead of me." Jesus replies, "Rise, take up your pallet and walk." The man is immediately healed.

The story reminds us not only of the desperation and isolation associated with illness, but also of our duty to help the sick access adequate care. The man is all alone; he has no one to help him get into the pool. Not only that, but the strangers around him could assist if they wanted to but instead, they simply choose to ignore him, stepping ahead of the desperate man so they can get to the healing waters themselves. And then, a miracle. Jesus, filled with compassion and mercy, comes to his aid.

Before the enactment of the ACA, many people could not access the U.S. health care system. Those who could merely stepped ahead of the others leaving the poor and sick to fend for themselves. When Congress enacted the ACA, the U.S. health care system was in the midst of a crisis that had to be addressed. Millions of uninsured, rapidly rising costs, the steady decline of employer-based health insurance, and the ever-increasing rise in out-of-pocket expenses for insured people and Medicare recipients plagued the system. By 2011, over 47 million people under the age of 65 were uninsured; three-quarters of them for over a year.¹⁴⁰ Between 2003 and 2013, health

¹³⁹ The story is found in *John* 5:1-18.

¹⁴⁰ THE HENRY J. KAISER FOUNDATION, FIVE FACTS ABOUT THE UNINSURED POPULATION, (Sept. 2012), *available at* <https://kaiserfamilyfoundation.files>.

insurance premium rates rose a startling 80%.¹⁴¹ Uncompensated medical bills cost hospitals over \$41 billion.¹⁴² Americans spent an average of \$8,745 per capita on health care amounting to 16.9 percent of the total GDP.¹⁴³ This figure represents about twice as much as other developed countries, but health outcomes in the U.S. were worse than many nations that spend far less on health care costs.¹⁴⁴ Clearly, the system was not working. Something had to be done.

When using Catholic social justice teaching as a standard to assess a health care system, or any social or economic system for that matter, we should begin with the question: Does it promote human dignity? In order to begin to answer that question, we should look to Paul VI's notion of a "Christian vision of human development." Each one of us is born, not only in the image of God, but also with a distinct personality and set of aptitudes. In order to fully develop these unique gifts, Paul VI insists we must have access to basic necessities so we can use our God-given talents "toward the destiny intended for" us by God.¹⁴⁵ Few people, however, can fully develop their potential without access to health care because there is a direct, undeniable link between lack of health insurance and poor health outcomes. Uninsured populations in the U.S. have a 25 percent higher mortality risk than insured populations.¹⁴⁶

Uninsured children are particularly unable to fully develop

wordpress.com/2013/01/7806-05.pdf.

¹⁴¹ THE HENRY J. KAISER FAMILY FOUNDATION, 2013 SUMMARY OF FINDINGS (August 20, 2013), *available at* <http://kff.org/report-section/2013-summary-of-findings/>.

¹⁴² Bruce Japsen, *Unpaid Hospital Bills Rise to \$41 Billion Annually*, FORBES (Jan. 7, 2013), *available at* <http://www.forbes.com/sites/brucejapsen/2013/01/07/unpaid-hospital-bills-rise-to-41-billion-annually/>.

¹⁴³ ORGANIZATION FOR ECONOMIC CO-OPERATION AND DEVELOPMENT, OECD HEALTH STATISTICS 2014: HOW DOES THE UNITED STATES COMPARE? *available at* <http://www.oecd.org/unitedstates/Briefing-Note-UNITED-STATES-2014.pdf>.

¹⁴⁴ DANIEL CALLAHAN & ANGELA A. WASUNNA, *MEDICINE AND THE MARKET: EQUITY V. CHOICE* 118-33 (2006).

¹⁴⁵ Paul VI, *supra* note 94, ¶ 15.

¹⁴⁶ McDONOUGH, *supra* note 38, at 198.

when denied access to health care. Not only are they more likely to die prematurely, but they have higher rates of low birth weight, a condition associated with developmental loss. One study of 8000 children between the ages of 6 and 15 concluded that children with low birth weight were 50 percent more likely to be enrolled in special education classes.¹⁴⁷ Uninsured children also have untreated chronic illnesses and developmental delays at much higher rates than insured children. Many common, treatable conditions such as ear infections, asthma, and iron deficiency anemia do not get treated in uninsured children resulting in chronic suffering, school absences, and substandard learning.¹⁴⁸

A lack of access to health care also has significant detrimental consequences for society in general. The economic impact alone is devastating. A lack of health care coverage places a tremendous financial burden on individuals and families. One of the stranger consequences of not having health insurance is that medical charges are usually higher for the uninsured than for those with coverage. The reason is that medical providers, suppliers, and insurers negotiate with each other for prices for various goods and services.¹⁴⁹ This practice usually leaves the uninsured, who have no bargaining power, paying much higher prices for the same goods and services. In 2013, the average insured person incurred half the amount of medical expenditures as the average uninsured person.¹⁵⁰

Financial ruin, an often ignored harmful effect of illness, was even more widespread than many originally believed. Prior to the enactment of the ACA, about half of all bankruptcies in the U.S. were the result of medical debt.¹⁵¹ Medical problems contributed to

¹⁴⁷ COMMITTEE ON THE CONSEQUENCES OF UNINSURANCE OF THE INSTITUTE OF MEDICINE, *HIDDEN COSTS, VALUE LOST: UNINSURANCE IN AMERICA* 65-66 (2003).

¹⁴⁸ McDONOUGH, *supra* note 38, at 198-199.

¹⁴⁹ *Id.* at 199.

¹⁵⁰ \$2,443 versus \$4,876. THE HENRY J. KAISER FAMILY FOUNDATION, *UNCOMPENSATED CARE FOR THE UNINSURED IN 2013: A DETAILED EXAMINATION* (May 30, 2014) available at <http://kff.org/uninsured/report/uncompensated-care-for-the-uninsured-in-2013-a-detailed-examination/>.

¹⁵¹ McDONOUGH, *supra* note 38, at 200.

bankruptcy for two major reasons. An accumulation of medical bills, including drug costs, that cannot be paid, is a big problem. This is true particularly considering that almost half of the medical problems contributing to bankruptcy involve chronic illnesses. The other major reason health problems contribute to bankruptcy is a loss of income associated with illness. Some 35.3 percent of bankruptcy debtors were forced to curtail employment because of an illness, often to help care for someone else.¹⁵²

High numbers of uninsured also contributed to rising health care costs. In 2013, uncompensated medical bills amounted to almost \$85 billion.¹⁵³ Hospitals provided 60 percent of this uncompensated care.¹⁵⁴ Uncompensated medical care has a ripple effect. The money to pay for medical services must come from somewhere. So, medical organizations “absorb” these costs by increasing prices while insurance companies raise their premiums to compensate for the higher prices.

The social impact of a lack of access to medical care is no less devastating. With the burden of uninsurance comes insecurity, an anxiety within families about loss of employment, about financial debt, and about trying to care for sick family members. Health insurance can provide a much-needed financial security blanket for many families thereby improving their overall well-being. When a family has health insurance, it reduces the trade-offs that they must make between spending money on healthcare and spending it on other essentials items.

A lack of access to health care especially harms society’s poor and marginalized. Low income families with no insurance have even more restricted financial choices than those with higher incomes. The payment for a visit to the doctor represents a larger portion of their income and takes a larger share of money away from some other expenditure. As income levels fall, families have less and less discretionary income. And unfortunately, many of the poor were uninsured. In 2012, 38 percent of individuals living below the

¹⁵² *Id.*

¹⁵³ UNCOMPENSATED CARE FOR THE UNINSURED IN 2013, *supra* note 150.

¹⁵⁴ *Id.*

poverty level were uninsured; 55 percent were minorities.¹⁵⁵ In fact, individuals below the poverty level are at the highest risk of being uninsured. This group accounted for 38 percent of all the uninsured.¹⁵⁶ Minority children are particularly vulnerable to having no insurance. Although there are federal programs to provide a much-needed safety net for children, there were still far too many minority children without any coverage. In 2012, of Latino children, 14.1 percent had no health coverage at all, while 9.3 percent of African-American children had none.¹⁵⁷

Finally, prior to the passage of the ACA, some of the most vulnerable in our society—those with pre-existing medical conditions—either lost their insurance, were denied coverage, or could not afford the cost of premiums if they were actually able to find coverage. Now insurance companies can no longer deny them coverage.

2. The Successes of the ACA in View of Catholic Social Teaching

Beginning with John XXIII through the papacy of Benedict XVI, the Catholic magisterium has been unequivocal in its support for universal access to health care.¹⁵⁸ Over and over the Church has deemed health care a basic right flowing from human dignity. For

¹⁵⁵ THE HENRY J. KAISER FAMILY FOUNDATION, KEY FACTS ABOUT THE UNINSURED POPULATION, SEPTEMBER 2013 (Sept. 2013) *available at* <https://kaiserfamilyfoundation.files.wordpress.com/2013/09/8488-key-facts-about-the-uninsured-population.pdf>.

¹⁵⁶ *Id.*

¹⁵⁷ US CENSUS BUREAU, INCOME, POVERTY, AND HEALTH INSURANCE IN THE UNITED STATES: 2012, 37 (Sept. 2013) *available at* <http://www.census.gov/prod/2013pubs/p60-245.pdf>.

¹⁵⁸ *See* John XXIII, *supra* note 79, ¶ 11 (listing the right to medical care as one of the rights that is necessary for “the proper development of life”); John Paul II, *supra* note 112, ¶ 15 (including health insurance in a list of “the rights of workers,” alongside social security, pensions, and compensation in the case of accidents); Benedict XVI, Message of His Holiness Benedict XVI to Participants in the 25th International Conference Organized by the Pontifical Council for Health Care Workers (Nov. 18, 2010) (stating that access to health care was an “inalienable right”).

several decades the U.S. Catholic bishops have also supported universal health care coverage. In 1981, they issued a pastoral letter on the topic.¹⁵⁹ The document's first general principle for public health care policy states that everyone has a right to adequate health care regardless of their economic, social, or legal status.¹⁶⁰ For many years, the CHA has written about and advocated for health care reform that expands coverage to the greatest number of people possible.¹⁶¹

How close does the ACA come to fulfilling the requirements of Catholic social justice? In terms of increasing the number of insured, the program has been a resounding success. Millions of Americans have already benefited from the program. In a summary of the first year of the law's enactment, the CHA made the following findings. A total of 10 to 14 million people who were previously uninsured received insurance coverage through the program.¹⁶² At least 3 million young adults stayed on their parents' insurance.¹⁶³ Of the 7.3 million people who signed up for private insurance through online exchanges during the first enrollment period, 85 percent qualified for federal subsidies which decreased the cost of their premiums.¹⁶⁴ The CHA estimates that 19 million people will gain insurance coverage through the ACA by 2015 and 25 million more will get coverage by 2016.¹⁶⁵

The law also expanded Medicaid eligibility so more people could access medical care. The expansion targeted adults living in

¹⁵⁹ U.S. CONFERENCE OF CATHOLIC BISHOPS, HEALTH AND HEALTH CARE (1981) *available at* <http://www.usccb.org/issues-and-action/human-life-and-dignity/health-care/upload/health-and-health-care-pastoral-letter-pdf-09-01-43.pdf>.

¹⁶⁰ *Id.* at 18.

¹⁶¹ *See, e.g.*, Catholic Health Association of the United States, 90 HEALTH PROGRESS 1 (2009).

¹⁶² CATHOLIC HEALTH ASSOCIATION OF THE UNITED STATES, OPEN ENROLLMENT SUMMARY (2014) *available at* <http://www.chausa.org/docs/default-source/advocacy/2013-2014-open-enrollment-summary.pdf?sfvrsn=0>.

¹⁶³ *Id.*

¹⁶⁴ Margot Sanger-Katz et al., *Is the Affordable Care Act Working?* N.Y. TIMES, Oct. 26, 2014, *available at* http://www.nytimes.com/interactive/2014/10/27/us/is-the-affordable-care-act-working.html?_r=1#/.

¹⁶⁵ Catholic Health Association of the United States, *supra* note 162.

poverty, people who have limited access to employer coverage, and those who cannot afford to purchase coverage on their own. Under the new law, those with incomes at or below 138 percent of the Federal Poverty Level can enroll in Medicaid. Although the Supreme Court held that states can opt-out of the Medicaid expansion, in the 28 states that have expanded Medicaid, 7.5 million people enrolled in the program.¹⁶⁶

More children now have insurance. The ACA protects the gains in children's coverage that have been achieved over time in Medicaid and Children's Health Insurance Program (CHIP), a low-cost health coverage to children in families that earn too much money to qualify for Medicaid. The national Medicaid minimum income eligibility threshold applies to all children up to age 19, and the law requires states to maintain the eligibility limits they had in place when the ACA was enacted (at a minimum), through September 30, 2019. Also, as of 2014, states must provide Medicaid coverage for children aging out of foster care, up to age 26. Finally, the ACA extends CHIP funding through 2015, and provides for a 23 percentage-point increase in the federal matching rates under CHIP during the period FY 2016-2019 if the Congress extends CHIP funding beyond 2015.¹⁶⁷

As many as 129 million Americans in the U.S. have some kind of pre-existing medical condition, including 17 million children.¹⁶⁸ They can no longer be denied coverage and if income-eligible, may receive subsidies to help pay for their insurance. Finally, the ACA has increased access to preventive health services by requiring most private health plans to cover certain benefits without co-payments. These benefits include mammograms, cervical cancer screenings, flu and pneumonia shots, and regular well-baby

¹⁶⁶ Margot Sanger-Katz et al., *supra* note 164.

¹⁶⁷ THE HENRY J. KAISER FAMILY FOUNDATION, *MEDICAID, CHIP AND THE ACA* (Mar. 26, 2014) *available at* <http://kff.org/health-reform/issue-brief/childrens-health-coverage-medicaid-chip-and-the-aca/>.

¹⁶⁸ ADELLE SIMMONS, ET AL, *THE AFFORDABLE CARE ACT: ADVANCING THE HEALTH OF WOMEN AND CHILDREN*, DEP'T OF HEALTH AND HUMAN SERV.S (Jan. 9, 2015) *available at* http://www.aspe.hhs.gov/health/reports/2015/MCH/ib_mch.pdf.

and well- child checkups.

2. *The Shortcomings of the ACA in View of
Catholic Social Justice Teaching*

While the ACA has made considerable progress in bringing about a just health care system, it still has a long way to go. Under the new program, there are several impediments to universal coverage. First, numerous federal court challenges have chipped away at the law. I will briefly discuss two of them.¹⁶⁹ In *National Federation of Independent Business v. Sebelius* the Supreme Court found that the ACA's requirement that all citizens either purchase insurance or pay a penalty is constitutional. On the other hand, the Court also held that the law cannot force states to expand Medicaid eligibility.¹⁷⁰

Since the decision, 22 states have opted out of Medicaid expansion.¹⁷¹ By refusing to accept Medicaid expansion states are not only turning down federal money that could boost their economies and save hospitals millions of dollars in uncompensated medical bills, they are also creating enormous gaps in health care coverage. Without the expansion, millions of people do not qualify for Medicaid because their income exceeds their state's eligibility

¹⁶⁹ I am omitting a discussion of *Burwell v. Hobby Lobby Stores, Inc.*, 134 S. Ct. 2751 (2014), where the Court held that as applied to closely held corporations, the regulations promulgated by the Department of Health and Human Services requiring employers to provide their female employees with no-cost access to contraception violate the Religious Freedom Restoration Act. Although an important decision as it relates to the Catholic Church and matters of freedom of religion, I do not believe the case negatively affects access to health care insurance.

¹⁷⁰ *National Federation of Independent Business v. Sebelius*, 132 S. Ct. 2566 (2012).

¹⁷¹ Some Republican-led states are reconsidering their decision to opt-out after Indiana recently decided to expand Medicaid coverage upon reaching an agreement with the Obama administration whereby the state will be allowed to require that some Medicaid enrollees pay for part of their care. See Louise Radnofsky & Arian Campo-Flores, *Deal Offers Model For Medicaid Expansion*, WALL ST. J., Jan. 28, 2015, at 1A.

cutoff, yet they also do not earn enough to buy insurance through the ACA. Approximately 4 million people are without insurance because their states opted out.¹⁷² Most are employed either part-time or full-time but still live below the poverty level. In Texas alone, the largest state opting out, about 1 million people will be without health insurance.¹⁷³ Minorities, particularly African Americans, are disproportionately affected because of the racial and ethnic composition of states not expanding their Medicaid programs.¹⁷⁴

More recently, the Supreme Court heard yet another case involving the ACA.¹⁷⁵ *King v. Burwell* challenged the health law's subsidies for low- and middle-income Americans who live in states that did not set up their own health insurance exchanges. Plaintiffs in the case argued that the text of the law allows for subsidies only in states that are running their own marketplaces so people in states relying on the HealthCare.gov federal exchange should not get subsidies.¹⁷⁶ The Court held that the language of the statute, when viewed within the structure and context of the Act, was necessarily ambiguous, and that the "credits are necessary for the Federal Exchanges to function like their State Exchange counterparts, and to avoid the type of calamitous result that Congress plainly meant to avoid."¹⁷⁷ Therefore, use of either federal or state exchanges qualified a taxpayer for certain tax credits.

Second, although the ACA has expanded health care coverage, large numbers of uninsured remain. According to the Congressional Budget Office, 26 to 27 million people are expected to remain uninsured even after several years.¹⁷⁸ There several reasons

¹⁷² THE KAISER J. FAMILY FOUNDATION, *THE COVERAGE GAP: UNINSURED POOR ADULTS IN STATES THAT DO NOT EXPAND MEDICAID* (Nov. 12, 2014) available at <http://kff.org/health-reform/issue-brief/the-coverage-gap-uninsured-poor-adults-in-states-that-do-not-expand-medicaid-an-update/>.

¹⁷³ *Id.*

¹⁷⁴ *Id.*

¹⁷⁵ *King v. Burwell*, 576 U. S. ____ (2015).

¹⁷⁶ *Id.*

¹⁷⁷ *King v. Burwell*, 576 U. S. ____ (2015).

¹⁷⁸ CONGRESSIONAL BUDGET OFFICE, *CBO Releases Updated Estimates for the Insurance Coverage Provisions of the Affordable Care Act* (Mar. 13, 2012) available at <http://www.cbo.gov/publication/43080>.

for this. Many are caught in a policy gap in those states that have not expanded Medicaid. Others may be difficult to reach — because of mental illness, language barriers or other isolating factors. Some do not qualify for Medicaid but also cannot afford the premiums even with the subsidy program. Others may simply not want insurance.

Third, a large population has been excluded from obtaining coverage under the ACA and under Medicaid: undocumented immigrants. Undocumented immigrants, people who entered the U.S. without valid documents and people who are living outside the terms of their entry visas, represent one of the poorest and most vulnerable populations. Approximately 11 million are living in the U.S. today.¹⁷⁹ Most emigrated from Latin America and live in California, Texas, Florida, or New York. With the exception of certain kinds of emergency care, they are not eligible for federal entitlement programs and they cannot purchase insurance through the ACA's insurance exchanges even if they pay for the insurance themselves.

Undocumented workers labor hard in the work force at jobs many Americans do not want to do. Yet, they have disproportionately low incomes. They also pay a variety of taxes, making contributions at local, state, and federal levels. One of the few health care safety nets for undocumented immigrants is the Disproportionate Share Hospital (DSH) program which provides funding to hospitals that treat indigent patients. Under the ACA, however, the funding of DHS has been greatly reduced with \$500 million in reductions in 2014, and scheduled \$600 million in reductions in 2016, \$1.8 billion in 2017, \$5 billion in 2018, \$5.6 billion in 2019, and \$3 billion in 2020.¹⁸⁰ Since undocumented residents are concentrated in a small number of states, the reduction

¹⁷⁹ Michael Gusmano, *Undocumented Immigrants in the United States: Demographics and Socioeconomic Status*, THE HASTINGS CENTER (Feb. 14, 2012) available at <http://www.undocumentedpatients.org/issuebrief/demographics-and-socioeconomic-status/>.

¹⁸⁰ THE HENRY J. KAISER FOUNDATION, HOW DO MEDICAID DISPROPORTIONATE SHARE HOSPITAL (DSH) PAYMENTS CHANGE UNDER THE ACA? 2 (Nov., 2013) available at <https://kaiserfamilyfoundation.files.wordpress.com/2013/11/8513-how-do-medicare-dsh-payments-change-under-the-aca.pdf>.

in DHS will particularly affect safety-net hospitals in those states.¹⁸¹

Catholic social justice teaching insists that everyone have access to medical care. Undocumented immigrants need direct and comprehensive health care safety nets. If we, as a nation, allow this injustice to continue, we risk condemning the undocumented to the status of what liberation theologian Gustavo Gutiérrez describes as “nonpersons, the ‘in-significant ones,’ the ones that don’t count either for the rest of society, and, far too frequently, for the Christian churches.”¹⁸²

And finally, the U.S. health care system remains one of the most expensive in the world and still has poorer health outcomes. In 2013, U.S. health care spending increased 3.6 percent to reach \$2.9 trillion, or an outrageous average of \$9,255 per person.¹⁸³ While spending has slowed slightly, this is the case worldwide and is most likely due to a global recession. Regardless, the U.S. health care system has been on an unsustainable trajectory of rising costs and increasing expenditures for years.

Given these shortcomings, while the ACA has made the U.S. health care system more equitable, overall it stills falls short. One major reason for its shortcomings is a continued overreliance on market practices to organize, finance, and distribute health care. The term “market” generally refers to a system that is free of government regulation and is founded on private ownership of property or an exchange of goods and wages based on supply and demand. No pure market economies exist in the world. Instead, most developed

¹⁸¹ For an excellent research report on undocumented immigrants *see* STEVEN P. WALLACE ET. AL., UNDOCUMENTED AND UNINSURED: BARRIERS TO AFFORDABLE CARE FOR IMMIGRANT POPULATIONS, UCLA CENTER FOR HEALTH POLICY RESEARCH (August 2013) *available at* http://www.commonwealthfund.org/~media/Files/Publications/Fund%20Report/2013/Aug/1699_Wallace_undocumented_uninsured_barriers_immigrants_v2.pdf.

¹⁸² GUSTAVO GUTIERREZ, *Renewing the Option for the Poor*, in *LIBERATION THEOLOGIES, POSTMODERNITY, AND THE AMERICAS* 72 (David Batstone et al. eds., 1997).

¹⁸³ CENTERS FOR MEDICARE AND MEDICAID SERVICES, NATIONAL HEALTH EXPENDITURES 2013 HIGHLIGHTS *available at* <http://www.cms.gov/Research-Statistics-Data-and-Systems/Statistics-Trends-and-Reports/NationalHealthExpendData/>.

countries have economies based on a market system, albeit with varying degrees of government regulation.

Health care economics is too complex to discuss in detail here but the following is a brief description of how the system came to rely so heavily on market mechanisms.¹⁸⁴ As health care prices began to rise in the U.S. during the 1960s, market proponents argued that costs could be contained if there was less government regulation, more competition among providers, and increased patient responsibility for health care costs.¹⁸⁵ Eventually, the system began to rely heavily on four market mechanisms for payment: private health insurance, managed care systems, cost sharing in the form of copayments and deductibles, and finally, health accounts. Also, the dominant payment model for physicians became a “fee-for-service” system where physicians are paid for the separate services they provide their patients, such as an office visit or procedure, instead of bundling these services. Payment is, therefore, based on the quantity, not quality, of care. Such a system also provides an economic incentive to overuse procedures and expensive technology. And then, the enormous, rapidly growing, and very expensive medical technology and pharmaceutical industries began to overshadow the industry. These factors, combined with other market-driven influences, created a disastrous situation: skyrocketing costs, an overuse of expensive medical technology, and more and more people who cannot afford health care.

Market ideology, with its bias toward profit, individual preferences, the creation of demand for products, and a total lack of consideration for the common good, has no place in the health care sector. Health care should not be treated like a consumer commodity. Those in need of its services are not mere consumers of a product. People do not choose to be sick. Most of us prefer to use the health care system as seldom as possible and find it confusing and sometimes scary when necessary to do so. When we are forced to navigate the system, we are in no position to consider costs, choices,

¹⁸⁴ One of the most comprehensive books on health care economics is THOMAS H. RICE, *THE ECONOMICS OF HEALTH RECONSIDERED* (3d ed., 2009).

¹⁸⁵ For a detailed discussion on the rise of market mechanisms in U.S. health care see McDONOUGH, *supra* note 38, at 72-75.

and “rational” alternatives. There is a big difference between an individual who requires kidney dialysis to save her life and another individual who desires, and then purchases, a high-definition television. While competition and choice, the mainstays of market economics, may benefit the television customer, it only wreaks havoc with the kidney patient.

Several Catholic ethicists have voiced concern over the use of marketization of health care including the late Edmund Pellegrino, a Catholic doctor, bioethicist at the Medicine and Kennedy Institute of Ethics, and founding director of the Center for Clinical Bioethics at Georgetown University. He insisted that market values had no place in health care because “healing within the Christian context is inconsistent with the profit-driven care.”¹⁸⁶ Catholic social teaching has traditionally been suspicious of market ideology. While no fan of communism and socialism, the Church also rejects the competition, self-interest, and profit driven values of market ideology because they do not serve the common good, do not protect human dignity, and ignore the plight of the poor and vulnerable. Paul VI criticized capitalism because it “considers profit as the key motive for economic progress, competition as the supreme law of economics and private ownership of the means of production as an absolute right that has no limits and carries no corresponding social obligations.”¹⁸⁷ Pope Francis has continued this tradition by recently criticizing capitalism for its:

[T]rickle-down theories which assume that economic growth, encouraged by a free market, will inevitably succeed in bringing about greater justice and inclusiveness in the world. This opinion, which has never been confirmed by the facts, expresses a crude and naïve trust in the goodness of those wielding economic power and in the sacralized workings of the

¹⁸⁶ Edmund D. Pellegrino, *Healing and Being Healed: A Christian Perspective*, in *Jewish and Catholic Bioethics: An Ecumenical Dialogue* (Edmund D. Pellegrino & Alan I. Faden, eds., 1999).

¹⁸⁷ Paul VI, *supra* note 94, ¶ 26.

prevailing economic system.¹⁸⁸

When capitalism's shortcomings prevent an essential system, like the U.S. health care system, from serving social justice we then need to look to the government and ask for even greater involvement. Because it is best suited to serve the public interest and promote the common good, the government has a positive role to play in the achievement of social justice. In fact, according to John XXIII, "the whole reason for the existence of civil authorities is the realization of the common good."¹⁸⁹ It is time, therefore, for the U.S. to consider a single-payer national health insurance program where the government organizes the financing of health care but its delivery remains in the private sector.¹⁹⁰ A single-payer system, without the distraction of market ideology, would better serve social justice. Such a system can truly act on behalf of the common good, promote human dignity, and protect the poor and vulnerable.

Conclusion

The Catholic social justice tradition provides us with a nuanced vision of social justice grounded in unique principles based upon a careful consideration of scripture, tradition, the secular disciplines, and human experience. This vision of justice serves as an excellent framework for evaluating political, social, and economic systems and structures. The Catholic Church's long tradition of involvement in health care has also created a wellspring of experience and knowledge unrivaled anywhere in the world. The ACA, while well-intended and a significant improvement over the prior health care system, simply falls short in fulfilling the requirements of social justice.

With ongoing court challenges that weaken the ACA's

¹⁸⁸ Francis I, *Apostolic Exhortation Evangelii Gaudium* LIBRERIA EDITRICE VATICANA ¶ 54 (Nov. 24, 2013).

¹⁸⁹ John XXII, *supra* note 79, ¶ 54.

¹⁹⁰ For an excellent comparison of the single-payer system in Canada and the pre-ACA system in the U.S. *see* CALLAHAN & WASUNNA, *supra*, note 144, at 53-86.

influence as well as its overreliance on market mechanisms, the law cannot provide universal, equitable health care to all people living in the U.S. Without a doubt, we can sit by and applaud its attempts to do so. But we cannot forget our obligations to protect human dignity, to promote the common good, to recognize our social interdependence, to meet our duty to help the poor and the vulnerable, and to act as stewards over limited resources. We need to make a choice. Are we going to mimic the people at the pool of Bethesda by simply stepping over the poor, the sick, and the vulnerable leaving them to fend for themselves? Or, are we going to emulate Jesus and immerse them into the healing waters of a truly universal, equitable health care system?