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# Catholic Social Teaching and American Legal Perspective

## **Cover Page Footnote**

Avery Dulles, S.J., a member of the New York Province of the Society of Jesus, is the first U.S. theologian named to the College of Cardinals. I am indebted to the Fordham Urban Law Journal staff for their research in providing the law references in the footnotes.

# CATHOLIC SOCIAL TEACHING AND AMERICAN LEGAL PRACTICE

*Avery Cardinal Dulles, S.J.\**

The very fact that I have been asked to give this lecture is an auspicious omen, not because it acknowledges my somewhat debatable qualifications as a speaker on the topic, but because it indicates that the close connections between theology, my own profession, and the law are recognized, and are being further cemented.<sup>1</sup> I am particularly pleased that this lecture marks the inauguration of the Catholic Lawyers' Program of the Institute on Religion, Law, and Lawyers' Work here at Fordham University's School of Law.<sup>2</sup>

## I. CONNECTIONS BETWEEN FAITH AND LEGAL PRACTICE

In contemporary American culture there is a widespread assumption that religion is something private, something one does with one's leisure time, and that it ought not to affect the way one acts in the public square or market place.<sup>3</sup> But faith, as set forth in the Bible, is not just a private relationship to God, affecting what a person does in the synagogue on Saturday or in church on Sunday.<sup>4</sup> One comes to services of worship in order to gain strength and guidance for what one will be doing every day of the week. The Word of God, proclaimed in the sanctuary, has important bearings on the public order of society, including its laws.<sup>5</sup> Isaiah, for in-

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1. See Rex J. Ahdar, *The Inevitability of Law and Religion: An Introduction*, in *LAW AND RELIGION* 1, 2 (Rex J. Adhar ed., 2000) (noting the increasing acknowledgement of the nexus between law and religion); Robert M. Franklin, *Another Day's Journey: Faith Communities Renewing American Democracy*, in *RELIGION, RACE, AND JUSTICE IN A CHANGING AMERICA* 31, 39 (Gary Orfield & Holly J. Lebowitz eds., 1999) (commenting on the renewed role of faith communities in American democracy).

2. For more information on the Institute on Religion, Law and Lawyers' Work, see *Institute on Religion, Law & Lawyers' Work*, Louis Stein Center for Law & Ethics, at <http://law.fordham.edu/htm/st-irl.htm> (last visited Oct. 7, 2002).

3. Ahdar, *supra* note 1, at 3.

4. Gary Orfield, *Introduction Religion and Racial Justice*, in *RELIGION, RACE, AND JUSTICE IN A CHANGING AMERICA*, *supra* note 1, at 13.

5. Ahdar, *supra* note 1, at 1.

stance, warns: "Woe to those who decree unrighteous decrees, who write misfortune, which they have prescribed, to rob the needy of justice, and to take what is right from the poor of my people, that widows may be their prey, and that they may rob the fatherless."<sup>6</sup> Jesus, as we all know, was unsparing of His criticism of scribes who interpreted the law of Moses in ways that would inhibit the performance of good deeds, such as healing the sick and supporting one's aging parents.<sup>7</sup>

The Bible holds out to us not only the vision of individual salvation, but also the vision of a society of peace and love, in which all are solicitous for the good of all, especially the poor and the powerless. This vision has important implications for the ordering of society.

In medieval and early modern times, Christian thought played an important role in the development of the common law.<sup>8</sup> Three points of intersection may be noted. First, the natural law tradition emphasized the role of reason;<sup>9</sup> second, the Church's Canon law had some influence on British common law;<sup>10</sup> and third, the courts of chancery emphasized the relation of law to equity and justice.<sup>11</sup> It is perhaps not coincidental that the Chancellors of the Realm were usually clergymen and were known as "keepers of the King's conscience."<sup>12</sup>

In what follows, I shall contend that faith-based, but rationally defensible, social theory can make a significant contribution to the work of professional schools, especially those operating in Christian and Catholic universities. Law, in particular, cannot be adequately taught without reference to the purposes of society and the nature of justice, which law is intended to serve. The role of law and its place in a well-ordered society has been studied in depth for many centuries in Catholic social theory.<sup>13</sup> Most lawyers are not

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6. *Isaiah* 10:1-2.

7. *Mark* 3:1-6.

8. See JEFFREY A. BRAUCH, IS HIGHER LAW COMMON LAW? READINGS ON THE INFLUENCE OF CHRISTIAN THOUGHT IN ANGLO-AMERICAN LAW 32-40 (1999).

9. *Id.* at 39.

10. See Charles J. Reid, Jr. & John Witte, Jr., *Review Essay: In the Steps of Gratian: Writing the History of Canon Law in the 1990's*, 48 EMORY L.J. 647, 663 (1999) (discussing the role of Canon law in the development of Western legal principles).

11. PHILIP H. PETTIT, EQUITY AND THE LAW OF TRUSTS 1-2 (7th ed. 1993).

12. *Id.* at 4.

13. See Lucia Ann Silecchia, *The 1996 Mirror of Justice Lecture: On Doing Justice and Walking Humbly with God: Catholic Social Thought on Law as a Tool for Building Justice*, 46 CATH. U. L. REV. 1163, 1167-69 (1997) (discussing the development of Catholic social theory).

philosophers or theologians, and for that very reason they stand to gain from interdisciplinary dialogue.

## II. CATHOLIC SOCIAL TEACHING

Over the centuries, and especially in the past 150 years, the Catholic Church has built up a body of social teaching that is intended to contribute to the formation of a society marked by peace, concord, and justice toward all. This body of teaching, based on reason and revelation, has been refined through dialogue with Greek philosophy and Roman law, as well as the experience of the Church throughout two millennia, in interaction with many cultures in Europe, the Americas, and other continents.<sup>14</sup> It seems safe to say that no other institution has developed a body of social teaching rivaling that of the Catholic Church, in depth, coherence, and completeness. Unlike the Church's strictly doctrinal teaching, which is addressed specifically to believers, Catholic social teaching is directed to all persons of good will, including those of any or no religion. It presupposes only that its addressees are interested in building a just and peaceful society on earth.

The Church's social teaching is found in many places. One may look, in the first place, to the documents of the Second Vatican Council, especially its Declaration of Religious Freedom and its Pastoral Constitution on the Church in the Modern World. Of almost equal importance is the series of social encyclicals issued by the popes since Leo XIII's *Rerum novarum* (1891). The present pope, John Paul II, has issued four important encyclicals that I would characterize as social.<sup>15</sup> In the United States, the National Conference of Catholic Bishops and the United States Catholic Conference published numerous statements touching on law and public policy.<sup>16</sup> Since this body of social teaching is so vast, I cannot undertake even to summarize it here, beyond indicating a few major headings.

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14. See HAROLD J. BERMAN, *THE INTERACTION OF LAW AND RELIGION* 49-76 (1974).

15. Three of the encyclicals of John Paul II are commonly classified as "social," namely *Laborem exercens* (1981), *Sollicitudo rei socialis* (1987), and *Centesimus annus* (1991). I am personally inclined to include *Evangelium vitae* (1995) in the list of social encyclicals, although it deals also with personal morality. A great deal of social teaching appears in several other encyclicals of the present pope, for example, *Redemptor hominis* (1979).

16. As of July 1, 2002, these two bodies were merged to form the United States Conference of Catholic Bishops.

### III. FIVE BASIC PRINCIPLES

The initial principle, I would say, is the inviolable dignity of every man and woman. According to Catholic teaching each human person is by nature a subject of rights and of duties. In this respect, the Catholic Church endorses the statement of the Declaration of Independence to the effect that all human beings are endowed by their Creator with certain inalienable rights, including life, liberty, and the pursuit of happiness. From this it follows that no ruler or society may arbitrarily deprive its citizens, or anyone else, of life, liberty, or property. Slavery as an institution is unacceptable. Torture and cruelty are affronts to human dignity.

Among the fundamental human rights, the Catholic Church, like the First Amendment in the American Constitution, recognizes is the right to the free exercise of religion. Since the Second Vatican Council, the Church affirms the legitimacy of arrangements in which no particular faith is established as the religion of the State.<sup>17</sup> According to Catholic teaching, all religions should enjoy the freedom to worship and propagate their beliefs, provided only that they do not violate the rights of others or transgress the just requirements of public order.

A second principle is the priority of the common good. All of us live in interdependence with others; we are by nature co-responsible for the welfare of all the persons affected by our conduct. For this reason we must collaborate for the good of each and all. The interests of the individual should not be given preference over those of society as a whole, nor should the interests of the totality be allowed to override the rights of individual persons.

From the principle of the common good follows a third, scarcely distinguishable from it—solidarity. This adds to the notion of the common good the idea that all are to regard and treat one another as persons who have a right to be loved. Ideally, human beings should deal with one another as friends, as members of an extended family, thus contributing to a civilization of love or social charity. The sense of solidarity prompts us to have special solicitude for those who are at greatest risk: the widow and the orphan, the poor and defenseless, the sick and the aged, the migrant and the refugee.

A fourth principle of Catholic social teaching is that of subsidiarity. Society is to be as free as possible, encouraging individu-

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17. VATICAN COUNCIL II, DECLARATION ON RELIGIOUS FREEDOM *Dignitatis Humanae* (Dec. 7, 1965).

als and smaller groups to exercise their initiative rather than rely for all things on the authority of the State.<sup>18</sup> The higher agency intervenes only at the point where the problems become too great for lower or smaller bodies to handle. This principle emphatically defends the rights of the family as the basic cell of human society, where new life is conceived and nurtured. The same principle guarantees the freedom of voluntary groups to associate with one another, to form societies for their mutual benefit, and to initiate and carry on commercial, cultural, and charitable enterprises. Opposing totalitarianism and the excesses of the welfare state, subsidiarity protects freedom of association, expression, and communication. On the other hand, the principle of subsidiarity makes provision for the intervention of the higher authority of the State where required for the sake of the common good.

As a fifth and final principle, I would list care of the environment. In recent years it has become alarmingly evident that human beings have the capacity to ravage the earth, to extinguish whole species of animal life, and to mutilate the beauty of God's creation. It is urgent for us to become more conscious that the resources of creation are given to us in trust, to be preserved for the use and enjoyment of all peoples, including future generations.

#### IV. THE LAW AND THE ETHICAL PRINCIPLES

The implementation of the Church's social agenda requires, first of all, a social ethos in which people become committed to objectives such as those just listed. Without that climate of opinion, no legal regulations will work. But law has an essential place in the maintenance of a healthy social order since it specifies what would otherwise be too vague for implementation. By imposing sanctions, it also motivates people who might otherwise fail to abide by the principles.

When I speak of laws, I mean binding regulations enshrined in statutes or judicial decisions and enforceable by the courts. In other words, I am speaking of positive law, not of divine or natural law, although good human legislation must conform to the divinely established order of reality. Positive law is intended to embody and protect the natural rights of all concerned and to bring about a fair resolution of conflicts. It therefore depends on principles of justice that are antecedent to itself.

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18. See Pope Pius XI, *Quadragesimo Anno: On Reconstruction of the Social Order* 79 (May 15, 1931).

Because law establishes norms for social behavior, it has a pedagogical function.<sup>19</sup> It should encourage people to do what makes for a just and healthy public order. Negatively, it should refrain from authorizing or enjoining actions that violate the rights of persons. The positive law ceases to be morally binding if it commands actions that are morally evil or if it permits infractions of the rights of persons and groups.<sup>20</sup> In extreme cases, one might be obliged to disobey unjust laws, such as those enacted against Gypsies and Jews in Hitler's Germany.<sup>21</sup>

It is important, I submit, for every student of law to be made aware of the principles of justice and social order that the law is intended to sustain. Sometimes a given principle will be decisive for determining what the law ought or ought not to be. For example, any law that denies inalienable human rights is unacceptable. Very often, however, the law must strike a compromise between giving full scope to one principle or another. The exercise of personal rights sometimes has to be curtailed for the sake of the common good, for example, in times of war or national emergency.<sup>22</sup>

In order to make these general principles more concrete, we may now turn our attention to some key points of intersection between the principles just given and the law.

## V. LEGAL IMPLICATIONS OF THE FIVE PRINCIPLES

The first principle, the dignity of human persons, rules out all laws that violate personal rights, beginning with the most fundamental, the right to life. The law has a positive obligation to protect innocent human life so far as possible from all assaults. At this point, multiple applications suggest themselves.

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19. See Francis Cardinal George, *Law and Culture*, Dedicatory Address at the Ave Maria School of Law (Mar. 21, 2002) (addressing the interplay of law and culture in American society).

20. See David Luban, *The Posner Variations (Twenty-Seven Variations on a Theme by Holmes)*, 48 STAN. L. REV. 1001, 1030 (1996).

21. Stephen L. Carter, *Michael J. Perry's Morality, Politics, and Law: The Dissent of Governors*, 63 TUL. L. REV. 1325, 1331 (1989) (discussing the moral justifications for civil disobedience); David Luban, *Conscientious Lawyers for Conscientious Lawbreakers*, 52 U. PITT. L. REV. 793, 803 (1991) (discussing a lawyer's role in representing clients engaged in civil disobedience).

22. Derek P. Jinks, *The Anatomy of an Institutionalized Emergency: Preventive Detention and Personal Liberty in India*, 22 MICH. J. INT'L L. 311, 324 (2001) (discussing changes to preventive detention laws in India, and their application).

According to Catholic social teaching, the God-given right to life extends to the unborn.<sup>23</sup> Hence, there can be no such thing as a right to abort or a right not to be born. President Bush's recent decision on government funding of stem-cell research respects the essentials of Catholic moral teaching, but some bishops and Catholic organizations have faulted it for not guarding sufficiently against the destruction of more human embryos for research purposes.<sup>24</sup> With regard to euthanasia, Catholic teaching is clear that God alone is the Lord of life.<sup>25</sup> Although it is proper to alleviate suffering by medical means, the doctor or the family are not entitled to kill patients suffering from incurable diseases. For similar reasons, the law should not permit doctors to engage in medically assisted suicide.

While the rights to life, liberty, and the pursuit of happiness are inalienable in the sense I have already explained, this does not mean that they can never be forfeited. As a punishment, persons may be deprived of their property; they may be confined to prison, and in extreme cases they may be punished by execution. The Catholic Church has traditionally labored to limit the excessive use of the death penalty, and many bishops today, following Pope John Paul II, seem to favor its total elimination in practice.<sup>26</sup> There is a growing body of literature on the purposes of punishment, including the protection of society, the rehabilitation of the offender, and redress for the disorder caused by the offense.

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23. Martin Shupack, *The Church and Human Rights: Catholic and Protestant Human Rights Views as Reflected in Church Statements*, 6 HARV. HUM. RTS. J. 127, 128 (1993) (discussing religious contributions on human rights issues).

24. Erin P. George, *The Stem Cell Debate: The Legal, Political, and Ethical Issues Surrounding Federal Funding of the Scientific Research on Human Embryos*, 12 ALB. L.J. SCI. & TECH. 747, 752 (2002); Albert S. Moraczewski, *May One Benefit from the Evil Deeds of Others?*, ISSUES L. & MED., June 22, 2002, at 97.

25. David A. Daigle, *Evangelium Vitae: Crossing the Threshold of Law with the Gospel of Life*, 37 CATH. LAW. 295, 315 (1997) (discussing Pope John Paul II's stance on abortion and euthanasia); John H. Garvey & Amy V. Coney, *Catholic Judges in Capital Cases*, 81 MARQ. L. REV. 303, 306-07 (1998) (arguing that Catholic judges are morally precluded from enforcing the death penalty); Thane Josef Messinger, *A Gentle and Easy Death: From Ancient Greece to Beyond Cruzan Toward a Reasoned Legal Response to the Societal Dilemma of Euthanasia*, 71 DENV. U. L. REV. 175, 186 (1993) (arguing that euthanasia should be allowed under limited circumstances).

26. Thomas J. Walsh, *On the Abolition of Man: A Discussion of the Moral and Legal Issues Surrounding the Death Penalty*, 44 CLEV. ST. L. REV. 23, 33 (1996) (arguing that the United States should abolish the death penalty); Patrick M. Fahey, Note, *Payne v. Tennessee: An Eye for an Eye and Then Some*, 25 CONN. L. REV. 205, 253 n.278 (1992) (discussing the use of victim impact evidence in capital sentencing hearings).

In expounding my first principle, I spoke of the free exercise of religion, a right sometimes difficult to harmonize with my second principle, the common good. Some Americans seem to feel that religion is so divisive a topic that it ought not to show itself on the public square. People have a right to be religious, they assert, so long as they keep their piety to themselves and do not urge their beliefs on others. The Catholic Church, on the contrary, insists that people have an inalienable right to bear witness to what they hold to be true as a matter of religious conviction. In the name of free speech, people ought not to be muzzled in the classroom or elsewhere. In this connection, the Church has often declared the right of private religiously oriented schools to exist and to be supported by some form of tax relief, so that parents of modest means have a true choice about the kind of education being given to their children.<sup>27</sup> The Church also teaches that religiously oriented schools should be allowed to hire teachers and administrators who support the values of the school, although here certain delicate questions arise about the right of employees to enjoy privacy concerning their personal beliefs and conduct.

The topic of Church and State suggests many other questions familiar to us all. Should there be a civic observance of religious holidays? May religious symbols be displayed on public property? Is it allowable to teach religion in publicly funded schools, or to begin the school day with prayer? What are the merits and dangers in government support for “faith-based initiatives”? Although there is no settled Catholic doctrine on questions such as these, the tendency of Church authorities would be to favor the advancement of religion and to oppose its exclusion from the public forum.<sup>28</sup>

My second rubric, the common good, stands in some tension with personal rights and subsidiarity. Catholic social teaching, with its keen sense of the communal, tends to find itself in opposition to our American individualism. The American bishops have generally favored taxation to support social programs but, recognizing the role of prudential judgment in policy questions, they have allowed considerable scope for diversity of opinion within the

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27. See Winnifred Fallers Sullivan, *Propter Honoris Respectum: Indifferentism Redux: Reflections on Catholic Lobbying in the Supreme Court of the United States*, 76 NOTRE DAME L. REV. 993, 1010 (2001) (showing support by the Catholic Church for school vouchers).

28. Kathleen M. Sullivan, *God as a Lobby*, 61 U. CHI. L. REV. 1655, 1661 (1994) (analyzing the use of religious speech in politics); Ruti Teitel, *A Critique of Religion as Politics in the Public Square*, 78 CORNELL L. REV. 747, 760-61 (1993).

Church itself.<sup>29</sup> The bishops have also spoken out a number of times in favor of gun control, especially with regard to limiting the sale of assault weapons and handguns.<sup>30</sup>

The so-called right to privacy evokes skepticism because it has at times been abused to protect wrongful killing. But the right itself need not be denied. Catholic Church authorities have traditionally insisted on the confidentiality of information disclosed in counseling situations. The seal of sacramental confession, which enjoys a unique inviolability, is an uncontested part of Catholic doctrine and has generally been protected by the courts.<sup>31</sup>

Under the rubric of solidarity, my third principle, one might note that Catholic teaching, at least in this country, has tended to favor generous government programs to assist the poor and the needy. In the wake of the Second Vatican Council, most Catholics in the United States strongly supported the civil rights movement of the 1960s.<sup>32</sup> The Pope and the bishops have often pleaded for greater hospitality toward refugees and immigrants escaping from difficult social, political, or economic circumstances. While vigorously condemning racism, the Church has also put itself on record against discrimination on grounds of gender, even at the risk of raising questions about the internal government of the Church itself. But I am not aware that the Church has taken any official stand on neuralgic issues such as the busing of elementary school students, affirmative action, or reparations to be given to groups that have in the past suffered from discrimination.

My fourth category, subsidiarity, raises other issues, some of which pertain to the rights of the family. In 1983, the Holy See drew up a "Charter of the Rights of the Family," an institution embattled by many pressures in Western society today.<sup>33</sup> The Church clearly supports legislation that favors the traditional Christian family; it energetically opposes legal recognition of easy divorce, polygamy, or same-sex unions.<sup>34</sup>

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29. *Contra* Stanley W. Carlson-Thies, "Don't Look to Us": *The Negative Responses of the Churches to Welfare Reform*, 11 NOTRE DAME J.L. ETHICS & PUB. POL'Y 667, 685 (1997).

30. *See, e.g.,* *Nation's Catholic Bishops Share Views on Criminal Justice System*, DALLAS MORNING NEWS, Nov. 16, 2000, at 4A.

31. *See* J. David Bleich, *Clergy Privilege and Conscientious Objection to the Privilege*, in LAW AND RELIGION, *supra* note 1, at 347.

32. *See* Orfield, *supra* note 4, at 1.

33. *Charter of the Right of the Family*, 13 ORIGINS 461, 461-64 (1983).

34. *See* Perry Dane, *The Intersecting Worlds of Religious and Secular Marriage*, in LAW AND RELIGION, *supra* note 1, at 386-407 (commenting on the secular and religious recognition of the institution of marriage).

On the matter of protecting the environment, Catholic teaching clearly affirms the need for responsible stewardship to prevent the destruction of the environment. But, aware of the disagreements within the scientific community about issues such as global warming, the Church has thus far refrained from precise applications. It encourages knowledgeable persons to try to determine the extent to which the government should limit emissions of carbon dioxide, and require industries to pay the expenses of cleaning up polluted lands and rivers.<sup>35</sup>

Under these headings I have given only a sampling of the kinds of questions that might be raised. My intention is not to solve any debated questions but to show that there is a necessary link between law and the ethical principles dealt with in Catholic social teaching. It is hard to think of any law that does not have repercussions in terms of social morality. Church teaching does not give detailed answers to all the questions I have raised, but it lays down some important principles that should not be disregarded. Occasionally the magisterium goes so far as to repudiate certain particular laws as unjust.

## VI. RELEVANCE OF ETHICAL PRINCIPLES TO LEGAL EDUCATION

It may be argued at this point that the purpose of a law school is not to study what the law ought to be, but what the law is. Some would hold that the school should turn out experts in the technique of enabling clients to profit from every loophole in the law, and obtain their objectives without risk of being sued or convicted.<sup>36</sup> Without minimizing the importance of these technical skills, I should like to plead for greater attention to matters of good and evil, right and wrong. In practice, law professors and law reviews deal at length with the reasons for and against the existing legal practice. Jurisprudence, in its study of legal principles, has to consider whether the law is what it ought to be, and how it can be improved so as to better to secure the rights of individuals, the common good, and other transcendent goals. This kind of study inevitably impinges on ethical questions treated in Catholic social

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35. E.g., U.S. BISHOPS, *Global Climate Change: A Plea for Dialogue, Prudence, the Common Good*, 31 ORIGINS 131, 131-36 (2002).

36. See, e.g., Jane B. Baron & Richard K. Greenstein, *Constructing the Field of Professional Responsibility*, 15 NOTRE DAME J.L. ETHICS & PUB. POL'Y 37, 46-47 (2001).

teaching. Unless the principles are clarified, the conclusions will often be unsound.

The purpose of the law school is to train future lawyers for all the tasks that they are likely to perform in their professional careers. When we hear the word "lawyers," most of us think in the first place of forensic practice, that is to say, the handling of cases in court by an attorney for the prosecution, for the plaintiff, or for the defense. No attorney in these roles can be absolved from ethical responsibility. The advocate has the obvious duty to be honest and truthful and to strive for results that do justice to the parties.<sup>37</sup> While respecting their own particular role in the adversarial process, and the allocation of the burden of proof, lawyers should not blindly support their clients' greed for profit at the expense of other parties. In presenting a client's case, the advocate should hope to contribute to a system in which justice for all is obtainable.

Many cases, in fact, are settled out of court by negotiation in which the lawyers for both sides seek to achieve a mutually acceptable agreement, preserving the rights of all concerned. In criminal cases, lawyers for the prosecution and the defense often use their good judgment in deciding whether the defendant should stand trial as charged, or plead guilty to a lesser offense. In all such actions, the lawyers should have in view the good of the defendant and of society.

Most lawyers spend a relatively small portion of their time in court.<sup>38</sup> They join firms that advise clients regarding their conduct, especially in matters pertaining to property and finance including the making of wills, contracts, gifts, and investments. In this counseling activity, their second function, there is ample room to persuade clients to do what is socially beneficial, rather than to pursue their private gain without regard for others. Morally upright clients will appreciate such advice; they would be offended to be treated as if they had no regard for the social consequences of their actions. Lawyers who have educated themselves in social ethics can advise clients far more effectively. For this reason, besides others already mentioned, Catholic law schools ought to take cognizance of Catholic social teaching.

A third function that may well accrue to the lawyer is that of being a judge. Judges, at least normally, are lawyers. As judges, their primary task is to apply the existing law, not to decide cases

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37. See N.Y. CODE OF PROF'L RESPONSIBILITY DR 1-102 (2001).

38. See Kevin E. Mohr, *Legal Ethics and A Civil Action*, 23 SEATTLE U. L. REV. 283, 336 (1999).

according to their personal convictions about what the law ought to be. Nevertheless, the making of decisions is a way of developing the law. By deciding what precedents are applicable to the particular case at hand, and how they apply to the facts of that case, the judge inevitably modifies the state of the law and sets precedents for the future.<sup>39</sup> The judge's sense of right and wrong thus shapes, to some extent, the direction in which the law evolves. In criminal cases, the judge exercises considerable discretion in instructing the jury and in imposing a fitting sentence. If the existing law is truly contrary to the conscientious convictions of the judge, the judge may have to recuse herself rather than cooperate in a morally evil action.

A fourth task that may well fall to the lot of the lawyer is that of legislation. A large proportion, and perhaps even a majority, of the legislators on the state and federal levels are, I suspect, lawyers. In framing laws they have an obligation to work for what is right and just, and not to give in to particular interests or pressures. If lawmakers are ignorant of social morality, or indifferent to it, they can hardly be competent. Legislators who have made a careful study of Catholic social teaching are in an excellent position to bring about greater justice and fairness in the legal system.

## VII. THE LAW AS A VOCATION

Throughout this lecture I have been assuming what perhaps ought not to be taken for granted, namely that the lawyer is in the business not simply to get a lucrative job and win cases, but to do some good for society.<sup>40</sup> Legal ethics, of course, includes prescriptions for the personal morality of lawyers. As I have mentioned, they have a duty to be honest and truthful and not to enrich themselves or their friends and supporters by appropriating what rightfully belongs to others.<sup>41</sup> But beyond submitting to these rules of personal conduct, the law may be regarded as a vocation, as an opportunity to accomplish some good and make the world a better place for one's having been in it.

To this end, lawyers may laudably donate portions of their time and talents to engage in public interest work, in advocacy for the poor, and in giving advice to charitable organizations. In the

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39. See BENJAMIN N. CARDOZO, *THE NATURE OF THE JUDICIAL PROCESS* 66-67 (1921).

40. See Eugene R. Goatke, *Lawyers as Officers of the Court*, 42 VAND. L. REV. 39, 45 (1989) (discussing a lawyer's occupation as one devoted to the good of society).

41. See *supra* note 37 and accompanying text.

course of their day-to-day conduct as advocates, counselors, judges, or legislators, they can seek to promote a just and peaceful social order. Beyond the specific responsibilities of the profession, lawyers can accomplish no end of good as upright leaders in the civic community to which they belong. By striving to serve the greater good of humanity, they can achieve an inner peace and satisfaction that eludes persons who treat the profession simply as a means of gaining wealth, prestige, or status for themselves.

Biblical and Christian social teaching, as I have tried to show, is an excellent resource that no publicly minded lawyer can afford to ignore. An education that pays due attention to this ethical component will greatly assist lawyers in every aspect of their high calling.

