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## COMMONWEAL OR WOE? THE ETHICS OF WELFARE REFORM

WILLIAM R. O'NEILL, S.J.\*

Injustice anywhere is a threat to justice everywhere. We are caught in an inescapable network of mutuality, tied in a single garment of destiny.

Martin Luther King<sup>1</sup>

In Robert Bolt's play, *A Man for All Seasons*, the aging Cardinal Wolsey admonishes Sir Thomas More: "You're a constant regret to me, Thomas. If you could just see the facts flat on, without that horrible moral squint; with just a little common sense, you could have been a statesman."<sup>2</sup> In Wolsey's eyes, More's moral fastidiousness obscures the legal realm where the "facts" of power and privilege must be seen "flat on." Wolsey's heirs are quick to upbraid our latter-day Mores for their sentimental "moral squint" at welfare reform. Yet even the least sentimental of interpretations is never given tout court; for if measurements of poverty, in Amartya Sen's words, represent "an exercise of description assessing the predicament of people in terms of the prevailing standards of necessities,"<sup>3</sup> our assessments themselves typically betray our tacit evaluations or prejudices (pre-judgments).<sup>4</sup>

Our disputes, that is, pose questions not only of allocative efficiency, e.g., the relative utility of block grants in the Temporary Assistance for Needy Families (TANF) program, but of the very moral and political aims welfare policy is intended to serve. In these pages, I will accordingly first consider the moral genealogy of our welfare policy in light of the more salient provisions of the newly enacted legislation. I will then offer a comparative

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1. Martin Luther King, *Letter from Birmingham City Jail*, in *A TESTAMENT OF HOPE: ESSENTIAL WRITINGS AND SPEECHES OF MARTIN LUTHER KING, JR.*, 290 (James M. Washington ed., 1986).

2. ROBERT BOLT, *A MAN FOR ALL SEASONS* 19 (1990).

3. AMARTYA SEN, *POVERTY AND FAMINES: AN ESSAY ON ENTITLEMENT AND DEPRIVATION* 21 (1981).

4. For a non-pejorative interpretation of prejudice (*praejudicium*), see HANS-GEORG GADAMER, *TRUTH AND METHOD* 265-307 (Joel Weinsheimer and Donald G. Marshall trans., 2d ed. 1991).

appraisal of the principal themes of Roman Catholic social teaching as it pertains to welfare policy. Finally, I will propose a set of moral criteria for the formulation of an equitable policy drawing upon both general ethical and distinctively religious warrants and backing.<sup>5</sup>

### THE MORAL PREMISES OF WELFARE POLICY

As its very title attests, the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 invokes a particular moral rationale, albeit one often obscured in the babel of contending voices. Welfare is essentially a *pis aller*; for the Act's proponents, poverty's persistence represents at best, ill-fortune in life's natural lottery, and at worst, an abdication of individual responsibility. Like distinctive variations on a theme, such views reflect the dominant motifs of our liberal, philosophic heritage, i.e., the primacy of what Isaiah Berlin terms our "negative liberty," the eclipse of the traditional, religious ideal of the common good, and the voluntaristic view of social obligation underwriting our distinction of the "deserving" and "undeserving poor."<sup>6</sup> Our emerging policy, I wish to argue, exhibits an elective affinity with these themes; the "common sense" of our statesmen dispelling any suspicion that the natural lottery might be rigged.<sup>7</sup>

Our modern world, remarked Max Weber, is disenchanted, for the "ultimate and most sublime values have retreated from public life."<sup>8</sup> The "retreat" of the medieval ideal of the common good (*bonum commune*) in the sixteenth and seventeenth centuries heralded the rise of a new school of natural law in which the "liberties of the moderns" reigned supreme.<sup>9</sup> While for Aquinas, "the common good is the end of each individual member of the community," for the modern social-contract theorists, influenced by nominalist legal theory, social obligation is voluntaristically

5. I am indebted to Thomas J. Massaro, S.J. and William J. Hutchison, S.J. for their invaluable analyses.

6. ISAIAH BERLIN, *Two Concepts of Liberty*, in *FOUR ESSAYS ON LIBERTY* 118, 122 (1969).

7. In appealing to Weber's conception of "elective affinity," I wish to show the legitimating influence of certain modern attitudes and beliefs without assuming that our particular policies are fully explained by them. See MAX WEBER, *The Social Psychology of the World Religions*, in *FROM MAX WEBER*, 267-301 (H. H. Gerth and C. Wright Mills trans. and eds., 1946).

8. MAX WEBER, *Science as a Vocation*, in *FROM MAX WEBER*, *supra* note 7, at 155.

9. Benjamin Constant, *De la liberté des anciens comparée à celle des modernes*, in *OEUVRES POLITIQUES DE BENJAMIN CONSTANT*, (C. Louandre ed., 1874).

incurred.<sup>10</sup> Social bonds, once the fruition of the natural *telos* or finality of liberty (*libertas*), are now depicted as the outcome of individual choice (*liberum arbitrium*), whether of Locke's fiduciary contract or the sovereign fiat of Hobbes's Leviathan. No longer "naturally" ordained to the common good, "the only freedom which deserves the name," says John Stuart Mill, "is that of pursuing our own good in our own way, so long as we do not attempt to deprive others of theirs or impede their efforts to obtain it."<sup>11</sup>

The very plurality of our particular ends leads us, remarks Berlin, to "place such immense value upon the freedom to choose."<sup>12</sup> In John Rawls's "political liberalism," for instance, mutually disinterested, rational choosers behind the "veil of ignorance" recognize the lexical priority of individual liberty in preference to the increment of any other social good. Society is itself conceived as a compact of "mutual advantage" in which self-interested agents are bound by formal, procedural constraints of justice as fairness in pursuit of their "conflicting, and indeed incommensurable conceptions of the good."<sup>13</sup> The primacy of individual preference, limited by the like liberties of other individual agents, thus restricts appeals to social benevolence in the design of society's basic institutions; in accordance with the heuristic ideal of the social contract, one is not "naturally" obliged to redress the fortunes of society's least favored members. In Emerson's memorable words, "Do not tell me, as a good man did today, of my obligation to put all poor men in good situations. Are they my poor?"<sup>14</sup>

The priority of individuals' negative liberty as our foremost natural or human right, in turn, determines the nature and scope of liberal rights' theory. "Positive" delimitations of individuals' liberty, e.g., as in basic entitlements or welfare rights to nutritional well-being, health care, or employment opportunities are relegated to an inferior sphere or dismissed as an "exercise of rhetorical license."<sup>15</sup> Our negative liberties, writes Robert

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10. THOMAS AQUINAS, *SUMMA THEOLOGIAE* II-II, Ques. 58, art. 7, 9. For an analysis of the role of nominalism in legal theory, see LOUIS DUPRÉ, *PASSAGE TO MODERNITY: AN ESSAY IN THE HERMENEUTICS OF NATURE AND CULTURE* 120-44 (1993).

11. JOHN STUART MILL, *ON LIBERTY* 72 (Gertrude Himmelfarb ed., 1974).

12. BERLIN, *supra* note 6, at 168.

13. JOHN RAWLS, *POLITICAL LIBERALISM* 99-107 (1993) [hereinafter RAWLS, *POLITICAL LIBERALISM*]; John Rawls, *Justice as Fairness, Political not Metaphysical*, 14 *PHIL. & PUB. AFF.* 225 (1985). Cf. JOHN RAWLS, *A THEORY OF JUSTICE* 4, 83 (1971) [hereinafter RAWLS, *A THEORY OF JUSTICE*].

14. RALPH WALDO EMERSON, *Self-Reliance*, in *ESSAYS AND LECTURES* 261-62 (1983).

15. JOEL FEINBERG, *SOCIAL PHILOSOPHY* 66-67 (1973).

Nozick, "fill the space of rights," while duties corresponding to such rights chiefly enjoin forbearance.<sup>16</sup> So it is, the predicament of greater hunger for fourteen million children and their families with the recent reduction in food stamp benefits by \$28 billion over the next six years,<sup>17</sup> or of the denial of Supplemental Security Income (SSI) to an estimated 315,000 children with disabilities, 40,000 to 50,000 of whom will likewise lose Medicaid benefits, was not regarded as an important *ethical* failure.<sup>18</sup>

A loosening of the moral reins thus ensues in the public realm as we "withdraw into the circle of family and friends; with this little society formed to [our] own taste," in Tocqueville's words, we "gladly leave the greater society to look after itself."<sup>19</sup> Vast inequalities of wealth and income, unprecedented in the modern period, are deemed just; for if, as is generally assumed, our basic social institutions abide by fair and impartial rules, poverty can no longer be regarded as *morally* tragic, i.e., as a failure of moral entitlement or right.<sup>20</sup> Succor of the "deserving poor," e.g., the widows and their young children who were the original beneficiaries of the Aid to Dependent Children (ADC) program (Title IV of the Social Security Act of August 14, 1935), is thus perhaps best viewed along the axis of Hohfeld's jural correlatives of "privilege and no-right," rather than of "duty and right."<sup>21</sup> For, in general, even the "deserving poor" lack moral claim-rights against the State to ensure the satisfaction of basic "positive"

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16. ROBERT NOZICK, *ANARCHY, STATE, AND UTOPIA* 238 (1974).

17. Half of the food stamp cuts will affect households with incomes below half the poverty line (6,250 for a family of three), while about two-thirds of the cuts will be borne by families with children. Three-hundred thousand legal immigrant children will lose food stamps entirely. The Center on Budget and Policy Priorities, *The Depth of the New Food Stamp Cuts in the New Welfare Law* (Aug. 16, 1996); *How the Welfare Act will Work*, CDF REP. (Children's Defense Fund, Washington D.C.) Sept. 1996, at 8.

18. *How the Welfare Act Will Work*, supra note 17, at 5, 8; cf. DAVID A. SUPER ET AL., *THE NEW WELFARE LAW* (Washington D.C.: Center on Budget and Policy Priorities, 1996), 29-30.

19. ALEXIS DE TOCQUEVILLE, *DEMOCRACY IN AMERICA* 506 (George Lawrence trans., J. P. Mayer ed., 1969).

20. In 1993, the lowest quintile of income earners received 4% of all income and owned 7% of all wealth in the U.S. The highest quintile received 49% of the income and owned 44% of the wealth; the income share of the lowest 40% declined from 15% in 1974 to 13% in 1994, while those of the top quintile rose from 44% to 49%; and for the decade 1980-1990, the increased income of the wealthiest 2.5 million Americans equaled the total income of the poorest 50 million. U.S. Census Bureau, cited in Marc J. Cohen & Don Reeves, *The Raging Debate About U.S. Poverty*, in *WHAT GOVERNMENTS CAN DO: SEVENTH ANNUAL REPORT OF THE STATE OF WORLD HUNGER* 42-43 (1996).

21. See WESLEY NEWCOMB HOHFELD, *FUNDAMENTAL LEGAL CONCEPTIONS* 36-40 (1964).

claims to well-being,<sup>22</sup> i.e., what Sen terms persons' capabilities to achieve valuable functionings.<sup>23</sup> AFDC benefits did not, for instance, suffice to raise a family above the official poverty line;<sup>24</sup> yet with the rescinding of these *legal* entitlements, 1.1 million additional children, the majority in working families, will likely succumb to poverty.<sup>25</sup>

The onus, indeed, falls upon the poor to show that they are worthy of society's largess. With the voluntaristic attenuation of social obligation, discrimination of the "deserving" from the "undeserving poor" rests, I surmise, in our social typifications.<sup>26</sup> While ADC was lauded for preserving the traditional familial role of women, women's greater participation in the labor market, and the rising percentage of single mothers and out-of-wedlock children on AFDC altered our assessments of their predicament.<sup>27</sup> Unlike widows, single mothers were more readily stigmatized as irresponsible, idle, and promiscuous; their child-rearing no longer regarded as honorable work.<sup>28</sup> Dismantling racial barriers to participation in welfare programs in the 1960s, moreover, seemed something of a pyrrhic victory; for as recipients differing from the ideal-typical beneficiary of ADC increased, so too did the likelihood of their being classified as "undeserving." In Robert Wuthnow's words, "[a]ll too often," the character of the poor

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22. The Center on Budget and Policy Priorities notes that between "1990 and 1992 when unemployment climbed, federal AFDC expenditures rose \$6 billion above the amount expended in 1989. The Bill's 'contingency fund', however, includes only \$2 billion — or one-third as much. The contingency funds are likely to run out part way into the next recession." Restrictive criteria, moreover, apply to the allocation of such funds. SUPER ET AL., *supra* note 18 at 1-2, 9-10.

23. See AMARTYA SEN, *Capability and Well-Being*, in THE QUALITY OF LIFE 30-53 (Martha C. Nussbaum & Amartya Sen eds., 1993).

24. In the early 1990's, no state offered AFDC benefits that raised their families above 80% of the official poverty line. Indeed, in the least generous states, the figure approaches 40%. The average AFDC family of three in 1994 received cash and Food Stamp benefits that raised it to two-thirds of the poverty line. SHARON PARROTT, *HOW MUCH DO WE SPEND ON WELFARE* (1995).

25. JOHN T. COOK & LAURA P. SHERMAN, *ECONOMIC SECURITY AMONG AMERICA'S POOR: THE IMPACT OF STATE WELFARE WAIVERS ON ASSET ACCUMULATION* (1996); Cf. SUPER ET AL., *supra* note 18, at 3, 31.

26. For an analysis of typification in the social sciences, see Maurice Natanson, *Phenomenology and Typification: A Study in the Philosophy of Alfred Schutz*, 37 SOC. RES. 1-22 (1970).

27. See LINDA GORDON, *PITIED BUT NOT ENTITLED: SINGLE MOTHERS AND THE HISTORY OF WELFARE 1890-1935* (1994).

28. See NANCY FRASER, *Women, Welfare and the Politics of Need Interpretation*, in UNRULY PRACTICES: POWER, DISCOURSE AND GENDER IN CONTEMPORARY SOCIAL THEORY 144 (1989).

is diminished implicitly in efforts to account for their situation in the first place. They symbolize the opposite of character traits thought to be the basis of middle-class success and security. The poor are thus credited . . . with limited intelligence, an inability to plan, having made bad choices, falling in with bad friends or marrying irresponsible partners, being weak-willed with respect to drugs and alcohol, or simply being lazy.<sup>29</sup>

Consonant, of course, with the discrimination of "deserving" and "undeserving poor" is the enlarged scope of private charity. The voluntary, religious sector of civil society orchestrates our social pity; yet the public drama, one might say, is not of equal protagonists before the law, but of those rendered supplicants to their benefactors. Religious voices occupy the interstices of "the greater society," yet figure only incidentally in securing the justice of its basic institutions. As Robert Wuthnow observes, religious sentiments temper our venality, yet do little to inspire institutional economic reform.<sup>30</sup> Indeed, for Rawls, distinctively religious traditions of justice, inasmuch as they rest on richer conceptions of the commonweal, imperil the "overlapping consensus" of a modern, pluralist democracy<sup>31</sup> in what Weber presciently described as our "godless and prophetless time."<sup>32</sup>

#### MOTIFS OF ROMAN CATHOLIC SOCIAL TEACHING

Although critics of the new welfare policy speak of the fraying of our social contract, the very idea of a compact of abstract, socially disenfranchised individuals, as we have seen, already represents a considerable attenuation of earlier notions of covenantal fidelity to the commonweal. Inspired by the great biblical injunctions of justice or righteousness (*sedaqah*) and right judgment (*misphat*) marking the reign of God, modern Roman Catholic social teaching recurs to the social ideal of the common good in elaborating its structural critique.<sup>33</sup> In their notable pastoral letter, *Economic Justice for All*, issued in 1986, and in subsequent pronouncements on the economy and welfare, the Roman Catholic bishops of the U.S. sought to apply the heritage of their

29. ROBERT WUTHNOW, GOD AND MAMMON IN AMERICA 216 (1994).

30. *Id.* at 198-221.

31. RAWLS, POLITICAL LIBERALISM, *supra* note 13, at 133-72.

32. WEBER, *supra* note 8, at 153.

33. For an interpretation of biblical conceptions of justice, see John Donahue, *Biblical Perspectives on Justice*, in THE FAITH THAT DOES JUSTICE 68-112 (John C. Haughey ed., 1977).

social teaching to the culturally diverse and religiously pluralist American polity.

Since the first modern social encyclical, Leo XIII's *Rerum Novarum* (1891), the Church's magisterial teaching has upheld the fundamental, intrinsic worth of persons as created in the "image of God." Earlier perfectionist interpretations of human finality, consistent with an organically conceived social hierarchy, have, in recent teaching, ceded to a more deontological appeal to moral persons' equal dignity and rights. John XXIII thus affirms in his encyclical *Pacem in Terris*,

Any human society, if it is to be well-ordered and productive, must lay down as a foundation this principle, namely, that every human being is a person; that is, his nature is endowed with intelligence and free will. Indeed, precisely because he is a person he has rights and obligations flowing directly and simultaneously from his very nature. And as these rights and obligations are universal and inviolable, so they cannot in any way be surrendered.<sup>34</sup>

Pope John invokes both norms of reason and of Revelation:

If we look upon the dignity of the human person in the light of divinely revealed truth, we cannot help but esteem it far more highly; for men are redeemed by the blood of Jesus Christ, they are by grace the children and friends of God and heirs of eternal glory.<sup>35</sup>

The recognition and institutional protection of persons' dignity sets the framework of social policy on welfare. The United States Catholic Conference, while critical of the status quo ante, asserts that "for the Catholic community, the measure of welfare reform is whether it will enhance the lives and dignity of poor children and their families."<sup>36</sup> The equal recognition and respect due moral persons in virtue of their dignity is, in turn, parsed in terms of agents' basic human rights. So it is, the discourse of human rights serves as a lingua franca in mediating the Church's theological beliefs regarding covenantal fidelity in a religiously pluralist context. In the words of the bishops in their 1986 Pastoral Letter:

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34. POPE JOHN XXIII, *PACEM IN TERRIS*, para. 9 (1963), *reprinted in* CATHOLIC SOCIAL THOUGHT: THE DOCUMENTARY HERITAGE 132 (David J. O'Brien & Thomas A. Shannon eds., 1992).

35. *Id.*

36. Administrative Board, U.S. Catholic Conference, *Moral Principles and Policy Priorities on Welfare Reform*, 24 *ORIGINS* 677 (1995) [hereinafter *Moral Principles*]. Cf. Catholic Charities USA, *Transforming the Welfare System: A Position Paper of Catholic Charities USA* (1994).



Catholic social teaching spells out the basic demands of justice . . . in the human rights of every person. These fundamental rights are prerequisites for a dignified life in community. The Bible vigorously affirms the sacredness of every person as a creature formed in the image and likeness of God. The biblical emphasis on covenant and community also shows that human dignity can only be realized and protected in solidarity with others.<sup>37</sup>

The appeal to human dignity "in solidarity with others" thus serves as a proximate foundation of human rights, ascertainable by natural reason, and hence prior to positive legislative enactments, constitutional arrangements, or judicial decisions, even as dignity is itself founded upon a distinctively religious understanding of creation and redemption. This complex foundation of human rights permits the Church to speak prophetically to the world while remaining rooted in the attitudes and beliefs of Christian discipleship. In specifying the "minimum conditions" for the realization of human dignity, the bishops seek to extend the notion of human rights to encompass not merely the "negative" civil-political rights enshrined in our American tradition, e.g., the freedoms *from* interference or coercion expressed in our rights to freedom of worship, assembly, speech, etc., but the "positive" socio-economic rights of subsistence, employment, minimal health care, education, etc.<sup>38</sup> The bishops thus conclude in their Tenth Anniversary statement of *Economic Justice for All, A Catholic Framework for Economic Life*, "All people have a right to life and to secure the basic necessities of life (e.g., food, clothing, shelter, education, health care, safe environment, economic security). . . . Society has a moral obligation, including governmental action where necessary, to assure opportunity, meet basic human needs and pursue justice in economic life."<sup>39</sup>

Invoking dignity and human rights as the moral minima reveals, moreover, that in adopting the modern language of human rights the Church charts a via media between marxist

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37. NATIONAL CONFERENCE OF CATHOLIC BISHOPS, *ECONOMIC JUSTICE FOR ALL* (1986), reprinted in *CATHOLIC SOCIAL THOUGHT*, *supra* note 34, at 597 para. 78 [hereinafter *ECONOMIC JUSTICE FOR ALL*].

38. *Id.* at 598.

39. U.S. Conference of Catholic Bishops, *A Catholic Framework for Economic Life*, 26 *ORIGINS* 370 (1996) [hereinafter *Catholic Framework*]. While maintaining that "[W]elfare reform should affirm the importance of marriage, strong intact families, personal responsibility, self-discipline, sacrifice and basic morality," the bishops insist that such reform "should help mothers and fathers meet the social, economic, educational and moral needs of their children." *Moral Principles*, *supra* note 36, at 676.

socialism and laissez-faire liberalism.<sup>40</sup> In the Roman Catholic tradition, the common good entails neither the collectivist subordination of the individual to a suprapersonal entity such as the State, nor the reductive individualism of modern liberalism. For the common good is conceived distributively, not en masse as "the sum total of those conditions of social living" which protect and promote the dignity and rights of every person.<sup>41</sup> In a similar vein, the principle of subsidiarity provides for the distinctive role of the mediating institutions of civil-society, e.g., the churches, unions, and other voluntary associations, so that the structural prerequisites of the common good are both equitably and efficiently satisfied.<sup>42</sup>

As the foregoing remarks reveal, Roman Catholic social teaching, despite its irenic tenor, offers a richer understanding of the moral aims of social welfare policy than envisioned in the recent legislation. The structural ideal of the common good, mediated by the principle of subsidiarity, gives rise to a substantive conception of justice whereby it is not so much fair procedures that determine just outcomes, as an antecedent set of material outcomes, i.e., the institutional fulfillment of persons' basic human rights that render procedures just or fair. From the earliest of the social encyclicals, a fair remuneration depended not only upon the contractual agreements of commutative justice, but upon the strictures of distributive and social justice which would ensure a "living wage."<sup>43</sup> The dignity of labor and the rights of workers thus enjoyed pride of place in the encyclical tradition. For work is conceived less in privative terms, than as the characteristic mode of expressing persons' dignity and fulfilling their contribution to the commonweal.

In an encyclical devoted to the moral import of labor, *Laborem Exercens*, John Paul II affirms:

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40. See John A. Coleman, S.J., *Neither Liberal Nor Socialist: The Originality of Catholic Social Teaching*, in ONE HUNDRED YEARS OF CATHOLIC SOCIAL THOUGHT: CELEBRATION AND CHALLENGE 25-42 (1991).

41. POPE JOHN XXIII, *MATER ET MAGISTRA* para. 65 (1961), reprinted in CATHOLIC SOCIAL THOUGHT, *supra* note 34, at 84, 94; see also *PACEM IN TERRIS*, *supra* note 34, at paras. 55-61; SECOND VATICAN COUNCIL, *GAUDIUM ET SPES* para. 26 (1965), reprinted in CATHOLIC SOCIAL THOUGHT, *supra*, at 166, 181.

42. POPE PIUS XII, *QUADRAGESIMO ANNO* paras. 79-80 (1931), reprinted in CATHOLIC SOCIAL THOUGHT, *supra* note 34, at 42, 60; see also *MATER ET MAGISTRA*, *supra* note 41, at paras. 51-58; *ECONOMIC JUSTICE FOR ALL*, *supra* note 37, at paras. 96-101, 119-24.

43. For an analysis of the threefold understanding of justice in modern Roman Catholic social teaching, see DAVID HOLLENBACH, *Modern Catholic Teaching Concerning Justice*, in JUSTICE, PEACE, AND HUMAN RIGHTS: AMERICAN CATHOLIC SOCIAL ETHICS IN A PLURALISTIC CONTEXT 16-33 (1988).

The word of God's revelation is profoundly marked by the fundamental truth that [the human person], created in the image of God, shares by his work in the activity of the Creator and that, within the limits of his own human capabilities, [the human person] in a sense continues to develop that activity, and perfects it as he advances further and further in the discovery of the resources and values contained in the whole of creation.<sup>44</sup>

Welfare policy, accordingly, must enhance both the opportunities and quality of work as befits the essential dignity of the laborer. In the words of the U.S. bishops:

Those who can work ought to work. Employment is the expected means to support a family and make a contribution to the common good. Too often welfare discourages work by eliminating health and child-care benefits for those who leave the welfare rolls for the labor market. Real reform will offer education, training and transitional help to those who exchange a welfare check for a paycheck. The challenge is to ensure that reform leads to productive work with wages and benefits that permit a family to live in dignity. Rigid rules and arbitrary time lines are no substitute for real jobs at decent wages and the tax policies which can help keep families off welfare.<sup>45</sup>

The social requisites of dignity pertain no less to those "who cannot work or whose 'work' is raising our youngest children":

Society has a responsibility to help meet the needs of those who cannot care for themselves, especially young children. Aid to Families with Dependent Children, food stamps and other entitlement programs provide essential support for poor children. We will support more effective and responsive federal-state-community partnerships, but we cannot support "reform" that will make it more difficult for poor children to grow into productive individuals. We cannot support reform that destroys the structures, ends entitlements and eliminates resources that have provided an essential safety net for vulnerable children or permits states to reduce their commitment in this area. Also, we cannot support punitive approaches that target immigrants, even legal residents, and take away the minimal benefits that they now receive.<sup>46</sup>

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44. POPE JOHN PAUL II, *LABOREM EXERCENS* para. 25 (1981), *reprinted in* CATHOLIC SOCIAL THOUGHT, *supra* note 34, at 352, 385.

45. *Moral Principles*, *supra* note 36, at 676.

46. *Id.*

As such, the welfare of the most vulnerable members of society is fittingly understood as the touchstone of economic policy. The U.S. bishops argue in the Tenth Anniversary statement of *Economic Justice for All*,<sup>47</sup> "[a] fundamental moral measure of any economy is how the poor and vulnerable are faring . . . . All of economic life should recognize the fact that we are all God's children and members of one human family, called to exercise a clear priority for 'the least among us.'"<sup>48</sup> The latter, "preferential option for the poor," first adumbrated in Latin American liberation theology, and subsequently incorporated in John Paul II's encyclical, *Sollicitudo rei socialis* and the U.S. bishops' pastoral letter on the economy, brings into relief the fundamental rights of the poor in welfare policy deliberation.<sup>49</sup> As a matter of basic equity, the State cannot, then, abdicate its responsibility to ensure the satisfaction of the legitimate claim rights of its least favored members. While fully acknowledging the proper role of states and localities, as well as of the mediating institutions of civil society, e.g., the church-based charitable organizations, the bishops nonetheless contend that "poverty has national dimensions and consequences that require federal commitment and national standards, safeguards and protections. The nation needs to reform its welfare system, not abandon the federal government's role and responsibilities in fighting poverty."<sup>50</sup>

#### A MODEST PROPOSAL

The preceding precis of modern Roman Catholic social teaching reveals the affinities and differences prevailing between the Catholic bishops and the architects of our present welfare policy. And although the bishops propose developing "a new cultural consensus that the basic economic conditions of human welfare are essential to human dignity and are due persons by right," the temper of times seems rather to favor Wolsey's realism than the bishops' "moral squint."<sup>51</sup> In this concluding section, I will accordingly offer a critical reconstruction of several, central motifs of the Roman Catholic social tradition as a prelude to proposing a modest set of criteria for evaluating welfare policy.

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47. ECONOMIC JUSTICE FOR ALL, *supra* note 37.

48. *Catholic Framework*, *supra* note 39, at 370-71.

49. POPE JOHN PAUL II, SOLICITUDO REI SOCIALIS paras. 42-43 (1987), reprinted in CATHOLIC SOCIAL THOUGHT, *supra* note 34, at 395, 425-27; ECONOMIC JUSTICE FOR ALL, *supra* note 37, at paras. 86-88.

50. *Moral Principles*, *supra* note 36, at 677.

51. ECONOMIC JUSTICE FOR ALL, *supra* note 37, at 598.

As we have seen, the essential dignity of persons in solidarity remains the font of Roman Catholic social ethics. While a detailed analysis of formal justification of attributing dignity to agents as a supervenient property<sup>52</sup> lies beyond the scope of this essay, it suffices to observe that the "immense value" we place upon our negative liberty itself presumes, in Berlin's words, that we regard autonomous agency "as an end in itself, and not as a temporary need."<sup>53</sup> Even Rawls's original contract, as I have argued elsewhere,<sup>54</sup> departs from the ideal of a pure, procedural justice in distinguishing agents' "highest-order interests" in the realization of their "moral powers."<sup>55</sup> The contracting parties, that is, implicitly regard themselves as "free and equal" moral agents, "all equally worthy of being represented"<sup>56</sup> as "moral persons with a right to equal respect and consideration in the design of their common institutions."<sup>57</sup> The immunities from coercion or interference recognized in the original position thus acquire their moral salience from the antecedent supposition of respect for moral persons as agents.

These comparatively richer moral premises enjoining respect for moral agency serve as a general, ethical analogue for the theological interpretation of human dignity in Roman Catholic thought. Indeed, the very rhetorical practice of rational claim-making, e.g., upholding our several negative liberties as claim-rights, exhibits our moral equality as interlocutors. One is reminded of Tocqueville's sage remark that

There is nothing which, generally speaking, elevates and sustains the human spirit more than the idea of rights. There is something great and virile in the idea of right which removes from any request its suppliant character, and places the one who claims it on the same level as the one who grants it.<sup>58</sup>

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52. See FEINBERG, *supra* note 15, at 90. According to Feinberg, a supervenient property is "a property possessed by something in virtue of some other property or properties it possesses." *Id.* Thus, under a supervenient property analysis, "[i]f one is more worthy than the other it must be because they have different properties. . . . [and] if two things or two persons have the same worth . . . they must have in common some characteristics . . . that is the basis of their equal worth." *Id.*

53. BERLIN, *supra* note 6, at 168-69.

54. WILLIAM R. O'NEILL, S.J., *THE ETHICS OF OUR CLIMATE* 62-78 (1994).

55. John Rawls, *Kantian Constructivism in Moral Theory*, 77 J. PHIL. 525 (1980).

56. *Id.* at 533, 546.

57. John Rawls, *Fairness to Goodness*, 84 PHIL. REV. 536, 539 (1975).

58. ALEXIS DE TOCQUEVILLE & GUSTAVE DE BEAUMONT, *TOCQUEVILLE AND BEAUMONT ON SOCIAL REFORM* 17 (S. Drescher ed. & trans., Harper & Row

Human rights, that is, express our moral self-knowledge as in Joel Feinberg's words, "dignified objects of respect, both in [our] own eyes and in the view of others."<sup>59</sup>

Now in ascribing worth, rather than mere price to persons as agents, we implicitly valorize the prerequisites of their exercising agency, i.e., not only our negative, civil liberties, but basic security and subsistence.<sup>60</sup> Alan Gewirth terms these "the generic goods of agency," inasmuch as they are presupposed in any reasonable conception of flourishing.<sup>61</sup> Such goods embracing both negative liberties and positive needs or welfare rights are mutually implicatory, for they constitute the moral minima of respect presumed in one's status as claimant. For what Rawls terms the "fair value" of liberty is imperilled if persons' basic right to adequate nutrition or security is denied.<sup>62</sup> And so too, one's right to security is threatened if liberties of effective participation in civic life are systemically suppressed. Preserving and protecting persons' basic agential *capabilities* (as the pragmatic analogue of *libertas*), rather than merely their negative liberties, is thus a prerequisite of assessing moral responsibility. Censuring

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1968), *quoted in* K. R. Minogue, *Natural Rights, Ideology and the Game of Life*, in *NATURAL RIGHTS, IDEOLOGY AND THE GAME OF LIFE*, in *HUMAN RIGHTS* 13, 34 (Eugene Kamenka & Alice Ehr-Soon Tay eds., 1977). *Cf.* R.J. Vincent's observation,

Not only are rights an important part of the language of morals, but they have, too, a unique role within that language. It is to denote a particular moral attitude. The demeanour of someone claiming his or her rights is not that of begging or pleading, and the response if the claim is met is not one of gratitude. Equally, if the claim is not met, the response is not one of disappointment but of indignation. This is because rights are insisted on as part of one's status as a person. They are not favours done by the holders of power to those beholden to it.

R.J. VINCENT, *HUMAN RIGHTS AND INTERNATIONAL RELATIONS* 17 (1986) (citations omitted).

59. JOEL FEINBERG, *supra* note 15, at 58-59.

60. See HENRY SHUE, *BASIC RIGHTS: SUBSISTENCE, AFFLUENCE, AND U.S. FOREIGN POLICY* 5-87 (1980).

61. ALAN GEWIRTH, *HUMAN RIGHTS* 41-78 (1982). By "reasonable" I understand a conception of flourishing consistent with the status of the agent as a "dignified object of respect." *Cf.* RAWLS, *POLITICAL LIBERALISM*, *supra* note 13, at 58-66.

62. RAWLS, *A THEORY OF JUSTICE*, *supra* note 13, at 204-5, 224-27. *Cf.* the refined understanding of needs, capabilities, and functionings as defining the moral minima of agency in the analyses of Amartya Sen & Martha C. Nussbaum in *WOMEN, CULTURE AND DEVELOPMENT* (Martha C. Nussbaum & Jonathan Glover eds., 1995), at 259-73, 61-115, 360-95 respectively.

"idleness" presumes the antecedent satisfaction of basic rights, e.g., the potential of fitting, dignified employment.<sup>63</sup>

The rhetoric of such basic rights thus illumines what Jürgen Habermas terms "systematic distortions" of our civic discourse.<sup>64</sup> For the common good describes the set of basic, institutional arrangements presumed for the discourse of free and equal moral agents. Formally, each person is regarded as a worthy interlocutor in determining the design of society's basic institutions. Materially, such uncoerced civic discourse presumes the institutional guarantees of a regime of basic human rights, for the maxim of respect implies not only recognition of an agent's particular point of view, but, since such views may reflect others' coercive repression, due regard for her autonomous capacity to form, revise, and act upon such a viewpoint.<sup>65</sup>

Our moral entitlement to *equal* respect or consideration in such a discursive rendering of the common good, in turn, justifies *preferential* treatment for those whose basic rights are most imperiled — in Camus' phrase, our taking "the victim's side."<sup>66</sup> For if equal consideration does not imply identical treatment, so one may distinguish legitimately between indiscriminate regard for moral persons and discriminate response to their differing situations.<sup>67</sup> Aquinas's observation that a servant who is ill merits greater attention than a son who is not, pertains, a fortiori, to equals: the fulfillment of equal basic rights, in materially dissimilar conditions, justifies a discriminate response.<sup>68</sup> In social eth-

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63. It is here, I believe, that my greatest difference with Lawrence M. Mead rests, for in recognizing agential rights (both positive and negative), I accord *moral* priority to persons' capabilities rather than mere functionings, e.g., employment at substandard jobs. The former requires, as a matter of fundamental justice or equity, that persons' basic capabilities to work be sustained, e.g., through provision of appropriate education, job-training, counseling, child care, etc. Insisting that persons work while neglecting these is akin to saying "Rise, pick up your pallet and walk," without the obligatory miracle. *John* 5:8-9.

64. See Jürgen Habermas, *The Hermeneutic Claim to Universality*, in JOSEPH BLEICHER, *CONTEMPORARY HERMENEUTICS* 190-203 (1980).

65. See BERNARD WILLIAMS, *The Idea of Equality*, in *PROBLEMS OF THE SELF* 236-37 (1973).

66. ALBERT CAMUS, *THE PLAGUE* 230 (Stuart Gilbert trans., Alfred A. Knopf Books 1948) (1947). In the present context, the term "victim" is an evaluative moral description referring to those suffering deprivation of their basic rights; as such, it is reducible neither to class membership nor to a particular psychological state. I have developed this analysis in *No Amnesty for Sorrow: The Privilege of the Poor in Christian Social Ethics*, 55 *THEOLOGICAL STUD.* 4 (1994).

67. See GENE OUTKA, *AGAPE* 20 (1972). Cf. RONALD DWORKIN, *TAKING RIGHTS SERIOUSLY* 227 (1978).

68. ST. THOMAS AQUINAS, *SUMMAE THEOLOGIAE* II-II, Q. 31, art. 3.

ics generally, such a discriminate response is expressed in the graduated moral urgency of differing human rights, i.e. the lexical priority of agents' basic rights over other, less exigent claims, e.g. property rights; and in the differing material conditions presumed for realizing the same human rights. A regime of rights may thus embody a legislative or juridical preference for the least favored in society and differential material entitlements corresponding to the differing intrapersonal and interpersonal prerequisites of agency, e.g. the greater nutritional needs of pregnant women.<sup>69</sup>

These brief remarks permit us, I believe, to "translate" the fundamental motifs of Roman Catholic social teaching into a persuasive, discursive idiom, without thereby assuming the burden of keeping "our metaphysics warm."<sup>70</sup> For religious attitudes and beliefs may supply an ultimate underpinning or backing of our rights-warrants, while illuminating the immediate context of their application through narrative, figure, or trope, e.g., the Lukan parable of the Good Samaritan.<sup>71</sup> Let me conclude by applying these general ethical tenets to the issue of welfare reform in the form of policy criteria:

1. The basic, moral rights of agents enjoy a lexical priority with respect to other less basic claims.

While such moral criteria do not suffice for the determination of specific policies, they establish the pertinent aims such policies must serve. Children's rights to nutritional well-being and basic health care thus become politically exigent; as *moral* entitlements, they must be legally protected with appropriate institutional guarantees. The significant reduction in nutritional benefits in the new legislation (e.g., the \$2.9 billion reduction in child nutrition programs over the next six years, including the Child and Adult Care Food Program (CACFP), in addition to the massive reduction in food stamp benefits) is therefore especially

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69. See JEAN DRÈZE & AMARTYA SEN, *HUNGER AND PUBLIC ACTION* 37-42 (1989).

70. T. S. ELIOT, *Whispers of Immortality*, in *THE COMPLETE POEMS AND PLAYS*: 1909-1950 32, 33 (1962).

71. Pace Rawls, rather than an "overlapping consensus" in which religious backing is "bracketed" in civic deliberation, we may speak of a fluid, "fusion of horizons" in which consensus is mediated through the understanding of difference, including the great religious traditions. See O'NEILL, *supra* note 54, at 129-48.



worrisome,<sup>72</sup> as are the capped funding provisions in the TANF program and the insufficient allotment of contingency funds.<sup>73</sup>

2. Such basic, mutually implicative claim-rights define a moral minima for public policy.

Policies adopted by the states must ensure the most effective means of implementation of persons' basic rights. Since no transfers or trade-offs are permissible at this most basic level, policies must be comprehensive (encompassing all qualified persons) and integral (addressing all pertinent claims).<sup>74</sup> Latitude in developing state policies in a cooperative federalism should not exacerbate the inequitable allocation of benefits (or burdens) across states and localities characteristic of AFDC; neither should residents (non-citizen immigrants) suffer the loss of basic *human* rights.<sup>75</sup> Consistent with the political aim of ensuring persons' basic capabilities, legitimate incentives for employment, while laudable, must be complemented with adequate resources devoted to ensure training, education, job-counseling, placement, and appropriate child care. Contrary to the restrictive two-year limit of TANF, young, single mothers should not be forced to work in the formal sector where this would redound to the detriment of their children.<sup>76</sup> (The Office of Management and Budget estimates that if states meet their new and higher welfare

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72. SUPER ET AL., *supra* note 18, at 22-23. The Child and Adult Care Food Program provides meals to children in child care centers and family day care homes.

73. *Special Report: Welfare Law*, CDF REP. (Children's Defense Fund, Washington D.C.), Sept. 1996, at 5-6 [hereinafter *Welfare Law*]. Benefits are not indexed for inflation. Similarly dubious from the perspective of basic rights are the more restrictive criteria of childhood disability and the states' prerogative of imposing family capping and a teenage mother exclusion. *Id.* at 7-8. See SUPER ET AL., *supra* note 18, at 29-30.

74. For a rights-based analysis of priority principles for public policy, see SHUE, *supra* note 60, at 111-19.

75. The new law permits states to reduce their share of the maintenance of effort by 25% of their 1994 levels, or 80% for states failing to satisfy mandatory work requirements. States may transfer 30% of their federal TANF block grant funds to the Child Care and Development Block Grant and the Social Services Block Grant (transfers to the latter alone may not exceed 10% of a states' federal TANF block grant allocation). States, moreover, are permitted to eliminate benefits for a child born to a mother receiving welfare. See SUPER ET AL., *supra* note 18, at 8.

76. In ECONOMIC JUSTICE FOR ALL, *supra* note 37, at para. 207, the American bishops contend:

[S]ociety's institutions and policies should be structured so that mothers of young children are not forced by economic necessity to leave their children for jobs outside the home. The nation's social welfare and tax policies should support parents' decisions to care for

work targets, child care funding for families on welfare will suffer a \$2.4 billion shortfall.<sup>77</sup> Yet under the new law, states are permitted to require parents of children six years and older to work, even if child care is not available.) One must similarly question the rigid time limits incorporated under TANF of five years in a lifetime, which, as we have seen, may leave over a million children and their mothers bereft of support.

3. Duties correlative to basic rights imply not only forbearance, but structural guarantees against deprivation and aid for those deprived.<sup>78</sup>

An equitable welfare policy must, in conjunction with other pertinent public policies, redress the structural causes of deprivation; a fortiori, the form of aid must not perpetuate systemic deprivation. Integral welfare policies must nurture families, provide for dignified employment for parents and appropriate educational opportunities for their children. Yet as we have seen, work is regarded in excessively retributive terms (the Congressional Budget Office estimates a nearly \$12 billion shortfall in work-related costs, excluding child care) and paltry allowance made for enhanced inner-city education (while under the former legislation, education was accounted as a work-activity, the new law may pit employment obligations against class attendance).<sup>79</sup> The burden of the aforementioned reductions in nutritional benefits and cash assistance is further aggravated by the disproportionate housing costs borne by the poorest sector of society, e.g., by 1985, 45% of poor households expended 70% or more of their incomes on housing.<sup>80</sup>

4. It follows as a corollary, that appeals to the private, charitable sector cannot displace federal, state, and local governments' responsibility for ensuring that persons' basic rights are satisfied.

The threefold set of duties correlative to agents' basic rights, i.e., of forbearance, protection of the most vulnerable, and aid to

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their own children and should recognize the work of parents in the home because of its value for the family and for society.

77. *Welfare Law*, *supra* note 73, at 8. Waivers, failure to meet work requirements, or reduction in caseloads may have possible mitigating effects. See SUPER ET AL., *supra* note 18, at 13-14.

78. SHUE, *supra* note 60, at 35-64.

79. SUPER ET AL., *supra* note 18, at 10-11. Contrary to the intent of the law, caseload reduction credits may be incurred by limiting eligibility requirements or imposing barriers to receiving aid. *Id.*

80. Cohen & Reeves, *supra* note 20, at 43.

those deprived, are borne by citizens generally; yet typically, the latter duties are mediated structurally, i.e., through the appropriate institutions of government. Both equity and efficiency require that appropriate, universal standards, corresponding to persons' basic rights, e.g., of nutritional well-being and health care, be established and suitably enforced.<sup>81</sup> Greater allocative efficiency, e.g., in applying the criterion of Pareto optimality to welfare policy, must accordingly be consistent with persons' equal rights and duties.<sup>82</sup> Collaborative models of public and private partnership commend themselves as even "the most optimistic estimates predict that contributions to charities might make up for only 5% of the federal cuts."<sup>83</sup> Indeed, private charities such as Catholic Charities, USA depend upon federal subsidies. "Almost half the \$87 billion charities will spend in 1996 will come from federal funds."<sup>84</sup>

5. The participatory rights of those most affected by welfare policy must be honored.

As Henry Shue observes, "for a right to the liberty of participation to be of any consequence, the participation must be effective and exert some influence upon outcomes." Basic participatory liberties are "effective" inasmuch as they exercise "genuine influence upon the fundamental choices among the social institutions and the social policies that control security and subsistence and, where the person is directly affected, genuine influence upon the operation of institutions and the implementation of policy."<sup>85</sup> It follows, then, that in the design and implementation of welfare policy, the views and experience of recipients must be respected; above all, persons must not be

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81. In Shue's words:

[A]ppeals for voluntary compliance with one's duty to aid others to enjoy subsistence can be unfair, almost to the point of mild cruelty, to the responsive. For reliance on voluntary contribution allows the unresponsive totally to escape their fair share of the effort and encourages the responsive to do even more than their share. Obviously this sort of voluntarism also courts the danger of a shortfall in the amount of transfers needed and is for this reason also unfair to those currently deprived of their rights. Therefore, for the sake of fairness both to those deprived of their subsistence rights and to those who would be willing voluntarily to perform their subsistence duties to assist, the performance of these duties ought to be a legal obligation.

SHUE, *supra* note 60, at 18.

82. See RAWLS, *A THEORY OF JUSTICE* 65-75.

83. John Murawski, *A Banner Year for Caring*, CHRON. OF PHILANTHROPY, May 30, 1996, at 38.

84. Cohen & Reeves, *supra* note 20, at 46.

85. SHUE, *supra* note 60, at 71.

treated paternalistically as mere supplicants deprived of moral standing.<sup>86</sup> For the poor, one might say with apologies to Ernest Hemingway, are different from you and me; they have less money.<sup>87</sup>

## CONCLUSIONS

These, of course, are far from a panacea, nor are they offered as definitive. Yet such criteria, illumining the oft-neglected ethical aspect of policy, remind us that we are still "tied in a single garment of destiny."<sup>88</sup> Such a "moral squint," indeed, reveals traces of a different genealogy—one recalled in John Winthrop's "city set upon a hill" where the world retains its measure of enchantment: "We must delight in each other, make others condition our own, rejoice together, mourn together, labor and suffer together, always having before our eyes our community as members of the same body."<sup>89</sup>

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86. A recent survey of low-income Americans undertaken by the Joint Center for Political and Economic Studies reveals a "virtual consensus among the poor" supporting "more education and training opportunities" (95%) and provision of "childcare to poor mothers who want to work" (94%). "Fully 85% of the poor are in favor of a plan that emphasizes education and training, Food Stamps, and childcare assistance for those transitioning to work, and public-service work for those unable to find private employment." JOINT CENTER FOR POLITICAL AND ECONOMIC STUDIES, *NEGLECTED VOICES: WHAT LOW-INCOME AMERICANS THINK OF WELFARE REFORM* at 4.

87. See THE OXFORD DICTIONARY OF QUOTATIONS 213 (3d ed. 1979).

88. Martin Luther King, *Letter from Birmingham City Jail*, in A TESTAMENT OF HOPE: ESSENTIAL WRITINGS AND SPEECHES OF MARTIN LUTHER KING, JR. 290 (1986).

89. John Winthrop, *A Model of Christian Charity*, in PURITAN POLITICAL IDEAS, 1558-1794 92 (Edmund S. Morgan ed., 1965).

