



1-1-2012

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Recommended Citation

Michael J. Nader, *Towards Reconciliation and Consensus: Catholic Social Thought and Entitlements*, 11 NOTRE DAME J.L. ETHICS & PUB. POL'Y 419 (1997).

Available at: <http://scholarship.law.nd.edu/ndjlepp/vol11/iss2/1>

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FOREWORD

TOWARDS RECONCILIATION AND CONSENSUS: CATHOLIC SOCIAL THOUGHT AND ENTITLEMENTS

MICHAEL J. NADER*

The distinctive mission of the *Notre Dame Journal of Law, Ethics & Public Policy* is to examine “public policy questions within the framework of Judeo-Christian values.” That means we approach legal and policy issues with a belief in a universal moral order that should be reflected in human law, based on reason and conscience, and that should serve as a guide for free persons as they strive to create a better society. Unlike law journals that limit the authority of their author’s prescriptions to legal doctrine, our *Journal* strives to transcend doctrinal limits and to publish authors who present a more integrative jurisprudence that unites legal authority with intellectual authority.

Legal authority is based, in part, on the institutional power of politically appointed judges who may decide cases under pragmatic constraints, with rhetoric that commands institutional obedience but not necessarily intellectual respect. Intellectual authority, as in the fields of philosophy, theology, and the social sciences, however, emerges when ideas are debated, evaluated, and tested until they earn the assent of free and discerning minds. By synthesizing these authorities, the *Journal* aims to provide the reader with a more comprehensive framework of analysis, and to publish articles that are inspired by the Judeo-Christian tradition, attentive to the authority of legal doctrine,

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informed by non-legal sources of intellectual authority, and directed towards practical solutions to concrete policy problems.

For important reasons, this issue examines welfare policy from the perspective of Catholic social thought. First, as a Notre Dame journal, it shares the commitment to the Catholic intellectual tradition of the oldest Roman Catholic law school in the United States.

Second, as Leo Strauss suggested,¹ Catholic social thought can provide the first principles of an intelligible framework of analysis and critique of law and public policy. Fr. Francis Canavan provides a summary of these principles:

God created the universe out of nothing. It therefore reflects and participates in His truth and goodness. The created universe is a vastly different place from the uncreated and ultimately meaningless universe of post-Christian modernity. (The world that God made is therefore much less suited to a purely mechanistic theory of economics). On the face of this earth, man is the highest of all creatures because, intelligent and capable of free choice, he is the image and likeness of God and is, furthermore, redeemed and made a sharer in God's own life by Jesus Christ.²

The third reason this issue discusses Catholic social thought on entitlements is explained by the National Conference of Catholic Bishops:

As *Catholics*, we are heirs of a long tradition of thought and action on the moral dimensions of economic activity. The life and words of Jesus and the teaching of his Church call us to serve those in need and to work actively for social and economic justice. As a community of believers, we know that our faith is tested by the quality of justice among us, that we can best measure our life together by how the poor

1. See LEO STRAUSS, *NATURAL RIGHT AND HISTORY* 2 (1952):

Present-day American social science, as far as it is not Roman Catholic social science, is dedicated to the proposition that all men are endowed by the evolutionary process or by a mysterious fate with many kinds of urges and aspirations, but certainly with no natural right . . .

To reject natural right is tantamount to saying that all right is positive right, and this means that what is right is determined exclusively by the legislators and the courts of the various countries. Now it is obviously meaningful, and sometimes even necessary, to speak of 'unjust' laws or 'unjust' decisions. In passing such judgments we imply that there is a standard of right and wrong independent of positive right and higher than positive right: a standard with reference to which we are able to judge of positive right.

2. Francis Canavan S.J., *The Popes and the Economy*, 11 NOTRE DAME J.L. ETHICS & PUB. POL'Y 429, 430 (1997).

and the vulnerable are treated. This is not a new concern for us. It is as old as the Hebrew prophets, as compelling as the Sermon on the Mount, and as current as the powerful voice of Pope John Paul II defending the dignity of the human person.³

Fourth, the Catholic Church in the United States runs the largest private education, social service, and nonprofit health care systems in the country. According to Fr. Bryan Hehir: "That puts you in a position of strategic leverage in a situation where you have declining public resources and exploding public needs."⁴ As the leading private provider of basic goods to millions of the most needy Americans, the Catholic Church should contribute substantially to the public debate over welfare reform.

Finally, while Catholic social thought provides moral guidance on welfare policy, it allows a wide range of prudential judgments on its application to the practical, particular and diverse problems of distributive justice. It is not a political or economic doctrine, or an alternative to capitalism or socialism. Catholic social teaching is moral theology that has been informed by centuries of philosophical reflection on the full meaning of human dignity and on the most practical service to the poor,⁵ and thus commends itself to all people of good will.

In this issue, Professor Francis Canavan's article provides an introduction to the basic principles and scope of Catholic social thought on economics. The Catholic vision upholds a certain individualism, as one is ultimately responsible for one's salvation, and yet recognizes that one is born and raised in a family, and thus social by nature. It affirms that one has the right to own property, but only to use as a steward for the common good. While the popes recognize the legitimate and necessary function of the free market and the profit motive, they also teach the need for a measure of government regulation of resources to meet the basic requirements of justice for each and every member of society. Finally, Fr. Canavan emphasizes that the application of the goals of Catholic thought requires prudential judgment.

Professor Arthur McGovern looks more specifically at what Catholic social thought teaches about entitlements. Although the papal encyclicals do not address or endorse entitlements

3. NATIONAL CONFERENCE OF CATHOLIC BISHOPS, *ECONOMIC JUSTICE FOR ALL* para. 8 (1986).

4. Bryan Hehir, Presentation at the Round Table Discussion: Welfare Reform and the Catholic Church (February 8, 1997), in 11 *NOTRE DAME J.L. ETHICS & PUB. POL'Y* 696 (1997).

5. See John Paul II, *What Church Social Teaching Is and Is Not*, 23 *ORIGINS* at 256-58 (1993).

directly, they recognize rights to subsistence goods for every individual based on their human dignity. Fr. McGovern finds some support for entitlements in the encyclicals because they teach that the government has a primary responsibility to insure that the rights to education, shelter, health care, and other basic goods are provided to all citizens.

While Professor James Schall acknowledges the noble intentions of entitlements, he examines their ideological origins and unintended consequences. Fr. Schall criticizes the modern liberal notion, beginning with Hobbes, that rights do not exist apart from the positive law of the state, which received its power through the social contract. As a result, only the state, not God and the transcendent dignity of the human person, provides the justification of rights, and alone determines the standards of human flourishing by the economic rights it chooses to provide. Fr. Schall's concern is that individuals tend to become accustomed to receiving government benefits for an ever expanding range of goods, and this dependency erodes the individual initiative and responsibility necessary to create wealth available for distribution in the first place. This dependency also empowers the state to arrogate to itself more of the freedom, activities and responsibilities of individuals and private associations.

Professor William O'Neill also finds the liberal, social contract theory of rights lacking, however, he appeals to the medieval idea of the common good to advocate comprehensive government benefits for the nation's poor. Fr. O'Neill asserts that the Catholic understanding of human dignity requires more than the liberal tradition of civil and political rights that protect one from interference. Solidarity also calls for governmental, or "institutional fulfillment" of each person's "positive socio-economic rights of subsistence, employment, minimal health care, education, etc."

Along with his additional criticism of the liberal understanding of rights-language, Professor Kenneth Himes acknowledges that Catholic teaching "owes a debt to liberalism" as it began to articulate the particular requirements of the common good with rights-language.⁶ Fr. Himes begins his account of the evolution

6. See also JOHN FINNIS, *NATURAL LAW AND NATURAL RIGHTS* 210 (1980): The modern language of rights provides . . . a supple and potentially precise instrument for sorting out and expressing the demands of justice. . . . It [rights-language] is simply a way of sketching the *outlines of the common good*, the various aspects of individual well-being in community. What the reference to rights contributes to this sketch is simply a pointed expression of what is implicit in the term 'common good', namely that *each* and everyone's well-being, in each of its basic

of rights-language with the “free-market” liberalism of John Locke and Adam Smith. The inclusion of socio-economic rights began with the “harsh realities” of the industrial revolution and with the modest social reforms embraced by the utilitarian liberals like Jeremy Bentham and John Stuart Mill. This century’s “welfare-state” liberals have sought to elevate the rights to subsistence goods to the same level of importance as civil and political rights in order to achieve the liberal goal of maximum individual liberty. Fr. Himes concludes his article with a discussion of Catholicism’s emphasis on human dignity and community, and its understanding of the purpose of economic rights to enable one to participate more fully in society and not merely to maximize personal liberty.⁷

From the perspective of a Catholic economist, Professor Jennifer Roback Morse examines the dynamics of welfare bureaucracies and their tempting effects on recipients, and everyone else. Professor Morse explains that government welfare programs force taxpayers to finance, and civil servants to administer, a common fund with little or no discretion. As a result, that fund entices potential recipients to choose not to work, and pursue other non-productive strategies, in order to qualify for public benefits. Welfare also entails the “Tragedy of the Commons” where “everyone in the group has a right to use the resource freely, with little or no accountability to the rest of the group.” As a result, the administrators spend money they did not raise, recipients receive benefits they did not earn, and resources are often wasted. Professor Morse also argues that because “a large realm” of poverty is caused by the detrimental choices of the poor, including single mothers and those dependent on drugs and alcohol, it follows that private, religious charities that can “regulate the conduct of recipients of their aid” will more effectively address the real needs of many of the poor. The article concludes with a discussion of how government welfare can dis-

aspects, must be considered and favoured at *all* times by those responsible for co-ordinating the common life. *Id.* at 214. [Rights-language provides] a usefully detailed listing of the various aspects of human flourishing and fundamental components of the way of life in community that tends to favour such flourishing in all. *Id.* at 221.

7. See also POPE JOHN XXIII, *PACEM IN TERRIS* at para. 60 (1963):

It is agreed that in our time the common good is chiefly guaranteed when personal rights and duties are maintained. The chief concern of civil authorities must therefore be to ensure that these rights are acknowledged, respected, coordinated with other rights, defended and promoted, *so that in this way each one may more easily carry out his duties.* (emphasis added).

place the opportunity for one to apply the Gospel and personally assist the poor with one's gifts, time and love.

Fr. Robert Sirico's article focuses on the principle of subsidiarity, which is a perennial and "fundamental principle" of Catholic social thought. Subsidiarity "begins with the claim of primacy for the smallest units in society, including community associations, families, and individuals. These groups have the first responsibility for caring for their own needs and for those with whom they come in contact." If these groups fail to provide for themselves, then "higher social structures, beginning with the closest level of government, are permitted to temporarily assume responsibility for those same functions." Fr. Sirico agrees with F. A. Hayek that central planners and administrators lack the necessary knowledge to manage the incentives, needs, and activities of a diverse society. He also explains that Christians are called to assist the poor through voluntary, personal and loving efforts, and not to delegate their compassion to government welfare programs funded through coercive taxation. Fr. Sirico concludes with accounts of successful charity programs, and reminds us of our spiritual resources to pursue additional opportunities for service and wealth creation.

Dr. Michael Warner's article asserts that because of a conscious relinquishment of the "Thomistic paradigm" in favor of a new "Political Theology" at the United States Catholic Conference (USCC) in the 1960s, the USCC has adopted a posture that is "activist, redistributionist and statist" regarding entitlements. Thomistic social theory teaches that a just society is an "organic" ordering of members according to their abilities to serve the common good as understood through the natural law. It supports the principles of federalism and subsidiarity. "Political Theology," however, rests on a different political philosophy where "men can only be known by their mutual dealings [and, therefore] salvation is fundamentally social." Instead of "organic social harmony," justice came to be "understood as the act of perpetually redressing inequitable interpersonal relations," and championing the cause of people who are perniciously marginalized by society's power structures. According to Dr. Warner, it seemed to the USCC that this new social theory was borne out by the experience of the civil rights revolution, and is the reason why the USCC has consistently preferred substantial federal control over welfare administration, a stance that led them to criticize Reagan Administration policies in the 1980s.

For an empirical analysis of welfare reform, Professor Greg Duncan and Gretchen Caspary explain and analyze fundamental provisions of the Personal Responsibility and Work Opportunity

Reconciliation Act of 1996. The authors compare the federal entitlement program of Aid to Families with Dependent Children (AFDC) with the new block grant program known as Temporary Assistance to Needy Families (TANF). Unlike AFDC, TANF funding will not increase with demand, and cumulative lifetime benefits will be limited to sixty months. The authors also present empirical evidence of the characteristics of AFDC recipients, and compare the data to prevailing stereotypes of recipients. They find that "three-quarters of first-time recipients will have more than one 'spell' of AFDC receipt," but that "more than two-fifths of first-time recipients" will permanently leave the rolls within two years, well under the time cap. They also consider whether studies demonstrate a "causal link between a mother's welfare receipt and her daughter's welfare participation later in life," and whether the level of welfare benefits contributes to out-of-wedlock births.

Secretary Cheryl Sullivan of Indiana's Department of Family and Social Services presents the major provisions of welfare reform, traces the previous efforts of presidents, governors, the Congress and state legislatures to implement these reforms, and explains the initiatives undertaken by the state of Indiana during the administration of former Governor Evan Bayh. Governor Bayh's program of family caps, fiscal sanctions, and work requirements was accompanied by further investment in child and medical care, transportation and housing assistance, and skills training. Secretary Sullivan concludes with a discussion of economic justice and the continued need for federal entitlements to supplement the service of charitable institutions.

From the viewpoint of "Catholic and feminist wisdom," Professor Christine Firer Hinze analyzes the four values of welfare reform: "work, autonomy, family and community," and criticizes the American cultural emphasis on "wage work and autonomy at the expense of family and community." She finds in Catholic social thought a more insightful meaning of work (including work in the home) as a way for individuals to express and realize themselves and contribute to the common good. Feminist thought also warns that welfare reform will ignore the value of domestic work "in our effort to insure that the poor household head, that is the poor single woman, becomes a participant in the individualist competitive *market* economy." Professor Firer Hinze concludes that according to Catholic and feminist thought, welfare reform "must embody concrete strategies" that are based on a "more holistic understanding" of human dignity, and acknowledge and sustain "family and community relations and responsibilities."

Dr. Stanley Carlson-Thies of the Center for Public Justice documents the unusual phenomenon of the federal government's admission that it cannot meet all of the needs of the poor, and the resulting "devolution" of that responsibility to the states, churches and other private organizations. He presents new proposals by U.S. Senators Dan Coats and John Ashcroft to direct federal funds to religious charities while "ensuring that they will not have to attenuate or abandon their religious character or style of service." Dr. Carlson-Thies also explores the negative reactions of many churches to reform, but concludes that reform "is a cause for hope, despite the flaws of the various plans, just because of the determined effort to transcend the 'shouting match' [within churches over welfare reform] by taking seriously both the institutions of civil society and a key role for government in protecting the poor."

Finally, the primary aim of this issue was to transcend the all too often rancorous and divisive exchanges among Catholics over welfare reform during the last decade and more. Towards that goal, a conference on "Welfare Reform and the Catholic Church" was held at Notre Dame in February of this year, and was sponsored by the Thomas J. White Center of the Notre Dame Law School, with the generous assistance of Notre Dame's Institute for Scholarship in the Liberal Arts and the United States Catholic Conference. The final session was a three hour round table discussion of all of the issues that welfare reform poses for religious believers. Nineteen participants, including leaders of direct service organizations, theologians, philosophers, policy scholars, and professors of law, political science and other disciplines discussed the theological, philosophical, political, practical and personal issues of welfare reform. Our issue presents the transcript of that informative, engaging, sometimes humorous and often congenial conversation.

In the Foreword to our inaugural issue in 1984, the founder of this *Journal*, Professor Douglas Kmiec, articulated the guide for our approach to this symposium with a quote from *Gaudium et Spes*:⁸

Christians should recognize that various legitimate though conflicting views can be held concerning the regulation of temporal affairs. [Proponents] should always try to enlighten one another through honest discussion, preserv-

8. SECOND VATICAN COUNCIL, PASTORAL CONSTITUTION ON THE CHURCH IN THE MODERN WORLD (GAUDIUM ET SPES) no. 75, 43, *reprinted in* THE DOCUMENTS OF VATICAN II 199-308 (W. Abbott ed. 1966).

ing mutual charity and caring above all for the common good.

In that spirit, Monsignor William Fay concluded the "Round Table Discussion:"⁹

The fact that we came here together and entered into this conversation with the kind of goodwill that we did illustrates something to which Pat Fagan alluded: that we came to this table to talk as Catholics about an issue, and not as partisans. That is something very substantial. We have not always done that as Catholics, and we should applaud the fact that we were able to do it today. My own vision is that, as Pat Fagan alluded to in his comments, we are one household. It can become very easy for us to run into our own room and slam the doors, and cook up a scheme within our own environments. In reality, there are a lot of common spaces in the household. The time was long overdue for us to come to this place to sit and talk. It is my hope that what we began today will happen again.

With this issue, we ask that the discussion continue in the same spirit.

9. Msgr. William Fay, Closing Thoughts at the Round Table Discussion: Welfare Reform and the Catholic Church (February 8, 1997), in 11 NOTRE DAME J.L. ETHICS & PUB. POL'Y 730 (1997).

