



# America Undecided

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*Catholic, Independent & Social Justice Perspectives on Election 2012*

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## Dedication

In a time of decision in our country and our church, we recall with gratitude five fellow Catholics whose lives and work remain powerful guides for how the church and state can relate fruitfully to one another, without surrendering to Caesar things belonging to God, or withdrawing from public servants the respect God has ordained for civil magistrates.

**Dorothy Day** (1897-1980), a woman who co-founded the Catholic Worker movement to practice each day the duty of hospitality to those most in need of help, and who followed the Gospel of peace and justice more faithfully than governmental commands promoting a culture of death.

*“God meant for things to be much easier than we have made them”*

**John Courtney Murray, S.J.** (1904 -1967), who taught his church to abandon the use of coercion and force in all matters of religious faith and practice, and who taught his fellow Americans that now more than ever before we must all hold the truth of the equal dignity of all persons and we must renew our commitment to the protection of life, liberty, and pursuit of happiness by all our sisters and brothers.

*“The American experiment reposes on the postulate, that freedom is the highest phase of civil society. But it also reposes on a further postulate that the elevation of a people to this highest phase of social life supposes, as its condition, that they understand that freedom is ‘not the power of doing what we like, but the right of being able to do what we ought.’”*

**Bernard J.F. Lonergan, S.J.**, (1904-1980), who taught that *cosmopolis*—the city we all yearn for in this world—is not a police state ruled by busybodies, a group denouncing other groups, or a superstate dominating other states, but the community of those who acknowledge that the only sane way to pursue authentic politics is to be attentive, intelligent, reasonable, and responsible.

*“The crisis I have been attempting to depict is a crisis not of faith but of culture....”*

**Joseph Cardinal Bernardin** (1928-1996), who searched diligently for common ground with fellow Catholics, consulting the faithful on how to meet the challenge of peace and the demands of economic justice, and who offered to

America a “consistent ethic of life” as the surest path to achieving the common good.

*“There is nothing wrong in itself with the prospect that different visions should contend within American Catholicism. That has long been part of the church's experience in this nation, and indeed differences of opinion are essential to the process of attaining the truth. But the way that struggle is currently proceeding, the entire church may lose....The church's capacity to respond to these changed conditions may be stymied if constructive debate is supplanted by bickering, disparagement, and stalemate.”*

**John Virgilius Sheridan** (1915-2010), whose ministry introduced us to a true understanding of love of neighbor premised upon a “Theology of Kindness” that enjoined us to love recklessly, to be unafraid of death, to be a positive light in a skeptical world, to shed false narratives that rationalize rather than tell the truth, to not look primarily to law to instill morality, and to have a mind ever open to new understanding.

*“Our faith can make all the difference in the faith life of another – the unbelieving heart is a lonely one. Let us not fail to sustain each other.”*

With deep gratitude for countless women—especially our mothers and many nuns who taught us to rejoice with those who are glad and to weep with those who mourn—*Catholic Democrats* dedicates this book to all men and women of good will who seek to live their lives humanly and humanely, so that our world may become a better place for all.

## Inspiration

*In the future days, which we seek to make secure, we look forward to a world founded upon four essential human freedoms.*

*The first is freedom of speech and expression -- everywhere in the world.*

*The second is freedom of every person to worship God in his own way -- everywhere in the world.*

*The third is freedom from want -- which, translated into world terms, means economic understandings which will secure to every nation a healthy peacetime life for its inhabitants -- everywhere in the world.*

*The fourth is freedom from fear -- which, translated into world terms, means a world-wide reduction of armaments to such a point and in such a thorough fashion that no nation will be in a position to commit an act of physical aggression against any neighbor-- anywhere in the world.*

*That is no vision of a distant millennium. It is a definite basis for a kind of world attainable in our own time and generation.*

--- Franklin D. Roosevelt  
January 6, 1941

*With a good conscience our only sure reward, with history the final judge of our deeds, let us go forth to lead the land we love, asking His blessing and His help, but knowing that here on earth God's work must truly be our own.*

--- John F. Kennedy  
January 20, 1961

*Each time a man stands up for an ideal, or acts to improve the lot of others, or strikes out against injustice, he sends a tiny ripple of hope, and crossing each other from a million different centers of energy and daring those ripples build a current which can sweep down the mightiest of walls of oppression and resistance.*

--- Robert F. Kennedy  
June 6, 1966

*I've spoken of the shining city all my political life, but I don't know if I ever quite communicated what I saw when I said it. But in my mind it was a tall proud city built on rocks stronger than oceans, wind-swept, God-blessed, and teeming with people of all kinds living in harmony and peace, a city with free ports that hummed with commerce and creativity, and if there had to be city walls, the walls had doors and the doors were open to anyone with the will and the heart to get here. That's how I saw it and see it still.*

--Ronald Reagan  
Farewell January 11, 1989

*When I thought of all the years, all the battles, and all the memories of my long public life, I felt confident in these closing days that while I will not be there when it happens, you will be the President who at long last signs into law the health care reform that is the great unfinished business of our society. For me, this cause stretched across decades; it has been disappointed, but never finally defeated. It was the cause of my life. . . . [I] saw your conviction that the time is now and witnessed your unwavering commitment and understanding that health care is a decisive issue for our future prosperity. But you have also reminded all of us that it concerns more than material things; that what we face is above all a moral issue; that at stake are not just the details of policy, but fundamental principles of social justice and the character of our country.*

---Senator Ted Kennedy,  
May 12, 2009, in a letter to President Obama

*Our ministry worked hard to enact this law because it would defend human dignity, provide insurance coverage to vulnerable persons and hard-working families and reflect the values of a fair and compassionate nation...When the Supreme Court validated the ACA, it was a moment for celebration and excitement about the future, when millions of uninsured will gain access to the coverage and care they need. Upholding the Affordable Care Act was a victory for low-income and vulnerable people and for our health system. Now, the work continues.*

--- Sister Carol Keehan, president and chief executive of the Catholic Health Association, July 2012

**Part I**

**The Undecideds**

*How the judgment of Catholic, independent and social justice voters can determine the outcome of election 2012*

## Who are the undecided voters?

The 2012 presidential race is a dead heat. The outcome swings on the undecided voter, and depending on the poll going into the final weeks, 8% or more are uncertain for whom to vote or vote at all.

From polling data, we know their most likely characteristics: white, female, young (18-29), employed, high school education or some college, friendly toward unions.<sup>1</sup> Watch for these faces sitting behind the candidates on television. They are also people of faith (though not regular in attendance) – more Protestant than Catholic – but just by a point or so. This is not good news for President Obama. The traditional Democrat/Republican line has seen serious differences in church attendance with the Democrats being less frequent. By this measure, the bulk of the undecided voters were likely in the Obama camp in 2008. How could this be?

Almost everyone perceives something happened in that first debate: like the mighty “Casey at the bat” in Ernest Lawrence Thayer’s classic poem, Barack Obama, the precedent-setting, intelligent president who broke the racial barrier was faltering against opponent Mitt Romney. In the weeks leading up to the debate, the president who had energized America’s youth in unprecedented numbers in 2008 was leading by such wide margins that he seemed unstoppable. He was the mighty Casey who stood up confidently at the home plate of state and stared down the Wall Street manipulators, the Congressional naysayers, and even the menacing forces of terror in the elusive, now ended, Osama Bin Laden.

At first, the legions of support behind the President took the stumble in stride; some even rationalized that the President had out of charity or strategy allowed his opponent to shine in this initial forensic outing. Despite being outspent, notwithstanding a leaner volunteer structure, and some notable donors having slammed the wallet closed, Obama could afford to be at the plate and let a strike or two go by, since opponent Mitt Romney couldn’t get on base for all of the investment capital of his well-healed friends.

Traipsing off to Europe in what would turn out to be a misbegotten attempt to build the appearance of international stature comparable to Obama’s high standing in Europe especially, Governor Romney managed to offend America’s close ally, the United Kingdom, with unneeded criticism of its summer Olympic preparations, gave away years of “honest broker” efforts by insulting

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<sup>1</sup> <http://www.businessinsider.com/undecided-voters-election-2012-10>

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Palestinians as a people in a blatant effort to ingratiate himself with the Prime Minister of Israel, and outrageously misunderstood diplomatic comments distancing America from a base and ugly portrayal of the Prophet Muhammad. An American hadn't been so clumsily moving through foreign capitals since Richard Nixon was pelted with eggs visiting the southern hemisphere. And this was the person we were going to trust with the delicate task of maintaining a fragile peace in our troubled world?

The polls told the story of an easy re-election for the youngish, rhetorically-gifted, constitutional law professor and community organizer. Out-spent or not, Obama had restored a sense of prudence in international matters; and despite the worst economic circumstances since the Depression of the 1930s, stabilized the economy, saved the auto industry from itself, seeded handsomely, if somewhat unsuccessfully, energy innovation that would be environmentally responsible, kept his promise to end the misguided war and mistaken military occupation in Iraq, and held the military to account for performance in Afghanistan with a firm date for withdrawal set in advance. No blank checks given by this President.

Moreover, the President seemingly achieved the impossible: the improved provision of health care. The reform is imperfect, but it is a meaningful, tangible step of essential help to tens of million Americans who are unemployed or do not work for a generous private employer who provides health care benefits or too poor to afford health insurance. Obamacare is being phased in, and even if we didn't understand the complex reform in its totality, most are very pleased that families would not go without care even with a pre-existing condition and that the overall system would not be bankrupted by costly emergency room care for a loved one denied care for pre-existing conditions.

President Obama was well on the march to victory and possibly a pick-up of both the House and the Senate which would put an end—at least for two years—of divided government and make possible successful implementation of the health reform, meaningful tax reform in favor of the middle class, comprehensive immigration reform, genuine leadership on alternative fuels and climate change, and—with a keen and sensitive eye toward the inter-faith differences in the Middle East—some long hoped-for progress between Israel and all of its Arab neighbors.

But a batter—even a mighty one like Casey or the Obama presidential equivalent—can hold back the needed swing only so long. Sports and politics are competitive, and Mitt Romney showed up at debate with his Harvard MBA polished up, illustrating a command of financial matters that would be fitting for the best accountant. When his majestic statistical brilliance was then given some rented adverbs and adjectives of empathy (seemingly borrowed right from the President's dugout), the American mind grew cloudy and anxious. Even as

the Romney position was ill defined if not “top secret” – apparently “too good to be disclosed,” quipped the President, Obama had lost what George H. W. Bush referred to as “the big mo,” or momentum. Obama as mighty Casey was down on his luck at a fragile moment. In a week, the American electorate turned from a positive, other-regarding source of hope into a far more pessimistic, me-first frame of mind touted by Romney and his hand-picked libertarian Vice-President, Paul Ryan.

On the standard run of foreign and domestic issues, the percentage of Americans remaining undecided is unwarranted.<sup>2</sup> While the President improved his performance in the second debate conducted town hall style, the previous week Vice-President Biden imported some bad actors school habits (an immature laugh and condescending smile), which prompted a draw with more observers than expected giving the debate to the far less experienced Paul Ryan. The ideologically rigid, libertarian Ryan has a tangled understanding of the historical supports of American politics, but his background fits well with the Romney criticism of the “lazy” (tongue firmly in cheek) bottom 47% of Americans who from time to time turn to their neighbors and fellow citizens for a steadying hand.

This book enters the 2012 campaign near the final act. All three of us are of independent mind and have acted on it in previous presidential campaigns to ascertain with little deviation, the winner in advance. We are not clairvoyant, nor do we aspire to recognition as political pundits. One of us is trained in theology and law, another in law and diplomacy, and a third in medicine. These are especially helpful preparations for assessing the qualities of the two candidates, but it is the trait that we share which is the real talisman: and that is, our Catholic faith.

Catholics have picked the majority vote getter, and supported him, since at least the Nixon presidency. We don’t believe that Catholics vote as a bloc, but we do believe that the “seamless garment” of Catholic belief supporting increasing respect for the dignity of the human person in community affirms the best in the American civic philosophy. The President is slightly behind with Catholics nationwide at the moment which, we argue, is attributable more to a distorted understanding or lack of appreciation for the achievements of the President’s first term and the promise of the second.

This book is meant for all regardless of your personal faith belief. It is not at all a book aimed solely at Catholic discernment. One of us wrote that sort of

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<sup>2</sup> Cf., <http://www.latimes.com/news/politics/la-pn-undecided-voters-election-2012-20121017,0,5461169.story>

book in 2008.<sup>3</sup> Nor is this merely a Catholic brief for Obama. Another of us wrote that advocacy work in 2008.<sup>4</sup> Informed by the scholarly insights of one of America's foremost scholars of law and religion,<sup>5</sup> this very timely and needed book will assist voters in assessing how well each candidate or party addresses domestic and international issues in a manner urged by Catholic Social Teaching, a body of political commentary that has developed over the past century. Sometimes we refer to this tradition as CST. We have striven to make this presentation as accessible as possible so that all readers can be informed by these insights that have held such important predictive value in the last dozen or so presidential elections. By the final chapter, we anticipate that— notwithstanding the nail-biting closeness of the present polls—readers will be able to conclude that Barack Obama, our 44<sup>th</sup> president deserves a decent opportunity to complete the important reforms he began in 2008.

If, however, through lackluster debate or a tsunami of Romney-leaning ads financed by corporate money traceable to a Supreme Court erroneously failing to see the difference between real and artificial persons, the undecideds are likely to remain in the dark over the President's first term success close to home. If, in addition, there is some negative international event challenging the sufficiency of the Obama foreign policy, there is a bona fide chance that Mitt Romney will stand with hand raised next January promising as the 45<sup>th</sup> president to “preserve, protect and defend,” the Constitution of the United States of America.

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<sup>3</sup> Douglas W. Kmiec, *Can A Catholic Support Him? Asking the Big Question About Barack Obama* (Overlook Press 2008)

<sup>4</sup> J. Patrick Whelan, *The Case for Obama* (Catholic Democrats 2008)

<sup>5</sup> John Noonan & Edward McGlynn Gaffney, Jr., *Religious Freedom: History, Cases, and Other Materials on the Interaction of Religion & Government* (Foundation Press 2011).

## **This is 2012, not 2008.**

*“The stories of faith people tell me reinforce the power of my Christian faith which has guided me through my presidency and in my life, as a husband, as a father....”*

—Barack Obama, September 2012

**R**eligious liberty has come into the center of the presidential debate. It is, in truth, a debate occurring across the globe, as abuse of religious faith has motivated an increasing number of violent acts, including tragically the loss of a brilliant and courageous diplomat, Ambassador Chris Stevens, and three of his colleagues in Libya. Americans can give thanks that the divisions experienced elsewhere have not produced in our society either fundamentalist controls or a secularist banning of any religious concerns in the public square. Neither is the American way. As the life and thinking of the President manifests, our founders knew the importance of faith to our prosperity and good order, but having escaped religious intolerance, they also appreciated the need to secure equal treatment under the law for people of all faiths and none whatsoever.

In 2012, the issue of religious liberty is in some ways a healthy exercise even in our occasional disagreement. Unlike 2008, where a single issue of singular importance dominated discussion, this year the origin of the concern expressed for life is being understood to involve the care of the poor, the family wage needs of the middle class, our responsibility for the created environment and much more. In 2008, the red hot nature of a topic Catholics have felt deeply to be the core issue of civil rights preempted a broader, more discerning inquiry into a seamless garment of all the public decisions that determine whether we adopt intelligent and reasonable policies affecting the dignity of the whole person, and promoting the common good of our lives together in community on this fragile planet.

There is also a welcome respect among people of different faiths and there is little evidence of the imprudent and unwise misuse of sacred office prompting a few priests across the country to counsel that a vote for Barack Obama was a mortal sin, notwithstanding tax code limitations against using the pulpit for electioneering or endorsing political candidates. Formally, the Catholic Church is careful to state that it does not tell its members how to vote, but as in any large organization, there is slippage – some of it with the winks and nods of higher-ups.

Most recently, the new president of the U S Conference of Catholic Bishops (USCCB), Cardinal Timothy Dolan, is demonstrating the Church’s commitment to keeping clear of what is “Caesar’s” by giving the closing benediction at both

the Democratic and Republican Party conventions. With Stephen Colbert, the cardinal even demonstrated an Irish sense of humor -that has used humanity to understand differences of view, and occasionally to bridge some of them. Of course, there is always an exception, and there are a few reports of priests, even in the Cardinal's diocese of New York distributing in the Church bulletin a highly partisan endorsement of Governor Romney. And thank God there are thousands of good and decent priests and nuns who nurture us laypersons by their selfless witness to the Gospel and their deep respect for our own intelligence and freedom.



**Figure 1 Promoting the common good based on common ground and the inter-faith initiative of the President are Jim Wallis of Sojourners and Doug Kmiec**

Concerning the very definition of life and freedom, it is perhaps not surprising that abortion had been dominant in public debate, including past presidential campaigns. One cannot understate the continuing concern of the Church for honoring human life, but we've taken to heart what we have known all along: threats to life require more an amendment of heart and mind, not the law.

For over two score years, much of our political life has been tied in a knot over how to deal with this subject more in court than in our living room. Ever since the early 70s when *Roe v. Wade* found an absence of federal or state power to prohibit the practice, GOP promises to reverse the decision by Supreme Court appointment have often fallen flat, distracting us and consuming energy that could well have been better deployed meeting the needs of pregnant women.

Notre Dame law professor Cathleen Kaveny notes sagely: "*Roe v. Wade* and most of the Supreme Court cases that followed it did not merely legalize abortion in 'hard cases'; they did not present abortion as a drastic option to be considered only 'in necessity and sorrow.' Instead, they effectively denied it was morally problematic, for years striking down legislative effort after legislative effort to encourage women to choose childbirth over abortion." Hence, she argues, "The fundamental challenge facing the pro-life movement is to help the American people expand beyond rights talk and move toward the virtue of solidarity—solidarity with the unborn, solidarity with others who are vulnerable, solidarity with those upon whom these most vulnerable persons depend." For Kaveny the function of law is not so much the correction of society as a federal marshal might do in the Old West, as it is the task of an effective teacher of moral virtue, especially of the virtue of solidarity.<sup>6</sup>

<sup>6</sup> Cathleen Kaveny, "How Views of Law Influence the Pro-Life Movement," *Origins* 34: 35, Feb. 17, 2005.

2012 has not been totally exempt of presidential abortion politics, of course. Martha Raddatz caused a stir raising the topic bluntly in the Vice-Presidential Debate. The topic of abortion is cited by the bishops as the basis for their opposition to the enhanced availability of health insurance under the Affordable Care Act or “Obamacare.” The label “Obamacare” was framed by the President’s “tea party” opposition, but recently the President said he’s fine with it, since he much prefers that moniker than Mr. Romney’s “I don’t care” approach. Governor Romney has pledged to repeal Obamacare on his first day in office—withdrawing insurance from those working for small businesses where there is presently no health plan as well as from those with no present insurance who have a pre-existing conditions or young people under age 26. The Catholic Church has a centuries-old tradition of caring for the ill in hospitals, and since 1919 the American church has been advocating that we come to understand health care as a human right.<sup>7</sup> In light of this history, it was dramatic for the bishops to ultimately oppose final passage of the President’s health reform which substantially accomplishes the Catholic objective.

The bishops argue that Obamacare allows the use of federal funds to pay for elective abortions. The churchmen point to the initial approval by the Department of Health and Human Services (HHS) of “high risk” insurance pools that would have covered abortion. The bishops also fault the reform for failing to include necessary language to provide essential conscience protection, “both within and beyond the abortion context.” The lack of statutory conscience protections, say the bishops, has been illustrated in dramatic fashion by HHS’s “preventive services” mandate, which forces religious and other employers to cover sterilization and contraception, including abortifacient drugs. The Church has filed multiple lawsuits challenging the application of the contraception mandate to the universities and hospitals and social service agencies conducted under its auspices. Some of these cases will be decided before November and the contest is so close that a headline either way could make the difference.<sup>8</sup>

As we note below, President Obama signed an executive order expressly precluding federal funds for abortion as part of his *legislative* advocacy for the health reform. The bishops doubt this will preclude a judge from construing the statute to the contrary. Separately, the bishops are not convinced that President Obama’s accommodation exempting a very narrow category of

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<sup>7</sup> National Catholic War Council, *Program of Social Reconstruction* (1919).

<sup>8</sup> See, e.g., *O’Brien v. United States Department of Health and Human Services*, 2012 WL 4481208 (E.D. Mo.) (dismissing a challenge to the preventive services coverage provision of the ACA, 42 U.S.C. § 300gg-13(a)).

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religious organizations meets their ethical concerns in terms of the contraceptive mandate.

As potentially contentious as these issues are, they have been displaced in public and candidate parlance in 2012 by a wider conception of public or community responsibility to construct a better life for ourselves and our children. It is not surprising that the Catholic voter-like other Americans-is perplexed by persistently high unemployment in excess of 8%; the dour economic plight of the EU; Iranian intransigence and clandestine enrichment of uranium; Israel's awkward intervention into the campaign trying to force prematurely the hand of the President; and the recent assassination of Ambassador Chris Stevens and the related instability in North Africa over how to integrate Islamic belief with democratic governance. Catholic teaching touches on each of these subjects and, as the President knows, from his early work in a community effort sponsored by the Catholic Campaign for Human Development, the Church – through homeless shelters, soup kitchens, hospitals, and extraordinary school commitment – contributes mightily to the country's well-being, extending a helping hand to all, regardless of race, gender, ethnicity, or creed.

As already mentioned, Catholics have been remarkably accurate in their support of the winning presidential candidate in elections since 1972. For this reason, the role of faith in the presidential election in 2012 remains important. In 2008, the answer to the question *Can A Catholic Support Him?*<sup>9</sup> defined the difference between victory and defeat. The answer given in pivotal states in 2008 was a resounding “Yes, we can!”

At the current moment, the question is more muted, and by virtue of the President's substantial achievements, slightly different. Specifically, Barack Obama's empathy with the needs of the middle class seeking stable, family-wage-paying-jobs; his disentangling of America from the tragically destructive war in Iraq; his sensitivity to international realities, including the prudence to liberate Libya in coordination with a genuine military coalition and with no American military occupation, and, even if not yet fully grasped or perfect in every respect, the move toward universal health care of special advantage to the poor and the elderly, make the question for the Catholic voter one of even greater nuance. President Obama's first term agenda has strongly advanced what Catholic instruction has always seen as its core mission of promoting social justice. For this reason, despite the hysterics of a few highly partisan members of our faith who have prejudged matters, the thoughtful Catholic in the rectories, convents, and pews is faced not with the categorical question of whether it is even possible in the light of Catholic teaching to contemplate

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<sup>9</sup> Douglas W. Kmiec, *Can A Catholic Support Him? Asking the Big Question About Barack Obama* (Overlook Press 2008).

“support” for Barack Obama. That way of putting things insults the intelligence and reasonableness and responsibility of every Catholic voter. It fits snugly into the worst anti-Catholic propaganda of a former era, making all Catholics the ignorant but docile puppets of the Vatican. Instead, the question Catholics and all people of good will must be asking our politicians is a much more interesting one: are you committed to protect the dignity of the human person in community and to promote civic virtue, especially the virtue of solidarity with the most needy and most vulnerable?

Are the President and his campaign attuned to these serious questions, which are not about the narrow self-interest of a particular religious community, but about the common good of the nation? If so, we think it will make a difference for thousands of Catholic voters in swing states like Florida and Ohio and Pennsylvania. There is much sensitivity to people of faith on the part of the President, but the message as always needs reaffirming all the way down. In an already obscenely expensive campaign, there may be a temptation to resist this reality. For example, it is likely that a few campaign aides who have experienced the Catholic Church as a single-issue lobby group always in the company of far right conservatives will be hesitant to make campaign adjustment. Bolstering this view will be the challenge to the very idea of a “Catholic” vote. Within the faith, for example, there are significant ethnic differences (Hispanic Catholics overwhelmingly favoring President Obama while Caucasian Catholics slightly favor Governor Romney).<sup>10</sup> Likewise, Catholics at different income levels yield a similar dichotomy.

Many things can happen in the arc of the remaining weeks of October to throw a presidential campaign off-track, as the senior President Bush’s disappearing Persian Gulf popularity in his 1992 loss to Bill Clinton illustrates. Campaign hands for this reason contemplate and take seriously rumored “October surprises.” The presidential team is certainly monitoring the egg-shell relationship with Israel together with the nuclear goings-on in Iran as well as any economic news that could dampen the President’s claim of economic recovery. With all of this, Catholic concerns may risk neglect, and a purpose of this small book is to inform fellow Catholics of the qualities of our President that have been remarkably responsive to our perspective. Even as the President has a constitutional duty not to “establish” any Church, he has demonstrated a special willingness to listen carefully and to adjust policy when that is possible.

Given the centrality of the health reform to the achievement record of the first term, President Obama must remain alert to the fact that what explains the marginally reduced incidence of abortion remains elusive. At the 2012 conventions, the two parties and their respective candidates did not amend

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<sup>10</sup> [http://nbcpolitics.nbcnews.com/\\_news/2012/05/21/11797240-decision-2012-and-the-myth-of-the-catholic-vote?lite](http://nbcpolitics.nbcnews.com/_news/2012/05/21/11797240-decision-2012-and-the-myth-of-the-catholic-vote?lite)

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appreciably their previous postures: RNC supports a human life amendment without exception for rape or life of the mother; DNC: respects a woman's decision-making with a promise of enhanced health resource, especially supporting pre-natal care. There were, of course, back stories to each position. On the Republican side, there was a seismic kerfuffle when the Republican candidate for U.S. Senate in Missouri, Todd Akin, attempted to draw a distinction between legitimate and illegitimate rape, and argued for elimination of any rape exception to abortion prohibitions. Whatever he was attempting to say, the leadership of his party wasn't in the mood to figure it out and loud requests were made for Akin to step aside. He didn't, but we suspect he will be polishing an answer to related questions for the balance of an unsuccessful campaign.

The Democrats, too, had some dissent, mostly in side panel discussions and platform language hearings over whether to acknowledge the over 20 million Democrats who self-identify as "pro-life." Dr. Steve Schneck of Catholic University made a fine argument on this very point at the Democratic National Convention, fingering poverty as "the most prominent abortifacient":

The current GOP presidential ticket is a good reminder for pro-life voters why they should support DEMOCRATS for Life of America. Why pro-life voters, despite our continuing opposition to abortion on demand in America, should support the Democratic Party and President Obama's re-election.

The most powerful abortifacient in America is poverty. The abortion rate is 300% higher below the poverty line. More than 3 out of 4 women who choose abortions cite economic reasons for their decision. Examples from other countries around the globe have demonstrated that effective social programs and health care for the poor correlate with much lower incidence of abortion.

The Dutch and Germans have abortion rates of less than 1/3 of America's in part because they have such programs that include comprehensive health care, special pre natal, natal, and post natal programs for all, and generous programs to encourage adoption.

In the US, when states have adopted such programs, the abortion rate has fallen dramatically, as for example in Massachusetts where it's mandated health care programs have reduced the rate of abortions among teens by 21%.

As the Affordable Care Act (Obamacare) begins to roll out, all the evidence is that we will see similar reductions nationwide. The ACA extends Medicaid upwards to cover millions more of America's working class. Within its provisions is the Pregnancy Assistance Fund that allocates

\$250 million to help at-risk women have their babies. It triples the level of America's adoption credit and proposes to make that credit permanent. Through community health centers it directly offers the kind of pre natal, natal, and post natal programs that poor women desperately need. That's pro-life policy... These are the kinds of policies that make a difference in rates of infant mortality and abortion.

The contrast with the extreme proposals of Romney-Ryan is frightening. Romney and Ryan want to rescind the ACA. So, no more Pregnancy Assistance Fund. No more tripled adoption incentive. No more special pre natal, natal, and post natal care. They even want to cut the Child Tax Credit.

Far from extending Medicaid to a greater percentage of America's working poor, Romney and Ryan's dangerous plan is to actually to cut Medicaid. Devastate it really. According to analysis by the Center on Budget and Policy Priorities at a minimum they are proposing cutting Medicaid by 29% by 2016 and by 40% by 2022. That's right: 40%. Other analysts have pegged the proposed Romney cuts to Medicaid at a shocking 59%.

Let me put that 40% slashing in perspective. Medicaid now pays for more than 1/3 of all births in America. Pregnancies are expensive. The medical costs of newborns are expensive. An abortion by contrast costs hardly anything at all.

So what will gutting Medicaid by 40% mean for abortion? I'm convinced that the number of abortions in America would skyrocket if those cuts are made. The rate of abortions will likely skyrocket if Romney and Ryan are elected and have their way with Medicaid.

As an aside: nearly 2/3 of the elderly in nursing homes pay for their care with Medicaid. Pro-lifers should think hard about what Romney and Ryan's anti-life policies will mean for end of life issues too – like elder abuse and euthanasia.

Nor does the shocking plan of Romney and Ryan end there. Food stamps would be slashed, public housing funds would be gutted, early childhood education programs would be chopped, WIC would be devastated, HHS and HUD grants to critical relief organizations like Catholic Charities would be cut. Catholic Charities gets large portions of its budget from such grants, as do many similar religious organizations. I fear that the combination of the Romney-Ryan cuts is a perfect storm for rising abortion rates and related pro-life concerns. Pro-life voters should think long and hard about this election. Can you vote for Romney if it means that infant mortality rises by four

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percentage points? If it means large numbers of America's elderly can no longer receive nursing home care? If means more hunger for America's poor? Can one vote for Romney if it means a 6 or 7 or, God forbid, 8 percent increase in the number of abortions in America? If it means ANY increase in the abortion rate? If it means thousands of new deaths among the unborn?

I'm 100% pro-life and would overturn *Roe* if I could. I'm a faithful Catholic who believes in the sanctity of life from conception to natural death. We Democrats for Life understand the challenges facing pro-life voters in this election. But the Romney-Ryan ticket offers no pro-life guarantees and raises profound moral questions that pro-life voters can neither shirk nor ignore.<sup>11</sup>

Dr. Schneck's insight nicely unifies the two sides of Catholic social teaching – the pro-life side with the often eclipsed preferential option for the poor which is at the heart of Jesus' instruction to love our neighbor. The appreciation of this broader view is far greater today than four years ago. In 2008, there was little, if any, acknowledgement of the interrelationship or “seamless garment” of these two sides of Catholic thought, as the late Cardinal Joseph Bernardin impressively taught. No, quite the contrary, in 2008, a great many bishops drew a hard and fast line between these two aspects of Catholic teaching with the Obama focus on addressing the needs of the poor given a distinct second position, or ignored altogether.

Consider this interview in 2008 with Kansas City Bishop, Robert W. Finn:

*Interviewer:* Bishop Finn, if a Catholic comes to you and says yeah, but I'm worried about the poor, and there's global warming, and candidate X is so much better than candidate Y on those, even though candidate X is pro-choice, and in fact, an absolutist when it comes to abortion rights. Doesn't that balance out? What's the response?

*Bishop Finn:* Well, you know, some people say that if you have some candidate who wants to do all kind of great things for the poor, that this is going to reach abortion at its foundations. But the foundation of abortion is not poverty..... The real root of abortion in our country is ... the idolatry of self and selfish convenience. It's the total neglect of personal responsibility....

*Interviewer:* I have people come up to me in places like Ohio and Minnesota after I've done this last week when I was traveling around, tell me that their local priests are counseling them it's okay to vote for Barack Obama, it's okay to vote for a candidate who's radically pro-choice because of other reasons. If

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<sup>11</sup>[http://www.democratsforlife.org/index.php?option=com\\_content&view=article&id=770:remarks-by-steve-schneck-democratic-national-convention&catid=24&Itemid=205](http://www.democratsforlife.org/index.php?option=com_content&view=article&id=770:remarks-by-steve-schneck-democratic-national-convention&catid=24&Itemid=205)

such a priest if known to you in your diocese, do you discipline them?<sup>12</sup> *Bishop Finn*: Well, we certainly have to talk in a very serious way. I think priests are subject to many of the same limitations as other people. They may have grown up in a particular partisan household that favors a candidate regardless of their moral stance. They're among those people who want to look for a way to rationalize their conscience. But yes, as a bishop, I have to try to hold my priests accountable for misleading people.

In 2008 significant majorities of Catholics saw matters differently than Bishop Finn, despite being threatened with denials of communion, excommunication, and the frequent declaration that a vote for Obama was a “mortal sin.” Indeed, Obama proved very attractive to Catholics. Without the Catholic vote in Ohio, Pennsylvania, Michigan and Indiana—all of which were in the Obama column in 2008—we wouldn't be speaking about a second term in 2012.

A few missteps by the Obama administration's handling of religious exemptions under Obamacare prompted legitimate concern about the President's sensitivity to minority religious views. But the watershed achievement on health care—still only partially grasped or politically applauded—greatly advances the social justice mandate. No President of any stripe may constitutionally advance the teachings of his own faith community while ignoring legitimate moral concerns of others in our society. Just as “the law knows no heresy” in this country, public policy should not create second-class citizens who are not members of a dominant, preferred, or established religious community. This constitutional standard has enabled religion to thrive in this country. The dispute between the Obama administration and those who have sued the Department of Health and Human Services over its directive on contraceptives will eventually be resolved. Were that dispute already resolved, it would be fair to characterize President Obama as an architect of the transformation of modern American life along the lines of Catholic Social Teaching about the common good of our society.

Perhaps this sentence will light up the conservative Catholic blogosphere, but calmer, more reflective souls among us know that Obama's mother Ann Dunham consistently encouraged her son to empathize with those in need and to think of his life as a commitment to serve the needs of all in our society. This maternal influence on Obama should be unsurprising since mothers often spend more time with their children than anyone else in the world. *New York Times* reporter Janny Scott interviewed hundreds of people who knew Dunham, and has provided a meticulously researched and skillfully written biography of Obama's mother.<sup>13</sup>

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<sup>12</sup> <http://www.priestsforlife.org/magisterium/bishops/bishop-finn-kansas-city.htm>

<sup>13</sup> Janny Scott, *A Singular Woman: The Untold Story of Barack Obama's Mother* (New York: Riverhead, 2012). We have relied on Scott's book for much of the material in this part of the book.

They also know that after Obama finished college at Columbia University, he received hand-on instruction in Catholic Social Teaching when he worked as a community organizer out of a Catholic parish on the South Side of Chicago, administering a social needs program for the long-term unemployed under the auspices of the Catholic Campaign for Human Development.

And Bishop Finn? Well, things have not gone as well. On September 7, 2012, the *New York Times* included an out-sized, above the fold picture of President Obama thanking delegates for the privilege of running for a second term to complete the implementation of the health reform as well as address the profound inequalities adverse to the middle class family and others. Also on the front page that day the paper reported that after a bench trial, Bishop Finn was found guilty of “shielding a pedophile priest.”<sup>14</sup> The two stories juxtaposed on the front page of the *Times* front page limn the difference between 2008 and 2012.

The relationship between the general run of Catholic voters and President Obama is today reasonably harmonious. Some will vote for him, others not. But we do not see any mass movement among Catholics to respond to Obama’s presidency with the intense animosity that some of our bishops displayed when Notre Dame awarded the President an honorary degree in spring 2009. At the time this conflict reached intensity, John Quinn—Archbishop emeritus of San Francisco and a former president of the USCCB—wrote in the Jesuit weekly *America* that he was concerned not about the capacity of bishops to witness to the need for protection of life, but about how to do this effectively, thus sending four false messages to society: (1) bishops of the United States function as partisan political actors in American life, (2) bishops are ratifying the “culture war mentality,” which corrodes debate both in American politics and in the internal life of the church, (3) bishops are effectively indifferent to all grave evils other than abortion, and (4) bishops are insensitive to the heritage and the continuing existence of racism in America.<sup>15</sup>

Why the thaw in 2012 compared to the previously chilly relationship? It may have something to do with the grace of humility that accompanies the need of the church to clean its own house. Or perhaps the improved relationship is due to the openness of President Obama to seek common ground—a trait he learned in Chicago from Cardinal Joseph Bernardin’s dying gift of the Common Ground Initiative. Or perhaps it is due to the important commitment of Cardinal Dolan to avoiding having the Church considered as just another

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<sup>14</sup> [http://www.nytimes.com/2012/09/07/us/kansas-city-bishop-convicted-of-shielding-pedophile-priest.html?\\_r=1&hp](http://www.nytimes.com/2012/09/07/us/kansas-city-bishop-convicted-of-shielding-pedophile-priest.html?_r=1&hp)

<sup>15</sup> John R. Quinn, “The Public Duty of Bishops: Lessons from the Storm in South Bend,” *America*, Aug. 31, 2009.

lobbyist. As noted, this non-partisanship was evident in the Cardinal's reaching out to the Democrats when the GOP convention organizers invited him to pray a final benediction. In 2008 the Archbishop of Denver—the site of the Democratic National Convention—threatened to deny communion to then-Senator Joe Biden the Democratic candidate for Vice-President if he showed up for Mass in a Denver church.<sup>16</sup> In 2012, Cardinal Dolan delivered a closing prayer at both the Republican and Democratic conventions. To be sure, the prayers differed slightly with the Cardinal giving greater emphasis to the protection of the unborn in his Democratic moment, but praying with special emphasis for the poor and the neediest as well, showing his own appreciation for the seamlessness of life issues.

Cardinal Dolan's prayers at the opposing political conventions illustrates an understanding of how carefully the Church must walk in these modern times that demand less command and more love and understanding. The Cardinal's very presence in both conventions—"blessing and not cursing" (Romans 12:14)—inspires an attitude of spiritually anchored civility rather than hostile judgment of the political actors of both parties.

At times, like all busy people, the Cardinal seems to rely in formal speech presentation upon other draftsmen for remarks that try to lurch the campaigns into the categorical thinking and phraseology of 2008. Nevertheless, the Cardinal has largely avoided the heated rhetoric of a "war on religious liberty" claim made by other bishops. The Cardinal's better sense of context has saved him from the hazards of appearing to follow the political playbook of either party, a danger that feeds the myth that the Catholic church is a one-issue voting bloc.<sup>17</sup>

In 1976—America's bicentennial year—a journalist once asked Mayor Richard J. Daley of Chicago "Will Catholics vote against Gov. Carter, Mr. Mayor, because of his abortion stand?" Writing in 2004, when then-Senator John Kerry was running for the presidency, the distinguished Catholic sociologist Fr. Andrew Greeley reports Hizzoner's reply:

The mayor of Chicago stared at the reporter with the bemused frown he reserved for silly questions. "They don't vote that way." Twenty-eight years later, they still don't vote that way. Nevertheless, in the run-up to the last seven presidential elections,

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<sup>16</sup> For an argument against misuse of the Lord in the Eucharist as a political weapon, see Nicholas P. Cafardi, "Voting and Holiness," in Cafardi, *Voting and Holiness* (New York: Paulist Press, 2012), pp. 11-14; and see Douglas W. Kmiec, *Can A Catholic Support Him?* (Woodstock, NY: Overlook Press, 2008), pp. 108-110, 115-121.

<sup>17</sup> John Gehring, "Not a Single-Issue Church: Resurrecting the Catholic Social Justice Tradition," in Cafardi, ed., *Voting and Holiness*, note 14 above, pp. 85-88.

experts on both sides have predicted that the “Catholic anti-abortion” vote would cause trouble for the Democrats, especially given the drift of Catholics from Democratic alignment. Both these “theories”—Catholic anti-abortion vote and a Catholic realignment—are urban folk tales that float around in the collective consciousness of the media with very little basis in fact.<sup>18</sup>

But even in the case of an affable leader like Cardinal Dolan, the temptation to go for “fighting words” is persistent. In a speech to the John Carroll Society on the eve of 9/11 this year, Cardinal Dolan used lots of militant discourse, ill-disguised in historical allusions that do not describe the moment we are living through with much precision. Even more curiously, the Cardinal is heard to define religious freedom as the “right to be left alone.” This libertarian battle-cry may motivate a narrow band of the Republicans, but it cannot be, and never was, the way of the Church in America. It is, in fact, not the way of the Church as exemplified by Cardinal Dolan’s own criticism of Vice-Presidential nominee Paul Ryan’s heartless assault on Medicaid and Medicare.

Yes, religious freedom does insulate the Church from aspects of law, particularly those aimed at singling out any synagogue, church, or mosque for disfavor. Yet, most of the health care dispute and other frictions involving the Catholic Church are not of this nature. The Church’s interest is the formation of community where the dignity of all is observed and the needs of all are reasonably met. “All will be well,” as Monsignor John Sheridan<sup>19</sup> used to opine, if we do not forget that the heart of the Catholic tradition is not snap condemnatory judgment, but discerning, redemptive encouragement and empowerment.

How fortunate the Church is that the personality of the incumbent President is one of like discernment and fairness. You might say in the alternative: how fortunate America is to have a president who is as aware and respectful of Catholicism as any president in recent memory. But there are traps for the unwary that the President and the Cardinal need to avoid for the spirit of good will between Catholics and the President to grow. More on this in the chapters that follow.

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<sup>18</sup> Andrew M. Greeley, “The Abortion Issue Has Little, If Any, Effect on the Catholic Vote: Few Are Swayed by a Candidate’s Pro-choice Policy,” *America*, June 18, 2004. See, e.g., National Opinion Research Center, *General Social Survey* (2002) and Survey Research Center (University of Michigan), *National Election Study* (2002); Jeff Manza and Clem Brooks, “The Religious Factor in U.S. Presidential Elections, 1960-1992.” *American Journal of Sociology* 103 (July 1997): 38-81.

<sup>19</sup> Douglas W. Kmiec, *Lift Up Your Hearts*, (Embassy International Press 2012) (Detailing the President’s outreach to Islam premised upon inter-faith understanding as well as how the President’s actions often manifested a genuine “theology of kindness.”)

## Faith-filled Freedom

*“That we can live with one another in a way that reconciles the beliefs of each with the good of all.”*

-- President Obama’s nightly prayer for our nation.

Americans have an intuitive sense about their political candidates. The hundreds of millions spent on campaign advertising may nab an independent here and there, but unless a campaign is entirely scripted, which would likely alienate voters more than it would impress, we know who is being genuine and who is not. Nowhere is this more true than on the subject of faith or religion.

While faith is unquestionably important to the individual believer insofar as it reconciles a person’s mind with that of God, its relevance to the success or failure of a democratic republic is as a consensual rationale (love of God and neighbor) for placing self-limitations on personal freedom without the heavy hand or penal sanction of law. Article VI of the Constitution precludes reliance upon a religious test oath to participate in any public office or “trust,” but like the First Amendment which is designed to keep government out of individual choice of religious belief or practice, Article VI is not conveying the unimportance of faith or religion to a life well lived, but the opposite.

Of course, since faith only matters if it is uncoerced, there is a dilemma, how to insist upon faith’s importance without undermining its consensual nature. Here, the founders relied upon the persuasiveness of the clergy and the latitude that each of us has to simply resolve that a person without an appreciation for the importance of faith is not well prepared to observe important limitations on the exercise of power. In short, that the Constitution – wisely – asks for no test oath or specified ecclesiastical preference does not mean that individual voters cannot, or should not, investigate the significance of faith in a person’s life. This was as true in the 19<sup>th</sup> century when Alexis de Tocqueville wrote a two volume treatise outlining the significance of personal faith to the exercise of good judgment in public or private matters. It was also true in the run up to the 2012 Republican convention, when Washington Post columnist Michael Gerson advised Romney to:

inject some authenticity – or at least some personality – into his campaign.... Take away Romney’s religion and you are left with Harvard, Bain, and various corporate boardrooms, Mormonism has been one of the main stages for his leadership, as well as the main setting where he has displayed humanity. He has been a missionary, a lay minister, a spiritual guide. He has delivered sermons, counseled couples and worked with leaders of other faiths, Mormonism is the reason for Romney’s rectitude, the explanation for his wholesomeness,

the key to understanding his persona. Without it, he would merely be a stiff, able management consultant. Romney's reticence on religion leaves a large personal and biographical gap.<sup>20</sup>

Happily, early in life, President Obama discovered that even the greatest service to others failed to resonate with him without a faith orientation. The faith-connection at first baffled him, but soon he realized it was what put "community" in his youthful role as a community organizer. Faith is thus important for the self-imposed limits on freedom it persuades us to observe and for the inter-connectedness it creates among the members of the human family. Subtract either, and the quality of the candidate before you for evaluation is of a far lesser quality. In Gerson's words about Romney, he is just "a stiff management consultant."

The reader may be saying, "That is not faith, it is merely common sense." In this, the reader would be right except that no reflective person would hesitate to ask further: how do these "common sense" limits come to be established? They are not laws of natural science, for example, dictating planetary orbits or the physical properties that must be observed to land a probe successfully on Mars. The grant of our freedom is such that we can choose – imprudently – and often with disastrous consequence to think we can "cheat the system" and set ourselves above the consequence of actions that cut against the grain of our human nature. We are absolutely free to drink or eat whatever we wish, but a diet of heavy drinking will over time destroy the body. We are absolutely free to be dishonest in business or in relationships, but over time the dishonesty will render new relationships impossible and tear asunder the old.

The person whose mind and spirit are open to faith manifests a love of freedom aimed at good purpose and observant of the qualities of the created human person. Moreover, the person of faith having identified something larger than his or her own desires as a limit searches for the best understanding of this external constraint and in so doing reveals another quality indispensable to leadership: humility and an open mind. And if this qualities are present in a candidate, as we believe they are in Barack Obama, it will be readily known by the voters whether they are occupying the same room as the President or only being engaged by him via the media.

If the President has this finely honed appreciation of freedom, faith and human nature why has he been accused of being at war with the Catholic faith? We take this up more directly in the discussion of Cardinal Dolan's insistence that the President must be even more sensitive to Catholic teaching discouraging use of contraceptives.

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<sup>20</sup> Michael Gerson, "Romney Should Not Be Afraid to Highlight His Faith," *Washington Post*, August 10, 2012.

In order to air these differences of opinion, the attitude of opposing positions must not be based on intransigence, but on charity and understanding. Cardinal Dolan's willingness to explore administrative alternatives, over the narrowness of the religious exemption granted in the context of the health care mandate for all those to be insured to have access to contraception. The Cardinal politely distanced himself from the budget priorities of Congressman Paul Ryan, Mr. Romney's designee for Vice-President. The Ryan budget priorities preserve tax benefits for those of extremely high income while proposing severe cuts in the social welfare system, both Medicare for seniors and Medicaid for the poor.

We worked diligently to secure an appropriate welcome for President Obama at Notre Dame, openly urged the President not to accept a crabbed religious exemption fashioned or copied over from other contexts by HHS that has the capacity to restrict Catholic homeless shelters and food pantries to caring for Catholics alone. We cannot imagine the President will not resolve this together even if he is perplexed by some in the Catholic health care community whom one might have expected to find among the strongest advocates of the overall provision of care to the poorest of the poor.

The President's perplexity, of course, is understandable. As a non-Catholic he cannot be expected to have every nuance of the highly nuanced contraception history and teaching of the Catholic church at his fingertips. Even if he did, it is in the nature of freedom of religion that it is not for the president, or officials acting for him, be they high or low in rank, to straighten out the complexities of that which theologians have had under debate since the 1960s and before. It can be reasonably anticipated that the President will work more diligently and responsively with Father Jenkins, the President of Notre Dame, to create an administrative mechanisms for self-insurers like the University to maintain the Church's conscientious objection. After all, Father Jenkins has enough to do with USC on the football schedule again this year. Although with the Irish up 6-0, it is the Trojans that may have their hands full.

The last bit of levity, while not raucous, is intended, since it illustrates a "Lift Up Your Hearts,"<sup>21</sup> spirit of working together in pursuit of the common good than most of the severely partisan accounts of the President Obama's intentions toward the Catholic community. In particular, we trust by now the reader knows well enough that the regrettable claims by some prelates that Obama is at war with the Church is so overstated as to be inaccurate. To call the disagreement between President Obama and some of the Catholic hierarchy

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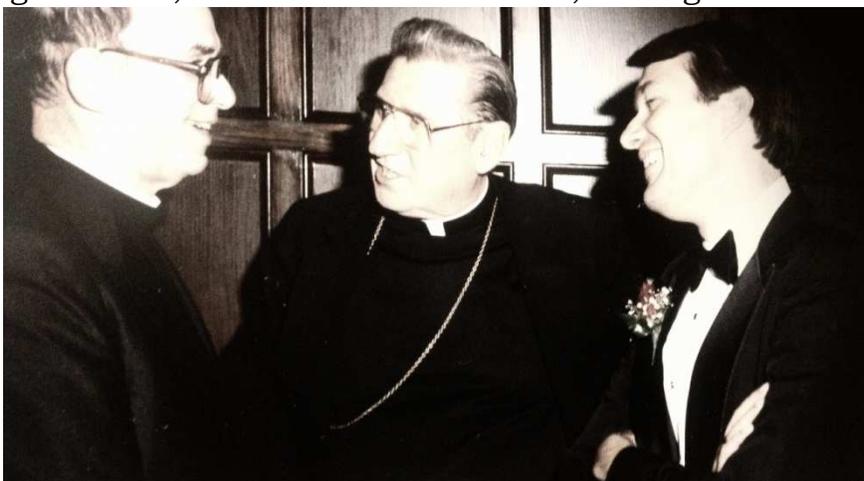
<sup>21</sup> Douglas W. Kmiec, *Lift Up Your Hearts*, (Embassy International Press 2012), available in select bookstores and on Amazon describing an ethic or theology of kindness that, if allowed, could greatly amend our broken civil discourse.

## America Undecided

a “War” is enormously overstated. This disagreement over the nuances of exemption scarcely approximates the justifiable and very serious concern of the Holy Father with secularism (the systematic exclusion of religious precept or expression from public discourse), and it also fails to comprehend that essential religious freedom has always depended upon a respectful distance between church and state.

The President cannot give Catholicism or any other faith first preference in the formulation of new laws for to do so would likely be an improper favoritism, or in constitutional terms, an unlawful establishment. Less visibly, but equally worrisome, it uses the power of legal enactment to short-circuit the internal discourse within the church herself.

Early on we explained why even though Barack Obama is not a Catholic, his background justifies our perception of him as capable of *visionary leadership for universal human rights*. All of us had the privilege of working with the late Cardinal Bernardin, a beloved progressive thinker and true southern gentleman, and Cardinal O’Connor, a tough as nails, former chaplain to the



**Figure 2 Cardinals Bernardin and O'Connor in conversation with Amb. Kmiec, who invited them to Notre Dame to help bridge the left-right split in the American church. Kmiec served on the law faculty & director of ND's Law & Gov't Center (1980-99)**

armed services and later one of Cardinal Dolan’s predecessors as Archbishop of New York. These great men of the Church saw the proverbial half-full and half-empty, but their love for Christ and His Church bridged any smallness on either prelate’s part.

President Obama is not Catholic – although ask me some time to tell you how the White House called him at his foreign post in Europe to report the President’s conversion to “the one true, catholic and apostolic faith.” I was overjoyed and explained to his Washington D.C. colleagues who awakened me with this news (given the 6 hour time difference). After letting me wander way out to the end of the conversational limb with affirmations that he knew the Holy Spirit wouldn’t wait forever, the closing words on the call were: “Oh by the way, Ambassador, “happy April 1.”

I still hear the chuckling and I remain ever alert for the return opportunity. In truth, however, the President’s perspective is one that welcomes the

participation of all religions in the formulation of public policy and in discussion in the public square. U.S. Senate Candidate Obama in 2006 wrote: “the discomfort of some progressives with any hint of religiosity has often inhibited us from effectively addressing issues in moral terms. Some of the problem is rhetorical: scrub language of all religious content and we forfeit the imagery and terminology through which millions of Americans understand both their personal morality and social justice. Imagine Lincoln’s second inaugural address without reference to ‘the judgments of the Lord,’ or King’s ‘I have a dream’ speech without reference to ‘all of God’s children.’” Their summoning of higher truths helped inspire what had seemed impossible and move the nation to embrace a common destiny.”<sup>22</sup>

You’ll see in the pages to come in Part III a reminder that Obama’s formation was that of a community organizer in the South Side of Chicago, a highly Catholic setting – working out of a Catholic rectory, learning the needs of others under the influence of a parish priest who worked tirelessly to meet those needs. and This experience was made possible through a grant provided At the most fundamental level of funding, supported by the Catholic Campaign for Human Development bringing aid and training to many places around the nation and beyond, including south Chicago where Obama had settled, would marry, and begin family life.

Yet, the formation of Barack Obama came with abundant, and other-regarding love, through the un-churched, but remarkably Christ-like witness of President Obama’s mother to which we turn to in Part II.

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<sup>22</sup> Barack Obama, *The Audacity of Hope: Thoughts on Reclaiming the American Dream* (Three Rivers Press 2006), p. .

**Part II**  
**An inspiration of Empathy and Service**

*I was not raised in a particularly religious household, but my mother instilled in me a sense of service and empathy that eventually led me to become a community organizer after I graduated college.*

-- President Barack Obama, Commencement Address  
University of Notre Dame, May 21, 2009

## Dreams from His Mother

*[F]or all her professed secularism, my mother was in many ways the most spiritually awakened person that I've ever known. She had an unswerving instinct for kindness charity, love, and spent much of her life acting on that instinct, sometimes to her detriment. Without the help of religious texts or outside authorities, she worked mightily to instill in me the values that many Americans learn in Sunday schools: honesty, empathy, discipline, delayed gratification, and hard work. She raged at poverty and injustice, and scorned those who were indifferent to both.*

–Barack Obama, *The Audacity of Hope* (2006)

The election of 2012 is occurring at a moment of promise, but also risk, as the heroic sacrifice of Ambassador Chris Stevens in Libya reminds us. The election will probably be among the most critical of any in our lifetime. So it is a good moment to reflect on many streams of thought and groups of people who played important roles in shaping the political thinking and career of President Obama.

Millions of Americans know something of the biography of America's 44<sup>th</sup> President, Barack Hussein Obama, from several studies that have appeared in the past several years.<sup>23</sup> In addition to these studies, the president published a memoir<sup>24</sup> after he completed his legal studies at Harvard Law School, where he was the first African-American to be elected President (Editor-in-Chief) of the law review.

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<sup>23</sup> See, e.g., David Remnick, *The Bridge: The Life and Rise of Barack Obama* (New York: Knopf, 2010); James T. Kloppenberg, *Reading Obama: Dreams, Hope and the American Political Tradition* (Princeton: Princeton University Press, 2011); David Maraniss, *Barack Obama: The Story* (New York: Simon & Schuster, 2012).

<sup>24</sup> Barack Obama, *Dreams from my Father: A Story of Race and Inheritance* (New York: Times Books, 1995).

### “A Singular Woman”

These reflections begin more personally by exploring the powerful influence of the President’s mother, Ann Dunham. That should be unsurprising since mothers often spend more time with their children than anyone else in the world. *New York Times* reporter Janny Scott interviewed hundreds of people who knew Dunham, about whom few details were previously known. Scott’s meticulously researched and skillfully written biography of Ann Dunham<sup>25</sup> has greatly assisted this account of the maternal influence on President Obama.

President Obama’s mother attended high school on Mercer Island in Lake Washington near Seattle, where she was part of an active Unitarian Church youth group and attended the East Shore Unitarian Church in Bellevue WA. After Ann graduated from high school, her father found work in Honolulu and she moved with her parents to Oahu. She enrolled at the University of Hawaii, and her first month in school she became acquainted with a charismatic 24-year-old graduate student named Barack Obama, the President’s father. She described him as having been the first African graduate student at the university there, and they married at a time when racially mixed marriages were still illegal in more than twenty states.<sup>26</sup>

Ann Dunham gave birth to the younger Barack Obama in Honolulu, Hawaii on August 4, 1961. Two Honolulu newspapers reported this fact shortly after he was born. And in response to unfounded rumors to the contrary, the President published the official State of Hawaii record of his birth—known as the “long-form certificate” proving when and where he was born.

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<sup>25</sup> Janny Scott, *A Singular Woman: The Untold Story of Barack Obama’s Mother* (New York: Riverhead, 2012). We have relied on Scott’s book for much of the material in this part of the book.

<sup>26</sup> In *Loving v. Virginia*, 388 U.S. 1 (1967), the Supreme Court unanimously invalidated all state laws that prohibited interracial marriages.



Figure 3 Statue of President Obama as a boy in Jakarta Indonesia

The President's father left before Barack's first separated before he had a very happy in the care of his few years later, Ann Indonesian student



Hawaii. They had a daughter Maya Soetoro when our future president was four years old. Two years later the family moved to Jakarta, Indonesia. President Obama's first school was a neighborhood Catholic academy, the St. Francis Assisi Foundation School. He began first grade there in 1968, a few months after Martin Luther King, Jr., and Bobby Kennedy were killed.

Hawaii to study at Harvard birthday. His parents was two years old, but he early childhood in Honolulu mother and her parents. A married Lolo Soetoro, an she met at the University of

President Obama's Catholic elementary school had only opened the previous year, and welcomed children of any religion. His first-grade teacher, Israella Dharmawan (now age 64), said that like all the other students, "Obama had to pray before and after each class, and cross himself in the name of the Father, the Son and the Holy Spirit."<sup>27</sup>

His family subsequently moved to a middle class neighborhood, some distance from the St. Francis School, and he was enrolled in a selective public school in central Jakarta that was part of the legacy of Dutch colonial rule.

In his memoir, President Obama describes memories of finding himself in the company of a very different set of classmates than many of us had in American schools. "The children of farmers, servants, and low-level bureaucrats had become my best friends, and together we ran the streets morning and night, hustling odd jobs, catching crickets, battling swift kites with razor-sharp lines—the loser watched his kite soar off with the wind, and knew that somewhere other children had formed a long wobbly train, their heads toward the sky, waiting for their prize to land."<sup>28</sup>

He describes seeing beggars every day, "in tattered clothing matted with dirt, some without arms, others without feet, victims of scurvy or polio or leprosy walking on their hands or rolling down the crowded sidewalks in jerry-built carts, their legs twisted behind them like contortionists'." He also became aware at a very young age of the extremes of suffering in the world. Indonesia had undergone a military coup the year before the family's arrival there, and

<sup>27</sup> Paul Watson, "As a Child, Obama Crossed a Cultural Divide in Indonesia," *Los Angeles Times*, March 15, 2007, p. A1.

<sup>28</sup> Barack Obama, *Dreams from My Father*, note 20 above, p. 457.

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hundreds of thousands of people had been killed. “The world was violent, I was learning, unpredictable and often cruel.”

The young Barack brought these images home; he did not look the other way. Together with his gifted mother, he would acquire a sensitive understanding of these varied human circumstances. At the University of Notre Dame in May 2009, President Obama observed how: “my mother instilled in me a sense of service and empathy that eventually led me to become a community organizer after I graduated college.”

How did Ann Dunham accomplish her lesson?

Most of all, she possessed an abiding sense of wonder, a reverence for life and its precious, transitory nature that could properly be described as devotional. Sometimes, as I was growing up, she would wake me up in the middle of the night to have me gaze at a particularly spectacular moon, or she would have me close my eyes as we walked together at twilight to listen to the rustle of leaves. She loved to take children—any child—and sit them in her lap and tickle them or play games with them or examine their hands, tracing out the miracle of bone and tendon and skin and delighting at the truths to be found there. She saw mysteries everywhere and took joy in the sheer strangeness of life.<sup>29</sup>

Like many of us who have lost our parents, Obama regretted opportunities missed that could not come again. After he finished his memoir *Dreams from My Father*, he received word of his mother’s death, prompting him to muse: “I think sometimes that had I known she would not survive her illness, I might have written a different book — less a meditation on the absent parent, more a celebration of the one who was the single constant in my life. I know that she was the kindest, most generous spirit I have ever known, and that what is best in me I owe to her.”<sup>30</sup>

And yet, Ann Dunham was not a religious woman:

[F]or all her professed secularism, my mother was in many ways the most spiritually awakened person that I’ve ever known. She had an unswerving instinct for kindness charity, love, and spent much of her life acting on that instinct, sometimes to her detriment. Without the help of religious texts or outside authorities, she worked mightily to instill in me the values that many Americans learn in

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<sup>29</sup> Obama, *The Audacity of Hope*.

<sup>30</sup> Barack Obama, *Dreams from My Father: A Story of Race and Inheritance* (New York: Times Books, 1995).

Sunday schools: honesty, empathy, discipline, delayed gratification, and hard work. She raged at poverty and injustice, and scorned those who were indifferent to both.<sup>31</sup>

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<sup>31</sup> Barack Obama, *The Audacity of Hope: Thoughts on Reclaiming the American Dream* (New York: Crown, 2006), p. 205.

### The Gifts of Empathy and Open-Mindedness

Ann Dunham was a cultural anthropologist well trained to be attentive to data about persons and the communities in which we live and function. An admirer of the great cultural anthropologist Margaret Mead, Ann studied with a mind open to discovering what we can learn from different cultures. It was not her way to analyze the world from the purpose of taking resources or reshaping far off lands in our own. But Ann's professional work was shaping someone very important: a young, inquisitive Barack Obama.

It is well known that the President prefers "bottom up" approaches to resolve problems. Like mother like son, for in work for the U.S. Agency for International Development and the Ford Foundation, Ann was a real pioneer in creating the whole field of micro-lending in which poor women were lent "seed money" to start their own businesses. The Ford Foundation turned to Barack's mother to explore the critical role of women in the support of poor households. After looking at a list of well-qualified candidates to do this work in rural villages, the Foundation decided on Dunham. "She's a specialist in small scale industries/non-farm employment and would be superb."

Dunham's work at the Ford Foundation benefitted from her fluency in the national language. Moreover, she had deep friendships in scores of villages, and was in fact, married for a time, to an Indonesian. At the International School where her daughter, Maya, attended, and where all the children of Ford Foundation employees attended, Dunham's daughter was the only Indonesian.

In a word, what distinguishes the best anthropologists (and the most sensitive human beings) is *empathy*. Native Americans call it walking a mile in another's moccasins. Or sometimes we call it *compassion*, the deep understanding that regrets the suffering or *pathos* of another human being strongly enough to be willing to enter into it and share it. This kind of living—with *empathy* for others—is the first thing that Barack Obama recalls as gifts from his mother, dreams of the future he received from her.

The President's younger half-sister Maya Soetoro agrees:

[Our mother] was ... unflinchingly and unwaveringly empathetic.... She had an ability to see herself in so many different kinds of people, and that is something she was very strict about with us—that absence of judgment, of acrimony. She was always very good at finding a language that the other person would understand, regardless of where they were from, or their socio-economic

background. And I think that's something that's been given to us, a major gift that's bestowed on us."<sup>32</sup>

She adds that Ann Dunham taught Barack and Maya that:

[W]e are basically all the same and we can get along and we can learn to love one another and we can reach out to one another and appreciate each other's differences and the beauty residing therein. But make sure that laughter was the prevailing form of communication and that nothing ever became acrimonious and that everything was pretty and everything was sacred and everything was properly maintained and respected—all the artifacts and ways of being and living and thinking.<sup>33</sup>

Sometimes, as in the case of a grave injustice, the appropriate way of responding is not mild, placid acceptance, but anger that leads to change. In *The Audacity of Hope*, the president noted, "She raged at poverty and injustice, and scorned those who were indifferent to both." If one is angry about poverty and injustice, the big question is what one will do with that anger to move in a useful direction. This introduces the duty of servant hood or service.

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<sup>32</sup> Todd Purdum, "Raising Obama," *Vanity Fair* (March 2008).

<sup>33</sup> David Maraniss, *Barack Obama: The Story* (New York: Simon & Schuster, 2012), p. 404.

### A Sense of Service

Ann Dunham's first major professional advance came when she was hired at age 27 by a Dutch priest, Rev. A.M. Kaderman, S.J., to work at a young English-language management training school called the Institute for Management Education and Development. Fr. Kaderman, a stern and very conventional colonial-era priest, had obtained funding from the Ford Foundation and a number of European donors with Catholic connections to help educate a new managerial class in Jakarta. He gave Ann considerable responsibility and an equity stake in the school. Though he was in his 60s at the time, Fr. Kaderman continued to work in the mountains and other parochial areas accompanied by Ann. They had a close working relationship for more than twenty years. Ann trained other teachers, helped develop the school's curriculum, and was herself popular as a teacher of some important executives. One of her fellow teachers described her as "a riot of laughter from beginning to end. She had a great sense of humor."

When Ann died of cancer in 1995, Obama's sister Maya Soetoro observed:

[H]er philosophy of life [was] to not be limited by fear or narrow definitions, to not build walls around ourselves and to do our best to find kinship and beauty in unexpected places. She gave us a very broad understanding of the world. She hated bigotry. She was very determined to be remembered for a life of service and thought that service was really the true measure of a life."<sup>34</sup>

Ann Dunham gave her children as strong sense of the duty of service to others. Ann Dunham has been widely portrayed as an atheist or agnostic. But Janny Scott found many people who knew her in Indonesia, and who describe her as someone with great respect for other religions, whose interest in them was not mere anthropological curiosity, but a deep commitment of a very spiritual person. The picture that emerges of Obama's mother is that she was strong-willed, sometimes an impulsive risk-taker, often generous, financially stressed woman of the late 20th century who never gave up her dream of doing something that she thought was important. Scott adds: "Many of her friends see her legacy in President Obama—in his self-assurance and drive, his boundary bridging, even his apparent comfort with strong women."<sup>35</sup> Like First

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<sup>34</sup> Janny Scott, "The Long Run: A Free-Spirited Wanderer Who Set Obama's Path," *New York Times*, March 14, 2008, p. A1.

<sup>35</sup> *Id.*

Lady Michelle Robinson Obama. Or Minority Leader of the House Nancy Pelosi. Or Obama's formidable opponent for the presidency in 2008 whom he invited to serve as Secretary of State, Hillary Rodham Clinton.

Dunham certainly made sure that her son Barack and her daughter Maya had a good education and were trained in good values. The president may not have learned these values in a Sunday school, but these are the values he credits his mother with teaching him at home: "honesty, empathy, discipline, delayed gratification, and hard work." Not too shabby.

### “Always Love Your Mother”

This subhead is the title of a sentimental Irish melody often sung in sad farewell at a mother’s funeral. It is a tear-jerker. How could it not be? The woman who bore us inside her body until it was time for us to see the light of day, how can we ever repay that woman for the gift of life itself? The answer, of course, is that we can’t. “Love her while she’s living,” it insists. “You’ll miss her when she’s gone.” Perhaps the most appropriate way to do love any mother is to recall gratefully the special gifts these most important of all women have given us, and to live our lives as authentically and generously as these marvelous women have done.

We have begun this volume on the faith of President Obama by identifying its understandable, but somewhat unusual beginnings. It is indeed understandable when faith is transmitted from parent to child; it is admittedly unusual when the parent, like Ann Dunham, was a non-believer. Nonetheless, faith is a gift of God and to insist that it follow some pre-ordained path acceptable to man is to get the order of the universe reversed. Yet some critics of the president who should more easily grasp this because they are members of the clergy have assailed the president’s faith commitment. In a televised interview on February 21, 2012, Dr. Franklin Graham—son of the famous evangelist Billy Graham—openly questioned the president’s Christian faith, stating, “Under Islamic law, the Muslim world sees Barack Obama as Muslim.”<sup>36</sup> In response to the justifiable concern of the NAACP and preachers around the country that Graham had become an accomplice to those who see faith only as an occasion to divide us, Graham has now apologized, admitting his objections to the president’s re-election are about his “policy stances,” not really about the president’s religious beliefs. After his apology, he persists with the same false attack on the president’s Christian identity. That’s not an apology. That’s chronic failure to speak truthfully.

In 1960 another famous preacher Dr. Norman Vincent Peale disqualified John Fitzgerald Kennedy for the presidency solely because he was a Catholic. A reporter spotted the witty former Governor of Illinois Adlai Stevenson—twice the unsuccessful standard-bearer of the Democrats against President Eisenhower in 1952 and 1956—and asked him what he thought of Dr. Peale’s statement. Stevenson replied: “He’s like the Apostle Paul.” “Really,” the reporter said, “How so?” Adlai: “I find Paul appealing. And Peale appalling.”

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<sup>36</sup> Mary Bruce, “Franklin Graham Questions Obama’s Christian Faith,” ABC News, Feb. 21, 2012. <http://abcnews.go.com/blogs/politics/2012/02/franklin-graham-questions-obamas-christian-faith/>

Dr. Graham's attacks on President Obama's religious commitment to Christ are equally appalling. During the 2008 primaries Franklin Graham asked then-Senator Obama whether he believed that "Jesus Christ was *the* way, the truth and the life." This was the middle of a business meeting, and the question silenced the room. The senator paused and began to answer that *he* believed.

"No," Graham interrupted, looking for perfect orthodoxy. "Do you believe Christ is *the* way?" This may be an important question for millions of Christians who are committed to limiting the scope of God's grace to a very small percentage of the world's current population, let alone in centuries past. In this context, it had all the appearance of the kind of Gotcha trap reported in the Gospel according to Mark 12:13, which Jesus answered by requiring his adversaries to produce one of Caesar's coins, asking them whose image was on it, and then stating: "Give to the emperor the things that are the emperors, and to God the things that are God's."

The Constitution guarantees that "there shall be no religious test" for holding a federal office, including the presidency. Obama might have told Dr. Franklin that he was standing by the constitutional ban on religious tests, and refused to answer the question. So might Jesus have refused to answer the trap question he was given, but if he had refused to do so, we would have missed a powerful saying that has evoked profound reflection down to our own day.

The First Amendment precludes Congress from exercising power ("Congress shall make no law") over religious matters by establishing any religious community in preference to others or by denying free exercise of religion to all of us. In the eighteenth century they were two sides of the same coin, two ways of stating the same value of religious freedom. Obama could also have given Franklin Graham an answer based on the First Amendment Religion Clause along these lines: "a person running for national office has to keep in mind that not everyone in the country shares his own Christian understanding, and no religious community may be preferred over another." But although Senator Obama clearly understands and respects the American commitment in the First Amendment, he did not rely on constitutional argument.

So how did the Senator respond? He simply shared the depth of his own personal experience. After a significant pause conveying the sincerity of his response, Obama gave the following home-run answer: "Dr. Graham," he said, "faith is very important to me, but my mother was not blessed with faith, but I know her to be the most caring, loving, empathetic person in my life. I cannot subscribe to an understanding of faith that suggests I will not have any opportunity to share eternity with her. Dr. Graham, Jesus is *my* way."

Ann Dunham wasn't lucky in her two marriages. But that didn't keep this "singular woman" from being the best single mom for her son Barack and her daughter Maya, or from giving both of them the constant, nurturing love they

never forgot.

Ann Dunham never became rich. Silver and gold she had not. But what she had she gave them. From her work as a scientist she imparted to her children the universal methodological duties to be attentive, intelligent, reasonable and responsible. From her work as a cultural anthropologist she passed on the obligation to be respectful of others, even when—especially when—others are different, and the corresponding moral duties of empathy and service.

This is why then-Senator Barack Obama was neither flat-footed nor tongue-tied when Dr. Franklin Graham tried to catch him up in a Catch-22 question that either affirmed or denied Graham's truth about Jesus as "*the way*." It also explains why Obama did not duck the pastor's nervous question or enter into theological debate with him, but replied by referring to his experience of his mother: "Dr. Graham, ... I know my mother to be the most caring, loving, empathetic person in my life."

Nothing more needed to be said, then or now.

Ann Dunham's gift of empathy blossomed in the efforts of the young community organizer Barack Obama, to which we turn next in Part III.

**Part III**

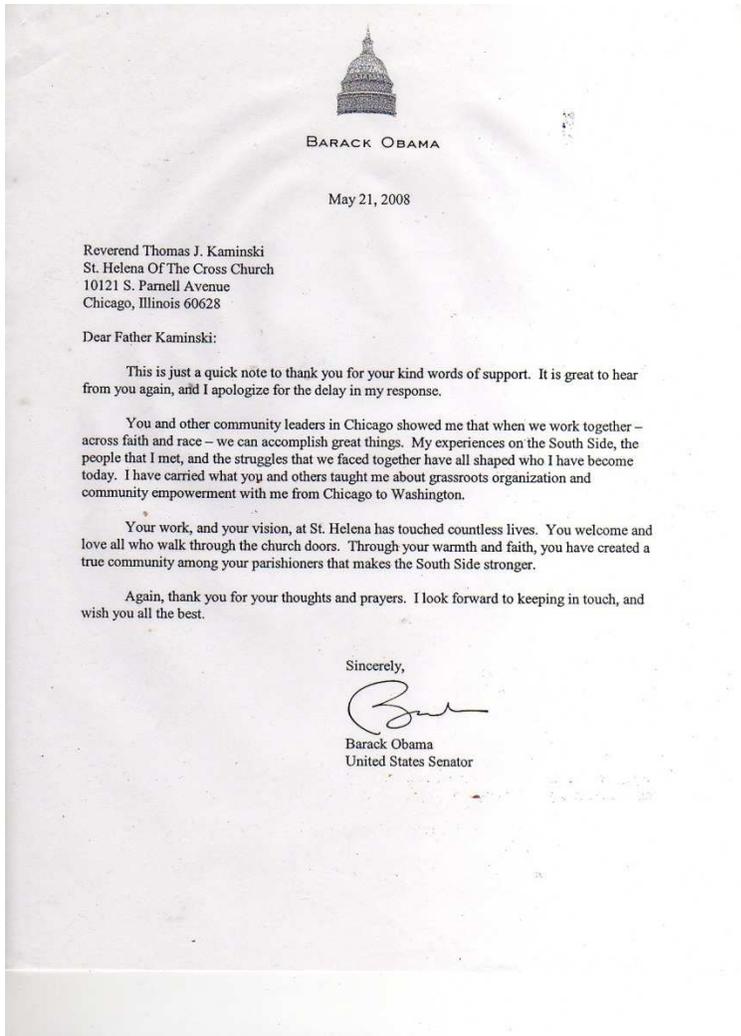
**Empowering the Poor and Encountering Catholic Social Thought**

**“Bound Together in the Service of Others”**

*I learned ... cooperation and understanding in my own life many years ago—with the help of the Catholic Church. A group of Catholic churches in Chicago helped fund an organization known as the Developing Communities Project, and we worked to lift up South Side neighborhoods that had been devastated when the local steel plant closed.*

*It was quite an eclectic crew. Catholic and Protestant churches. Jewish and African-American organizers. Working-class black and white and Hispanic residents. All of us with different experiences. All of us with different beliefs. But all of us learned to work side by side because all of us saw in these neighborhoods other human beings who needed our help—to find jobs and improve schools. We were bound together in the service of others.*

-- President Barack Obama, Commencement Speech,  
University of Notre Dame, May 21, 2009



Chicago is the spiritual home of Barack Obama because it was here that he met his wife Michelle Robinson, and here that he became the father of his daughters Malia and Sasha. It was here that he was drawn to accept Christ as a member of the United Church of Christ in Hyde Park. And it was here that he was introduced to Catholicism by spending three years as a community organizer for a group of eight Catholic parishes on the South side. With funding from the U.S. Bishops and working for three years out of an office in a Catholic church rectory, he learned from splendid priests, nuns and laypeople about the richness of Catholic Social Tradition. And it was here that he met the late Archbishop of Chicago, Cardinal Joseph Bernardin. He was inspired

by Bernardin's Catholic Common Ground Initiative, which explains Obama's deep desire to find common ground with those who share with him the awesome responsibility of representing all of us, the People of the United States.

The Catholic perspective on American political life is very much shaped by Catholic Social Thought, a view of the world developed in a little over a century through a series of papal encyclicals, synods and pastoral letters addressing the dignity of the human person and in particular the plight of the world's poor. President Obama is a member of the United Church of Christ, but his worldview was also shaped by his exposure to Catholic thought. He attended Catholic elementary school in his earliest formative years, and received support in his community organizing work from the Archdiocese of Chicago and the U.S. Conference of Catholic Bishops' Campaign for Human Development.

Barack Obama found his way back into the Catholic world very much by chance. President Obama says in his first book that he attempted to find work

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just out of college as a community organizer, motivated by an early allegiance to the central theme of *change*. He wrote:

I didn't know anyone making a living that way. When classmates in college asked me just what it was that a community organizer did, I couldn't answer them directly. Instead, I'd pronounce on the need for change. Change in the White House, where Reagan and his minions were carrying on their dirty deeds. Change in the Congress, compliant and corrupt. Change in the mood of the country, manic and self-absorbed. Change won't come from the top, I would say. Change will come from a mobilized grass roots...In the month leading up to graduation, I wrote to every civil rights organization I could think of, to any black elected official in the country with a progressive agenda, to neighborhood councils and tenant rights groups. When no one wrote back, I wasn't discouraged. I decided to find more conventional work for a year, to pay off my student loans and maybe even save a little bit. I would need the money later, I told myself. Organizers didn't make any money; their poverty was proof of their integrity.<sup>37</sup>

He worked briefly for an international consulting firm, and then for the New York Public Interest Group as an advocate for college students. According to an account in the *New York Times* of his four years in New York, after Columbia President Obama accepted a position with Business International Corporation (BIC), a 250-employee newsletter-publishing and research firm that helped international American companies understand overseas markets. He worked as a researcher and writer for a reference service, called Financing Foreign Operations, and also wrote for a newsletter entitled Business International Money Report.

About a year and a half after graduating from college, President Obama left BIC to pursue his interest in community organizing. He found a position with the New York Public Interest Group, a student-directed organization based on the campuses of the State University of New York and City University of New York campuses. He worked as a project coordinator, based at City College in Harlem, and organized students to address issues related to mass transit, environmental issues and education issues. He made less than \$10,000 a year to mobilize student volunteers on education-related issues. He was hired and supervised by Eileen Hershenov, a distinguished New York attorney. In an interview for this book, she said: "I have a distinct memory of having several conversations with Barack during that short period about different models of organizing. A number of books were appearing by former organizers with groups like the Southern Christian Leadership Conference, and we talked

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<sup>37</sup> Barack Obama, *Dreams from My Father: A Story of Race and Inheritance* (1995), p. 133.

about the pros and cons of these organizing strategies and how they built lasting movements for change. Barack was interested in learning about organizing, in doing it and thinking about it, to effect bottom-up change that was meaningful, and outlasted any particular leaders.” In *The Audacity of Hope*, President Obama describes his first trip to Washington, taking a group of New York college students to meet with their Congressional representatives about Reagan-era plans for cuts in student loans.

In his memoir, President Obama spends 150 pages talking about his experience working on the South Side of Chicago as a community organizer, primarily within eight Catholic parishes that had witnessed stark economic misfortune during the 1970s and 80s. He was recruited by a character named Marty Kaufman, President Obama’s pseudonym for



**Figure 4** *Jerry Kellman, Catholic organizer who recruited President Obama to relocate from New York to the South Side of Chicago.*

Gerald Kellman, a recent Catholic convert who had made a career as an organizer in Chicago. Kellman advertised widely in search of someone who could reach out to black church leaders and their congregants in an area of Chicago that had once been an ethnic enclave for white immigrants who worked in the steel industry. But the economic hardships of the early 1970s had resulted in demographic shifts from Irish and Italian families to black

families that were also experiencing significant work-related stresses.

Jerry Kellman’s own story is fascinating. While still in high school, he became active in the Civil Rights and anti-Vietnam War movements. He continued this work in college, and then trained as a community organizer in Chicago. Kellman worked for Catholic Charities and with Catholic parishes in inner city neighborhoods for a number of years before returning to school for a Master’s degree in journalism at Northwestern and post-graduate work in public policy at the University of Chicago, prior to meeting Barack Obama.

During the 1970s, he collaborated with a number of Jesuit Scholastics who had taken time off from their training to become community organizers in the Pilsen neighborhood of Chicago. Pilsen was the port of entry for Mexican immigrants, and Chicago continues to be home to the largest community of Mexican immigrants outside the Southwest. Kellman had nearly finished his graduate degree when he was offered a job by one of the Jesuits he had known, Gregory Galluzzo. Employed by the Latino Institute. Kellman helped Galluzzo train community organizers in Latino neighborhoods throughout the city to work with Catholic churches. This resulted in the United Neighborhood Organization (UNO), the city’s first church-based city-wide Latino organization.

At that time, the bi-state Calumet Region was going through a massive economic shock that resulted from the closings of steel mills, in an area that

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was home to the biggest steel production capacity in the world. But these companies had been devastated by foreign competition from countries that had nationalized their steel industries, and by the fact that technology was changing. The major companies, like US Steel, had invested relatively little in retooling, and began diversifying their ownership portfolios.

Steel production was the anchor of the economy, but a chain reaction occurred with these plant closings that led to auto assembly plants closing, then public and private investment pulling out, then the closing of local retail stores. Kellman began talking to Catholic pastors, whose parishioners included a fairly large African-American population that was Roman Catholic. Initially he had trouble getting these pastors interested in collective action, until he met Fr. Leo Mahon. Like many other priests of his era, and with the encouragement of Chicago Cardinal Albert Meyer, Fr. Mahon had responded to the call of Pope John XXIII to minister to the needs of Latin America's poor in the early 1960s. As recounted in his book, *Fire Under My Feet: A Memoir of God's Power in Panama*, Fr. Mahon built a mission called San Miguelito outside Panama City, Panama. For twelve years he labored on behalf of hundreds of thousands of people, embarking on pioneering work in building Christianity and democracy, and establishing access to clean water and other basic human needs.

Kellman joined with Fr. Mahon to recruit twenty suburban Catholic parishes to participate in a new effort at community organizing. In 1982, the new Archbishop, Joseph Bernardin was in his first year in Chicago. Kellman recounted that the Cardinal "told any pastor that wouldn't join this organization to go to confession. And so we had a very good response in the parishes." The consortium of parishes paid about \$5,000 apiece to hire some community organizers, including Kellman, to work in an area that was home to a mix of blacks, whites and Latinos.

There was a long history of Catholic parishes in Chicago being involved with the needs of the poor and social justice. Monsignor Jack Egan had inspired a generation of priests and lay persons to work in the inner city, and he helped solidify the role that the Archdiocese of Chicago has long had as a leader in social justice advocacy. The Catholic Action Movement—motivated by its motto, "See, Judge, Act"—became deeply rooted in Chicago through three groups of lay Catholics: Young Christian Students, Young Christian Workers, and the Christian Family Movement.

Fr. Mahon and other missionaries sought to transfer lessons they learned in Panama to similar struggles of people in Chicago. This focus on "listening" to the needs of people, rather than trying to organize around some particular issue in pursuit of grant funding, became a model for what Jerry Kellman was trying to do. He decided to move from the suburban parishes into the inner city, and to develop a separate board of directors to meet the poverty criteria for grant funding by the Catholic Bishops' *Campaign for Human Development*. So

he and two friends created the Developing Communities Project (DCP), which was the organization that hired young Barack Obama. Fr. Mahon, who had trained a whole generation of Chicago priests in the mission in Panama, said in an interview for this book that Kellman returned from New York very impressed with his new recruit. “Jerry told me then ‘Watch this guy. He’s going to be somebody great some day!’”

Kellman knew a young priest named Fr. Bill Stenzel, the pastor at Holy Rosary Parish in the Roseland section on the South Side of Chicago, and negotiated an arrangement for President Obama’s office space in the rectory there to suit the new DCP enterprise.



**Figure 5 Shrine of the Holy Rosary Church**

The Roseland neighborhood, where Holy Rosary is located, has a quiet dignity that derives from its pivotal place in the history of the labor movement—the place where President Grover Cleveland sent troops in 1894 to suppress the famous Pullman Strike. The row houses in Roseland, around Holy Rosary Church, had been constructed after the Civil War by George Pullman for the employees who built his passenger carriages for the Pullman Palace Car Company. A severe economic recession in late 1893 led to wage cuts, in the face of sustained high rents in the company housing, and the workers embarked on a strike against Pullman in May 1894. A month later, the strike against Pullman spread nationwide. As an appeasement to growing unrest among workers across the country, Congress passed a resolution on June 28, 1894, announcing the first national Labor Day. Within a week, President Grover Cleveland sent troops into the Roseland neighborhood to suppress the Pullman Strike, with widespread violent resistance that peaked on July 4, 1894, a few blocks away from Holy Rosary Church.

Reminiscing about his time working in this neighborhood, President Obama said in an October 2008 interview with *Catholic Digest*, “I got my start as a community organizer working with mostly Catholic parishes on the South Side of Chicago that were struggling because the steel plants had closed. The Campaign for Human Development helped fund the project, and so very early on, my career was intertwined with the belief in social justice that is so strong in the Church.”

When he arrived in Chicago, he found himself in the most modest possible circumstances in his new job. He set up shop in a windowless two-room office in the rectory at Holy Rosary on South Martin Luther King Drive. Of the six Holy Rosary parishes in Chicago, this one had been known as “Holy Rosary

Irish” because of the traditionally heavy Irish immigrant presence there over its history. But when President Obama arrived, most of the Irish Catholics had fled the economic misfortune that had befallen this area.

Fr. Stenzel, pastor of Holy Rosary, is a man with a booming voice who had a degree in business and economics from the Illinois Institute of Technology. He entered the priesthood as a second career, and Holy Rosary was his first opportunity to serve as a pastor. At the time he was overseeing a melding of two elementary schools, as the number of Catholics in the Roseland neighborhood dropped precipitously. When President Obama arrived at the church, about 200 mostly non-Catholic students were enrolled there in the new St Mark the Evangelist School. The School Sisters of Notre Dame had left by then, replaced by lay teachers dedicated to teaching in the inner city.

President Obama did not teach at the school, but he had an opportunity to get acquainted with many of the parents. One Chicago priest, who helped run another large Catholic school nearby, said in an interview for this book, “Barack certainly had a respect for the Catholic school system, particularly when it was the only alternative for education of the poor. He recognized that Catholic schools became a vehicle by which children could be prepared to compete in life.” As a candidate for the US Senate in 2004, President Obama's campaign filmed one of its television commercials in a Catholic school, championing the education that the children were receiving there.

President Obama's office in 1985 was on the first floor of the rectory, previously a living quarters for one of the priests and subsequently for a housekeeper. But hard times had led to the housekeeper's departure, and the office's only window had been bricked over to put in a heating unit. There were no signs on the door indicating the names or mission of Obama, Kellman, or the two other organizers who worked there with them. The office was equipped with old furniture, and new Apple computers. There was a conference room adjoining Obama's office.

Fr. Stenzel was impressed with the young man who took up shop there: “Barack was doing what he was doing, and he wasn't creating a resume. He had an unusual self-confidence and a kindness about him. When he first arrived, he asked me if it would be OK to come to Mass on Sunday.” The two subsequently became friends and President Obama attended Mass at Holy Rosary many times that first year.

The assistant bishop who oversaw that cluster of parishes was a dynamic young African-American prelate named Wilton Gregory, a convert to Catholicism when he was a student at the nearby St Carthage Catholic School to the north. Just prior to Barack Obama's arrival in Chicago, Cardinal Bernardin had ordained Gregory as the nation's youngest bishop. Bishop Gregory oversaw the needs of these struggling churches in Vicariate 6 of the

Archdiocese of Chicago, where President Obama was laboring. In later years Bishop Gregory went on to become the first black president of the US Conference of Catholic Bishops, and is currently the Archbishop of Atlanta.

Years later, once President Obama became an Illinois state legislator, he became friendly with Cardinal Bernardin, who himself attained a towering status in American Catholicism as the author of the Bishops' pastoral letter *The Challenge of Peace*, as president of the US Bishops' Conference, as the insistent champion of "the consistent ethic of life," and as the creator of the "Common Ground Initiative." In an October 2008 interview, President Obama said, "I've tried to apply the precepts of compassion and care for the vulnerable that are so central to Catholic and to my work, [such as in] making health care a right for all Americans—I was the sponsor in the state legislature for the Bernardin Amendment, named after Cardinal Bernardin, a wonderful figure in Chicago I had the opportunity to work with who said that health care should be a right."

Raised with no specific religious training himself, President Obama found himself surrounded in 1985 by religion. Fr. Tom Kaminski, the first president of the DCP during the time when it hired President Obama, said in an interview for this book, "Barack may not have identified himself as religious, but the religious and Christian principles he held told me that obviously he must have read [the scriptures] and studied them somewhere, because he knew it and spoke knowledgably about it."

Fr. Kaminski had been a mentor to Fr. Stenzel, who served as assistant pastor before being assigned to Holy Rosary Parish. Fr. Kaminski had himself entered Catholic seminary in a time of great excitement in the church. Pope John XXIII had called a global convocation of bishops (Vatican II) as countries across the developing world were throwing off the yoke of colonialism, and new technologies were bringing people everywhere into closer contact with one another.

At the time of his ordination to the priesthood in 1966, Kaminski found himself confronted with the fallout of the new globalization. Over the next 20 years, he witnessed the economic dislocation of closing steel mills through the Calumet River Valley south of Chicago, ethnic Catholics moving to the South in search of new opportunities, and African Americans faced with both the promise of the civil rights revolution and the hostility of a city grappling with an unprecedented intermingling of previously isolated communities.

At the time that Jerry Kellman brought Barack Obama to Chicago and introduced him one-by-one to these eight Catholic pastors, Fr. Kaminski was leading St Helena of the Cross parish in the Washington Heights community on the South Side of Chicago. He had been selected as "president" of the

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Developing Communities Project, he said, “because no one else wanted the job.”

With no previous formal exposure to religious practice, Obama might be said to have gotten his political start by collaborating with the church and the bishops through the Developing Communities Project and the CCHD.



In

**Figure 6 Holy Rosary Rectory where Obama worked**

an interview following the 2008 presidential election, Kaminski recalled those days as follows:

When Keith Olbermann announced at 10 p.m. that [Obama] was going to be the

next president, that absolutely blew me out of the water -- I was SO proud of the guy! Of course I had a horse in the race, and it was something very, very special.... You look around the world, nobody else has a person of African descent as their president.

Then he recalled the scene that unfolded in the time leading up to Barack’s arrival in Chicago two decades earlier:

Stenzel ... was here [at St Helena] only eight months as my assistant. It was a middle class African-American parish, with a lot of bus drivers and police. Mike Kruglik—now working in south suburbs—was a short round guy who used to run a restaurant in Houston. Jerry Kellman used to remind me of Columbo. He had been through the whole Saul Alinsky thing. He had the street smarts. Then comes along Barack. Nice smile, calm personality.... The thing that impressed me the most was his ability to listen, and in doing so he shows respect for the person he’s listening to. He doesn’t come back with the quick answer, the flip answer. I think he’s going to be able to draw the best out of all the people around him.... He’s 45-46 years old now, but I still see the kid in him—there’s a genuine quality. I look at the man today that I saw back in 1985-86, and still see those genuine qualities. They haven’t been chipped away.

During his seminary days, a junior classmate had nicknamed Kaminski “The Rock.” Kaminski was one of those people who spent his life dedicated to helping others, and perhaps more



**Figure 7 Father Kaminski with Dr. Whelan**

importantly cultivating that enthusiasm in his parishioners.

Kellman also spoke to the subject of Barack Obama's religious formation, the role that Catholicism played in it, and the indignities he suffered as a result of his labors on behalf of the Catholic parishes:

The first year, all [Barack's] work was in the Catholic Church. All his committees were Catholic...His work with the Catholic churches was his first introduction as an adult to Christianity. He was shaped by his interactions at that point with Catholic priests and lay people. The second year he expanded his outreach to other Christian churches. Perhaps not surprisingly, he was attacked because he worked for the [Catholic] Church. A lot of people wanted to discredit him. It's almost funny now, but they would say, "He's just a tool of the Catholics." People who were politically connected would criticize him in that way. His education as a community organizer was shaped by the Catholic Church. Each meeting began and ended with prayer. He'd go to Mass to try and understand what was happening with pastors and lay people.

Despite the economic decline of the city, there remained a religious fervor in Chicago that derived in part from the city being home to twelve schools of theology. President Obama obtained a small apartment in Hyde Park, near the University of Chicago and the Catholic Theological Union (CTU), founded just 16 years earlier when three religious communities came together with a vision that mirrored the reform spirit of Vatican II. In 1985, when President Obama arrived, CTU was in the process of becoming the largest Roman Catholic school of theology and ministry in North America, encompassing training for 32 separate religious orders and ultimately producing more than 3500 graduates (nearly 20% of all order priests in the US).

President Obama began his new career by going around to meet the pastors in this cluster of eight Catholic parishes. Fr. Kaminski described it this way :

We were constantly getting calls from community organizers who wanted to meet, and then I get a call from yet another young guy who asked to set up a meeting. You set up a meeting with this young community organizer, and I'm asking myself, you know, "How can I get out of this? How quick could I make it out of this meeting?" But what I thought was going to be a half hour meeting went to an hour-and-a-half or more. I was so impressed with his passion for people, and wanting to do something about it. But most impressive was his belief that the church had to be the vessel to bring people together to fight on behalf of people—that we all had to be a part of this response to the needs of people. He

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recognized that the churches were where people had put their trust, and people had put their faith, and that *we* had to be the response team for it.

What struck me about him was, yes, his intelligence, but also his grounded ability to relate to where people were at and to feel it. He wasn't emotionally removed from it. He was very much in touch with it. That was very impressive to me. His real conviction. I remember telling him, this is what we believe here, teach here, what we're about here. "Good luck" bringing these churches into this kind of commitment to change.

President Obama's first task was to build a body of leaders who would be willing to work with each other, and to generate some hope the problems around them could be solved. Rampant drugs and crime had left people in Roseland with little hope that anything could be done. So Obama had to get them to be hopeful again, and to regain their trust. He had to convince them to get involved. The chief thing he did in the beginning, according to Fr. Kaminski, was to learn to do one-on-one interviews with the lay leaders of the parishes. In those interviews he would listen for narratives and get the story of people's lives. He was good at that, because he liked stories.

He would conduct 12 interviews a day, going from one to another. He'd go back to his apartment in Hyde Park, and write a report as a basis for discussion. When he talked to people, he was not only interested in their stories, but had a knack for developing a trusting relationship with them and gaining a point of invitation into the story. For instance if there was a parent who was worried about their kids getting interested in gangs and drugs, they might be willing to get involved with other parents who shared that concern. According to Kellman, young Barack Obama would say, "You feel so strongly about this from your own life, don't you want to do something about this?" He spent his first few months, identifying neighborhood leaders, gathering people at street corner meetings during the summer, and talking about the neighborhoods. Their tasks ranged from simple things like trying to get potholes fixed, to getting abandoned buildings torn down.

Kellman recounts how these were people who had no public skills. An organizers' job is to get people to participate in democracy. So Obama had to train them to ask simple questions like what legislation would apply in this situation? Who stands to win or lose? How does the budget get decided on? How do you meet with a public official? How do you talk to a reporter? All the while, he was never in the forefront, always in the background.

Kellman left the organizing project a year after hiring President Obama, leaving him in charge to build the organization and expand its funding. In early 2007, Kellman began organizing again, working on social justice issues confronting

the homeless, and with churches that have created rotating shelters hosted by Catholic and Protestant churches, and synagogues, and investing in health and treatment of addiction, and advocacy for the elderly.

After Obama became executive director of the DCP, the thrust of the work for DCP moved from listening to making neighborhood life better for all the residents. Marriages in the Roseland area had been sundered by economic circumstances. Drugs were common but jobs were scarce, and no one felt particularly safe on their own streets. Particular efforts included opening a job intake center, forming neighborhood groups that organized clean-ups and pressed the Park District into improving city parks, and organizing crime watch programs. The DCP also worked to have cancer-causing asbestos removed from public housing. President Obama was particularly enthusiastic about addressing issues involving youth, especially the establishment of after-school programs and job retraining at six junior colleges in Chicago. President Obama also contributed to leadership skills training on behalf of the Chicago Archdiocesan Office of Black Catholics.

President Obama's work got its start with funding from Catholic parishes on the South Side, and then from a grant from the Catholic Campaign for Human Development. In November of 1986, during his time at Holy Rosary, the Bishops issued a lengthy pastoral letter called "*Economic Justice for All*." This document insisted that attention to the wide range of issues—including the very matters that Obama was focused on as a community organizer on the South Side—was both a religious and a civic duty:

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 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.

As *Americans*, we are grateful for the gift of freedom and committed to the dream of "liberty and justice for all." This nation, blessed with extraordinary resources, has provided an unprecedented standard of living for millions of people. We are proud of the strength, productivity, and creativity of our economy, but we also remember those who have been left behind in our progress. We believe that we honor our history best by working for the day when all our sisters

and brothers share adequately in the American dream.<sup>38</sup>

Building community was at the heart of President Obama's work for those three years. One priest described his commitment this way: "I know he respected immensely the Catholic religion and its presence in not just the Civil Rights movement but the fights for workers' rights—particularly nuns and priests and how engaged they were."

But President Obama's experience as a community organizer did not sit well with his Republican opponents in 2008. In the spring, Rudy Giuliani—the Catholic former mayor of New York—belittled the role that community organizers play in politics. In September the GOP's vice-presidential nominee Sarah Palin mocked Obama: "I guess a small-town mayor is sort of like a community organizer, except that you have *actual responsibilities*" (her emphasis).

What followed was an outpouring of press condemnation for their sarcasm, acknowledging that community organizing is at the heart of Catholic Social Thought to end poverty and promote social justice. Joe Klein, political correspondent for TIME Magazine, wrote:

They were making fun of a young man's decision "to serve a cause greater than himself," in the words of John McCain. They were, therefore, mocking one of their candidate's favorite messages. Obama served the poor for three years, then went to law school. To describe this service—the first thing he did out of college, the sort of service every college-educated American should perform, in some form or other--as anything other than noble is cheap and tawdry and cynical in the extreme.<sup>39</sup>

Before Obama left Chicago to attend law school at Harvard, *Illinois Issues* asked Obama to reflect on his experiences as a community organizer for the Developing Communities Project and send the magazine an essay answering the question "Why Organize?"<sup>40</sup> He begins this essay with a recollection that a woman on the South Side had put the same question to him on a bleak January morning while he was waiting to deliver some flyers to a group of confused and angry parents who had discovered the presence of asbestos in their school:

"Listen, Obama," she began. "You're a bright young man, Obama. You went to college, didn't you?"

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<sup>38</sup> United States Catholic Conference, *Economic Justice for All: A Pastoral Letter* (2006).

<sup>39</sup> Joe Klein, "What a Community Organizer Does," *TIME Magazine*, Sept. 4, 2008.

<sup>40</sup> Barack Obama, "Problems and Promise in the Inner City," *Illinois Issues* (1988).

I nodded.

“I just cannot understand why a bright young man like you would go to college, get that degree and become a community organizer.”

“Why’s that?”

“Cause the pay is low, the hours is long, and don’t nobody appreciate you.” She shook her head in puzzlement as she wandered back to attend to her duties.

Thinking often of that conversation, Obama replies succinctly: “It needs to be done, and not enough folks are doing it.” In the article for *Illinois Issues* Obama explains further:

[T]he issues of the inner city are more complex and deeply rooted than ever before. Blatant discrimination has been replaced by institutional racism; problems like teen pregnancy, gang involvement and drug abuse cannot be solved by money alone. At the same time, as Professor William Julius Wilson of the University of Chicago [at that time] ... has pointed out, the inner city’s economy and its government support have declined, and middle-class blacks are leaving the neighborhoods they once helped to sustain.

Neither electoral politics nor a strategy of economic self-help and internal development can by themselves respond to these new challenges. The election of Harold Washington in Chicago or of Richard Hatcher in Gary were not enough to bring jobs to inner-city neighborhoods or cut a 50 percent drop-out rate in the schools, although they did achieve an important symbolic effect. In fact, much-needed black achievement in prominent city positions has put us in the awkward position of administering underfunded systems neither equipped nor eager to address the needs of the urban poor and being forced to compromise their interests to more powerful demands from other sectors....

He noted that community organizing provides a way to merge various strategies for neighborhood empowerment:

Organizing begins with the premise that (1) the problems facing inner-city communities do not result from a lack of effective solutions, but from a lack of power to implement these solutions; (2) that the only way for communities to build long-term power is by organizing people and money around a common vision; and (3) that a viable organization can only be achieved if a broadly based indigenous leadership — and not one or two charismatic leaders— can knit together the diverse interests of their local institutions. This means bringing together churches, block clubs, parent groups

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and any other institutions in a given community to pay dues, hire organizers, conduct research, develop leadership, hold rallies and education campaigns, and begin drawing up plans on a whole range of issues—jobs, education, crime, etc.

Once such a vehicle is formed, it holds the power to make politicians, agencies and corporations more responsive to community needs. Equally important, it enables people to break their crippling isolation from each other, to reshape their mutual values and expectations and rediscover the possibilities of acting collaboratively—the prerequisites of any successful self-help initiative.

Twenty years before Governor Palin would denigrate the work of community organizers in 2008, Obama had learned from his own experience that this form of public service could achieve some impressive results:

Schools have been made more accountable—job training programs have been established; housing has been renovated and built; city services have been provided; parks have been refurbished; and crime and drug problems have been curtailed. Additionally, plain folk have been able to access the levers of power, and a sophisticated pool of local civic leadership has been developed.

He concluded eloquently:

[O]rganizing teaches as nothing else does the beauty and strength of everyday people. Through the songs of the church and the talk on the stoops, through the hundreds of individual stories of coming up from the South and finding any job that would pay, of raising families on threadbare budgets, of losing some children to drugs and watching others earn degrees and land jobs their parents could never aspire to—it is through these stories and songs of dashed hopes and powers of endurance, of ugliness and strife, subtlety and laughter, that organizers can shape a sense of community not only for others, but for themselves.

Obama's experience as a community organizer also led him to insights about the effectiveness of faith-based communities such as Holy Rosary Church. In July 2008 then-Senator Obama held a press conference to announce his intent to expand federal funding of such Faith-Based projects, but emphasized that private philanthropy cannot be a substitute for job training and other educational responsibilities that rightfully belong with the government. Congress adopted this proposal, allowing cities to receive federal aid for Faith-Based Initiatives empowering poor people. The former community organizer turned president quickly signed the bill into law

In Parts IV & V below we will take a close look at President Obama's health reform, but we return for a moment first to remind the reader of the competitive nature of politics and the profound difference between the two tickets. In varying ways Governor Romney and Congressman Paul Ryan agree on broad and deep cuts in federal programs providing a social safety net. In July of 2012 the House adopted the Ryan budget. Its cuts include the very program mentioned above.

### Ryan's Reverse Robin Hood

**P**aul Ryan reverses the Robin Hood legend. He wants to lower the tax burdens of the wealthiest Americans by shifting additional burdens on already strapped members of the middle class. In this instance Ryan curiously urges religious communities to pick up the slack created by his changes in the federal budget. We wonder if people like Congressman Ryan are aware that many churches, Catholic and Protestant, are closing inner-city churches for lack of economic viability. In the spring of 2008, the Archdiocese of Chicago closed Holy Rosary Church. President Obama's old office was put up for sale in the summer just prior to the presidential election.

Obama-Biden and Romney-Ryan are in polar opposite positions issues of economic justice including both tax fairness and spending priorities. In our view, voters may legitimately include all of these issues among many factors informing one's conscience about how to vote in this election.

## **Part IV**

### **The Historic Achievement of Health Care Reform**

*Our health-care system is broken: expensive, inefficient, and poorly adapted to an economy no longer built on lifetime employment, a system that exposes Americans to insecurity and possible destitution. But year after year, ideology and political gamesmanship result in inaction, except for 2003, when we got a prescription drug bill that managed to combine the worst aspects of the public and private sectors--price gouging and confusion, gaps in coverage and an eye-popping bill for taxpayer.*

*The market alone cannot solve the problem--in part because the market has proven incapable of creating large enough insurance pools to keep costs to individuals affordable. Overall, 20% of all patients account for 80% of the care, and if we can prevent disease or manage their effects, we can dramatically improve outcomes and save money.*  
-- Barack Obama *The Audacity of Hope* (2006)

**“A Moral Imperative, A Requirement of Justice”**

This chapter differentiates between universal health care and the extensive, but limited reform of the health care system that extends coverage to more than 32 million previously uncovered Americans. It offers an analysis of the identification of health care as a social justice issue in Catholic Social Thought. It explores the role of governmental actors—President Obama and Congress—in bringing to pass major legislation known as the Affordable Care Act. It focuses on the abortion issue under three headings: the commitment not to support abortion with federal funds (the Hyde Amendment and the Stupak- Amendment), the fear of the United States Conference of Catholic Bishops that the ACA would raise the incidence of abortion in the United States, and the reply of laypersons (such as Dr. Patrick Whelan and Professor Timothy Jost) and Catholic nuns (such as Sister Carol Keehan, president of the Catholic Hospital Association, and Sister Simone Campbell, executive director of NETWORK), that the proposed legislation would reduce rather than raise the incidence of abortion. We conclude this chapter with a user-friendly guide to the Patient Protection and Affordable Care Act.

On March 23, 2010, President Obama signed into law the Affordable Care Act or ACA. Coverage under this statute is not universal, but a reform of the health care system of this magnitude is a historic achievement that had eluded the best efforts of champions of health care as robust as Teddy Roosevelt and Teddy Kennedy.

## What the Affordable Care Act is Not: Universal

With the full implementation of universal health care laws in Mexico (2011) and Turkey (2012), the United States became the last industrialized country (among all members of the Organization for Economic Cooperation and Development) without universal health insurance coverage. Despite spending 50% more per capita than the second highest-spending country (Norway), roughly 1/6<sup>th</sup> of Americans had no health insurance prior to the enactment of the Affordable Care Act. This has significant consequences for people's health. A 2004 report by the well-respected Institutes of Medicine estimated that about 18,300 deaths occur annually as a result of a lack of health insurance. A 2009 Harvard study published in the *American Journal of Public Health* estimated the number at 44,800 deaths per year, based on a national sample of 9000 people followed over a 12-year period.

In the most recent (2010) Commonwealth Foundation survey of patients and providers in seven comparable countries, the U.S. health care system ranked last or next-to-last on five dimensions of a high performance health system: quality, access, efficiency, equity, and healthy lives. Whether it's infant mortality (48<sup>th</sup>), longevity (50<sup>th</sup>), or childhood death from maltreatment (26<sup>th</sup> out of 27 OECD countries), the U.S. has been doing very poorly in recent years on both the medical and public health fronts. Nonetheless, critics of reform have repeatedly fallen back on the argument that the U.S. has "the best health care system in the world." The high insurance rates are an immediate cause for concern when society begins asking how it can begin to do better.

## Health Care and Catholic Social Thought

In 1891 Pope Leo XIII issued an encyclical letter *Rerum Novarum, On Capital and Labor* that dealt with the industrial revolution and the dignity of workers. This document initiated a rich collection of reflections of Catholics on many issues relating to social justice. These documents are referred to collectively as Catholic Social Thought or CST. At the core of this tradition is a commitment to the dignity of the human person in community. Eventually CST identified health care as a human right, and the earliest call to do so was sounded by the U.S. bishops immediately after World War I, nearly a hundred years ago.<sup>41</sup>



**Figure 8 Dr. Olivier Whelan, M.D. to be** proper development of life... Therefore, a human being has the right to security in case of sickness, inability to work, widowhood, old age, unemployment, or in any other case in which he is deprived of the means of subsistence through no fault of his own” (§ 20).

Pope John Paul II expanded on this in his encyclical, *Laborem Exercens, On Human Work* (marking the 90<sup>th</sup> anniversary of *Rerum Novarum*): “The expenses involved in health care, especially in the case of accidents at work, demand that medical assistance should be easily available for workers, and that as far as possible it should be cheap or even free of charge” (§ 19).

Beginning in the early 1990s, the Catholic bishops of the United States further developed this idea. Bishop James Malone of Youngstown OH, then chairman of the bishops’ Committee on Domestic Policy, wrote a letter to Congress in April 1992 calling health care “a basic human right”:

In our parishes and schools, our shelters and clinics, we see the consequences of failed and confused policy—the families without insurance, the sick without options, the children without care.... When the health-care system leaves so many people uncared for—

<sup>41</sup> National Catholic War Council, *Program of Social Reconstruction* (1919).

affecting human life itself—then this system is in need of serious and comprehensive reform.

In June 1993, the National Conference of Catholic Bishops issued a statement entitled “A Framework for Comprehensive Health Care Reform: Protecting Human Life, Promoting Human Dignity, Pursuing the Common Good.” The document was developed by the Domestic Social Policy Committee, and approved by the Catholic bishops of the United States at their General Meeting in June 1993.

The resolution began with a searing indictment: “Our nation’s health care system serves too few and costs too much.” Referring to health care as “a moral imperative,” the bishops stated:

We seek to outline the values, criteria, and priorities that are guiding our conference’s participation in this vital dialogue.... For decades we have advocated sweeping reform. In communities across our land, we serve the sick and pick up the pieces of a failing system. We are pastors, teachers, and leaders of a community deeply committed to comprehensive health care reform. Our urgency for reform reflects both on our traditional principles and everyday experience.

The bishops enunciated a simple but fundamental principle shaping their approach to health care:

Every person has a right to adequate health care. This right flows from the sanctity of human life and the dignity that belongs to all human persons, who are made in the image of God. Health care is more than a commodity; it is a basic *human right*, an essential safeguard of human life and dignity. We believe our people’s health should not depend on where they work, how much their parents earn or where they live.

The document outlined eight essential criteria for reform:

*Respect for Life.* Whether it preserves and enhances the sanctity and dignity of human life from conception to natural death.

*Priority Concern for the Poor.* Whether it gives special priority to meeting the most pressing health care needs of the poor and underserved, ensuring that they receive quality health services.

*Universal Access.* Whether it provides ready universal access to comprehensive health care for every person living in the United States.

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*Comprehensive Benefits.* Whether it provides comprehensive benefits sufficient to maintain and promote good health; to provide preventive care; to treat disease, injury, and disability appropriately; and to care for persons who are chronically ill or dying.

*Pluralism.* Whether it allows and encourages the involvement of the public and private sectors, including the voluntary, religious, and nonprofit sectors, in the delivery of care and services; and whether it ensures respect for religious and ethical values in the delivery of health care for consumers and for individual and institutional providers.

*Quality.* Whether it promotes the development of processes and standards that will help to achieve quality and equity in health services, in the training of providers, and in the informed participation of consumers in decision making on health care.

*Cost Containment and Controls.* Whether it creates effective cost-containment measures that reduce waste, inefficiency, and unnecessary care; measures that control rising costs of competition, commercialism, and administration; and measures that provide incentives to individuals and providers for effective and economical use of limited resources.

*Equitable Financing.* Whether it assures society's obligation to finance universal access to comprehensive health care in an equitable fashion, based on ability to pay; and whether proposed cost-sharing arrangements are designed to avoid creating barriers to effective care for the poor and vulnerable.

The document concluded with four “key policy priorities”:

***Priority Concern for the Poor/Universal Access:*** “When there is a question of allocating scarce resources, the vulnerable and the poor have a compelling claim to first consideration.... We will strongly support measures to ensure true universal access and rapid steps to improve the health care of the poor and unserved. ***Universal access must not be significantly postponed, since coverage delayed may well be coverage denied.***”

***Respect for Human Life and Human Dignity:*** “Government statistics on infant mortality are evidence that lack of access and inadequate care are literally matters of life and death...Neither the violence of abortion and euthanasia nor the growing advocacy for assisted suicide is consistent with respect for human life... We are

convinced it would be a moral tragedy, a serious policy misjudgment, and a major political mistake to burden health care reform with abortion coverage that most Americans oppose and the federal government has not funded for the last seventeen years. Consequently, we continue to oppose unequivocally the inclusion of abortion as a health care benefit, as do three out of four Americans (cf. April 6, 1993 New York Times poll).”

***Pursuing the Common Good and Preserving Pluralism:*** “We fear the cause of real reform can be undermined by special interest conflict and the resistance of powerful forces who have a major stake in maintaining the status quo. It also can be thwarted by unnecessary partisan political combat.”

***Restraining Costs:*** “We have the best health care technology in the world, but tens of millions have little or no access to it and the costs of the system are straining our nation, our economy, our families, and our Church to the breaking point. We insist that any acceptable plan must include effective mechanisms to restrain rising health care costs. By bringing health care cost inflation down, we could cut the federal deficit, improve economic competitiveness, and help stem the decline in living standards for many working families. Without cost containment, we cannot hope to make health care affordable and direct scarce national resources to other pressing problems that, in turn, worsen health problems (e.g., inadequate housing, poverty, joblessness, and poor education).”

This was an extraordinary document, focusing on racial disparities in health care, the principle of solidarity with the poor, and the opportunity costs of health care inflation. The document recognized the role that the Catholic Health Association (CHA) had played in generating the recommendations made by the bishops. It concluded with a call to action: “As long-time advocates of health care reform, we appeal to the leaders of the nation to avoid a divisive and polarizing dispute which could jeopardize passage of national health reform.”

The guidelines recommended by the CHA in 1992 incorporated many elements that ultimately became part of the *Patient Protection and Affordable Care Act of 2010*. They recommended: (1) no discrimination based on pre-existing conditions, (2) subsidization of care for people based on their income up to 200% of the federal poverty level, and (3) establishment of national minimum standards of care, including preventive care.

The bishops also engaged in extensive dialogue with other faiths, putting out a joint statement titled “The Common Good: Old Idea, New Urgency,” that was

co-authored with the National Council of Churches and the Synagogue Council of America in 1993. Anthropologist Michael V. Angrosino concluded in 1996, “It is clear that recent policy statements by the official US Catholic hierarchy, testimony by members of the that hierarchy, positions taken by the relevant representative Catholic professional organization, and reports emanating from interdenominational dialogue all place the US church squarely in the camp of reform and, moreover, do so in a tone that is highly critical of the status quo.”<sup>42</sup>

After decades of public advocacy for widened access to health care, it seemed inconceivable in the 1990s that the bishops would come out against serious reform legislation like that launched under President Obama in 2009. The attitude in the ‘90s was that while everyone recognized the Church’s opposition to abortion, the focus would be on protecting Catholic institutions from having to provide such services—rather than on Catholics seeking to further restrict abortion rights for all American women as a condition for their support of comprehensive reform.

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<sup>42</sup> Michael V. Angrosino, “The Catholic Church and U.S. Health Care Reform,” *Medical Anthropology Quarterly* 10: no. 1 (1996) 3-19.

## President Obama's Vision of Health Care Reform

In his 2006 book, *The Audacity of Hope*, President Obama laid out his concerns about the health care system, with language very similar to that of the bishops in 1993:

Our health-care system is broken: expensive, inefficient, and poorly adapted to an economy no longer built on lifetime employment, a system that exposes Americans to insecurity and possible destitution. But year after year, ideology and political gamesmanship result in inaction, except for 2003, when we got a prescription drug bill that managed to combine the worst aspects of the public and private sectors--price gouging and confusion, gaps in coverage and an eye-popping bill for taxpayers.<sup>43</sup>

He argued that the amount of money spent in the US on health care should be enough to provide basic coverage to everyone, if costs related to private insurance, Medicare and Medicaid could be adequately controlled:

The market alone cannot solve the problem—in part because the market has proven incapable of creating large enough insurance pools to keep costs to individuals affordable. Overall, 20% of all patients account for 80% of the care, and if we can prevent disease or manage their effects, we can dramatically improve outcomes and save money.<sup>44</sup>

Health care reform became a central issue in the presidential race between then-Senator Obama and Senator Hillary Clinton, who had played a central role in leading the previous major effort for reform in 1993/1994. There were many similarities between their proposals, though Senator Clinton alone advocated an individual mandate to buy insurance. Ultimately, President Obama acquiesced to the advice of most health care economists, that insurance companies could not be expected to eliminate restrictions on pre-existing conditions if the healthiest people could opt out of purchasing insurance. A sharp contrast was drawn during the 2008 general election between Senator Obama's continued commitment to major health insurance reform and Senator John McCain's opposition to it.

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<sup>43</sup> Obama, *Audacity to Hope*, 22-23.

<sup>44</sup> *Id.* 184.

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His first month in office, President Obama signed the \$700 billion American Recovery and Reinvestment Act into law, which helped to initiate funding for electronic medical record initiatives and other planning for health reform. On February 24, 2009, the president addressed a joint session of Congress on his plans for the new administration:

There will be many different opinions and ideas about how to achieve reform, and that is why I'm bringing together businesses and workers, doctors and health care providers, Democrats and Republicans to begin work on this issue next week. I suffer no illusions that this will be an easy process. It will be hard. But I also know that nearly a century after Teddy Roosevelt first called for reform, the cost of our health care has weighed down our economy and the conscience of our nation long enough. So let there be no doubt: health care reform cannot wait, it must not wait, and it will not wait another year.

On March 5, 2009, President Obama held a White House forum that assembled Members of Congress, insurance and pharmaceutical industry representatives, union leaders and health economists to begin the dialogue.

## Congress Enters the Stage: The Power to Tax and Spend

In the summer of 2009, several committees within the House of Representatives began laying the groundwork for comprehensive legislation. The Republican Senate Finance Committee met publicly and appeared on the verge of proposing bipartisan legislation. But during the summer recess, many members found themselves confronted at town hall meetings by organized opposition to health insurance reform by so-called Tea Party activists who attempted to shout down the advocates for reform. These efforts were organized by groups like Freedom Works, with funding from conservative sources like the Koch brothers, the Scaife family, and Philip Morris industries (maker of Marlboro cigarettes) among others. One widely circulated memo at the time outlined in detail how protesters could disrupt and harass members of Congress, urging tea partiers to “spread out” in order to make their numbers seem more significant, and to “rock-the-boat early in the Rep’s presentation ... to yell out and challenge the Rep’s statements early ... to rattle him, get him off his prepared script and agenda ... stand up and shout and sit right back down.”

After the August recess, President Obama again addressed a joint session of Congress, specifically outlining his proposal for reform, and two months later the House of Representatives passed the Affordable Health Care for America Act 220–215. This legislation was modeled in part on previous efforts, including the successful Massachusetts health reform law signed in April 2006 by Governor Mitt Romney.

But the idea of the individual mandate has a long history, bearing the fingerprints of such unlikely figures as Newt Gingrich and Ronald Reagan. According to Forbes contributor Arvik Roy, the much-villainized idea had its origins in President Richard Nixon’s 1974 health reform effort, which would have required all employers to provide health coverage for all employees. In 1986, legislation signed by President Reagan that created COBRA health insurance coverage for people who lose their jobs and also mandated that virtually all hospitals with emergency rooms had to provide care for anyone in need. This unfunded mandate forced hospitals to bill private insurance holders extra to cover the costs of caring for the uninsured, or to seek local tax-funded subsidization.

In 1989, a plan put forth by Stuart Butler of the conservative Heritage Foundation incorporated a provision to “mandate all households to obtain adequate insurance,” as a means of enhancing personal responsibility and

moving away from employer-sponsored insurance toward a more market-based approach. Mr. Butler wrote then:

[The] Heritage plan ... assumes that there is an implicit contract between households and society, based on the notion that health insurance is not like other forms of insurance protection... A mandate on individuals recognizes this implicit contract. Society does feel a moral obligation to insure that its citizens do not suffer from the unavailability of health care. But on the other hand, each household has the obligation, to the extent it is able, to avoid placing demands on society by protecting itself...A mandate on households certainly would force those with adequate means to obtain insurance protection, which would end the problem of middle-class “free riders” on society’s sense of obligation.

This idea was then incorporated in Republican efforts that included a plan considered by President George H.W. Bush in 1991, Rhode Island Senator John Chaffee’s bill countering the Clinton reform effort in 1993 (co-sponsored by twenty Senate Republicans, nearly half of their caucus), and the Romney effort in 1995/1996. Governor Romney was justifiably proud of this accomplishment, and his official portrait in the Massachusetts state house depicts only one achievement of his tenure in office: the signed health care law nestled on the desk between Mr. Romney himself and a picture of his wife Ann, who suffers from multiple sclerosis.

In his 2009 address to Congress, President Obama said:

With the money saved through increased preventive care and lower administrative and malpractice costs, we would provide a subsidy to low-income families and immediately mandate coverage for all uninsured children. There is no easy fix, but the point is that if we commit to making sure everyone has decent care, there are ways to do it.

After Scott Brown won the special election in Massachusetts in January 2010 to fill the Senate seat long-held by Senator Ted Kennedy, the loss of a filibuster-proof majority appeared to be a significant setback for health care reform. But President Obama formulated a version of the Senate bill passed on Christmas Eve 2009, and this became a basis for negotiation with the House.

## The Role of Abortion in the Health Care Debate

**A**bortion had been a significant stumbling block in the negotiations from the beginning. Congressman Bart Stupak (D-MI) had led a caucus of anti-abortion Democrats and had co-authored language governing funding for abortion called the Stupak-Pitts amendment in the House bill. Rep. Stupak was a former police officer and Catholic who consulted closely with the USCCB to find language that would adequately address their concerns about the new health care law. The purpose of the Stupak amendment was to block federal funding for abortion, in the same spirit as the longstanding “Hyde Amendment” to the federal budget. The Hyde Amendment is an attachment to the appropriations bill for the Department of Health and Human Services, approved by Congress every year since 1976, that restricts the use of HHS funds for abortions, except in cases of rape, incest, or risk to the life of the mother. But the Stupak language also forbade the law from covering “any part of the costs of any health plan that includes coverage of abortion.” Specific exceptions were made for cases of rape, incest or threat to the life of the mother. Democrats in the Senate refused to incorporate the House amendment, and initially it appeared that lack of resolution of this issue might stymie the whole reform effort.

At issue was whether federal funds could be used to subsidize care for those individuals whose incomes fell below 200% of the federal poverty level, if that care included the same coverage of abortion that was provided to all women who were covered by their employers or had high enough incomes not to require subsidized policies. Under the legislation, state-level insurance exchanges would be set up to provide people with an opportunity to go online and select insurance plans that best-suited their needs. Rep. Stupak argued that any subsidy to poorer individuals who selected such plans would amount to federal support for abortion. Opponents argued that federal subsidies to a few subscribers shouldn’t result in all members of a particular plan losing coverage for abortion.

Would Health Care Reform Increase Abortion?

The USCCB weighed in on the side of the Stupak-Pitts amendment, supporting its passage and encouraging Catholics across the country to pressure Congress to include this language or defeat the whole bill. They argued that subsidizing people in purchasing policies that covered abortion amounted to federal payment for abortion, in violation of the spirit of the longstanding Hyde Amendment. Opponents pushed back by saying that the bishops were overreaching by trying to compel these insurance plans to be stripped of the

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existing abortion coverage, thus using the Hyde amendment to deny abortion coverage to people with no federal subsidization. The bishops' support came even though the Stupak amendment included language that would have permitted people with federally subsidized insurance plans to attach a supplemental policy covering elective abortions, so long as these enrollees paid for it themselves.

In effect, the bishops were seeking to enshrine in statutory law the restrictions of the Hyde Amendment, which had required annual re-approval during the budget process. A high-profile negotiation began, to determine whether Rep. Stupak and his group of Catholic Democratic representatives would support what was anticipated to be the final House-Senate compromise on abortion funding. This appeared to be a simple narrative of whether abortion rights supporters (backing the Senate bill) or opponents (backing the House version) would prevail.

The bishops' involvement in the health care fight was high-profile from the beginning. In October 2009, the USCCB sent bulletin inserts to almost 19,000 parishes across the country urging Catholics to write their senators asking that the Senate incorporate abortion restrictions like the Stupak language, making Stupak language the sole litmus test for support of the health care reform law. Parishes were also given suggested pulpit announcements and petitions for the prayers of the faithful in support of Stupak language.

## No Empirical Support for Fear of Increased Abortion

Then three things happened in rapid succession that added clarity to the situation. First, Democratic members of the House were presented with a study by Dr. Whelan published in the *New England Journal of Medicine* the week prior to the House vote on the Senate Bill, showing that abortions had continued to decline in Massachusetts after implementation of full insurance coverage under the Romney health care law—this despite mandated coverage of abortion services for all policy holders.<sup>45</sup> Thus, claims that expanding insurance coverage to more people would result in more abortions appeared to be without any empirical grounding.

Second, the Board of the Catholic Health Association voted to endorse the Senate bill, and offered public assurances that it would not provide funding for abortion.

Third, the widely-respected health law expert, Timothy Jost, released an analysis of the ACA in early March 2012, concluding that the original House version and the Senate bill would be equally effective in excluding federal funding of abortion. Suddenly, the bishops' argument that Catholics should vote against the final Senate bill on the basis of its having fallen short of the Stupak-Pitts restrictions on abortion funding seemed out-of-touch with the reality.

A curious duel ensued between the USCCB and Professor Jost, a Mennonite law school faculty member at Washington and Lee University in Virginia and co-author of a popular textbook. He wrote, "Requiring a separate abortion policy [as the Stupak amendment did] rather than a separate premium [as required by the Senate bill] is an administrative technicality. It merely requires one more piece of paper." The USCCB responded to Prof. Jost's memo with a detailed rejoinder two weeks before the final House vote, arguing the reasons why the Senate bill didn't pass muster—reasons that strained credulity when Professor Jost publicly addressed them shortly before the vote.

Professor Jost also addressed the concern raised by the bishops and anti-abortion groups about the possibility that \$11 billion in federal funds to

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<sup>45</sup> Patrick Whelan, "Abortion Rates and Universal Health Care," *New England Journal of Medicine* (Mar. 17, 2010) (concluding that "some federal subsidization of overall [health] care for a fraction of the additional 31 million people who would be covered would not mean a significant or even a likely increase in the number of abortions performed nationally").

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expand primary care at more than a thousand Federally Qualified Health Centers (FQHCs) would be used to subsidize abortions there. The problem is that these federally regulated community health centers, created as part of President Lyndon Johnson's anti-poverty efforts in the 1960s, provide primary care in poor communities and had never performed any abortions. In part because these centers are required to provide full-service care to children and to men, in addition to women, none of these funded centers are operated by Planned Parenthood. At the time the ACA was passed, these community health centers were receiving \$2.2 billion in annual federal support, having nearly doubled in number over the previous ten years under President George W. Bush. As religious writer David Gibson pointed out, "The centers, and the billions they receive each year, have never before been subjected to pro-life scrutiny or criticism," and he noted that President Bush would have been unlikely to push such a significant expansion if he thought federal law inadequately restricted the possibility of these clinics providing abortions. The newfound concern that FQHCs might get into the abortion business appeared contrived.

In reality, the Senate bill was more anti-abortion than the original House legislation. The final bill incorporated provisions that allowed states to restrict the availability of abortion in any health plan, a restriction that was not included in the original House bill. Indeed, unlike the Stupak Amendment, the Senate bill stipulated that abortion coverage not be linked to cheaper coverage in a way that would incentivize more abortion coverage. Taken together, these measures ensured that no subscriber would be compelled to buy abortion coverage or to pay federal taxes subsidizing it. The editors of *Commonweal* stated in January 2010, "The longer one looks at the Stupak Amendment and the Senate compromise, the less different they seem."

Moreover, ACA represented the first federal law that provided new funding and was explicitly dedicated to *abortion reduction*. The law incorporated elements of the Pregnant Women's Support Act, sponsored by Pennsylvania Senator Bob Casey, providing \$250 million over 10 years to create a federal Pregnancy Assistance Fund (PAF) that is helping teenagers and college students who are new mothers or currently pregnant, and helps victims of domestic violence who are pregnant.

There are currently 17 PAF-funded programs, helping new parents in states and Indian tribes across the country. In 2011, Senator Casey procured expanded funding for the PAF with S.1490, the Pregnancy Assistance Fund Expansion Act, which provided for \$25 million in annual grant funding through 2019. The currently funded programs include *Young Mom's Connect* in North Carolina (support and care for teen parents in 5 counties), the Pregnant and Parenting Adolescent Support Services (PPass) Program in Indianapolis (avoiding subsequent pregnancies and decreasing high school drop-out rates), the Montana Healthy Teen Parents project in Helena (focused on Native

American youth), and the Virginia Department of Health program (domestic violence, particularly affecting college students across the state). So the ACA provides for a wide variety of new ideas in constructively addressing the causes of unintended teen pregnancy.

The ACA also provided \$1.2 billion in additional funding for adoption. The law raises the maximum adoption credit to \$13,360 per child, up from \$12,150 in 2009. The credit is based on the reasonable and necessary expenses related to a legal adoption.

In summary, the ACA did nothing to expand abortion rights or funding, and in fact provided funding for the first organized effort to help decrease abortion by addressing the underlying social factors that make it difficult for women to carry pregnancy to term.

## The Role of Women Religious

As the health care debate unfolded in early 2009, there appeared to be considerable agreement between the USCCB, the CHA and the Leadership Conference of Women Religious (LCWR). Formed in 1956 at the request of the Congregation for Institutes of Consecrated Life and Societies of Apostolic Life at the Vatican, the Conference of Major Superiors of Women became a voice for America's nuns. In 1971 the name was changed to LCWR, and today represents more than 1500 congregations of Women Religious—which included more than 80% of the roughly 59,000 nuns in the U.S. at the time.

Like the bishops, the LCWR had a long history of supporting expanded health care coverage, having passed general assembly resolutions in 1990, 1998, 2002, and finally in August 2009. That final statement called for “reform that provided affordable, accessible health care for all, with special attention to those who are poor and vulnerable.” Sr. Marlene Weisenbeck FSPA, Ph.D., J.C.L., a canon lawyer who was president of LCWR, said in December 2009 that the organization “strongly supports health care legislation that will expand coverage to most people in the US and will protect human life at all stages,” even as the USCCB began drawing a red line on the specific language of the Stupak Amendment.

Despite the bishops' objections to perceived accommodations for abortion in the ACA, the bishops eventually found themselves opposed by the Catholic Health Association, the LCWR, and a wide swath of Catholic theologians and other academics. Sr. Carol Keehan, president of the CHA, spoke strongly in support of the ACA, saying it “significantly expands coverage, especially to low-income and vulnerable populations, and is a tremendous step toward protecting human dignity and promoting the common good.” Citing the new funding for abortion reduction, and her organization's own legal analysis, she said they were “confident that the reform law does not allow federal funding of abortion and that it keeps in place important conscience protections for caregivers and institutions alike.”

In response to Sr. Keehan's letter to Congress on behalf of the CHA in support of the reform bill, Sr. Simone Campbell SSS, an attorney and executive director of the 40-year-old Catholic social justice lobbying group NETWORK, wrote the “nuns' letter” backing up her colleagues at CHA. In two days, in mid-March 2010, she got 59 signers that included many of the superiors of the major religious orders within the LCWR structure. The letter, which received wide attention on all the networks, on the web, and in print media, stated:

The health care bill that has been passed by the Senate and that will be voted on by the House will expand coverage to over 30 million uninsured Americans. While it is an imperfect measure, it is a crucial next step in realizing health care for all. It will invest in

preventative care. It will bar insurers from denying coverage based on pre-existing conditions. It will make crucial investments in community health centers that largely serve poor women and children. And despite false claims to the contrary, the Senate bill will not provide taxpayer funding for elective abortions. It will uphold longstanding conscience protections and it will make historic new investments – \$250 million – in support of pregnant women. This is the REAL pro-life stance, and we as Catholics are all for it.

The bishops themselves seemed to acknowledge the critical role that the support of nuns had played in passing the ACA. Several bishops who attended the USCCB executive session in June 2010 told the Catholic News Agency that “Cardinal George charged CHA and other Catholic groups with providing cover” for undecided legislators to vote for the law, and had “weakened the moral voice of the bishops in the U.S., caused confusion and wounded Catholic unity.” Cardinal George was said to have remarked to the bishops that “Sr. Keehan and her colleagues are to blame for the passage of the bill.” *Blame?* That is not the verb we would use to describe the *attentiveness* of these dedicated nuns to their own hands-on experience in ministry of health care and to the empirical data on the Massachusetts experience published in the *New England Journal of Medicine*, or their *intelligence* in grasping the significance of these data, or their *reasonableness* in explaining the consequences of these data, or their courageous *responsibility* in acting decisively to advance the cause of genuine health care reform, without the distractors urged by the USCCB. Instead of “blame,” we suggest the right word for the nuns and priests and laypersons who acted within their own proper spheres as faithful citizens is: *gratitude*.

In the end, the bishops seemed not only unwilling to compromise, but unable to acknowledge the good-faith efforts of the Democrats to provide additional reassurance that their objections were being met. After the law was approved, the bishops established an *ad hoc* Health Care Concerns Committee, headed by Bishop Kevin Rhoades of Fort Wayne-South Bend, Indiana. He met that April with Sr. Keehan, together with Bishop Thomas Paprocki of Springfield MA and Bishop Kevin Vann of Fort Worth TX, with the intent of persuading her to change the CHA position on the ACA. She made clear that their position would not change, and the *ad hoc* committee hasn’t been heard from since (no acknowledgement on the USCCB website, and no public records of meetings or actions since spring 2010).

At the CHA annual meeting in June 2010, President Obama and Senator Bob Casey (D-PA) spoke to the group in a video tribute that acknowledged their role in the reform effort. “I can say without any hesitation that if the Catholic Health Association were not involved in this effort, it’s highly likely we wouldn’t

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have been able to pass the bill,” said Sen. Casey. President Obama then specifically singled out the CHA to express his thanks:

for your help and courage in passing health care reform, a major victory for our nation, for human dignity, and for the most vulnerable among us. I especially want to thank Sr. Carol Keehan for the extraordinary leadership she’s shown in advancing our national discussion. I know your ministry has been working for decades to make sure that everyone can afford quality health care.

The women religious were not alone in the Catholic world in their support for health insurance reform. Most major Catholic periodicals editorialized in favor of the ACA. *Commonweal* opined on January 19, 2010, that the absence of the Stupak language in the final bill “should not keep Catholics who are both pro-life and pro-reform from supporting this important legislation.” The editors of the Jesuit news weekly *America* wrote on April 5, 2010:

Hurrah! The yearlong battle has been won, and the health care reform bill is now the law of the land. Most Americans will benefit from the legislation: the insured who could get sick or lose their job; those with Medicare/Medicaid coverage whose drug payments fall into “the doughnut hole” gap in coverage; and especially the 32 million Americans currently without insurance...Our government has completed a major exercise in “promoting the general welfare,” which the Constitution mandates it to do.<sup>46</sup>

Writing in the international Jesuit journal, *La Civiltà Cattolica*, Fr. Andrea Vicini (himself a pediatrician) wrote that the ACA was “a needed and long awaited beginning” to reform, because “limited access to health care compromised in many ways the health of citizens and the country.”<sup>47</sup> Fr. Vicini is a professor of bioethics at the Pontifical Faculty of Theology in Naples and his analysis was reviewed by the Vatican Secretariat of State before publication, which appeared to lend approval from Rome that had been lacking from the USCCB.

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<sup>46</sup> Editorial, “Achieving Step One,” *America*, April 5, 2010.

<sup>47</sup> Carol Glatz, “Jesuit Journal Praises US Health Reform Law as Needed, Long-awaited,” *Catholic News Service*, June 3, 2010.

## Resolution of the Abortion Concern?

President Obama's February 25, 2010 summit meeting with Republican leaders helped reframe the issues and put the opposition to the ACA on the defensive. It became clear that the only road to passage was for the House to accept the Senate reform bill, amending it with financial provisions that could be passed by the process of Reconciliation in the Senate. On March 21, Rep. Stupak announced that he and his supporters were reassured that an executive order by President Obama reinforcing the Hyde Amendment restrictions would adequately address their concerns about any potential of the Senate bill to pay for abortion services, and the House voted 219-212 to pass the ACA into law. 34 Democrats and all 178 Republicans voted against the law. One severe irony was the universal opposition of all the House Republicans to the first law explicitly directed toward the reduction of abortions in the United States.

During the debate in the Senate, Senators such as Charles Schumer (Dem.-NY) opposed the extension of the Hyde Act to the Affordable Care Act. President Obama responded promptly by promising to issue an executive order achieving that result if the legislation reached his desk for signature. Far from breathing a sigh of relief—let alone expressing a word of gratitude to President Obama for this courageous leadership by confronting the Schumer position—Cardinal George on that occasion was capable only of negativity: “The fact that an executive order is necessary to clarify the legislation points to deficiencies in the statute itself.”

On March 23, 2010, President Obama signed the Affordable Care Act. As noted above, President Obama had promised to issue an executive order extending the Hyde Amendment to the ACA. On March 24, 2010, the day after signing the ACA, the president kept his promise by issuing Executive Order 13535. The order maintains current Hyde Amendment restrictions on governmental funding of abortion and extends those restrictions to the newly created health insurance exchanges. President Obama came right to the point:

Following the recent enactment of the Patient Protection and Affordable Care Act (the “Act”), it is necessary to establish an adequate enforcement mechanism to ensure that Federal funds are not used for abortion services (except in cases of rape or incest, or when the life of the woman would be endangered), consistent with a longstanding Federal statutory restriction that is commonly known as the Hyde Amendment. The purpose of this order is to establish a

comprehensive, Government-wide set of policies and procedures to achieve this goal and to make certain that all relevant actors—Federal officials, State officials (including insurance regulators) and health care providers—are aware of their responsibilities, new and old. Under the Act, longstanding Federal laws to protect conscience (such as the Church Amendment, 42 U.S.C. 300a-7, and the Weldon Amendment, section 508(d)(1) of Public Law 111-8) remain intact and new protections prohibit discrimination against health care facilities and health care providers because of an unwillingness to provide, pay for, provide coverage of, or refer for abortions.

The executive order represents an immediate good faith effort by the president to accommodate dissenting religious traditions, including Catholicism. The promptness of this executive order is significant: it is contemporaneous with the passage of the statute. So is the fact that it is made at the highest level of executive policy—the personal involvement of the president himself. It offers a clear understanding of what is *excluded* from the meaning of “preventive care.”

*Catholics in Alliance for the Common Good* is a group of Catholic clergy and laypersons long involved in social justice matters. They have issued a thoughtful voters’ guide to many issues worthy of consideration in this election. This group supported the passage of the ACA, and immediately applauded President Obama for issuing an executive order “guaranteeing that no taxpayer dollars will ever be used to fund abortions.” So do *Catholic Democrats*.

Some people just can’t take “Yes, we can” for an answer. For example, *The American Center of Law and Justice*—an advocacy group opposed to the ACA—argued that Obama’s executive order is an inadequate formulation to prohibit abortion funding since “an executive order cannot trump the language of the statute.” Of course executive orders do not trump *conflicting* statutes. Once again, however, lawyer talk that might sound impressive to some, fails to *explain* the negative *judgment* of the ACLJ relating to the executive order. It only begs the very question at issue: does the new law fund abortions or does it not? The President of the United States says it does not.

The president does not agree with the official teaching of the Catholic church on abortion. That is easy to see from his own words cited at the beginning of this chapter. But it is long past time to cease the unfair and inaccurate characterization of this president as “the worst president ever on abortion.” He is not, and people who say so are ill-informed. True, his goal has not been to eliminate all abortions. No president can seriously maintain this goal. Some presidents attract prolife support by making a promise to support the reversal of *Roe v. Wade*. That decision is deeply flawed, but nearly forty years later the illusory promise to reverse it by constitutional amendment remains unfulfilled.

Perhaps that is because the promise to achieve a constitutional amendment on abortion is easy for a president to make since the process of constitutional amendment involves only legislators, in the Congress and the state legislatures. No matter what one's view on reversing *Roe v. Wade* might be, there is nothing wrong with expressing public gratitude to President Obama for clarifying at the outset of the life of the Affordable Care Act that it will be interpreted to affirm and sustain Henry Hyde's achievement of a middle ground on abortion.

One of the immediate narratives that emerged was that the nuns had won, and the bishops lost. The Washington correspondent for the *National Catholic Reporter* Jerry Filteau concluded:

After the Senate rejected the Stupak amendment in its version of the bill—and after the entire political landscape in the Senate subsequently changed with the election of an anti-health-reform Republican to replace the late health reform advocate Sen. Ted Kennedy (D-Mass.), the USCCB was faced with an unenviable political decision with substantive moral dimensions: Whether to reject the Senate bill outright because it did not elevate the Hyde Amendment to federal statutory status, or to accept it, with the continued need to keep the Hyde Amendment alive year by year in the appropriations process. By declaring an unalterable opposition to the entire health care reform bill because of its failure to legislate the Hyde Amendment as statutory law, not just annual appropriations measures, the bishops took a major political gamble. They lost. The political fallout will continue for many years to come.<sup>48</sup>

The leadership of the bishops' conference, meanwhile, was not gracious in defeat. Moments after President Obama signed the new law, Cardinal George responded publicly with a statement that was unanimously approved by the bishops' Administrative Committee: "We applaud the effort to expand health care to all. Nevertheless, for whatever good this law achieves or intends, we as Catholic bishops have opposed its passage because there is compelling evidence that it would expand the role of the federal government in funding and facilitating abortion and plans that cover abortion." George's complaint about "conscience protection" for health care providers was unclear for two reasons. First, the ACA contains no provisions that would compromise longstanding proscriptions against compelling doctors to perform abortions or sterilizations, known as the Church Amendment (because of its principal

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<sup>48</sup> Jerry Filteau, "Fact Checked: US Bishops on Health Care Reform," *National Catholic Reporter*, April 12, 2010.

sponsor, Senator Frank Church, Dem.-ID).<sup>49</sup> Second, President Obama's executive order expressly noted that the Church Amendment and the Welton Amendment "remain intact." Cardinal George also cited concerns about the inability of undocumented immigrants to buy policies through the exchanges, a dicey issue unto itself that hinges more on the outcome of the coming debate on immigration reform. He was critical of the nuns and "other so-called Catholic groups" because, he said, "in the end, they have weakened the moral voice of the bishops in the U.S."

Speaking at a meeting in May 2010, Sister Carol said she had worked closely with the bishops for months crafting a common effort to pass the best bill possible. In an interview that spring with the *National Catholic Reporter*, she said, "This was not a bill that just did a little pittance of something, like improving reimbursement. This was a bill that, for the first time in the lives of 32 million Americans, gave them a chance to have decent health insurance.... That was a heavy burden on my conscience, and on our organizational conscience."<sup>50</sup>

Fr. Bryan Hehir is a central figure in the voice of American Catholicism on justice and peace. He is currently the CEO of Catholic Charities, has served as dean of the Harvard Divinity School and professor at the Kennedy School of Government, and is a former staff member of the USCCB dating to the 1970s. At the CHA meeting on June 13, 2010, Hehir took a measured view of the achievement of the passage of the ACA and used the opportunity to thank Sister Carol publicly for her effective work:

It would be a gross missed opportunity in this assembly not to acknowledge the way in which Sr. Carol's leadership embodies the elements of experienced hands-on care for the poor, ministry to all, and intelligent courageous leadership of this organization.

The Catholic debate was intense and at times conflicted, but I think more focused and, save for the very edges of the debate, more moderate in tone. Indeed there were multiple Catholic voices in this debate, not one or two. The bishops' conference and CHA were appropriately the dominant players. But a lively extensive commentary could be found in Catholic institutions and

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<sup>49</sup> For a thoughtful analysis of these issues in medical ethics and social policy, see Mark R. Wicclair, *Conscientious Objection in Health Care: An Ethical Analysis* (New York: Cambridge University Press, 2011).

<sup>50</sup> See John L. Allen, "Minding the Gap between the Bishops and Catholic Health Care," *National Catholic Reporter*, June 16, 2010; see also Barbra Wall, *American Catholic Hospitals: A Century of Changing Markets and Missions* (New Brunswick, NJ: Rutgers University Press, 2011), chapter 8: "S Stands for 'Sister,' Not 'Stupid'" (recognizing the adroit testimony of Sister Carol at a vulnerable moment in the legislative history of the ACA).

publications.... My purpose has been to identify what I understood the fault lines to have been. Precisely on the point where the ethical objective and the empirical content of the bill merged is where friction occurred.... We should understand how narrow that final question was. It was not about objectives. It was not about intent. It was about how you mix those two dimensions.... For my part, I believe the objectives then and now continue to be worthy objectives, and can continue to be pursued. I also believe there was a foundation for the different judgments made about supporting the bill, and that those different judgments fitted within the Catholic moral tradition. The final judgment about this bill is not about Catholic inside and outside, the permissible range of Catholic moral tradition.

## The Health Care Reform Need Not Be Perplexing

The ACA ensures that all Americans have access to quality, affordable health care, and is intended to decrease the economic drag created by health care on the overall economy. The Congressional Budget Office determined that the new law would not add to the U.S. budget deficit, and potentially provides coverage to all but 5% of Americans. By 2022, 33-million additional Americans will have health insurance because of this law. It is a complex law detailed under ten headings, including expansion of coverage, the role of public programs (like Medicaid), improvement of quality in care, prevention of disease, maintenance of the provider workforce, transparency, access to new therapies, community-based services, provision of care for Native Americans, and the means of paying for it all.

**Title I. Quality, Affordable Health Care for All Americans.** The law effects insurance market reform eliminating discrimination on the basis of pre-existing medical conditions and price discrimination based on gender (women's premiums have been historically much higher than men's). Insurance companies supported these reforms generally with the proviso that all Americans be required to carry insurance (the so-called shared responsibility mandate), in order to keep healthy people from "free-loading" until such time as they need health care. The law also eliminates lifetime and unreasonable annual limits on benefits, requires coverage of preventive services (including immunizations), extends coverage of young people on their parents' policies until age 26, makes comparison of different plans easier, and caps the amount of insurance premiums that can be spent on non-medical expenses (like insurance company profits and administrative expenditures).

One of the key provisions is the establishment of the new American Health Benefit Exchange. Each state will have an opportunity to establish an Exchange by 2014 to help individuals and small employers obtain coverage. The plans that are included will be accredited for quality, will present benefit options in an easily understood standardized form, and will use a standard enrollment form. All members of Congress will be required to choose their health coverage on one of the exchanges, insuring that they have the same coverage choices as everyone else.

In short, most families will continue to be covered under their employers' insurance plans. But families that earn less than 133% above the federal poverty line will be covered under Medicaid. For families between 133-400% of the poverty line who don't have employer coverage, up to about \$90,000 for a family of four, tax credits on a sliding scale will be available to help pay for membership in private insurance plans through the Exchanges.

**Title II. The Role of Public Programs.** The ACA extends Medicaid, as noted above, and preserves the successful Children’s Health Insurance Plan (CHIP). There are provisions for community-based care for people with disabilities or other home health care needs. There are a series of provisions for state-by-state innovation in the delivery of care, and improved efficiency in coordinating instances where people have overlapping eligibility for different programs under the law.

**Title III. Improving the Quality and Efficiency of Health Care.** Payment for Medicare and Medicaid services under the ACA will be more closely linked to quality outcomes. The Medicare Part D prescription drug benefit, initiated during the Bush Administration, will be improved by closing the so-called donut hole coverage gap.

**Title IV. Prevention of Chronic Disease and Improving Public Health.** The law has provisions to build a new public health system through a new interagency council that will promote a national prevention and health promotion strategy. A Prevention and Public Health Investment Fund will be established to spearhead a national education campaign to raise awareness of activities to promote health and prevent disease, including HIV, diabetes, asthma, and other costly chronic illnesses. There is a substantial new investment in understanding and addressing health care disparities between different groups.

**Title V. Health Care Workforce.** The ACA provides new help to expand the number and quality of primary care physicians and other primary care providers (including nurses and dentists). There is also \$11 billion in new funding for community health centers across the country. Title V was among the most controversial from the USCCB’s point of view, because there are no specific provisions governing the provision of abortions through the community health centers, or the possibility that primary care doctors and others would have to undergo abortion training. But community health centers have never provided abortions, being required by law to provide full-service care not only to women. Furthermore, conscience protections related to abortion and sterilization have been in place since the 1970s, and remain unaffected by the ACA.

**Title VI. Transparency and Program Integrity.** The ACA broadly provides more access to information about the quality of health care providers, of nursing homes, a means to rein in waste, fraud and abuse by providers, and a framework for decreasing the costs and consequences of malpractice.

**Title VII. Improving Access to Innovative Medical Therapies.** The ACA restricts the ability of drug companies to keep generic drugs off the market, and creates a new mechanism for creating generic versions of biological drugs

(like Enbrel for arthritis and psoriasis) to make these valuable medications more available and less costly.

**Title VIII. Community Living Assistance Services and Supports Act (CLASS Act).** One of the most daunting challenges facing American health care as the Baby Boomers age is the means by which people can pay for long-term care, particularly if they are overcome by disability. The CLASS Act is a self-funded and voluntary long-term care insurance plan that employees will buy through payroll-deduction premiums in order to receive a daily monetary benefit if they succumb to a disability. No taxpayer funds will be used to pay benefits under this program, which should help reduce current Medicaid expenditures for chronic care.

**Title IX. Revenue Provisions.** Tax cuts facilitating health insurance should help many middle class families to have less difficulty paying for care, and should spare them from one of the greatest indignities of the current situation: half of all bankruptcies in the U.S. are thought to occur as a result of a health crisis in the family.

**Title X. Reauthorization of the Indian Health Care Improvement Act.**

ACA reauthorizes the Indian Health Care Improvement Act (ICHIA), a 1976 law that had expired in 2000. As such, the new law has provisions for long term and hospice care, better integrates care with other elements of the health care system, helps train and employ Indians to provide health care services, and provides for the establishment of comprehensive behavioral health, prevention, and treatment programs for Indians. All told, this act will affect about 1.9 million of the country's 3.3 million Native Americans and Alaskan Natives.

**Summary.** The immensity of the health care puzzle is daunting, even despite the progress posed by the escalating implementation of the ACA. In September 2012, an 18-member expert panel concluded that the health care system wastes \$750 billion per year, about 30% of every dollar, on superfluous care, redundant paperwork, and malfeasance. Health care costs began slowing considerably in 2010, perhaps in part because of efforts to begin complying with the new law. President Obama argued repeatedly that, as much as the ACA represented a more humane way for people to remain healthy, it also represented a critical investment in the economic health of the country by relieving some of the increasing burden that escalating health costs imposed on every aspect of the economy.

The law makes no provisions for expanded federal payments for abortion. It has no effect on provider conscience protections that are previously enshrined in law. It expands community health clinic funding, with no reference to developing a new capability for these clinics to perform abortions. All these criticisms appeared to be excuses for undermining the primary intent of the

law: expansion of health care coverage to virtually all Americans, a major Catholic social justice priority for more than a hundred years.

In short, the ACA fulfills the vision of health care as a human right first alluded to in 1891 by Pope Leo XIII and made explicit as recently as August 2012 by Pope Benedict XVI. Furthermore, the new law fulfills to a large extent the goals anticipated by Bishop Malone in his 1992 letter to Congress, which outlined eight essential criteria for reform: Respect for life, priority concern for the poor, universal access, comprehensive benefits, pluralism of use within both public and private sectors, quality of care, and containment of health care costs with equitable financing.

Shortly before he died in 1996, Cardinal Bernardin said that people speaking in the name of the Catholic Church must “speak from a tradition of faith in a language that is open to public acceptance by citizens of several faiths or no faith,” and that they “must earn the right to be heard by the quality of their arguments.”<sup>51</sup> By this test, some of the critics of the Affordable Care Act were either inattentive to the data from the Massachusetts experience or failed to comprehend their significance. As a result their conclusions were unreasonable in the sense that they failed to explain the data that there were fewer abortions with broader health care coverage, not the other way around. These critics succumbed to poor logic grounded in loyalty to a conservative ideology determined to thwart President Obama and the Democrats at all costs. In short, their methodology was flawed because of a bias that blocked insight.

The Editors of *Commonweal* Magazine put it this way:

If there’s an issue big enough to stall health-care reform, surely it’s abortion policy. Unlike other obstacles to reform (distrust of big government, new taxes, or anything that looks vaguely European), the abortion debate, like the debate over health care itself, involves fundamental questions of justice. What are our obligations to two vulnerable groups, the sick and the unborn? And what do we do when these obligations seem to conflict?

Unfortunately, much pro-life opposition to health-care reform has never gotten past its own rhetoric to a careful examination of policy. Some pro-lifers suggest that a prochoice president *must* be trying to use health-care reform to increase funding for abortion—no matter what he or the legislation says. Better, therefore, to try

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<sup>51</sup> Joseph Bernardin, *A Moral Vision for America*, edited by John Langan, S.J. (Washington, DC: Georgetown University Press, 1998) see also J. Bryan Hehir, “Responsibilities and Temptations of Power: A Catholic View,” *Journal of Law and Religion* 8: 71 (1990).

to kill his proposals, just to be safe. This is single-issue politics with a vengeance, and without excuse.<sup>52</sup>

In the end, single-issue politics did not win out in Congress. The bill became law. The single-issue players did not give up. They came back just as strong in supporting efforts to invalidate the law through constitutional challenges mounted against it. The next chapter explores two sets of lawsuits. First, the attack on the ACA itself culminated in a 5-4 vote of the Supreme Court sustaining the ACA. Second, Kathleen Sebelius, Secretary for Health and Human Services, issued an interpretation of the term “preventive services” in the ACA includes contraceptives in health care plans for employees covered under the Act.

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<sup>52</sup> Editorial, “Prolife, Yes, & Pro-reform,” *Commonweal* (January 29, 2010).

**Part V**

**The politics of abortion and the controversial HHS regulations**

## The Difficulty of Addressing Abortion

Following the polarizing 2004 election, the Democratic leadership in Congress took a more activist stance in addressing the abortion problem. Representatives Tim Ryan (D-OH) and Rosa DeLauro (D-CT) fashioned legislation that would dramatically lower abortion rates by addressing the health and economic needs of women and their children. Although the Bush Administration substantially increased funding for “abstinence-only sex education” and a variety of church-sponsored crisis pregnancy centers, in October 2007 President Bush vetoed Democratic prevention legislation that would have explicitly worked through economic measures to decrease abortions.

Subsequent proposals sponsored by Congressional Democrats, including the *Reducing the Need for Abortion and Supporting Parents Act* (HR 1074, known as the DeLauro-Ryan bill) and the *Prevention First Act* bill (HR 819), were later incorporated into the Affordable Care Act by Senator Robert Casey (R-PA). After all the public attacks in elections across the country, it was the Democrats who finally passed legislation explicitly dedicated to decreasing the incidence of abortion.

President Obama has consistently opposed the criminalization of abortion throughout his career, but has simultaneously spoken with unwavering conviction about the moral seriousness of the issue and the need to work constructively to address it. He told *Catholic Digest* in October 2008,

Nobody is pro-abortion. I believe we need to do more to address the underlying factors that may lead a woman to make these heart-wrenching decisions. We should do everything we can to reduce unintended pregnancies and support women who choose to have a child. So we should be focusing on pre- and postnatal care, we should be making adoption far more available. If we can create a situation where young women and young men are acting responsibly and recognize the sacredness of human sexuality, then we can drastically cut the number of abortions. That is something that I intend to work on with people from all perspectives, when I'm president of the United States

President Obama played a personal role in writing the abortion language that was included on this issue in the Democratic platform in 2008, which offered solutions to reducing the number of abortions, saying, “We also recognize that such health care and education help reduce the number of unintended pregnancies and thereby also reduce the need for abortions. The Democratic Party also strongly supports a woman's decision to have a child by ensuring

access to and availability of programs for pre- and post-natal health care, parenting skills, income support, and caring adoption programs.” This was new language that had not been included in the 2004 Party Platform.

In contrast, the Republican Platform Committee very publicly deleted similar language that had “invited all people of good will to work together to reduce the incidence of abortion.” The final Republican Platform reiterated the traditional language supporting passage of a Constitutional amendment banning abortion, and was glaringly silent on economic, health and other measures to reduce abortions.

In summary, like most Americans and a plurality of Catholics, President Obama came into office believing that constructive measures are the most moral and effective way to solve the abortion problem. He frequently expressed his determination to enact such measures, which were repeatedly vetoed by the Bush Administration. Despite the conventional wisdom, one must ask whether abortion reduction efforts shouldn’t be broadly considered to be more compatible with a culture of life than the alternative obsession with a never-to-be-realized drive for criminalization.

## A New Administration Addresses The Abortion Problem

In his commencement address at the University of Notre Dame in May 2009, President Obama echoed language previously used by President Bush regarding efforts to find common ground on the abortion issue. The Obama Administration launched an unprecedented data-gathering effort by an Abortion Reduction Task Force within the Domestic Policy Counsel. Over the next four months, they collected information from more than 100 religious and public policy organizations across the political spectrum, seeking to find common ground on the issue. Among the recommendations made were the array of abortion reduction proposals that had featured prominently in legislation sponsored by then-Senator Hilary Clinton and in the House by Rep Rosa DeLauro, seeking new funding for abortion reduction.

One result was the ACA language, largely ignored by the US Catholic bishops and other conservatives, that sought to make adoption easier and more affordable; to provide daycare opportunities on college campuses; and to provide adequate prenatal care for women. This provision of the ACA, termed “The Pregnant Women Support Act,” provided for \$250 million in funding for these measures.

But another common theme in the recommendations provided to the Abortion Reduction Task Force was the potential role that wider availability of contraception might play in decreasing the incidence of abortion. The ACA gave wide latitude to the Secretary of Health and Human Services to establish rules governing the availability of “preventive care,” including contraception. Almost as soon as President Obama signed the Affordable Care Act, opponents of the ACA—including twenty-six states, private individuals, and the National Federation of Independent Businesses—challenged the constitutionality of the new law. The Supreme Court upheld the ACA by a 5-4 vote as “legislation ... within Congress’ power to tax.” We discuss the constitutionality of the ACA in Part I of this chapter. In Part II we discuss an interpretation of the ACA requiring employers to provide contraceptives to employees in group health care plans. In Part III we accept the invitation of President Obama to discuss the issues of abortion and contraception by focusing on “clear ethics, sound science, and respect for the equality of women” in health care policies “without reducing those with differing views to caricature.”

## The ACA Is a Valid Exercise of the Power of Congress to Tax

The litigation challenging the ACA moved at a quick pace. On January 31, 2011, federal trial judge Roger Vinson ruled that mandatory health insurance—the provision of the Internal Revenue Code imposing a “shared responsibility penalty” on almost all Americans failing to purchase health insurance—was beyond the power of Congress to impose. Finding this provision inseverable from the ACA, Judge Vinson struck down the entire act.<sup>53</sup>

The federal court of appeals in Atlanta agreed with the trial court that the insurance mandated for each person was unconstitutional, but reversed the trial court on whether the individual mandate was severable, and sustained the rest of the Act.<sup>54</sup>

The federal government sought review of this decision by the Supreme Court, which agreed to hear the case, and set aside three full days for oral argument—unheard of since the nineteenth century. In a landmark decision on June 28, 2012, the Court upheld the most significant provisions of the ACA, but invalidated other portions of the Act.<sup>55</sup>

There were several opinions in the case running to over a hundred pages in the *United States Reports*. Legal scholars and litigators will have lots to think about, write about, and strategize about for a long time to come. The main points are these. The opinion of Chief Justice Roberts (joined by Justices Ginsburg, Breyer, Sotomayor and Kagan) upheld the individual mandate to buy health insurance as a constitutional exercise of the *power of Congress to tax*. The Chief Justice wrote:

A tax on going without health insurance does not fall within any recognized category of direct tax.... The shared responsibility payment is thus not a direct tax that must be apportioned among the several States.... [I]t is abundantly clear the Constitution does not guarantee that individuals may avoid taxation through inactivity. A capitation, after all, is a tax that everyone must pay simply for existing, and capitations are expressly contemplated by the Constitution. The Court today holds that our Constitution protects us from federal regulation under the Commerce Clause so long as we abstain from the regulated activity. But from its

<sup>53</sup> *Florida v. U.S. Dept of Human Health and Services*, 780 F. Supp. 2d 1256 (N.D. Fla. 2011).

<sup>54</sup> *Florida v. U.S. Dept of Human Health and Services*, 648 F.3d 1235 (11<sup>th</sup> Cir. 2011).

<sup>55</sup> *National Federation of Independent Business v. Sebelius*, 567 U.S. \_\_\_, 132 S.Ct. 2556 (2012).

## America Undecided

creation, the Constitution has made no such promise with respect to taxes.

Congress's use of the Taxing Clause to encourage buying something is ... not new. Tax incentives already promote, for example, purchasing homes and professional educations.... Sustaining the mandate as a tax depends only on whether Congress *has* properly exercised its taxing power to encourage purchasing health insurance, not whether it *can*. Upholding the individual mandate under the Taxing Clause thus does not recognize any new federal power. It determines that Congress has used an existing one....

The Affordable Care Act's requirement that certain individuals pay a financial penalty for not obtaining health insurance may reasonably be characterized as a tax. Because the Constitution permits such a tax, it is not our role to forbid it, or to pass upon its wisdom or fairness.

[I]t is reasonable to construe what Congress has done as increasing taxes on those who have a certain amount of income, but choose to go without health insurance. Such legislation is within Congress' power to tax....<sup>56</sup>

A majority of the justices (the same five mentioned above) ruled that Congress could expand Medicaid by placing conditions on grants to the states under the *power of Congress to spend*. A different majority of five justices (Chief Justice Roberts and a separate opinion joined only by Justices Scalia, Kennedy, Thomas, and Alito) ruled that Congress may not use its spending power in a “coercive” manner requiring the states to accept a significant expansion of Medicaid or risk losing existing Medicaid funding.

Chief Justice Roberts summarized the holdings in the case as follows:

The Affordable Care Act is constitutional in part and unconstitutional in part. The individual mandate cannot be upheld as an exercise of Congress's power under the Commerce Clause. That Clause authorizes Congress to regulate interstate commerce, not to order individuals to engage in it. In this case, however, it is reasonable to construe what Congress has done as increasing taxes on those who have a certain amount of income, but choose to go without health insurance. Such legislation is within Congress's power to tax.

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<sup>56</sup> *Id.* at 2599, 2600, 2608.

As for the Medicaid expansion, that portion of the Affordable Care Act violates the Constitution by threatening existing Medicaid funding. Congress has no authority to order the States to regulate according to its instructions. Congress may offer the States grants and require the States to comply with accompanying conditions, but the States must have a genuine choice whether to accept the offer. The States are given no such choice in this case: They must either accept a basic change in the nature of Medicaid, or risk losing all Medicaid funding. The remedy for that constitutional violation is to preclude the Federal Government from imposing such a sanction. That remedy does not require striking down other portions of the Affordable Care Act.

The Framers created a Federal Government of limited powers, and assigned to this Court the duty of enforcing those limits. The Court does so today. But the Court does not express any opinion on the wisdom of the Affordable Care Act. Under the Constitution, that judgment is reserved to the people.<sup>57</sup>

Given the fierce political opposition of Republicans to the ACA during the legislative phase, the political response to the Court's decision was predictable. Republicans turned the Court's decision into a rally for repeal of the entire Act. Republican presidential nominee Mitt Romney said he would repeal the bill, without any reference to the deep similarities with the legislation he had signed in Massachusetts. A spokesperson for the Romney campaign announced that they raised more than \$3.2 million in the hours after the announcement of the decision. House Speaker John Boehner and Senate Minority Leader Mitch McConnell also vowed to repeal the ACA. Several state Republican officials indicated their desire to use the portion of the Court's opinion that appeared to give them the power to refuse any further expansion of Medicaid.

By contrast, one commentator suggested that the ruling "may secure Obama's place in history."<sup>58</sup> President Obama responded more modestly, acknowledging that "the debate over this law has been divisive" and lamenting the shallowness of policy analysis in Washington that focuses exclusively on "who won and who lost"—a discussion, he said, that "completely misses the point." He welcomed the central fact that the Court "reaffirmed a fundamental principle that here in America—in the wealthiest nation on Earth—a no illness or accident should lead to any family's financial ruin...." The president stated why he made this issue such a high priority:

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<sup>57</sup> *Id.* at 2608.

<sup>58</sup> Mark Landler, "A Vindication, With a Legacy Still Unwritten," *New York Times*, June 28, 2012.

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I did this because it was good for the country. I did it because I believed it was good for the American people....

Americans all across the country ... have had to worry not only about getting sick, but about the cost of getting well.... [B]ecause of this law ... there are Americans who will not have to hang their fortunes on chance.

The highest court in the land has now spoken. We will continue to implement this law. And we'll work together to improve it where we can. But what we won't do—what the country can't afford to do—is re-fight the political battles of two years ago, or go back to the way things were....

[T]oday I'm as confident as ever that when we look back five years from now, or ten years from now, or twenty years from now, we'll be better off because we had the courage to pass this law and keep moving forward.

The dynamism of the challenge in the current campaign is captured in the final word of this presidential message: FORWARD.

### The Obama Administration Includes Contraception within Covered Preventive Services

A year after the enactment of the ACA, Kathleen Sebelius, Secretary of Health and Human Services, initiated the administrative process of issuing directives interpreting provisions in the ACA. The constitutional basis for this practice is found in two provisions. First, the executive branch has the duty to “take care that the Laws [of the United States] be faithfully executed.” U.S. Constitution, Art. II, §3. Second, the President is expressly authorized to “require the Opinion, in writing, of the principal Officer in each of the executive Departments, upon any Subject relating to the Duties of their respective Offices” U.S. Constitution, Art. II, §2.

The substantive commitment to gender equality is not embedded in an explicit text such as the proposed Equal Rights Amendment, which failed by one vote in state legislatures to become an amendment to the constitution. But no one seriously contests that gender equality is a constitutional value protected against state action by the Equal Protection Clause of the Fourteenth Amendment; the Supreme Court has taught since the *School Desegregation Cases* (1954)—including a claim arising from the District of Columbia—that *equality* is implicit in the Fifth Amendment duty of the federal government to observe *due process of law* in handling claimed violations of human freedom. Secretary Sebelius came to Washington as the Governor of Kansas. She is the first governor to be able to say her dad was also a governor. Jack Gilligan, former Governor of Ohio, served as a member of the City Council of Cincinnati, a Member of the House of Representatives, and Director of the Agency for

International Development in the State Department during the Carter administration.

As Sebelius explained recently at this year's commencement exercises at Georgetown—criticized by Cardinal Dolan for inviting her<sup>59</sup> and picketed by abortion activists—politics is in her genetic structure. When other kids in Cincinnati were off having fun on a Saturday, young Kathleen was off with her Da at rallies and political gatherings all over town, in church basements, labor halls, public libraries, or anywhere Jack could find a “crowd” who would listen to him. Jews usually define a minyan as ten males. Gilligan followed Jesus on this point: “Wherever two or three are gathered together in my name, there I am in your midst” (Mt. 18:20).

Although Debelius is deeply committed to politics, she is not a wild-eyed partisan. She has long known the importance of the common good as the measure of her political service. How else could a Democrat survive in Kansas? Like President Obama, Sebelius thinks she has to cross the aisle and to listen attentively to many perspectives if she is to govern effectively. This is undoubtedly one of the reasons why the president selected Sebelius for this important position.

As a deeply committed Catholic, Secretary Debelius is fully aware of the official teaching of our church prohibiting the use of “artificial contraception,”<sup>60</sup> and is aware both that some other religious communities agree with this general view of contraception, and that still others—the overwhelming majority of religious believers and agnostics and atheists—emphatically do not agree with the official teaching of Catholicism on this matter. She knows further the undisputed sociological data that an overwhelming number of Catholics did not receive or internally assent to the specific conclusion of Pope Paul VI in paragraph 11 of *Humanae Vitae*: “each and every marital act must of necessity retain its intrinsic relationship to the procreation of human life.” For example, Patricia Beattie Jung noted recently:

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<sup>59</sup> Cardinal Dolan replied to a question about Sebelius's invitation to speak at Georgetown: “Georgetown is the oldest Catholic university in the country. Part of Catholic identity is to be in union with the bishops. When they would invite someone that is so dramatically at odds with one of the central tenets of the faith, that does bother us.” The cardinal does not identify the “central tenet of the faith” Sebelius is allegedly at odds with. Nor does he explain why—with all the pastoral good he can achieve both as leader of the USCCB and as chief pastor of one of the world's most magnificent cities, where Mayor Ed Koch and Cardinal John O'Connor could co-author a book about the phenomenal people they served in such different ways—he would have time to be “bothered” with controlling the guest list of a distinguished Jesuit university outside his diocese.

<sup>60</sup> Pope Paul VI, Encyclical *Humanae Vitae*, *On Human Life* ¶ 11 (1968); see also Blessed John Paul II, Encyclical *Evangelium Vitae*, *The Gospel of Life* ¶93 (1995); Pope Benedict XVI, Encyclical Letter *Caritas in Veritate*, *Love in Truth*, ¶15 (2008).

Despite Church teaching to the contrary, few in North America could [in 1965] (or do now) see that allowing individuals to make concrete decisions about ‘artificial’ contraception would seriously damage the moral life of the community. In addition, many non-Catholic religious leaders approved as ‘responsible’ this approach to parenthood. The claim that this practice eroded obvious and minimal standards of public morality or ‘generally accepted standards’ was no longer credible. The point here is not to obscure important differences between the debate about contraception and the debate about abortion, but to suggest that in regard to sexual issues the church has not always been clear or convincing about when and why some issues should be properly matters of public policy and others matters of private conscience.<sup>61</sup>

More importantly, Sebelius understands fully that her responsibility as a federal official is not to protect Catholic orthopraxy on birth control, but—as noted above—to “take care that the Laws [of the United States] be faithfully executed.” U.S. Constitution, Art. II, § 3. And she understands too that whatever interpretation she places on the words of the statute that Congress enacted may not violate the words of the First Amendment: “Congress shall make no law respecting an establishment of religion or prohibiting the free exercise thereof.”

Most importantly, she may be one of the most astute officials in Washington who understands that *both* of these constitutional obligations inform and limit her authority as a federal official. Her sworn constitutional duty is to implement the ACA as Congress wrote it, with a provision to include “preventive services” in health care plans, grounded in a concern for equal access to health care for women. The text of the statute may fairly be read to require HHS to include as many persons as possible, including women, within the coverage of the law. More specifically, an advisory panel from the Institute of Medicine recommended HHS last year to include birth control on the list of covered services, because it promotes maternal and child health by allowing women to space their pregnancies.

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<sup>61</sup> Patricia Beattie Jung, “Constructing a Consistent Ethic of Life: Feminist Contributions to Its Foundation,” in Thomas A. Nairn, Ed., *The Consistent Ethic of Life: Assessing Its Reception and Relevance* (Maryknoll: Orbis Books, 2008), p. 67; see also Jean Porter, “Contraceptive Use and the Authority of the Church: A Case Study on Natural Law and Moral Discernment,” in Maura A. Ryan and Brian F. Linnane, S.J., eds., *A Just & True Love: Feminism at the Frontiers of Theological Ethics, Essays in Honor of Margaret A. Farley* (Notre Dame, IN: University of Notre Dame Press, 2007), pp. 369-405.

And she must do so in a manner that avoids both preferring one religious view over another or prohibiting the free exercise of religion. A lot of balls (or eggs) in the air to juggle.

Theoretically, but only theoretically, Sebelius could have written a mandate that required all employers—including all religious employers of all shapes and sizes—to include contraceptives in all group plans. On the other hand, the fact that Sebelius—like all political appointees—serves at the pleasure of the president means she also has to take seriously Obama’s conviction that his administration would promise to try to accommodate religion wherever that is constitutionally permissible.

Sebelius knew intuitively that it would be better to accommodate the official structures of exempted church units such as dioceses and parishes, and analogous units in other religious communities. Sebelius (or her lawyers) found a provision in the tax code that appeared on its face to do this.<sup>62</sup> In August of 2011 HHS issued a first draft regulation exempting religious organizations as defined by this provision of the tax code, but requiring church-related institutions—social service agencies, schools, colleges, and hospitals—to comply with the proposed directive.

Melissa Rogers—professor of theology at Wake Forest Divinity School and former chair of President Obama’s Advisory Council on Faith-Based and Neighborhood Partnerships—described the effect of the interim directive as follows:

[A]ll new health plans would have to cover contraceptive services, sterilization procedures, and patient education and counseling for women of childbearing years without co-pays or deductibles for patients. HHS proposed that certain religious employers would be exempt from the requirement to provide contraceptive services, and it defined the term “religious employer” quite narrowly. An organization is a “religious employer” under the rule only if it primarily employs and serves people who share its faith, has as its purpose inculcating religious values, and qualifies as a church body under certain narrow IRS requirements.<sup>63</sup>

Rogers deftly summarized pros and cons of this interpretation of the ACA. In favor of the directive are considerations such as these:

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<sup>62</sup> 26 U.S.C. § 6033; for a critical analysis of this provision, see Edward McGlynn Gaffney, Jr., “Governmental Definition of Religion: The Rise and Fall of the IRS Regulations on an Integrated Auxiliary of a Church,” 25 *Valparaiso University Law Review* 203 (1991).

<sup>63</sup> Melissa Rogers, “Seeking a Win-Win Solution for HHS Regulations,” *Washington Post*, Oct. 7, 2011.

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[T]he need for wide access to services that reduce government costs, ... [and] promote public health and stronger families.... [Since] one-half of all pregnancies in the United States are unplanned, ... cost[ing] taxpayers about \$11 billion per year, ... access to affordable contraception lessens those costs, ... decreases the number of abortions and helps families to plan for the future.

On the other hand, the means chosen by the HHS to advance legitimate secular goals of the ACA involved the government in defining a religious community in a manner at odds with its own self-understanding. Rogers also noted:

Many religious organizations serve people of all faiths and none, and thus would not qualify for the HHS exemption. Some of these same organizations preach against sterilization and the use of most contraceptives. The HHS rule would force them to contradict those religious teachings by providing health care coverage for those services.

Rogers urged the government to accommodate “all religious entities that object to providing coverage for contraceptives and sterilization, while also ensuring that employees of those organizations have the ability to access such coverage.” She noted that the contraceptive coverage law adopted by Hawaii (and many other states) recognizes that some religious employers “decline to cover contraceptives,” but requires these employers to “provide written notification to enrollees disclosing that fact and describing alternate ways for enrollees to access coverage for contraceptive services”:

[This allows employees] of an objecting religious employer to purchase coverage of contraceptive services directly and ... at a cost that does not exceed the enrollee’s pro rata share of the price the group purchaser would have paid for such coverage had the group plan not invoked a religious exemption.

Rogers concluded:

The objections of all religious entities to providing coverage for contraceptives and sterilizations should be honored. At the same time, employees of objecting religious organizations should have prompt access to such coverage on the same terms as employees of other organizations.

HHS called for comment and many religious communities flagged the problem of governmental defining of religion. On January 20, 2012, the HHS issued its directive, but it was not the “win-win solution” urged by Rogers and various religious organizations. Within a week E.J. Dionne wrote in *Commonweal* that

President Obama “utterly botched the admittedly difficult question of how contraceptive services should be treated under the new health-care law.” Presidents don’t write administrative regulations. Cabinet members and their staff do. That did not inhibit Dionne from accusing Obama—in an overused phrase—of throwing “his progressive Catholic allies under the bus and strengthen[ing] the hand of those inside the church who had originally sought to derail the health care law.”<sup>64</sup> Referring to Obama’s address at Notre Dame cited at the beginning of this chapter, Dionne noted that this address “showed an appreciation for the Catholic Church’s contributions to American life—particularly through its vast array of social-service and educational institutions—and an instinctive feeling for Catholic sensibilities.” Dionne concluded:

As a general matter, it made perfect sense to cover contraception. Many see doing so as protecting women’s rights, and expanded contraception coverage will likely reduce the number of abortions. While the Catholic Church formally opposes contraception, this teaching is widely ignored by the faithful....

Speaking as a Catholic, I wish the church would be more open on the contraception question. But speaking as an American liberal who believes that religious pluralism imposes certain obligations on government, I think the church’s leaders had a right to ask for broader relief from a contraception mandate that would require it to act against its own teachings. The administration should have done more to balance the competing liberty interests here.

On February 10—perhaps to show that he was really not trying to throw anyone under a bus—the president himself re-entered the scene, issuing a revised rule that would on the one hand, exempt all religious employers from paying for, providing coverage for, or making referrals to services to which they are morally opposed. On the other hand, the new approach would enable employees—many of whom are not Catholics—of religious hospitals, universities, and social service agencies to have access to contraception or sterilization directly from insurers. More negotiation was needed to address the situation of self-insuring entities, but none ensued.

Professor Rogers issued a statement expressing her view that “President Obama and his administration deserve great credit for implementing a solution that honors free exercise rights ... and respects the interests of Americans who would like to have these important health benefits, [which] strengthen health

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<sup>64</sup> E.J. Dionne, Jr., “Compromised: Obama Owes More On Religious Freedom,” *Commonweal*, Jan. 29, 2012.

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and families and help to reduce the number of abortions.”

Leaders of the USCCB emphatically disagreed. In their view, the Obama administration does not deserve any credit at all for trying to reach an accommodation. Cardinal Dolan stated that “these matters of faith are not open to compromise” and stated that he was “drawing a line in the sand.” The metaphor seemed curious at first, but describes more or less accurately what happened next, a shift in the sands of election year politics from any attempt to explore further accommodation of religion to a constant refrain of violation of free exercise of religion, culminating in the litigation.

On the same day a large group of over 100 scholars and journalists—including, however, no accountants or merger and acquisition lawyers—dismissed the effort of the Obama administration to relieve the pressure on the consciences of church officials by proposing a shift of the cost of the contraceptives services to the generalized liabilities of the church’s insurers as “a cheap accounting trick”:

This so-called “accommodation” changes nothing of moral substance and fails to remove the assault on religious liberty and the rights of conscience which gave rise to the controversy. It is certainly no compromise. The reason for the original bipartisan uproar was the administration’s insistence that religious employers, be they institutions or individuals, provide insurance that covered services they regard as gravely immoral and unjust. Under the new rule, the government still coerces religious institutions and individuals to purchase insurance policies that include the very same services....

It is an insult to the intelligence of Catholics, Protestants, Eastern Orthodox Christians, Jews, Muslims, and other people of faith and conscience to imagine that they will accept an assault on their religious liberty if only it is covered up by a cheap accounting trick.

The discourse rapidly rose in volume and intensity, with bishops outdoing laypersons in spreading the fear that the Obama administration was waging “war” on the church, “assaulting” our “most cherished liberty,” or “strangling” the church. Lamentably, little effort was taken in these defensive maneuvers to specify how precisely—through a tax arising from an employment relationship—the government was thought to be burdening religious faith or practice when it issued the revised regulations on inclusion of contraceptives and sterilization in health care plans.

Brian Cahill—former executive director of Catholic Charities in the Archdiocese of San Francisco—sounded a different note:

The bishops continue to insist the mandate is a new, limiting definition of a religious entity, but the language comes from an earlier California law mandating contraception, similar to laws in 20

other states. Only one California bishop challenged the law, and he lost. Contraception remained in our health plan at San Francisco Catholic Charities, and life went on. Contrary to what the bishops claim today, the government is not saying to Catholic Charities and Catholic hospitals that they can only hire and serve Catholics. It is simply saying that if they hire and serve without regard to religious faith, then they have to play by the rules of the pluralistic society in which they choose to function.<sup>65</sup>

On August 3, 2012, Secretary Sebelius issued the Final Interim Regulation of HHS. Sebelius was obviously unable to please everyone. After the noisy rejection of the attempt to reach a mutually satisfactory resolution of this conflict of consciences, no reasonable person could have expected she could, would, or should do so. As the pace and heat of opposition to the HHS mandate intensified, several dioceses, social service agencies, colleges and hospitals filed lawsuits seeking judicial relief from the proposed HHS directive.

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<sup>65</sup> Brian Cahill, "If the Bishops Want to Lead, They Must First Listen," *National Catholic Reporter*, Sept 12, 2012.

### Clear Ethics, Sound Medical Science, and Respect for Women

**I**n the remainder of this chapter we search for common ground not only among our readers who are Catholics, but also among all persons of good will. How did it come to pass that a matter that Catholics themselves had quietly resolved without a schism in the church now has the potential of dividing the country with the same ferocity and tenacity as the controversy over abortion? We do not pretend to know, and we assume good will among all our readers. These two things are enough to start a conversation about an important matter. Such conversation is desirable precisely because it is sadly not all that common in the quadrennial moment of fractious and ill-informed debate that passes as acceptable political discourse.

We state these concerns about contraception and abortion because we believe our country is capable of moving forward with greater attention to one another's experience and concerns, with deeper understanding of why we all need to be free as much as possible in personal sexual ethics, with more critical reflection on things as to which it is necessary to accept restrictions on freedom because of a transcendent value such as respect for another living fellow human being. We affirm that there are moral imperatives that will emerge with greater clarity to all of us if we sort out competing claims even with a minimal standard like the golden rule, and with more responsible behavior taking bold action to protect the most vulnerable among us, while learning to pray as Reinhold Niebuhr once taught us: "God, give me the serenity to accept the things I cannot change, the courage to change the things I must, and the wisdom to know the difference."

## Personal Responsibility and Social Ethics

We begin with a few observations about ethics that will undoubtedly seem obvious to most readers, but that we deem necessary to state briefly since several Catholic leaders seem to be overlooking these fundamental points in their advocacy for justice and love. The HHS directive is not a statement about the private mores or behavior of people making love in the privacy of their homes. It is about a question of *social ethics*, a problem of *public policy*. It is about health care plans that typically function as an aspect of compensation of employees for their work.

The HHS directive neither affirms nor rejects the claim of the Catholic church that the teaching of Pope Paul VI in paragraph 11 of the 1968 encyclical *Humanae Vitae* is the best way of sexual human communication and communion, that is that “each and every marital act must of necessity retain its intrinsic relationship to the procreation of human life.” The sound constitutional reason for consensus on this point is that the truth or falsity of *Humanae Vitae* is literally none of the government’s business. But this constitutional norm cuts both ways. The first amendment strips our government of power to favor or disfavor the official teachings of Catholicism or any other religious community. That is not a commitment to anti-religious hostility, but a recognition that religious faith and practice is for us as individuals and within our various communities to work out without governmental support or hindrance. In this respect, Catholics in America in the same situation as all other religious communities. As the Supreme Court ruled in 1871:

In this country the full and free right to entertain any religious belief, to practice any religious principle, and to teach any religious doctrine which does not violate the laws of morality and property and which does not infringe personal rights is conceded to all. The law knows no heresy, and is committed to the support of no dogma, the establishment of no sect.<sup>66</sup>

A leading American canonist suggests that the widespread rejection of the specific teaching of paragraph 11 of this encyclical raises a serious doubt about its capacity to bind all the faithful since one of the cardinal rules of interpretation of Canon law is that “for a law or rule to be an effective guide for

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<sup>66</sup> *Watson v. Jones*, 80 U.S. 679, 728 (1871).

the believing community, it must be accepted by that community.”<sup>67</sup> St. Augustine once noted in a sermon: “When I hold up the host before communion, I say ‘Corpus Christi,’ and you reply ‘Amen,’ which means: ‘Yes, we are.’”<sup>68</sup> Citing this sermon, the eminent English theologian Nicholas Lash wrote recently:

The response of the faithful to sound teaching in the church is to say, ‘Yes, that’s it.’ Where this response is lacking, the teaching is called into question. ‘The judgment of the whole world is secure.’ In the months leading up to the first Vatican Council [1870], Cardinal John Henry Newman insisted that he ‘put the validity of the Council upon its reception by the [whole world-wide church].’ And when, after the council, [Newman] hesitated before accepting the definition of papal infallibility, Lord Acton remarked, ‘He was waiting for the echo.’”<sup>69</sup>

Even so, Catholics cannot expect the government to affirm the Pope or to supply the echo. Such decisions are beyond its ken and jurisdiction.

Neither personal nor social ethics can achieve maturity without historic consciousness or awareness or the horizons within which we make concrete judgments, and live our lives. We are not living under the Führer during the terrible twelve years of the Third Reich or under Stalin in the days of the “evil empire” (isn’t that phrase redundant?) of the Soviet Union. We are all living and struggling with one another in post-9/11 America, without a king or queen, thank you. We are living through the last days of an election campaign to determine whether President Obama will have a second term or be replaced by Governor Romney for a constitutional term of four years, once renewable. If you want to vote for Romney and Ryan, that’s fine. Whoever wins the presidency will have to interact with a Congress and a federal judiciary staffed with others who have profoundly differing views of our nation and our deepest needs. So all the talk about Obama and Hitler and Stalin should come to an end right now. It’s worse than stupid. It’s disgusting.

No matter what we think of paragraph 11 in *Humanae Vitae*, it’s high time we Americans did more talking with one another about interaction between love and life discussed in other parts of the encyclical. And no, we Catholics shouldn’t expect many of our fellow Americans who weren’t born into a

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<sup>67</sup> James E. Coriden, “The Canonical Doctrine of Reception,” paper published by Association for the Rights of Catholics in the Church (ARCC), [http://www.arcc-catholic-rights.net/doctrine\\_of\\_reception.htm](http://www.arcc-catholic-rights.net/doctrine_of_reception.htm).

<sup>68</sup> Augustine, Sermon No. 272.

<sup>69</sup> Nicholas Lash, “Teaching or Commanding?: When Bishops Instruct the Faithful,” *America*, Dec. 13, 2010.

Catholic family to want to read a papal encyclical. Face it, an encyclical letter is a curious genre that takes an awful lot of getting used to. But love and life are universal, so let's started talking about our deepest hopes and fears about each of these things and about their dynamic inter-connection.

Even if you have already cast an absentee ballot for Romney (or for the other fellow), we beg all of you to heed with great care the hope of President Obama that we can “surely make our case on abortion to the public with passion and conviction ... without reducing those with differing views to caricature.” It is time for Americans to move past stereotypes of those who disagree on this important matter. No matter how difficult it has been for us to talk about this vital issue, we must find the time, the patience, and the respect for others that are essential ingredients to any serious communication.

If we could find a moment to be more humble about what we are sure—often too sure—we know about all the others in our society, we might be agree that none of us is wise enough or even caring enough, let alone capable enough to be a busybody trying to govern or control the most intimate of all human contact, sex, in a manner that would be good for us or for those we might seek to control. Hence in such matters as when or where or how or with whom to have sex, we as a society have been in a long, slow process of learning how to cope with extraordinary diversity.<sup>70</sup>

Our society is not anti-religious or secularist. On the contrary, religious views about the sacred character of love and the obligations of patience and fidelity and charity embedded in the Torah, Gospel, or Holy Qur'an thrive in this country precisely because our government lacks authority to pronounce about any of these sources of our faiths and religious practices. So do deeply human and humane relationships among people of no religious faith

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<sup>70</sup> On May 5, 1967, after reading the Report of the Pontifical Commission on Population and Birth Control published in 1967, Fr. Murray gave a talk to a group of theologians in Toledo, Ohio, about several topics, including contraception. Murray noted that official church teaching on birth control had been “very clear and very certain.” The trouble, he said, was: “The church reached for too much certainty too soon, it went too far. Certainty was reached in the absence of any adequate understanding of marriage. This, many would hold—I would hold—is today no longer theologically tenable.... It is also psychologically untenable. In the absence of an adequate understanding of marriage, there was an inadequate understanding of the marital act and an inadequate understanding of the total situation of the problem of reproduction, especially in its demographic dimension. Also there was an inadequate understanding of the authority of the church as exercised in the field of natural morality. There was a little too much exuberance for a Church whose dynamism was not within the Christian faith itself but in the classicism which had infiltrated into Christian faith. In itself it is not Christian but Platonic.” See <http://woodstock.georgetown.edu/library/Murray/1967g.htm#1>; see also “Murray Says Church Was Too Sure,” *The National Catholic Reporter* (May 17, 1967), p. 3; *The Tablet* (May 20, 1967), pp. 566–567; *The Advocate* (May 26, 1967).

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Ethical or moral convictions are not static. They are dynamic. We change intellectually when we see more than we were able to see before. We change morally when we realize we must accept more responsibility for ourselves and for one another. We don't expect the pat answers of our childhood or adolescence to work well for us in adulthood. As we mature, we see the point of Cardinal John Henry Newman's famous aphorism: "In a perfect world it might be otherwise, but here below to live is to change and to be perfect is to have changed often."<sup>71</sup>

Politics enjoys no immunity from the consequences of anti-intellectual decline and gross stereotyping. For example, a law student at a Catholic university was vilified as a "slut" after she publicly identified her desire to continue to get contraceptives. None of this has to continue. We must all work to overcome partisan divisions of the past four years. But that does not mean that any of us should retreat into a vague fogbank of false commonality avoiding hard questions about human life more worthy of our attention than the current debate over funding birth control.

We call attention throughout this book to many issues respecting human dignity and life itself that are indeed worth contending for. We name these issues: abortion, torture, war, death penalty, and euthanasia. But the fuller list is lengthy and complex: racism, sexism, environmental justice to the earth and our fellow creatures, immigration policy, housing, poverty, and misdistribution of wealth, income, and power. We do this not because we think America already agrees about these things. On the contrary, we know our society is deeply divided on these issues and is not making much progress in paying attention to them or in forming more intelligent viewpoints about them or in sorting out the most valuable and most important truths from the most banal falsehoods.

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<sup>71</sup> John Henry Newman, *The Idea of a University* (1852; rev. ed. 1858).

## Perspectives from Medical Science

**A**bundant medical data show that emergency contraceptive drugs like Ella and Plan B function primarily by blocking ovulation, and have never been shown to interrupt established pregnancies when taken as directed. The use of the term “abortifacient” was not only misleading but incendiary, clearly meant as a slur against the entire health care reform effort embodied in the 2010 Affordable Care Act.

The loudest argument in Catholic circles seemed to be the traditional one of the 1968 papal encyclical, *Humanae Vitae*, that contraceptives interfere with procreation and thus separate the bonding function of romantic love from its generative potential. With the introduction of the first birth control pills in 1960, Pope John XXIII appointed a panel of six men to reconsider the Church’s prohibition in light of wide concern about world population growth. Pope Paul VI expanded the commission to include women, married couples, bishops and “many experts in the various fields pertinent to these questions.” The commission met five times between 1963 and 1966

Indeed, it is widely known that the commission’s final report to the pope proposed that he approve some form of artificial contraception for married couples. The 1968 encyclical proscribed common use of the pill, but also offered two exceptions: “recourse to infertile periods,” also known as the “rhythm method,” and what the document labels as “lawful therapeutic means.” The latter represented an appreciation even then that there were reasons other than contraception why birth control pills might be prescribed for women. Paragraph 15 of *Humanae Vitae* clarifies that “the Church does not consider at all illicit the use of those therapeutic means necessary to cure bodily diseases....”

Deirdre McQuade, a spokesperson for the Pro-Life Secretariat of the USCCB, began declaiming in her public remarks, “Pregnancy is not a disease to be prevented...so birth control is not preventive care, and it should not be mandated.” But *Humanae Vitae*, which focused on world population growth and whether married people should be allowed to use the pill, actually anticipated that there would be non-contraceptive uses for birth control pills and made special accommodation for these uses. In the past six years, new evidence has emerged about a very significant cancer protective effect for birth control pills. If the cancer prevention abilities of these medications were more

widely known, would conservative lawmakers be condemning them with such a sense of conviction?

Despite efforts by HHS to assuage the concerns of the bishops and other conservatives regarding individual employer culpability for the use by their employees of contraceptives, and despite wide support by Catholic health care providers, Cardinal Timothy Dolan redoubled his efforts on behalf of the USCCB to condemn the rules as part of a concerted “campaign against religious liberty.”

August 1 marked the implementation date for new HHS regulations, which provoked some ferocious words by Republican lawmakers. One representative from Pennsylvania likened it to the destruction of Pearl Harbor and the World Trade Center, saying “I want you to remember Aug. 1, 2012, the attack on our religious freedom. That is a day that will live in infamy, along with those other dates.” A Catholic representative from Kansas referred to the regulations as “thinly veiled religious bigotry.”

The general philosophy of medicine in the 1960s was quite different from today. Prevention was not a major objective of medical care then, before it was appreciated how significantly smoking and diet impacted the development of cancer and cardiovascular disease. In 1968, even the experts could not have predicted the extent to which hormonal contraceptives would later be shown to have a preventive role in the development of cancer.

The national debate in 2012 over the responsibility of employers to make available these drugs, however, raised the question of whether the time had come for a significant reappraisal. Women’s gynecologic cancers, and colorectal cancer, have since been shown to be significantly reduced in women who have taken oral contraceptives.

Efforts by the Obama Administration to make oral contraceptives more widely available—including for women who work at the nation’s Catholic colleges, universities and hospitals—must be evaluated in the context of the potential for preventing some of the most feared forms of cancer. Thousands of women will die this year because of three terrible cancers that could have been substantially prevented. *Humanae Vitae* anticipated and permitted these uses of the pill.

A new study released in October 2012 provided significant new evidence to show that proper use of contraception can significantly reduce abortion. With results published in the journal *Obstetrics & Gynecology*, researchers at Washington University in St. Louis enrolled more than 9000 reproductive-aged girls and women from the St. Louis area in a four-year prospective of pregnancy in poor women provided with free contraception. Nearly two-thirds had had a previous unintended pregnancy. After two years, the pregnancy rate was about ¼ the national rate, and nearly a third of the rate for the St. Louis

metropolitan area. The effect was even more pronounced among teenage girls.

### Do emergency contraceptives cause death or loss of fertilized embryos?

Over the past year, a number of conservative writers have made reference to the HHS rules compelling companies to pay for “controversial abortion-inducing drugs.” But there is no factual basis for this widely-repeated claim. Any controversy over this issue is a result of a misreading of the facts. There is little controversy about routine estrogen- or progesterone-based contraceptives inducing loss of an established pregnancy or preventing implantation of a fertilized embryo. The controversy over “abortifacient” drugs pertains to the two classes of emergency contraceptives, one (levonorgestrel, sold as Plan B and others) is sold over-the-counter and represents greater than 99% of all emergency contraception in the United States. The other, (ulipristal, sold as Ella) was approved in 2010 by the FDA and requires a prescription. Neither has been shown to induce abortion when used as directed. So any reference to them as “abortifacient drugs” is simply wrong.

Plan B and Ella are both progesterone receptor binders. Ella is actually the more effective inhibitor of ovulation, which may explain why it's more effective at preventing pregnancy. What is the causal mechanism of Ella if it does not prevent implantation? There is no medical evidence that Ella prevents implantation at the doses used (indeed, no evidence that RU486 does that at equivalent doses). So independent of the definition of when life begins, it would be incorrect to say that Ella or other emergency contraceptives are abortion-inducing drugs. This appears primarily to be a problem of guilt by association between Ella (rarely used) and RU486 (not approved as an emergency contraceptive).

Writing for the *The New York Times* in June 2012, Pam Belluck found that the federally approved labels and medical Web sites mentioning a possible effect of emergency contraceptives on implantation of fertilized embryos do not reflect any established science. “The politically charged debate over morning-after pills and abortion, a divisive issue in this election year, is probably rooted in outdated or incorrect scientific guesses about how the pills work. Because they block creation of fertilized eggs, they would not meet abortion opponents’ definition of abortion-inducing drugs.” She went on to described an essentially political decision by the FDA during the drug-approval process the mention the implantation issue on drug labels, despite the lack of scientific proof and the objections of Plan B’s manufacturer.

Inquiries by the *Times* led to the NIH revising its patient information website on the issue. An F.D.A. spokeswoman acknowledged, “The emerging data on Plan B suggest that it does not inhibit implantation. Less is known about Ella. However, some data suggest it also does not inhibit implantation.” Data from

scientists in Australia and Chile was cited, showing that women taking Plan B after ovulation got pregnant at the same rate as women who took no drug at all. Diana Blithe, a prominent biochemist who supervises research on contraception at the NIH was quoted saying that she didn't believe an implantation effect should be cited on drug labels. "As a scientist, I would definitely take it off of emergency contraception," she said. Based on the existing evidence at the time Plan B was being considered for unrestricted over-the-counter availability, the International Federation of Gynecology and Obstetrics issued a statement saying that such pills "do not inhibit implantation."

President Obama signed Executive Order 13535 in 2010 forbidding use of federal funds to pay for abortion. Critics of the HHS regulations seeking to expand the availability of emergency contraception attempted to conflate these drugs with medical abortion drugs. But the scientific evidence, and the provenance of the original FDA language on ECs and implantation, makes clear that there are no grounds for concluding that ECs are "abortifacient drugs."

#### Summary

The new HHS regulations are based on a widely-accepted medical definition of preventive medicine. The ability of doctors and patients to decide when and how to use contraceptives results in the fullest possible medical benefit with regard to the prevention of cancer, the preservation of bone mineral density, the regulation of menses-associated pain and other symptoms, and the reduction of unintended pregnancy. The wide use of the term "abortifacient" to describe emergency contraception has proven to be strictly rhetorical in nature, with no actual basis in fact.

## Distinguishing Abortion and Contraception

**M**uch of the commentary on the HHS directive attacks this policy on the ground that it advances abortion through medications approved by the Food and Drug Administration. If this claim is empirically verifiable, an argument against inclusion of a particular drug should prevail under the extension of the Hyde Amendment that the president generously made in Executive Order 13535. If not, however, then these medications should not be viewed as abortifacients at all, but as contraceptives.<sup>72</sup>

No one suggests that this issue of how to characterize these medications is supported by reference to divine revelation. Hence, the critique of governmental regulation is an empirical claim that can only be supported or rejected only on empirical grounds. An argument from authority—somebody important said so—is the last resort when no serious or explanatory reason for a conclusion can be offered.

Both during the legislative debate over the ACA and now in the implementation stage of the statute, some Catholic leaders tend to fuse abortion and contraception. The discussants in this controversy should not elide these distinct realities. President Obama obviously had this distinction in mind when he signed the executive order, and when he became personally involved in the search for an accommodation of religion on contraception that would recognize some room for conscience without contradicting his constitutional duty to execute or carry out the statutory requirement in the ACA to include preventive services within the coverage of group health plans.

Whatever one thinks about contraception and abortion, they are not the same thing. For example, we saw that Catholic nuns who lobbied Congress on the ACA were able to persuade enough Catholic Members of the House of Representatives that the program of funded health care—including contraceptives—in Massachusetts signed by Governor Romney led to a *lower* incidence of abortion. And eminent Catholic laypersons such as John T. Noonan, Jr., Michael J. Perry,<sup>73</sup> Lisa Sowle Cahill,<sup>74</sup> and Cathleen Kaveny<sup>75</sup>

<sup>72</sup> Pam Belluck, “Abortion Qualms on Morning-After Pill May Be Unfounded,” *New York Times*, June 5, 2012; Editorial, “How Morning-After Pills Really Work,” *New York Times*, June 8, 2012.

<sup>73</sup> Michael J. Perry, “Religion, Politics, and Abortion,” 79 *U. Detroit Mercy L. Rev.* 1 (2001); Perry, *Under God?: Religious Faith and Liberal Democracy* (New York: Cambridge University Press, 2003), pp. 98-123.

<sup>74</sup> Lisa Sowle Cahill, “Moral Theology after Vatican II,” in Michael J. Lacey and Francis Oakley, eds. *The Crisis of Authority in Catholic Modernity* (New York: Oxford University Press, 2011) pp. 193-

have provided thoughtful commentary on these matters for decades, without blurring the line between abortion and contraception.

Judge Noonan is perhaps the most illustrious example of one who has preserved the distinction between contraception and abortion. Few, if any, have written with greater depth or clarity about both subjects. In the 1960s he served as a consultant to the Pontifical Commission on Population and Birth Control.<sup>76</sup> In 1965, three years before *Humanae Vitae*, Noonan wrote a definitive history of the treatment of contraception by Catholic theologians and canonists. The concluding page summarizes his careful research:

The recorded statements of Christian doctrine on contraception [do] not have to be read in a way requiring an absolute prohibition. The environmental changes requiring a reconsideration of the rule accumulated only after 1850. These changes brought about a profound development of doctrine on marriage and marital intercourse, love became established as a meaning and end of the coital act....

That intercourse must be only for a procreative purpose, that intercourse in menstruation is mortal sin, that intercourse in pregnancy is forbidden, that intercourse has a natural position—all these were once common opinions of the theologians and are so no more. Was the commitment to an absolute prohibition of contraception more conscious, more universal, more complete, than to these now obsolete rules? These opinions, now superseded, could be regarded as attempts to preserve basic values in the light of the biological data then available and in the context of challenges then made to the Christian view of [the human].

the core of the existing commitment might be found values other than the absolute, sacral value of coitus. Through a variety of formulas, five propositions had been asserted by the Church. Procreation is good. Procreation of offspring reaches its completion only in their education. Innocent life is sacred. The personal dignity of a spouse is to be respected. Marital love is holy. In these

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224; Cahill, “Grisez on Sex and Gender: A Feminist Theological Perspective,” in Nigel Biggar and Rufus Black, *The Revival of Natural Law* (London: Ashgate, 2000).

<sup>75</sup> Cathleen Kaveny, “Contraception, Again: Where Can We Find Compromise?,” *Commonweal*, December 15, 2006; and see Cathleen Kaveny, “How Views of Law Influence the Pro-Life Movement,” *Origins* 34: 35, Feb. 17, 2005.

<sup>76</sup> For a careful and intensive study of the work of the Commission and its aftermath in the encyclical *Humanae Vitae*, see Robert Blair Kaiser, *The Politics of Sex and Religion* (1998), now available as a free ebook; to download, see <https://www.smashwords.com/books/view/151118>

propositions the values of procreation, education, life, personality, and love were set forth. About these values a wall had been built; the wall could be removed when it became a prison rather than a bulwark.<sup>77</sup>

Another way of underscoring important differences between contraception and abortion is to note that although Noonan laid out persuasive reasons in support of a change on official teaching on birth control before *Humanae Vitae* in 1968, he vigorously repudiated the Supreme Court's adoption of a constitutional policy in *Roe v. Wade* supporting abortion on demand. Noonan begins his study of this constitutional doctrine as follows:

Once or twice in a century an issue arises so divisive in its nature, so far-reaching in its consequences, and so deep in its foundations that it calls every person to take a stand. Abortion, it once appeared was an unlikely candidate to be such an issue.... The issue cut across party lines, the parties had no pat partisan formulas for containing it, and each side was good at remembering its enemies. The politicians wished it would go away.... Abortion has not gone away. Today it divides the country. Neutrality for a legislator is impossible. Each side believes with deep conviction that it is right. But both sides cannot be right, and conflict in theory means conflict in practice. Legalized as a private act, abortion has become a public issue. It has become the kind of public issue that compels almost everyone to take a stand.<sup>78</sup>

In the concluding chapter Noonan sums up the argument of his book by offering several reasons "why the liberty of abortion must be limited and surpassed":

The liberty established by *The Abortion Cases* is destructive of the structure of the family. It sets up the carrier as autonomous and isolated. It separates her from her partner in procreation. It separates her when she is a minor from her parents. It is destructive of the responsibility of parents for their daughters. Its exercise is a betrayal of the most paradigmatic of trusts, that which entrusts to a mother the life of her helpless child. The liberty is oppressive to the poor. Its existence has led to depriving the pregnant poor of assistance for their dependent unborn children. Its existence has intensified the pressure on the

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<sup>77</sup> John T. Noonan, Jr., *Contraception: A History of its Treatment by the Catholic Theologians and Canonists* (Cambridge, MA: Belknap Press of Harvard University Press, 1965), pp. 532-33.

<sup>78</sup> John T. Noonan, Jr., *A Private Choice: Abortion in America in the Seventies* (New York: Free Press, 1979), p. 1.

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poor to destroy their unborn children. The obligation of the government is to aid the disadvantaged by social assistance and economic improvement; the liberty transforms this responsibility to the poor into a responsibility to reduce poverty by reducing the children of the poor....

There must be a limit to a liberty so mistaken in its foundations, so far-reaching in its malignant consequences, and so deadly in its exercise. There must be a surpassing of such liberty by love.<sup>79</sup>

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<sup>79</sup> *Id.* at 189-190, 192.

## Honoring Individual Claims of Conscience

Codes of Catholic medical ethics typically exclude sterilization procedures from being performed in Catholic hospitals. In his address at Notre Dame cited at the beginning of this chapter, President Obama called for conscience clauses generally honoring individual claims of conscience. The president meant every word of that statement, and honored his commitment when he issued Executive Order 13535, clarifying that the Church Amendment and the Welton Amendment remain in force. Thus President Obama has clarified that on his watch federal law exempts doctors, nurses, or other members of a medical staff from taking direct part in a procedure to which they voice a conscientious objection. This sort of conscience clause was the only part of the Georgia Abortion Law that all nine justices sustained on the day they invalidated the statute in *Doe v. Bolton*,<sup>80</sup> the companion case to *Roe v. Wade*.<sup>81</sup>

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<sup>80</sup> 410 U.S. 179 (1973).

<sup>81</sup> 410 U.S. 113 (1973).

## Sterilization

The official Catholic ethical teaching on sterilization is that it is illicit because it severs the link between love-making and procreation. This view is not widely shared among medical ethicists, who do not characterize truly voluntary sterilization as an assault upon human life. Since the whole point of sterilization is to prevent conception from occurring, sterilization is a form of contraception and not an abortion. Now that these procedures have become relatively easy to reverse, moreover, many physicians think the time has come for reassessment of the Catholic official position on sterilization. Once again, though, we stress that the government lacks power to approve or disapprove of official Catholic teaching on this matter.

What President Obama promised at Notre Dame and during the legislative debate on the ACA, he delivered in Executive Order 13535, reaffirming respect for the conscientious refusal of a hospital or doctor or other health practitioner to perform a sterilization procedure. The same principle of respect for an objector would obviously not support the conclusion that no one may have access to a sterilization procedure on the ground that the Catholic church deems it illicit or immoral. No one is making that claim in the discussion of the HHS directive. Instead, the claim of Catholic schools and hospitals is that the constitution entitles them as religiously affiliated employers to automatic exemption from the operation of a federal employer tax—which is how the Supreme Court justified the ACA.

## The Litigation

That claim is now before several federal courts. One trial judge has dismissed the case before her on the ground that the HHS directive does not substantially burden the plaintiffs' free exercise of religion. Perhaps other judges will rule differently on this claim, just as various courts did when they ruled on the constitutionality of the ACA. Perhaps the Supreme Court will agree to place one of these cases on its docket to resolve a substantial conflict among the federal appellate courts on the same constitutional question.

Or perhaps the Court will take the case as it did with another tax case involving the USCCB years ago, to educate the lawyers of the land on who has "standing to sue," the technical term describing limits on the power of federal courts to hear "generalized grievances" rather than "actual injuries."

Or perhaps the Court will rule on the merits, but if it does, it is unlikely to rely on any of the cases cited by the bishops in their educational outreach to Catholic celebrating "our most cherished liberty." It is more likely to look to its jurisprudence on tax exemption, since the dioceses and Catholic hospitals and universities are seeking judicial relief from a tax burden imposed as a general matter on employers who are defined not by their religiosity, but by the numerosity of their employees.

As some point in this long list of possibilities, it may occur to Catholics who cherish the tradition of Catholic Social Thought to explain why it is that an employer who provides access to a benefit, and does not mandate the use of the benefit or condone it in any fashion, transgresses his or her conscience in conforming to a legal mandate binding all other employers? Much as we might wish there were a loophole freeing us from the general obligation to pay through the tax system for various acts of the state resulting in grave violations of the dignity of the human person—such as war, torture, and the death penalty—are aware of no case supporting the claim that the plaintiffs are pressing in this litigation.

There is two simpler ways for this litigation to come to an end. Cardinal Donald Wuerl, Archbishop of Washington, identified one. "All of this could just go away," he wrote in *The Washington Post*, if the government just admits it is wrong. We're not holding our breath.

The other way this could end is implicit in the title of this book, *Undecided America*. If enough people vote for Romney and Ryan, they have promised to work diligently to repeal the Affordable Care Act. If they succeed in doing that, then the regulations construing it will indeed "just go away." And so will the promise of health care coverage for over 32 million Americans. More will be

revealed.

## **Part VI**

### **Obama on Religion and Public Life**

*Ours is a promise that says government cannot solve all our problems, but what it should do is that which we cannot do for ourselves—protect us from harm and provide every child a decent education; keep our water clean and our toys safe; invest in new schools and new roads and new science and technology. Our government should work for us, not against us. It should help us, not hurt us. It should ensure opportunity not just for those with the most money and influence, but for every American who is willing to work. That’s the promise of America—the idea that we are responsible for ourselves, but that we also rise or fall as one nation; the fundamental belief that I am my brother’s keeper; I am my sister’s keeper. That’s the promise we need to keep. That’s the change we need right now.*

*-- President Barack Obama, Democratic National Convention  
Denver, Colorado, August 24, 2008*

### A More Theologically Literate President Than Most

**B**arack Obama is a Bible-reading Christian, but not a thumping one. He learned the habit of reading the Bible regularly when he started going to the Trinity United Church of Christ in Hyde Park, where he “came to Christ.” As we noted earlier, Obama’s reply to Dr. Franklin Graham shows that he also learned to avoid using the Bible to threaten people or to condemn them.

Robert Bellah—a Cal Berkeley professor of sociology—describes “Civil Religion” not as a specific religious community, but as an important dimension of American life, which “has its own seriousness and integrity and requires the same care in understanding that any other religion does.”<sup>82</sup> Following Rousseau’s definition,<sup>83</sup> Bellah identifies the content of civil religion in America as follows: “the existence of God, the life to come, the reward of virtue and the punishment of vice, and the exclusion of religious intolerance.” Bellah clarified later that he certainly did not mean to supporting an “idolatrous worship of the American nation.” For him, the American civil religion is not “a form of national self-worship but the subordination of the nation to ethical principles that transcend it in terms of which it should be judged.”<sup>84</sup> In short, the sorts of things that Ann Dunham surely believed in, with her heart and soul.

One of the problems with civil religion is that texts Bellah cites as evidence for this phenomenon—inaugural addresses and presidential speeches—are usually not very thick with religious meaning. That’s probably a good thing, too. Better a paucity of presidential forays into theology than a host of embarrassing pronouncements by people untrained in theology, yet speaking about things clearly beyond their ken.

When President Lyndon Johnson had had enough of the Southern Senators who threatened to kill the Civil Rights Act of 1964—the longest filibuster in the history of the Senate—he went up to Capitol Hill, twisted arms of several Senators, and reminded them of unseemly (he used a more colorful word) things he knew about each of them, and then delivered the speech of his life, known as the “We Shall Overcome” speech. The arm-twisting probably did the job. But the dramatic appearance of the Texan president in the bully pulpit also sent an important message to the American people that the time had come to give up the strange career of Jim Crow, or apartheid, American-style. And

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<sup>82</sup> Robert N. Bellah, “Civil Religion in America,” *Daedalus* (1967).

<sup>83</sup> Jean Jacques Rousseau, *Of The Social Contract, Or Principles of Political Right, The Social Contract* (1762, ET, 1782) chapter 8, book 4.

<sup>84</sup> Robert N. Bellah, *Beyond Belief: Essays on Religion in a Post-Traditionalist World*. Berkeley: University of California Press, 1991, p. 168.

nobody was too offended by LBJ's invocation of the popular hymn that sustained the hope of millions against the intransigence of the Senators blocking change.

Another Texan, George W. Bush, was asked during his first presidential campaign to identify his favorite philosopher. He replied that it was Jesus Christ. President Bush (No. 43) is a devout Methodist, and made several overt plays to the Christian Right to keep them in the GOP fold. He referred to a line from a Protestant hymn once in a while, but that probably snuck under the radar of those who get nervous when Presidents start invoking the deity. Nearly every president since Washington has done so in the inaugural address.

President Obama, by contrast, has referred much more frequently and more intelligently to both the Hebrew Bible and the Christian New Testament than his predecessor, or for that matter, more frequently than any prior president. But one would never know it if you were to rely on commentators from the Christian Right, or from the millions of ignorant Americans who think Obama is a Muslim, or from malicious preachers like Dr. Franklin Graham who know better, but cannot overcome their addiction to pander to the ignorant.

The first example of Obama's use of religious imagery we discuss is his acceptance of the nomination of the Democratic Party to run for the presidency. Obama is no rabbi. And the convention hall in Denver is not a synagogue. On that occasion, he was addressing not just his party, but the nation and the world. Yet he chose a text from the Hebrew Bible to help us all understand our calling as the "keeper" of our brothers and sisters.

No biblical text is more worthy of our attention after Governor Mitt Romney's selection of Congressman Paul Ryan as his running mate. Ryan (a Catholic) is famous for crafting a federal budget that on page after page denies that we may use the government to articulate broad social policies to carry out this vision of empathetic service for the most needy in our midst. Obama's speech in Denver acknowledged Ryan's point about individual responsibility, but Ryan's cut-throat budget diminishes the truth of Catholic Social Thought that solidarity with the poor has always been a national priority, at least since the Great Depression and the New Deal.

Obama tells us confidently: "the promise of America [is] the idea that we are responsible for ourselves, but that we also rise or fall as one nation; the fundamental belief that I am my brother's keeper; I am my sister's keeper."

## Obama Wrongly Targeted as Muslim

**W**hy is President Obama repeatedly targeted as a covert Muslim? Given our constitutional protections of freedom of speech or of the press, one might just say “so what?” and move on. Yet, the anti-Islamic nature of the reporting and its clear desire to harm the reputation of the President warrants scrutiny.

So what explains the persistent stories that Obama is a Muslim, and by irrational extension of an absence of logic, anti-American? One explanation is rank partisanship that takes advantage of the ease of internet communication to spread misinformation about a political opponent. Dirty tricks and misstatement have long been part of American politics, but the internet gives falsehood advantages that leaflets and posters and earlier forms of non-digital communication simply didn't have.

Moreover, the Catholic vote is critical to electoral success, or at least in the last 12 or so presidential elections, Catholics have voted for the winner. Not even all the fuss over hanging chads in the 2000 election interrupted this string of perceptive picking for the popular vote winner. Catholics do not vote as a bloc in the usual political sense of that terminology. Catholics are intelligent voters and come from all walks of life and we pride ourselves at finding the person, not the party. Nonetheless, the Catholic tradition is a powerfully unifying one that often finds a way to manifest its diversely rich voice in an electoral manner with clarity. For that reason, if President Obama's opposition can confuse (defame?) the President's religious beliefs, there is a chance of winning by falsehood.

Some people should also know better. In a televised interview, Dr. Franklin Graham openly questioned the president's faith, stating, “Under Islamic law, the Muslim world sees Barack Obama as Muslim.” In response to the justifiable concern of the NAACP and preachers around the country that Graham had become an accomplice to those who see faith only as an occasion to divide us, Graham has now apologized, admitting his objections to the president's re-election are “policy stances,” not the president's faith beliefs.

No surprise Fox News has been a major supplier of the Obama as Muslim story. Today, Fox News is the antithesis of fairness and balance in journalism. There was a time when Fox might have been a healthy counterpoint. Today Fox News is notorious for promoting heat over light, meanness over understanding, and, most recently, lie over truth. Responding to newly published claims that Obama criticized Fox for promoting the idea that Obama “is a Muslim,” Fox anchor Bret Baier stated what had to be the falsehood extraordinaire: “For the record,” Baier proclaimed, “we found no examples of a host saying the president is a Muslim.”

Fox didn't bother to search its own archives before telling that whopper. Here is what those archives show.

June 2009: Fox's "Special Report" quotes an Obama advisor as saying Obama has "experienced Islam on three continents" and spent part of his childhood in Indonesia with his Muslim father.

Aug. 30, 2010: Fox co-host Brian Kilmeade on "Fox & Friends" states, "Wouldn't [Obama] have kept his name as Barry, and not Barack," if he were worried about the "24 percent of this country [that] thinks he is a Muslim."

Aug. 20, 2010: Chris Wallace on Fox's "Special Report" poses a question to Fox reporter Steve Hayes about how the Obama people will do "damage control" on the issue of "the growing number of people [who] think Obama is a Muslim, not a Christian." Cynically, Hayes responds, "We're likely to see him going to church a lot more."

And on and on, including a Bill O'Reilly interview with Donald Trump suggesting Obama's birth certificate may identify him as a Muslim and Fox highlighting conservative pundit Ann Coulter's column in September 2010 claiming Obama to be an atheist. Fox even featured a guest priest questioning Obama's reasons for believing in the "precepts of the faith," suggesting that most believers fall in love with Christ, not the Ten Commandments.

**Part VII**  
**Obama's "Call to Renewal"**

## Nearing the Time to Decide

The best way to assess the genuineness of the President's voice is to hear his own call to renewal. The positive, constructive steps that President Obama has taken toward building bridges with the Catholic faith tradition and other religious traditions were not a product of the campaign alone. Indeed, one of the principal reasons we were attracted to Senator Obama was by his pre-presidential writing and speaking about his own journey of faith. Obama's writing reveals a sincere and practical understanding of faith as it relates to the political culture.

In a speech entitled "Call to Renewal," given in Washington in the summer of 2006 (at a poverty conference of the same name organized by a close Obama friend and advisor, the Reverend Jim Wallis), Mr. Obama noted that during his Senate campaign he was challenged on his abortion views. To this, senate-candidate Obama gave the standard liberal response: It is impermissible to impose his religious views upon another. He was running for "U.S. Senator of Illinois and not the minister of Illinois," he quipped.

Had Obama left it at that, he could easily be written off. But the insufficiency of that answer nagged at him. He realized — and this epiphany explains his successful campaign and the hope that he inspires for common ground — that the greatest division in America today is "not between men and women, or those who reside in so-called red states and those who reside in blue, but between those who attend church regularly and those who don't." He also recognized that some conservative leaders "exploit this gap" by reminding evangelical Christians how much Democrats disrespect their values and dislike their church. Truth hurts, but, of course, pointing fingers at Pat Robertson or Sarah Palin or the international gaffes of Mitt Romney would not have merited positive conservative or special Catholic notice if Obama hadn't kept talking. He didn't just criticize those on the right who used religion as a wedge issue; he directed a healthy amount of criticism to the left and his own party.

Democrats, he said, avoid engaging the substance of religious values by falsely claiming the Constitution bars the subject. Even worse, some far-left liberals paint religious Americans as "fanatical," rather than as people of faith. This evenhandedness got the attention of many, some of whom had not been aligned with the Democrats for many years.

Here was a public figure who actually understood that, for millions of Americans; faith "speaks to a hunger that's deeper than... any particular issue or cause." Obama reflected on how neither of his parents was actively religious,

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and yet he found himself drawn to the church. He could engage in community organizing for the poor, but without faith he would always remain “apart and alone.” Faith did not mean the absence of doubt, said Obama, but it did mean hearing God’s spirit beckoning.

Obama himself noted that there is nothing more transparent than “inauthentic expressions of faith.” Showing that occasional dry wit, he likened it to [white] politicians who “come and clap — off rhythm — to the [Black] choir.”

Obama thus squarely challenges secularism and those who would urge that religion be banished from the public square. Calling as his faith witnesses Abraham Lincoln, Martin Luther King, Jr., Frederick Douglass, and Dorothy Day, Obama would tell his audiences that it is an “absurdity” to insist that morality be kept separate from public policy.

Having urged liberals to see how much of American life is grounded in the biblical traditions, Obama did have a request for conservatives — namely, try to fully understand the liberal perspective on the separation of church and state. Not the infamous “wall of separation” that bizarrely mandates secularism disguised as neutrality, but the perspective that separation more readily protects church from state than the opposite.

This sentiment is as old and wise as Alexis de Tocqueville, who cautioned churches against aligning too closely with the state for fear of sacrificing “the future for the present.” “By gaining a power to which it has no claim,” Tocqueville observed, “[the church] risks its legitimate authority.”

From the spin rooms, black with people, there went up a muffled roar,  
Like the beating of the storm-waves on a stern and distant shore.  
“Kill him! Kill Jim Lehrer!” shouted someone in the stands;  
And its likely they’d a-killed him had not Obama raised his hand.  
With a smile of Christian charity great Obama’s visage shone;  
He stilled the rising tumult; he bade the debate go on;  
He signaled to the moderator, and once more Mitt’s curiosities flew;  
But Obama still ignored it, and confused Jim admonished the President,  
“Strike two.”

## The Meanness of the Times

There is a mean-spiritedness in the land. Why are so many people on the internet so angry? What's the deal? Natalie Walchover outlines the psychological environment and causes for such extreme aggression in online discourse.<sup>86</sup>

Walchover suggests the combination of virtual anonymity, physical distance, the medium of writing and the lack of back-and-forth conversation leads to this ugly behavior. Angry writing apparently also gives people a dubious sense of achievement with far less investment or risk to their own reputation than leaving one's arm-chair behind to actually take up the interests of another through political or community activism.

The article concludes that aggressive internet behavior is toxic to any type of constructive relationship and as a result ineffective and should be avoided at all costs. Psychologists suggest the behavior should be "simply censored by online media outlets — because it actually damages society and mental health." This flies in the face of our American ideal of open discourse, but in the violence we see all around us, the concern cannot be ignored.

The *Scientific American* study has not gone unnoticed. In particular, the whiz kids and financiers and content suppliers to the digital marketplace have begun to realize how base, and entirely unreliable, the information on the net has become. For the moment, the commercial factors selling goods and services have remained quiescent, but a few more "Dark Knight" tragedies like that in Aurora, Colorado, and a greater public awareness exercising constituent dissent to the pervasive ugliness may bring an effort to governmentally censor.

It would be most unfortunate if government was the censor, but lawmakers will respond when freedom without limits is merely license. Already the Supreme Court has had a number of cases asking it to regulate various "fleeting expletives" and some justices have argued that free speech does not belong in school. So much for open-minded inquiry. This may seem harmless enough with "low value speech." But we know from history that the line between the removal of the trivial and the heavy hand that dictates content favoring those in power can readily become indistinct. Self-regulation and discipline orchestrated by those who have advanced this information technology seems far more appropriate. In this regard, the more responsible parts of the blogosphere are requiring identification to post a comment, admonishing

<sup>86</sup> Natalie Walchover, "Why is Everybody on the Internet So Angry?," *Scientific American* (July, 25, 2012) <http://www.scientificamerican.com/article.cfm?id=why-is-everyone-on-the-internet-so-angry>

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civility, and filtering out the lewd and the loopy. So-called “trolls” who surf the net often on their soldier, but on some occasions just like so many word-terrorists looking to disrupt discourse just for the sake of the disruption are being called out.

## To disagree is not necessarily to deny liberty

The problem of meanness and modern judgmentalism too regularly substitutes condemnation for the love we are called to manifest toward our neighbors. This is an unflattering aspect of some of the debates this election and within American Catholic churches. Contrast this meanness with the calm graciousness of thousands of priests of the era of Msgr. John Sheridan, discussed at length in the recent book *Lift up your Hearts*,<sup>87</sup> who thrived on inclusion and understanding rather than exclusion and overheated rhetoric.

There is much of value in the Archbishop Chaput's writing. His passion – that of a “Heart on Fire” for the faith quite often renders him a splendid teacher. His writing, like our own, notes the frequent references to the Creator at the time of America's founding and the importance of grounding individual human rights in a transcendent source beyond the capacity of individual men and women to alter. Yet, however wise and largely accepted by the general population those propositions are, they sit uneasily among his other more sweeping and unrefined claims that the Obama administration is deliberately assaulting the religious liberty of the Catholic church. General readers are well acquainted with President Obama's view of the importance of interfaith understanding and the significance of faith in our own history and in the way ahead among foreign nations.

In part, the Archbishop seems to be bothered more by the fact that our founders' Christian beliefs that dominate. America is a land of a diversity of faith beliefs. The Archbishop quotes with approval the work of the Jesuit John Courtney Murray who was instrumental in moving Rome from its insistence that Catholicism be the established church of America. This was the view well into the turn of the 20<sup>th</sup> century. Murray linked the foundation for religious freedom to be granted to all faiths as an aspect of human dignity. This freedom does not depend upon the truth or falsity of a particular religious conception; rather, the freedom is an intrinsic human right.

By comparison, the Archbishop's conception of religious freedom seems to overlook the significance of this shift in the Church and John Courtney Murray's writing. Oddly the Archbishop relies more on the writing of John Courtney Murray from the 1940s than that which was given approval by the church in the 1960s. The Catholic Church of the 1940s stressed its desire to impose or construct a Christian culture. Today the reality simply is that

<sup>87</sup> See Douglas W. Kmiec, *Lift Up Your Hearts* (2012) [http://www.amazon.com/Lift-Up-Your-Hearts-Tragically/dp/0615610579/ref=sr\\_1\\_1?ie=UTF8&qid=1347069174&sr=8-1&keywords=kmiec+lift](http://www.amazon.com/Lift-Up-Your-Hearts-Tragically/dp/0615610579/ref=sr_1_1?ie=UTF8&qid=1347069174&sr=8-1&keywords=kmiec+lift)

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Catholicism and Christianity are aspects of a very diverse culture. This is no way to suggest that Catholic teaching has declined in importance, but it is to suggest strongly, that in a democracy, Catholic teaching is not *ipso facto* the law of the land, even as legislators may frequently be urged to make reference to it as a justification for public policy.

Of course, it would be easier for the Archbishop and all other Catholics, including ourselves, if society always modeled its policies on the Catholic tradition. However, even if law and public policy become more closely aligned with other faith ideas, this result, in itself, does not necessarily violate the delicate Constitutional balance in favor of religious freedom. Religious freedom is endangered by coercion of belief or practice; it is not endangered because the general laws, including the subsidies drawn from taxes, permit other believers to pursue ends outside that permitted by Catholic belief.

To the extent that Catholic and other faiths purport to follow the general description of our knowable human nature as part of the natural law (that is, the reasoned reflection upon one's self and that which can be deduced therefrom), we can expect a good deal of agreement across faith traditions. Where a religious teaching cannot be inferred from human nature, however, there can be substantial difference in belief and practice -- just compare the dietary and Sabbath practices observed by the orthodox Jewish citizen with that of the Catholic.

Moreover, in public matters, not even sainted Catholics insisted on the Catholic view 100% of the time. It is unassailable that Catholics can never advance an argument to promote intrinsic evil, but that is a narrow slice of Catholic teaching. Where such evil is not implicated and the Holy Father has not conclusively settled a matter, the Catholic view can be differently stated. Thomas More is our example here. He did everything possible to be the King's good servant because he knew that the average college person was watching him closely and he gave profound respect to the law. When the Archbishop of More's time presumed to know what advice More had confidentially given the King with no exploration of alternative paths, Thomas upbraids him since the Church has a duty to preserve civil order and not look to pick fights -- be they accurately described as small skirmishes or less convincingly as a war or constitutional crisis.

## **Part VIII**

### **“Solidarity (and Subsidiarity) Forever”**

*[A]t the dawn of the 21st century we also have a collective responsibility to recommit ourselves to the dream; to strengthen that safety net, put the rungs back on that ladder to the middle-class, and give every family the chance that so many of our parents and grandparents had. This responsibility is one that’s been missing from Washington for far too long—a responsibility I intend to take very seriously as President.*

*-- Barack Obama, Spartanburg, South Carolina, June 15, 2007*

## Rebuilding a Broken Social Order

In 1992 James Carville, a campaign strategist of then-Governor Bill Clinton, coined the phrase “The economy, stupid!” as a slogan for the presidential campaign. Sometimes the slogan is recalled as though the Governor said to a staff member of his campaign: “It’s the economy, stupid!”

Every bureaucracy has its share of persons who are at least occasionally inattentive, unintelligent, and unreasonable. From what little we know about the Vatican, we doubt that any of the Popes addressed one of their staff members as “stupid,” however tempted they may have been to express disagreement in this way. But almost all of the popes of the past century have been as insistent and as bold as President Clinton that one must focus on economic realities. Since the publication of Pope Leo XIII’s famous labor encyclical “*Rerum Novarum*, (On Labor and Capital)” in 1891, Catholic Social Thought has spoken with similar urgency about economic issues. But CST adds one more word that is crucial to the evaluation of proposals for fixing all that ails the broken economies of this world: *justice*. So we entitle this section of the book: “It’s the unjust economy, stupid!”

The CST tradition has for over a century been analyzing various aspects of the economy as a matter of distributive justice, always with an eye to the promotion of the *Common Good*. These themes recur in virtually every document, such as the social encyclicals of Popes Pius XI (*Quadragesimo Anno*, On the Fortieth Anniversary, 1931), John XXIII (*Mater et Magistra*, Mother and Teacher, 1961), Paul VI (*Populorum Progressio*, On the Development of Peoples, 1967), John Paul II (*Laborem Exercens*, On Human Work, 1981; *Centesimus Annus*, On the Hundredth Anniversary, 1991), and in one of the most important documents of the Second Vatican Council, *Gaudium et Spes*, Pastoral Constitution on the Church in Today’s World (1965), and the statement of the 1971 Synod of Bishops in Rome, which summarized it this way: “Action on behalf of justice and participation in the transformation of the world fully appear to us as a *constitutive dimension of the preaching of the Gospel*, or, in other words, of the Church’s mission for the redemption of the human race and its liberation from every oppressive situation.” This means that we cannot separate proclaiming the Word of God from action for justice or liberation from oppression, since redemption and salvation are not just from sin, but also from poverty and injustice.

CST sometimes stresses *solidarity*, standing together with the poor and with workers. Sometimes it focuses on *subsidiarity*, realizing that a governmental unit closer to the core of the injustice may be able to think more creatively, and act more swiftly to provide effective social remedies of a specific injustice. Or sometimes the magnitude and scope of an economic disorder is so vast that the

resources of an entire nation or even transnational solutions must be sought. Hence it is a profound misunderstanding of CST to regard these two themes as in dialectical “either-or” tension with one another. On the contrary, several of the documents make clear that solidarity and subsidiarity are conjoined “both-and” themes.

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The USCCB offers a summary of the principal points of Catholic Social Thought on economic justice.<sup>88</sup>

The economy exists for the person, not the person for the economy.

All economic life should be shaped by moral principles. Economic choices and institutions must be judged by how they protect or undermine the life and dignity of the human person, support the family and serve the common good.

A fundamental moral measure of any economy is how the poor and vulnerable are faring.

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.)

All people have the right to economic initiative, to productive work, to just wages and benefits, to decent working conditions as well as to organize and join unions or other associations.

All people, to the extent they are able, have a corresponding duty to work, a responsibility to provide the needs of their families and an obligation to contribute to the broader society.

In economic life, free markets have both clear advantages and limits; government has essential responsibilities and limitations; voluntary groups have irreplaceable roles, but cannot substitute for the proper working of the market and the just policies of the state.

Society has a moral obligation, including governmental action where necessary, to assure opportunity, meet basic human needs, and pursue justice in economic life.

Workers, owners, managers, stockholders and consumers are moral agents in economic life. By our choices, initiative, creativity and investment, we enhance or diminish economic opportunity, community life and social justice.

The global economy has moral dimensions and human consequences. Decisions on investment, trade, aid and development should protect human life and promote human rights, especially for those most in need wherever they might live on this globe.

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<sup>88</sup> USCCB, Committee on Domestic Justice and Human Development  
“A Catholic Framework for Economic Life”

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The nation's highest honor is the Medal of Freedom. President Clinton conferred this honor Cardinal Joseph Bernardin in the last year of his life. Later in the day this skillful articulator of Catholic Social Thought delivered an address at Georgetown University speaking not only about war and peace, but also about the connection between solidarity and subsidiarity. Because this link has now resurfaced in the 2012 campaign, the portion of Cardinal Bernardin's Georgetown talk addressing this connection is worthy of consideration again in this year.

### “The Catholic Moral Vision in the United States”<sup>89</sup>

Running through most of our social policy debates is the discussion of the appropriate role of the state in our common life as a society. Catholic social thought is hardly statist in its premises or principles. The concept of “subsidiarity,” a staple of Catholic social theory, explicitly requires that responses to social needs not start with the state. But subsidiarity does not yield a conception of the state that removes from it not only basic moral obligations for “the general welfare” but also specific moral duties toward those afflicted by illness, hardship, unemployment, and the lack of adequate nutrition and housing. My point is that it is not sufficient to carry on a discussion of the appropriate role of the state purely in terms of efficiency or size or “intrusiveness.” These criteria are important but not significant if we omit a conception of what the state’s moral role is in society. To speak of the state’s moral role is not only to address the cultivation of moral standards; it also involves specific duties, often of a socio-economic nature, which the state has to its citizens.

Critics of this position will say I am making an abstract argument about the state’s responsibility without acknowledging that the state does not generate the resources for its socio-economic policies and programs; citizens do that. The critics are partially right; we cannot discuss the moral obligations of the state apart from a substantive analysis of the obligations we have to each other as members of civil society. To the critics I will grant your point because I am convinced the deeper issue beneath our policy debates is precisely this question: how we conceive of our social bonds of obligation and responsibility, within families, beyond families to neighborhoods, and ultimately to the national community of which we are a part. A purely “contractual” view of our relationships is inadequate; it quickly reduces our obligations to those freely chosen, with no wider fabric of accountability. Contractual relations serve useful, limited functions, but we need a stronger fabric of social ties to undergird our life as a society. We require a sense of obligation to those we do not know, will never meet, and yet bear a responsibility for, precisely because of their need and our capacity to share in meeting that need.

There are many ways to express this stronger sense of social responsibility; John Paul II and the pastoral letter rely on the concept of “solidarity.” Solidarity exists among humans because of a shared sense of personhood. Solidarity precedes subsidiarity. The first defines our moral relationship; the

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<sup>89</sup> Cardinal Joseph Bernardin, Georgetown University, September 9, 1996. For the full text of this address, see Joseph Cardinal Bernardin (John P. Langan, SJ, ed.), *A Moral Vision for America* (Washington: Georgetown University Press, 1998), 144-57.

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second regulates how we will fulfill the duty of solidarity. Social solidarity finds expression in several ways. It sustains personal relationships; it binds families in a common life of love and support; it initiates and supports private efforts of charity and social service. But it also helps to define the moral responsibility of the state and its citizenry.

Solidarity points toward the neuralgic issue of U.S. politics: taxation. Taxes are one way in which the state facilitates our responsibilities to each other. Tax policy is a secular issue, but it is rooted in moral obligations we have to one another. A fair tax policy, one which obliges each of us to play a role in sustaining the human dignity of all in our society, is a requirement of distributive justice. In Catholic teaching, paying taxes is a virtue. Taxes help us to meet our pre-existing obligations to the poor.

In addition to establishing the basis for a just tax policy, Catholic teaching, I believe, has something critical to say to our contemporary debate about institutional responsibility and social policy. Over the last sixty years, three key ideas have characterized Catholic social teaching: subsidiarity, solidarity, and socialization. They need to be held in tandem: solidarity establishes the basis of common obligation; subsidiarity argues that private voluntary institutions are needed to fulfill our obligations; and socialization maintains that increased societal interdependence requires an activist state to meet the needs that private institutions cannot meet alone. I spoke earlier about the need for new patterns of public-private collaboration. To address the deeper issues of our social policy debate we need to attend to these three concepts. We do have moral obligations to the vulnerable. So, we should have an adequate public policy to guarantee that the orphans, the widows, and the resident aliens are not left to the ravages of life.

## A Call for Economic Renewal and Support for Workers

Our nation needs an economic renewal that places workers and their families at the center of economic life and creates enough decent jobs for everyone who can work. Work is more than a paycheck; it helps raise our families, develop our potential, share in God's creation, and contribute to the common good.

Everyone and every institution has a role to play in building a more just economy. In the words of our Conference, we seek an economy that serves the person rather than the other way around. Blessed John Paul II said:

[S]ociety and the State must ensure wage levels adequate for the maintenance of the worker and his family, including a certain amount for savings. This requires a continuous effort to improve workers' training and capability so that their work will be more skilled and productive, as well as careful controls and adequate legislative measures to block shameful forms of exploitation, especially to the disadvantage of the most vulnerable workers, of immigrants and of those on the margins of society. The role of trade unions in negotiating minimum salaries and working conditions is decisive in this area (*Centesimus Annus*, no. 15).

Unions and other worker associations have a unique and essential responsibility in this needed economic renewal. Our Church has long taught that unions are "an indispensable element of social life, especially in modern industrialized societies" (*Laborem Exercens*, no. 20) and are examples of the traditional Catholic principles of solidarity and subsidiarity in action. At their best, unions demonstrate solidarity by bringing workers together to speak and act collectively to protect their rights and pursue the common good. Unions are a sign of subsidiarity by forming associations of workers to have a voice, articulate their needs, and bargain and negotiate with the large economic institutions and structures of government.

Like other institutions, including religious, business and civic groups, unions sometimes fall short of this promise and responsibility. Some union actions can contribute to excessive polarization and intense partisanship, can pursue positions that conflict with the common good, or can focus on just narrow self-interests. When labor institutions fall short, it does not negate Catholic teaching in support of unions and the protection of working people, but calls out for a renewed focus and candid dialogue on how to best defend workers. Indeed, economic renewal that places working people and their families at the center of economic life cannot take place without effective unions. This renewal

requires business, religious, labor, and civic organizations to work together to help working people defend their dignity, claim their rights, and have a voice in the workplace and broader economy.

### Building a More Just Economy

**I**n this time of economic turmoil and uncertainty, we need to reflect on the moral and human dimensions of too much poverty and not enough work. We are called to work together--business, labor, and government--to build a productive economy that offers opportunity, creates jobs, generates growth, protects the dignity of working people, respects the family, and promotes genuine human development.

The relative silence of candidates and their campaigns on the moral imperative to resist and overcome poverty is both ominous and disheartening. Despite unacceptable levels of poverty, few candidates and elected officials speak about pervasive poverty or offer a path to overcome it. We need to hear from those who seek to lead this country about what specific steps they would take to lift people out of poverty. In this election year, Catholics should review and act on what the U.S. bishops said on economic issues in *Forming Consciences for Faithful Citizenship*:

Economic decisions and institutions should be assessed according to whether they protect or undermine the dignity of the human person. Social and economic policies should foster the creation of jobs for all who can work with decent working conditions and just wages. Barriers to equal pay and employment for women and those facing unjust discrimination must be overcome. Catholic Social Teaching supports the right of workers to choose whether to organize, join a union, and bargain collectively, and to exercise these rights without reprisal. It also affirms economic freedom, initiative, and the right to private property. Workers, owners, employers, and unions should work together to create decent jobs, build a more just economy, and advance the common good (no. 76).

Our Conference of Bishops is developing a pastoral reflection on work, poverty, and a broken economy. This modest reflection will draw heavily from Pope Benedict's powerful encyclicals, will communicate our solidarity with those who have been left behind, and will call for prayer, education, discussion and action. It will be an example of responding to the call of Pope Paul VI to the laity:

[T]o take the initiatives freely and to infuse a Christian spirit into the mentality, customs, laws and structures of the community in which they live. Let each one examine himself, to see what he has

done up to now, and what he ought to do. It is not enough to recall principles, state intentions, point to crying injustice and utter prophetic denunciations; these words will lack real weight unless they are accompanied for each individual by a livelier awareness of personal responsibility and by effective action (*Octogesima Adveniens*, no. 48).

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Daniel C. Maguire, "When Religion is a Refuge for Scoundrels: 'Ryan Budget,'" *Religion Dispatches*, April 8, 2012

"Catholic Social Teaching" is a too often overlooked treasure of social justice theory and it's been growing even more impressive over the past two centuries. This teaching is not fringe; it is papal to the core. It is "a pity beyond all telling" that Catholic bishops, obsessed with condoms and such, could not raise their passions and attention above the pelvic zone and shout from the rooftops a message that is crucially and brilliantly relevant to a global political economy on the brink of total collapse.

In October 2011, Pope Benedict's Pontifical Council on Justice and Peace presented in capsule form this social critique which has roots reaching all the way back to the Hebrew Bible. Like panicked devils shrinking from God's face in a medieval tapestry, right-wing Catholics shrieked in pain and fell over themselves belittling it. The epithets flew with inquisitorial venom: "incompetent babble on financial reform," railed Nicholas Hahn; it isn't authoritative and can be ignored, insists George Weigel, the redoubtable Catholic apostle of right-wing-think.

### The Vatican Joins Occupy

Their pain is understandable. The document is in sync with the Occupy Wall Street movement. Cardinal Peter Turkson, the Cardinal president of the council that produced the document said as much: “The basic sentiment behind the protests [the “occupy” protests] is in line with Catholic Social Teaching.”

And lest anyone attempt to claim that the document is merely the obscure ravings of a minor council: according to the *Guardian UK*, its secretary, Bishop Mario Toso, “stressed that the document was built on existing Vatican teaching, notably Pope Benedict XVI’s 2009 encyclical, titled *Charity in Truth*, which criticized free market fundamentalism.” That encyclical included clear and direct criticism of the free-market fundamentalism at the heart of attempts to dismantle financial reform:

The conviction that the economy must be autonomous, that it must be shielded from ‘influences’ of a moral character, has led man to abuse the economic process in a thoroughly destructive way. In the long term, these convictions have led to economic, social and political systems that trample upon personal and social freedom, and are therefore unable to deliver the justice that they promise.

Jesuit Thomas Reese said that the document is “closer to the view of Occupy Wall Street than anyone in the U.S. Congress.” Would that it were true that, as Congressman Paul Ryan said, “Catholic Social Thought is indispensable for officeholders.” Mitt Romney’s description of Ryan’s budget as “marvelous” would no longer be ludicrous.

Like Jesus’ description of his own mission, the Vatican document is “good news for the poor” (Luke 4:18). Ryan’s budget is not. Budgets show where the heart is: they are intensely moral documents. To budget-makers we can say: show me the losers and the winners, and I will tell you what you are.

Among the losers in the Ryan-Romney budget, are programs that help the 99 percent: *Medicaid, Medicare, food stamps, health insurance* (one-half of the \$5 trillion in cuts over a decade would come from health care even though our health care potpourri is the worst in the developed world.) Other losers include: *preschool programs, environmental and financial regulations, Pell grants, Head Start, and mortgage guarantees.*

As to winners, it is the bloated rich who get help they do not need and could never deserve. As Robert Reich reports, in 2010 15,600 super-rich households (the top 1/10th of 1 percent) got 37 percent of all the economic gains that year with the rest going to those in the top 10 percent. The Ryan budget defends greed over need. Extend the tax breaks and further deregulate the dogs of greed. And as for the military, ah yes, the military, Ryan said they did not ask enough, though they have never been known for modesty in their requests. With the military budget around \$2 million per *minute*, there is no need to further feed that black hole in the economy—but feed it Ryan would. Kill-power is prized more highly than Head Start and Medicare.

### Enter the Real Catholic Social Teaching

When the real Catholic Social Teaching enters the conversation it's nothing less than a wake-up call to the modern world. The cumbersome title of the Vatican document signals its bold mission: *Toward Reform in the International Financial and Monetary System in the Context of Global Public Authority*. The Westphalian model giving sovereignty to individual states made sense in 1648. It makes no sense now given the interpenetration of economies and technology and our shared ecological peril. Our current need is for a Declaration of Interdependence and a "public, supranational authority with universal jurisdiction." Pope after pope call for a "true world political authority" and a "world bank" to preside over a "global, universal common good." Nations need to "transfer a part of each nation's powers to a world authority and to regional authorities."

What is called for is not a tyrannical despotic world authority. The Catholic tradition of "subsidiarity" means that nothing should be done by a higher authority that can be done by active participation at lower levels. Right-wingers like Paul Ryan grab that one word, "subsidiarity" and claim it supports their maniacal hatred of government. It doesn't. It calls for a more active citizenship, not voter suppression. Internationally it calls for "a new model of a more cohesive, polyarchic international society that respects every people's identity within the multifaceted riches of a single humanity." The goal is a solidarity that would end poverty and obsessive reliance on military violence for security.

The Vatican document supports fair taxation, greed-controlling regulation and bailouts "with public funds" when necessary. It excoriates "neoliberalism," the greed-is-good creed of the right wing. Maggie Thatcher used it, and when she entered office 1 out of 10 Britons was in poverty; when she left, 1 out of every 4 (1 in 3 children) was impoverished. Reagan was married to it—as are his worshiping successors—and the 99% continue to lose while the 1% gorge and the economy sinks. It's not complicated. It's dumb. And, as the Vatican says, it's immoral.

Catholic Social Teaching is not wild-eyed idealism; it is a pragmatic realization that without the taming of greed and without poverty-ending sharing, we face global economic chaos. To see that, just open your eyes.

## A Word from the Nuns on the Bus

Sister Simone Campbell is the Executive Director of NETWORK, a Roman Catholic Social Justice Organization. Sister Simone organized the “Nuns on a Bus” two-week tour of nine states in June of 2012 to explain the local effects of cuts in federal spending urged by the budget plan proposed by Congressman Paul Ryan. The Ryan plan was adopted by a partisan vote in the House of Representatives and rejected by a similar partisan vote in the Senate. In addition to meeting with social service agencies and members of Congress on their bus tour, NETWORK members met with economically deprived people that Catholic sisters work with. Sr. Simone spoke about these experiences to the Democratic National Convention.

In June, I joined other Catholic sisters on a 2,700-mile bus journey through nine states to tell Americans about the budget Congressman Paul Ryan wrote and Governor Romney endorsed. Paul Ryan claims his budget reflects the principles of our shared Catholic faith. But the United States Conference of Catholic Bishops stated that the Ryan budget failed a basic moral test, because it would harm families living in poverty.

We agree with our bishops, and that’s why we went on the road: to stand with struggling families and to lift up our Catholic sisters who serve them. Their work to alleviate suffering would be seriously harmed by the Romney-Ryan budget, and that is wrong.

During our journey, I rediscovered a few truths. First, Mitt Romney and Paul Ryan are correct when they say that each individual should be responsible. But their budget goes astray in not acknowledging that we are responsible not only for ourselves and our immediate families. Rather, our faith strongly affirms that we are all responsible for one another.

I am my sister’s keeper. I am my brother’s keeper. While we were in Toledo, I met 10-year-old twins Matt and Mark, who had gotten into trouble at school for fighting. Sister Virginia and the staff at the Padua Center took them in when they were suspended and discovered on a home visit that these 10-year-olds were trying to care for their bedridden mother who has MS and diabetes.

They were her only caregivers. The sisters got her medical help and are giving the boys some stability. Now the boys are free to claim much of the childhood they were losing. Clearly, we all share responsibility for the Matts and Marks in our nation.

In Milwaukee, I met Billy and his wife and two boys at St. Benedict’s dining

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room. Billy's work hours were cut back in the recession. Billy is taking responsibility for himself and his family, but right now without food stamps, he and his wife could not put food on their family table.

We all share responsibility for creating an economy where parents with jobs earn enough to take care of their families. In order to cut taxes for the very wealthy, the Romney-Ryan budget would make it even tougher for hard-working Americans like Billy to feed their families. Paul Ryan says this budget is in keeping with the values of our shared faith. I simply disagree.

In Cincinnati, I met Jini, who had just come from her sister's memorial service. When Jini's sister Margaret lost her job, she lost her health insurance. She developed cancer and had no access to diagnosis or treatment. She died unnecessarily. That is tragic. And it is wrong.

The Affordable Care Act will cover people like Margaret. We all share responsibility to ensure that this vital health care reform law is properly implemented and that all governors expand Medicaid coverage so no more Margarets die from lack of care. This is part of my pro-life stance and the right thing to do.

In Hershey, Pennsylvania, a woman in her late thirties approached us. She asked for the names of some people she could talk to, because she felt alone and isolated. Her neighbors have been polarized by politics masquerading as values. She cares about the well-being of the people in her community.

She wishes they, and the rest of the nation, would listen to one another with kindness and compassion. Listen to one another rather than yell at each other. I told her then, and I tell her now, that she is not alone.

Looking out at you tonight, I feel your presence combined with that of the thousands of caring people we met on our journey. Together, we understand that an immoral budget that hurts already struggling families does not reflect our nation's values. We are better than that.

So I urge you to join us on the bus. Join us as together we stand with Matt and Mark, Billy and his family, the woman in Hershey and the Margarets of our nation.

This is what we nuns on the bus are all about: We care for the 100 percent, and that will secure the blessings of liberty for our nation. So join us as we nuns and all of us drive for faith, family and fairness.

## Women's Work

One of the notable aspects of Catholic thought that is often missed by the outside world is the appreciation Catholic writing gives to the distinctive way in which Christ treated women as an equal despite the cultural favoritism accorded men. Candidate Romney in the second debate in mid-October 2012 awkwardly tried to brag about his sensitivity by elaborating how difficult it was to find women for his cabinet while he served as Governor of Massachusetts. He needed to assemble special “binders of women,” he said. We’re skeptical. Our own experience in law, diplomacy, medicine, and the university suggests the problem is not men without binders, but men with blinders unable to see the female talent all around them. In this regard, Catholic encyclical writing has consistently taught that women and men should be welcomed equally in all public positions, but no one should be honored more for what they do in the market rather than the home.

During the campaign in 2008, Barack Obama took exception to a Supreme Court ruling that seemingly made it more difficult for a woman to recover back pay for years of discriminatory treatment in compensation. In essence, if a woman had been covertly discriminated against her lack of knowledge of the wrong could run the time clock against her and leave her without complete statutory remedy. This was one of the first elements of statutory inequality remedied at the urging of the President by legislative amendment.

Yet, the Catholic perspective reveals that there is more to it than just formal equality. Not surprisingly, President Obama invited his closest rival in 2008 to serve in the pivotal role of Secretary of State. Secretary Clinton in turn attracted distinguished women to high level posts in the Department. One of them, Anne Marie Slaughter, has earned substantial praise for her honest appraisal of whether “women can have it all” in Atlantic magazine, concluding – unlike men – that they cannot. The reason: by learned responsibility or by nature, women have assumed the essential formative role for family. Dr. Slaughter is not at war with this proposition, though she readily praises men who assume a greater investment in their family’s needs. No, with the same type of practical mind as the President, Dr. Slaughter has suggested that even minor changes in work and school schedules, for example, might better come to grips with the fact that while work and family are both human goods, the former is intended to be the servant of the latter. In brief, families are not to be assumed a free, common good to advance and arrange schedules for corporate profitability.

This progressive feminist insight is strikingly pro-life. There is no more startling line in the abortion cases than the one sadly written by Justices

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O'Connor, Kennedy and Souter in their plurality opinion in *Casey v. Planned Parenthood* that the availability of abortion is what assures a woman's ability to participate in the social and economic life of the nation. How awful to sacrifice the lives of children and the well-being of families on the altar of corporate profit!

It is vital for women of high reputation and achievement like Dr. Slaughter to speak up. If Dr. Slaughter's more "Catholic" understanding (and we use this descriptively for we are unaware of her actual faith) expressing a true and full commitment to work compatible with the needs of family is to be heard, it will be because of the quality of women and men recruited into places of public influence who can refute some of the mindlessly, pro-corporate mind-set that finds its way is deeply embedded into Western culture and rears its head even in what is thought a neutral study. Consider, for example, a recent study on women and work – this one from Canada claiming to show that women with children are less "productive" than women without children. That may not seem flattering to women struggling to balance work and family, but it's actually men who will want to hide the study under the rug. According to the Canadians, men may be giving family-friendly benefits a bad name. Things like flexible hours were found to have a negative impact on a man's productivity while working at odd hours didn't affect a woman's productivity one whit. Men, it seems, tend to use these flexible hours to goof off, while women use them to finish drafting the merger agreement while waiting interminably in the doctor's waiting room.

The study also finds that men with babies at home, work overtime. Go figure. Even when men attempt to do more of the parenting, they're not that very good at it. The study found that men who have a stay-at-home partner get a lot done, whereas women who have stay-at-home husbands don't receive any particular advantage from it.

One "unexpected" -- though perhaps not surprising -- finding given the above pattern is that: women without children work the hardest of all, including men. To quote the researchers, the obvious way for women "to balance work and family is to reduce their family commitments, which may be accomplished by having fewer or no children." Yes, that's one way, but it is also a prescription for cultural suicide.

We like to think work is for our benefit. The reverse proposition -- that we live to rack up billable hours would be bleak indeed -- though that is pretty much the life of a young associate at any major law firm in the United States.

To have a chance at getting our priorities straight, it might be better to explore the payment of compensation correlated, at least in part, to family responsibilities. And since strong families benefit the entire community, the burden of this subsidy ought not only be on the backs of private employers.

With true compensation a function of the tax code, qualifying parents – mothers or fathers – actively engaged in parenting and also in the workplace could be allowed to keep more of their income.

But wouldn't a wage differential favoring child-rearing parents violate Equal Protection? Possibly to a Justice who doesn't think child-rearing an important or compelling state interest. But who's in that group? Surely Justices Ginsburg and liberal-thinkers like Stephen Breyer, Elena Kagan and Sonia Sotomayor wouldn't want the law to be construed in a way that narrows a woman's choices. Since under existing law pregnancy (or "pre-birth child care") cannot be a basis of discrimination against women, why should care delivered "post-birth"?

Those in the law-as-umpire ("just callin' em as we see 'em") camp -- the Chief Justice and Justices Scalia and Alito – might raise a judicially-restrained eyebrow at these innovations, but it would be perverse if those who oppose an unfettered abortion right were to go out of their way not to understand the relevant customs and traditions that underlie the "liberty" of the Fifth and Fourteenth Amendments as family-friendly. In any event, any law like this is certain to be drafted gender-neutrally, using terminology like "primary caregiver."

President Obama is right: here, change we need. Employment practices in the United States still reflect 19th-century attitudes. It is time we explore new employment relationships. At a minimum, we should better facilitate the entry and exit and reentry of women into the marketplace. The partner track for women with young children can be longer. Universities can rethink hiring practices that look down upon mothers with J.D.'s and Ph.D.'s returning to the classroom to teach. And that billable hour or equivalent productivity expectation? Simply make it less while children are young and increase it as the children reach middle and high school. The Canadian study found women tend to work longer hours with teenage children in any event, speculating that adolescents are more self-reliant or contributing to the running of the household. You wonder whether these researchers actually know any teenagers. No matter, those high school years supply ample incentive for men and women alike to work longer hours away from amplified music and the latest "you tube" – driven anxiety.

The reality of the modern family is bolstered when Catholic teaching points the way to the practical means to lead a life to the full.

### It's No Party - the Church, that is

The Editors of *Commonweal* remind us that the church is not coterminous with any political party, and that there is room for deep disagreement among Catholics about how to apply CST to the concrete circumstances of life in the real world.<sup>90</sup>

Both presidential campaigns are calling this election a choice between two starkly different visions of America. At least on that score both are right. The crucial question has to do with the role and scope of government, especially in the economy.

President Barack Obama contends that he wants to rebuild the economy “from the middle out,” rather than from the top down. Like his party, the president believes that the federal government has a limited but indispensable role to play in regulating commerce and the financial industry, protecting the environment, funding education, providing health-care coverage, and maintaining a safety net for the elderly and those who cannot provide for themselves. He would raise taxes on top earners to do this.

Mitt Romney, like his party, would severely limit the role of government in the economy and opposes any expansion of the welfare state. In fact, he wants to shrink it. He thinks the economy is built from the top down, and that the so-called job creators need to be rewarded and encouraged by lowering taxes and curtailing government regulation. He argues that the private sector is better equipped to meet the needs of the poor, and the federal government should play no role in providing health care to those who are currently uninsured....

Obama and Romney have chosen running mates who reflect their political philosophies.... In a venerable Catholic tradition, Vice President Joe Biden has been an advocate for the poor, the elderly, and the marginalized, and a strong defender of the role of government in cushioning the harshness of modern economic life generally.... Congressman Paul Ryan’s views on the morality of capitalism, influenced by the eccentric philosopher Ayn Rand and the Austrian economist Friedrich von Hayek, are very hard to reconcile with Catholic Social Thought. Pursuing one’s self-interest is the first principle of any just moral order, according to Rand and Hayek. Catholicism places our obligations to others foremost in any moral or social calculus.

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<sup>90</sup> Editorial, “Catholics & Party Politics: Same Creed, Opposing Views” *Commonweal*, August 28, 2012.

How can these two ambitious politicians profess the same creed, one that places the poor and the disenfranchised at the center of our concerns but also defends the sanctity of every human life from the moment of conception? This is not an easy question to answer. There is a good deal of mutual incomprehension on the part of Biden's Catholic supporters and Ryan's, each side pointing to the log in the other's eye. What can explain the reasoning of a Catholic who supports abortion on demand or that of a Catholic who thinks that helping the poor undermines their moral agency and weakens their resolve to help themselves? [B]oth candidates are committed to the retaliatory use of nuclear weapons, something their church rejects completely.

The presence of these two Catholics on the presidential tickets reminds us of how complicated political choices always are, how often politics involves unpalatable tradeoffs, and how difficult it is to translate religious conviction into law and public policy.

**Part IX**

**The Way Forward -- Will Obama Hit unto or over (the) Mitt?**

**It Will Make All the Difference**

## Of Insubstantial Burdens and Monumental Reform – A few last words on the HHS Contraception Mandate

The health care reform law does mandate through the now well-known HHS regulation that insurance companies provide free contraceptive coverage. This is argued to be contrary to Catholic teaching and so the question becomes has the President provided an adequate exemption for Catholic employers who don't wish to underwrite the cost of such contraception. As is well known, some bishops loudly and immediately called out the President.

an especially overwhelming the religion itself, less deferential As a matter of if not the employer who



**Figure 9** Amb. Kmiec at the White House with the President.

does not mandate the use of the benefit or condone it in any fashion, transgresses his or her conscience in conforming to a legal mandate? We are, after all, not excused from income tax when we make conscientious objection to a foreign war even if federal law provides alternative service in lieu of an obligation to participate directly.

The President immediately suggested accommodation. Leaders less formal teaching of religious practice, practices that go against the and actual practice of the believers of could have been expected to be far and respectful of the formal teaching. ethics, Catholics owe it to ourselves, President, to ask why it is that an provides access to a benefit, and

If there is at bottom no substantial burden on religious conscience then of course there's no need for a religious exemption. If, in fairness, there is doubt about either the violation of conscience, and therefore, the need for the exemption, it's certainly hard to say that the President has consciously gone to war to single out for disfavor religious liberty of Catholics.

It is for every faith to determine in its own beliefs. For that reason, we do not always have at one's disposal the latitude to note the non-religious claims anchored in utility. We also do not place weight on what might well be thought as a matter of logic to advance the protection of human life at the heart of the Church's teaching insofar as the use of contraception can be said to be inversely proportional to the number of abortions.

We think both inquiries important but we don't rely upon them. Neither argument may be admitted since ultimately they depend upon a re-examination of the Church's teaching, itself, which only the Holy Father in

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consultation with his bishops and informed by the body of Christ – the lay people of the Church – can discern. There is a great hunger for the Church to re-examine this topic as the Vatican discovered when Pope Benedict XVI suggested – not a change in doctrine – but the pondering of whether there are better ways to open our minds to a correct assessment of the human body and sexuality. In the Pope’s words: “there is much in this area that needs to be pondered and expressed in new ways. . . .The basic lines of *Humanae vitae* are still correct. Finding ways to enable people to live the teaching, on the other hand, is further question.”<sup>91</sup>

In any event, the President has lifted much of the burden on even this remote challenge to conscience. In particular, the president responded promptly to begin discussions on how the ethical concerns of the church might be met more satisfactorily.<sup>92</sup> In particular, the president proposed that no Catholic employer would be directly asked to supply contraceptive coverage; instead, that coverage would be provided at no cost<sup>93</sup> by the insurance company.

To a good many theologians, this worked well enough to avoid formal cooperation with evil,<sup>94</sup> but left unanswered how the problem could be avoided where a Catholic employer did not use a third-party insurer, but was self-insured. Discussions continue, with some now suggesting that it might be possible to create a public entity by implementing regulation to offer the contraceptive benefit in this self-insured context in a way that similarly separates a Catholic employer.

To date, the matter is unresolved. The President has gone a good distance to make certain the Catholic Church and its auxiliaries are not the provider of

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<sup>91</sup> Benedict XVI, *Light of the World* 146-57 (2010).

<sup>92</sup> Washington, D.C. responds promptly, as one might expect, when a problem is first identified. Because problems can take years rather than minutes to solve, the span of public attention is not always adequate to gain the full attention of the President, who is of course subjected to demands of many from all sides. Unfortunately, that is what happened here: the President’s initial accommodation was thoughtful and well received, but soon found to be incomplete, because a number of important Catholic institutions supplying aid and sustenance to those in need or supplying a world-class education (not to mention Mr. Obama’s first honorary degree as President), Notre Dame, self-insure and thus cannot use the formality of insurance company distribution to separate themselves from the distribution of condoms. Of course, as suggested in the text, the entire theory of cooperation with evil seems overbroad.

<sup>93</sup> Contraception is less expensive than the costs associated with a pregnancy.

<sup>94</sup> That the law may specify that abortion or contraceptive coverage be included as choices for employees ought not to be seen as making the employer complicit in the act itself. To think that an authorizing statute or executive decision violates principles of religious liberty or free exercise merely because it allows a choice contrary to faith is to misunderstand the nature of democracy and individual freedom. It also vastly understates the responsibility of the church’s own obligation of moral formation -- including effectively revealing to married couples the sublime joy and significance of intimacy that is total and ever open to new life.

contraceptive care. It is fair to ask whether our demanded exemption, built as it is on an ethical analysis of remotely cooperating with evil, is what we are called to defend given the entire context of our societal, if not public, obligation to the poor, and the Catholic “special option for the poor.”

Certainly, the entirety of the context must include bringing 32 million people into the health care system. These men, women and children, prior to the Affordable Care Act, were left to rely on the happenstance of very expensive emergency room care. It is quite obvious by their campaign rhetoric that the president’s political opponents view the religious freedom/contraceptive mandate issue as another chance to repeal universal health care. Catholics are admonished by the bishops not to fall into rank selfishness. In discussing the seven themes of Catholic social teaching, the bishops ask:

“Let each one examine his conscience, a conscience that conveys a new message for our times. Is he prepared to support out of his own pocket works and understanding organized and in favor of the most destitute? Is he ready to pay a higher price for imported goods so that the producer may be more justly rewarded?”<sup>95</sup>

Whatever one thinks of the bona fides of the dispute over religious freedom, it should not excuse us from addressing the claim of distributive justice. Said the Holy Father:

“It is necessary to work with greater commitment at all levels so that the right to health is rendered effective, favoring access to primary health care.” Benedict continued: “Health justice should be among the priorities of governments and international institutions.”

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<sup>95</sup> Quoting from *On the Development of Peoples*, #48.

### So You Can't Blame The Supreme Court For This One

It is in the dry, bloodless nature of legal argument that in three days of unprecedented questioning before the Supreme Court, the redistribution issue was left unspoken -- unless, that is, you read (really, squinted) between the lines. It was possible to do, as one of our number identified in advance that the Supreme Court was less befuddled than it was made out to be by the commentary on the argument. The Act fell within the ample authority of Congress to address problems of national scope beyond the competence of individual states. Advocates opposing the use of government to redistribute wealth to meet the needs of average citizens drove most of the argumentation before the Court, and soaked up a great deal of media time, but ultimately, Chief Justice Roberts perhaps drawing on his comfortable middle class upbringing, but middle class nonetheless, reaffirmed what has long been the law: Congress can meet any general welfare matter without regard to commerce power limits (which are very few in any case) under its tax and spending power. More than \$100 billion in health costs annually is imposed on the present system by the uninsured, and but for some obscuring footwork behind the high court lectern by libertarian friends who pretend that life is possible alone, that is a problem of truly national scope.

Not to put too fine a point on it, once it was conceded that Congress has the power to tax us and, if it had wanted to, could then supply medical care through a single-payer government provider with our tax money, the notion that it could choose to do something less intrusive of the market was obvious. If freedom and liberty survive having money subtracted from one's paycheck to support a benefit through a government monopoly, freedom is hardly devastated when the government just requires us to buy insurance in a semi-competitive private marketplace so that the costs we cannot escape because of our own mortality aren't imposed on the system as a whole. Rather, the mandate sees that they are covered whenever they unwantedly and unexpectedly occur. That the mandate also results in more balanced risk pool and lower premium is, as Justice Ruth Bader Ginsburg noted, just the nature of insurance.

When someone who can afford to purchase insurance instead decides to not obtain it, he or she is making a choice of economic significance for himself and others. For himself, the presently healthy self-insurer is exhibiting a preference for assuming risk while manifesting no empathy for other citizens whose costs increase by his remaining out of the insurance pool.

The health care law brought into relief why the Catholic vote has been consistently able to predict the winning popular vote candidate when no other

category of citizen evens comes close. Catholic citizens rely less on partisanship or blind loyalty, and more on a genuine concern for the integrity and equality of laws as written, and as the late Senator Ted Kennedy a champion of health care would say a genuine concern for “the little guy.” Most importantly, at our best, we possess a willingness to constantly re-examine whether government as a form of community is pursuing the common good, including the care of the poor and the elderly.

Yes We Can . . . Lose . . .but Not “if we have faith, hope & enthusiasm”

---Walter Kmiec (1922-2010)

**W**e began this book inspired by the President’s achievement to secure health care for tens of millions who presently lack this care as well as admiring of the Chief Justice, who set partisanship aside to uphold the law under well fixed and understandable constitutional precedent. We also found it auspicious to compliment legislative leaders who have withstood the loud, sometimes hate-filled epithets of neighbors who have unfortunately been manipulated into thinking that wealth and privilege is all he needs and it will be his if he associates with those who have largely led their individual and corporate lives profitably in every narrow sense of that word.

Americans generally are not a narrow, hyper-technical or hyper-critical people. Most of us know that President Obama’s plan is not perfect, but you cannot beat something with nothing, and at its core – caring as the plan does for those with little resource or whose very pre-existing illness was perversely being used to deny them any regular assistance. Catholic-Americans have great respect for Constitutional structure that preserves the rule of law. When law is guided by a pursuit of common, rather than merely individual, good, it honors practices that raise us up.

From time to time, America has allowed frustration to erect a fence to the needs of strangers, but over time, we have always torn down the walls of privilege because it is the Catholic experience that privilege does not protect faith and freedom, it lessens them. This is the teaching of Thomas More whose great intelligence merited being Lord Chancellor of England, but whose love of God and of neighbor called him to higher station.

It seems that every wave of new citizens has had to endure a certain amount of suspicion as the latest of the “teeming refuse,” as the poet Emma Lazarus writes on the base of Lady Liberty, arrives upon our shores often unwanted by the *haves* of other nations. We see in the generations of British, Irish, Polish, German, and Italian migrants the same yearning for *True Freedom*, as that which motivated Cardinal Archbishop Dolan to write a monograph on the subject by the same name. The U.S. Constitution divides power to account for the defects of human nature, but it was never intended to indulge the pessimistic view that government could not be a source for good. The best Constitution, as James Madison said, is a reflection of human nature -- a nature that is surely better off, as Pope Benedict put it succinctly, where health care is a human right.

Whenever we have asked our leaders to act boldly, we have also exercised prudence by searching for a compensating compass that admonishes; but not rashly. This is what 2012 is about, and that is why Cardinal Dolan's subtitle of protecting human dignity is what prompts the mind to think. His eminence is borrowing this title, as he acknowledged in the front pages of the book, from Pope Leo XIII, whose encyclical writing is often viewed as the repository of the beginning of modern social teaching. It was Leo who wrote: "True freedom . . . is that freedom which most truly safeguards the dignity of the human person; it is stronger than any violence or injustice. Such is the freedom which has always been desired by the Church, and which she holds most dear."

There is a happy coincidence between the structure of the American Constitution and the insight of Cardinal Dolan drawn from an elderly paraplegic parishioner who told him that his secret to life was "Just to live [since living] is itself a gift from God." One of us faced death in a horrible car accident that took the lives of two very senior Catholic religious who were our co-author's best friends. We might quibble over this or that means of doing good, but would readily subscribe to the view, as Cardinal Dolan writes, that "the beauty and dignity of life itself [is] a beauty and dignity that go beyond what we're able to do, what we're able to accomplish."<sup>96</sup>

As Americans, we ask a great deal of ourselves, and we readily experiment and invent the most logical means to try and get there. As Daniel Webster explained, and Chief Justice John Marshall, accepted: The rule of thumb is that federal commercial power is to apply where the general interests of the union would otherwise be jeopardized by conflicting state regulation, *but* state regulation is to be preferred where that is not true and states have the better vantage from which to address a public problem.

Webster's argument and Marshall's acceptance of it flows directly from the Virginia Resolution underlying our Constitution's structure. The Sixth Virginia Resolution of 1787 (Virginia Resolution) provides:

[T]hat the National Legislature ought to possess the Legislative Rights vested in Congress by the Confederation; and moreover, to legislate in all cases for the general interests of the union, and also in those cases to which the States are separately incompetent, or in which the harmony of the United States may be interrupted by the exercise of individual Legislation.

The reader can now easily see for him or herself that what "rescued" the health care reform law from constitutional attack was the Constitution, itself. It was not the betrayal or courage of a single justice that sustained the program that

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<sup>96</sup> Cardinal Timothy Dolan, *True Freedom* (ebook edition).

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some sought to defeat by derisively calling it Obamacare? No, the health care law achieved the blessing of the Court and withstood over thirty attempts to repeal it because its essentials represent our Catholic commitment to the common good and not merely individual good.

There will always be some disagreement over how closely our governmental structure mirrors the principles of solidarity and subsidiarity that guide the social teaching of the Catholic Church, but frankly that is just fine. That is what elections are about, to express these different points of philosophy. Yet, we must be honest; some choices more fully reflect the Catholic tradition than others. The Catholic way is not plain vanilla libertarianism that smugly announces “don’t tread on me,” because under the Catholic model, we are obligated to each other by our very belief in transcendence of creation. This is far more than merely contract or consent. This is why employers are obligated to pay a just wage – a wage that reflects the needs of the employee families – and it is reciprocally why employees have an obligation – whether or not written into union contract – to help sustain the business. This is especially true with respect to the work of the public business, including as we have assigned it, the education of our children. Government is a source of not just the protection of property for purposes of exclusion, but for the protection of those environmental resources that necessarily are shared globally, and where overconsumption or over inundation with greenhouse gas undermines the natural landscape that sustains food and shelter. The well-being of the community in Catholic thought is thus sustained by freedom, but not just any freedom, but rather one that is well directed toward securing the spiritual and moral well-being of the community.

What is most important is not whether one is Democrat or Republican, but appreciating how subsidiarity means not taking to a higher level that which can be done more effectively and empathetically below. As subsidiarity is a correlative of solidarity – working together toward universal value – it cannot be accomplished by the individual walking alone. In Cardinal Dolan’s terms that would not be “true freedom,” but false liberty denying that the human person is by nature meant for community.

Catholic teaching that calls us to pursue distributive justice affirms the nobility of such effort, and President Obama can be counted upon to observe the sensitivities of religious freedom, as he has very impressively before, and during, his years of initial public service. Yes, there have been a misstep here or there. Presidencies are modernly a cast of thousands, and with the misstep over the mandate now largely corrected, there is certainly no reason to think President Obama unacceptable to the well-formed Catholic conscience, and many reasons to wish him success. We do.

Will all of our American bishops agree? Most of us observe the stricture that it is not the place of the church to endorse or disqualify candidates. This is

important, for too great an alliance with even a highly popular candidate or party today is no assurance of continued popularity tomorrow. Moreover, our faith is hardly the pursuit of the popular. Blessed are those who are persecuted, after all, for their willingness to submit to Christ. Whether the present teaching of our church is wildly popular, or as in the case of contraception, not well understood or followed. In any event, when unpopularity or disfavor comes, a religion indulging in political alliances discovers that it has traded the greater for the lesser.

So what, then, is the American Catholic voter to make of President Obama's efforts at being responsive to the bishops on the adequacy of the contraception mandate? First, it is fair for the president to ask us to discern whether those remaining unsatisfied with the breadth of the offered exemption are doing so because of genuine coercion of practice contrary to church teaching or as a covert way to oppose distributive justice. Evaluation of the sufficiency of the exemption is also more helpfully informed not by assertions of what the Constitution demands in terms of exemption from generally applicable laws (and this is a debatable matter, with modern case developments being less favorable than many believe) than by Jesuit Fr. John Courtney Murray's advice to the late Cardinal Richard Cushing, who inquired in the 1960s whether the Catholic church should lead the effort to oppose repeal of laws that made contraception usage a criminal act in some states. Murray responded by drawing distinctions between law and morality and public and private morality:

In our present case, the crucial issue is whether contraception is an issue of public morality or of private morality. The question is disputed among Catholics.

I think that the case for affirming contraception to be matter of private morality is sufficiently conclusive in our present circumstances. It is not merely that the practice is in fact widespread, or that so many people do not consider it to be wrong. The more decisive reason is that the practice, undertaken in the interests of "responsible parenthood," has received official sanction by many religious groups within the community. It is difficult to see how the state can forbid, as contrary to public morality, a practice that numerous religious leaders approve as morally right. The stand taken by these religious groups may be lamentable from the Catholic moral point of view. But it is decisive from the point of view of law and jurisprudence, for which the norm of "generally accepted standards" is controlling.<sup>97</sup>

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<sup>97</sup> John Courtney Murray, S.J., Memorandum to Cardinal Richard Cushing (1965), Murray Archives, file 1-43. <http://woodstock.georgetown.edu/library/murray/1965F.htm>.

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Murray thus advised against leading the repeal effort under what he termed “valid and traditional” theories of law and jurisprudence. And his analysis of religious freedom comes from a perspective that reminds us that it is not the freedom to be Catholic that is guaranteed in the American Constitution -- it is the freedom to pursue religious belief and practice, of any faith, or none, as well. This is what the Vatican Council’s Declaration on Religious Freedom *Dignitatis Humane* likewise affirms. As Murray puts it: “The concept of religious freedom is this: First, a man may not be coercively constrained to act against his conscience. Second, a man may not be coercively restrained from acting according to his conscience, unless the action involves a civil offense -- against the public peace, against public morality, or against the rights of others. But the practice of contraception involves no such civil offense. Therefore the principle of religious freedom should obtain. And laws in restraint of the practice are in restraint of that principle.”

How were Catholics then to affirm the beauty of the teaching of total gift of the and procreative marital estate? By giving witness to it in their own lives. They likely will not know or understand the point of our teaching if the words we use to teach with are the words of war. This is not to deny the contentious nature and sensitivity of this subject, which is interrelated with practices such as sterilization as well as abortion. It is therefore important that the President not lessen the conscience clause protection that is available to Catholic health practitioners. And isn’t that almost the verbatim recital that President Obama makes in his Executive Order backstopping that the health care reform does not have as its purpose the use of federal funds for a practice that the President himself has acknowledged raises the most difficult moral decision that a woman may face; a decision that Justice Kennedy recognized would be with the woman the rest of her life. The richness of the Catholic faith permits us to see how deep the wound, how tragic the consequence, to the slaying of every culture’s most basic community: that of mother and child.

Reciprocally, it is fair for the President in any further refinement of the corrected exemption to ask that we join him upon the common ground that the social justice teaching of the church that we *do* share with President Obama; namely, making health care as close to universal right as possible. It should also mean reluctance on the part of bishops to dash into court. Reasoned discussion in the political process is far better. According to Justice Scalia, the alternative is “a system in which each conscience is a law unto itself or in which judges weigh the social importance of all laws against the centrality of all religious beliefs.”

With respect, it is not engaging in the political process to seed the public discussion with bellicose terminology and promises of litigation. What can we all do now? Take a breath, say a prayer and, rather than deploying the language of war, how about we love our enemies, and maybe it would not be too much to ask all whether in the demanding station of an American bishop or

in a less visible position that is capable of influencing few in number to refrain from calling our incumbent President, his opponent, or any person assisting them an “enemy”?

More guidance needed? We recommend these words from *Gaudium et Spes*:

Whatever is opposed to life itself, such as any type of murder, genocide, abortion, euthanasia or willful self-destruction, whatever violates the integrity of the human person, such as mutilation, torments inflicted on body or mind, attempts to coerce the will itself; whatever insults human dignity, such as subhuman living conditions, arbitrary imprisonment, deportation, slavery, prostitution, the selling of women and children; as well as disgraceful working conditions, where men are treated as mere tools for profit, rather than as free and responsible persons; all these things and others of their like are infamies indeed. They poison human society, but they do more harm to those who practice them than those who suffer from the injury. Moreover, they are a supreme dishonor to the Creator.<sup>98</sup>

As Cardinal Dolan writes admiringly of the late John Paul II, we are, as Catholics, called upon to answer “a variety of threats to the sacredness of human life in today’s culture, such as abortion, infanticide, eugenics, the misuse of artificial reproductive technologies, contraception, and euthanasia, as well as an even broader range of dangers to human life poverty, and unjust distribution of economic resources, or, the arms race, drugs, and human trafficking. No ‘single issue’ politician was Karol Wojtyla!” Those who hold the President’s vision of universal values must also have charity in their hearts and patience, for as Cardinal Dolan writes: “it will require compromise and acceptance of intermediary steps. In this respect, John Paul’s discussion of imperfect laws that seek to limit or minimize threats to life, and of the moral responsibility of legislators to oppose all unjust laws, is pertinent and very challenging.”

Very challenging, indeed. But not impossible. In the words of Benedict XVI, “We are sinners. We should not take that failure to live up to this high moral standard as an authoritative objection to the truth. We should try to do as much good as we can and to support and put up with each other. We should also try to express the teaching pastorally, theologically, intellectually in the context of today’s studies of sexuality and anthropology so as to create the conditions for understanding so that people can realize that this is a great task

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<sup>98</sup> Vatican II, Constitution on the Church in the Modern World, *Gaudium et Spes* (1965).

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on which work is being done and on which even more and better work needs to be done.”<sup>99</sup>

We believe President Obama has been about this great task and deserves the opportunity to continue in its greater accomplishment.

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<sup>99</sup> Benedict XVI, *Light of the World* 147

**Part X**  
**Additional Homework for the Undecided**

### Transcending Sound-Bites & Forming Conscience

**T**hroughout this book we have been urging our politicians and you, our fellow citizens about to vote in a critical election, to do four things: Be attentive. Be intelligent. Be reasonable. Be responsible. In this part, we tell you where we got these four imperatives and how they apply to political life in this country, and specifically to your duty to vote responsibly, or conscientiously, which we discuss in these final words.

## Bernard Lonergan and the Duty to Understand

We got this basic idea about politics and what has gone wrong with it from a Canadian Jesuit, Bernard Lonergan, who was one of the most eminent Catholic philosopher-theologians of the past century. In 1957 he published his most important work *Insight: A Study of Human Understanding*. In 1971 he was awarded the highest honor of Canada: Companion of the Order of Canada.

We give you just one page of dense quotes from this famous philosopher, just so that you can say with comfort and ease that you once studied philosophy and found out how you can know everything there is to be known. Here goes. No cheating, please. Give this page a read. Then we try to discuss it with you in non-philosophical language.

We hope that Lonergan will help you sort out a recurrent problem in American politics: Who is helping us to become more human and humane? And who is trying to control our minds and our votes? When we identify the “*who?*” question, it usually becomes easy to answer the “*why?*” question: for reasons that have nothing to do with the common good of all of us, and everything to do with self-interested power.

Trust us for now on this next point: there are people of both kinds in both major political parties who want you to be docile and do what you are told, and such people exist in every religious community we have encountered. Since the major point of Catholic Social Thought is the dignity of the human person, we are laying out the thought of one of Catholicism’s finest thinkers so that you will be free of appeals to our fears, so that you will be able to recognize power games for what they are, and so that you will take your unique irreplaceable place of honor and responsibility when you cast your ballot this November 6, no matter who you are going to select as the next President of the United States. Here is what Lonergan recommends:

1. Thoroughly understand what it is to understand, and not only will you understand the broad lines of all there is to understood but also you will possess a fixed base, an invariant pattern, opening upon all further developments of understanding.
2. Besides insights there are oversights. Besides the dynamic context of detached and disinterested inquiry in which insights emerge with a notable frequency, there are contrary dynamic contexts of the flight from understanding in which oversights occur regularly and one might almost say systematically. Hence if insight

into insight is not to be an oversight of oversights, it must include an insight into the principal devices of the flight from understanding.

3. What practical good can come [from understanding]? The answer is more forthright than might be expected, for insight is the source not only of theoretical knowledge but also of all its practical applications, and indeed of all intelligent activity. Insight into insight, then, will reveal what activity is intelligent, and insight into oversight will reveal what activity is unintelligent. But to be practical means to do the intelligent thing, and to be unpractical means to keep blundering about. It follows that insight into insight is the very key to practicality.<sup>100</sup>

4. The Greek mediation of meaning resulted in classical culture ... and by and large, its canons of art, its literary forms, its rules of correct speech, its norms of interpretation, its ways of thought, its manner in philosophy, its notion of science, its concept of law, its moral standards, its methods of education, are no longer accepted.... Classical culture has given way to a modern culture, and ... the crisis of our age is in no small measure the fact that modern culture has not yet reached its maturity....

[F]or each of the five elements constitutive of the Greek ideal of science (truth, certainty, knowledge, necessity, and causality), the modern ideal substitutes something less arduous, more accessible, dynamic, effective. Modern science works.

[I]nsofar as the universe was necessary, it was possible ... to find ultimate and changeless foundations..., but insofar as the universe was contingent, it was a realm of endless differences and variations that could not be subsumed under hard and fast rules....

Lonergan offers four imperatives corresponding to these operations. Corresponding to *experience*, the first imperative is **Be Attentive**. This requires careful attention to facts, empirical data. In politics it is not always easy to get access to reliable, accurate information, even after we have listened to a debate. Who or what blocks easy access to information in our country? What can we learn from a TV ad? Is it easy even to find out who paid for it, and how much they paid?

Corresponding to *insight*, the second imperative is **Be Intelligent**: understand what things really mean. Insight usually occurs when we are kicking around a serious question. We are aware of the data or the information, but haven't yet figured out what it means. We are puzzled and formulate a question, which

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<sup>100</sup> Bernard J.F. Lonergan, *Insight: A Study of Human Understanding* (Toronto: University of Toronto Press, 1992, first published 1957) pp. 5, 8, 22.

leads us to seek understanding. We may go back to the facts frequently and all of a sudden you notice a recurrent pattern, a set of clues that leads to the light going on: “Aha, I get it!”

Corresponding to *judgment*, the third imperative is **Be Reasonable**: judge carefully whether an insight is correct or false. In *judgment* we attempt either to verify or falsify a proposition. If an explanation is satisfactory, and does not have to be bolstered with several gratuitous assumptions, this explanation is called “true.” Even here, though, we may remain humble about what we are pretty sure we know, for new data may cause our certitude to come under fresh questioning.

Corresponding to *decision*, the fourth imperative is: **Be responsible**. When you have formed a judgment about the truth or falsity of a claim, the obvious next step involves your decision about what you are going to do about your own judgments or convictions. How are you going to live your life? This is such an intensely personal question that only you can really answer it. It is the ultimate question of authenticity: “To thine own self be true.”

2. “*Besides insights there are oversights.*” Lonergan never said that the task of human understanding is easy. He just insists that it is necessary if we want to avoid the opposites of his four imperatives. Try any one of these opposites on for size: inattentive, unintelligent, unreasonable, or irresponsible. None of them suits you? Good! Keep it that way. But realize that it’s normal that we make mistakes as we go along. When that happens, it does no good to deny it, especially if my mistake really injures or hurts someone else. Best to admit the mistake promptly. And if I have injured or hurt someone, best to make some amends to that person. Not just saying “sorry” and then repeating the same dumb mistake over and over. But serious change. A U-turn in the road of life, if that is what is called for. Jews call it *teshuvah*; Greeks call it *metanoia*; in English we call it *conversion*. And that doesn’t mean switching allegiance from one synagogue or church or mosque or political party to another. It means an inside job, an intellectual change of mind, or a moral change of the habits of the heart. Whatever it takes to get real in understanding that there is more to life than me, myself and I, and that we are called to live in this world in peace and in just relationships with others, all of whom I am meant to respect, even when—make that *especially* when—I disagree with others. The search for ways to secure the common good of all in our society begins with the humble recognition of the possibility of my own blindness to the common good. It develops as I become more aware of ways in which I try to have my group win at all costs, even costs that will ultimately hurt me and my group plenty, because what goes around comes around.

3. “*What practical good can come from understanding?*” Now that we realize that the recurrent pattern of human understanding requires attentiveness,

intelligence, reasonableness, and responsibility, and that it applies to politics as well as all sorts of other things, we offer examples from American politics in this paragraph and in the next two sections of this chapter. Insight into insight helps us know the difference between an intelligent and an unintelligent proposal or policy. The difference will also become clear in the exercise of the power to tax and spend. For example, a budget may be so overloaded with selfishness that it crowds out solidarity with the needy, or provide so much relief for the super-wealthy that it sticks it to an overburdened middle class, so that Warren Buffett's secretary pays tax at a higher rate than he does. There is no escaping the political obligations of being attentive, intelligent, reasonable, and responsible, especially in an election year. Why? Because, as Lonergan explains, "to be practical means to do the intelligent thing, and to be unpractical means to keep blundering about."

4. "*Classical culture has given way to a modern culture.*" In the ancient world classical culture, say of the Golden Age in Greek philosophy, permanence and immutability were esteemed as the greatest human achievement. After the breakthrough of modern science—with its incessant yearning for discovery of new truths by looking at old realities with a fresh perspective or a novel question—immutability was no longer equated with perfection. Observation of data led to questions for understanding. Insights required verification or falsification. Answers that were no longer explanatory yielded to more satisfying answers that are more explanatory. This change of mind comes about when a person is willing to change by adopting a more reliable, more accurate explanation of the data than prior unsatisfactory answers could provide.

Cardinal John Henry Newman once wrote: "In a higher world it may be otherwise, but here below to live is to change, and to be perfect is to have changed often."<sup>101</sup> In the modern world, change is something generally desirable, not something that is generally to be lamented or regretted. But change is not always a desirable thing. To know the difference between necessary social change and lurching blindly toward disaster—such as another prolonged and unwinnable war in the Middle East—requires attentiveness, intelligence, reasonableness, and responsibility, not outsourcing our foreign policy to old business pals who egg us on to attacking Iran, with reckless disregard for the consequences. Especially when it comes to the conundrums of making war and building peace, the problem of sorting out intelligent and unintelligent policies cannot be solved by reliance on slogans.

Many of our politicians and religious leaders are "determined to live in a world that no longer exists." According to the late and beloved Archbishop of Milano, Cardinal Carlo Martini, aspects of Catholicism are out of date by centuries: "The church is tired, in the Europe of well-being and in America. Our culture

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<sup>101</sup> John Henry Newman, *The Idea of a University* (1852; rev. ed. 1858).

has become old, our churches and our religious houses are big and empty, the bureaucratic apparatus of the church grows, our rites and our dress are pompous.” Never mind the comment on the garments. Fellini loved it, and that is good enough. But the bureaucratic mindset imposing “assessment” on faithful women is a cultural relic we can do without. The timing of this needless display of power, moreover, seems retaliatory for the exercise of plain speaking by nuns engaged in health care to Congress about reasonable inferences from the Massachusetts experience of health care reform.

We discussed above how various Catholics—bishops and priests and nuns and laypersons—conducted their representation of Catholic Social Thought to congressional decision-makers on the project of extending health care coverage to over 32 million Americans without it. The bishops were concerned that the ACA would increase the incidence of abortion in this country. When the data on the experience of a similar health care reform in Massachusetts were published in a highly reputable medical journal, however, the bishops owe both the church and the world a reasonable explanation of why that research is unsatisfactory or inconclusive. Or at least the bishops might have quietly thanked many priests and sisters and laypersons for doing what they could not bring themselves to do. Instead some bishops lashed out in anger at the nuns, whom they *blamed* (what a curious verb for such an amazing victory!) for exercising independent judgment over what to do when a leader like President Obama offered an opportunity to improve the delivery of health care for so many millions of people.

The nuns had much more cause to trust their own experience because they are well trained in public health and most bishops are not. They are engaged in health care on a daily basis and none of the bishops is. These nuns thought long and hard and they prayed with all their heart and soul after the bishops’ withdrawal of support for the reform legislation. Then they took action based on a conscientious decision to inform congressional offices of the alternative interpretation of the Massachusetts data—that the incidence of abortion would go down rather than up.

Both steps taken by the bishops seem now to be errors of practical prudential judgment about the right time to stand together in solidarity for social justice. In our view, these decisions of inaction and then blaming the nuns for their action profoundly miss the mark on what conscience means in Catholic moral reasoning, and seem more grounded in a false sense of loss of control or power over who may speak for the church. We note, furthermore, that the nuns tried to coordinate their efforts every step of the way with the representatives of the bishops’ conference, so if any of the bishops still desire to “blame” anyone for “what went wrong” with the passage of the ACA, all they need is a good mirror to see the source of their Angst. They chose to believe their fears about abortion rather than the reliable analysis of empirical data published by our co-author, Dr. Whelan. The nuns trusted the scientific analysis and offered it

to enough Members of the House to pass the bill by a very tiny margin of 220-215. A change of only three votes would have consigned this bill to the large trash can full of over a century of failed attempts to reform our broken health care system. Not a single Republican Member of the House voted for the bill. As for the episcopal pique expressed in 2010, one can only hope that all the bishops are well over that by now. Whether or not they are, we publicly express our own gratitude to these sisters for raising their voices in support of an amazing achievement in American history.

We three Catholics do not think of ourselves as those Lonergan describes as “a scattered left, captivated by now this now that development, exploring now this and now that new possibility.” We are calm and steady laypersons seeking on a daily basis to follow the Gospel of our Brother Jesus as best we can. We, too, cherish the freedom of the church most dearly, as much as Cardinal Dolan and Archbishop Lori and his colleagues on the *ad hoc* Committee do. The fact that we disagree with their practical application of this cherished freedom to this administrative directive on a tax binding all employers does not diminish our respect for their office.

We doubt the effectiveness of the current litigation brought under the Cardinal's direction, not only because it has been rather embarrassingly unsuccessful, but because it is without merit. That is to say, we do not doubt there are challenges in America to religious liberty, it is just that what the Church has alleged is not it. We are capable of seeing constitutional harm when any government official seeks to determine who is fit to be a minister of the church or what ministries the church may engage in, or to define the message and meaning of the church in today's world. But we do not think the HHS mandate on contraceptives does any of those things. And we think that imposition of a general tax on all employers defining the terms of benefits in a group health care plan is within the power of Congress to tax and to spend, and within the duty of the Executive the duty to Take Care that laws be faithfully executed. We return to Bernard Lonergan's influence on us as Catholics, on our church, and on our world. We hope that what he observed about the recurrent pattern of human development may in this time of crisis produce a fuller measure of respect for the *experience* of others, a deeper *insight* into what makes them tick, a more self-critical reflective spirit that tempers all our *judgments*, and a bolder willingness to put in action our own conscientious *decisions* about what we must dare to do to carry out our convictions, and to leave to others the task of discovering how they might best live their lives more humanly and humanely.

Because we are social and political, we seek to achieve these worthy goals politically or in a *polis*, a city or a country that truly cherishes religious and political freedom, but that lacks the power to impose religion or correct

thinking upon anyone, a city safe to live in because it is not a busybody or a coercive thought police.

Each vote counts. One person, one vote. That person is you, and no one—not a bishop and not a party leader—can do that for you. Hence it bears repeating at the end of this book the four methodological imperatives guiding all human inquiry apply as well to the act of voting: be attentive; be intelligent; be reasonable; and be responsible. To vote responsibly means acting decisively and conscientiously, after critical reflection on competing insights into experiences on which we focus attentively, take into account the common good of all of us, with special respect for those who are most vulnerable.