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# FAITH IN THE PUBLIC SQUARE: SOME REFLECTIONS ON ITS ROLE AND LIMITATIONS FROM THE PERSPECTIVE OF CATHOLIC SOCIAL TEACHING

LUCIA A. SILECCHIA\*

## I. INTRODUCTION

It is very clear that in recent years, the proper role of religion in the public square has received much attention. Obviously, this is not a new area of interest. Indeed, long before our nation was founded, the relationship between religious beliefs and legal systems was an area of great interest to almost everyone, including scholars, religious leaders and lawmakers.<sup>1</sup> Part of the reason for this is that individual beliefs about the divine, and individual beliefs about how those in power should govern the affairs of this world are, for many people, two of their most fundamental concerns. Therefore, it should not be surprising that the intersection of religion and the law has always generated interest, often created tension, and, sometimes, given rise to tragedy.

In recent years, greater attention has been paid to the influence of religion in the American public square. Witness, for example, recent discussions of the religious affiliations of Supreme Court nominees, or the funding of faith based organizations, or the

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1. I have written about this issue on several prior occasions. See generally Lucia A. Silecchia, *Catholic Social Teaching and Its Impact on American Law: Some Observations on the Past and Reflections on the Future*, 1 J. CATH. SOCIAL THOUGHT 277 (2004) [hereinafter *Catholic Social Teaching*]; Lucia A. Silecchia, *Reflections on the Future of Social Justice*, 23 SEATTLE U. L. REV. 1121 (2000) [hereinafter *The Future of Social Justice*]; Lucia A. Silecchia, *On Doing Justice and Walking Humbly with God*, 46 CATH. U. L. REV. 1163 (1997) [hereinafter *Walking Humbly With God*]. Many of the ideas presented in this symposium were first articulated in these earlier articles, which are cited throughout this piece. These articles also include references to sources of interest to those wishing further in-depth information about this issue from the perspective of Catholic social thought.

intervention of religious groups in such currently contentious matters as immigration policy, stem cell research, and the death penalty, and the range of areas in which religion and law intersect becomes obvious. Even the briefest scan of current headlines makes it clear that this connection is one that remains a subject of great interest.<sup>2</sup>

Religious leaders have also become much more involved than they may have been in the past. They have “issued pastoral letters and statements on such fundamental moral questions as the [value] of . . . life, the gravity of war and peace, environmental responsibility, economic justice, [family life], and the responsibility of individuals and governments to assist the most vulnerable, both nationally and globally.”<sup>3</sup> They have also explored the scope of the rights and responsibilities of religious people, as individuals, to participate in political affairs on the local, national, and international levels. Yet, while all this attention is given to religious influences on the law, there is also “[a] profound ambivalence [in] American society to the use of religious arguments in public life. . . .”<sup>4</sup> Indeed, we see this ambivalence in the very charters of our nation. “At the same time that freedom from a . . . religious state was enshrined in the American Constitution, it was [also] clear that the Founders openly embraced religious practice, [public reference to the divine] . . . and confidence in the existence of objective truths.”<sup>5</sup> Paradoxically, “the same American population that is described by . . . statistics as being deeply religious is also one that is more comfortable with keeping religious beliefs private.”<sup>6</sup> Arguments and initiatives based on ethical concerns or a general declaration of compassion are welcome and encouraged in the public square. Yet, such altruism is sometimes less welcome when a law maker suggests that the altruism that motivates a legal proposal has its roots deep within his or her religious faith.<sup>7</sup>

This poses the question: what is the role for religious entities to play in the process of law making and the development of public

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2. Of course, this is not to say that the connection between law and religion has not garnered attention prior to recent times. However, a number of particularly high-profile events, such as religious commentary on the Middle East conflicts, the Terry Schiavo case, stem cell research and its funding, immigration reform proposals, the religious beliefs of three recent Supreme Court nominees, the “Ten Commandments” and “Pledge of Allegiance” cases, and legislative proposals concerning the definition of marriage, have placed religious groups at the forefront of many of this past year’s most contentious and emotional legal debates.

3. *Catholic Social Teaching*, *supra* note 1, at 277–78.

4. *Id.* at 295.

5. *Id.* at 295–96.

6. *Id.* at 297.

7. *Id.* at 297–300 (developing this theme more fully with hypothetical examples).

policy? I will address this question not through the lens of the government looking at religion to see what role it should play, but rather, from the perspective of a religious group assessing what its proper role and its moral obligations might be in the public square. Much of this discussion will be taken from the principles of Catholic social teaching, since that is the tradition on which I have written most often and with which I am most familiar. It is also a tradition that has been shaped over many centuries and in various contexts. It has arisen through places and times where the Catholic Church was closely linked with the state, as in much of European history, as well as places and times such as nineteenth and twentieth century America, where that tradition represented a minority perspective largely held by an immigrant or “outsider” population.<sup>8</sup> Thus, it speaks in great detail about the intersection of law and religion from a variety of perspectives. From this discussion of Catholic social teaching, I hope to draw out some general principles that might be applied to a more general discussion of religious groups in public policy making.

## II. CONTRIBUTIONS OF RELIGIOUS GROUPS TO LAW AND POLICY-MAKING

First, I would like to begin with a discussion of three valuable contributions that I believe religious groups can and should make in the development of American law and public policy—contributions that draw on their rightful competence and expertise. Next, I will address a number of limitations on this role—again, not from the perspective of constitutional law, but from the perspective of religious groups who should themselves understand the prudent limitations on their influences in shaping law. In many respects, a clear understanding of their limitations as participants in shaping law may be as critically important as understanding their role in shaping law itself.

Before addressing the role of religious groups in shaping law and policy, however, it is important not to assume that all religious traditions perceive this intervention to be part of their mission in this world. Indeed, fearing the repeat of past harms that have arisen from the entanglement of law and religion, or preferring to concentrate their energies on theological and ministerial efforts, some religious

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8. *See id.* at 288 n.42 *et seq.* (discussing immigrant ties to the Catholic Church in the United States).

traditions advocate a more limited role for themselves in shaping secular law and policy.<sup>9</sup> This caution is an important one, and should manifest itself in the willingness of religious groups to consider the extent of their role in tandem with considerations of the limitations on that role.

However, the view of Catholic social thought as articulated by the Constitution on the Church in the Modern World (*Gaudium et Spes*) and shared by other traditions—although not all—is that complete withdrawal from the public square is not an option. It was declared in *Gaudium et Spes*:

[T]hey are mistaken who, knowing that we have here no abiding city but seek one which is to come, think that they may shirk their earthly responsibilities. For they are forgetting that by the faith itself they are more than ever obligated to measure up to these duties, each according to his own proper vocation.<sup>10</sup>

It is this linkage between faith and earthly responsibilities that manifests itself in a role for the religious tradition in public life.

#### A. Articulating Moral Absolutes

The first role, and the most important function that religious groups may play in shaping law and public policy, is the critically important task of articulating those minimal standards against which society should set its laws. Religious communities are uniquely suited to articulating a vision as to those things which are moral absolutes, and toward which societies should consistently move. As an example, over forty years ago, in *Pacem in Terris*<sup>11</sup> Pope John XXII articulated a basic set of human rights, applicable for all places and at all times. His list was “[f]ar more extensive than the [secular] American Bill of Rights, [because] this listing embodied the negative freedoms from

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9. Significant Constitutional obstacles to religious intervention in public affairs accompany this reticence. Although that discussion is beyond the scope of these remarks, this is an additional consideration to bear in mind when evaluating the proper role of religious groups.

10. Second Vatican Council, *Gaudium et Spes* ¶ 43 (Dec. 6, 1965) [hereinafter *Gaudium et Spes*], reprinted in CATHOLIC SOCIAL THOUGHT: THE DOCUMENTARY HERITAGE 192 (David J. O’Brien & Thomas A. Shannon eds., 1992) [hereinafter DOCUMENTARY HERITAGE].

11. Pope John XXII, *Pacem in Terris* (Apr. 11, 1963) [hereinafter *Pacem in Terris*], reprinted in THE DOCUMENTARY HERITAGE, *supra* note 10, at 131–62.

harm common in civil lists of rights . . . [but] it also . . . [included] affirmative rights to the tangible and intangible goods of the world.”<sup>12</sup> Predictably, it denounced threats to life, bodily integrity, free speech, free press and free exercise of religion. However, it also went further and listed affirmative rights. These affirmative rights included the right to such things as food, clothing, shelter, medical care, rest and a good name. Further, it articulated rights to respect, culture, education, monetary support during involuntary unemployment, private ownership of property, freedom of movement, a just wage, and the right to emigrate.<sup>13</sup>

Even the briefest review of this declaration reveals that, “[a]lthough the listing clearly articulated a right to the freedom of religion, the rest of the [statement of rights] is entirely secular in nature.”<sup>14</sup> This claimed in clear terms that, from the perspective of Catholic social teaching, there is an authority and an obligation of religious groups to “articulate basic fundamental rights and to assert the non-negotiable obligation of civil authority to defend and protect those rights”<sup>15</sup> through appropriate laws. Unbound by the obligations to achieve consensus or develop politically palpable compromises, religious groups can be bolder in their assertions of basic human rights than governmental entities. In an ideal world, one would hope that human rights are so fundamental that they would not need the backing of law. Indeed, in many ways, it is a serious mistake to view fundamental rights merely as gifts bestowed by a state. If they are viewed this way, it would follow that states also have the authority to take those rights away. However, in our imperfect world, where it is often tempting to reach for the “lowest common denominator” declaration of rights, it is the particular responsibility of religious groups to consistently articulate a vision of basic human rights that depends not on one’s location or status, but stems directly and simply

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12. *Catholic Social Teaching*, *supra* note 1, at 282.

13. *Pacem in Terris*, *supra* note 11, ¶ 11–30, at 132–35. This is not the only place in the major social encyclicals where a list of fundamental human rights appears. See, e.g., *Gaudium et Spes*, *supra* note 10, ¶ 26, at 181:

[T]here must be made available to all men everything necessary for leading a life truly human, such as food, clothing, and shelter; the right to choose a state of life freely and to found a family; the right to education, to employment, to a good reputation, to respect, to appropriate information, to activity in accord with the upright norm of one’s own conscience, to promotion of privacy, and to rightful freedom in matters religious too.

14. *Catholic Social Teaching*, *supra* note 1, at 282.

15. *Id.* at 283.

from one's nature as human.<sup>16</sup> Advocating that the law protect these fundamental rights is perhaps the most critically important role through which religious groups can contribute to the development of American law and policy.

### *B. Resisting Majoritarian Threats*

The second role that religious organizations can play is in offering a counter-balance to the majority. Much has been said in the negative sense about the danger of allowing a vocal religious group to assert influence which may be disproportionate to the size of its membership and in opposition, at times, to the will of the majority. There is also, however, a danger in giving free reign to an unrestricted majority, whose claim to power lies primarily in its numerical strength. This is particularly true in a democratic system such as ours, in which the majority often need not consider the views of the weakest or the most vulnerable. Pope John Paul II warned:

Democracy cannot be idolized to the point of making it a substitute for morality . . . Fundamentally, democracy is a system, and as such is a means and not an end . . . The value of democracy stands and falls with the values which it embodies and promotes.<sup>17</sup>

Thus, within a democratic system, a religious group should view one of its roles as being a counter-cultural one, which defends unpopular ideas of justice and fights for core values when a majority threatens them. A reference point for deciding which interests might be defended by the religious group may often, indeed, turn on those which are the least popular. “[T]he realization of the common good,” Pope John XXIII said, is “the whole reason for the existence of civil authorities.”<sup>18</sup> Protecting this common good may require taking a stance against the will of the majority, who see the “common good” opposed to their individual benefit. It is precisely here where religious groups have a critical function. Thus, if the first role of religious groups is the positive one—the articulation of basic rights—the second

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16. See *Walking Humbly With God*, *supra* note 1, at 1179 (developing this theme more thoroughly).

17. POPE JOHN PAUL II, *THE GOSPEL OF LIFE: EVANGELIUM VITAE* ¶ 70, at 127-28 (Mar. 25, 1995) (Times Books).

18. *Pacem in Terris*, *supra* note 11, ¶ 54, at 140.

role may be viewed as a negative one, in which religious groups discharge their obligation to protect vulnerable minorities from the legal misadventures of the majority. One need look only to the involvement of religious groups in joining the civil rights movement, supporting workers, protecting child laborers, advocating for migrants, or defending the vulnerable unborn to see that religious groups may, at times, be either the sole or the strongest buffer between a majority perspective and that of a more vulnerable group that needs support.

### *C. Educating Faith Communities*

The third important function of religious groups should be their indirect impact on law and public policy through the education of their own members, so that they are constantly reminded that as individuals in the public square, they are personally obligated to do what is necessary to advance justice.

Pope Paul VI wrote:

It is not enough to recall principles, state intentions, point to crying injustices, 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. It is too easy to throw back on others responsibility for injustices, if at the same time one does not realize how each one shares in it personally, and how personal conversion is needed first.<sup>19</sup>

By educating the laity on how to infuse public life with moral principles articulated by the faith they profess, religious groups can add an element to public discourse that is often lacking. Pragmatism, economic viability, political expediency, scientific feasibility, and legality are often factored into consideration by law-makers, voters, and policy makers—and rightly so. Each of these influences on law-making can be beneficial and, thus, powerful advocates to ensure that they are not forgotten in the making of laws. However, religious groups have an obligation to ensure that their members bring ethical and moral considerations to the forefront of legal debate. Although this obligation is not unique to religious groups, it is particularly well

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19. Pope Paul VI, *Octogesima Adveniens* ¶ 48, (May 14, 1971), reprinted in THE DOCUMENTARY HERITAGE, *supra* note 10, at 284.

suiting to them. Public discourse cannot help but be enriched if those with deeply held religious convictions are urged to bring their perspectives to the public square where they can be discussed, debated, and subjected to scrutiny of opponents, and then incorporated into public policy when those perspectives are beneficial, and not incorporated into public policy when those perspectives are not beneficial.<sup>20</sup>

### III. LIMITATIONS ON RELIGIOUS GROUPS IN LAW AND POLICY-MAKING

Yet, at the same time that religious groups rightfully lay claim to a voice in shaping the laws of governed people, there are limitations on any church's ability to advance this. There seems today to be an over-reliance on the constitutional framework to impose external legal limitations on religious groups that seek to involve themselves in public life. Religious groups themselves also bear responsibility to evaluate the limitations on their own legal and political participation, and to articulate these limitations as clearly as they articulate the scope of their affirmative involvement. Without an understanding of their rightful limitations, religious groups will not be able to navigate their role in a pluralistic democracy with either integrity or consistency.

Just as Catholic social teaching articulates a role for religion in legal matters, it also draws a clear delineation around that role. I hope these limitations may be more generally applicable to a full discussion of the proper scope of religious involvement in law-making.

#### A. *Caution Against Over-Reliance on Law*

First, Catholic social teaching warns against over-reliance on civil law as a way to advance justice, and warns that law is not the sole tool for advancing the common good. Rather, it cautions that "the law must not undertake more nor go further than is required for the remedy of . . . evil or the removal of . . . danger."<sup>21</sup> The Church urges recognition of the fact that there are entities such as families, religious communities, schools, social organizations, private charitable

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20. This will also allow for a greater degree of honesty as law and policy makers can state directly what factors motivated their decisions to support or oppose various initiatives.

21. Pope Leo XIII, *Rerum Novarum* ¶ 29, May 15, 1891, reprinted in THE DOCUMENTARY HERITAGE, *supra* note 10, at 28.

organizations, lay professionals in all fields, and individuals, whose role in creating a just society is often of greater importance than the legal process itself in achieving the goal of justice. This caveat should not imply that law is a tool to be ignored in the effort to build justice. However, it is not always the only or the best way to do so. This first caveat is best summarized by Pope Paul VI who wrote:

Legislation is necessary, but it is not sufficient for setting up true relationships of justice and equality. In teaching us charity, the Gospel instructs us in the preferential respect due to the poor and the special situation they have in society. . . . If, beyond legal rules, there is really no deeper feeling of respect for and service to others, then even equality before the law can serve as an alibi for flagrant discrimination, continued exploitation, and actual contempt.<sup>22</sup>

Thus, a religious group that concentrates all of its efforts in the public square toward legal reform, may find that it is not accomplishing all that it might, could, or should. Prudence dictates that as a religious group tries to influence law and public policy, it limits its over-reliance on law as a tool to achieve justice. While it is true that the domain of politics is wide and comprehensive, it is not exclusive. Religious groups can thus challenge the public to avoid seeking solutions to all problems through the operation of law, but to weigh that against the ways through which other entities might also alleviate injustice and social problems.<sup>23</sup> For example, religious groups can appeal to institutions such as families, charitable organizations, philanthropic initiatives, private associations and educational institutions to play a leadership role in alleviating unjust conditions.<sup>24</sup>

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22. Pope Paul VI, *Octogesima Adveniens*, *supra* note 19, ¶ 23, at 273–74.

23. The traditional role that many churches have played in such initiatives places them in a particularly good position to claim, with integrity, that they should not direct all their energies to the arena of legal reform, but should focus as well on other aspects of culture and society also likely to impact the creation of a just order.

24. Although beyond the scope of this paper, such an approach would respect the principle of subsidiarity, which plays a prominent role in Catholic social teaching.

*B. Attention to Defining a Proper Scope of Expertise*

Second, any church seeking greater involvement in legal affairs must do so with respect to its understanding that the government has its own unique sphere of influence, and its own field of expertise. Pope John Paul II noted, "The church respects the legitimate autonomy of the democratic order and is not entitled to express preferences for this or that institutional or constitutional solution. Her contribution to the political order is precisely her vision of the dignity of the person."<sup>25</sup> Hence, from the perspective of Catholic social teaching, "[t]his respectful distance from the civil sphere reflects the Church's understanding that Caesar is to be given a wide berth in his realm of competence as long as his laws do not interfere with the Church's prerogatives or trample on the dignity and rights of peoples."<sup>26</sup> Part of this respect for the role of the state requires that religious groups themselves articulate their legal vision in broad strokes, without assuming for themselves the task of offering finely tuned legal proposals. For example, "Catholic social teaching, for the most part, sets out broad principles and moral values to guide the development of law, but it leaves to lay expertise the challenge of translating [these] broad values into specific law and political initiatives."<sup>27</sup>

In light of this, "[t]here are some issues on which [a] Church's social teaching sets forth specific polic[ies] and programmatic recommendations . . . . [T]hese, however, [should be] few and far between."<sup>28</sup> This view, taken from Catholic social teaching, but more broadly applicable, stems from the belief that "it does not belong to the Church . . . to offer concrete solutions in the social, economic, and political spheres for justice in the world. Her mission involves defending and promoting the dignity and fundamental rights of the human person."<sup>29</sup>

Furthermore, and to provide a more concrete example:

[T]he Church preaches the principle of subsidiarity, consistently teaching that problems should be resolved at the lowest level capable of effectively doing so.

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25. Pope John Paul II, *Centesimus Annus* ¶ 47 (May 1, 1991), reprinted in THE DOCUMENTARY HERITAGE, *supra* note 10, at 475.

26. *Catholic Social Teaching*, *supra* note 1, at 287.

27. *Id.* at 301.

28. *Id.*

29. Synod of Bishops, *Justice In The World* (1971), reprinted in THE DOCUMENTARY HERITAGE, *supra* note 10, at 294.

[However, the Church] does not enumerate with specificity which issues should be resolved at which level. Instead, it is left to lay policy-makers . . . . Likewise, in one sentence, Pope John Paul II said both, that ‘workers should be assured the right to strike,’ and that ‘a strike remains an extreme means.’ Yet, lay decision makers are charged with deciding what factors to weigh in determining if a strike is abusive or ‘extreme.’<sup>30</sup>

This clearly “respectful attitude toward the vocation of . . . lawmaker and the desire to defer to it”<sup>31</sup> operates as a limitation on the role to be played by religious groups. By offering religious “expertise in moral and ethical questions as a complement to rather than a substitute for lay wisdom in legal affairs means that [this] tradition is not capable of being reduced to quick sound bites or easy summaries.”<sup>32</sup> This is also true of many religious groups, and, thus, can reduce their influence in our “fast-paced political world, where decisions are often made quickly.”<sup>33</sup> Yet despite temptations to the contrary, this limitation is necessary.<sup>34</sup>

### C. Avoiding Party Affiliation

A third and final limitation that churches should impose on themselves is the neutrality of remaining un beholden to and un-allied with any particular political party. The freedom that religious groups enjoy leaves churches “at liberty to preach social teachings that are logically consistent according to their moral precepts”<sup>35</sup> without shoe-horning these precepts into the confines of any individual political party. The Catholic Church, and others, advocate positions that are “largely inconsistent according to the current array of American political alignments.”<sup>36</sup> This separation from political alliances will,

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30. *Catholic Social Teaching*, *supra* note 1, at 301–02 (quoting Pope John Paul II, *Laborem Exercens* ¶ 20, (September 14, 1981), reprinted in THE DOCUMENTARY HERITAGE, *supra* note 10, at 381).

31. *Catholic Social Teaching*, *supra* note 1, at 303.

32. *Id.*

33. *Id.* at 304.

34. Only this deference to lay expertise, where appropriate, ensures that the energy and resources of religious groups is directed toward those areas in which they are most wise and well-equipped to contribute a valuable perspective that will not come from any other source.

35. *Catholic Social Teaching*, *supra* note 1, at 304.

36. *Id.*

by definition, be a limitation on the power of religious groups to assert influence. As a practical matter, this may be the most challenging limitation on the ability of religious groups to exercise short-term, tangible influence in the public square. A religious group that aligns too quickly or completely with a political party may find that

a body of doctrine . . . developed to challenge all to a more just view of life can also lull into complacency those who accept part of it but resist the challenge and discomfort inherent in realizing that neither party [today] neatly captures the full range of [many of the Church's] teaching[s] consistently or completely.<sup>37</sup>

While this “counter-cultural aspect of [many religious] teachings . . . should enhance its credibility . . . in the short term [it can] reduce the teaching’s impact on American law.”<sup>38</sup> However, it is also a powerful self-limitation that a church should impose from within when it comes to aligning itself with a political party.

#### IV. CONCLUSION

In the future, as in the past and the present, the task of navigating a role for religious groups in the United States will remain a challenge. Too often this task of determining where those lines should be drawn is approached from an overly legalistic angle. Churches should focus both on defining their most effective role and function within the public square and, equally important, on discerning where the limitations on that role may be drawn.

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37. *Id.* at 307.

38. *Id.* at 306.