

The Legacy of John Paul II to Lawyers

*John F. Coverdale**

Only a small fraction of John Paul II's voluminous writings directly address legal issues, but he has left lawyers an extraordinarily rich and challenging legacy. He offers us an alternative vision to the prevailing positivist and postmodern views.

For John Paul II, the law is not an isolated technical discipline unmoored from a larger system of morality. Rather, it is an instrument in our search for the human fulfillment that is the goal of morality. As such, it necessarily reflects a set of moral aspirations. For John Paul II, it is not enough that a legal system be technically coherent and conducive to civil peace and economic prosperity. Ultimately, laws are to be fashioned and judged on the basis of their ability to contribute to the flourishing of the community and of each of its members. That flourishing requires civic peace and economic prosperity, but goes beyond them to encompass the full human development of the members of the society and, ultimately, their relationship with God. In this context, John Paul II appreciates the values inherent in democracy and free-market economies, but treats them not as self-justifying ultimate values but as instruments to be used in our efforts to build societies that will facilitate the search for truth and goodness.

John Paul II challenges both the Marxist collectivist vision of law and society and the individualistic liberal vision that dominates the thinking of American lawyers and legal academics. Although he takes on specific issues like the right to property and its role in society, his basic challenge to both collectivism and individualism lies at the level of philosophical and theological anthropology. In opposition to both

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collectivism and individualism, he offers a set of distinctive answers to the ultimate questions that any lawyer who is concerned about the underpinnings of the law must ask: Of what does human fulfillment consist? What is the basis of human dignity? What is the relationship between truth and freedom? What forms the foundation of human rights?

John Paul II's vision is deeply rooted in his religious faith. He is convinced that Christ "fully reveals man to himself and brings to light his most high calling."¹ In his view, ultimate human fulfillment is to be found in a relationship with God who embodies the truth and goodness we seek. This does not mean, however, that John Paul II's thought is of interest only to those who share his religious faith. Even a cursory search of the World Wide Web demonstrates that many people whose world view is not religious have found that his thought challenges and enriches their own positions with new perspectives. Many who reject his religious beliefs find that John Paul II's description of the human condition resonates with their own experience and aspirations.

The appeal of John Paul II's thought to those outside his religious tradition lies in the fact that he convincingly engages the human experience of his readers. In addition to being a believer and a theologian, John Paul II is an original philosopher whose phenomenological analysis of human experience lays bare many profound truths about human action and life.² His analysis of the philosophical wellsprings of human activity and freedom, as well as of Christ's teaching and example, enables him to propose values that ring true to many men and women of other religions or of no religion.

John Paul II's thought derives its power not only from its intellectual rigor and coherence with the reader's personal experience but from a life based on the convictions formulated in his writings. The John Paul II who wrote about the contribution of work to human fulfillment spoke not merely from the quiet of a scholar's library or the glare of a world leader's podium, but from a quarry where, as a laborer during the Nazi occupation of Poland, he felt

¹ Encyclical Letter from Pope John Paul II to the Bishops of the Catholic Church, *Redemptor Hominis* [On the Redeemer of Man] ¶ 8 (Mar. 4, 1979), available at http://www.vatican.va/holy_father/john_paul_ii/encyclicals/documents/hf_jp-ii_enc_04031979_redemptor-hominis_en.html [hereinafter *Redemptor Hominis*] (emphasis omitted).

² See ROCCO BUTTIGLIONE, KAROL WOJTYLA: THE THOUGHT OF THE MAN WHO BECAME POPE JOHN PAUL II (1997).

“bone-chilled and exhausted most of the time.”³ His meditations on the role and positive value of suffering in human life gained immeasurably in strength and attraction as he lived them out in the long years of his physical decline and the weeks of his last illness and death.

In addition to his own example, John Paul II backed his theories with the example of more than 1700 people whom he either canonized (named “Saint”) or beatified (named “Blessed”).⁴ Many of them were lay men and women of the twentieth century. Their lives reflected, often in striking fashion, the values John Paul II expressed in his writings. Their real-life experiences give John Paul II’s thought a power and attraction that mere speculation, however erudite, lacks.

This Article offers an introduction to some aspects of John Paul II’s thought. It is directed primarily to readers who have little or no knowledge of his writings, but who do have an interest in jurisprudence and in the broader issues of the law. Although I have not always resisted the temptation to offer readers in footnote some suggestions for further reading, my focus is on John Paul II’s own writings rather than on the abundant literature they have provoked. Wherever possible, I have tried to let him speak in his own words, without excessive commentary or paraphrasing on my part. My goal is to present his thought rather than critiquing it or examining in depth its implications, applications, and limitations.

Part I of this Article focuses on issues of philosophical and theological anthropology, and on the ultimate questions about what it means to be human. Although the questions are philosophical and theological rather than legal, some set of answers to them ultimately underlies every coherent legal system. Part II of this Article examines John Paul II’s approach to specific issues that are directly related to the legal system.

I. PHILOSOPHICAL AND THEOLOGICAL ANTHROPOLOGY

A. *The Value and Dignity of Persons*

John Paul II has often been described as a “personalist” because of his emphasis on the value and dignity of the human person.⁵ “[M]an is the only creature on earth that God willed for itself,” he

³ TAD SZULC, POPE JOHN PAUL II: THE BIOGRAPHY 116 (1995).

⁴ *Saint Watch*, U.S. CATHOLIC, July 2004, at 11.

⁵ See, e.g., KENNETH L. SCHMITZ, AT THE CENTER OF THE HUMAN DRAMA: THE PHILOSOPHICAL ANTHROPOLOGY OF KAROL WOJTYLA/POPE JOHN PAUL II 35–36 (1993).

asserts over and over again, quoting the Second Vatican Council's constitution *Gaudium et Spes*.⁶ "[I]n Christ and through Christ," he says, "man has acquired full awareness of his dignity, of the heights to which he is raised, of the surpassing worth of his own humanity, and of the meaning of his existence."⁷ That dignity and worth belong not to "the 'abstract' man, but the real, 'concrete,' 'historical' man . . . in his unique unrepeatable human reality."⁸

In his thought, the person is the central focus, and the policies of any community should ultimately be directed to the full development of each of the persons who comprise it, whether that community be a country, a village, a business, a club, or a family. Communities of all sorts exist to serve persons. Whatever a community's specific objective (from promoting world peace to selling pencils), the ultimate justification of its existence is the service it provides to persons.

The most fundamental and inviolable dignity and worth of each person derives from personhood, from being a person, "a subjective being capable of acting in a planned and rational way, capable of deciding about himself, and with a tendency to self-realization."⁹ Human dignity rests on being created in "the image and likeness of God,"¹⁰ endowed on the natural level with an intellect and will¹¹ that

⁶ See, e.g., *Redemptor Hominis*, *supra* note 1, ¶ 13 (quoting Second Vatican Council, *Gaudium et Spes* [Pastoral Constitution on the Church in the Modern World] ¶ 22 (Dec. 7, 1965), available at http://www.vatican.va/archive/hist_councils/ii_vatican_council/documents/vat-ii_cons_19651207_gaudium-et-spes_en.html [hereinafter *Gaudium et Spes*]). For a discussion of John Paul II's vision of human dignity, see John F. Coughlin, O.F.M., *Pope John Paul II and the Dignity of the Human Being*, 27 HARV. J.L. & PUB. POL'Y 65 (2003).

⁷ *Redemptor Hominis*, *supra* note 1, ¶ 11.

⁸ *Id.* ¶ 13.

⁹ Encyclical Letter from Pope John Paul II to the Bishops of the Catholic Church, *Laborem Exercens* [On Human Work] ¶ 6 (Sept. 14, 1981), available at http://www.vatican.va/holy_father/john_paul_ii/encyclicals/documents/hf_jp-ii_enc_14091981_laborem-exercens_en.html [hereinafter *Laborem Exercens*].

¹⁰ See, e.g., *Redemptor Hominis*, *supra* note 1, ¶ 13 (quoting *Genesis* 1:26).

¹¹ See Pope John Paul II, Address To Participants in the International Conference Sponsored by the Pontifical Council for Pastoral Assistance to Health-Care Workers: In The Image and Likeness of God: Always? *Illness of the Human Mind* ¶ 3 (Nov. 30, 1996), available at <http://www.ewtn.com/library/PAPALDOC/JP96N30.htm> [hereinafter *Address to Health-Care Workers*].

Philosophical and theological reflection has identified in man's mental faculties, that is, in his reason and in his will, a privileged sign of this affinity with God. These faculties, in fact, enable man to know the Lord and to establish a relationship of dialogue with him. In discussing this, St. Thomas points out, "Person signifies what is most perfect in all nature, that is, a subsistent individual of a rational nature."

makes human beings capable of entering into loving relationships with others and of making a “sincere gift of self” to others.¹² Over and above this natural dignity, every human being is “called to a fullness of life which far exceeds the dimensions of his earthly existence, because it consists in sharing the very life of God.”¹³

This fundamental dignity and worth is independent of talents or accomplishments. So, for example, John Paul II insists that even a person suffering from serious mental illness, which may obstruct normal use of the faculties that reflect most directly man’s likeness to God, nonetheless “‘always’ bears God’s image and likeness in himself, as does every human being. In addition, he ‘always’ has the

Id. (quoting ST. THOMAS AQUINAS, SUMMA THEOLOGIAE I, Q. 29, art. 3).

It should be made clear however that the whole man, not just his spiritual soul, including his intelligence and free will, but also his body shares in the dignity of “the image of God.” In fact, the human body “is a human body precisely because it is animated by a spiritual soul, and it is the whole human person that is intended to become, in the body of Christ, a temple of the Spirit.” “Do you not know [sic][,]” the Apostle writes[,] “that your bodies are members of Christ[. . .]? You are not your own. . . . So glorify God in your body.” Hence the need to respect one’s own body, and also the body of every other person, especially the suffering.

Id. (internal citations omitted) (quoting *Catechism of the Catholic Church* § 364, available at http://www.vatican.va/archive/ccc_css/archive/catechism/pls2c1p6.htm; 1 *Corinthians* 6:15, 19–20; *Catechism of the Catholic Church* § 1004, available at <http://www.vatican.va/archive/catechism/p123a11.htm>). See also Apostolic Letter of Pope John Paul II, *Mulieris Dignitatem* [On the Dignity and Vocation of Women] ¶ 7 (Aug. 15, 1988), available at http://www.vatican.va/holy_father/john_paul_ii/apost_letters/documents/hf_jp-ii_apl_15081988_mulieris-dignitatem_en.html [hereinafter *Mulieris Dignitatem*] (“By reflecting on the whole account found in [*Genesis*] 2:18–25, and by interpreting it in light of the truth about the image and likeness of God, we can understand even more fully what constitutes the personal character of the human being, thanks to which both man and woman are like God. For every individual is made in the image of God, insofar as he or she is a rational and free creature capable of knowing God and loving him.” (internal citation omitted) (citing *Genesis* 1:26–27)).

¹² Letter from Pope John Paul II to Families ¶ 12 (Feb. 2, 1994), available at http://www.vatican.va/holy_father/john_paul_ii/letters/documents/hf_jp-ii_let_02_021994_families_en.html [hereinafter *Letter to Families*]. See *Mulieris Dignitatem*, *supra* note 11, ¶ 7 (“Moreover, we read that man cannot exist ‘alone’; he can exist only as a ‘unity of the two,’ and therefore *in relation to another human person*. It is a question here of a mutual relationship: man to woman and woman to man. Being a person in the image and likeness of God thus also involves existing in a relationship, in relation to the other ‘I.’ This is a prelude to the definitive self-revelation of the Triune God: a living unity in the communion of the Father, Son and Holy Spirit.” (internal citation omitted) (citing *Genesis* 2:18)).

¹³ Encyclical Letter from Pope John Paul II to the Bishops of the Catholic Church, *Evangelium Vitae* [The Gospel of Life] ¶ 2 (Mar. 25, 1995), available at http://www.vatican.va/holy_father/john_paul_ii/encyclicals/documents/hf_jp-ii_en_c_25031995_evangelium-vitae_en.html [hereinafter *Evangelium Vitae*].

inalienable right not only to be considered as an image of God and therefore as a person, but also to be treated as such.”¹⁴

John Paul II’s stress on the dignity of each person precludes “using” human beings to achieve the goals of the society as Marxist and other totalitarian regimes would do.¹⁵ Rather, in his view, the function of the state is to promote “the common good,” understood not as the aggregate of the goods of a majority of individuals, but rather as the “sum of social conditions which permit and foster in human beings the integral development of their person.”¹⁶ Rather

¹⁴ *Address to Health-Care Workers*, *supra* note 11, ¶ 8. Going to an even more extreme case, that of persons in a persistent vegetative state, John Paul II affirms:

[T]he intrinsic value and personal dignity of every human being do not change, no matter what the concrete circumstances of his or her life. *A man, even if seriously ill or disabled in the exercise of his highest functions, is and always will be a man*, and he will never become a ‘vegetable’ or an ‘animal.’ Even our brothers and sisters who find themselves in the clinical condition of a ‘vegetative state’ retain their human dignity in all its fullness.

Pope John Paul II, *Address to the Participants in the International Congress on Life-Sustaining Treatments And Vegetative State: Scientific Advances And Ethical Dilemmas* ¶ 3 (Mar. 20, 2004), *available at* http://www.vatican.va/holy_father/john_paul_ii/speeches/2004/march/documents/hf_jp-ii_spe_20040320_congress-fiamc_en.html [hereinafter *Address on Life-Sustaining Treatments*]. *See also* Pope John Paul II, *Address to Disabled People and Their Families* (Dec. 3, 2000), *available at* <http://www.catholic-forum.com/saints/pope0264lu.htm> (calling for “an attitude and a culture” of “integration” of the disabled that respects their right to a dignified life and to acceptance and autonomy).

¹⁵ In John Paul II’s view:

[T]he fundamental error of socialism is anthropological in nature. Socialism considers the individual person simply as an element, a molecule within the social organism, so that the good of the individual is completely subordinated to the functioning of the socio-economic mechanism. Socialism likewise maintains that the good of the individual can be realized without reference to his free choice, to the unique and exclusive responsibility which he exercises in the face of good or evil. Man is thus reduced to a series of social relationships, and the concept of the person as the autonomous subject of moral decision disappears, the very subject whose decisions build the social order.

Encyclical Letter from Pope John Paul II to the Bishops of the Catholic Church, *Centesimus Annus* [The Hundredth Year] ¶ 13 (May 1, 1991), *available at* http://www.vatican.va/holy_father/john_paul_ii/encyclicals/documents/hf_jp-ii_enc_0105_1991_centesimus-annus_en.html [hereinafter *Centesimus Annus*].

¹⁶ Pope John Paul II, *Message for World Day for Peace* (Jan. 1, 2005), *available at* http://www.vatican.va/holy_father/john_paul_ii/messages/peace/documents/hf_jp-ii_mes_20041216_xxxviii-world-day-for-peace_en.html. Although fostering the common good is a special responsibility of governments, John Paul II sees all members of society as implicated in the effort to create the conditions that permit human flourishing. Addressing artists, for instance, he said:

Within the vast cultural panorama of each nation, artists have their unique place. Obedient to their inspiration in creating works both

than the person existing to serve some higher good, the person is the end and goal at whose service the state exists: “the origin, the subject and the purpose of all social institutions is and should be the human person.”¹⁷

B. The Meaning of Self-Realization: The Gift of Self

Although John Paul II stressed the primacy of persons and rejected Marxism and other forms of collectivism, he was far from embracing the individualism that characterizes much American thought,¹⁸ especially in its libertarian strains.¹⁹ Individualism sees “freedom as the ultimate goal and the individual as the ultimate entity in society.”²⁰ It views the individual as self-contained, and the

worthwhile and beautiful, they not only enrich the cultural heritage of each nation and of all humanity, but they also render an exceptional social service in favour of the common good.

Letter from Pope John Paul II to Artists (Apr. 4, 1999), available at http://www.vatican.va/holy_father/john_paul_ii/letters/documents/hf_jp-ii_let_23041999_artist_s_en.html.

¹⁷ Encyclical Letter from Pope John Paul II to the Bishops of the Catholic Church, *Veritatis Splendor* [The Splendor of Truth] ¶ 97 (Aug. 6, 1993), available at http://www.vatican.va/holy_father/john_paul_ii/encyclicals/documents/hf_jp-ii_enc_06081993_veritatis-splendor_en.html [hereinafter *Veritatis Splendor*] (quoting *Gaudium et Spes*, *supra* note 6, ¶ 25).

¹⁸ For a classic study of American individualism, see ROBERT BELLAH, *HABITS OF THE HEART: INDIVIDUALISM AND COMMITMENT IN AMERICAN LIFE* (1985).

¹⁹ One example, albeit an extreme one, of libertarian individualism is the “objectivist philosophy” of Ayn Rand, whose novel *Atlas Shrugged* was listed second after the Bible in a 1991 survey conducted for the Library of Congress and the Book of the Month Club in which respondents were asked to name a book that had changed their lives. The Library of Congress Center for the Book, Book Lists, <http://www.loc.gov/loc/cfbook/booklists.html> (last visited Sept. 21, 2005). In Rand’s view, the ultimate moral value for each individual is his or her own well-being, and selfishness, understood as “concern with one’s own interests,” should be considered a virtue. See AYN RAND, *VIRTUE OF SELFISHNESS* vii (Signet 1961).

²⁰ MILTON FRIEDMAN, *CAPITALISM AND FREEDOM* 5 (Univ. of Chi. Press 1962), quoted in Daniel Rush Finn, *The Economic Personalism of John Paul II: Neither Right Nor Left*, 2 J. MARKETS & MORALITY 79 (1999). In an essay first published in 1961, the future John Paul II laid out succinctly his opposition to both individualism and totalitarianism:

[P]ersons may easily place their own individual good above the common good of the collectivity, attempting to subordinate the collectivity to themselves and use it for their individual good. This is the error of individualism, which gave rise to liberalism in modern history and to capitalism in economics. On the other hand, society, in aiming at the alleged good of the whole, may attempt to subordinate persons to itself in such a way that the true good of persons is excluded and they themselves fall prey to the collectivity. This is the error of totalitarianism, which in modern times has borne the worst possible fruit.

goal of life as pure autonomy: to make one's own decisions, without reference to standards other than one's own preferences.

John Paul II rejects this individualistic view. He does not see the individual as self-contained. His fully-realized human being is not an atomistic, isolated individual, but rather a member of communities ranging in size from family to country and even to the entire world community:

Each man in all the unrepeatable reality of what he is and what he does, of his intellect and will, of his conscience and heart . . . has, because he is a "person," a history of his life that is his own and, most important, a history of his soul that is his own. . . . [However,] in keeping with the openness of his spirit within and also with the many diverse needs of his body and his existence in time, [he] writes this personal history of his through numerous bonds, contacts, situations, and social structures linking him with other men, beginning to do so from the first moment of his existence on earth, from the moment of his conception and birth. . . . [He lives] in the sphere of society and very diverse contexts, in the sphere of his own nation or people (perhaps still only that of his clan or tribe), and in the sphere of the whole of mankind²¹

This could be read as a statement of the obvious fact that all human beings need help in meeting their needs and in developing their potential. That would, however, miss John Paul II's point. He is saying not that we need others for what they can give us—as resources for the achievement of our individual goals—but rather that we reach our full development only by giving ourselves to others:

[H]e cannot "*fully find himself except through a sincere gift of self*." This might appear to be a contradiction, but in fact it is not. Instead it is the magnificent paradox of human existence: an existence called *to serve the truth in love*. Love causes man to find fulfillment through the sincere gift of self.²²

KAROL WOJTYLA, *Thomistic Personalism*, in PERSON AND COMMUNITY: SELECTED ESSAYS 174 (Theresa Sandok trans., 1993).

²¹ *Redemptor Hominis*, *supra* note 1, ¶ 14.

²² *Letter to Families*, *supra* note 12, ¶ 11 (quoting *Gaudium et Spes*, *supra* note 6, ¶ 24). The concept that human beings find their ultimate fulfillment not by taking things for themselves but by making a loving gift of themselves to others is directly rooted in Christian revelation and concretely in the doctrine of the Trinity. See, e.g., *Mulieris Dignitatem*, *supra* note 11, ¶ 18 ("[T]his description, indeed this definition of the person [as finding fulfillment in the sincere gift of self], corresponds to the fundamental biblical truth about the creation of the human being—man and woman—in the image and likeness of God."). Catholic theology sees in the Trinity three divine persons who each completely possesses the divine being, which is also

John Paul II is fully aware of the human capacity for selfishness and lack of concern for others,²³ as well as for brutal violations of the most elementary human rights.²⁴ He is convinced nonetheless that man is by nature capable of transcending self-centeredness and orienting himself toward the other. “Another way of saying this is that humans have the capacity to love—that mysterious ability to

fully possessed by each of the other divine persons. Further, the divine persons are defined precisely by their relationship to each other.

Despite its theological roots, the concept of persons finding fulfillment in giving themselves to others can appeal to those who do not accept its religious foundation because, as John Paul II notes, it reflects the “truth about man which is confirmed by the very experience of humanity.” *Letter to Families*, *supra* note 12, ¶ 6. For a secular psychological argument in favor of seeking fulfillment in the gift of self, see MARTIN E.P. SELIGMAN, *AUTHENTIC HAPPINESS: USING THE NEW POSITIVE PSYCHOLOGY TO REALIZE YOUR POTENTIAL FOR LASTING FULFILLMENT* (2002) (arguing that the “Meaningful Life” consists in using one’s strengths in the service of something much larger than self); GREGG EASTERBROOK, *THE PROGRESS PARADOX* (2003) (observing that prosperity has not brought greater happiness and arguing in favor of finding meaning in service of greater ideals).

John Paul II’s own life is a striking example of finding fulfillment in selfless service to others. Millions of people were able to see him and be touched by his words and example because, at an age when most men are comfortably retired, he continued to travel the world. To the end of his life, he reached out to people in the crowds who came to see him, despite having been shot at as he moved through the crowd in St. Peter’s Square in 1981. Only a few days before his death, although the doctors who had performed a throat operation on him weeks earlier advised him against speaking, he insisted on trying to address the people who had gathered in St. Peter’s Square on Palm Sunday.

²³ John Paul II’s personal experience of the Nazi occupation of Poland and the brutally repressive Communist regime that followed it left no room for a Pollyannaish view of human nature. *See, e.g.*, Pope John Paul II, Address to the Diplomatic Corps ¶ 4 (Jan. 10, 2005), *available at* http://www.vatican.va/holy_father/john_paul_ii/speeches/2005/january/documents/hf_jp-ii_spe_20050110_diplomatic-corps_en.html (“[E]vil takes on the countenance of selfishness and hatred, which is negativity; it can only be overcome by love, which has the positivity of generous and disinterested giving, even to the point of self-sacrifice. This is the heart of the mystery of Christ’s birth: to save humanity from the selfishness of sin and its corollary of death, God himself lovingly enters, in Christ, into the fullness of life, into human history, thus raising humanity to the horizon of an even greater life.”).

²⁴ *See, e.g.*, Pope John Paul II, Message for the Sixteenth Anniversary of the Liberation of the Prisoners of the Auschwitz-Birkenau Death Camp (Jan. 27, 2005), *available at* http://www.vatican.va/holy_father/john_paul_ii/messages/pont_messages/2005/documents/hf_jp-ii_mes_20050127_auschwitz-birkenau_en.html. (“This anniversary calls us to ponder once again the drama which took place there, the final, tragic outcome of a programme of hatred. In these days we must remember the millions of persons who, through no fault of their own, were forced to endure inhuman suffering and extermination in the gas chambers and ovens. I bow my head before all those who experienced this manifestation of the *mysterium iniquitatis* [mystery of evil].”).

desire the good for others, to give of themselves for others, and to go out of themselves to seek union of mind and heart with others.”²⁵

All men and women are, of course, capable of turning in on themselves and treating others as mere instruments for the satisfaction of their needs or whims. But according to John Paul II, far from being a manifestation of human flourishing, focus on self prevents human beings from reaching their full potential and the happiness that comes with it:

When man does not recognize in himself and in others the value and grandeur of the human person, he effectively deprives himself of the possibility of benefitting from his humanity and of entering into that relationship of solidarity and communion with others for which God created him. Indeed, it is through the free gift of self that man truly finds himself. This gift is made possible by the human person’s essential “capacity for transcendence” A man is alienated if he refuses to transcend himself and to live the experience of selfgiving and of the formation of an authentic human community oriented towards his final destiny, which is God.²⁶

In John Paul II’s view, these considerations are not merely guides to personal conduct. Because they reflect the reality of human nature, they should also serve as guides to social organization. A society will achieve the common good and facilitate the full human development of its members only if its structures reflect and facilitate living “in the dimension of gift.”²⁷ On the contrary, “[a] society is alienated if its forms of social organization, production and consumption make it more difficult to offer this gift of self and to establish this solidarity between people.”²⁸

²⁵ Kristina Johannes, *Protecting the Human Environment: Alienation as Social Critique*, 13 RELIGION AND LIBERTY, Mar.–Apr. 2003, at 6. This understanding of human beings as essentially social has deep roots in Catholic thought. In fact, Thomas Aquinas asserts that “[i]t is natural to all men to love each other.” ST. THOMAS AQUINAS, SUMMA CONTRA GENTILES, Bk. III, ch. 117 (Vernon J. Bourke trans., Hanover House 1956). Hobbes’ more pessimistic view of human nature, summed up in the famous phrase “homo homini lupus,” stands in sharp contrast to the traditional Catholic understanding of human nature (even after original sin) and reflects the pessimism of many Protestant reformers who were convinced that human nature was totally corrupted by original sin.

²⁶ *Centesimus Annus*, *supra* note 15, ¶ 41.

²⁷ For the idea of living “in the dimension of gift,” see Apostolic Letter of Pope John Paul II to Youth for the First World Youth Day (Mar. 31, 1985), *available at* http://www.vatican.va/holy_father/john_paul_ii/apost_letters/documents/hf_jp-ii_apl_31031985_dilecti-amici_en.html.

²⁸ *Centesimus Annus*, *supra* note 15, ¶ 41.

C. *Freedom: The Uncoerced Ability to Know and Embrace Truth*

In addition to offering a view of human nature in which the person is the highest value but in which the person is essentially social and destined to find its fulfillment in the gift of self to others, John Paul II puts forward a vision of freedom that contrasts sharply with the individualistic view of freedom that underlies classical liberalism, and many other strands of contemporary American thought. In the individualistic vision, freedom consists primarily in the absence of external constraints and the consequent ability to make one's own choices without reference to external standards. In the words of one of the leading exponents of the academic version of this view, F.A. Hayek:

The real question, therefore, is not whether man is, or ought to be, guided by selfish motives but whether we can allow him to be guided in his actions by those immediate consequences which he can know and care for or whether he ought to be made to do what seems appropriate for somebody else who was supposed to possess a fuller comprehension of the significance of these actions to society as a whole.²⁹

This concept of freedom as the absence of any external reference in deciding about one's actions is reflected in the Supreme Court's statement in *Planned Parenthood v. Casey*³⁰ that "[a]t the heart of liberty is the right to define one's own concept of existence, of meaning, of the universe, and of the mystery of human life."³¹

For the individualistic view of freedom as self-initiation, any guide external to the individual that could constrain in any way individual action would violate the individual's freedom.³² John Paul II offers a sharply different view of freedom. Freedom, he says, "possesses an inherently relational dimension [It is placed] at the service of the person and of his fulfillment through the gift of self and openness to others."³³ Freedom, according to John Paul II,

²⁹ Friedrich A. Hayek, *Individualism: True and False*, in INDIVIDUALISM AND ECONOMIC ORDER 14 (1948), quoted in Finn, *supra* note 20, at 79.

³⁰ 505 U.S. 833 (1992).

³¹ *Id.* at 851. The sentiment is not confined to judicial opinions or academic writings. Consider Frank Sinatra's 1968 hit, *My Way*: "And now, the end is here. / And so I face the final curtain. / My friend, I'll say it clear. / I'll state my case, of which I'm certain. / I've lived a life that's full. / I traveled each and ev'ry highway. / And more, much more than this, I did it my way." FRANK SINATRA, *MY WAY* (Reprise Records 1969).

³² See Finn, *supra* note 20, at 79.

³³ *Evangelium Vitae*, *supra* note 13, ¶ 19.

consists not in self initiation without reference to specific goals but in the ability to choose the true and the good without coercion:

A person who is concerned solely or primarily with possessing and enjoying, who is no longer able to control his instincts and passions, or to subordinate them by obedience to the truth, cannot be free: *obedience to the truth* about God and man is the first condition of freedom, making it possible for a person to order his needs and desires and to choose the means of satisfying them according to a correct scale of values³⁴

Before further exploring this concept of freedom, we need to highlight its underlying premises: that there is a truth about God and man, and that human beings are capable of knowing it. In sharp contrast to the prevailing skepticism about our ability to know, John Paul II vigorously defends human ability to reach truth, not only about the physical universe that surrounds us, but more importantly about ourselves, and ultimately about God. “The human person, with his reason, is,” he says, “capable of recognizing both this profound and objective dignity of his own being, and the ethical requirements that derive from it. In other words, man can *discern in himself the value and the moral requirements of his own dignity*.”³⁵

John Paul II begins his argument in favor of the human ability to know truth with Aristotle’s observation that “[a]ll human beings desire to know.”³⁶ His argument, however, rests not primarily on the authority of ancient philosophers but on common human experience, and concretely on the pursuit of truth both in daily life and in science:³⁷

Everyday life shows how concerned each of us is to discover for ourselves, beyond mere opinions, how things really are
People cannot be genuinely indifferent to the question of

³⁴ *Centesimus Annus*, *supra* note 15, ¶ 41.

³⁵ Pope John Paul II, Address to the Participants in the General Assembly of the Pontifical Academy for Life ¶ 3 (Feb. 27, 2002), *available at* http://www.vatican.va/holy_father/john_paul_ii/speeches/2002/february/documents/hf_jp-ii_spe_20020227_pont-acad-life_en.html.

³⁶ ARISTOTLE, METAPHYSICS, I, 1 (Arthur Madigan trans., Oxford Univ. Press 1999) (*quoted in* Encyclical Letter from Pope John Paul II to the Bishops of the Catholic Church, *Fides et Ratio* [Faith and Reason] ¶ 25 (Sept. 14, 1998), *available at* http://www.vatican.va/holy_father/john_paul_ii/encyclicals/documents/hf_jp-ii_enc_15101998_fides-et-ratio_en.html [hereinafter *Fides et Ratio*]).

³⁷ John Paul II’s style of argument here owes much to the German phenomenologist Max Scheler who excelled at describing experiences and values. John Paul II wrote his second doctoral dissertation in philosophy on Scheler. Karol Wojtyła, *System etyczny Maksa Schelera jako srodek do opracowania etyki chrzescijanskiej* [The Ethical System of Max Scheler as Means of Constructing a Christian Ethics] (doctoral dissertation, Jagiellonian University) (Dec. 1953).

whether what they know is true or not. If they discover that it is false, they reject it; but if they can establish its truth, they feel themselves rewarded. It is this that Saint Augustine teaches when he writes: “I have met many who wanted to deceive, but none who wanted to be deceived.”³⁸

This human desire to know “the objective reality of things,” John Paul II observes, “has driven so many enquiries, especially in the scientific field”³⁹

The question, of course, is not whether human beings desire to know the truth—which they obviously do—but whether they can actually do so. John Paul II considers it “unthinkable” that “a search so deeply rooted in human nature would be completely vain and useless.”⁴⁰ The fact that we can search for the truth and pose questions about reality, he says, “implies the rudiments of a response. Human beings would not even begin to search for something of which they knew nothing or for something which they thought was wholly beyond them. Only the sense that they can arrive at an answer leads them to take the first step.”⁴¹ For confirmation of this observation, John Paul II turns to the experience of scientists:

When scientists, following their intuition, set out in search of the logical and verifiable explanation of a phenomenon, they are confident from the first that they will find an answer, and they do not give up in the face of setbacks. They do not judge their original intuition useless simply because they have not reached their goal; rightly enough they will say that they have not yet found a satisfactory answer.⁴²

The same logic leads John Paul II to conclude that we are capable of knowing the truth, not only about the physical world that surrounds us, but also about the ultimate questions of our origin and destiny which have occupied the thoughts of philosophers and ordinary men since the beginning of history:

The thirst for truth is so rooted in the human heart that to be obliged to ignore it would cast our existence into jeopardy. Everyday life shows well enough how each one of us is preoccupied by the pressure of a few fundamental questions and

³⁸ *Fides et Ratio*, *supra* note 36, ¶ 25 (internal citations omitted) (quoting ST. AUGUSTINE, *CONFESSIONS*, Bk. X, ch. xxiii, ¶ 33).

³⁹ *Id.*

⁴⁰ *Id.* ¶ 29.

⁴¹ *Id.*

⁴² *Id.*

how in the soul of each of us there is at least an outline of the answers.⁴³

Finally, John Paul II argues that we can have confidence in the truth of our conclusions in the search for answers to the ultimate questions about the meaning of life if they are substantially similar to those that men and women of different cultures have arrived at over the centuries: “One reason why the truth of these answers convinces is that they are no different in substance from the answers to which many others have come.”⁴⁴ He is aware, of course, of the existence of a broad range of philosophical, theological, and religious positions, and readily concedes that “not every truth to which we come has the same value.”⁴⁵ Nonetheless, he concludes that despite these differences, “the sum of the results achieved confirms that in principle the human being can arrive at the truth.”⁴⁶

From the perspective of this somewhat lengthy discussion of human ability to know the truth in its many facets (religious, ethical, scientific, practical), we return to the topic of John Paul II’s view of freedom as the ability to choose the true and the good without external constraints. John Paul II is fully aware that many contemporary partisans of relativism and skepticism view any claim to know the truth as a threat to freedom. He argues, to the contrary, that relativism and skepticism lead only to an “illusory freedom.”⁴⁷ “Once the truth is denied to human beings,” he says, “it is pure illusion to try to set them free. Truth and freedom either go together hand in hand or together they perish in misery.”⁴⁸

⁴³ *Id.*

⁴⁴ *Fides et Ratio*, *supra* note 36, ¶ 29.

⁴⁵ *Id.*

⁴⁶ *Id.* As the passages just quoted demonstrate, John Paul II is a vigorous defender of natural capacity of human beings to reach the truth and of reason’s “capacity to rise beyond what is contingent and set out towards the infinite.” *Id.* ¶ 24. At the same time, he is convinced that in Christian revelation, “men and women are offered the ultimate truth about their own life and about the goal of history. As the Constitution *Gaudium et Spes* puts it, ‘only in the mystery of the incarnate Word does the mystery of man take on light.’” *Id.* ¶ 12 (quoting *Gaudium et Spes*, *supra* note 6, ¶ 22).

⁴⁷ *Veritatis Splendor*, *supra* note 17, ¶ 1.

⁴⁸ *Fides et Ratio*, *supra* note 36, ¶ 90. See *Evangelium Vitae*, *supra* note 13, ¶ 19 (“[F]reedom negates and destroys itself, and becomes a factor leading to the destruction of others, when it no longer recognizes and respects its essential link to truth.” Without a reference to the truth about moral good and evil, freedom ends up focused only on the individual’s “subjective and changeable opinion or, indeed, his selfish interest and whim.”); see also Pope John Paul II, Message to the Sixth Plenary Session of the Pontifical Academy of Social Sciences (Feb. 23, 2000), available at http://www.vatican.va/holy_father/john_paul_ii/speeches/2000/jan-mar/documents/hf_jp-ii_spe_20000223_acd-sciences-plenary_en.html [hereinafter *Message to*

To best understand John Paul II's view of the relationship between truth and freedom, one must examine his view of conscience. Although a discussion of conscience may seem far removed from the concerns of the law, it is in fact a privileged vantage point for exploring the claims of truth and freedom.

John Paul II considers a "heightened sense of the dignity of the human person and of his or her uniqueness, and of the respect due to the journey of conscience . . . one of the positive achievements of modern culture."⁴⁹ He rejects, however, exalting freedom "to such an extent that it becomes an absolute, which would then be the source of values."⁵⁰ Specifically, he rejects the tendency "to grant to the individual conscience the prerogative of independently determining the criteria of good and evil, and then acting accordingly."⁵¹

Human beings, and concretely conscience, according to John Paul II, do not create values or make things good or evil. There are moral goods: values that make us more fully human, that make us "good persons," when we choose them. They are good because they accord with our nature, and ultimately with the plan the Creator had in making us.⁵²

Conscience "is not an absolute placed above truth and error. Rather, by its very nature, it implies a relation to objective truth . . ." ⁵³ The function of conscience is not to make acts good or evil but "to apply the universal knowledge of the good in a specific situation and thus to express a judgment about the right conduct to be chosen here and now."⁵⁴ The fact—unfortunately attested to by our personal experience—that we can reject good and choose evil is a sign that we are free, but in John Paul II's view it is a manifestation of the limitations of our freedom.⁵⁵ We are most fully free when we freely choose the true and the good.⁵⁶

Academy of Social Sciences] ("The freedom which the Church promotes attains its fullest development and expression only in openness to and acceptance of the truth. 'In a world without truth, freedom loses its foundation and man is exposed to the violence of passion and to manipulation, both open and hidden.'" (emphasis added) (internal citation omitted) (quoting *Centesimus Annus*, *supra* note 15, ¶ 46)).

⁴⁹ *Veritatis Splendor*, *supra* note 17, ¶ 31.

⁵⁰ *Id.* ¶ 32 (emphasis in original).

⁵¹ *Id.*

⁵² *See id.* ¶¶ 9–13.

⁵³ Pope John Paul II, Message for XXIV World Day for Peace (Jan. 1, 1991), available at http://www.vatican.va/holy_father/john_paul_ii/messages/peace/documents/hf_jp-ii_mes_08121990_xxiv-world-day-for-peace_en.html.

⁵⁴ *Veritatis Splendor*, *supra* note 17, ¶ 32.

⁵⁵ *See* Pope John Paul II, Message for XIV World Day for Peace ¶ 7 (Jan. 1, 1981), available at http://www.vatican.va/holy_father/john_paul_ii/messages/peace/docu

John Paul II is acutely aware of the fact that any claim to possess moral truth will be criticized by many as anti-democratic. He responds, however, that democracy itself is weak and exposed to the danger of deteriorating into a tyranny of the majority (or of those who are able to manipulate majority opinion) unless it is founded on true values and ethical principles:

“[I]f there is no ultimate truth to guide and direct political activity, then ideas and convictions can easily be manipulated for reasons of power. As history demonstrates, *a democracy without values easily turns into open or thinly disguised totalitarianism.*”

. . . [T]he defence of universal and unchanging moral norms is a service rendered not only to individuals but also to society as a whole: such norms “represent the unshakable foundation and solid guarantee of a just and peaceful human coexistence, and hence of *genuine democracy.*” In fact, democracy itself is a means and not an end, and “*the value of a democracy stands or falls with the values which it embodies and promotes.*” These values cannot be based on changeable opinion but only on the acknowledgement of an objective moral law, which ever remains the necessary point of reference.⁵⁷

D. *The Nature of Law*

Against this background, we can understand John Paul II's concept of law, which closely follows the pattern set down by Thomas Aquinas.⁵⁸ For John Paul II, as for Thomas Aquinas, law may

ments/hf_jp-ii_mes_19801208_xiv-world-day-for-peace_en.html (“It is a caricature of freedom to claim that people are free to organize their lives with no reference to moral values, and to say that society does not have to ensure the protection and advancement of ethical values.”).

⁵⁶ *Veritatis Splendor*, *supra* note 17, ¶¶ 31–56.

⁵⁷ *Message to Academy of Social Sciences*, *supra* note 48, ¶ 2 (emphasis added) (quoting *Centesimus Annus*, *supra* note 15, ¶ 46; *Veritatis Splendor*, *supra* note 17, ¶ 96; *Evangelium Vitae*, *supra* note 13, ¶ 70). John Paul II refers here to ethical principles and values rather than to strictly religious truths. He is not calling for a theocracy, and in fact considers religious freedom an essential element of human flourishing. See, e.g., Pope John Paul II, Message for XXI World Day for Peace (Jan. 1, 1988), available at http://www.vatican.va/holy_father/john_paul_ii/messages/peace/documents/hf_jp-ii_mes_19871208_xxi-world-day-for-peace_en.html (“[R]eligious freedom, an essential requirement of the dignity of every person, is a cornerstone of the structure of human rights, and for this reason an irreplaceable factor in the good of individuals and of the whole of society, as well as of the personal fulfilment of each individual.”).

⁵⁸ An interesting recent discussion of John Paul II's jurisprudence can be found in Martin Rhonheimer, *Fundamental Rights, Moral Law, and the Legal Defense of Life in a Constitutional Democracy: A Constitutionalist Approach to the Encyclical Evangelium Vitae*, 43 AM. J. JURIS. 135 (1998).

generally be thought of as “an ordinance of reason for the common good, made by him who has care of the community, and promulgated.”⁵⁹ Unlike the positivistic conception which sees whatever the legislature (or in some cases, the courts) commands as law, thereby making the law essentially an act of the will of the legislator, John Paul II views law as primarily an act of reason which directs men toward their proper goal.

John Paul II’s jurisprudence starts not with the acts of legislatures, but rather with God’s original plan for creating the universe, and specifically for creating human beings and bringing them to their fulfillment. This divine plan, which John Paul II, following traditional Catholic teaching, refers to as the “divine law” or the “eternal law,” is “the divine wisdom as moving all things to their due end,”⁶⁰ or viewed another way, “the reason or the will of God, who commands us to respect the natural order and forbids us to disturb it.”⁶¹

The divine plan for the universe and each of its parts is reflected in the laws of nature, which determine how things behave. In their realm, the laws of nature leave no room for freedom or self-determination. But the moral law is different. Human beings, in keeping with their dignity as persons, capable of knowing the good and freely choosing it, are not compelled to follow the moral law. Rather “reason, . . . by its natural knowledge of God’s eternal law, is . . . able to show man the right direction to take in his free actions.”⁶²

Traditional Catholic thought has long referred to this “rational order whereby man is called by the Creator to direct and regulate his life and actions”⁶³ as the natural law. It “expresses and lays down the purposes, rights and duties which are based upon the bodily and spiritual nature of the human person.”⁶⁴

⁵⁹ ST. THOMAS AQUINAS, SUMMA THEOLOGIAE, I-II, Q. 90, art. 4, available at <http://www.newadvent.org/summa/209004.htm> (last visited October 2, 2005).

⁶⁰ *Veritatis Splendor*, supra note 17, ¶ 43 (internal quotation marks omitted) (quoting ST. THOMAS AQUINAS, SUMMA THEOLOGIAE, I-II, Q. 93, art. 1, available at <http://www.newadvent.org/summa/209301.htm> (last visited October 2, 2005)).

⁶¹ *Id.* (internal quotation marks omitted) (quoting ST. AUGUSTINE, CONTRA FAUSTUM XXII, 27:PL 42, 418).

⁶² *Id.*

⁶³ *Id.* ¶ 50 (internal quotation marks omitted) (quoting Congregation for the Doctrine of the Faith, Instruction on Respect for Human Life in its Origin and on the Dignity of Procreation *Donum Vitae*, Intro. ¶ 3 (Feb. 22, 1987), available at http://www.vatican.va/roman_curia/congregations/cfaith/documents/rc_con_cfait_h_doc_19870222_respect-for-human-life_en.html [hereinafter *Donum Vitae*]).

⁶⁴ *Id.* When talking about “human nature” in the context of natural law, the reference is to man’s condition as a person: “man’s proper and primordial nature,

In this vision, the natural law is not a series of arbitrary precepts, but a set of conclusions about what is fitting to our own nature and the nature of the world in which we live, conclusions that we reach by reflecting on ourselves and the world in which we live. In this sense, John Paul II equates natural law with “human reason itself which commands us to do good and counsels us not to sin.”⁶⁵ In this, he closely follows Thomas Aquinas who says that “in human actions,

the ‘nature of the human person,’ which is *the person himself in the unity of soul and body*, in the unity of his spiritual and biological inclinations and of all the other specific characteristics necessary for the pursuit of his end.” *Id.* (quoting *Gaudium et Spes*, *supra* note 6, ¶ 14).

John Paul II stresses that the natural law cannot be reduced to a series of biological norms, but rather reflects the reality of man’s whole nature, both physical and spiritual. He illustrates this point with the following example:

[T]he origin and the foundation of the duty of absolute respect for human life are to be found in the dignity proper to the person and not simply in the natural inclination to preserve one’s own physical life. Human life, even though it is a fundamental good of man, thus acquires a moral significance in reference to the good of the person, who must always be affirmed for his own sake. While it is always morally illicit to kill an innocent human being, it can be licit, praiseworthy or even imperative to give up one’s own life out of love of neighbour or as a witness to the truth. Only in reference to the human person in his ‘unified totality,’ that is as ‘a soul which expresses itself in a body and a body informed by an immortal spirit,’ can the specifically human meaning of the body be grasped. Indeed, natural inclinations take on moral relevance only insofar as they refer to the human person and his authentic fulfilment, a fulfilment which for that matter can take place always and only in human nature.

Veritatis Splendor, *supra* note 17, ¶ 50 (internal citations omitted) (citing *John* 15:13; quoting Apostolic Exhortation of Pope John Paul II, *Familiaris Consortio* [The Role of the Christian Family in the Modern World] ¶ 11 (Nov. 22, 1981), available at http://www.vatican.va/holy_father/john_paul_ii/apost_exhortations/documents/hf_jp-ii_exh_19811122_familiaris-consortio_en.html [hereinafter *Familiaris Consortio*]).

⁶⁵ *Id.*, ¶ 44 (internal quotation marks omitted) (quoting Encyclical Letter from Pope Leo XIII to the Bishops of the Catholic Church, *Libertas Praestantissimum* [On the Nature of Human Liberty] ¶ 8 (June 20, 1888)). Although the natural law consists in a series of rational conclusions about what is right, fitting, and in keeping with our human nature, it derives its obligatory force not simply from the fact that the conclusions are rational, but from the fact that they are the reflection of God’s plan for us, expressed in the eternal law. *See id.*

“[T]his prescription of human reason could not have the force of law unless it were the voice and the interpreter of some higher reason to which our spirit and our freedom must be subject.” Indeed, the force of law consists in its authority to impose duties, to confer rights and to sanction certain behaviour: “Now all of this, clearly, could not exist in man if, as his own supreme legislator, he gave himself the rule of his own actions.”

Id. (quoting Encyclical Letter from Pope Leo XIII to the Bishops of the Catholic Church, *Libertas Praestantissimum* [On the Nature of Human Liberty] ¶ 8 (June 20, 1888)).

good and evil are predicated in reference to the reason; because as Dionysius says (Div. Nom. iv), ‘the good of man is to be in accordance with reason,’ and evil is ‘to be against reason.’”⁶⁶

John Paul II’s stress on the natural law’s connections with the eternal law and its roots in man’s status as a creature created by God might seem to suggest that natural law really is not natural at all, and has little relevance except to those who accept Christian revelation. John Paul II does not see things that way. He is convinced that Christ “*fully reveals man to himself* and brings to light his most high calling.”⁶⁷ Consequently, the natural law is more easily discerned by reason “enlightened by Divine Revelation and by faith.”⁶⁸ Nonetheless, he stresses repeatedly “the role of human reason in discovering and applying the moral law.”⁶⁹ He views the principal tenets of the moral law⁷⁰ not as religious precepts, but as truths about who we are and what it means to flourish as a human being, truths which reason can attain even without the help of Christian revelation. Consequently, “the ‘natural law’ written in the human heart”⁷¹ is available to all men and women, whether believers or not, and should inform their individual and social conduct, including the civil law.

In John Paul II’s jurisprudence, civil law—whether statutory, judge-made, or merely customary—is, like any other type of law, “an ordinance of reason.”⁷² To be a valid “ordinance of reason,” it must possess not merely instrumental rationality—the choice of suitable means to achieve the desired goal⁷³—but the deeper substantive rationality of contributing to human flourishing because the goals it pursues respect “those essential and innate human and moral values which flow from the very truth of the human being and express and safeguard the dignity of the person”⁷⁴ In this sense, John Paul II,

⁶⁶ ST. THOMAS AQUINAS, SUMMA THEOLOGIAE, I-II, Q. 18, art. 5, *available at* <http://www.newadvent.org/summa/201805.htm> (last visited October 2, 2005).

⁶⁷ *Redemptor Hominis*, *supra* note 1, ¶ 8 (internal quotation marks omitted) (quoting *Gaudium et Spes*, *supra* note 6, ¶ 22).

⁶⁸ *Veritatis Splendor*, *supra* note 17, ¶ 44 (emphasis omitted).

⁶⁹ *Id.* ¶ 40 (emphasis omitted).

⁷⁰ Pope John Paul II, Angelus Message (Feb. 27, 2000), *available at* http://www.vatican.va/holy_father/john_paul_ii/angelus/2000/documents/hf_jp-ii_ang_20000227_en.html (The principal precepts of the natural law, John Paul II teaches, are reflected in the commandments of the Decalogue.).

⁷¹ *Evangelium Vitae*, *supra* note 13, ¶ 70.

⁷² AQUINAS, *supra* note 59, I-II, Q. 90, art. 4.

⁷³ For examples of the rational basis test used by the Supreme Court in due process cases, see *Bowers v. Hardwick*, 478 U.S. 1039 (1986), and *Washington v. Glucksberg*, 521 U.S. 702 (1997).

⁷⁴ *Evangelium Vitae*, *supra* note 13, ¶ 71.

quoting Thomas Aquinas, argues that valid civil laws must respect the natural law: “Every law made by man can be called a law insofar as it derives from the natural law. But if it is somehow opposed to the natural law, then it is not really a law but rather a corruption of the law.”⁷⁵

John Paul II rejects the contention that democracy means that “the legal system of any society should limit itself to taking account of and accepting the convictions of the majority” or that it should be “based solely upon what the majority itself considers moral and actually practises.”⁷⁶ He also rejects the contention that relativism “guarantee[s] tolerance, mutual respect between people and acceptance of the decisions of the majority,” and the correlative contention that “moral norms considered to be objective and binding lead to authoritarianism and intolerance.”⁷⁷

He acknowledges that “history has known cases where crimes have been committed in the name of ‘truth,’” but he points out that “equally grave crimes . . . have also been committed and are still being committed in the name of ‘ethical relativism.’”⁷⁸ Everyone, he observes, is horrified by the crimes against humanity which proliferated in the twentieth century. But, he asks, “would these crimes cease to be crimes if, instead of being committed by unscrupulous tyrants, they were legitimated by popular consensus?”⁷⁹

⁷⁵ *Id.* ¶ 72 (internal quotation marks omitted); *see also* ST. THOMAS AQUINAS, SUMMA THEOLOGIAE, I-II, Q. 93, art. 3, *available at* <http://www.newadvent.org/summa/209301.htm> (last visited October 2, 2005) (“[H]uman law has the nature of law in so far as it partakes of right reason; and it is clear that, in this respect, it is derived from the eternal law. But in so far as it deviates from reason, it is called an unjust law, and has the nature, not of law but of violence.”). This is the position taken by Martin Luther King in his Letter from Birmingham Jail:

I would agree with St. Augustine that “an unjust law is no law at all.”

Now, what is the difference between the two? How does one determine whether a law is just or unjust? A just law is a man-made code that squares with the moral law or the law of God. An unjust law is a code that is out of harmony with the moral law. To put it in the terms of St. Thomas Aquinas: An unjust law is a human law that is not rooted in eternal law and natural law. Any law that uplifts human personality is just. Any law that degrades human personality is unjust.

Martin Luther King, Jr., Letter from Birmingham Jail (Apr. 16, 1963), *available at* <http://www.nobelprizes.com/nobel/peace/MLK-jail.html>.

⁷⁶ *Evangelium Vitae*, *supra* note 13, ¶ 69.

⁷⁷ *Id.* ¶ 70.

⁷⁸ *Id.*

⁷⁹ *Id.* American history provides painfully compelling evidence for the proposition that majority support is no guarantee that laws are just. For long periods of time, slavery, extermination of the Native American population, and the Jim Crow laws enjoyed majority support in our country. *See, e.g.*, JACQUELINE JONES ET. AL,

John Paul II recognizes the virtues of democratic government to the extent that “it ensures the participation of citizens in making political choices, guarantees to the governed the possibility both of electing and holding accountable those who govern them, and of replacing them through peaceful means when appropriate.”⁸⁰ That is not to say, however, that democracy is “a substitute for morality or a panacea for immorality.”⁸¹

Democracy is merely a system of government and as such “a means and not an end.”⁸² The moral value of democracy, apart from the instrumental values it embodies, “depends on conformity to the moral law to which it, like every other form of human behaviour, must be subject. . . . [I]ts morality depends on the morality of the ends which it pursues and of the means which it employs.”⁸³ Widespread consensus in favor of democracy is a positive development, but “the value of democracy stands or falls with the values which it embodies and promotes.”⁸⁴

John Paul II notes with approval the values that generally prevail in democratic systems such as “the dignity of every human person, respect for inviolable and inalienable human rights, and the adoption of the ‘common good’ as the end and criterion regulating political life. . . .”⁸⁵ These values, however, he contends, need a more solid and stable foundation than “provisional and changeable ‘majority’ opinions.”⁸⁶ They will not be secure unless they are based on “the acknowledgment of an objective moral law which, as the ‘natural law’ written in the human heart, is the obligatory point of reference for civil law itself.”⁸⁷

Democracy would be in danger, and would lose its moral value “[i]f, as a result of a tragic obscuring of the collective conscience, an attitude of scepticism were to succeed in bringing into question even the fundamental principles of the moral law.”⁸⁸ Without a

CREATED EQUAL: A SOCIAL AND POLITICAL HISTORY OF THE UNITED STATES (Longman 2005).

⁸⁰ *Centesimus Annus*, *supra* note 15, ¶ 46.

⁸¹ *Evangelium Vitae*, *supra* note 13, ¶ 70.

⁸² *Id.* For an analysis of John Paul II’s thought on democracy, see Douglas W. Kmiec, *Is the American Democracy Compatible with the Catholic Faith?*, 41 AM. J. JURIS. 69 (1996).

⁸³ *Evangelium Vitae*, *supra* note 13, ¶ 70.

⁸⁴ *Id.*

⁸⁵ *Id.*

⁸⁶ *Id.*

⁸⁷ *Id.*

⁸⁸ *Id.*

foundation in stable moral convictions, democracy itself “would be reduced to a mere mechanism for regulating different and opposing interests on a purely empirical basis.”⁸⁹

E. The Dignity and Role of Women in Society

John Paul II calls for recognizing “the equal dignity and responsibility of women with men.”⁹⁰ He laments the existence of “a widespread social and cultural tradition [that] has considered women’s role to be exclusively that of wife and mother, without adequate access to public functions”⁹¹ Women, he says, “have the same right as men to perform various public functions.”⁹² More broadly, he sees “an urgent need to achieve *real equality* in every area: equal pay for equal work, protection for working mothers, fairness in career advancements, equality of spouses with regard to family rights and the recognition of everything that is part of the rights and duties of citizens in a democratic State.”⁹³

Men and women, however, have in John Paul II’s view “[a] specific diversity and personal originality.”⁹⁴ They are

⁸⁹ *Evangelium Vitae*, *supra* note 13, ¶ 70.

⁹⁰ *Familiaris Consortio*, *supra* note 64, ¶ 22. He finds strong support for this position in the Bible. *See id.*

In creating the human race “male and female,” God gives man and woman an equal personal dignity, endowing them with the inalienable rights and responsibilities proper to the human person. God then manifests the dignity of women in the highest form possible, by assuming human flesh from the Virgin Mary, whom the Church honors as the Mother of God, calling her the new Eve and presenting her as the model of redeemed woman. The sensitive respect of Jesus towards the women that He called to His following and His friendship, His appearing on Easter morning to a woman before the other disciples, the mission entrusted to women to carry the good news of the Resurrection to the apostles—these are all signs that confirm the special esteem of the Lord Jesus for women. The Apostle Paul will say: “In Christ Jesus you are all children of God through faith. . . . There is neither Jew nor Greek, there is neither slave nor free, there is neither male nor female; for you are all one in Christ Jesus.”

Id. (internal citations omitted) (quoting *Genesis* 1:27; *Galatians* 3:26–28)

⁹¹ *Id.* ¶ 23.

⁹² *Id.*

⁹³ Letter from Pope John Paul II to Women ¶ 4 (Jun. 29, 1995), *available at* http://www.vatican.va/holy_father/john_paul_ii/letters/documents/hf_jp-ii_let_29_061995_women_en.html [hereinafter *Letter to Women*].

⁹⁴ *Mulieris Dignitatem*, *supra* note 11, ¶ 10.

complementary.⁹⁵ “The personal resources of femininity,” he says, “are certainly no less than the resources of masculinity,” but they are “different.”⁹⁶

[A] woman . . . must understand her ‘fulfilment’ as a person, her dignity and vocation, on the basis of these resources, according to the richness of the femininity which she received on the day of creation and which she inherits as an expression of the ‘image and likeness of God’ that is specifically hers.⁹⁷

The equality of men and women, in John Paul II’s view, “goes hand in hand with the recognition of differences inherent in them since creation.”⁹⁸

In John Paul II’s conception, “the dignity of women is measured by the order of love, which is essentially the order of justice and charity.”⁹⁹ This means that “God *entrusts the human being to [women] in a special way*,”¹⁰⁰ and that the defining characteristic of femininity is “sensitivity for human beings in every circumstance: because they are human!”¹⁰¹

Masculinity and femininity are not accidental or secondary characteristics, but rather different specific ways of being human, that go to the heart of who the person is and what he or she does. Masculinity and femininity manifest themselves “within all the interpersonal relationships which, in the most varied ways, shape society and structure the interaction between all persons.”¹⁰²

⁹⁵ Pope John Paul II, Angelus Message (Mar. 8, 1998), *available at* http://www.vatican.va/holy_father/john_paul_ii/angelus/1998/documents/hf_jp-ii_ang_08031998_en.html (“Man and woman complement each other not only physically and psychologically at the level of behaviour, but more profoundly at the level of being.”). Commenting on the account of creation in *Genesis* 2:18, in which God says: “It is not good that the man should be alone; I will make him a helper fit for him,” John Paul II notes:

The creation of woman is thus marked from the outset by *the principle of help*: a help which is not one-sided but *mutual*. Woman complements man, just as man complements woman: men and women are *complementary*. Womanhood expresses the ‘human’ as much as manhood does, but in a different and complementary way.

Letter to Women, *supra* note 93, ¶ 7.

⁹⁶ *Mulieris Dignitatem*, *supra* note 11, ¶ 10.

⁹⁷ *Id.*

⁹⁸ Pope John Paul II, Address to an International Meeting on Promoting the Well-Being of Women (Dec. 7, 1996), *available at* http://www.vatican.va/holy_father/john_paul_ii/speeches/1996/december/documents/hf_jp-ii_spe_19961207_motherhood_en.html.

⁹⁹ *Mulieris Dignitatem*, *supra* note 11, ¶ 29 (emphasis omitted).

¹⁰⁰ *Id.* ¶ 30.

¹⁰¹ *Id.*

¹⁰² *Id.* ¶ 29.

Specifically, “a woman represents a particular value by the fact that she is a human person, and, at the same time, this particular person, by the fact of her femininity.”¹⁰³

If femininity is for women (as masculinity is for men) part of their personal identity, women should not be required to sacrifice their femininity in order to pursue a career or play an active role in public life.

In the name of liberation from male “domination,” women must not appropriate to themselves male characteristics contrary to their own feminine “originality.” There is a well-founded fear that if they take this path, women will not “reach fulfillment,” but instead will *deform and lose what constitutes their essential richness*.¹⁰⁴

More specifically, John Paul II calls for overcoming “the mentality which honors women more for their work outside the home than for their work within the family,” and demands “clear recognition” of “the value of [women’s] maternal and family role.”¹⁰⁵ On this basis, society needs to develop structures that allow women to “harmoniously combine[]” their roles in the professions and in public life with their maternal and family roles.¹⁰⁶

John Paul II calls for social and economic structures that “make it possible for a mother—without inhibiting her freedom, without psychological or practical discrimination, and without penalizing her as compared with other women—to devote herself to taking care of her children and educating them in accordance with their needs, which vary with age.”¹⁰⁷ John Paul II recognizes that some, perhaps many, women will prefer to or need to combine paid work outside the home with the tasks of raising children, and as we have seen, defends their right to do so. He asserts, however, that having to

¹⁰³ *Id.*

¹⁰⁴ *Id.* ¶ 10. In John Paul II’s vision, “woman and man are marked neither by a static and undifferentiated equality nor by an irreconcilable and inexorably conflictual difference. Their most natural relationship, which corresponds to the plan of God, is the ‘unity of the two,’ a relational ‘uni-duality,’ which enables each to experience their interpersonal and reciprocal relationship as a gift which enriches and which confers responsibility.” *Letter to Women*, *supra* note 93, ¶ 8.

¹⁰⁵ *Familiaris Consortio*, *supra* note 64, ¶ 23. Cf., e.g., Dorothy E. Roberts, *The Day, Berry & Howard Visiting Scholar: The Value Of Black Mothers’ Work*, 26 CONN. L. REV. 871 (1994) (criticizing policies of forcing welfare mothers to put their children in day care and take up paid work); JOAN WILLIAMS, UNBENDING GENDER: WHY FAMILY AND WORK CONFLICT AND WHAT TO DO ABOUT IT (2000) (arguing that workplaces are designed around male life patterns in ways that discriminate against women, and that the work/family system that results is bad for women but also for men and children).

¹⁰⁶ *Familiaris Consortio*, *supra* note 64, ¶ 23.

¹⁰⁷ *Laborem Exercens*, *supra* note 9, ¶ 19.

abandon care of the family “in order to take up paid work outside the home is wrong from the point of view of the good of society and of the family when it contradicts or hinders these primary goals of the mission of a mother.”¹⁰⁸

II. APPLICATIONS

John Paul II’s most important legacy to lawyers is the philosophical and theological anthropology we have just explored, particularly his articulation of the connection between truth and freedom. He has not attempted to sketch out a single “Catholic” solution to the specific problems that are debated in the political arena. He recognizes that specific solutions can only be crafted by people with close-up knowledge of each situation and with the requisite technical information and practical wisdom.¹⁰⁹ Neither, however, has he limited himself to setting forth the broad-brushed vision of what it means to be human which we have just summarized. In a number of areas, he has drawn intermediate level consequences from the broad principles previously examined. In the second half of this Article, we turn our attention to some of the areas where he has done so.

A. *The Right to Life*

The value of human life and the need to develop a “culture of life” in the face of what he describes as a “culture of death”¹¹⁰ are some of the best known aspects of John Paul II’s thought. He returns to them frequently, calling repeatedly for “absolute respect for life from conception to natural death.”¹¹¹

¹⁰⁸ *Id.* ¶ 20.

¹⁰⁹ See *Centesimus Annus*, *supra* note 15, ¶ 43 (“The Church has no models to present; models that are real and truly effective can only arise within the framework of different historical situations, through the efforts of all those who responsibly confront concrete problems. . .”).

¹¹⁰ Post-Synodal Apostolic Exhortation of Pope John Paul II, *Ecclesia in America* ¶ 63 (Jan. 22, 1999), available at http://www.vatican.va/holy_father/john_paul_ii/apost_exhortations/documents/hf_jp-ii_exh_22011999_ecclesia-in-america_en.html [hereinafter *Ecclesia in America*].

¹¹¹ Letter from Pope John Paul II to Cardinal Bernard Law (Dec. 29, 1997), available at http://www.vatican.va/holy_father/john_paul_ii/letters/1997/documents/hf_jp-ii_let_19971229_cardinal-law_en.html.

His veneration for human life has deep religious roots.¹¹² He sees human life not merely as something of value, but also as sacred: “Man’s life comes from God; it is his gift, his image and imprint, a sharing in his breath of life. God therefore is the sole Lord of this life.”¹¹³ “The sacredness of life gives rise its inviolability.”¹¹⁴

Nonetheless, he asserts that the value of life and the duty to protect it are not merely religious truths to be preached to believers, but natural moral or ethical truths that every man and woman can grasp:

Even in the midst of difficulties and uncertainties, every person sincerely open to truth and goodness can, by the light of reason and the hidden action of grace, come to recognize in the natural law written in the heart the sacred value of human life from its very beginning until its end, and can affirm the right of every human being to have this primary good respected to the highest degree. Upon the recognition of this right, every human community and the political community itself are founded.¹¹⁵

John Paul II has applied these principles to a range of issues including euthanasia and the death penalty. He has been especially insistent, however, in condemning abortion. To that issue, we turn first.

¹¹² He begins his longest and most focused treatment of the question of life and the respect due to it with the words:

The Gospel of life is at the heart of Jesus’ message. Lovingly received day after day by the Church, it is to be preached with dauntless fidelity as “good news” to the people of every age and culture.

. . . .

Man is called to a fullness of life which far exceeds the dimensions of his earthly existence, because it consists in sharing the very life of God. The loftiness of this supernatural vocation reveals the greatness and the inestimable value of human life even in its temporal phase. Life in time, in fact, is the fundamental condition, the initial stage and an integral part of the entire unified process of human existence. It is a process which, unexpectedly and undeservedly, is enlightened by the promise and renewed by the gift of divine life, which will reach its full realization in eternity. At the same time, it is precisely this supernatural calling which highlights the relative character of each individual’s earthly life. After all, life on earth is not an “ultimate” but a “penultimate” reality; even so, it remains a sacred reality entrusted to us, to be preserved with a sense of responsibility and brought to perfection in love and in the gift of ourselves to God and to our brothers and sisters.

Evangelium Vitae, *supra* note 13, ¶¶ 1–2 (internal citation omitted) (citing *John* 3:1–2).

¹¹³ *Id.* ¶ 39.

¹¹⁴ *Id.* ¶ 40.

¹¹⁵ *Id.* ¶ 2 (citing *Romans* 2:14–15).

1. Abortion

John Paul II is aware that powerful reasons may sometimes counsel an abortion:

[T]he decision to have an abortion is often tragic and painful for the mother, insofar as the decision to rid herself of the fruit of conception is not made for purely selfish reasons or out of convenience, but out of a desire to protect certain important values such as her own health or a decent standard of living for the other members of the family. Sometimes it is feared that the child to be born would live in such conditions that it would be better if the birth did not take place.¹¹⁶

Nonetheless, he says, the unborn child is “a human being at the very beginning of life,”¹¹⁷ and no reasons, “however serious and tragic, can []ever justify the deliberate killing of an innocent human being.”¹¹⁸

One could agree that deliberate killing of innocent human beings is never justifiable and yet defend abortion on grounds that up to some point of development, the fetus is not a human person. John Paul II rejects that position:

[F]rom the time that the ovum is fertilized, a life is begun which is neither that of the father nor the mother; it is rather the life of a new human being with his own growth. It would never be made human if it were not human already. This has always been clear, and . . . modern genetic science offers clear confirmation. It has demonstrated that from the first instant there is established the programme of what this living being will be: a person, this individual person with his characteristic aspects already well determined.¹¹⁹

Even if it were not clear that from the moment of conception the unborn child is a human being with a right to life, John Paul II argues that any doubt should be resolved in favor of protecting its rights:

[W]hat is at stake is so important that, from the standpoint of moral obligation, the mere probability that a human person is involved would suffice to justify an absolutely clear prohibition of any intervention aimed at killing a human embryo. Precisely for this reason, over and above all scientific debates and those

¹¹⁶ *Id.* ¶ 58.

¹¹⁷ *Id.*

¹¹⁸ *Evangelium Vitae*, *supra* note 13, ¶ 58. On John Paul II's position on abortion, see Charles E. Rice, *Abortion, Euthanasia, And The Need To Build A New 'Culture Of Life'*, 12 NOTRE DAME J.L. ETHICS & PUB. POL'Y 497 (1998).

¹¹⁹ *Evangelium Vitae*, *supra* note 13, ¶ 60 (internal quotation marks omitted) (quoting *Donum Vitae*, *supra* note 63).

philosophical affirmations to which the Magisterium has not expressly committed itself, the Church has always taught and continues to teach that the result of human procreation, from the first moment of its existence, must be guaranteed that unconditional respect which is morally due to the human being in his or her totality and unity as body and spirit.¹²⁰

He recognizes that civil law need not—indeed, should not—prohibit every immoral action, but he rejects the contention that this principle can justify legalizing abortion:

[C]ivil law must ensure that all members of society enjoy respect for certain fundamental rights which innately belong to the person, rights which every positive law must recognize and guarantee. First and fundamental among these is the inviolable right to life of every innocent human being. While public authority can sometimes choose not to put a stop to something which—were it prohibited—would cause more serious harm, it can never presume to legitimize as a right of individuals—even if they are the majority of the members of society—an offence against other persons caused by the disregard of so fundamental a right as the right to life.¹²¹

He also denies that legal toleration of abortion can be justified by appealing to the respect owed to individual conscience. Although John Paul II is a passionate defender of the dignity of individual conscience and of the need to respect it,¹²² he recognizes that individual conscience can be mistaken.¹²³ When the mistake involves serious harm to others, society cannot simply tolerate the harm on grounds that the perpetrator believes his or her act is justified. “[S]ociety has the right and the duty to protect itself against the abuses which can occur in the name of conscience and under the pretext of freedom.”¹²⁴

2. Euthanasia

At the opposite end of life, John Paul II sees the growing acceptance of euthanasia as “one of the more alarming symptoms of

¹²⁰ *Id.*

¹²¹ *Id.* ¶ 71. John Paul II describes recognition of the absolute equality of every innocent human being with regard to the right to life as “the basis of all authentic social relationships which, to be truly such, can only be founded on truth and justice, recognizing and protecting every man and woman as a person and not as an object to be used.” *Id.* ¶ 57.

¹²² See *supra* note 49 and accompanying text.

¹²³ See *Veritatis Splendor*, *supra* note 17, ¶ 62.

¹²⁴ *Evangelium Vitae*, *supra* note 13, ¶ 71.

the ‘culture of death.’”¹²⁵ He finds its roots in three phenomena, not all of which underlie every decision in favor of euthanasia: a cult of efficiency and an excessive concern with economic values; a conception of freedom which extends to the right to determine the limits of one’s own existence; and finally, a view of life which finds no value or meaning in suffering.¹²⁶

In some cases, support for euthanasia derives from an attitude of excessive preoccupation with efficiency . . . which sees the growing number of elderly and disabled people as intolerable and too burdensome. These people are very often isolated by their families and by society, which are organized almost exclusively on the basis of criteria of productive efficiency, according to which a hopelessly impaired life no longer has any value.¹²⁷

As a counterweight to this attitude which values persons primarily as producers and consumers, John Paul II offers his vision of the intrinsic dignity and value of human life, independent of the person’s economic and other contributions and achievements.¹²⁸

A second factor underlying support for euthanasia is the conviction that each person is “his own rule and measure, with the right to demand that society should guarantee him the ways and means of deciding what to do with his life in full and complete autonomy.”¹²⁹ In contrast to this vision, John Paul II argues that our freedom does not involve the autonomy to make things good by choosing them. Rather, he says, there are moral goods that lead to authentic human fulfillment because they reflect the creator’s plan and design. Human beings are called to use their reason to seek and recognize those values, and their freedom to choose them. Beyond that, they cannot go. No matter how intensely they desire something evil, desire does not make it good.¹³⁰ Concretely, it is not given to human beings to choose the time of their own death or that of

¹²⁵ *Id.* ¶ 64.

¹²⁶ *See id.* ¶¶ 24, 64–67. For an analysis of John Paul II’s thought on euthanasia, see Richard S. Myers, *An Analysis of the Constitutionality of Laws Banning Assisted Suicide from the Perspective of Catholic Moral Teaching*, 72 U. DET. MERCY L. REV. 771 (1995).

¹²⁷ *Evangelium Vitae*, *supra* note 13, ¶ 64.

¹²⁸ *See supra* note 10 and accompanying text (discussing the foundation of human dignity in the fact of being a person created in the image and likeness of God); *infra* notes 150–171 and accompanying text (discussing John Paul II’s position that even work derives its value primarily from the fact that it is an activity of a person rather than from what it produces).

¹²⁹ *Evangelium Vitae*, *supra* note 13, ¶ 64.

¹³⁰ *See supra* Part I.C–D (discussing John Paul II’s view of the moral good, conscience and the natural law).

another person, and to do so is to act against the good of life, whatever the circumstances.¹³¹

Finally, John Paul II identifies at the root of euthanasia an attitude that values life “only to the extent that it brings pleasure and well-being,” and that sees suffering as “an unbearable setback, something from which one must be freed at all costs.”¹³² Euthanasia is seen in this light as a compassionate response to the sufferings of others.¹³³ His reply to this attitude is particularly closely bound to religious faith. Suffering, he says, has meaning and value because it serves to “repay the objective evil of the [sufferer’s moral] transgression[s] with another evil, but first and foremost because it creates the possibility of rebuilding goodness in the subject who suffers.”¹³⁴

Beyond this answer, which can already be found in the book of Job, John Paul II points to Christ’s passion as the ultimate answer to the question about the role of suffering in our lives:

[Every person is] called to share in that suffering through which the Redemption was accomplished. He is called to share in that suffering through which all human suffering has also been redeemed. In bringing about the Redemption through suffering, Christ has also raised human suffering to the level of the Redemption. Thus each man, in his suffering, can also become a sharer in the redemptive sufferings of Christ.¹³⁵

At one level, this means that through suffering the person who suffers opens himself to Christ’s redeeming action. “[T]o suffer means to become particularly susceptible, particularly open to the working of the salvific powers of God”¹³⁶ At another level, it means that the sufferer in some way “completes the suffering through which Christ accomplished the Redemption of the world.”¹³⁷

¹³¹ *Evangelium Vitae*, *supra* note 13, ¶ 66 (“[I]t is never licit to kill another: even if he should wish it, indeed if he request it because, hanging between life and death, he begs for help in freeing the soul struggling against the bonds of the body and longing to be released; nor is it licit even when a sick person is no longer able to live.” (internal quotation marks omitted) (quoting St. Augustine, Ep. 204, 5 (CSEL 57) 320)).

¹³² *Id.* ¶ 64.

¹³³ *Id.*

¹³⁴ Apostolic Letter of Pope John Paul II, *Salvifici Doloris* [On the Christian Meaning of Human Suffering] ¶ 12 (Feb. 11, 1984), *available at* http://www.vatican.va/holy_father/john_paul_ii/apost_letters/documents/hf_jp-ii_apl_11021984_salvifici-doloris_en.html [hereinafter *Salvifici Doloris*].

¹³⁵ *Id.* ¶ 19 (emphasis omitted).

¹³⁶ *Id.* ¶ 24 (emphasis omitted).

¹³⁷ *Id.* (emphasis omitted).

Having examined the various factors that contribute to the growing acceptance of euthanasia, John Paul II concludes that euthanasia properly so called involves the “morally unacceptable killing of a human person”¹³⁸ and cannot be justified either by “a misguided pity at the sight of the patient’s suffering” or by “the utilitarian motive of avoiding costs which bring no return and which weigh heavily on society.”¹³⁹

This does not mean that John Paul II believes that in all circumstances everything that can be done to prolong life should be done. “[T]here is,” he says,

a moral obligation to care for oneself and to allow oneself to be cared for, but this duty must take account of concrete circumstances. . . . To forego extraordinary or disproportionate means is not the equivalent of suicide or euthanasia; it rather expresses acceptance of the human condition in the face of death.¹⁴⁰

Such measures, he says, “no longer correspond to the real situation of the patient, either because they are by now disproportionate to any expected results or because they impose an excessive burden on the patient and his family.”¹⁴¹

More specifically, he says that it is not euthanasia, “when death is clearly imminent and inevitable, . . . [to] ‘refuse forms of treatment that would only secure a precarious and burdensome prolongation of life, so long as the normal care due to the sick person in similar cases is not interrupted.’”¹⁴² The euthanasia he rejects as immoral is “an

¹³⁸ *Evangelium Vitae*, *supra* note 13, ¶ 65.

¹³⁹ *Id.* ¶ 15.

¹⁴⁰ *Id.* ¶ 65.

¹⁴¹ *Id.*

¹⁴² *Id.* (quoting Congregation for the Doctrine of the Faith, Declaration on Euthanasia, ¶ IV (May 5, 1980), available at http://www.vatican.va/roman_curia/congregations/cfaith/documents/rc_con_cfaith_doc_19800505_euthanasia_en.html). John Paul II requires two conditions for not giving treatment that would “only secure a precarious and burdensome prolongation of life.” First, that “death is clearly imminent and inevitable,” and second, that “normal care due to the sick person . . . is not interrupted.” *Id.*

In March 2004, John Paul II clarified what he understands by “normal care.” *Address on Life-Sustaining Treatments*, *supra* note 14. “The sick person in a vegetative state, awaiting recovery or a natural end, still has the right to basic health care (nutrition, hydration, cleanliness, warmth, etc.), and to the prevention of complications related to his confinement to bed. He also has the right to appropriate rehabilitative care and to be monitored for clinical signs of eventual recovery.” *Id.*

I should like particularly to underline how the administration of water and food, even when provided by artificial means, always represents a *natural means* of preserving life, not a *medical act*. Its use,

action or omission which of itself and by intention causes death, with the purpose of eliminating all suffering.”¹⁴³

3. The Death Penalty

John Paul II’s belief that the ultimate dignity and worth of human beings depends on their having been created in the image and likeness of God, rather than on their personal merits, lies at the foundation of his opposition to the death penalty.¹⁴⁴ “[T]he dignity of human life,” he says, “must never be taken away, even in the case of someone who has done great evil.”¹⁴⁵

John Paul II recognizes the three classic goals of punishment: retribution, defense of society, and rehabilitation. To achieve all three goals of punishment, “the nature and extent of the punishment must be carefully evaluated.”¹⁴⁶ Although he sees “redress[ing] the violation of personal and social rights” as the “primary purpose” of punishment,¹⁴⁷ the value of human life and the need to offer the offender the possibility of rehabilitation mean, in his view, that retribution alone cannot justify capital punishment. It can be justified only in cases “of absolute necessity . . . when it would not be possible otherwise to defend society.”¹⁴⁸

furthermore, should be considered, in principle, *ordinary* and *proportionate*, and as such morally obligatory, insofar as and until it is seen to have attained its proper finality, which in the present case consists in providing nourishment to the patient and alleviation of his suffering.

. . . .

The obligation to provide the “normal care due to the sick in such cases” includes, in fact, the use of nutrition and hydration. The evaluation of probabilities, founded on waning hopes for recovery when the vegetative state is prolonged beyond a year, cannot ethically justify the cessation or interruption of *minimal care* for the patient, including nutrition and hydration. Death by starvation or dehydration is, in fact, the only possible outcome as a result of their withdrawal. In this sense it ends up becoming, if done knowingly and willingly, true and proper euthanasia by omission.

Id. (internal citations omitted).

¹⁴³ *Evangelium Vitae*, *supra* note 13, ¶ 65.

¹⁴⁴ Cf. Michael R. Merz, *Is the Death Penalty on Life Support?: Conscience of a Catholic Judge*, 29 U. DAYTON L. REV. 305 (2004) (discussing John Paul II’s position on the death penalty).

¹⁴⁵ Pope John Paul II, Homily at Mass in Trans World Dome, St. Louis, Missouri (Jan. 27, 1999), *available at* http://www.vatican.va/holy_father/john_paul_ii/travels/documents/hf_jp-ii_hom_27011999_stlouis_en.html.

¹⁴⁶ *Evangelium Vitae*, *supra* note 13, ¶ 56.

¹⁴⁷ *Id.*

¹⁴⁸ *Id.*

On the practical level, John Paul II argues that under contemporary conditions, capital punishment cannot be justified since modern societies can defend themselves without resort to it: “Today, given the means at the State’s disposal to deal with crime and control those who commit it, without abandoning all hope of their redemption, the cases where it is absolutely necessary to do away with an offender ‘are now very rare, even non-existent practically.’”¹⁴⁹

B. Work

John Paul II’s personalist philosophy comes to the fore in his approach to work, a subject to which he dedicated an entire encyclical letter, *Laborem Exercens*.¹⁵⁰ His primary focus is not on productive physical and intellectual activities as such, nor on the products they produce or the services they provide.¹⁵¹ He gives only cursory attention to all of this, which he refers to as “work in the objective sense.”¹⁵² His primary interest is in “work in the subjective sense,” and on “man as the subject of work.”¹⁵³

By “work in the subjective sense,” he means the human activities that make up work, considered not as producing external results but rather as human actions performed by a free subject endowed with intellect and will. Machines can produce goods and services, but because of his emphasis on the subjective aspect of work, John Paul II does not think of them as “working” in the proper sense: “the proper subject of work continues to be man.”¹⁵⁴ Only men and women “work” in the full and proper sense of the term precisely because they are persons “capable of acting in a planned and rational way, capable of deciding about [themselves], and with a tendency to self-realization.”¹⁵⁵ For this reason, “[a]s a person, man is . . . the subject of [sic] work,”¹⁵⁶ and work “concerns not only the economy but also, and especially, personal values.”¹⁵⁷

The economic value of work springs, of course, from the goods and services it produces, but John Paul II is more interested in its ethical value, which derives from “the fact that the one who carries it

¹⁴⁹ *Ecclesia in America*, *supra* note 110, ¶ 63 (citing *Catechism of the Catholic Church* § 2267 (citing *Evangelium Vitae*, *supra* note 13, ¶ 56)).

¹⁵⁰ *Laborem Exercens*, *supra* note 9.

¹⁵¹ *Id.*

¹⁵² *Id.* ¶ 5.

¹⁵³ *Id.* ¶ 6.

¹⁵⁴ *Id.* ¶ 5 (emphasis omitted).

¹⁵⁵ *Id.* ¶ 6.

¹⁵⁶ *Laborem Exercens*, *supra* note 9, ¶ 6 (emphasis omitted).

¹⁵⁷ *Id.* ¶ 15.

out is a person, a conscious and free subject, that is to say a subject that decides about himself.”¹⁵⁸ “The sources of the dignity of work are to be sought primarily in the subjective dimension, not in the objective one.”¹⁵⁹ John Paul II finds in the example of Jesus Christ, who dedicated most of his life to manual labor, confirmation for this conviction that “the basis for determining the value of human work is not primarily the kind of work being done but the fact that the one who is doing it is a person.”¹⁶⁰

Although work can be difficult and painful, it is not a necessary evil, something to which we are driven only by necessity. Quite to the contrary, John Paul II sees it as “a good thing for man”:¹⁶¹

It is not only good in the sense that it is useful or something to enjoy; it is also good as being something worthy, that is to say, something that corresponds to man’s dignity, that expresses this dignity and increases it. . . . Work is a good thing for man—a good thing for his humanity—because through work man *not only transforms nature*, adapting it to his own needs, but he also *achieves fulfilment* as a human being and indeed, in a sense, becomes “more a human being.”¹⁶²

But work does not always lead to human fulfillment. Leaving aside the extreme case of the labor camps where work is used to destroy human beings, work can be organized in ways that are more or less fulfilling. John Paul II, therefore considers it essential to create a

social order of work, which will enable man to become, in work, “more a human being” and not be degraded by it not only because of the wearing out of his physical strength (which, at least up to a certain point, is inevitable), but especially through damage to the dignity and subjectivity that are proper to him.¹⁶³

John Paul II rejects what he classifies as “*materialistic and economistic*”¹⁶⁴ conceptions which treat “work as a special kind of ‘merchandise,’ or as an impersonal ‘force’ needed for production.”¹⁶⁵

¹⁵⁸ *Id.* ¶ 6. John Paul II says that this proposition “in a sense constitutes the fundamental and perennial heart of Christian teaching on human work.” *Id.*

¹⁵⁹ *Id.*

¹⁶⁰ *Laborem Exercens*, *supra* note 9.

¹⁶¹ *Id.* ¶ 9.

¹⁶² *Id.* Because he views work as contributing to human development—and as a way of participating in the life of the community—John Paul II calls for finding ways in which the disabled can work. Providing them work suited to their circumstances is, he says “demanded by their dignity as persons and as subjects of work.” *Id.* ¶ 22.

¹⁶³ *Id.* ¶ 9.

¹⁶⁴ *Id.* ¶ 7.

¹⁶⁵ *Laborem Exercens*, *supra* note 9, ¶ 7.

In such a conception, “*man is treated as an instrument of production, whereas he—he alone, independently of the work he does—ought to be treated as the effective subject of work and its true maker and creator,*”¹⁶⁶ as well as “*the true purpose of the whole process of production.*”¹⁶⁷

In the context of the relations between capital and labor in the process of production, John Paul II has no doubts about the priority of work: “*labour is always a primary efficient cause, while capital, the whole collection of means of production, remains a mere instrument or instrumental cause.*”¹⁶⁸ Capital should be thought of as subordinate to labor, and “*at the service of work.*”¹⁶⁹ Capital—however sophisticated and technologically advanced—should be thought of only as a “*workbench.*”¹⁷⁰ Its worth and value have their roots in the service it renders to work. Furthermore, work is prior to the workbench that is capital and partially responsible for its existence. Capital, in fact, is the result of two inheritances:

the inheritance of what is given to the whole of humanity in the resources of nature, and the inheritance of what others have already developed on the basis of those resources, primarily by developing technology, that is to say, by producing a whole collection of increasingly perfect instruments for work. In working, man also “*enters into the labour of others.*”¹⁷¹

C. *Social Organization: Subsidiarity and Solidarity*

The classic principle of Catholic social doctrine known as the principle of subsidiarity¹⁷² grows out of the recognition that

the social nature of man is not completely fulfilled in the State, but is realized in various intermediary groups, beginning with the family and including economic, social, political and cultural

¹⁶⁶ *Id.*

¹⁶⁷ *Id.*

¹⁶⁸ *Id.* ¶ 12.

¹⁶⁹ *Id.*

¹⁷⁰ *Id.* ¶ 14.

¹⁷¹ *Laborem Exercens*, *supra* note 9, ¶ 13.

¹⁷² The principle has deep roots in Catholic social thought, going back at least to Thomas Aquinas, but it was given special prominence by Pius XI. See Encyclical Letter from Pope Pius XI to the Bishops of the Catholic Church, *Quadragesimo Anno* [The Fortieth Year] (May 15, 1931), available at http://www.vatican.va/holy_father/pius_xi/encyclicals/documents/hf_p-xi_enc_19310515_quadragesimo-anno_en.html.

groups which stem from human nature itself and have their own autonomy, always with a view to the common good.¹⁷³

In light of this conviction, subsidiarity teaches that a larger, higher-level organism should not do what smaller, lower-level organisms can accomplish, either on its own or with assistance from the higher-level organism.

In John Paul II's thought—as indeed in Catholic social thought generally—subsidiarity is not merely a question of finding the most efficient level at which to place particular functions. It reflects the larger vision of human beings as free and responsible persons created by God “for their own sake” and yet called to live in relation with others and to achieve their fulfillment precisely in making a free gift of themselves to others.¹⁷⁴

John Paul II considers the ideal social organization one in which there is ample room for “the spirit of initiative” or what he calls “creative subjectivity.”¹⁷⁵ Individuals and smaller social entities should not only be permitted to carry out the functions they are capable of performing, but should be encouraged and helped to do so by larger entities. Higher-level entities, he says, should ascribe to themselves only those functions which lower-level entities cannot carry out, even with assistance:

[S]maller social units—whether nations themselves, communities, ethnic or religious groups, families or individuals—must not be namelessly absorbed into a greater conglomeration, thus losing their identity and having their prerogatives usurped. Rather, the proper autonomy of each social class and organization, each in its own sphere, must be defended and upheld.¹⁷⁶

Subsidiarity cannot be adequately understood in isolation from the principle of solidarity. Solidarity springs from recognizing the

¹⁷³ *Centesimus Annus*, *supra* note 15, ¶ 13. The summer 2005 issue of the Journal of Catholic Social Thought was entirely dedicated to subsidiarity. Journal of Catholic Social Thought, Table of Contents Summer 2005, <http://www3.villanova.edu/mission/journal/contents/05s.htm> (last visited Sept. 22, 2005). See also Robert K. Vischer, *Subsidiarity as a Principle of Governance: Beyond Devolution*, 35 IND. L. REV. 103 (2001).

¹⁷⁴ See *supra* notes 94–108 and accompanying text.

¹⁷⁵ Encyclical Letter from Pope John Paul II to the Bishops of the Catholic Church, *Sollicitudo Rei Socialis* [On Social Concern] ¶ 15 (Dec. 30, 1987), available at http://www.vatican.va/holy_father/john_paul_ii/encyclicals/documents/hf_jp-ii_enc_30121987_sollicitudo-rei-socialis_en.html [hereinafter *Sollicitudo Rei Socialis*].

¹⁷⁶ *Message to Academy of Social Sciences*, *supra* note 48.

other members of society as persons.¹⁷⁷ Its “essential note . . . is to be found in the radical equality of all men and women,”¹⁷⁸ and it

helps us to see the ‘other’ . . . not just as some kind of instrument, with a work capacity and physical strength to be exploited at low cost and then discarded when no longer useful, but as our ‘neighbor,’ a ‘helper,’ to be made a sharer, on a par with ourselves, in the banquet of life to which all are equally invited by God.¹⁷⁹

Solidarity, John Paul II insists,

is not a feeling of vague compassion or shallow distress at the misfortunes of so many people, both near and far. On the contrary, it is a firm and persevering determination to commit oneself to the common good; that is to say to the good of all and of each individual, because we are all really responsible for all.¹⁸⁰

Solidarity grows out of a recognition that “we are *brothers and sisters in a common humanity*.”¹⁸¹ In addition, in the light of Christian faith,

solidarity seeks to go beyond itself, to take on the specifically Christian dimension of total gratuity, forgiveness and reconciliation. One’s neighbor is then not only a human being with his or her own rights and a fundamental equality with everyone else, but becomes the living image of God the Father, redeemed by the blood of Jesus Christ and placed under the permanent action of the Holy Spirit. One’s neighbor must therefore be loved, even if an enemy, with the same love with which the Lord loves him or her; and for that person’s sake one must be ready for sacrifice, even the ultimate one: to lay down one’s life for the brethren.¹⁸²

D. Economic Organization: Freedom at the Service of Persons

John Paul II’s teaching on questions of economic organization reflects his stress on the subjective value of work, his emphasis on the value and dignity of persons and their freedom, and his commitment to the principle of subsidiarity. He eschews both collectivist solutions

¹⁷⁷ See *Sollicitudo Rei Socialis*, *supra* note 175, ¶ 39.

¹⁷⁸ Pope John Paul II, Message for XX World Day for Peace ¶ 4 (Jan. 1, 1987), available at http://www.vatican.va/holy_father/john_paul_ii/messages/peace/documents/hf_jp-ii_mes_19861208_xx-world-day-for-peace_en.html [hereinafter *World Day for Peace 1987*].

¹⁷⁹ *Sollicitudo Rei Socialis*, *supra* note 175, ¶ 39 (internal citation omitted) (quoting *Genesis* 2:18–20).

¹⁸⁰ *Id.* ¶ 38.

¹⁸¹ *World Day for Peace 1987*, *supra* note 178, ¶ 2.

¹⁸² *Sollicitudo Rei Socialis*, *supra* note 175, ¶ 40 (internal citation omitted) (citing 1 *John* 3:16).

which stifle initiative under centralized controls and libertarian capitalist solutions which leave unanswered basic human needs that are not backed by purchasing power.

John Paul II recognizes that free markets are efficient devices for allocating resources: “[T]he free market is the most efficient instrument for utilizing resources and effectively responding to needs . . . which are ‘solvent,’ insofar as they are endowed with purchasing power, and for those resources which are ‘marketable,’ insofar as they are capable of obtaining a satisfactory price.”¹⁸³ In his view, the value of markets does not lie, however, only in their ability to allocate resources effectively. They are also desirable because “they give central place to the person’s desires and preferences, which, in a contract, meet the desires and preferences of another person.”¹⁸⁴

Despite his appreciation of markets, John Paul II sees a need for governmental activity in the economic sphere in order to promote social justice. Markets do an excellent job of responding to needs that are backed by purchasing power, but a just society cannot limit itself to meeting those needs:

[T]here are many human needs which find no place on the market. It is a strict duty of justice and truth not to allow fundamental human needs to remain unsatisfied, and not to allow those burdened by such needs to perish. . . . Even prior to the logic of a fair exchange of goods and the forms of justice appropriate to it, there exists *something which is due to man because he is man*, by reason of his lofty dignity. Inseparable from that required “something” is the possibility to survive and, at the same time, to make an active contribution to the common good of humanity.¹⁸⁵

In some cases, private individuals or groups (including unions, which John Paul II specifically mentions in this context),¹⁸⁶ or local

¹⁸³ *Centesimus Annus*, *supra* note 15, ¶ 34 (emphasis omitted).

¹⁸⁴ *Id.* ¶ 40.

¹⁸⁵ *Id.* ¶ 34.

¹⁸⁶ *Id.* ¶ 35. The right of workers to unionize and the obligations of organized workers have bulked large in Catholic Social Teaching from its inception in Leo XIII’s encyclical *Rerum Novarum*. Encyclical Letter from Pope Leo XIII to the Bishops of the Catholic Church, *Rerum Novarum* [On Capital and Labor] (May 15, 1891), available at http://www.vatican.va/holy_father/leo_xiii/encyclicals/documents/hf_l-xiii_enc_15051891_rerum-novarum_en.html. John Paul II stands squarely in this tradition. See, e.g., *Laborem Exercens*, *supra* note 9, ¶ 20. Given the constraints on the size of this Article, I have not developed this aspect of John Paul II’s thought, not because it is unimportant, but because there are fewer fresh new approaches here than in other areas of his thought. Cf. David L. Gregory, *Catholic Social Teaching on Work*, 49 LAB. L.J. 912 (1998).

governments can meet needs markets cannot. John Paul II asserts, however, that some degree of intervention by national governments will often be required if “the market [is to] be appropriately controlled . . . so as to guarantee that the basic needs of the whole of society are satisfied.”¹⁸⁷ Although economic freedom is a value, it must be “circumscribed within a strong juridical framework which places it at the service of human freedom in its totality, and which sees it as a particular aspect of that freedom.”¹⁸⁸

Not only can markets alone fail to meet the individual needs of all the members of the society, they are also often ill suited to protecting and fostering “collective and qualitative needs” such as protection of the environment.¹⁸⁹ In John Paul II’s view:

It is the task of the State to provide for the defence and preservation of common goods such as the natural and human environments, which cannot be safeguarded simply by market forces. Just as in the time of primitive capitalism the State had the duty of defending the basic rights of workers, so now, with the new capitalism, the State and all of society have the duty of *defending those collective goods* which, among others, constitute the essential framework for the legitimate pursuit of personal goals on the part of each individual.¹⁹⁰

John Paul II makes no attempt to prescribe specific solutions or to dictate the amount of governmental control of the economy. He recognizes that these are areas for prudential decisions based on specific circumstances. Therefore no solution can claim to be “the Catholic solution.”¹⁹¹ He does, however, reject both the smothering intervention of the welfare state which “deprive[s] society of its responsibility . . . [and] leads to a loss of human energies,”¹⁹² and the radical capitalistic ideology . . . which refuses even to consider the[] problems [of marginalization and exploitation in the Third World and of alienation in the developed world], in the *a priori* belief that any attempt to solve them is doomed to failure, and

¹⁸⁷ *Centesimus Annus*, *supra* note 15, ¶ 35.

¹⁸⁸ *Id.* ¶ 42.

¹⁸⁹ *Id.* ¶ 40. This is not to say that John Paul II rejects the use of market mechanisms—such as transferable pollution rights—in the pursuit of environmental goals. I am not aware of his ever having addressed these types of mechanisms. They generally function, however, within a governmentally established framework.

¹⁹⁰ *Id.*

¹⁹¹ See *supra* note 109 and accompanying text.

¹⁹² *Centesimus Annus*, *supra* note 15, ¶ 48.

which blindly entrusts their solution to the free development of market forces.¹⁹³

John Paul II sees government's principal contribution to economic well being in providing "guarantees of individual freedom and private property, as well as a stable currency and efficient public services . . . so that those who work and produce can enjoy the fruits of their labours and thus feel encouraged to work efficiently and honestly."¹⁹⁴ Governments, however, must also be involved in "overseeing and directing the exercise of human rights in the economic sector," although primary responsibility in this area falls to individuals and social groups.¹⁹⁵ Further, governments need to "sustain business activities by creating conditions which will ensure job opportunities, by stimulating those activities where they are lacking or by supporting them in moments of crisis."¹⁹⁶ In addition to these roles of coordinating and stimulating business activities, governments may need to play a "substitute function" when the private sector is too weak or just getting under way, but John Paul II cautions that such interventions should be as brief as possible.¹⁹⁷

E. Property and the Universal Destination of Goods

Like his predecessors,¹⁹⁸ John Paul II affirms the right to private property. In part, this is because private property and free markets have proven to be particularly efficient ways of organizing economic activity.¹⁹⁹ In the mind of John Paul II, however, private property is also an important component of human dignity and autonomy:

A person who is deprived of something he can call "his own," and of the possibility of earning a living through his own initiative, comes to depend on the social machine and on those who control it. This makes it much more difficult for him to recognize his

¹⁹³ *Id.* ¶ 42.

¹⁹⁴ *Id.* ¶ 48.

¹⁹⁵ *Id.*

¹⁹⁶ *Id.*

¹⁹⁷ *Id.*

¹⁹⁸ *See, e.g.*, Encyclical Letter from Pope Leo XIII to the Bishops of the Catholic Church, *Rerum Novarum* [On Capital and Labor] ¶ 8–13 (May 15, 1891), *available at* http://www.vatican.va/holy_father/leo_xiii/encyclicals/documents/hf_l-xiii_enc_15051891_rerum-novarum_en.html; Encyclical Letter from Pope John XXIII to the Bishops of the Catholic Church, *Mater et Magistra* [On Christianity and Social Progress] ¶¶ 108–111 (May 15, 1961), *available at* http://www.vatican.va/holy_father/john_xxiii/encyclicals/documents/hf_j-xxiii_enc_15051961_mater_en.html.

¹⁹⁹ *See supra* notes 183–184 and accompanying text.

dignity as a person, and hinders progress towards the building up of an authentic human community.²⁰⁰

Nonetheless, private property, however important, is not in John Paul II's view the primordial principle of social and economic organization. Rather, he finds the "characteristic principle of Christian social doctrine"²⁰¹ in "*the universal destination of the earth's goods*,"²⁰² i.e., in the fact that "the goods of this world are originally meant for all."²⁰³ According to John Paul II, "God gave the earth to the whole human race for the sustenance of its members, without excluding or favouring anyone."²⁰⁴

But the earth does not satisfy human needs without work, and it is through work that men adapt the earth to their needs and at the same time acquire title to that part of it that they have transformed.²⁰⁵ Private property "is acquired first of all through work in order that it may serve work."²⁰⁶ This acquisition of rights to individual property does not cancel out the principle of the universal destination of the goods of the earth. A person who acquires private property through his work "has the responsibility not to hinder others from having their own part of God's gift; indeed, he must cooperate with others so that together all can dominate the earth."²⁰⁷

The universal destination of the goods of the earth profoundly affects the meaning and significance of property rights. John Paul II conceives private property as subject to a "social mortgage."²⁰⁸ By this he means that the right to property is not "absolute and untouchable."²⁰⁹ Rather, it is "*subordinated to the right to common use*, to the fact that goods are meant for everyone."²¹⁰ Referring specifically to privately owned means of production, he says:

Isolating these means as a separate property in order to set it up in the form of "capital" in opposition to "labour"—and even to

²⁰⁰ *Centesimus Annus*, *supra* note 15, ¶ 13.

²⁰¹ *Sollicitudo Rei Socialis*, *supra* note 175, ¶ 42.

²⁰² *Centesimus Annus*, *supra* note 15, ¶ 6 (emphasis added).

²⁰³ *Sollicitudo Rei Socialis*, *supra* note 175, ¶ 43.

²⁰⁴ *Centesimus Annus*, *supra* note 15, ¶ 31.

²⁰⁵ *See id.*

²⁰⁶ *Laborem Exercens*, *supra* note 9, ¶ 14.

²⁰⁷ *Centesimus Annus*, *supra* note 15, ¶ 31.

²⁰⁸ Pope John Paul II, Opening Address at the Puebla Conference ¶ III, 4 (Jan. 28, 1979); Pope John Paul II, Message to the Jubilee 2000 Debt Campaign (Sept. 23, 1999), *available at* http://www.vatican.va/holy_father/john_paul_ii/speeches/1999/september/documents/hf_jp-ii_mes_23091999_jubilee-2000-debt-campaign_en.html.

²⁰⁹ *Laborem Exercens*, *supra* note 9, ¶ 14.

²¹⁰ *Id.*

practise exploitation of labour—is contrary to the very nature of these means and their possession. They cannot be *possessed against labour*, they cannot even be *possessed for possession's sake*, because the only legitimate title to their possession—whether in the form of private ownership or in the form of public or collective ownership—is *that they should serve labour*, and thus, by serving labour, that they should make possible the achievement of the first principle of this order, namely, the universal destination of goods and the right to common use of them.²¹¹

The universal destination of the goods of the earth is incompatible with situations in which some people have vast possessions while others cannot meet even their elementary needs. John Paul II finds “one of the greatest injustices of the contemporary world” in “the poor distribution of the goods and services originally intended for all.”²¹²

John Paul II's concept of property differs sharply from the “programme of *capitalism* practised by liberalism and by the political systems inspired by it.”²¹³ He rejects the position of “‘rigid’ capitalism . . . [which] defends the exclusive right to private ownership of the means of production as an untouchable ‘dogma’ of economic life.”²¹⁴ Not only does he believe that the universal destination of the goods of the earth brings with it limits on the rights and autonomy of privately owned capital, but he also believes that, under appropriate circumstances, the “socialization” of certain means of production may be called for.²¹⁵

“Socialization,” does not mean simply expropriating formerly privately-held capital. “[M]erely converting the means of production into State property in the collectivist system is by no means equivalent to ‘socializing’ that property.”²¹⁶ The goal is not state ownership but rather a situation in which “on the basis of his work each person is fully entitled to consider himself a part-owner of the great workbench at which he is working with every one else.”²¹⁷ John Paul II suggests that one way of moving toward that goal might be by

²¹¹ *Id.*

²¹² *Sollicitudo Rei Socialis*, *supra* note 175, ¶ 28. These situations obviously harm the poor who often “do not succeed in realizing their basic human vocation because they are deprived of essential goods.” *Id.* But they often also harm “the few who possess much—who do not really succeed in ‘being’ because, through a reversal of the hierarchy of values, they are hindered by the cult of ‘having.’” *Id.*

²¹³ *Laborem Exercens*, *supra* note 9, ¶ 14.

²¹⁴ *Id.*

²¹⁵ *Id.*

²¹⁶ *Id.*

²¹⁷ *Id.*

associating labour with the ownership of capital, as far as possible, and by producing a wide range of intermediate bodies with economic, social and cultural purposes; they would be bodies enjoying real autonomy with regard to the public powers, pursuing their specific aims in honest collaboration with each other and in subordination to the demands of the common good, and they would be living communities both in form and in substance, in the sense that the members of each body would be looked upon and treated as persons and encouraged to take an active part in the life of the body.²¹⁸

III. CONCLUSION

John Paul II offers a penetrating and remarkably coherent set of answers to the most fundamental questions lawyers face as persons, as professionals, and as citizens. His vigorous defense of the dignity and value of every human life and his stress on the role of inter-personal relations in the development of each individual marks out a path between the two extremes which mar contemporary understandings of the human condition: collectivism, which sacrifices the person to the goals of the group, and individualism, which fails to recognize that individuals find their ultimate fulfillment not in isolation, but in service to others and to the common good—a good not only of the community, but of each person who contributes to it.

John Paul II's analysis of specific issues, such as work and the role of government in economic life, is rooted in his philosophical and theological anthropology. He lays no claim to special expertise in economics or politics, but rather explores the implications for social and economic organization of his vision of what it means to be human. His goal is to discover principles of social, political, and economic organization that will permit the men and women who make up society to achieve not only personal autonomy and economic prosperity but fulfillment as human beings.

John Paul II addresses himself in many of his documents to all men and women of good will.²¹⁹ His thought, however, has special relevance to lawyers, because all lawyers who aspire to go beyond being mere technicians must come to grips with the ultimate questions that concern the goal of human life and the sort of society that will contribute to its attainment. It is my hope that this Article will inspire some readers to delve more deeply into John Paul II's answers.

²¹⁸ *Id.*

²¹⁹ *See, e.g., Redemptor Hominis, supra* note 1.