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**The Catholic ethic and the spirit of corporatism : historical and contemporary links between church and state in social services, health care and education.**

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THE CATHOLIC ETHIC AND THE SPIRIT OF CORPORATISM:  
HISTORICAL AND CONTEMPORARY LINKS BETWEEN CHURCH AND STATE IN  
SOCIAL SERVICES, HEALTH CARE AND EDUCATION

A Dissertation Presented

by

RICHARD L METAFORA

Submitted to the Graduate School of the  
University of Massachusetts Amherst in partial fulfillment  
of the requirements for the degree of

DOCTOR OF PHILOSOPHY

February 1999

Political Science

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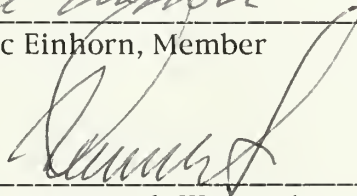
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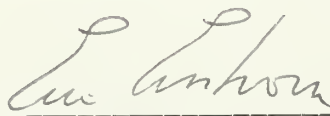
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ABSTRACT

THE CATHOLIC ETHIC AND THE SPIRIT OF CORPORATISM:  
HISTORICAL AND CONTEMPORARY LINKS BETWEEN CHURCH AND STATE  
IN SOCIAL SERVICES, HEALTH CARE AND EDUCATION

FEBRUARY 1999

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The political concept of *corporatism* is used to analyze Catholic-sponsored organizations as providers of US welfare-state services. Corporatism nowadays characterizes a political arrangement by which professional and industrial sectors acquire state-like powers in order to coordinate social productivity. Though corporatism usually refers to non-governmental fields which acquire government-like status, this dissertation takes a somewhat reverse perspective by focusing on the welfare state, an area which by definition already is governmental, yet by 1996 US welfare reform legislation is slated to increase its delegation of welfare delivery services to non-government practitioners.

Much of early twentieth century corporatist thought was founded on the papal encyclicals *Rerum Novarum* (1891) and *Quadragesimo Anno* (1931), but the Church cut its involvement with corporatism after disastrous coöptions by fascism. This study presents a revised formulation

of Catholic corporatism by tracing its origins to the eleventh century canon law concept of the Mystical Body of Christ, whereby sacred imagery was invoked to protect religious vocations from encroachments by the newly evolving sovereign state. Today, as the devolution of the welfare state includes faith-based organizations, the largest of which are Catholic, a more complete genealogical look at Catholic corporatism provides a framework to evaluate a welfare industry increasingly run by a semi-public aggregation of professional institutions invested with the duties and resources of the state.

The study uses a conjectural hypothesis, "Catholic Welfare Corporatism," defined by three traits - organicism (unity), subsidiarity (localism), and multimodality (performance across business, government and community forums). By this measure, Catholic-sponsored organizations in the welfare service industry are found to demonstrate a "social-corporatist" orientation at odds with the "state-corporatist" authoritarian category into which Catholic corporatism is typically placed. But the public warrant of Church-sponsored operations in the US have been contingent on their adaptation to American democratic pluralist values. The balance struck between a Catholic corporate identity and its responsiveness to the culture which it serves is key to its survival. Prewar Catholic corporatist inclinations toward monopolism, institutional hubris and political naiveté must be resisted for corporatist innovations to progress.

## PREFACE

When I told a Catholic friend recently that I was doing a dissertation on corporatism she acted as most people do, as though I had just lapsed into a foreign language. "What?" she asked, her eyes blank. Since we were in our church's parish house at the time, I thought it would be helpful to explain that for half a century corporatism was at the very heart of modern Catholic social doctrine, that is, before Mussolini got involved. "I want to look at it again," I said brightly. She winced and asked, "But why?"

One-sentence explanations of this thesis have an amazing capacity to repel a wide variety of listeners. Non-Catholics who care about religion assume that I am on the verge of an accusatory sermon, and everyone else seems to think I live in a windowless cellar reading crackpot manifestos. Some very brief autobiographical details may be helpful in explaining how I arrived at this particular project.

I have worked at various times throughout my life in a family food importing business created by my dad which, when I was about seven, converted from a proprietorship to a corporation. It was a distinction I took serious pride in as a child when typing its invoices and letters. I wasn't just doing office work, I was part of a *corporation*, the same species as Ford Motors or Firestone or Del Monte.

A lifetime later in graduate school I noticed "corporatism" in the syllabus of Howard Wiarda's Comparative Politics seminar, and had been told that Howard was an expert on Latin America. Scholars will be amused to know that in my ignorance I thought this might have something to do with the United Fruit Corporation, and when I heard that corporatism also involved Italian politics, I thought this might please my father, whose business I had recently quit. I thought corporatism might focus his wildly contradictory recollections of *Il Duce*, despite the fact that fascism was a major reason for his difficult emigration to the US in 1936.

I rapidly learned that corporatism had far more to do with politics than ethnic food importing, but its Catholic dimension kept alive some of my earliest impressions of a corporation: that corporations can be much more than simply a means to make money, that they can be very personal, cultural and even spiritual. What was a genuine surprise to me however, was that for most of Catholic history the idea of a corporation was concerned more with community than private accumulation. This view escapes most of my far younger fellow graduate students, who welcome the idea of work affiliations as labor unions, but tend to see business enterprises in Chomskian terms, that is, as little more than front organizations for criminals. (My attempts to discuss the Catholic Church have been met with similar skepticism). The more I looked into Catholicism and corporatism, the more it seemed to me that a fabulous misunderstanding was afoot, not simply in the sense of good intentions

gone awry, but that perfectly useful ideas had been thrown away by both extremes of the political spectrum, in a fashionable rush toward sexy clichés and facile imagery.

What does this have to do with the welfare state? The rest of this dissertation will speak for itself, but to state the idea briefly, as alternatives to the welfare state are considered, I feel that the Church's approach to the welfare industry deserves to be understood in its full historical and contemporary context, especially in its orchestration of business, state and community. The nineteenth century corporatist social doctrine of the Church is a powerfully useful tool to do this, because it suggests a thematic unity among what might seem diverse if not antithetical ideas: the Church, government, commerce, families, classes, labor, philanthropy, property and faith. However, no grand 'unified field' theory is proposed here, simply a way to orient thinking in ways which would otherwise be neglected.

### Methodological approach

This study casts an extremely wide net to gather its interests together. First, the Catholic Church's notions of work groups and service to society is easily as old as Christianity - although I consider the eleventh century the point at which the roots of organizational corporatism become visible, mostly as an outgrowth of medieval monasticism and the Investiture contest. Second, the modern political form of corporatism necessarily involves at least two major Catholic social documents between 1891 and

1931, the latter of which must unavoidably be described in terms of its entanglement with Italian fascism. Finally, Catholic-sponsored work in welfare state services requires a contemporary demonstration, certainly in social services, but also including the rich doctrinal context of Catholic education and the very big business of Catholic health care.

This is a broad work of synthesis, designed to stimulate questions and speculation. It is descriptive and explanatory, but it also recommends that Catholic constructions of corporatism be seen as a respectable and useful source of analytical insight about the welfare state. Though the contemporary section does draw on survey research, this study does not originate a sufficiently large sample of empirical data to produce any scientifically conclusive, quantifiable findings of its own. Neither does this study aim to prove a formal causal theorem, tested by numerical analysis. Rather, it offers a conjectural hypothesis, specifically, a model - "Catholic welfare corporatism" - observable in history and applicable to the present-day prospect of a devolved welfare state. It represents the insights and anecdotal reflections of at least thirty three professionals in the fields of Catholic sponsored social services, health care and education, and several years of my own reflection and analysis of corporatist history. Therefore, the prime purpose of this study is to orient ways of thinking about work affiliations, especially as an ethical-cultural process of social reconciliation, in the context of a pluralist, capitalist, democratic political system.

I suppose I am not the first to believe that I live in a unique moment in history, or that I was born in a spectacularly lucky nation. Nor is it a particularly original wish that I reflect the best of my era. My hope however is that this study may be slightly ahead of its time in reconciling what too often seems alienating, unreal, or out of date. I believe that the idea of faith and community as a fundamental element of work is either enormously underrated or largely invisible, and that American politics hasn't quite gotten a handle on it, but that it soon will.

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## CHAPTER 1

### FROM CORPORATISM TO CATHOLIC WELFARE CORPORATISM

#### The Problem of the welfare state

Since the 1970s doubts have been increasing about the US welfare state. The very word "welfare" has been shunned by the US Congress, whose title for recent welfare reform legislation is the "Personal Responsibility and Work Opportunity Reconciliation Act of 1996." <sup>1</sup> Besides the newly temporary nature of welfare checks, other aspects of the welfare state are under close scrutiny, particularly the cost and effectiveness of human services, health care and education. The 1996 Act responds to a growing political sense that money and effort is better invested by "devolving" more of the work of the welfare state to church-based organizations, whose sense of mission, especially to the disadvantaged, is now considered of vital assistance to the state's interests. Arguably, church-based organizations may in some aspects be more capable of serving the needy than the government bureaucracy. However there are also questions of First Amendment constitutionality, risks of sectarian bias, and worries about pressure for religious conversion ("catechesis"). Is it right for religion-based welfare state services, such as those sponsored by the Catholic Church, to be paid for by taxpayer funds? <sup>2</sup>

An analytical tool for this problem is *corporatism*, a political technique which delegates part of government's economic decisionmaking to self-directing, semiprivate vocational organizations. These organizations

are referred to by using the word *corporation* in a specialized way, that is, as officially empowered associations which represent their particular lines of work (this is also called "functional representation," in the sense of representation-by-function). These group associations can be made up of labor unions, tradesmen, nonprofit "public benefit" corporations and small business firms, but for most people, when the word "corporation" is used to describe a political arrangement, it implies an unholy alliance between big business and big government. It would follow, therefore, that corporatism must amount to a conspiracy to bypass democracy in the name of profit and power.

Such visions of injustice are not entirely unfounded. In fact, they typify many corporatist political outcomes in the twentieth century. But this was far from the intent among those who first conceived of corporatism and vastly different from the cultural traditions from which it emerged.

This study proposes a new version of corporatism, or at least a new term to describe a type of corporatism which already exists unrecognized: *Catholic welfare corporatism*. The study's purpose is to use Catholic welfare corporatism as a framework to address the question of using faith-based "welfare state surrogates," that is, transferring the work of the welfare state to Catholic-sponsored (and other religious) organizations. In the process, Catholic welfare corporatism suggests part of the altruistic significance which Catholics once saw in corporatism, and which nowadays is winning renewed interest in various interpretations of communitarianism.

It may be said that the hypothesis of this study is that the "independent variable" *Catholic welfare corporatism* promotes faith-based surrogates for the welfare state (the "dependent variable").

### Three key traits of Catholic Welfare Corporatism

Catholic welfare corporatism can be identified by three key characteristics which appear, to varying degrees, in the selected history of corporatism which this study traces, and in contemporary Catholic-sponsored social services, health care and education. These three traits are *organicism*, *subsidiarity*, and *multimodality*. The three traits are identified as follows:

#### Organicism

*Organicism* refers to a Catholic concept of unity, whose significance for collective "bodies politic" is that they are understood to be indivisible wholes distinct from other integral bodies and imbued with inviolable dignity. Organicism is grounded in ancient Catholic tradition drawn directly from Catholic notions of the Body of Christ, St. Paul's metaphor for the followers of Jesus. In the Middle Ages - precisely at the moment that the clergy's autonomy was under assault by the increasing ambitions of the state - canonists applied this sacred notion to the institutional Church as well, as the *Mystical Body of Christ*. The spiritual authority implied by this organic notion is used to justify a divinely ordained legitimacy independent the state.

## Subsidiarity

*Subsidiarity* is an administrative credo which holds that the decision making of local organizations should not be unnecessarily preempted by greater authorities. Subsidiarity is presented in the 1931 papal encyclical *Quadragesimo Anno* primarily as an indirect critique of Italian fascism. Though the corporatist concept of subsidiarity is thus grounded in the Church's autonomy from the state, it is not limited to jurisdictional conflicts with the state. Subsidiarity here also refers to the institutional autonomy which the Church's subsidiary organizations expect from the Church itself. Therefore subsidiarity in Catholic welfare corporatism is a rationale of corporate self-direction in both Church-state and Church-sponsor relations.

## Multimodality

Organicism and subsidiarity are traits which are uncontroversially recognized as corporatist. The third trait of Catholic welfare corporatism, *multimodality*, is less conventional, but is observable in Catholic sponsored public benefit (welfare-service) corporations as well as in their corporatist precursors in the Middle Ages, and in the late 19th/early 20th centuries.

Multimodality calculates political bargaining power in terms of versatility. It is not a trait which is exclusive to Catholic welfare corporatism, but it is a characteristic which is particularly strong in Catholic welfare corporatism. Multimodality describes an organization's capacity to operate simultaneously in multiple spheres of social activity

(called "modes of regulation," in the sense of three distinct forums of institutionalized social behavior).

Lange and Regini define "modes of social regulation" as methods by which "activities are coordinated, resources allocated, and conflicts structured," and label those modes state, market and community.<sup>3</sup> These modes are classically identified with Hobbes (the state - authority and hierarchy), Adam Smith (the market - exchange), Durkheim (the community - solidarity).

Catholic sponsored welfare services simultaneously perform in all three of these modes. They (1) do the work of the state as subcontractors ("surrogates") and bargain with government for regulatory space and revenue, (2) compete in the market with a variety of service providers including other nonprofit and investor owned businesses - and the government itself, and (3) serve the community as charitable benefactors in the religious tradition of the Church. Medieval antecedents of Catholic-sponsored welfare service corporations can also be shown to share these qualities in analogous ways.

These three traits, organicism, subsidiarity and multimodality will provide the reference points by which Catholic welfare corporatism is observed through the chronology of the study.

## The "Fourth Mode"

In addition there is a relatively new concept among neocorporatists which has particular interest for this dissertation, but it is not presented here as a defining trait of Catholic welfare corporatism. The "fourth mode" refers to Streeck and Schmitter's hypothesis of an additional mode of social regulation, beyond the three customary modes of social interaction (state, market, and community). The fourth mode is an arena which is populated only by corporations. Dubbed "the association," it focuses on the interactions corporations have exclusively with each other, especially the voluntary "organizational concertation" by which organizations interact in "today's bargained economies." <sup>4</sup>

The idea of a fourth mode suggests what might be called a *corporate social ethic* in a "society" made up of corporations. This is slightly different from what is meant by a "corporate citizen," which refers to a corporation's responsibility to society in general. The multimodal capabilities of Catholic welfare corporatism necessarily involve interaction across sectors. But the rights and responsibilities which corporations have to each other, especially in the field of welfare work, may call for a different ethic of competition. Catholic organizations explicitly commit to a Catholic moral standard toward those receiving welfare services. The spirit of Catholic corporatism would suggest similar standards of ethics regarding competition among welfare providers.

Among political scientists corporatism is somewhat notorious for its sprawl of definitions. Why does this study now propose to attach the words "Catholic" and "welfare" to corporatism?

### Early corporatism and "Catholic" corporatism

When corporatism first emerged as a modern political concept in Europe at the end of the nineteenth century, it was largely due to the 1891 papal encyclical *Rerum Novarum*, in which pope Leo XIII recommended vocationally based mutual aid societies as a way to rescue labor from the abuses of the industrial revolution. *Rerum Novarum's* inspiration for these "Worker Societies" was taken from the renaissance guilds of Florence, a favorite model among corporatists. The guilds suited the Church's new notions of social doctrine because they symbolized the peaceful integration of workers and merchants, rather than the class conflict which the era's Marxists pursued.

Expanding on the guild idea, corporatists of this time planned to divide a nation's work force into about a dozen special "corporations," each defined by a particular category of economic activity (e.g., manufacturing, agriculture, intellectual arts). Each widely inclusive corporation would gather together all the businesses, labor and professionals involved in a particular field to negotiate with government on nationwide economic goals such as income levels, production outputs and employee benefits. Each corporate group would be the only one of its kind authorized to negotiate with government for its sectoral interests, and each was expected to have the power to 'deliver' its membership as a unified whole in

response to bargained outcomes. Each would furthermore be responsible for implementing their own regulations in their own sphere of work. Corporatism would thus mobilize whole sectors of economies, leading workers and bosses to collaborate with unitary efficiency. Variations on this basic scheme were eventually put into place in a number of countries, with mixed results, and elements continue today even in the US, depending on how corporatism is defined.

Implicit in Catholicism's leadership of early corporatism was a critique of the liberal state, the individual-centered, electoral democracies which since the Enlightenment had not treated the Church kindly. Catholics preferred corporatism's "intermediary institutionalism," that is, a system which emphasized organizations which, like the Church, operated between the individual person and the state, and which represented what Black describes as a *milieu moral*, obliged to give their fellows "'mutual aid' as 'brothers' or friends.'" <sup>5</sup>

Among the early advocates of corporatism who appreciated this moralistic type of intermediary role were G.W.F. Hegel, Emile Durkheim and John Maynard Keynes. <sup>6</sup> Hegel felt the primary quality of the (corporatist) corporation was moral: "As the family was the first, so the Corporation is the second ethical root of the state, the one planted in civil society." <sup>7</sup> Durkheim saw in the "corporation or occupational group" a normative power capable of containing individual egos, something which he felt the state was unlikely to achieve because it was too remote. <sup>8</sup> Durkheim thought only a group formed around a shared vocation could achieve certain types of discipline, "regulated only by a group intimate enough

with it to know its functioning, feel all its needs. . ." <sup>9</sup> In 1927 Keynes similarly recommended economic units which lie

"somewhere between the individual and the modern State . . . semi-autonomous bodies. . . whose criterion of action within their own field is solely the public good as they understand it . . . a return, it may be said, toward the medieval conceptions of separate autonomies." <sup>10</sup>

"Medieval conceptions of separate autonomies" is what nineteenth century Catholic corporatists meant to inspire by using the Florentine guilds as their guiding precedent. The idea of institutional autonomy was consistent with the Catholic Church's feelings about the state, especially since the Church had been compelled to dismantle its own medieval trade guilds in the Papal States shortly after the French revolution (the last guild was closed in 1801). Thus, the Church's corporatist project at the end of the nineteenth century was a Catholic reasserting of anti-liberal, intermediary institutionalism, fostered by its understandable concern about a giant, all-enveloping state.

Joseph Schumpeter, the eminent Harvard economist who in 1919 was Austrian finance minister, was also among the advocates of corporatism evoking the Church's brand of hostility to liberalism: <sup>11</sup>

This [liberal] system of ideas, developed in the eighteenth century, recognizes no other regulatory principle than that of individual egoism . . . this principle of irreligious (and also perfectly stupid) rationalism imposed itself on a long line of thinkers. . . express[ing] only too well the spirit of social irresponsibility which characterized the passion, and the secular, or rather secularized, state in the nineteenth century. <sup>12</sup>

Sympathetic to industrial self government, Schumpeter at first presented corporatist ideas under the rubric "socialization" which Swedberg interprets as "neither that the state should be running the economy nor that the workers should. What was needed was some kind of intermediary socialist agency." <sup>13</sup> It is not surprising that at the time corporatism was touted as the "Third Way" answer to capitalism on the one hand and communism on the other. Corporatism became a Catholic answer to Marxism, packaged in the culturally traditional form of the guilds, offering instead a Christian doctrine of economic justice which reconciled labor unionism to capital without renouncing God or private property.

### The decline of Catholic corporatism and the rise of *neocorporatism*

Nowadays Catholic corporatism is at best an informal term, completely unofficial as far as the Catholic Church is concerned, for at least three reasons. First, it refers to a category of corporatism whose association with the Church, though extensive, was never referred to explicitly in a papal encyclical (an *encyclical* is a pope's official letter of policy). Second, Catholic corporatism contains some outright contradictions, including conflicting interpretations by Pope Pius XI and the Oswald Nell-Breuning, the original drafter of *Quadragesimo Anno*. But the third, most grievous reason for Catholic corporatism's unofficial status is its ill-fated convergence with Mussolini's Italian fascism, after which the Church abandoned any use of the term.

Because of the Italian fascist connection, corporatists of all types, Catholic especially, were regarded with great skepticism (even though

Mussolini decided to rename his version corporativism.) After the war, corporatism's guilt by association with fascists was partially alleviated by a vigorous effort to recast corporatism in different terms. *Neocorporatism* discovered a "societal" strain of corporatism in modern, mostly northern Europe (e.g., Sweden, Switzerland, Netherlands, Norway, Denmark) which featured good-faith coalition bargaining between the freely formed interests of industry and the advanced-democratic state. Societal or "social" corporatism provided a sharp (and hygienic) contrast with "state corporatism," a category which Schmitter links to authoritarian, neomercantile political cultures with little more than token democracy. <sup>14</sup>

Neocorporatism's "societal" distinction was an expansion of Manoilescu's 1936 *subordonne/pur* typology, which had concerned itself with how corporatism comes to be instituted, either freely rising up from civil society and therefore constitutive of the state ("societal corporatism,") or imposed - typically with a heavy authoritarian hand - "top-down" by the state ("state corporatism"). <sup>15</sup> Many Latin Catholic countries were lumped into the category of "state corporatist" and, combined with the Church's pointed indifference, Catholic corporatism has thus been marginalized or forgotten since World War II.

Old-school corporatism before the war - which necessarily included Catholic corporatism - tended to think in terms of a basic change in the structure of government, so that it amounted to an entirely distinct political form, on the order of "socialism" or "monarchism."

Neocorporatism instead speaks of political bargaining techniques among interest groups, so that its traits can be observed in a variety of regimes

and social orders. Thus another neocorporatist approach which Catholics never consciously adopted was to emphasize corporatism as a process, rather than as a formal structure.

The flexible, process-minded emphasis of neocorporatism allowed a new offshoot, *mesocorporatism*, to address the techniques of corporatism in the context of smaller or more regional circumstances. Whereas early corporatism envisioned twelve nationwide corporations, each representing the grand, system-steering concerns of entire economic sectors, mesocorporatism instead is suited to "more restricted intervention into specific sectors" on a more circumscribed range of issues, according to Cawson.<sup>16</sup> Mesocorporatism may be helpful in evaluating Catholic-sponsored welfare services because Catholic facilities are more accurately thought of as a sub-sector of the "welfare production industry," not as an entire field on their own. Also, even though Catholic services might be considered a nationwide affiliation, there is a great deal of regional variation which is based on the personal inclinations of the local bishop, and even more narrowly, on a given institution's corporate status under canon law.

Neocorporatism's shift in emphasis is important because few political regimes exist nowadays which can be described solely as "corporatist." Corporatism is mostly employed as one of a series of adjectives which describes the secondary, rather than the primary traits of a political system. Analytically, it orients the investigator by identifying one of the qualities which underlies a system, or which colors the dealings of political actors. However, it has been corporatism's lot to be regarded as some sort of

affliction or syndrome which is detected in the body politic, rather than prescribed as a therapeutic regime - its original purpose among Catholic corporatists.

Were there to have been a Catholic-neocorporatist discourse, however, a key issue would have been the nature of an "interest group." Whereas contemporary (corporatist or pluralist) politics understands industry councils and professional associations to be vehicles for the groups' own lobbying interests, Catholic corporatism and later organizational ethics orients toward wider public good, transcending a group's "personal" ambitions.

Unfortunately, because of the Church's renunciation of their corporatist project after the war, Catholic corporatism has been virtually absent from neocorporatist discussions. The Second Vatican Council (1960-63) deeply affected how Catholic institutions deal with politics, yet there has been virtually no neocorporatist analysis applied to its innovations. Using Catholic corporatism to analyze the representation of interests among Catholic-sponsored organizations working for the US welfare state is, therefore, something new.

### Corporatism's current predicament

Though neocorporatism has advanced corporatism's use in political analysis, corporatism as a practical method is a shadow of what it once seemed for Durkheim, Keynes and Schumpeter. In fact it recently has

provoked some bleak - if not explicitly negative - comments from its founding fathers.

Howard Wiarda recently wrote, "after several decades of experience, we know that Latin American corporatism . . . has run its course." He urges its dismantling because "praetorianism abounds; venality, conflict-of-interest, and double- (or more!) dipping are widespread; the system is profoundly corrupting." <sup>17</sup>

In 1965, Shonfield had used the word "corporatist" to mean public-spirited economic planning by an "organized group of producers, instead of leaving the outcome to the clash between individual competitors in the market." <sup>18</sup> Shonfield however also conceded that corporatist organizations "bypass the ordinary democratic process" to avoid "throwing their own deliberations open to the public [or] subjecting the bargains struck between the centres of economic power to regular parliamentary scrutiny." <sup>19</sup> Presumably this was the price to pay for corporatism's efficiency and for the compliance of private interests. However, mixing state power with group interests often looks like a rigged game run by elites, where clout rather than democracy prevails. US politicians are typically embarrassed by any suggestion of special interest politics, and steer clear of corporatism's brand of explicit and purposively empowered representation.

As Mancur Olson has noted, claims on the state by organized interests are expensive. He warns that advanced Western democracies suffer a worsening "institutional sclerosis" caused by ambitious interest

organizations which exist to lobby the state, and which thrive in an increasingly well-funded industry of policy persuasion. 20

But beyond the difference between sectoral interests and the good of wider society, there are structural distinctions between corporatism and lobbying. "Interest group lobbying" is conducted among an unlimited number of agents and agencies, in an "open market" of influence bartering. Corporatism instead is typified by a finite number of official representative groups which the government deals with exclusively, rather than involving numerous overlapping and redundant agents. Also, though corporatist deliberations are not entirely public, its "corporations" are at least established and conspicuous, representing large economic sectors whose issues are sufficiently large ("encompassing") that they are necessarily wedded to the interests of their political communities. Finally, corporatist associations represent the interests of *groups*, not of one or two huge business firms.

Theodore Lowi complains that America illegitimately treats lobbying groups as though they deserve the same rights as individual persons, an approach which he calls "interest group liberalism." 21 He calls the US government "corporatist," which by his reckoning means that it is abandoning its policymaking to private organizations. He says there is little distinction between today's US Departments of Commerce and Agriculture and the corresponding councils of German and Italian corporatist regimes during the era of fascism. But if what Lowi says is true - that the US treats groups as though they were persons - is it really such a

departure from American principles? Consider Howard Wiarda's 1981 definition of corporatism:

A "corporation" may be defined as an entity or body . . . recognized in law as constituted by one or more persons and having various rights and duties as a juridical person whose relations with the state are governed by both informal understandings, and oftentimes, formal contracts. "Corporatism" refers to a system of interest intermediation and national socio-political organization based upon these entities, and governing the relations between the state, with its licensing and regulating powers, and various societal groups. <sup>22</sup>

There are at least two elements in this definition which open the door to a Catholic corporatist answer to Lowi's concerns. First, the *juridical person* is part of the modern legal definition for all corporations, though it is not frequently cited in definitions of corporatism. It allows the flexibility to involve a variety of corporate bodies in the process of interest intermediation, including towns and universities as well as business and labor organizations. But it has particular significance for Catholic corporatism because the legal origins of the "juridical person" can be shown to have roots in the theological reasoning of Catholic canonists in the Middle Ages.

The canonists' notion of the juridical person was formative of Catholicism's expansive view of the corporation as a vehicle of social reconciliation, beyond its commonplace meaning as a business firm. It has further relevance for religion-based organizations whose identities - or corporate personalities - claim rights of religious tolerance, just as individuals do. The inclusion of the juridical person in Wiarda's definition therefore permits a link to Catholic corporatism's fundamental notions of an institution's public mission. For Catholics, one of the ways in which an

organization can be made analogous to an individual person is in the sense that both are called to transcend self interest for the good of the community. This is especially true in the case of public benefit services.

A second element of Wiarda's definition of corporatism allows corporatist relations with the state to be seen as sometimes governed by "informal understandings." This neocorporatist emphasis on process rather than structure is also relevant for Catholic-sponsored welfare services, because their relations with the state, though contractual when providing secular services, must necessarily be informal in matters regarding their Catholic religious identities, due to the First Amendment of the US constitution (the "establishment clause"). Thus in Wiarda's neocorporatist approach, political space is allowed for Catholic corporatism to recapture the normative spirit of public trust originally expressed by Durkheim, Schumpeter and Keynes.

The answer to Lowi is not to entirely refute his point that some corporations don't deserve the full panoply of rights due individual human persons, but to suggest instead that - subject to "the state, with its licensing and regulating powers" - some organizations might be acceptable as welfare-state surrogates, even if (and perhaps because) it includes spiritual distinctions which an individual person might have. Note that "spiritual distinctiveness" is offered here as a very relative term whose links to professional behavior is a matter of degree.

It is important to note that the modern business usage of the term *corporation* frequently implies a joint-stock corporation, which is made up

of shares which can be bought and sold as alienable bits of participatory property. This is clearly at deviance from Catholic notions of corporate integrity, in which individual "members" of the body of Christ are human beings intended to be joined inseparably and eternally as one with the Church.

This is not to say that Catholic understandings of the corporation - and by extension, corporatism - are antithetical to commerce or institutional self interest. Michael Novak's Toward a Theology of the Corporation fits religion into his conception of the business corporation, yet does so without losing the medieval canonists' dimension of community as part of the identity of the juridic person.<sup>23</sup> Novak writes, "The development of corporate law opened human history to the action of social institutions freely entered into. . . these 'mediating structures' which are larger than the individual but smaller than the state, make possible the flowering of human initiative. . ." <sup>24</sup> Paraphrasing Weber, what Novak finds interesting "is the rise of communal risk taking, the pooling of resources, *the sense of communal religious vocation* in economic activism." (my italics). <sup>25</sup> What Novak seems to suggest is that Catholic constructions of juridical persons permit a healthy self interest, but manage also to retain a special sense of community as part of the corporate personality.

There are of course profound dangers in what a group is capable of in the name of its own truth. Reinhold Niebuhr reminds us that groups cannot be expected to act with the same moral conscience of individuals, and believing that they do can have tragic consequences. But this does not exclude the possibility that some groups can be expected to be more

"personally accountable" than others, especially when those groups are granted public powers in fields which involve the needy.

### Welfare corporatism

We have seen corporatism as a system of institutional intermediacy. But what institution represents the welfare state *to the state*? That is, who represents the industry when the industry *is* the state? Williamson writes, "The key issue that arises is that in the welfare sector much production is carried out directly by the state itself, posing certain conceptual issues about how appropriate the idea of intermediation is." <sup>26</sup> Williamson then adds, "welfare production does appear to raise a number of important questions about the corporatist model, particularly in regard to the state." <sup>27</sup> He says that so far the corporatist analysis of welfare has been similar to other corporatist studies, which focus on business and labor topics. But this overlooks the bigger issue of welfare production's redistributive economics. Welfare therefore deserves special attention as an economic sector with a peculiarly direct effect on the entire capitalist system. Adding to its importance moreover, is that welfare is seen by some as radically contradictory.

Offe says the welfare state is contradictory because it leads the state to act in ways which are anti-capitalist, even though the state is supposed to support capitalism. That is, welfare subverts a system which is "commodified" by providing "non-commodified" goods. <sup>28</sup> Williamson says this "places welfare corporatism in the domain of broad political sociology,

rather than that of policy studies as has emerged in the . . . industrial and training spheres," like conventional corporatist analysis. 29

This study will show that there is a precedent which addresses Offe's welfare contradiction among the historical roots of Catholic corporatism. In the "charitable vocation" of the Church's medieval monasteries, there was a "gift economy" which was half-way between Offe's opposites of "commodities" and "non commodities"(see Chapter Three). In that gift economy, when a gift was given, some sort of gift was expected in return, so that there was in fact a type of trade. But it was not a cut-and-dried transaction in which property was completely "alienated," like a commodity which can be sold or transferred to whomever and then forgotten. When medieval benefactors gave a gift, they embarked on an ongoing social relationship with the monastic community. Recipients of gifts would likewise be socially obliged to the community, or at least accountable to a spiritual Providence.

This precedent has an immediate relevance to modern welfare, for which many prefer the involvement of spiritualized "family" communities over a faceless bureaucracy and a check in the mail. 30 The medieval monastic gift economy required reciprocal involvement and accountability from both givers and receivers (who in turn would become receivers and givers). Furthermore, corporatism is reflected in the medieval monasteries because they were primitive welfare-producing corporations in bargaining relationships with the secular ruling power.

What Offe sees as contradiction, others see as a benign paradox - the welfare state supports capitalism by keeping its workers healthy and skilled, even if it does provide goods for "free." But even so, the business of welfare is not always business, it is as Williamson says, a type of "political sociology" as well as industrial policy. The question then becomes, how is it that the state must predominate in welfare delivery? To what degree should the state control the style of welfare distribution as well as its financial arrangements?

Offe's believes that one of the effects of corporatism is "reprivatization," which diminishes "state-capitalist tendencies toward 'global regulation.'" <sup>31</sup> Thus corporatism restores to society what has been sectioned off by the state. For Offe, corporatism means "*an increase of the social character of politics within capitalism*, a dissolution of the institutional separateness, or relative autonomy of the state, the withering away of the capitalist state as a coherent and strictly circumscribed apparatus of power." <sup>32</sup> Welfare corporatism, therefore, can alleviate the welfare state's capitalist/anticapitalist "split personality" by dispersing its delivery through a more varied array of institutions.

The application of corporatism to welfare runs counter to the general impression of corporatism as a limitation to modern, especially American, notions of individual enterprise. Corporatism's association with large, exclusive, protective guilds draws criticisms of inefficiency, price fixing and wasteful patronage. But in the case of welfare, if there has been a monopolistic arrogation of power, it has been in the hands of the state. The net implication of welfare corporatism is the breaking up of that state

monopoly. Relatively speaking it is a "privatization" of what has become the exclusive domain of the state. So that paradoxically, unlike other arrangements of corporatism, Catholic welfare corporatism promotes a plurality of welfare agencies, (comparatively speaking) without completely relinquishing some aspect of scope, finance and integralism which the state precedent has developed.

Certainly corporatism has some contradictions of its own, particularly when it relies, says Keane, "upon arcane and highly inaccessible elite negotiations . . . [which] erode the institutional boundaries between 'civil society'. . . and the state." <sup>33</sup> But Offe adds that corporatism also has the potential to break down the "bourgeois definition of politics as the struggle for institutionalized state power . . . politics now transcends state institutions - new arenas of resistance are opened up." <sup>34</sup>

What Offe means by the "social character of politics" is revealed in his description of new social movements, noting that these "post industrial" movements believe in part that "processes of modernization that rely exclusively on instrumental and strategic rationality are inherently counterproductive and destructive." <sup>35</sup> Offe says the movements are not necessarily opposed to modernization, but simply want checks and controls on the "perverse self destructive consequences of technical, military, economic urban, and social policy modernization." <sup>36</sup> This could easily be an excerpt from the National Conference of Catholic Bishop's Economic Justice for All. <sup>37</sup> The Catholic Church, though more traditionalist than the movements which Offe describes, has the demonstrable capacity for

updated approaches to social welfare which suit Offe's notions of corporatism and social politics.

### Summarizing "Catholic welfare corporatism"

To summarize, this study combines elements of Catholic corporatism and welfare corporatism to suggest a new analytical framework: *Catholic welfare corporatism*. (CWC).

"Catholic welfare corporatism" is relevant to today's faith-based welfare services because (1) *Corporatism* addresses the idea of state surrogacy, that is, the authorizing of public powers and duties to organizations outside the formal apparatus of the state and (2) *Catholic corporatism* - construed in its original intent as social witness - understands certain organizations to have corporate identities defined by systematic principles of social responsibility which precede, and in some ways transcend the state. Thus Catholic welfare corporatism is presented as an analytical framework for the purposes of assessing independent, religion-sponsored social services, health care and education which are funded by the welfare state.

In general, Catholic welfare corporatism can be defined as a method by which religion-sponsored welfare services, including education and health care, are regarded as a vocational sector which is empowered by the state yet distinct from it. Catholic welfare corporatism depends on continuing financial commitment from the state (it is "privatized" only in the sense of its delivery apparatus, not in the state's financial role) and

relies on the concerted interests of government, nonprofit, religious-sponsored and investor owned corporations. Catholic welfare corporatism pursues regulatory latitude for diverse methods and research, including certain religion-based therapies and curricula, consistent with standards defined and regulated by relevant professional disciplines.

### How the rest of the study proceeds

Part Two is a study of the medieval Catholic construction of "the corporation." Canonist glosses on ancient Roman administrative law legitimized a separate type of sovereignty for the Church's realm, expanding on Augustine's conception of "two cities," the worldly and the spiritual. It is richly expressive of how institutions outside the state can nevertheless claim roles and resources - especially in morally justified remediation of the disadvantaged - comparable to that of the state.

In Part Three, medieval negotiations of distinct fields of economic and professional function are seen as consistent with the corporatist social initiatives taken by the Church to define its role in the 19th and 20th century world of democratic politics. The corporatist idea of self-regulating vocational organizations says much about what the Church hoped for its own security in a post-enlightenment world of secular democratic rule. By extension it laid the groundwork for other forms of interest group representation in their bargaining with the state. Part Three includes a review of late 19th century Catholic social doctrine, its development into the corporatist program epitomized by the 1931 encyclical *Quadragesimo Anno*, and its ultimate corruption by Italian fascism's "corporativism."

Part Four begins with a brief summary of the Church's political posture in American society, highlighting the National Conference of Catholic Bishops, a corporation of Catholic bishops who contribute to the identity of Catholic sponsored work as an identifiable, integral segment of the welfare industry. It is followed by a look at the business details and doctrinal particulars of contemporary Catholic sponsored work in social services, health care and education. Chapter Five includes a summary and a conclusion, followed by a list of Selected Works Consulted.

The Church's earliest corporatist remedies were justifiably eclipsed in the 20th century by overwhelmingly successful government-run social benefit programs. But as this century closes, the welfare state is in transition. A renewed consideration of Catholic corporatism is timely then, if not as a complete answer to the future of the welfare state, then as a source of questions about the how the welfare state might be more effective.

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<sup>1</sup> Public Law 104-193, 110 STAT. 2105. Note especially Section 104, "Services Provided By Charitable, Religious, or Private Organizations"

<sup>2</sup> Note that for the purposes of this study "religion-based welfare services" and "Catholic-sponsored public benefit corporations" are construed in the limited sense of professionalized human services, health care and formal education, which also involve some degree of state funding. It does not include, for example, theological seminaries, religious broadcasting and publishing, "faith healing" nor various other ecclesiastical, nonprofit or investor owned religion-related enterprises.

<sup>3</sup> Peter Lange and Mario Regini, eds., State, Market and Social Regulation: new perspectives on Italy. NY: Cambridge UP, 1989: 6.

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<sup>4</sup> Wolfgang Streeck and Phillippe Schmitter, Private Interest Government: Beyond Market and State (Beverly Hills: Sage, 1985): 2.

<sup>5</sup> Antony Black, Guilds and Civil Society in European Political Thought from the Twelfth Century to the Present. (Ithaca NY: Cornell UP, 1984): 26

<sup>6</sup> Though his father was a rabbi, as a child Durkheim experience a "religious crisis" under the tutelage of a Catholic governess, though he never converted.

<sup>7</sup> G.W.F. Hegel, The Philosophy of Right. Trans. T.M. Knox (Oxford UP, 1942): 154, quoted in Black 203-204.

<sup>8</sup> Emile Durkheim, Division of Labor in Society Tr. George Simpson. Preface to the Second Edition (NY: Free Press/Macmillan, 1933): 10

<sup>9</sup> Durkheim 5.

<sup>10</sup> John Maynard Keynes, The End of Laissez-Faire (London: Hogarth, 1927): 41-42 cited in Frederick L. Pryor "Corporatism as an Economic System: A Review Essay" Journal of Comparative Economics (1988): 317-344 at 318.

<sup>11</sup> Dale L. Cramer and Charles G. Leathers "Schumpeter's Corporatist Views" History of Political Economy 13 (1981): 746.

<sup>12</sup> Joseph A. Schumpeter, "The Future of Private Enterprise in the Face of Modern Socialistic Tendencies" (1945 Montreal speech) in Richard Swedberg, ed. Joseph A. Schumpeter: The Economics and Sociology of Capitalism (Princeton NJ: UP, 1991): 404

<sup>13</sup> Swedburg 14

<sup>14</sup> Some of Schmitter's adjectives for "state" corporatism include: delayed capitalist, authoritarian, neomercantile, nonexistent or plebiscitory elections; repressed class, ethnic, and language subcultures. He names as examples Portugal, Brazil, Mexico, Chile, and fascist Italy. "Societal" corporatism's adjectives include post liberal, advanced capitalist, open competitive elections, coalitional, exemplified by Sweden, Switzerland, the Netherlands, Norway, and Denmark. Phillippe C. Schmitter, "Still the Century of Corporatism?" Schmitter & Lembruch, Trends Towards Corporatist Intermediation (London: Sage, 1979): 13

<sup>15</sup> See M. Manoilescu, Le siecle du corporatisme Paris, 1936.

<sup>16</sup> Alan Cawson, "Varieties of Corporatism: the importance of the meso-level of interest intermediation" in A. Cawson (ed) Organized Interests and the State (London: Sage, 1985) 11-12. See also Cawson, Corporatism and Political Theory (Oxford: Blackwell, 1986): 107.

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17 Howard Wiarda, "Dismantling Corporatism" World Affairs. Spring '94: 202-203.

18 Andrew Shonfield, Modern Capitalism, The Changing Balance of Public and Private Power (Oxford: UP, 1965) quoted in Philippe C. Schmitter "Corporatism is dead! Long Live Corporatism!" Government and Opposition Winter 1989: 57.

19 Shonfield, quoted in Schmitter, "Corporatism is dead," 57.

20 Mancur Olson, The Rise and Decline of Nations (New Haven: Yale UP, 1982).

21 Theodore Lowi, The End of Liberalism (NY: W.W. Norton, 1979): 78. Note his use of the term "corporate state" rather than "corporatism" which by definition is noncompetitive - only one corporation per field, hence an immediate limitation to the burgeoning lobbying industry.

22 Howard Wiarda, From Corporatism to Neo-Syndicalism (Cambridge: Harvard UP, Center for International Affairs, 1981): 32.

23 Michael Novak, Toward a Theology of the Corporation (Washington DC.: American Enterprise Institute Press, 1981).

24 Novak 11.

25 Novak 47.

26 Peter J. Williamson, Corporatism in Perspective (London: Sage, 1989): 184.

27 Williamson 184.

28 Claus Offe, Contradictions of the Welfare State John Keane, ed. (Cambridge MA: MIT Press, 1984): 149.

29 Williamson 183.

30 For an account of the popularity of religious communities in matters of welfare, see especially Joe Klein, "In God They Trust" The New Yorker June 16, 1998: 40-48, and Joseph P. Shapiro and Andrea R. Wright, "Can Churches Save America?" US News and World Report Sept. 9, 1996: 46-53.

31 Offe 50.

32 Offe 249.

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<sup>33</sup> John Keane, introduction, Contradictions of the Welfare State, by Claus Offe (Cambridge MA: MIT Press, 1984): 28

<sup>34</sup> Offe 250.

<sup>35</sup> Offe 294.

<sup>36</sup> Offe 294.

<sup>37</sup> National Conference of Catholic Bishops, Economic Justice For All, Washington, DC: USCC, 1986.

## CHAPTER 2

### JURISTIC CONSTRUCTIONS OF THE CORPORATION

#### Introduction

This chapter explores the deep roots of Catholic corporatism which are revealed in the interplay between Church and state in the Middle Ages. First, it details the Church's canonical justification for setting the Church apart from the state, a legal reasoning which turned on the Church's conceptual metaphor of an organic, collective, corporate "person" - the Mystical Body of Christ. While borrowing heavily from Roman law, the Church added refinements which amounted to our modern understanding of the corporation and has implications for the special *corporatist* notion of the corporation which is central to Catholic welfare corporatism. Next, this chapter shows how medieval monasteries operated as corporate institutions prototypical of the "multimodal" qualities described in Chapter One, mixing finance with politics and philanthropy. Finally, this chapter reviews the Investiture contest as an attempt by the Church to define its vocational boundaries in the field of what was, at the time, the equivalent of social service, education and health care.

In these ways the medieval Church provides the genealogical baseline for Catholic welfare corporatism - in the organicism of its corporate religious-legal imagery, the multimodality of its practice, and the subsidiarity of its institutional autonomy.

## Canon law and "the corporation"

The modern legal definition of a corporation includes these key characteristics, as [1] an "artificial person or. . . body politic. . . [2] having a personality and existence distinct from that of its several members. . . [3] with the capacity of continuous succession . . . " <sup>1</sup> American jurists cite 19th century case law as standard precedent, but these three criteria can be seen coalescing as a legal conception about a thousand years ago, when the Roman Catholic Church began to refer to itself as the *corpus mysticum* - the "Mystical body of Christ." <sup>2</sup>

How the Church arrived at the term *corpus mysticum* was as ambitious and convoluted as the politics of the era. For nearly nine centuries the Pauline metaphor *corpus Christi* had been used to refer to the Church as the universal assembly of all Christians, but by Carolingian times *corpus Christi* acquired a second definition, as the communion bread. <sup>3</sup> *Corpus mysticum* was then introduced as a better way to describe the miracle of the Host, but by pope Gregory VII (1073-1085) there was another switch, related to the burgeoning growth of monastic organizations. <sup>4</sup> *Corpus mysticum* no longer exclusively meant the Eucharist - the evocative phrase was now applied to the institutional church, including, Kantorowicz tells us, "the Church as the 'corporation' of the clergy." <sup>5</sup> The corporatist rationale becomes important as the anchor by which the Church hoped to hold ground in the shifting political tectonics of the Middle Ages.

### Political implications of the canonical "corporation."

Simultaneous with the Church's self-conception as an institutional corporation - in the modern sense sketched above - political thought extended the Church's "corporal" notion of organizational autonomy to the nation-state. According to Ladner, "It is only from the era of Gregory VII (1073-1085) that the states were seen as bodies politic, while at the same time the Roman Catholic Church developed its institutional-corporational side as one aspect of its being the Body of Christ." <sup>6</sup> For its part, the papacy, "in a world of nascent sovereign powers, had to emphasize the role of the Roman Church as a 'corporation,'" intending to establish itself in political and sociological terms as concretely as the secular powers. <sup>7</sup>

In their search for a rationale for the autonomy of the nation-state from imperial rule (and, ironically, the pope), secular rulers derived from the Church's construction of a corporation what Gierke called the "corporational or body politic theory of the state." <sup>8</sup> According to Tierney, from 1250 on secular rulers began to use the term "mystical body of the *commonwealth*" -*corpus mysticum reipublicae*. <sup>9</sup> Tierney adds that the "idea that Christendom was made up of an assembly of states that recognized no temporal superior. . . was not invented by Grotius himself of course, nor by the fifteenth century civic humanists, nor by Bartolus . . . It goes back to the works of our early Decretists." <sup>10</sup> (*Decretists* are experts in Pope Gregory VII's revised canon law of 1140, explained below).

When Simon of Tournai wrote, "Two are the bodies of Christ: the human material body which he assumed from the Virgin, and the spiritual

collegiate body, the ecclesiastical college," he marked the beginning of a new era of political reasoning.<sup>11</sup> Christ's human and divine natures were well established, but this was something new, this was a differentiation of *bodies*, applied to an institutional collectivity. Kantorowicz tells us, "Here, at last, in that new assertion of the 'Lord's Two Bodies' - in the bodies natural and mystic, personal and corporate, individual and collective of Christ - we seem to have found the precise precedent of the 'King's Two Bodies,' which took hold in Elizabethan England nearly four centuries later."<sup>12</sup>

Though originally symbolic of Christ as God, the figurative use of the body by the Church and the Decretists allowed "the clerical corporational institution of the *corpus ecclesiae iuridicum* to coincide with the *corpus ecclesiae mysticum* and thereby to 'secularize' the notion of 'mystical body'".<sup>13</sup> Thus the "corporation of the clergy" had legal consequence in the ascending world of secular jurisdiction. The Church's "fictional person" - the made-up collective person which, figuratively speaking, was the worldly manifestation of Christ - could be the basis by which the Church could be construed as a legal personality. Kantorowicz writes:

Here the mysterious materiality [of] the term *corpus mysticum* . . . has been exchanged for a juristic abstraction, the 'mystical person' . . . synonymous with, the 'fictitious person,' the *persona repraesentata* or *ficta* which the jurists had introduced into legal thought and which will be found at the bottom of so much of the political theorizing during the later Middle Ages.<sup>14</sup>

Thus the institutionalist rationale represented by the "Mystical body" became not simply a device of vocational self-determination by the "corporation of the clergy," but of political legitimacy leading to a modern concept of the state. Out of this context medieval jurists developed a hybrid

of Roman law and clerical collegiality to formulate an updated version of the *universitas*, a bedrock concept of political sovereignty. <sup>15</sup>

### The diction of rulership in classical Rome and the Church

There is a term from chemistry - *enantiomorph* - which Jungians have applied to the behavior of rivals who take on each other's characteristics. <sup>16</sup> The Church and state were enantiomorphs during the Middle Ages, such that it is difficult to identify what behavior originated with whom. In the time of Gregory VII (1073-1085), apparently the state found it useful to mirror the Church. Ladner says, to the extent the secular nations envisioned a "community of people consisting of rulers and ruled . . . It can hardly be accident that in Christian times before the Gregorian era it was as a rule not applied to the state but to the Church." <sup>17</sup>

However, neither is it surprising that the Church's thinking on behalf of its own institutional boundaries and legitimacy should also bear the seeds of imperial Roman political administration. Though the Church's arguments about the legitimacy of corporate bodies was arrogated by the state for its own purposes in the Middle Ages, the Church had derived much of its own basic legal concepts from classical Roman law in order to adapt it to the needs of the Middle Ages.

Most of the medieval advances in administrative theory, most importantly the monk Gratian's twelfth-century canonical milestone *Concordance of Discordant Canons* (the *Decretum* - commissioned by Pope Gregory VII and published later in 1140) were based on a rediscovered text

of the (Christian) Roman emperor Justinian's *Corpus Juris Civilis* (528-38).

<sup>18</sup> But Imperial influence on the Church's thinking can be found even earlier, in the late fourth century St. Jerome's "Vulgate" translation of the Bible which Ullmann tells us "coincided with the first manifestations of the papacy as a governmental institution." <sup>19</sup> The Roman influence is pronounced. "Every biblical theme, thought, imagery, or event was depicted in Latin. . . the Bible was seen through Roman and Latin eyes. . . Jerome had used terms and concepts taken from the language of Roman administrators, Roman officials, Roman lawyers, and the like. . ." <sup>20</sup>

Roman legal tradition was also embraced by St. Ambrose (c. 340-97), a contemporary of St. Jerome, and an aristocratic Roman scion and governor of Milan when he was also named bishop there. Norman Cantor writes that St. Ambrose "played a large role in moving the church toward a legalistic style of ecclesiastical life and toward the establishment of canon law as a system based on punishment, duty, office and obligation." <sup>21</sup> His compendium of instructions to Christians, *De officiis ministorum*, was based on Cicero <sup>22</sup> and its approach "crystallized the new concept that bishops were authoritarian figures quite separate from ordinary lay people. A bishop dictates, decrees and pronounces edicts." <sup>23</sup>

Ullmann contends that the Old Testament notion of power descending from God to king as presented in the Latin Bible constructed a "thoroughly Roman notion of imperium." <sup>24</sup> The papacy was then able to cite Latin-couched Roman models which in turn "might have appeared to corroborate and confirm the bible." <sup>25</sup> Biblical values expressed in the language of the Roman Imperium served the ambitions of secular and religious

monarchism such that "the tenor, language and orientation of the Bible came to show, if not an affinity, at least no substantial difference with the themes of government exercised in the late Roman Empire." <sup>26</sup>

### Church corporations and Roman precedent compared

Classical Rome's great innovation was private law, which Chroust describes as the first "practical expression of the . . . irreducible worth and dignity of . . . individuality." <sup>27</sup> It conferred upon the individual male Roman citizen head-of-household a "legal personality." Though some *groups* had a crude notion of legal personality, Roman classical law "had no concept of the corporation," in Nicholas' words, because the "Roman law of corporations" failed to fully apprehend key corporate traits, namely, an independently constituted artificial person, a personality distinct from its members, and "immortality" (in other words the capacity for continuous succession). <sup>28</sup>

### Roman corporations as creatures of the state

Among the imperfect ways in which classical Romans recognized collective persons is that they were considered little more than extensions of the state. According to Gierke, "[n]o Roman corporation existed that had not at first been recognized by Roman constitutional law as a *political* unit. . . ." (my italics). <sup>29</sup> However some groups did have the rudimentary traits of legal personality, and in rare instances the *Corpus juris civilis* used the word "person" to refer to municipalities and law courts (but these were departments of government). <sup>30</sup> Gierke adds that classical Rome's

incomplete notions of collective personhood lacked the "image of an *external* legal association," independent of state creation.<sup>31</sup> It was the Christian Church, interacting with Germanic tribal custom, and subsequent to the Investiture contest, which was to formalized the missing dimension as an entirely different type of collective personality, one which considered itself, in Gierke's words, a "transcendent associative unity" whose existence was God's will, not a statutory fiat of any territorial or imperial state.<sup>32</sup>

#### The Roman *Societas* as partnership, not true corporation

A frequently cited precursor to the corporation found in classical Roman law was the partnership association called a *societas* (a blanket term which referred to virtually all joint agreements). The majority of *societates* were legally analogized as fraternal relations,<sup>33</sup> especially the *societas omnium bonorum*, which was usually an agreement among heirs to merge all assets and thus avoid the breakup of inherited property such as contiguous farmland (cf. the "indivisible totality" of Roman inheritance mentioned earlier).<sup>34</sup> The form grew to accommodate unrelated individuals in common purpose other than agriculture,<sup>35</sup> (e.g., to preserve open space, or share travel expenses)<sup>36</sup> but the *s. omnium bonorum* was mostly geared to farming arrangements between family members, and amounted to a commonly held property title which did not constitute its own corporate personality.<sup>37</sup>

However, the *societas publicanorum* was recognized as having a certain personality independent of its members although it still bears the

characteristic Roman juristic mark of a state enterprise.<sup>38</sup> One of the ways *s. publicanorum* was "its own person" distinct from its founding members was that it offered limited liability investment opportunities, so that losses experienced by the *societas* were distinct from the owners' personal accountability (other than the amount invested). Nevertheless *s. publicanorum* existed as a state subsidiary, created by the state.

The *publicani* (originally, "tax farmers") paid the state for permission to commonly exploit public resources (e.g., the state salt works or with the *s. argentariorum*, silver mines.) The *publicani* expanded *s. unius negotiationis* into a new form as instrument of a "powerful capitalist class" which engineered large scale, complicated deals with the state. (Livy wrote of a *s. publicanorum* which supplied the provisions for the army in Spain).<sup>39</sup> Though there is no evidence that investment "shares" could be traded, (a way in which a corporation could be alienated from its members) though some partners "contributed capital and shared in profits without taking part in management and without risking more than the amount invested."<sup>40</sup> Some *societates* would stipulate that one of the partners be excluded from any losses, though all parties were required to make some contribution of capital or labor.<sup>41</sup>

### The Christian notion of corporate immortality

We have just noted how Roman corporations did not arrive at the Catholic idea of a corporation with a separate legal personality transcendent from its individual members, nor as an association wholly separate from the state. Another capability which the classical Romans did

not imagine for a corporation (other than the state itself) was immortality. "The most significant feature of the personified collectives and corporate bodies was that they projected into past and future, that they preserved their identity despite changes, and that therefore they were legally immortal." <sup>42</sup> Beyond the obvious case of the Resurrection, Aquinas' view of immortality also applied to the "Corporation of Christ" <sup>43</sup> in the tradition of Augustine's City of God, a "'mystical society of all the elect, past, present and future.'" <sup>44</sup>

However in the manner of enantiomorphs, it is no surprise that the Roman Empire ("eternal Rome") served as a model for the sempiternity of the Church. Kantorowicz reminds us that Justinian's law held the "empire was founded by God directly; that the empire was 'forever;' and that, therefore, as Andreas of Isernia put it, 'the Church does not die and is forever, like the Empire.'" <sup>45</sup> The idea of an eternal empire appealed to certain popes and canonists in the twelfth and thirteenth centuries, who imagined the Church as the vehicle destined to accomplish Roman immortality, with the pope as its new type of emperor. <sup>46</sup> Consistent with the mirror relationship among these ideas, the basis for Rome's assumption of immortality was the Bible, <sup>47</sup> in which Jerome interpreted that the final (and everlasting) of Daniel's Four World Monarchies was Rome. <sup>48</sup> Aquinas pursued this thought, saying the end of the Hohenstaufen empire had transposed the Roman Empire from the "temporal to the spiritual order and infers that the prophecies concerning its eternity now apply to the Catholic Faith of the Roman Church." <sup>49</sup>

The Church seemed as inclined to describe its immortality in terms of empire as the empire was to wrap its perpetuity in the righteousness of religion. But in the context of the politics of the Middle Ages, the Church as *corpus mysticum* was arguing for its own sovereignty as a corporation which was constituted independent of the state, including the Roman imperial state. Kantorowicz writes that as the nations made their case for sovereignty, the new territorial, quasi national state,

independent of the Church and the Papacy, quarried the wealth of ecclesiastical notions. . . placing its own temporariness on a level with the sempiternity of the militant Church. In that process the idea of the *corpus mysticum*, as well as other corporational doctrines developed by the Church were to be of major importance. <sup>50</sup>

Other than for the imperial state itself, the Roman law precedent for the 'immortality' of a self constituted corporation is scant. Cicero once attempted to argue (in a case of contested inheritance) that partnerships were not necessarily ended by death, but there is no evidence of any legal structure which was in place which defined corporations in those terms. <sup>51</sup>

However, in the historical tangle of imperial and religious notions is a trace of institutional perpetuity found in the custom of religious *property* which Gilchrist finds "drawn almost entirely from the Roman Law" <sup>52</sup> on which rents, fines and 'fifths' were dedicated revenue for the religious community. <sup>53</sup> The Church would not fail to exploit this precedent during the Investiture contest, but strictly speaking the property in question was the sacral property of the pagan state religion, which was treated under the *jus sacrum* , which in turn was a subset of the *jus publicum*, so we arrive again at the state as proprietor. <sup>54</sup> Yet there was still another

enantiomorph in store, as the concept of inalienable church property would return as a model for the secular state in the form of the *fiscus*, or the inalienable "holy" treasury.<sup>55</sup> (The Church as a justification for taxation is an idea taken up later in this chapter).

### The organic collectivity and pluralism

To paraphrase Voltaire, "God created Man in his image, and Man returned the compliment". Similarly medieval organicism took the single most certain reality of life - our own bodies - and projected it on to society. This incarnational fact of life, writ large, in turn inspired other analogies - just as the Church was the supreme universe, so there were other, smaller universes (*universitates*) held together by organicist gravity, yet in orbits of their own by virtue of their individual corporate identities. Within the all-encompassing corporation of the Church were similar corporations, each a 'body' unto itself, in the spirit of Catholic corporatism.

It is easy to imagine that Church organicism intended to form a monolithic society, but its effect was a comparatively pluralistic, a "mediate social articulation" to use a neocorporatist term. This pluralism is epitomized by the monastic corporations - which mirrored in diverse ways the corporate model of the institutional church. Undeniably the array was authoritarian. As Chroust found, organism's *principium unitatis* exalted God as the Absolute One before and above plurality, and "every particular group, gild, estate or social organ held a definite place within a strictly hierarchical order extending from the lowliest individual to the supreme single whole." <sup>56</sup> But this did not preclude plurality, rather it reified it.

Diversity was a wholesome effect of this ordered unity. Augustine took the image of an all-encompassing God and made it into a recursive analogy in which "every particular being in its infinitely-varying individuality appears as a replica of the universal whole 'in order that all men might serve as images of the single universal administration of all things.'" <sup>57</sup> Using God (our miraculous self) as the code and the Church as the prototype, medieval civilization replicated its ideal form in countless new *corpora*.

### State organicism versus Church organicism

John of Salisbury's organist tract *Policraticus* in 1159 pictured a body politic composed of members and organs with specific functions. <sup>58</sup> But when Salisbury likened society to a single body whose head was the state and heart was the church, his version of organicist imagery marked a significant restatement of hierocratic theory. "Along with the traditional hierocratic theory, he admitted that the end of the state is the perception of truth and the rewarding of virtue. . . This is a subtle but highly significant departure from political Augustinianism; John's modification of hierocratic doctrine would have infuriated Gregory VII." <sup>59</sup> It maintained that the state must serve the church, but his apportionment of the cognitive function to the state gently subverted the Church hierarchy. That there should be a division of labor within the body of society was plainly organicist. But Salisbury's nascent nationalist organicism deviated from a position that the Church had carefully constructed since Gelasius, whose fifth century doctrine asserted the absolute sovereignty of *auctoritas sacra* over the *regalis potestas* of royal power.<sup>60</sup>

Within the hierarchy of social functions the church was the organ with the ultimate claim on interpretive analysis, especially as to who plays what role within that hierarchy. That God "exalts some above others so that the beauty of order would the more shine forth among men" was the quintessential religious core of descending power.<sup>61</sup> Cantor tells us Salisbury's organicist (and prescient) solution "was to ascribe moral qualities to the state, thereby preserving in theory the ethical foundations of the social order. But to do so was to give the state moral sanctions and implicitly to increase its authority."<sup>62</sup> The implications are far reaching and of contemporary relevance. To what extent moral consciousness is an explicit mission of the state, or the business of institutions other than the state continues to be a problem central to political thought and to Catholic welfare corporatism.

#### Church organicism and collegial decisionmaking

A likely modern assumption is that whatever uniformity there was among medieval Catholics was a matter of highly authoritarian papal imposition but there is another side to organicist unanimity. As early as Gregory the Great (590-640) outcomes reached in the deliberations of general councils of prelates had the force of ecclesiastical law, in part because their deliberations were taken as unanimous. Tierney writes, the "canons of the early general councils were always to be preserved inviolate because they were established by universal consent (*universali consensu*). [Gregory] added that anyone who went against the canons 'destroyed himself and not them.'" <sup>63</sup> The Church eventually developed a

"Doctrine of Indefectibility" which held "that the church as a whole would always adhere to the true faith when it acted together, as a corporate entity." <sup>64</sup> The outcomes of these councils were obviously not a product of universal suffrage, but neither were they monarchical dictates - unless the deliberative body itself could be considered the monarch - a precocious notion for the end of the sixth century.

In yet another refinement of Roman legal precedent, the canonists took a phrase from Roman classical law - *Quod omnes tangit ab omnibus approbetur* (What touches all is approved by all) and turned it into a constitutional doctrine of corporate consent. Among other things, *Quod omnes* was construed by the Decretists Huguccio, Alanus and J . Teutonicus to mean that on matters of faith, even laymen should be represented at councils. Further, because a commonwealth amounted to a single entity, its nature transcended a mere collection of individuals, therefore "accordingly any assembly representing the single personality of the commonwealth must also be a corporate body." <sup>65</sup>

Until the Decretists *Quod omnes*, as with the other Roman law precedents cited earlier, had been no more than a technicality of private law with no application to corporations. The canonists gave it constitutional significance by using it in regard to "corporate bodies, explaining that here the approval of the corporation as a whole was required, not that of each single member. They found new applications for it." <sup>66</sup>

Executive accountability awoke around 1200 when the Decretists applied *quod omnes tangit* to explain the nature of general councils, which Tierney explains meant that "A matter that 'touched' the whole community could be approved by a representative assembly acting on behalf of all." 67 Mentioned above was distinction which the "King's Two Bodies" made between office and officer. It was not long before the same logic would reach the pope. The eponymous Refinus (c 1160) wrote "in a case which touches the whole church the pope can be judged by the church" and elsewhere, in dealing with an erring pope, "just as what touches all is to be approved by all if it is good, so it should be rejected by all." 68

Ultimately, the Church was not spared the new impulses for self-justified sovereignty which it had originally used to expertly in its own interests. Cynus of Pistoia foreshadowed Marsilius and the humanists in eventually bypassing the Church entirely: "Nor is it absurd that the empire should be derived from God and the people: the emperor is from the people, but the empire is called divine from God." 69 Kantorowicz notes, "the co-agency of an eternal God and a sempiternal people made the cooperation of the Church as superfluous as it had been in the fourth and fifth centuries: the Church was practically frozen out, as the continuity was achieved para-ecclesiastically by the powers of God and the people or "nature." 70

### Review of Chapter Two

Compelled by the Investiture struggle to stand apart, Church and empire internalized each other's characteristics and in the process reconceived relations between ruler and ruled. But it was the Church

which first imagined itself as a transcendent legal personality constituted apart (and above) any other temporal power. Based on a Christian vocabulary of body metaphors, the inventory of ideas from the "corporation of Christ" helped medieval politics to fully visualize the juristic corporation. By extension, elementary legal concepts about the modern nation, as well as the organizations which intermediate between state and society, were similarly inspired. As the rationale of the modern independent nation strengthened, the Church needed a technique of institutional boundary protection and professional self definition. This became the essence of Christian corporatism and its progeny, the Renaissance guilds.

We next turn to the era's fulfillment of "mediate social articulation" in the form of the monastic corporations.

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<sup>1</sup> Dartmouth College v. Woodward, 17 US. (4 Wheat.) 518, 636, 657, 4 L.Ed. 629 qtd. in Henry Campbell Black Black's Law Dictionary (St. Paul, Minn.: West Publishing, 1983): 180.

<sup>2</sup> As noted in chapter one, modern political science is careful to distinguish the system of corporatism from the business corporation. However this chapter deals with developmental history in which they share a common origin.

<sup>3</sup> From St. Paul in I Cor. 12:12 and 27 and elsewhere.

<sup>4</sup> Ernst H. Kantorowicz, The King's Two Bodies (Princeton: UP, 1957) 195. *Corpus mysticum* was a phrase from the monastic movement. Two monks of Corbie, Radpertus and Ratramnus, followed Hrabanus Maurus in the introduction of new term, associated with transubstantiation controversies.

<sup>5</sup> G. B. Ladner , "Aspects of Medieval Thought on Church and State" *Review of Politics* v.9 (Oct. 1947) No. 4) 421. The communion host was then required to be known as *corpus verum* and the general reference for Christians became "Christendom." Marsilus' *Defensor Pacis* disparaged the Church's power elite by replacing *Corpus Christi Mysticum* with

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*universitas fidelium* and reasserting the Pauline term *Corpus Christi*.  
Ladner 412.

<sup>6</sup> Ladner 414

<sup>7</sup> Ladner 415

<sup>8</sup> Cf. Gierke, *Das deutsche Genossenschaftrecht* (Berlin 1881 v. III 546)  
cited in Anton-Hermann Chroust, "The Corporate Idea and the Body Politic  
in the Middle Ages" (Review of Politics V. 9 (Oct. 1947) No. 4): 432.

<sup>9</sup> Brian Tierney, Religion, law, and the growth of constitutional  
thought 1150-1650. (NY: Cambridge UP, 1982): 19.

<sup>10</sup> Tierney 22.

<sup>11</sup> Simon of Tournai, qtd. by Kantorowicz, 198. This dichotomy was  
"almost customarily" invoked by Lothar of Segni (later Innocent III).

<sup>12</sup> Kantorowicz, 43 and 199.

<sup>13</sup> Kantorowicz 201.

<sup>14</sup> Kantorowicz 202.

<sup>15</sup> Tierney notes that Ricardus Anglicus  
attributed to the national king an autonomous power derived from  
neither pope nor emperor but from the corporate body of the realm  
the *universitas*. Already before 1200, he is attributing to his king  
*iurisdictio et imperium*; . . . the words implied a power to judge, to  
legislate, to command - all that would later be covered in the work  
'sovereignty'. We are at the beginning of a theory of the national  
state. Tierney 22.

<sup>16</sup> Enantiomers are ". . . crystals whose molecular structures have a  
mirror image relationship to each other" Webster's New Collegiate  
Dictionary (Springfield: G. & C. Merriam, 1977): 374.

<sup>17</sup> Ladner 413-414.

<sup>18</sup> Other administrative advances include the contributions of  
Germanic custom (which will be discussed later along with the Guilds) as  
well as Byzantine influences.

<sup>19</sup> Walter Ullmann, "The Bible and Principles of Government" The  
Church and Law in the Earlier Middle Ages (London: Variorum, 1975): 183.

<sup>20</sup> Ullmann, "Bible" 185.

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- 21 Norman F. Cantor The Civilization of the Middle Ages (NY: HarperCollins, 1993): 71.
- 22 Anchor Atlas of World History Vol. I tr., Ernest A. Menze (NY: Doubleday, 1974) 107. The Milan Edict of Toleration in 313 granted freedom and equality for Christians and formal elimination of cults of the state.
- 23 Cantor 71.
- 24 Ullmann, "Bible" 196.
- 25 Ullmann, "Bible" 224-225.
- 26 Ullmann, "Bible" 224
- 27 Anton-Hermann Chroust, "The Corporate Idea and the Body Politic in the Middle Ages" Review of Politics (Oct. 1947): 432.
- 28 Nicholas 185.
- 29 Otto Gierke, Associations and Law: The Classical and Early Christian Stages trans., ed., George Heiman (Toronto: UP, 1977): 117.
- 30 Digesta , cited in Kantorowicz, King's, 305. Notable for its precedence to the role of the churches and monasteries in funeral and burial rights, this is part of the *lex mortuo* .
- 31 Gierke 144.
- 32 Gierke 144-145.
- 33 Barry Nicholas, An Introduction to Roman Law. (Oxford: UP, 1962): 187.
- 34 H. F. Jolowicz, Historical Introduction to the Study of Roman Law (Cambridge: UP, 1932): 306.
- 35 Alan Watson, The Law of Obligations in the Later Roman Republic (Oxford: Clarendon, 1965) 137. Over time more dynamic and abstract arrangements were devised, such as the *s. unius negotiationis* , which created a partnership to operate an ongoing business in a specific line of work. After time a more wide-ranging variation was developed, the *s. universorum quae ex quaestu veniunt* , in which the parties were free to share in all acquisitions of any type of business transaction, but it was not a legal personality separate from the partners.
- 36 Nicholas 185.
- 37 Watson 126.

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- 38 Gierke 100-101.
- 39 Watson 135.
- 40 Jolowicz 306-307.
- 41 Nicholas 186.
- 42 Kantorowicz 311.
- 43 Apparently this is a phrase from Rudolph Sohm, qtd. in Kantorowicz 202.
- 44 Ladner 403.
- 45 Kantorowicz 294.
- 46 Ladner 418.
- 47 Daniel 7:14 & 23 cited in Walter Ullmann, The Growth of Papal Government in the Middle Ages (London: Methuen, 1970): 231.
- 48 Kantorowicz 292.
- 49 Ladner 420.
- 50 Kantorowicz 207
- 51 Gaius Quinticius had land in partnership with Sextus Naevius. Gaius willed his share to Publius Quinticius whom Sextus denied. It remains unclear, though, whether Cicero was arguing an extension of inheritance law here. Watson 132.
- 52 J. Gilchrist The Church and Economic Activity in the Middle Ages. (NY: St. Martin's Press, 1969): 15.
- 53 Gierke 114. The inheritance of an intestate vestal, however, went to the *populus*.
- 54 The pagan priesthood was essentially civil service. There was a "sale" in a transactional sense, but this was a pro forma procedure in which state property was dedicated to the gods.
- 55 Kantorowicz 185.
- 56 Anton-Hermann Chroust, "The Corporate Idea and the Body Politic in the Middle Ages" Review of Politics (Oct. 1947): 427, 444.

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57 St. Augustine, De Deversis Quaestionibus qtd. in Chroust 426.

58 E.g., the king or prince as head; legislature (Senate) as heart; judges and governors eyes, ears and tongue; soldiers, hands; financial officers, stomach; peasants, feet; etc. Cf. Brinton 312; Kantorowicz 199.

59 Cantor 327.

60 Chroust 432.

61 Aquinas Summa Theologica I q. 96 art. 3, cf. Romans 13:1 "things of God are well ordered" qtd. in Chroust 441.

62 Cantor 327.

63 Tierney 16.

64 Tierney 20. Consistent with Catholic corporal imagery, the author of *Summa Omnis qui iuste* (c 1186) wrote that the Church never erred "in its whole body".

65 Tierney 21.

66 Tierney 24.

67 Tierney 25.

68 qtd. in Tierney 25.

69 Qtd. in Kantorowicz 297.

70 Kantorowicz 297-298.

### CHAPTER 3

#### THE POLITICAL ECONOMY OF MEDIEVAL MONASTICISM

The medieval monasteries are a particularly useful baseline for Catholic welfare corporatism because their vocation was largely social service, performed by means of what were in their time quasi-governmental corporations, with the authority to redistribute vast resources. As practiced by the monastic corporations of the Middle Ages, the good business of welfare redistribution was an economic necessity which both mobilized resources and built a 'non contractual foundation of contract' - to paraphrase Durkheim - that is, a general atmosphere of trust which encouraged more specific obligations. Thus, the primitive welfare corporatism of medieval monasticism was among the "genetic precursors" of modern political economics.

Centuries before the trade guilds of the early Italian Renaissance, the Church's "charitable vocation" amounted to a professional class, shaped by conciliar legislation and coordinated with the coercive abilities of the state. Also, medieval monasticism's use of charitable gifts - its "gift economy" - was a prerequisite to modern finance and market economics, and an outstanding example of "multimodality."<sup>1</sup> The gift economy was part of an intricate mix of cultural and productive motives which anticipated many later instruments of capital mobilization. These also ran the risk of corruption - "simony" - a complication of charity which continues today.

Though this chapter focuses on the medieval monastic gift economy as a precursor to modern welfare state services, it should be noted that

monasticism's culture of gift exchange and obligation had a precursor of its own in the writings of the ancient Roman statesman and philosopher Lucius Annaeus Seneca (c. 4 BC - AD 65). Seneca's concept of the gift was to play a significant role in the regency of the Infante D. Pedro of Portugal (1439-1447) whose model of state and society, according to Greenfield, was "almost a prototype of what political scientists and others today refer to as the corporate, organicist patrimonial state," with an additional emphasis on distributive justice and "the reduction and elimination of poverty . . . " <sup>2</sup> D. Pedro's innovation was to apply Seneca's personal morality to an institutionalized system of gift exchange, in which the wealthy were encouraged to share their abundance with the less fortunate. Though exact reciprocation was presumably not required, some response from the poor was expected - usually in the form of a Christian kindness to others and a diffuse commitment of solidarity with the political order. Gratitude in all cases was first to be shown to God in the form of prayer or piety, undoubtedly an effect of the widespread custom of monasticism throughout Christendom. <sup>3</sup>

All charity may involve a calculation of reward, but some calculations are less selfish than others. A monk's choice of (relative) poverty may have been more fulfilling for him, but that does not mean that such a choice was politically indifferent. Based on ethical choice, monasticism had a profound impact on economics and culture for centuries. When it periodically degenerated into greed and simony, the Church's means of coercion was not the police power of the state, but moral constraints based on fictive kinship. These were made politically real through a primitive type of organic corporatism. Medieval monasticism's use of the family, writ

large, and its multimodal scholastic, legal, productive and commercial skills, generated a bedrock compendium of Western regulatory standards. Any blueprint of Western social regulation must include this building block of corporatism.

### The charitable vocation and its corporate organization

For centuries monasticism was the most influential cultural force in the medieval West. Little writes, "A map showing the centres of power, jurisdiction, communications and erudite culture in Europe in the 10th and 11th centuries should not emphasize cities but rather the great monasteries . . ." <sup>4</sup> Because of their virtual monopoly on literacy and education, monks were keystones to secular and religious power. Medieval abbots were "star administrators" many of whom became enormously influential popes. Beginning with Gregory I ("the Great," 590-640) monks led the Church into an era of worldly power for the papacy. Gregory VII (1073-85, formerly the monk Hildebrand) is considered by many to have been the Church's most powerful pontiff. Popes Stephen IX and Victor III were former monks from Montecassino, the originating monastery of Benedict of Nursia whose *Rule* shaped the Benedictine order. Great leaders also arose from the abbots of Cluny and Odo; reformist monks included St. Damian, the cardinal bishop of Ostia, and many others, epitomized by the ultimate reformer, Martin Luther.

Economically, the monasteries equaled or exceeded many feudal estates. Cluny housed as many as four hundred monks. <sup>5</sup> As early as the eighth century, the 150 monks of Bobbio had acquired twenty eight

neighboring farms with thirty eight buildings for their serfs. <sup>6</sup> Some monasteries employed numerous peasants and *conversi* , an auxiliary class of monk introduced by John Gualbert (995-1073) at Vollambrosa. <sup>7</sup> Bolton notes that the *conversi* "protected [higher-level monks] from the distractions of routine work" by handling daily operational tasks. <sup>8</sup> Medieval monasteries did excellent business, leaving a blueprint for modern commerce which included trade fairs, sales expeditions and mortgage lending. Some monasteries were so powerful that they minted their own money, proclaiming, writes Gilchrist, "the wise doctrine of a stable coinage" and creating reserves of capital. Gilchrist adds, "The great achievements of medieval civilization of the 11-13th centuries would not have been possible but for the learning, example and progressive character of the clergy and monks of the time." <sup>9</sup>

Mindful of St. Augustine's admonition that charity was the perfect manifestation of justice, the monasteries were concerned for a panoply of have-nots which came to them - widows, orphans, travelers, exiles, lepers, prisoners, the unemployed and the sick. In the early days of the monastic movement, a monk's motivation was mostly to withdraw from the world either as a solitary anchorite or part of an autarkic cenobite community, but some, because of their charitable callings, necessarily were drawn into neighboring secular communities. <sup>10</sup> There are endless examples of medieval "outreach ministry," sometimes far beyond immediate neighborhoods and towns. In the twelfth and thirteenth century, toward the peak of monastic influence, Franciscans and Dominicans exceeded the traditional rule which kept monks close to the cloister as they began to travel (and preach) widely, especially in the new urban centers.

The deliberate effort on the part of monks and nuns to make a career of serving the needy was part of their personal calling, but the structural means to do so was accomplished through the deliberate organizational and legislative will of the Church. As early as the fifth and sixth century, the Church's welfare state was constructed through canon laws which mandated funds from bishop's revenues, the so-called "Bishop's chest." From a quarter to a third of bishop's funds were dedicated to poor relief. <sup>11</sup> From c. 400 on, apostolic constitutions specifically required that bishops to provide clothing and food for the poor. <sup>12</sup>

Scholars of the church call attention to the fact that the Church's social legislation was not the result of monarchical pronouncements, but of bishops who would meet to formulate policy in a corporate, "conciliar" decisionmaking process. Though bishops had a great deal of independent power, beginning in the early Frankish era they acted as colleagues and council members, meeting as representative bodies to formulate policy as a corporate body. <sup>13</sup>

At first, the extent to which these policies were effective depended solely on the sanctioning power of the Church. Social policies bore the weight of canon law, at first an unevenly enforced default-authority at best, though not insignificant. The Council of Tours in 576 specified that tithes be paid for use of the poor and the redemption of captives, without widespread results. The Second Council of Macon in 585 threatened excommunication to those refusing to comply with compulsory donations to the Bishop's chest for relief of the poor: "Let anyone who scorns these most

beneficial statutes be severed for ever from the limbs of the Church." 14 (Though excommunication may seem less than frightening today, it proved sufficiently powerful to set at least two emperors on their knees). By the eighth century, by force of Pepin's law (as king and head of the state church), compulsory donations for Church purposes were required by the state in the form of tithes, in effect a tax to fund welfare.

Centuries of Church and monastic records reveal an extensive apparatus for welfare delivery. Lateran decrees refer, in passing, to the scope of what was done. Almshouses and leper houses had special tithe-exemptions, (Lateran III. 23) as did pilgrim centers (Vienne 17); there were special provisions for education (Lateran III. 8 and IV.II); the establishment of monastic hospitals (Vienne 30; Lateran V. Sess. IX, Bull of the Reform 5) all of which were, Ullmann writes, "signposts to a vast system of medieval poor-relief. We are only just beginning to understand and to mark out its precise nature and extent." 15 After the eleventh century, monasteries frequently included an infirmary or hospital (particularly for children) as a basic part of their complexes, and lodgings for destitute travelers ("xenodochia," later "hospitals"). 16 Standards for assistance were periodically established to control chicanery and fraud. The local poor were offered help "except where it would do harm;" the idler was denied charity but "discrimination on religious or moral grounds was out." When in doubt, Johannes Teutonicus advised, "it is better to do too much than to do nothing at all" 17

However, the self renunciation and charitable sacrifices of the monasteries of the Middle Ages met with a conspicuous and awkward

material success. These institutions of voluntary poverty were frequently as prosperous as the richest of secular estates, sparking periodic waves of monastic reform to impose renewed ascetic disciplines. St. Francis at first renounced all goods, and then refused to even touch money. Similarly the Dominicans in 1220 pledged absolute mendicant poverty. Subsequently a distinction was made between ownership and use of money, as in the decrees *Quo Elongate* (1230) and *Ordinem vestrum* (1245) which consented to use intermediaries for financial matters. (The "owner" of record for Franciscan property was declared to be the Papacy).<sup>18</sup> But often these measures only improved efficiency, and combined with innovation and managerial skill it added to an embarrassment of riches. Such obvious wealth provoked accusations of ecclesiastical corruption (simony) particularly acute in the period 1000-1150.

### The Monastic Gift Economy: The Gift Circle

How the monasteries functioned as productive organizations resembles a primitive form of Catholic welfare corporatism, consistent with its three basic traits. Local monastic orders can be seen fitting into the organic whole of the Church, while enjoying some of the independence which the modern corporatist principle of subsidiarity suggests. They were furthermore able to perform in multimodal ways, demonstrating impressive "business" acumen through innovations which drew on their simultaneous roles as community centers, hospitals, schools, banks and family advisors.

Central to the political economy of medieval monasticism was its dynamic exchange of *gifts* which circulated in a community. Sometimes called a "gift circle," this type of economy relied on a practice in which a gift was customarily met with a return gift, so that the process became a system of trade. This "gift economy" generated many financial innovations, including some of the most cherished devices of modern capitalism. In gift economies like that of the Middle Ages, the Church took gifts, gave gifts, and thus was part of the gift exchange, which necessarily involved it in the secular material world and a host of material temptations.

We have noted how Roman classical law prohibited the conversion and alienation of pagan church property. Simony is the Christian term which describes the violation of the principle that faith, as well as the Church's property, was not a thing to be purchased or sold. The biblical basis for simony can be found in Acts 8: 20: "But Peter said to [Simon], 'Your silver perish with you, because you thought you could obtain the gift of God with money!'" Clearly God's gifts were not intended for commerce, but the tangible gifts of men and women offered an intriguing middle ground. Contributing to the confusion was that the difference between a good gift and evil simony mostly turned on the spirit in which a gift was given, but this was a distinction not easily defined by written rules.

Consistent with gift economies, gifts which were given to medieval monasteries were often passed along to others, sometimes to the needy, but other times given back to a wealthy benefactor, frequently with an increase in value. In time, gifts given to monasteries and churches included the *tithe*, a percentage of income derived from an endowment

such as a granary or vineyard. Tithes became a main source of operational resources for religious communities, originally given as a gift, but then traded or ultimately sold to other monasteries or churches. Thus the already hazy bounds of simony became blurred.

Medieval monastic cartularies (written records) further confirm that, rather than one-time-only gifts, a significant amount of what was given to a monastery or church was either given back to the original donor (or their family) in some form of another, or given to a temporary proprietor, and then re-donated back to the church or monastery. Rosenwein's computer analysis of centuries of Cluny gift transfers revealed a continual loop of claims and quitclaims, gifts and counter gifts in which the same parcels of land, granaries or fishing rights were presented time and again as entirely new donations. <sup>19</sup>

In gift economies, an etiquette is developed to assure ethical gift exchanges and to discourage tendencies for gifts to remain the permanent possession of one owner. Malinowski describes 20th century Pacific islanders in which each gift-receiver becomes in turn a gift-giver, with the understanding that each recipient is required to move the gift along to someone else before long. <sup>20</sup> Hyde recounts a folk tale from Kashmir in which two Brahmin women "tried to dispense with their alms giving duties by simply giving alms back and forth to each other. . . When they died, the returned to earth as two [poisoned] wells. . . No one else can drink from an the ego-of-two." <sup>21</sup>

Priests and holy men frequently appear as mediators in gift economies, as third party guarantors of genuine gift-circles. Hyde notes that Maori hunters return part of their kill to the forest, out of appreciation of nature's bounty, but leave the offering with priests who "take on or incarnate the position of the third thing to avoid the binary relation of the hunter and the forest." <sup>22</sup> Thus, assuming the spirit of the gift was upheld, the participation of monasteries in the medieval gift economy was central to the community as a type of extended family or special community, bound by charity and reciprocal good will.

### Breaking the Gift Circle

Although gift economies were not meant solely for one's immediate family, neither was it intended for those outside a bounded society. Lewis Hyde portrays the community created by the gift circle in terms reminiscent of Catholic corporate imagery. "I have come to think of the [gift] circle, the [community or] container in which the gift moves, as its 'body'." <sup>23</sup> For Hyde, the circulation of the gift gives life to the communal body and is therefore as essential, and sacred, as blood. Gifts are therefore not alienable commodities to be bought or sold, but something which necessarily must be kept within the body of the community.

The gifts that flow through a gift economy define it as a community. The Christian liturgical parallel is the Host of the Eucharist, a gift which defines the collective body of Christians. According to the Bible in I Corinthians 10: 16-17, "The cup of blessing which we bless, is it not a participation in the blood of Christ? The bread which we break, it not a

participation in the body of Christ? Because there is one bread, we who are many are one body, for we all partake of the one bread." Thus, in gift economies and in Christian communion, the "body" of the community is defined in terms of the gift with which it is conceptually organic and inseparable. <sup>24</sup>

A problem arose however when the monasteries, out of practical efficiency, needed sometimes to handle gifts as though they were commodities. For example, a monastery might receive a gift in the form of a piece of land, but the land might include a vineyard in a distant town, something which may have been impractical to cultivate at a distance. At that point it made sense to sell the faraway property in order to focus on more convenient holdings. Or perhaps a particular monastery was more adept at cheese making than wine making, and would prefer to specialize, and therefore trade the original gift for some more suitable possession.

This was made more complex when the gift was not a title to real estate, but instead a tithe as a right to the income derived from a piece of land or productive asset. (This concept of a tithe as a percent interest of revenue is employed among contemporary organized religions, notably the Mormons, whose adherents presumably devote a tenth of their income to their Church). When it became prohibitive to directly collect relatively small revenue amounts, e.g., "one eighth of the candle offerings of a distant church," these rights to income became tradable as well, at first among religious organizations, then to benefactors, and ultimately to the public at large which in turn traded amongst each other. <sup>25</sup> Once so conveniently packaged, (much like modern financial instruments) tithes were

particularly susceptible to conversion and simony, eroding the notion of "Church property" and becoming just another commodity.

As these endowments of income became properties-in-themselves, they soon slipped out of ecclesiastical hands, usurped by landlords and given, sold, and enfeoffed (made a fief) in the same way as any secular property. By the tenth century the tithe became in effect a seigniorial duty and rent on land, losing much of its spiritual significance.<sup>26</sup> Pope Sylvester II (999-1003) as abbot of Bobbio complained of how the entire patrimony had been granted away. The crisis reached a fevered pitch in 1054-8 when Cardinal Humbert of Silva Candida published *Libri tres adversus simoniacos*, warning of the economic ruin of the Church due to simony.

It should be noted that this abstract conceptualization of property as *income* was far ahead of its time. In the hands of monastic scribes and administrators, monastic economics thus developed the framework of the negotiable instrument, a title to income derived. The tithe was a right to revenue which became a property itself, an abstracted right (just as licensing fees and royalties today) which could be flexibly manipulated and consolidated, though not without with mixed results as we have seen.

Although some sort of return is anticipated in either the case of a gift or a commodity, a distinction can be made about the degree to which such an expectation is counted on, that is, how closely a return is figured and fixed upon. (See Appendix One for an elaboration of the distinction between gift and commodity). Gifts are supposed to be 'freely given and freely

returned,' with no specific obligation or schedule. The informal custom of gift exchange however was at odds with the monasteries' practical similarities to profit trade. In cases such as estate distributions of inheritances, the entry of a family member into a monastery, or interacting with others as one of the community's large landholders, monastic corporations were both mediators and principals, beneficiary and benefactor. Besides, the cleric's stock in trade was written accountancy, which typically involved the exact quantification of value. <sup>27</sup> It was a professional position which constantly challenged their principles.

On the occasions when the monasteries were victimized by castellans and others who simply usurped church property, monastic attitudes to property were not so spiritual that they simply quietly acquiesced. Though many monasteries, notably the Cistercians, refused to make claims through litigation because they thought it excessively worldly to do so, their alternative was to "clamor to God", which may have been even more effective. Since they believed that stealing Church property was an affront to God Himself, the monks spared their victimizers no peace as they embarked on raucous and persistent demonstrations of their anger and woe. Prominent among the techniques was the humiliation of relics - taking their own cherished mementos of their predecessors and throwing them rudely on the ground - to portray how they felt they were being treated. This was followed by the monks throwing themselves prostrate and "commencing to clamor." There were times when the relics which were humiliated included those of a previous bishop, an effective means of involving the incumbent Church hierarchy. <sup>28</sup>

Mauss calls gift economies a "total social movement" whose multiple activities are "economic, juridical, moral, aesthetic, religious, mythological and socio-morphological . . . " <sup>29</sup> Rosenwein found the gifts in Cluny's monastic cartularies gathered together a universe of emotions and values which "expressed love, subordination, enmity, compensated for crimes, tied together estranged families" and even promised to bring Saint Peter into the family (gifts to a monastery or church were done in the name of the appropriate patron saint). <sup>30</sup> She writes,

We need not argue with Marx that economic forces underlie all social and political relationships; nor with Weber that ascetic religious antecedents lurk behind capital investment; nor with Freud and Erikson that the psychology of compulsive accumulation lies behind the profit motive, to observe that calculated capitalist maneuvers also involve images of self worth and strategies for social recognition and prestige. And gifts, in turn, however removed from prices and precisely reckoned profits, nevertheless are the result of calculations about return gifts, material benefits, and/or services.

<sup>31</sup>

### The inventions and risks of monastic asset management

As a precursor to today's Catholic welfare corporatism, the medieval monasteries combined multimodal skills in business and finance with philanthropy and public service. Here is a review of some of the ways the monasteries operated, and the risks they ran by attempting a combination of religious faith and worldly practicality.

#### Estate distributions

Among the most successful of the services provided by the monasteries in the Middle Ages were those which expanded on the Church's

traditional presence at "threshold" events such as birth, marriage and especially death. As modern medicine and estate attorneys might suggest, there are few events more money-intensive than death. Monks as spiritual guides, recording secretaries, trustees, social workers, health care providers, gerontologists - and beneficiaries - became specialists in the final voyage, and took careful watch over what was left behind. In response to donations, monasteries offered burial rights in the abbey, listings in the abbey's martyrology, anniversary masses, feast days, chanted masses and memorial alms to the poor.<sup>32</sup> Many civilians would decide on their deathbed to join a monastery, adopting the monk's habit as a talisman for burial.<sup>33</sup>

Death was also the major transfer event for property. At such moments, the monasteries were present, trusted, and frequently named as heirs themselves, so they developed a conspicuous role as large scale landlords.<sup>34</sup> Many monasteries, in order to maintain contiguous farmland, would buy out shares of estates from local families who were in the process of settlement.<sup>35</sup> As the monasteries grew, they functioned as local bankers who could offer financial liquidity for heirs-to-be, offering mortgages (hence the name *mort-gage*, from death-pledge, i.e. money offered in advance of an expected inheritance).<sup>36</sup>

### Leases and lease improvements

When direct operations of intact and ongoing real property proved impractical, one of the methods of indirect control was the *precarium*, a way for the Church to lease properties to lay people with the

understanding the estate was 'recoverable at will'.<sup>37</sup> The *precarium* was similar to, if not formative of, feudal tenancy but, as precarious as its name implies, it ran the risk of simony.<sup>38</sup>

Suspensions were raised by a proliferation of "precarial donations" between the more prosperous monastic houses and their wealthy patrons. In gift economies when one gives a return gift, there is usually an added increase.<sup>39</sup> At first, monasteries received material gifts and returned only spiritual services. Precarial donations, however, reversed the monastic role from beneficiary to benefactor - what they gave back was more than what they got, and the increase could be measured in material, not simply spiritual terms. In the hands of the monks, land was made more productive, dairies and wineries more profitable and livestock herds made more robust, with great gain returned to the original grantor (frequently a relative of the abbot). It invited some question about whether these were donations or some other form of transfer.

The ambiguity over leasehold improvements and percentage reimbursements - in either direction - leaves lots of interpretive room for both "gift increase" and "commodity profit" explanations. Monasteries might grant a "life estate" to someone who was better suited to defend (or cultivate) a piece of property, with the understanding it would ultimately revert back. (*Emphyteusis* referred to a long term lease, usually a grant of uncultivated land which the tenant improves). Other times a gift would be given to humble folk with the understanding that a portion of the proceeds (or other fragmented asset) would be apportioned to the monastery and that eventually a portion of that land, once cleared and cultivated, would also

return to the monastery. <sup>40</sup> But the title could also be easily obscured in these affairs through matronymics, carrying the deed on the books through a wife's family name. <sup>41</sup> Clerical marriage was banned in the mid eleventh century with an eye to this practice, although Lateran III 15 allowed goods from a benefice to be willed to others by a cleric holding that benefice. <sup>42</sup>

Duby concludes that precarial donations "helped to create some of the great lay fortunes in the region." <sup>43</sup> Rosenwein found that at Cluny "most precarial donations gave back hereditary lands that had once belonged to the family of the recipient." <sup>44</sup> To what extent virtue or greed played a role in those fortunes was the basis which determined simony, and whether the monasteries exploited - or were exploited - a gift so that it was converted to a commodity or a pretense for a type of embezzlement. It also perpetuated serfdom, though the monasteries presumably represented a more altruistic purpose than private feudal accumulation. At the very least, however, the gift economy as mediated by the monasteries facilitated the productive use of property otherwise unavailable to the economy.

Though a gift is never fully owned, there is a benefit from controlling it. Rents and tithes are essentially returns-on-equity and technically contradictory to the Church's ban on usury, though there is some room for biblical interpretation, based on Deut. 23: 19-20: "You shall not lend upon interest to your brother, interest on money, interest on victuals, interest on anything that is lent for interest. To a foreigner you may lend, but to your brother you shall not lend upon interest. . . "

Eventually, especially as the Crusades needed financing, the Church found the business of loans of money with interest irresistible. When it came down to competition with Jewish lenders, the Church finessed its way out of the limitation against usury entirely, as antisemitic friars (the Brotherhood of Man) set up Christian pawnshops (called *Monte di Pieta* - mounts of mercy) which charged interest of 20%-50% above principal. <sup>45</sup> There were some 87 *monti* approved by Pope Leo X in 1515 who argued their charges were "not usura, but compensation for *damn et interesse*" i.e., potential damages and losses. It was also argued that the bible prohibited interest on loans to one's brother, but allowed lending-charges to "strangers". Monasteries more customarily made large secured loans on the basis of a 7%-12% return, 25%-30% on smaller ones, with one to nine years repayment. <sup>46</sup> Canonists developed similar accommodations to the notion of "just price." <sup>47</sup>

#### Tax exempt status

Another benefit from passing a gift into monastic hands, and then receiving it back again later, is that property transferred from lay benefactors would become tax exempt for the time it was under monastic care. During the Crusades or any period in which taxes presented a problem, land and other property could become "monasteries" and as just noted, remain on the books under a wife's family name, frequently increasing in value all the while.

### The tithe as prototypical tax which funded medieval "welfare"

The modern political relevance for church tithes is that it was a prototypical tax which produced enormous revenues for the purpose of what we would call welfare. According to Poschl, tithes were "the most important tax in the economic development of western Europe" with no equal in "duration, extent of application and weight of economic burden"<sup>48</sup>. The tithe originated from biblical times as a tenth-part payment (or "first fruits") to the Church<sup>49</sup>. By the fifth and sixth centuries, tithes were well established in old areas Christianity in the West, especially the Frankish kingdoms in southeastern Gaul and in some parts of Visigothic Spain before the Moslem conquest.

Monasteries at first were not qualified to collect tithes - only churches - but after time monks won the right to immunity from tithes and then were allowed to received dedicated and fixed tithes.<sup>50</sup> Nevertheless some monastic orders refused tithes altogether, rather than risk worldly entanglements.<sup>51</sup> Tithes as endowments were given as gifts to churches and monasteries as well as levied by canon and secular law as an ecclesiastical tax.

### Medieval property ownership: Groups and families

Roman classical law had set the precedent for the exclusive ownership of property by individuals, but medieval attitudes toward property - informed by Germanic custom - were substantially different from this, in ways which are especially germane to corporate notions of ownership.<sup>52</sup>

Embedded in the monastic gift economy were an ambiguous mix of collective ownership and kinship. Property ownership in the Middle Ages was structured in a way White describes as "unknown to modern law," managing to mix extended family and group possession. 53

Intertwined with these formative versions of property ownership was monasticism's *fictive kinship* the "brothers" and "sisters" and godparenting that the monasteries represented offered new avenues of property accumulation, apprenticeship to trades, and class mobility in the limited, static social structures of the time (See Appendix Two).

Medieval property was intermediate between the individual and the group, a hybrid, says Gierke, of the "Romanist principle of proprietary individualism and the Germanic principle of proprietary communitarianism . . . " 54 Gierke points out that Germanic property custom incorporated public and private law into one realm, so that the "Roman division of law into the domain of the state on the one hand and of the autonomous isolated individual on the other was rejected." 55 Thus we see an early affinity for corporatism's intermediary qualities, presented as a modern alternative to the "liberal state."

The most prominent way in which medieval Germanic property possession demonstrated this group-owned quality was in the administration of family inheritances by fictive (and factual) relatives in monasteries. Monastic cartularies appear to confirm that (as is appropriate for gift economies) medieval property was not as entirely alienable as it is in the twentieth century, especially in the sense of it being in one person's

power alone to dispose of. <sup>56</sup> The many participants shown in the cartularies suggest a group-owned phenomenon in which communal ownership, rather than individual, was the norm. <sup>57</sup>

### The *laudatio parentum*: Guaranteeing bequests

A more precise explanation for the array of participants which characteristically crowd monastic property records was the *laudatio parentum*, a means by which testamentary bequests to monasteries would be witnessed by benefactors' relatives in order to avoid later challenges to the will. <sup>58</sup> Magnates were entirely capable of giving tithes and gifts to one abbey, then change their minds, take it back, and give it to somewhere else. <sup>59</sup>

As poetic as gift economies might sound, White tells us "[g]ifts to saints should not be viewed as untroubled, conflict-free feasts of familial and religious solidarity." <sup>60</sup> Accordingly, monastic transactions involved elaborate rituals comprised partly of Roman contract law, partly of stylized altar ceremony, all recorded by the clerics in handwritten duplicate as a witnessed testament.

The procedure (and the lawsuits they provoked) testifies to the inextricable, ongoing bonds of family and community which underlie certain European notions of possession, and which are embedded in Catholic corporatism.

## Joining a monastery for a price: Religious entry

As part of their multimodal talents, the monasteries were in the thick of medieval 'family values,' especially as the monasteries boomed in popularity as an alternative lifestyle for wealthy scions. As the monasteries experienced a steady stream of applicants, especially in the eleventh and twelfth centuries, acceptance into the monastic life became increasingly selective. Benedict's *Rule* in the mid sixth century excluded no group from potential acceptance into the Benedictine monastic community.<sup>61</sup> But by the eleventh and twelfth century, Steven White tells us the Benedictines were typically "recruited from the same restricted circle of upper class landholders."<sup>62</sup>

Religious entry merged with tithes and gifts in a growing currency of monastic interaction with the secular world. Bargaining brought old debts and new needs into play. Since the monastery was an undying corporation, a person's monastic entry meant feudal lords lost his or her rights of marriage, wardship and escheat (property reversion absent an heir), so this too became a matter of negotiated compensation for their assent to the subject's entry.<sup>63</sup> This might be offset if the lord had a prospective monk among his own offspring. Many claims against the property of a religious house was settled by counting it as an entry gift of a relative's entry into that house.<sup>64</sup>

Wealthy entrants were likely to receive higher level positions in prospective monasteries. Considering the almost absolute power which rested in the hands of the abbot, there was an obvious way of recouping the

"investment," particularly if the original donation came from the abbot's own family. In 787 St. Wadrille's - a huge monastic farm of over 170,000 acres, made a gift of over 60,000 acres - to the abbots own relatives. 65

### Institutional refuge: The infirm and the divorced

But perhaps the best demonstration of monasticism's marriage of social service and economics is in the institutional refuge it provided the old, the infirm, and those disinclined to marriage. "What emerges from this consideration of the practice of receiving the old, the injured, and the ill to religious life is that it was a social institution that always involved negotiations and conditioned agreements." 66

Given the traditional moral prescriptions of marriage and family - not uncommon in our own day - it is striking how many religious communities were built by Catholic priests and nuns who instead "marry" (symbolically, by ceremony) the Church and Jesus. An example from the seventh century is the founding of Notre Dame de Homblierers. Subsequent to the pope's annulment of her marriage engagement, a young noblewoman named Hunegund led Irish missionaries to France, financed by her frustrated fiancé's would-be dowry (her suitor later joined a monastery as well). However, about 940 the monastery of Homblierers is mentioned as a "community of nuns in need of reform because of lapsed morals." 67 Efforts by the archbishop of Reims to assign an overseer named Bertha ultimately failed after which the facilities were instead given over to a group of monks.

Virtual weddings were not limited to those in religious orders. According to Bolton, at the Hospital Santo Spirito in Rome a procession was held once a year to celebrate a "mystic wedding," attended by 1000 local paupers and 300 hospital inmates. Each would receive a small gift of money and a meal. The analogy of marriage became a favorite of those who would analogize their emperors and kings as "grooms" of the nation, a comparison borrowed directly from biblical references to Christ. 68

The idea of linking religion to rather innovative notions of marriage is not limited to the Middle ages, of course. Modern variations on the theme include the Shakers, Quakers, Mormons, Oneidans and Christian Scientists. To a far greater extent than today, medieval monasteries were a popular alternative to the sometimes-messy matters of marriage and youth. Further, because clerical marriage was so closely associated with simony, it was in the Church's organizational interest to reimpose standards of celibacy.

In the sixth century, Justinian considered religious entry the legal equivalent to divorce, allowing the remaining spouse to remarry after one year. Gregory I felt this eroded the permanence of marriage, but during the eleventh century, as controversies over clerical marriage reemerged, the preferable outcome was for both spouses to each join religious houses. 69

Adults with dependents were not prevented from following the popular trend to an apostolic life of poverty and seclusion, because the sons, daughters and elders of new entrants were accommodated by still other monasteries. Peter Waldo (aka Valdes, also leader of the "Waldensian"

movement) put his daughters in a monastery to accommodate his calling as a wandering preacher.<sup>70</sup> Peter Abelard favored the founding of adjacent double monasteries, one for each gender, especially so that a man with dependents could give his children over to nearby communities.

These children (so-called *oblatii* or *nutriti*) were more than mere boarders -they were obliged to become permanent monks by Benedict's *Rule*, reaffirmed by the Council at Worms in 868.<sup>71</sup> Consequently these children became a major source of monastic entrants, ostensibly because they were "offered to God" to fulfill a vow or atone for sins (usually of the father). Others were simply orphans. Aside from motives of piety religious entry of children began to develop into a controversy. In a not particularly charitable mood, Ulrich of Hirsau complained in 1079 that "if any of those children is lame or maimed or hard of hearing or blind or humpbacked or leprous. . . indeed they offer this one to God with very eager vow so that he may be a monk."<sup>72</sup>

In religious entry for adults and children, and as intermediaries for family traditions, medieval monasteries effectively used the tools of business and law in their vocation. Not surprisingly, these also ran risks of abuse and neglect.

### Review of Chapter Three

We have seen the medieval monasteries as a fundamental part of Western political economics whose "gift economy" and professional roles contained formative traces of Catholic welfare corporatism, showing (1)

organicism in their ties to the Church; (2) subsidiarity through their local and regional missions; (3) multimodality in the extensive variety of social services and productive work, performed in the arenas of state, market and community.

The balance which the monasteries struck among these three roles provides a familiar background for the modern Catholic welfare corporatism, particularly in its challenge to keep principles of service in line with social accountability and economic survival. Much of what the monasteries experienced centuries ago bears a striking resemblance to the opportunity and risks of what nowadays is nonprofit enterprise. How the monasteries threaded the 'eye of the needle' so to speak, by handling the great wealth which came their way either as direct gifts or as an extension of their professional roles, provides an elaborate blueprint for modern counterparts.

Most of the evidence which survives from this era is in the form of official documentation - the equivalent of bookkeeping records, accountancy statements, or statutes of the Church or civil authority. The extent to which religious culture provided moral constraint on a daily basis is somewhat less certain, but we know that simony became a major ethical issue, subject to periodic reforms. Therefore, we see religion as an influential normative force which participated at the highest levels of productive enterprise, presumably the type of economic regulation which the nineteenth century corporatists had in mind when they imagined a moral role for vocational corporations.

But to what extent did the medieval Church - and the "welfare function" of its monasteries - operate not as a subordinate part of the state, but as an independent state of its own? To argue (in the corporatist sense) that the Church was a constitutive component of the state rather than its own transnational domain, requires a closer look at Church-state interaction. The modern state is partly defined by how effectively it both absorbed and marginalized the Church, a development illuminated by the Investiture contest, an epiphenomenon of the proprietary church system. Also occurring in parallel during this era was the Church's own intra-organizational dynamic with the monasteries, such that the monasteries emerged as the true intermediary institutions of the time, rather than the centralized Church. Chapter Four next investigates how the Church and state negotiated their distinct realms of jurisdiction, and provided additional cultural precedent for the corporatist vocational associations of the nineteenth and twentieth centuries.

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<sup>1</sup> *Caritas*, which Catholics use to convey both "charity" and "caring" has two meanings in Latin: (1) "dearness" or "high price;" and (2) "high regard, esteem and affection." Sir William Smith and Sir John Lockwood, Chambers Murray latin-english dictionary (London: John Murray, 1986): 98.

<sup>2</sup> Sidney Greenfield, The Patrimonial State and Patron-Client Relations in Iberia and Latin America. (Amherst, MA: International Area Studies Program, University of Massachusetts, 1976): 3.

<sup>3</sup> Greenfield, 21-22.

<sup>4</sup> Lester K. Little Religious Poverty and the Profit Economy in Medieval Europe (London: Paul Elek, 1978): 64.

<sup>5</sup> Little 19.

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- <sup>6</sup> Jean Decarreux, Monks and Civilization. (London: Allen & Unwin, 1964): 357.
- <sup>7</sup> Little 73.
- <sup>8</sup> Brenda Bolton The Medieval Reformation (Baltimore: Edw. Arnold, 1983): 37.
- <sup>9</sup> Gilchrist, M. Church and Economics in the Middle Ages 138-9.
- <sup>10</sup> E.g., St. Simon Stylites, whose ministry was literally based on sitting alone on a pillar in the desert.
- <sup>11</sup> Gilchrist 77. (Cf. Lateran III 18: "The Church of God as a devoted mother is bound to provide for those in need, both in the things that pertain to the body and also in those that pertain to the good of soul").
- <sup>12</sup> The council of Orleans in 512 was an early manifestation not of private charity but of the systematic policy of public authority. Ullmann 12.
- <sup>13</sup> Ullmann 10
- <sup>14</sup> qtd. in Giles Constable Monastic Tithes (Cambridge: UP, 1964): 22.
- <sup>15</sup> Ullmann 79.
- <sup>16</sup> "Monastic Medicine in Pre-Crusade Europe: The Care of Sick Children" Bernard Bachrach and Jerome Kroll The Medieval Monastery Andrew MacLeish, ed. St. Cloud Minnesota: North Star Press, 1988
- <sup>17</sup> Ullmann 81.
- <sup>18</sup> Gilchrist 45.
- <sup>19</sup> Barbara H. Rosenwein To Be The Neighbor of St. Peter: The Social Meaning of Cluny's Property 909-1049. Ithaca: Cornell UP, 1989.
- <sup>20</sup> Bronislaw Malinowski Argonauts of the Western Pacific (London: George Routledge & Sons, 1922)
- <sup>21</sup> Lewis Hyde, The Gift: Imagination and the Erotic Life of Property. (NY: Vintage, 1979): 18.
- <sup>22</sup> Hyde 18.
- <sup>23</sup> Hyde 16 -17.

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<sup>24</sup> A gift economy assumes gifts to have a certain immanence which cannot be bought, sold or otherwise cut away. The 'hau' as the Maori tribes of New Zealand would call it, is an inalienable spirit in the gift which, by way of socially beneficial use, is destined to return to the original giver. Marcel Mauss The Gift: Form as and Functions of Exchange in Archaic Societies Trans. Ian Cunnison (New York: Norton, 1967): 8-10, cited in Hyde 18.

<sup>25</sup> J. H. Lynch, Simoniacal Entry into Religious Life from 1000 to 1260 (Columbus: Ohio UP, 1976): 7.

<sup>26</sup> Constable 64.

<sup>27</sup> See Appendix One for a chart of other distinctions.

<sup>28</sup> Geoffrey Koziol, "The Monastic Idea of Justice in the Eleventh Century" The Medieval Monastery Andrew MacLeish, ed. St. Cloud (Minnesota: North Star Press, 1988): 70-71.

<sup>29</sup> Mauss, qtd in Stephen D. White, Custom, Kinship and Gifts to Saints: The Laudatio Parentum in Western France 1050-1150. (Chapel Hill N.C., UNC Press, 1988): 4.

<sup>30</sup> Rosenwein 202-203.

<sup>31</sup> Rosenwein 131.

<sup>32</sup> White 26.

<sup>33</sup> This was an irrevocable decision, which no doubt produced mixed feelings among those who unexpectedly recovered and were then obligated to live out their days as a monk.

<sup>34</sup> Little 64.

<sup>35</sup> Lynch 6. Cistercians, in lieu of tithes, sought large blocks of uncultivated land rather than enter into such potentially arcane dealings.

<sup>36</sup> So fevered was the interest in monastic mediation with the afterlife that Peter worried about the Church being overtaken by a cult of the dead.

<sup>37</sup> Cantor 199.

<sup>38</sup> Cluny at first was forbidden to grant any benefices but after 50 years Abbot Maiolus declared that "any ecclesiastical property may be granted for a rent to anyone, even to laymen" Constable 4.

<sup>39</sup> As with conventional commerce, with every transaction in a gift economy there is usually an increase in value. In tribes like the Kwakiutl,

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the value increase is encouraged by a type of competition over who can give away the most, who can "top" the previous giver. According to Hyde, gifts that remain gifts "do not *earn* profit, they *give* increase" (Hyde 31, 17) meaning that in gift economies all the (tangible) increase should follow along with the gift. Gift economies are personified by the steward who is obliged to release the gift as a gift to others, without counting on any predetermined interest or rate of return for himself.

40 Rosenwein 120.

41 Gilchrist 29.

42 Gilchrist 28, 6.

43 Rosenwein 43.

44 Rosenwein 115.

45 Hyde 124.

46 Decarreaux 360.

47 Though not mentioned by earlier canonists, from 1100 onwards produced a derivation from the revived Roman Law of the 12th c. Roman Law held that a remedy for a seller is sue for recovery if price received is less than half the just price. Medieval glossators applied this to the buyer as well as the seller (e.g., twice cost). Otherwise *licet contrahentibus invicem se naturaliter circumvenire* : parties are free to get the better of one another. Roman courts interfered only on very extreme abuses (*laesio enormis*) and generally allowed pricing to follow market forces of supply & demand. Gilchrist 59.

48 Constable 2

49 Leviticus 27: 26 "a firstling belongs to the Lord. . . " and Leviticus 27:30 "All the tithe of the land . . . is the Lord's. . . "

50 Tables were turned as the monastic era progressed, so that it was not unusual for local churches to find themselves paying tithes to area monasteries. The change came gradually at first, not as a general policy but on a subjective basis, as papal privileges including tithes were first granted in 643 to the monastery at Bobbio and in 659 to Le Mans( Constable 59). By 822 the Statute of Adalhard of Corbie authorized tithes to monasteries as a category, with the result that parochial churches had new and powerful competition.(Constable 60.)

51 The Cistercians specifically refused tithes of "other men, burial rights, churches, mills, serfs, and other property" which would draw them into secular world. The Premonstratensians, Carthusians, and Grandmontines did likewise.

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52 As noted earlier in Nicholas 162.

53 Stephen D. White Custom, Kinship and Gifts to Saints: the Laudatio Parentum in Western France 1050-1150 (Chapel Hill: UNC Press, 1988): 32.

54 quoted in S. White 7.

55 George Heiman, trans. & ed., Otto Gierke Associations and Law: The Classical and Early Christian Stages (Toronto: UP, 1977): 34. At the time of the collapse of the Roman Empire the migratory culture of German tradition had regarded property in somewhat of a symbolic/ritualistic sense - as an article of display, as booty to reward the courageous, or as a tribute to bury with the dead. (Little 4-5). Similarly the land, tithes or other goods presented to monasteries acquired a spiritual quality beyond their practical use-value, because these gifts were ostensibly gifts to saints, received and stewarded by monks who were esteemed for their Christian service as the saints' earthly representatives. Since the time of Boniface in the early eighth century the Germanic territories were cherished sites for monastic missions, where some of the most influential corporatist cross-fertilization occurred. The Germanic influence on corporatist theory is profoundly determinative and sustained, not only at this most formative moment of corporate thinking but in the Catholic Church's social doctrine of the late nineteenth and early twentieth centuries. (A full discussion of German and Norman influence relating to the proprietary church system and Hohenstaufen anticlericalism follows in chapter four).

56 Lynch 6 provides some elaboration of this.

57 S. White 5-6.

58 Approval from kin sometimes required payment. Either the monks or the donor would offer money to the reluctant kin in exchange for their approval. S. White 48.

59 Empress Ricardis between 862 and 896 "gave to [the monastery's patron saint] St. Maurice for divine services thirty acres of fields and vineyards . . . thus she performed a great penance, since she had forcibly deprived the church of St. Maurice of its tithes at Sigolsheim" Constable 65 Qting Chronicon Ebersheimense, XV

60 S. White 174. The monastery at Marmoutier recorded at least 46 disputes in which relatives contested gifts to the abbey; La Trinite, 17; St. Aubion, 28; St. Vincent, 35 and Noyers, 23. S. White 51.

61 Escaped slaves without their owners' approval were the first to be restricted, then over the centuries entry was increasingly a function of class. Lynch xiv.

62 S. White 17.

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63 Lynch 11.

64 In 1080 a woman named Ascelina Cata entered the nunnery at Ronceray and presented as an entry gift the woods at Brain-sur-l'Authion and other forest rights. Her nephew Girorius at first confirmed the donation, then changed his mind, but reconfirmed with the payment of ten pounds. When his Aunt died, Girorius renewed his claim, but as he had a daughter who wished to join the house, he returned the ten pounds, abandoned his claims, and added more land and granted the nuns the privilege (immunity) to purchase goods in his region without paying his due fees. Lynch 12.

65 Decarreaux 357.

66 Lynch 35.

67 Theodore Evergates, Intro. to material prepared by William Mendel Newman The Cartulary and Charters of Notre Dame de Homblrieres (Cambridge MA: Medieval Academy of America, 1990) 9.

68 Bolton 103.

69 St. Peter Damiani (Damian) was a leading reformist who recounted many of the church's sexual scandals -as well as the property conversions noted earlier - and sparked renewed commitment to a fully celibate clergy in the mid eleventh century. The Catholic notion of holy celibacy was largely a mid fourth-century construction of St. Ambrose, as a part of his concept of a hierarchical, authoritarian and legalistic Church administration. Cantor 251, 71; Lynch xiv.

70 Lynch 43, Bolton 60.

71 Lynch 40.

72 Lynch 41.

## CHAPTER 4

### THE INVESTITURE CONTEST AND VOCATIONAL JURISDICTION

The corporatist significance of the Investiture contest (c. 1050-1130) lies in how the Church and its monastic corporations retained some measure of self determination while various states - particularly German - attempted to usurp the Church's power to appoint religious leadership. Chapter One noted that the distinction between 'state' and 'societal' corporatism lies in the level of determinative control by the state. Though the general perception is that Catholic corporatism is a form of "state" corporatism - where the creative authority acts from the top down - the Investiture contest can be seen to suggest some embryonic elements of "societal" corporatism as well. This is to say that the Church in general and the monasteries in particular represented collectivities which were formed independent of (and prior to) the "state" - such as it was eight centuries ago - rather than as creatures of some secular political process.

However, in much of the dynamic between the Church and the state in the Middle Ages, the two realms of authority frequently acted as a matched pair. The issue during the Investiture struggle was not limited to right of kings to appoint bishops, but also included the power of the pope to anoint emperors. The *quid pro quo* of the papal anointment of kings for the royal confirmation of popes served their mutual interests from at least as early as the eighth century, when the Church's blessing helped the Carolingians' dubious claims against the established Merovingian French monarchy prevail. The genetic traces of societal corporatism find an even better

precursor in the struggle for control between the Church and its own subsidiary organizations, especially the monastic corporations and the lay religious communities which foreshadowed the Protestant reformation.

There are a number of analogies from this period which can be drawn to characteristic traits of corporatism. The Investiture contest forms a procedural prototype for the sort of leadership selection which turns up in Schmitter's definition of modern corporatism as ". . . functionally differentiated categories, recognized or licensed (if not created) by the state . . . in exchange for observing certain controls on their selection of leaders . . . " <sup>1</sup> The institutional interplay between the Church, the state, and the growing number of monastic and lay religious orders also anticipated the trait of multimodality in Catholic welfare corporatism. Additionally, the bid for self direction by these local organizations suggests subsidiarity, vocational interest representation and the mesocorporatist quality of regionality.

The theme of government fiscal regulation is also woven into the Investiture story. This was an era in which taxation was increasingly justified by what, in those times, resembled social welfare spending. Frequent tax revenue collection had been commonplace in the Middle Ages because of the "extraordinary" expenses related to the Crusades. But public revenue collected on a systematic yearly basis went primarily to fund the era's brand of social service, using monasticism as its vehicle, and the clergy as its agents. The system was not without arrogation by the usual suspects of private and public actors, another part of the Investiture story

as we shall see, all part of an era of particularly rich illustrations for the notion of "devolved" social service as a surrogate for the state.

### Eigenkirchen

The Investiture contest was as much about economics and power as it was about faith, popularly symbolized by the submission of emperor Henry IV (1050-1106) to pope Gregory VII (born Hildebrand, 1073-85) at Canossa in 1077. Henry had condemned Gregory's selection of bishop for Milan, preferring his own, and the emperor attempted to nullify Gregory's election. The pope subsequently excommunicated the emperor, at which time Henry's coalition of German bishops collapsed. Gregory's forgiveness was largely the result of the intercession of abbot Hugh of Cluny, an enormously popular monk whom Gregory could not afford to offend. But matters degenerated further as Henry IV at the synod of Mainz in 1085 deposed two archbishops and thirteen bishops and replaced them with imperial appointees. Gregory's response was to absolve Henry's subjects of any loyalty to their king, a move which precipitated widespread rebellion.

As we have seen, the Church and its monasteries were economic engines of enormous impact, so the power of appointment to Church and monastic offices had profound implications. The Lateran synod of 1059 had aimed to reverse the custom of German lay appointment of bishops, an office which the secular rulers had come to confer on elite government clerks, rather than men of any theological training. Almost immediately upon his election in 1073, Gregory, mindful of Henry IV's record of removing three popes from office, published *Dictatus Papae* which

proclaimed that the pope was beyond the judgment of any human, including the emperor (whom he would eventually excommunicate). Among his pronouncements was the right of popes to free election by their own college of cardinals, and that the dismissal, transfer or reinstatement of bishops was to be done exclusively at the pope's discretion. Thus, the issue became professional autonomy, a key aspect of corporatism.

The essential dynamic was that the emperor would seek to subsume the Church, against which the Church argued that it transcended the state. This would continue in crisis over the next 175 years, growing particularly incandescent during the reigns of Henry IV, Frederick I Barbarossa and Frederick II. Never again would the Church be as politically predominant in the West as it was during this stand against the state, an era marked by the papacies of Gregory VII and Innocent III.

Beyond the drama of dueling personalities was the political economy of the German proprietary church system (*Eigenkirche*). The proprietary church system is important to welfare corporatism because it was the main source of institutionally-based, publicly minded economic power for the ascendant German empire, and because it came primarily in the form of monastic corporations on charitable missions. In multimodal fashion, the corporatist monasteries were fundamental to political power on three levels - the universal church, the imperial state and the local community.

As early as 742 the *Concilium Germanicum* attempted to come to grips with the impositions and outright confiscation of churches by Charles Martel (714-41). Under Pepin and Carloman, there were to be stable and

regular endowments established for churches, with the manorial lords denied their traditional power to unilaterally dismiss or appoint clergy without the bishop's consent. 2

As the monastic movement in Germany continued to grow in size and income, Church finances continued to be subject to the manipulations of territorial lords (*Grundherrschaft*). Though not originally a monastic privilege, over the years monks eventually acquired their own churches where they either hired or served as priests, taking the income for themselves. In time, the busy acquisition of churches by monasteries resembled modern corporate takeovers. Constable tells us, "Such a relationship between ecclesiastical institutions, by which one church or monastery held another as its property was later called incorporation. . . The tithes and entire revenue of all these [dependent] churches were paid to the ruling monastery. " 3

The reason the manorial lords had such powers was that a proprietary church was built on a rich man's land, who also had rights to adjunct income such as "the offerings, the first-fruits, the dues levied by the priest . . . and later the tithe." 4 The crux of the threat posed by such investment income was that eventually included in the revenue stream were the simoniacal "sale" of holy sacraments for burial, baptism, marriage, communion, confession, and unction. In exchange, the territorial lord defrayed operational expenses, and presumably protected the poor, but if there was a profit, as there usually was, the lord was empowered to take it for himself.

The struggle for control over these valuable economic engines involved the interplay of pope, royalty and nobility, as well as lay and Church-appointed clergy. What was drawn from this crucible was largely shaped into corporatist forms.

### The monastery at Cluny

In what Catholic welfare corporatism would interpret as a combination of organicism and subsidiarity, some monasteries and churches devised a long-distance papal protection to keep local potentates from excessive meddling in monastic affairs. Prototypical was Cluny (founded 910), which simultaneously exploited the protective, organicist benefits of the centralized Church while pursuing subsidiarist measures establishing Cluny and its satellites as a distinct subtype of the monastic movement. Bolton writes that Cluny's concept of *libertas* aimed to avoid worldly influences and sought to distance the more aggressive members of the surrounding lay community by using "two cures: to escape localism it placed itself directly under the pope and to escape the association with noblemen and their way of life it restored the need for *communitas*." 5

The Cluny notion of community departed from the cloistered tradition and instead began a system in which representatives of various Cluniac abbeys would visit other monastic houses to exchange prayers and compare experiences. Cluny was also responding to an increasing need for a common set of statutes and organizational cohesion in order to moderate the tendencies of many monasteries to go off on their own interpretations of the Benedictine Rule. 6 Cluniacs were not particularly bashful in their

technique of bringing wayward abbeys back into line. Abbot Odo of Cluny (926-944) ordered his men to retake the Abbey of Farfa by physical force.<sup>7</sup> It was a first step in cultivating a corporate identity among the several houses.

Cluny could afford its independence from localism because of its great size and the huge number of donations which came from relatively far away. One of the Cluniac reforms instituted by Peter the Venerable was to restrict donations to a maximum of 50 per day.<sup>8</sup> Cluny's conspicuous success and leadership formed a coat tail of similar "cluniac" houses, in a rough affiliation centered around the Cluny mother house.

Rome expanded the Cluniac model of papal protection to the Hirsau monasteries, which became the Vatican's answer to the German proprietary churches. By the third quarter of the tenth century there had been over one hundred abbeys operating in Germany, probably all of them attached to the crown. By 1075, the number had shot up to seven hundred, many of them papal or so called "Roman" monasteries. However not all were sufficiently wealthy to afford to ignore local benefactors.

Ironically the new "Roman monastery" system was led by Pope Leo IX (1049-1055) who had been appointed by his close relative the emperor Henry III "the Black" (1002-1024), who had already deposed three popes (none of whom were his relatives, however). Adding to the irony was that Leo IX's most influential advisor was Hildebrand, who would later become pope Gregory VII, perhaps the empire's most formidable adversary. Rome had been requesting permanent Church appointments by formal acts of

investiture, but the Germans insisted on beneficium grants - gifts- made by local magnates. <sup>9</sup> In response, the "Roman" monasteries were established with papal (Roman) sponsorship and protection written into their constitutional charters. Located in the regions of Swabia, Bavaria, Franconia and Burgundy, the "Roman" monasteries were also referred to as *abbatia libera* , or a *monasterium liberum* and arose in "conscious opposition to the proprietary rights exercised by the laity," according to Hirsch. <sup>10</sup> It was an arrangement fostered by the mediation of Cluniac monks who promoted the idea of an *episcopatus liber* (free church) inside the courts of the Salian (Franconian) rulers, another example of the multimodal skills of the monks.

### The Right to the Vogt

To make matters even more complex, the local magnates persisted in including themselves in the new "Roman" monastic trend, exploiting the distant and virtually abstract rule of Rome while simultaneously moving the monasteries away from royal control. Cluniac charters intended no tribute or service to pope, emperor or diocesan, but there was a new creature in the political forest, the *Vogt*. <sup>11</sup> Henry IV in the Hirsau charter of 1075, while placing free direction of monastic properties in the hands of the abbot, set apart the crucial power of finance, placing it among the administrative powers of an individual called the advocate or *vogt*. <sup>12</sup> Besides fiduciary direction over revenues, the charter granted the *vogt* jurisdiction over criminal matters of life and limb, a fixed income percentage from the operations and participation in the deposing of abbots. Furthermore, the office of *vogt* would remain hereditary in the family of

the contributing noble (the Count of Chalw, in the case of Hirsau 1075). The *vogt* was nominally an elected post, but candidates were selected from a limited pool of counts or peers and in reality was appointed by the local magnate. Hirsch adds, "Since the advocacy was really only a modified form of the older proprietary right which the lord had exercised in his churches, the heritage of the proprietary lord inevitably passed to the advocate and not to the pope. " 13

Playing the tension between pope and emperor, the dynasts used the office of the advocacy to maintain their rights while ostensibly surrendering their monasteries. 14 Additionally, ties with the papacy established the independence of their foundations from the *Reichskirche*, impairing rights of the crown. However the Hirsau abbeys ultimately needed the consent of the crown to have a permanent exercise of their legal rights. In practice - and the Curia eventually recognized this - the *vogt* needed a royal grant of jurisdiction if he was going to exercise high criminal justice. 15 The *vogt* and other seigniorial offices were beginning to be drawn up into the realm of government rights, legitimized by a new style of civil law heavily influenced by the Germans, led by the Hohenstaufen, the great imperial adversaries to the papacy.

### Monasteries as multimodal mediating structures

Mindful of welfare corporatism's emphasis on "mediating structures," German monasticism worked itself amidst all sorts of arrangements - financial, political and organizational - which created new types of work, and experimented with new balances of financial and administrative

power. <sup>16</sup> Monasteries - with a mission to serve the poor - made space for themselves on several sides of the action, royal, papal and noble. <sup>17</sup>

The monastic story is one of succeeding waves of reform, each begun as a conscientious effort to return to the humble origins of the apostolic life, each becoming in due course successful, worldly and decadent. At first the appeal of Cluny was based on the genuine piety of its members - no one was allowed into the order who had not divested of their private property. Nevertheless as with other monasteries, it fell somewhat victim to its own success (provoking the vigorous criticisms of the Cistercians) which motivated Cluny abbot Peter the Venerable (1122-1156), to re-impose the disciplines of fasting and silence and rededicate the abbey's mission to concern for the poor. Somewhat more grandly, though, he planned to build the "biggest church in Christendom" part of which would be for the exclusive use of monks "where they might pray and mortify themselves as in a hermitage far from the sight of men." <sup>18</sup>

### Cistercians

As Cluny meant to be a reform of the Benedictines, so the Cistercians saw themselves as a reform of Cluny. <sup>19</sup> The Cistercians began as a fringe movement reaffirming the *vita apostolica*, in imitation of Christ's simple poverty. At the beginning the Cistercians were isolationists, renouncing populated areas, pointedly avoiding competition with other monks for endowments, tithes, rents, or services.

In regard to corporatist development, the Cistercians mark a definite advance beyond Cluny's loose affiliation of monasteries. The Cistercian's Charter of Charity (*Carta Caritas*) formed a true corporation of abbeys and priories with a New Monastery of Cîteaux (*Cistercium*) at its center. 20 Bolton writes, "The real founders of the Order of Cîteaux may have been those abbots who, in the General Chapter of 1123, renounced some of their autonomy to a new corporate body within the Church, so bringing into existence the first monistic order." 21

Although Cluny had opened the door to interaction among various monasteries, the Benedictine forms prior to the Cistercians were comparatively atomistic. In the Cistercian order there was a direct single chain of authority radiating from the hub at Cîteaux which included additional mother houses, a regular system of mutual visitation by which the proceedings at each site were monitored, and a supreme legislative body instituted at Cîteaux which every three years held a General Chapter of all Cistercian abbots. 22 Among the matters decided were procedures by which unworthy abbots could be removed by decision of their monks.

Although at first making a point of shunning lay magnanimity, one form of lay involvement which considerably furthered the Cistercians efforts were the *conversi* - illiterate half-monks which provided the basic labor force of the order. In some areas *conversi* outnumbered full monks by two or three to one, and by 1190 there began to appear evidence of overworked and underfed *conversi*. 23

The Cistercian method of regular and systematic visitations and General Chapters was adopted by the pope and applied to all monastic orders by the Fourth Lateran in 1215. There were other ties between the pope and the Cistercians. The Cistercian's frontier ethos made for a close alliance with the pope. <sup>24</sup> Bolton notes, "In the course of the twelfth century the Cistercians became the leading crusade agents of the Papacy" <sup>25</sup> Their evangelizing zeal and a proclivity for quick condemnation of heresy earned the Cistercians the dubious distinction of leading roles on the second, third and fourth crusades.<sup>26</sup>

### Knightly Orders and the Templars

The organicist dimension of corporatism can be seen to coincide in the medieval monastic and military disciplines. Though the earliest crusading orders - "soldiers of Christ" - accompanied the Crusades as support services and physicians, they rapidly became paramilitary and reached a peak with the Knights Templar (The Poor Brothers of the Temple of Jerusalem). The Knights Hospitalers (Order of St. John of Jerusalem) were rivals of Templars whose original intent was as a medical corps of the crusaders but who also became a purely military order.

Eventually the Templars yielded to same temptations as the Cistercians. Innocent III especially encouraged the Cistercians to give up some of the joys of contemplation in order to carry on evangelical tasks and presumably compensate for the notorious corruption of some clergy. However the Cistercians by then were no strangers to rich clothing and lavish spending, and commonly came to use horses, which they did not in

their ascetic early days. Cantor notes that particularly during the mid twelfth century economic expansion "[I]t was difficult for any effective corporate group not to make money, and if the corporation was also dedicated to divine service, it received endowments from all sides." 27 As with many monastic orders, they became skilled at wealth transfers and asset management "and by the thirteenth century they were the greatest bankers in Europe, with the papacy and the French kings as their clients. The Templars constitutes one documented case of religion playing a part in the rise of capitalism" 28

### Professional Boundaries: Priests vs. monks

The Investiture issue was never really resolved, but the issue of leadership persisted, particularly in light of simoniacal abuses by clergy, lay-appointed or otherwise. One of the repercussions of simoniacal reform was to resurrect the Donatist view that unfit priests should stand to be removed by the people. 29 Implicit in this was yet another, even more significant feature of the monastic corporations - a strong undercurrent of lay organization, in the name of faith, but in the form of corporate power. Here can be seen a streak of primitive meso-corporatism and subsidiarity, contrasting the steeply hierarchical universal Church with regional, self constituting semi-autonomous organizations.

Long before the monk Martin Luther would famously challenge the Roman Church hierarchy, there had been long-standing tension between monks and priests. Gregorian reformism was based on impatience with the simoniacal Church hierarchy, and a fervor for ascetic devotion to one's

personal principles. Benedict himself was not ordained, but instead a "lay religious," and many of the Augustinian canons were plainly individualistic in their approach to faith. Many monastic communities amounted to systematized lay practice, with considerable anti sacerdotal tendencies, dating from the time of Constantine's conversion. Bolton believes "the monastic movement could be interpreted as a form of protest by the laity against the curtailment of former freedoms and privileges." <sup>30</sup> Bolton adds that Benedict's *Rule* required that a "priest should not be let into monastery too easily and once there, must be made to obey the Rule as did all other monks." <sup>31</sup> Priests were allowed to say mass at a monastery only by permission of the abbot.

The *Rule* was designed for autonomous communities but there was a supervisory provision for the Church, a role for intervention by the local bishop for internal affairs. In practice however the Benedictines had some notoriety for lassitude and excessive independence, addressed by succeeding tides of reform, but the rivalry between priest and monk was real and growing. <sup>32</sup>

### The *Ministeriales* and lay orders

Earlier the idea was raised of medieval monasticism as a primitive form of societal corporatism, a self-defining vocational movement from below, rather than imposed as a preconception from above. The Catholic Church's attempts to restrict and standardize the priestly profession made short term gains relative to the state, and thus appears as an early form of corporatism's technique of protected, distinct professional sectors. But the

way that it was imposed was typically hierarchical and rigid, in the "top down" style of state corporatism. In many ways the hierarchical Church and its priestly profession was more a state than it was a corporation, at least in the intermediary, meso-corporatist sense which we have associated with Catholic welfare corporatism.

The lay appointments which were the crux of the Investiture contest was only part of the erosion of established, priest-dominated Church power. The momentum of the future was with the monastic corporations and their imitators, the grass roots orders of lay religious who prefigured the Protestant Reformation. These organizations, from the "bottom up" as it were, attempted to claim their own distinct identities, eventually with some success. The professional monopoly which the priesthood had enjoyed was now assaulted on all fronts, not simply by the monastic orders, but by other groups of lay religious, as well as by an associated growth of the *ministeriales*, the new category of lay public administrators.

Norman Cantor has pointed out that the power of the Germans and Normans in the tenth and eleventh centuries was substantially founded on control over the Church, and in particular the Benedictine monasteries. The aid which the Church gave them included not only revenue, but knights and administrative personnel.<sup>33</sup> Henry III had marked a turning point at which the royal dependency on Church clerics began to evolve a class of its own, and for the royals this aimed for a more reliable alternative. Part knight, part serf, *ministeriales* were stewards in manorial centers, revenue officials, castellans or simple knights whom the monasteries, bishops and higher level knights needed. The *ministeriales*

system was an effective means of class mobility for the formerly unpropertied, and came to mean the emancipation of peasants, serfs and bondsmen from personal dependence. At the moment the Hohenstaufen took over government, the *ministeriales* emerged with new wealth and holdings, and began to cultivate their own separate estates. By the eleventh century benefices held by *ministeriales* become hereditary and subsequently became less subject to their lords will, free to leave their lord providing he left his former housing at the lord's disposal.<sup>34</sup>

As the idea of *ministeriales* flourished, so did the proliferation of the communities of religious laity. Though not monastic corporations in a strict sense - in many cases they were heretical collectives - these bodies of non-ordained, privately religious "amateurs" were pious and ostensibly poor, similar to the monasteries, but with a pronounced willingness to interpret and preach the gospel on their own.

The Waldensians and Humiliati personified the twelfth century lay passion for religious life, many of them *ministeriales* from Metz. Along with St. Francis and many others of the time whose faith and renunciation defied the disproportionate wealth of the privileged, Peter Waldo (Valdes) was from the wealthy classes, a rich merchant from Lyon who about the time of the 1176 famine, sold all his worldly possessions, sent his wife and daughters to a convent and assumed voluntary poverty in imitation of Christ. He produced a vernacular version of Gospels and of other books of the Bible, ultimately provoking papal condemnation for taking it upon himself to preach.

Waldo's delegation to pope Alexander III in 1179 was denied official recognition. Waldensians were ostensibly allowed to preach, but only with permission of a priest, which amounted to a virtual ban. By 1184 the Waldensians were anathematized for 'thrusting their sickle into the harvest of others' - preaching without authorization, violating the professional monopoly of the Church. Hence both religious laity and the growing bureaucratic class were crowding the Church's traditional dominance in its vocations and professions.

The heavy hand by which the Church dealt with lay religious movements is the sort of the approach which earned Catholic corporatism its modern identification with "state corporatism." It was the beginning of a dark era of decline by the Church into repression and worse. The Englishman Walter Map dismissed the Waldensians as *idiotae et illiterati* who presumed to preach in the absence of a knowledge of Latin. The Waldensians further affronted the Church hierarchy in 1199 when the group was accused of reading from a French translation of the Scriptures. The books were declared heretical and burned.

The Humiliati, also anathematized along with the Waldensians in 1184, showed traits which can be considered forerunners of Catholic welfare corporatism. Writes Bolton, "This lay group had as its framework the fraternity, an organization which by providing mutual aid and benefits."<sup>35</sup> The Waldensians made elaborate arrangements for the sick and dying, providing simple rituals at funerals, performing on their own what was a major Church specialty and source of income. Forerunners of the Dominicans, the Humiliati were mostly upper class Lombards who offered

the choice to men and women to either live in conventual communities or practice a limited form of voluntary poverty within own families, thus they were not, strictly speaking, corporate in their organization, however corporate they might have been in spirit. 36

### The Franciscans

One group which managed to succeed in formal acceptance while also managing to push the limits of self-administered faith - and the implied risk to the professional class of priests - were the Franciscans. Cantor informs us, "The whole tenor of Franciscan teaching replaced traditional sacramentalism with a religion centered on personal experience. This was the kind of religion that the bourgeoisie demanded . . ." 37 The tremendous power of the independent urban movement - a trend which eluded both pope and emperor in this transitory era - was not lost on the Franciscans who preached in marketplaces throughout Europe, allowing the bourgeois to entertain the notion that if one was faithful to the Virgin and Child, and lived abstemiously, he might reasonably equate himself spiritually even with the pope.

The Franciscans achieved papal acceptance virtually at the last moment of the Fourth Lateran of 1215. 38 Though St. Francis did not intend his followers to form into a corporate group, they eventually did under the guidance of Innocent III, holding property corporately. 39

### The Third and Fourth Lateran Councils 1179 - 1215

The reactionary fever of the Third Lateran Council under Lucius III (1181-1185) led to a sweeping anathematization of many of the new religious groups. The *Ad abolendam* of 1184, urged by an anti-heretical campaign ongoing in Toulouse, justified confiscating the possessions of a host of presumed heretics, neglecting to stating what the offending doctrines were. Its techniques prefigured the Inquisition. According to Bolton, "Any three respectable people in each diocese could denounce, on oath to their bishop, those who held secret conventicles or who differed in their way of life from the faithful." 40

As the Fourth Lateran Council approached, Innocent III attempted to incorporate some disobedient groups into the hierarchical church. Making a *distinctio* between irrevocable heretics and the merely disobedient, he allowed "tertiary" Humiliati to preach about their personal experiences, so long as they did not presume to teach doctrine. However, the Fourth Lateran Council which convened on November 1, 1215 degenerated into a tumult of agitated attendees where one bishop was crushed to death and others suffocated. 41

Although Innocent III is characterized among the most powerful popes of the Middle Ages, primarily for effectively reaffirming Gregory VII's pronouncement that the pope recognized no human superior. This was a claim which the Hohenstaufen emperor Frederick II took as a personal affront. As his predecessor Henry IV learned in his clash with Gregory VII, the twice-excommunicated Frederick found himself on bended

knee and in sackcloth begging the pardon of Innocent. However Frederick II was to make war successfully against Innocent, although Frederick died before he was able to consolidate those victories.

Innocent's personal style was pointedly unlike royalty, and conspicuously in service to the poor. Following the manner of Diego and Dominic in Languedoc before him, in 1207 Innocent gave up the rich vestments of papal privilege and changed to a simple tunic of undyed wool. Innocent III also advanced the agenda of social service for the embattled Church by creating, writes Bolton, "one of the most interesting religious corporations of the early thirteenth century by combining his new hospital foundation of Santo Spirito with the old church of the Saxon school . . . of Rome." One of his first acts as pope was to praise the Hospital of Saint-Esprit in Montpellier for its corporal works of mercy - welcoming strangers, feeding the hungry, clothing the poor, tending the sick. 42

Such progressive tendencies notwithstanding, the Fourth Lateran's major finding was that no new orders would be allowed (with the notable exception of the Franciscans whose lawyers claimed earlier oral approval). A shred of reformism survived in the form of what could be considered corporatist: Canon XII introduced a Cistercian-like system of triennial General Chapters, to be attended by all the house heads with the power to legislate as a body. But the degree to which the Universal Church sought to rigidly impose its own monolithic will was to ultimately number its days as a world power.

## Frederick II Hohenstaufen

As Innocent III represented a peak in the imperial Church, so his contemporary Frederick II Hohenstaufen marked the apogee of the imperial state. However it was Frederick who personified the coming age in which the moral legitimacy of the Church was transformed into the supreme authority of the state. Frederick II was grandson of Frederick I Barbarossa (1152-1190) and philosophical descendent of the Salian emperor Henry IV (1056-1106) - of Canossa fame as we have noted.<sup>43</sup> In the year of the Fourth Lateran, Frederick II Hohenstaufen was careful to take the cross at his coronation (at Aix) even though historically the Hohenstaufen represented the quintessential royal lineage of anticlericalism.<sup>44</sup> In Kantorowicz's words, "The Hohenstaufens became a special imperial race - the royal houses of Europe may be princely families but the Waiblings had become *stirpes caesarea*, the imperial race of Rome". (The "Waiblings" are also known as "Ghibellines" and form the other end of the Ghibelline/Buondelmonti factions of Shakespearean fame).

It was Frederick II who personified the new era of state rulership, becoming the ruler who would by his own definition "make all things new again," deliberately paraphrasing St. Paul's characterization of Jesus. The phrase would turn up again three centuries later in Machiavelli's description of rulership in the *Prince*.<sup>45</sup> Frederick II revoked all privileges, grants, gifts and titles - including those held by the Church - thus making all possession subject to his personal renewal.<sup>46</sup> He personified the emerging reality of the centralized, secular state, and exploited the years of simony which separated the Church's authority from

its own ecclesiastical hierarchy. Renowned for his scientific abilities (he produced a systematic research study on falcons) and linguistic abilities, he is considered a pioneer in modern administrative technique.

Years before Frederick's reign, during the time of Henry III, the *ministeriales* had begun to replace the clerical bureaucracy, which Frederick II's grandfather Frederick I (Barbarossa) expanded. Frederick II perfected this new category of administrators, scientists and bureaucrats, training secular replacements for Church administrators who were driven off by the Investiture controversy. He allowed them to be entirely independent of Church education by the founding of the University of Naples in 1224, a major milestone in government secularization of what were originally Church functions.

But Frederick did not stop at developing a statist alternative to the clerical profession. Frederick intended to absorb into his rule the Church's divine claims of legitimacy, appropriating the legalistic notions and sacred imagery which had been refined by the Decretists. Kantorowicz writes,

Frederick's self-definition as 'father and son of Justice' becomes meaningful, since his claim to mediatorship in matters of Law resulted from, and fell in with, the political thought of his century. If Justice was the power 'intermediate between God and the world' (*Siete partidas* II, 9, 28 (*Real Academia de la Historia: Madrid*, 1807) II, 84) then the Prince as the *Iustitia animata* necessarily obtained a similar position. Hence, by the combined efforts of Roman Law and Aristotle, of legal and political philosophies, supported by traditional theological maxims, Justice and Prince as well as their mutual relationship appeared in a new light. 47

The Hohenstaufen era not only usurped ecclesiastical office by the usual means of simoniacal secular appointment, but more elegantly they

nourished their rulership as a new kind of "priest" - priests of the law, a "complement and anti type to the ecclesiastical order" adds Kantorowicz. Arrogating much of the Church's ruling technique, the Hohenstaufen used canon law diction for a legalistic theology of rulership, reconstructing the Prince as the living law, the *lex animata*.

Cantor tells us that Bishop Otto of Freising did much to introduce this new hybrid language of moralistic secular government by writing of his nephew, Frederick I in *Deeds of Frederick Barbarossa*, an "extremely optimistic, highly emotional celebration of the moral and messianic potentialities of imperial authority".<sup>48</sup> Freising originally was harshly judgmental about secular power's propensities to coopt the Church, a surprise coming from a Hohenstaufen, even though a bishop. Yet Freising came genuinely to believe in the potential of the charismatic hero, inspiring the political mood in which, Cantor adds, "[t]he twelfth century state was absorbing into itself moral, emotional, and even divine qualities to buttress legal absolutism and administrative power."<sup>49</sup> Freising is compared favorably to his contemporary John of Salisbury, who similarly advocated the moral sanction of the state (previously the domain of the church) but many feel Freising was clearer in his vision, a true "[p]rophet of the independent self sufficient state."

After attacking and taking Ancona and Spoleto, Frederick II personified the themes of his grand-uncle Freising. According to Kantorowicz, Frederick seized on the coincidence of Christmas and his own birthday (December 26th), and declared "Arise! direct your eyes to see the wisdom and might of the Empire! And know ye us, your prince and gracious

possessor. Prepare ye the way of the lord . . . take the bars off your doors that your Caesar may come. . ." 50

Not surprisingly Frederick II had a terrific group of fans among the Nazis of the 1920s and 1930s. (A popular modern biography of the emperor was published in Germany 1927 with a swastika on the cover). Frederick's Caesaristic arrogation of spiritual leadership was to reappear in fascist guise, in a reiteration of corporatist history, as we will seen in Chapter 3.

### Monastic intermediation and Frederick II

The intermediary nature of the monastic corporations is clear in their collaborations with Frederick II. The Salians and Hohenstaufen followed an extensive Norman tradition which encouraged monastic scholars from the Rhine land and Northern Italy to improve the Norman churches, and to build and endow monasteries. The Cistercians in particular proved valuable to the emperors' interests. Immediately following his Coronation at Aix (where he took the cross) Frederick II courted Cistercian favor, making many gifts to the Cistercians, appointing them to run castles, breed cattle, and practice their skills as builders and architects. Kantorowicz' biography of Frederick says "The Cistercians were to act as 'Preservers of the harmony between the Emperor and Pope' a scheme which had proved fruitful under Barbarossa and Otto IV" 51 Prodigious farmers and steady pioneers, the Cistercians were not just ascetics but impressed Frederick with their 'passionate love' for the Virgin' free from earthly disturbance and earthly broils," writes Kantorowicz. 52

The affinity between religious and military discipline found an ardent sponsor in Frederick II. Among the many connections between the Grey Monks and spiritual Knights were those Spanish Cistercians who took arms when Calatrava was threatened by the Moors. Frederick II traced the origin of the spiritual knights and Cistercian monks to St. Bernard, drawing the comparison between the Templar knights' romantic devotion sobriety to Bernard and his order.<sup>53</sup> The Templars' new knightly inspiration was no longer centered on a mistress but on God himself.

Frederick especially furthered the Teutonic knights - heavily investing in this otherwise neglected group, and making a point of attributing the original founding of the Teutonic order to Barbarossa. According to Cantor, "The monastic form imbued them with corporate efficiency and fanatical zeal." <sup>54</sup>

Frederick exploited the tension between the regular clergy and the orders. Some Franciscans and Dominicans were open supporters of the Emperor against the clergy. "In opposition to the prevailing belief that the Antichrist would come from without to attack the church, many saw the destroyer within the bosom of the church herself," writes Kantorowicz. <sup>55</sup> While crossing the Tuscan Alps, Frederick II met the Minister General of the Franciscans, Brother Elias of Cortona, which was, according to Kantorowicz, the "first indication of the secret sympathy which united the Franciscans and Ghibellines." <sup>56</sup> Brother Elias was a disciple of St. Francis, who picked Elias as his successor. However Elias was removed from his post in the spring of 1239 and joined up with Frederick, consulting and informing the emperor about the confidential plans of pope Gregory IX. <sup>57</sup>

Frederick II had made much of ecclesiastical corruption, and managed to direct the popular hostility toward ambitious priests at pope Innocent IV. The pope had been forced to sell off fiefs and peddle high church offices in order to support his war with Frederick, issuing promissory notes on the next available benefice or see. 58

Following a string of military defeats which Frederick had imposed on the retreating papal forces, and on the verge of an unprecedented alliance of secular rulers against the pope, Frederick II fell fatally ill. 59 On his deathbed at the age of 56 (Dec. 13, 1250 in Foggia) he joined the Cistercian order, donning their grey habit, asking for absolution and preparing a generous will which restored to the Church her possessions (on condition they 'render unto Caesar' as appropriate).

### Review Discussion

We have seen how medieval Catholic canon law has contributed to the modern legal definition of a corporation, particularly in the concept of a juridic person. The medieval Church furthermore analogized the sacred imagery of Jesus's body in order to justify the self-sufficient legitimacy of the institutional Church, as the "Mystical Body of Christ." The Church's juridic reasoning reveals the indelible mark of classic Roman law, reformulated by the monk Gratian's *Decretum*, and so it has a particular affinity for the claims to public authority which the Church used for purposes of its institutional autonomy over and against the state.

Although the Church's efforts to protect its priesthood and control of Church revenues amounted to creating a protected vocational category - one of the definitive characteristics of corporatism - the Church in its broadest and most universal "imperial" sense was not the most telling corporatist example from this period. For the purposes of Catholic welfare corporatism, the legal concept of an organic corporate "body" is more fully revealed in the Church's subsidiary monastic corporations, rather than the overarching state-unto-itself which the Church virtually was during the Middle Ages. The Church at the level of the papacy sought to become its own state, and in that sense, the monarchical Church's interpretation of corporate-ness was as much a project of nationhood as it was a corporatist phenomenon. A more fitting illustration from this era, in terms of Catholic welfare corporatism, is the intermediary role which the monasteries played, as a lesser part of a greater political unity, whether that greater collectivity was the Church or the state. 60

The religious orders - both the fully acknowledged monastic orders and the 'outlaw' lay orders - suggest an embryonic form of Catholic welfare corporatism's mesocorporatist, sub-sector qualities. These organizations were intermediate-sized regional groups whose work was varied and versatile. They display primitive "multimodality" as social service agencies, schools and hospitals, with professional roles in finance, productive enterprise and technology. Their public administrative capabilities, linked to the Church's traditional authority, rivaled the state itself. The organizational skills of orders like Cluny and the Cistercians, their systematic coordination of subsidiary houses and their consolidation

of land and productive enterprises provide much of the foundation for many modern institutions of market capitalism.

The monasteries' approach to finance was a precursor to all modern business corporations, but especially to nonprofit public welfare organizations, including the often complex, nuanced and tempting realities of work in a world of ambition and greed. The gift economy which the monasteries participated in, with its characteristic family enmeshment, endowments, testamentary agreements, and implied "return" rewards (in which simony had a major role), shared many of the traits of modern philanthropy. Furthermore, much of the work for the monasteries was what can be described in today's terminology as welfare production: social service, medicine and education. The financial wherewithal to practice these professions attracted the outright usurpations of the medieval state, but in their most basic origins, they can be seen as fundamentally the business of the Church and related societal agencies. Thus what nowadays is considered a devolution of the state to the Church is from the perspective of this history quite the opposite.

Eventually the newly self-sufficient state, pioneered by the Hohenstaufens, claimed much of the Church's realm for itself - notably with help of monks as intermediaries - while borrowing heavily from ecclesiastical notions of legitimacy. The medieval state's arrogation of the Church's public status was to be repeated in the early twentieth century, in the very name of corporatism. A corporatist vision of social unity, though first conceived in good faith by the Church, and expressed in a language of vocational sovereignty grounded in medieval Church tradition as we have

seen, was to be once again absorbed and subordinated to the political ambitions of the dictatorial state. This is the focus of Part Three to which we now turn.

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<sup>1</sup> Phillippe C. Schmitter, "Still the Century of Corporatism?" Trends Toward Corporatist Intermediation (California: Sage, 1979): 13.

<sup>2</sup> Ulrich Stutz, "The Proprietary Church as an Element of Medieval Germanic Ecclesiastical Law" Mediaeval Germany 911-1250 Geoffrey Barraclough, trans. & intro. Vol. II. Essays. (Oxford: Basil Blackwell, 1939): 48.

<sup>3</sup> Constable 61.

<sup>4</sup> Stutz 42.

<sup>5</sup> Bolton 41.

<sup>6</sup> Benedict's *Rule* was a compendium of what are essentially monastic by-laws, created by the monk Benedict of Nursia c 530, reformulated by Benedict of Aniane 816-819. It is considered the first whole constitution of Western monasticism. The earlier Augustinian canons, based on the very general guidance drawn from a letter which St. Augustine sent to his sister about a century before Benedict's *Rule*, were considered far more eclectic and susceptible to lay involvement and corruption.

<sup>7</sup> Bolton 42.

<sup>8</sup> Bolton 43.

<sup>9</sup> Along the lines of gift economics, rather than as a strictly feudal structure. "Its basis, north of the Alps, was normally an orally concluded agreement followed by a formal act of investiture. . . marked by the payment of an *exenium*, a gift, to the party making the grant." Stutz 58.

<sup>10</sup> Hans Hirsch, "The Constitutional History of the Reformed Monasteries During the Investiture Contest." Mediaeval Germany 911-1250 Geoffrey Barraclough, trans. & intro. Vol. II. Essays. (Oxford: Basil Blackwell, 1939): 131-174, 132.

<sup>11</sup> E.g., the charter of Peterhausen under heading "*De libertate monasterii*".

<sup>12</sup> Henry had confirmed the enactments of count Adalbert of Chaw who had released the abbey from his proprietary control and put it under the abbot who was guaranteed free election. The agreement was finalized

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in typical gift-economy fashion, which took place over the relics of the patron saint in the presence of witnesses. Hirsch 133-4.

13 Hirsch 148, 168.

14 The papal-imperial contest is recorded in the *Libelli de Lite*, a collection of polemics in the form of letters to Mathilde of Tuscany in which an ongoing debate was exchanged between pope and emperor on the issue of Investiture.

15 There was little ultimate satisfaction for the adversaries. The popes' monastic policy failed because Henry V resumed his relations with the reformed monasteries in order to maintain his position of judicial supremacy - justified in the name of "rescuing" monasteries from local princes. The Concordat of Worms in 1122 somewhat resolved problems but after the death of Henry VI, the empire lost influence over episcopal elections.

16 Cf. Paul Johnson in Novak, Towards a Theology of the Corporation 8.

17 This is not to say that the effects of the Henry/Gregory contest were all salutary. One of the outcomes was that German princes and nobles were more inclined to act as though their king was illegitimate, which allowed Germany's feudal transformation of free peasants into serfs.

18 Bolton 43.

19 Begun in 1098 by Robert of Molesme (c 1027-1110) the great expansion of the Cistercians after 1112 is credited to St. Bernard of Clairvaux (1090-1153). Between 1125 and 1151, 317 foundations were made, compared to an average of one foundation per year prior to Bernard's arrival.

20 Stephen Harding brought the Cistercians into the mainstream, writing *Carta Caritatis* after 1113. Bolton 40.

21 Bolton 40.

22 In 1135 a bull of Pope Eugenius III ordered canons in Germany to hold annual regular chapters. Canon XII of Fourth Lateran Council 1215 orders in every kingdom or province triennial chapters of abbots and priors of all religious orders.

23 Bolton 48.

24 The Cistercians were notable pioneers, especially in France from Garonne to the Pyrenees, the Loire valley, Picardy in the north and Burgundy near Cote D'or. They were in the frontiers of England, and Spain after the reconquista, as well as in northern and central Italy, Poland,

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bohemia and Hungary. By the twelfth century there were about 500 Cistercian houses in operation.

25 Bolton 50.

26 The Cistercians developed a pronounced militant streak and became a leading influence on the newly burgeoning Military Orders, especially the Spanish orders of Calatrava and Alcantara and the Portuguese order of Aviz.

27 Cantor 383.

28 Cantor 383.

29 The Donatists were a schismatic Christian sect, notably an adversary of St. Augustine's.

30 Bolton 39.

31 Bolton 41.

32 The rivalry between priests and monks had been going on for quite a while, frequently about money. In 896 a layman named Roger, in league with the monks of St. Maximin at Trier built a church on his land and endowed it with several tithes of various sorts. The monks proceeded to switch their customary tithe payment from the parish church to the new church, which the monks took over at Roger's death, thus paying the tithes to themselves. In the council of St. Denis in 993 regional prelates led by Bishop Arnulf of Orleans came to accuse certain monasteries of usurping tithes meant for the local churches. The bishops were physically expelled by the monks' supporters. Defended by Abbo of Fleury, the monks argued that they were superior to both laity and clerical orders and therefore entitled to special privileges. Abbo did not contend that monks should serve in ecclesiastic offices, but that they should be allowed to celebrate the mass as part of a congregation. Abbo then made the charge that ecclesiastical revenues were being malapportioned by laymen in league with corrupt bishops. He said "by judgment of the bishops, ecclesiastical oblations are of greater use to the horses and dogs of laymen than to pilgrims, orphans, and widows, and to the restoration of churches" Constable 68, 81.

33 Cantor 7.

34 *Dienstrechte*, a type of *ministeriales*-law emerged which developed special statutes controlling the entrance and exits from the ranks of *ministeriales*. Hirsch 210.

35 Bolton 64.

36 The Dominicans are followers of the Spanish priest and ascetic Dominic, begun as a mostly intellectual group whose organizing principles included competence based leadership which overrode seniority. At first

abbey-bound, Dominicans switched to traveling and preaching after coincidental visit to Rome by both Dominic and St. Francis in Nov. 1215, where perhaps they met. Among the distinctions between the two orders are that the Dominicans could own their own houses, and though the Dominicans were devoted to university study (presaging Aquinas' convergence of science and revelation), the Franciscans were dismissive of formal education. Bolton 78.

37 Franciscans gave voice to those who were tired of the hierarchical Church but wanted to stay faithful. St. Francis began with the modest general principles of the Little Brothers, serving by example, bringing faith to the laity, dedicated to either physical labor or begging for their keep. Epitomizing the religious fashion of the times, Francis was genuinely devoted to the apostolic life of poverty and asceticism, renouncing not only personal, but common property. His dedication and ministry drew huge numbers of recruits many of whom, like Francis, were wealthy persons who had decided to renounce their possessions and worldly status to serve God. Franciscans were eligible to be priests, free to travel and preach. Cantor 432

38 Francis (1181-1226) came to Innocent III in 1210 to submit a *proposita* seeking approval for his group, which had been unwilling to follow traditional rule. Francis already had support of bishop Guido of Assisi, thence to Cardinal John Colonna who also intervened. Innocent allowed the movement to continue providing two things - Franciscans were to be tonsured so as clerics they could be permitted *licentia praedicandi ubique* - license to preach anywhere. Second, they were to be "in all things obedient to the Holy See" So unlike the Waldensians and Humiliati, the Franciscans submitted in specific obedience to the See.

39 In 1223 a new *Regula Prima* for Franciscans including a hierarchy of officials and novitiate was accepted by Pope Honorius III as a *Regula Bullata*. Bolton 72.

40 Bolton 97.

41 Amidst an atmosphere of high drama, sixty eight reforming decrees were generated from three plenary sessions. Innocent, careful to speak in Latin, was under great pressure from conservative forces to suppress the new movements. "The Archbishop of Mainz was told to sit down three times" Bolton 107

42 Bolton 100.

43 After Henry VI's death, Otto the Welf battled Philip Hohenstaufen (Henry VI's brother) for the imperial throne. Philip Hohenstaufen was assassinated and Otto succeeded to the throne, aided by a papal coronation. (The pope crowned him in 1209 as Roman Emperor in exchange for free episcopal elections in Germany, an arrangement the Hohenstaufens constantly rejected. Also Otto promised to recognize Sicily as a papal fief and guarantee immunity from attack). Otto reneged on all his pledges to

the pope, who then betrayed the secret plot to kill Henry VI's son, Frederick II. Otto gave up his plans against Frederick II subsequent to an excommunication and the near-revolt it instigated in Germany. (Otto was beaten to death at the age of 36 by the abbot and priests of Harzburg) Frederick II thus became king "by grace of God and pope" at the age of 17. Kantorowicz (FII) 47-56; 66 It was an accession for which the Church would suffer, particularly during the papacy of Innocent IV, who deeply weakened and indebted the Church in his war with Frederick.

44 Ernst Kantorowicz Frederick the Second E.O. Lorimer, trans. (NY: Frederick Ungar, 1957): 572.

45 St. Paul's description of Christ comes from 2 Corinthians 5: 17-21 "If anyone is in Christ, he is a new creation. The old order has passed away; now all is new!"

46 In 1220, he seized Monte Cassino, one of the most sacred establishments of Christianity, built by St. Benedict and over its history the home of several popes and papal advisors.

47 Ernst Kantorowicz, The King's Two Bodies. (Princeton NJ: UP, 1957): 136-137.

48 Cantor 329.

49 Cantor 329.

50 Kantorowicz (FII): 512. Frederick never quite entered and took Rome, however. He paused at the gates, enough time for Pope Gregory IX to turn the ridiculing crowds to his favor.

51 Kantorowicz (FII): 85.

52 Kantorowicz (FII): 83.

53 Likewise Alfonso VIII in his special court charters to the Order of Calatrava.

54 Cantor 383. The nineteenth century German historian Heinrich Treitschke credits the Teutonic Knights with the origins of Prussianism, furthered by the enormously powerful banking system founded by the Teutonic Knights in 1190.

55 Kantorowicz (FII): 618.

56 The Ghibellines and Guelfs formed a political polarity which stemmed from Amide-Buondelmonti family feud in Florence of 1216. The Ghibellines (Waiblings) were seen as intellectual, secular and quasi heretical. The Buondelmonti factions (Guelfs) originally supported the

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emperor, and the Ghibellines the rival king, but under Frederick the Ghibellines became pro imperial, and the Guelfs pro-papal.

57 Kantorowicz (FII): 509.

58 A certain brother Arnold, following a forty day fast in which he experienced a vision informing him that the pope, not the emperor, was the real enemy of God, had calculated that the name Innocentus Papa was the mathematical equivalent to the satanic number 666.

59 This may have been the first attempt at an evenhanded alliance of forces on a limited and conditional military mission. "Frederick did not struggle against nationhood, but used it to magnify himself instead. His policy toward kings was not unlike toward the German princes - he did not limit their independence. Far from suggesting, as his forefathers had, that the western kings should sacrifice their national independence on the altar of universal empire, Frederick used his most eloquent manifestos to adjure them jealously to guard their independence... in cooperation with the Emperor, to defend them against the two enemies of all kings and all states: the rebel and the priest." Kantorowicz (FII): 565-566.

60 "[It was the Church who first craved complete severance . . . by the creation of a unified, self-sufficing priest-state, furnish[ing] a model for the wholly temporal empire" Kantorowicz (FII): 44.

## CHAPTER 5

### THE HISTORICAL CONTEXT OF *RERUM NOVARUM*

#### Introduction

John Coleman writes that modern Catholic social teaching is both "anti-capitalist" and "rooted in the distinction between state and society." <sup>1</sup> Though "anti-capitalist" is perhaps too strong a term - the Church criticizes capitalism and condemns its abuses, but does not reject it outright - Coleman is correct to assert that the Church stands as a counterpoint to the state, both in the Catholic social teaching which emerges in the late 19th century, and in its medieval origins. The institutional distinction of the Church from the state is part of Catholic tradition, defined during the Middle Ages as we have seen, in a process which is made more apparent using the early "genetic traces" of corporatism as a guide. From the traces of corporatism which were visible in the Middle Ages we now turn to the late 19th century, in which corporatism emerged as a concrete political idea and a vehicle for Catholic social teaching.

Chapters 5 and 6 will analyze the Church's approach to corporatism both as a structure to respond to the social needs of the time, and as a technique to serve the Church's own institutional interests. It also addresses the failures of corporatism in these purposes, and how the Church failed corporatism as well because the Church was unable to fully and realistically comprehend two new developments of the era: capitalist business and party politics.

Chapter Five explores the Catholic social doctrine synthesized by Pope Leo XIII's encyclical *Rerum Novarum*, with an emphasis on how the medieval guilds framed the corporatist remedy for the "workingman's" struggle with industrialization. Chapter Six traces the Church's entanglement with the era's partisan political process and how Fascist politics ultimately absorbed and betrayed Catholic corporatism, along with a related movement, syndicalism. It includes a reflection on Pius XI's *Quadragesimo Anno*, a key 1931 encyclical written in secrecy which became the source of much misinterpretation about Catholic corporatism. This is followed by a brief look at corporatism in an international context and as a special interest technique implicit in the conflict with fascism over Catholic Action.

### Background of *Rerum Novarum*

By the nineteenth century the repercussions of the French revolution had swung the political pendulum far away from Gelasian's 'two swords' concept of dual rulership by Church and Empire to a post-Enlightenment world in which the Church was on the run from the confiscatory aggressions of the individualist, liberal secular state. Among the repercussions of the French Revolution was the elimination of long standing strata of intermediary institutions, in favor of the new vision of a centralized state.

Among those intermediary institutions were the network of worker guilds, which had survived from the thirteenth century. The new political

fashion of the times had little sympathy for the guilds' costly habits of price fixing, craft secrets and resistance to innovation. In France, the decree of Allarde in March of 1791 declared that every person was "free to do such business, exercise such profession, art or trade as he may choose" but on the condition that they obtain a license from the government.<sup>2</sup> The Le Chapelier law of June 14, 1791 banned all forms of economic coalitions, whether among labor or capital or combinations of workers and employers, and furthermore prohibited strikes or lockouts.<sup>3</sup> The closing of the French guilds spread rapidly from France to the rest of Europe, including the Church's own guilds in the Papal States, the last of which (the bakers) had been compelled to shut down by 1801. Thus an institutional layer of independently constituted groups which mediated between the individual and the state disappeared.

Napoleonic legislation of 1803 required that all workmen carry a certificate (*livret*) administered by the police and contingent on a satisfactory work history, verified by previous employers. Though capital was presumably subject to similar impositions by the state, typically it was labor which found itself substantially at a disadvantage and without bargaining power. Though the Napoleonic repression was partially repealed in 1848, the demise of the guilds for the Church was richly symbolic of an expansionist state which arrogated to itself what once was the realm of independent, intermediate, institutional Church. Thus the idea of institutional autonomy which re-emerged as part of the Catholic corporatist vision after the mid-nineteenth century was a Catholic reasserting of anti-liberal, intermediary institutionalism, fostered by its understandable concern about a giant, all-enveloping state.

The revolutionary climate of 1848 precipitated a reactionary mood at the Vatican, ultimately driving its approach to politics back to a pre-1789 *status quo ante*. Pope Pius IX (1846-78) was forced to seek refuge outside of Rome, causing him to erase some of his early optimism over the prospects of electoral democracy.<sup>4</sup> Returning in 1850, accompanied by a French expeditionary force, Pius IX (Pio Nono) thereafter began a series of shrill, authoritarian protests.<sup>5</sup> In his 1864 Syllabus of Errors he attacked freedom of the press, universal suffrage and religious tolerance, as well as short-sightedly dismantling a promising Catholic liberal movement by condemning "clerical liberal societies" and excommunicating its key leader, Abbé Felicité de Lamennais (1782-1854).<sup>6</sup> The pope was unashamedly backward: "If anyone thinks that the Roman Pontiff can and should reconcile himself and come to terms with modern civilization, let him be anathema."<sup>7</sup>

The First Vatican Council in 1870 epitomized Pius IX's empty expressions of superiority by resurrecting the long dormant notion of papal infallibility, claiming that the Church was owed an absolute jurisdiction superior to any state on matters of faith. It was a feeble reasserting of the imperial papacy which Gregory VII and Innocent III had invoked so effectively centuries earlier. That very year the Kingdom of Italy forcibly overtook the last of the papal states, confiscating extensive Church property. As Rome was made the capital of the Italian nation, all theological faculties in the Italian University system were abolished. The petulant pope refused his state pensions and "retired" to his few remaining acres, sulkily referring to himself as a "prisoner" in the Vatican.

His successor Leo XIII represented a sea change from most of the Church's 19th century intransigence, attempting to engage the modern world, although not without some wariness of its politics. Leo XIII's 1891 encyclical *Rerum Novarum* attempted to come to terms with secular nationhood and its worldly politics, reformulating the Church's mission to involve itself concretely with the needs of common society rather than persist in a fruitless legalistic battle about its special competence as a temporal authority. Leo's papacy and the Catholic reform movements of the time attempted to adapt corporatist ideas to the serious social needs of the time. The expropriation of the Papal States, (the "Roman Question") though hardly forgotten, was now replaced by the urgent post-Marxist "Social Question" - what the Church planned to do in the real world for oppressed industrial workers and their families.

Leo had several nineteenth century precursors in his efforts to serve the disadvantaged through the organized pursuit of justice, notably Frederic Ozanam (1813-53) who founded the St. Vincent de Paul Society in 1833. Lamennais was another major figure whose liberal critique of industrial capitalism held it accountable for the widespread misery of workingmen some seventy years before *Rerum Novarum* and twenty five years earlier than the Communist Manifesto.

The image of a *societas perfecta* (a self sustaining community independent from the rest of the world) endured in the corporatist vision of self-directing vocational realms at arm's length from ruling secular power. Serving both moral principle and its own institutional survival, the

Church applied corporatism to the "Social Question" by reasserting a medieval vision of an ordered organic unity, using the medieval Florentine guilds as its model. Though not deeply wedded to the idea of actually reinstating Florentine guilds, the notion of vocationally-based guilds running the state, rather than being run by it, must have appealed to the Church's wounded pride.

Neither socialist nor capitalist, individualist nor collectivist, the Church cast a broad net, criticizing and synthesizing the political trends of the times. When the Church took a confrontational position, it correctly assessed the democratic signs of the times and took the side of the masses, identifying with the losers and the marginalized in the capitalist game, the workers who were oppressed by the new forces of industrialism, the small shop owners and tradesmen intimidated by vast business monopolies, and the landed aristocracy who found their old form of power suddenly inconsequential, just as the Church was shoved aside by the new state.

### Harmonizing Labor and Capital

Leo XIII's 1891 encyclical *Rerum Novarum*, (*Rerum*), subtitled "On the Condition of Labor," was dedicated to the "large majority of very poor working men, isolated and defenseless," whose plight had stirred debate among Catholic social reformers.<sup>8</sup> Among the Catholic intellectuals involved in the discussion were those who aimed to thoroughly restructure capitalism and others who wished to simply improve it. One way in which the groups were divided was by how closely they expected to combine the powers of employers with the rights of workers.

Included among the early Catholic corporatists were romantic reconstructionists led by Austrian Baron Karl von Vogelsand (1819-91), whose complete rejection of capitalism proposed to give labor a direct role in the control of capital. <sup>9</sup> Similarly, *Freie Vereinigung*, a group convened in 1883 at the castle of Haid in Bohemia, vowed to sweep away the concept of labor as a commodity and reconceive it as a true partner in the "corporate" (organic) reorganization of industry. Vogelsang and his French disciples Marquis René de la Tour du Pin (1834-1925) and Count Albert de Mun (1841-1914) were among the first to promote the medieval guilds as ideal worker-owner cooperatives.

The prevailing view however came to be that of Bishop Wilhelm Emmanuel von Ketteler of Mainz (1811-77), a meliorist who was wary of capitalism's abuses but saw fit to stay within the system to criticize its morals. The first to fight for workers' rights legislation in Germany, Leo XIII called Kettler "my great precursor" and embraced his moderate approach, reinforced by the corporatist prescriptions of the Fribourg Union. <sup>10</sup>

### Interpreting the Guilds

Kettler and Leo were less radical in their interpretations of the guilds than were the French aristocrats. Rather than insisting that industrial capitalism revert to the late Middle Ages - an era no doubt more congenial to landed gentry like du Pin and de Mun - Leo XIII emphasized instead that the associations suggested by the guilds "should be adapted to the

requirements of the age in which we live." <sup>11</sup> The idea was to affect the quality of relations between labor and capital, not to change the basic meaning of capital itself.

In Italy, the mood was similarly less revolutionary than among the Vogelsang followers. The Catholic social reform congress *Opera dei Congressi* in 1874 urged representatives of mutual aid societies to follow "as closely as possible" the ancient corporations of arts and trades, without taking the historical precedent to mean the revocation of the capitalist system. <sup>12</sup> In 1877 the Congress at Bergamo struck a benign and familial note, proposing (notably in manufacturing) a "fraternal union between the community of workers and the upper classes, this being the essence of the Christian corporation." <sup>13</sup> By the time of *Rerum Novarum*, the question persisted as to whether a "corporation" should consist of a complete fusion of *both* employers and workers, or of worker associations *separate* from employers?

Writing in *Rerum Novarum* of "those institutions and organizations which afford opportune assistance to those in need," Leo XIII praised "societies for mutual help; various foundations by private persons for providing for the workman, and for his widow and his orphans. . . and what are called "patronages" (orphanages and rest homes). He then states that "most important of all are Workmen's Associations," mentioning in the next sentence "what excellent results were effected by the Artificer's Guilds of a former day." <sup>14</sup>

## Separate "Workmen's Associations"

The innovative leap which *Rerum Novarum* then makes is to apply this reference to the idea of independent labor associations, a remarkable step for an institution as conservative as the Catholic Church. This almost didn't happen, except for the last minute influence of Baltimore's Cardinal Gibbons, who caused section 36 of *Rerum Novarum* to be changed. The beginning of the second paragraph of section 36 had read simply, "most important of all are Workmen's Associations." But according to Mueller, Gibbons changed a subsequent line to clarify what Leo meant by these "Associations." The later line now reads, "It is gratifying to know that there are actually in existence not a few societies of this nature, consisting *either of workmen alone*, or of workmen and employers together, but it were greatly to be desired that they should multiply. . ." <sup>15</sup> Leo was thus encouraging a trend which he felt was already in existence and furthermore, endorsed the idea that a perfectly reasonable part of this trend were associations consisting exclusively of labor. However it is also important to note that the context in which he referred to these organizations were as welfare benefit institutions: there is no specific reference in this passage to collective bargaining agencies whose main work was negotiating contracts over wage pricing.

In Germany and Austria the Vogelsang-school anti capitalists had resisted the idea of separate unions. They wanted the system entirely changed on the workingman's terms, and preferred the absolute mutual identification of labor and employer which was implicit in their interpretation of the guilds. They argued that separate unions for

workingmen would incite class hatred. <sup>16</sup> The anti capitalists wanted to exploit the guild form as a pretext to overtake the capitalist system, and the employers knew this. (This was precisely Edmondo Rossoni's intent for the Fascist Corporations). Employers, for their part, were justifiably wary that 'integral' corporatism would blur the dominant role of capital.

### The guilds and functional representation

In other ways the medieval guilds were an awkward fit to modern realities. The late thirteenth century Florentine guilds achieved a type of functional representation which not only had 'self regulating' authority in their own lines of work, but became the entire community's governing apparatus, as a type of legislature or magistracy, rather than as an industry-specific consultative panel. In 1280 as part of a Ghibelline-Guelf ruling compromise, the so-called Fourteen (guilds) each elected their own representatives to various government committees which had city-wide powers, more than those strictly pertaining to their own businesses. This was more than professional autonomy, this was a overarching system of representative government. Notably, the system eventually was collapsed into "one harmonious entity" run by the aristocracy, an arrangement purchased through the specious "participation" of lower guild representatives who were appointed to powerless committees. <sup>17</sup>

The idea of functional representation in the form of a parliamentary chamber did appear in Italian Catholic reform circles during the mid nineteenth century, with a proposition in 1851 to add an additional chamber to the Italian Parliament made up of skilled professionals from

various economic sectors. Interestingly, the corporations were expected to be very large economic classifications with society-wide impact (c.f. Lowi's "encompassing groups"). The hope was that a nation united under the Catholic religion could reasonably determine which sectors were "the true, organic parts of society and not the mincemeat interests of 300 or 400 persons represented in the Chamber . . . " <sup>18</sup> Presumably their interests would be large enough to be identified with the concerns of the entire nation, rather than entirely focused on self-regarding issues.

This concept of a vocationally-based chamber of parliament was eventually instituted by the fascist corporativists in Italy, and in other countries, notably Portugal. The idea was briefly reconsidered in post WW II Italy, but the notion of extending the idea of functional representation to the point of an additional chamber of parliament is not explicit in any Catholic encyclical, even though it has been associated with primarily "Catholic" countries.

#### Traces of Societal Corporatism in Workmen's Associations

It also appears that at this point *Rerum Novarum* is suggesting organizational principles more along the lines of "societal corporatism" than "state corporatism." Referring to worker associations, Leo distinguishes "these lesser societies [from] the society which constitutes the State" because they have different purposes and ends. Civil society, or "public society," as Leo puts it, is "concerned with the interest of all in general" but he seems to say that societies which are formed on the basis of professional interests are *in* the state but are not *of* the state, to paraphrase

Augustine. He writes in section 37 of *Rerum Novarum*, "But the societies which are formed in the bosom of the State are called *private* and justly so, because their immediate purpose is the private advantage of the associates," and he continues in section 38, "Particular societies, then, although they exist within the State and are each a part of the State, nevertheless cannot be prohibited by the State. . . For to enter into a 'society' of this kind is a natural right of man, and the State must protect natural rights, not destroy them. . ." 19

This does not entirely arrive at societal corporatism, but it does squarely place competence for the creative power of association in the hands of society rather than the state. It could be argued that "formed in the bosom of the state" suggests that they are creatures of the state, but the imagery indicates that the state's role is one of nurturance rather than conception, and this would be consistent with Leo's admonition that the state support, and not to prevent, the spontaneous formation of associations, other than those which are "evidently bad, unjust, or dangerous to the State. 20

When Leo states that these "lesser societies" are different from "the societies which constitute the state" - it can be taken to mean that they are not constitutive of the state, nor do they have "public" interests on their mind, but instead are dedicated to the needs of their own professional communities.<sup>21</sup> This is also not entirely indicative of societal corporatism. With regard to welfare-relief, which is clearly the context in which the whole discussion occurs, Leo's idea seems at that point to propose corporations which would "take care of their own" rather than to make

claims on government. This is consistent with the institutional autonomy which Church history has favored, but it was written at a time when the notion of the state was not yet fully consonant with the "welfare-state." Following Bismarck's lead, state welfare relief was about to marginalize the Church and other "charitable" agencies. Thus, though Leo may not have been proposing a "societal" type of corporatist scheme, neither is he particularly endorsing "state" corporatism.

There are limits to the clarity which 20th century classifications of corporatism can bring to its 19th century origins, but to the extent that *Rerum Novarum* argued a natural law right to self-constituting associations, it provides some evidence that the original intentions of Catholic corporatism shared certain inclinations towards societal corporatism, rather than the capitulation to state dominance indicated by state corporatism. The time for capitulation to the state did come to pass during the era of fascism, but at that point the most the Church was able to do was make an indirect point (in *Quadragesimo Anno*) of how this departed from its corporatist principles.

### The Guilds and the definition of "workers"

Another problem in adapting the medieval guild model to modern circumstances was in how "workers" were construed. Mueller points out, "the guilds did not originally comprise employers and employees. Journeymen and apprentices who were under the protection of the guild were not 'employees' in the modern sense, but students of a craft. . ." 22 When Leo suggested that the guilds "be adapted to the requirements of the

age in which we live" he added little more advice than to say that 1891 was an age of "different customs, and of more numerous requirements." <sup>23</sup> Thus the medieval class of artisans was an inadequate analogy to the modern 'wage slave' whose assembly line labor was easily replaced and "commoditized."

### Medieval nostalgia and aristocratic condescension

The *noblesse oblige* of the nineteenth century guild-minded romantic reformers hadn't yet fully grasped the nature of modern industrial capital, thinking more in the anachronistic terms of artisans and latifundia than in the ascendant reality of capitalist finance. <sup>24</sup> More often what the Church evoked was a moralistic etiquette among the upper classes, a paternalistic protective largesse for the less fortunate of the Christian 'family'.<sup>25</sup>

The body metaphor of Catholic corporatism invites similar problems with aristocratic diction, in the sense that some parts of the human body are clearly more important than others and that their special, preordained roles should not ever be changed. *Rerum* endorses "natural" hierarchies ("unequal fortune is the necessary result of unequal condition") and inherited privilege through one's "station in life." <sup>26</sup> Coleman notices this aristocratic influence and asks why ". . . every other name of notables mentioned in the history books as influencing *Rerum* was a count, marquis . . . or industrialist and that no militant union organizers had any impact on the document?" <sup>27</sup>

In rejecting socialist proposals to abolish private property *Rerum* (in sections 4-15) classifies private property as a "natural right" and promotes this type of ownership for as many of the working class as possible, arguing that it is a necessary aid to parental responsibility. But here again the idea of property is based on a poetic evocation of hearth and home, rather than on an economic analysis of productive property in the factory and warehouse. 28

### The attempt to reinterpret the modern corporation

Perhaps the medieval color to Catholic social ethics at the time of *Rerum Novarum* was meant to help put a human face on the modern concept of a "corporation." At the end of the 19th century, the business corporation represented impersonal commerce, driven by impossibly expensive machinery, controlled by distant investors. The business corporation was Industrialization's great vehicle, but what capitalism made of it was far different from personalistic notions of corporate-ness enshrined in Catholic tradition. The Middle Ages helped to evoke an image of simpler, more pastoral times.

In 1953, John Courtney Murray described the cultural understanding of the business corporation in Leo XIII's era as though

a new 'master' had appeared, the corporation. And, as the American aphorism had it, 'Corporations have neither bodies to be kicked nor souls to be damned'. They were seemingly immune from the restraints that conscience had imposed on the old 'master', the individual, in an age when economic relationships were generally

personal. The private conscience had ceased to be an effective means of social control" 29

As we have seen, Catholicism since the Middle Ages could construe the idea of a "corporation" even in sacred terms, as an immortal assembly formed into the Mystical Body of Christ. By extension, organicism also informed Catholic ideals of corporate social unity ("organicism" is used explicitly in this sense in *Quadragesimo Anno*).<sup>30</sup> What the early Catholic corporatists seemed to be searching for by evoking the Middle Ages and its guilds was a redeeming vision of the corporation, as a "legal personality" with a pronounced moral, ethical, Christian orientation, not simply an "entity." To do this it drew its imagery from a time before big business and big government changed everything, including the stature of the Church.

#### The specter of the liberal state: Distributists and Dorothy Day

Another modern event which was viewed as frightening and impersonal was the centralized liberal state. The state, for years hostile to the Church, banishing guilds and their communities of mutual aid, and now threatened to absorb all social service. Addressing the "Confraternities, Societies, and Religious Orders which have arisen by the Church's authority," *Rerum Novarum* notes that, "In many places the State had laid violent hands on these communities . . . it has placed them under the civil law, taken away their rights as corporate bodies, and robbed them . . ." <sup>31</sup> Therefore the Church had good reason to hold the state at a certain distance.

The Catholic "Distributivists" of the early twentieth century, led by Chesterton, Belloc, Eric Gill and father Vincent McNabb, warned of an emerging "servile state" whose taxation imposed involuntary burdens on the middle class, in the name of the welfare state. Pius XII continued this critique years later with an equivalent term, "the providential state" whose implications threatened to take away many of the roles of the Church and other traditional mediating institutions.<sup>32</sup> Consistent with the Church's emphasis on property as personal (and agricultural), rather than industrial, they saw private property - meaning mostly family farms - as the best remedy for the liberty and self sufficiency of the masses.

Today's persistent cry of less-taxes-more-property echo the Catholic-populist social prescriptions of Hilaire Belloc's 1912 book The Servile State. His and G.K. Chesterton's advocacy of "distributivism" promoted private property for all so that each could be self sufficient and "fend for themselves against efforts of governments to constrict freedom through passage of coercive laws in the name of humanitarianism and social security."<sup>33</sup> Belloc held that labor becomes "servile" when the state imposes taxes under the compulsion of [welfare state] positive law which is "performed for the benefit of others who are under no such compulsion [i.e., the capitalist oligarchy]."<sup>34</sup> Belloc, another admirer of the medieval guild system, (an "excellent consummation of humanity") blames the sixteenth century British expropriation of monastic lands as setting the stage for the aristocracy's narrow concentration of wealth and its eventual arrogation of industrial production.<sup>35</sup> According to the Distributivists, hugely disproportionate wealth "rose upon the ruins of religion" and the

consequential poverty which resulted finds dubious remedy in a state whose answer is to tax the masses into "servitude". 36

Dorothy Day's Catholic Worker movement in the early twentieth century also promoted an alternative to the modern state, a type of anarchistic agrarian self-help vision. Her collaborator Peter Maurin coined the phrase "green revolution" for the farming communes he proposed in order to provide land and homes for the unemployed. They advocated "hospice houses," houses of hospitality provided in a spirit of mutual aid, as an alternative to surrendering to the state the works of loving charity provided by the Church and society. 37

Day's approach had ties to Catholic corporatism in its appeal to institutional liberty. Commenting on an article by Bob Ludlow, one of the editors of The Catholic Worker, Dorothy Day wrote

both among Catholics and anarchists in general a great deal of misunderstanding comes about by a confusion of the terms State, government and society. Father Luigi Sturzo's book Inner Laws of Society is the best Catholic treatment of the subject I have read. He brings out the point that the State is only *one* form of government. When you analyze what anarchists advocate (particularly the anarcho-syndicalists) it really boils down to the advocacy of decentralized self-governing bodies. It *is* a form of government . . . 38

The Distributivists and the Catholic Worker Movement both in their own ways embodied a Catholic response to the modern "welfare state." Though they were not strictly corporatist, they did share values in the spirit of the guilds, particularly as traditionalist counterpoints to the emerging trends of modern state administration.

### Toniolo's corporatist refinements

By the end of the nineteenth century Giuseppe Toniolo's synthesis finally resolved some of the guild limitations by incorporating modern business concepts into an institutional intermediacy between the state and the individual. Consistent with Catholic principles, it had a moral tone, in his words, "a true and proper instrument of defense for salaried labor" ("un vero e proprio strumento di difesa del lavoro salariato." 39

Toniolo's three-point definition of corporation has both structural and procedural dimensions: (1) as a representative structure (2) as a system and method of claiming rights (as correlates of duty) and (3) as an agency of promotion, specifically "an autonomous and permanent association. . . with the aim of representing, protecting and furthering the various interests (material and moral) of each class, coordinated with those of other hierarchical classes of society". 40 He makes the distinction between the two types of corporations, *simple* in which the corporation arises from solely owners or solely workers, and *mixed* in which owners and workers enter the same corporation, echoing the old dichotomy sparked by Vogelsang.

In 1894 (two years after the founding of the Italian Socialist Party) Toniolo issued a rejoinder to the socialism through the *Unione cattolica per gli studio sociali*, endorsed by the *Opera dei Congressi*. Speaking in the language of modern capitalist finance, he recommending profit-sharing and stock participation for workers (anticipating *Quadragesimo* thirty

seven years later). He begins with the familiar anti-liberal moralist tone, "These professional unions do not have a merely economic purpose, but are ultimately aimed at shaping into an organic whole what is now a society pulverized by wide-spread and pernicious individualism." Yet he clings to the Church's patronizing tradition, "[b]ut if it is repugnant to the upper classes of property owners and capitalist to join the lower classes in mixed associations. . . the latter will accept that workers join professional unions exclusively." 41

The net result was very advanced for the time: the Church was weighing in on the side of labor unions. The organicists' dream of "integral" or "mixed" unions would exist only as a figure of speech, a broad sentiment of fraternal goodwill. Structurally and politically, workers would contend for their rights by their own representation, rather than petition for acceptance as part of an organic whole in which capital was the head and labor did the heavy lifting.

Toniolo's attempt at a neo-guildist modern corporatism nevertheless retained the tone of condescension which seems to constantly dog the Church. Romantic tradition also affected the Church's approach to electoral politics, and contributed to the alienation of two politically-minded Catholic priests, the visionaries Romolo Murri and Luigi Sturzo, fathers of Christian Democracy.

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<sup>1</sup> John A. Coleman, S.J. "Neither Liberal nor Socialist - The Originality of Catholic Social Teaching" One Hundred Years of Social Thought ed. John A Coleman (Maryknoll: Orbis, 1991): 32, 38.

<sup>2</sup> Ernest I. Bogart, Economic History of Europe 1760-1939 (NY: Longmans, Green & Co., 1942): 211.

<sup>3</sup> Clive Trebilcock, The Industrialization of the Continental Powers 1780-1914 (NY: Longman, 1981): 126.

<sup>4</sup> In 1846 Pope Pius IX began his papacy on an optimistic enough note, declaring amnesty for all political prisoners in the Papal States. He was furthermore sufficiently sanguine about the prospects of electoral democracy to come close to allowing himself to be drafted as the leader of a "neo-Guelph" party, which attempted to evoke the medieval Guelf/Ghibelline dichotomy, but was somewhat of a misnomer in that it identified Catholicism with the Italian nation. He quickly abandoned the idea. Carlo Francesco Weiss, "Corporatism and the Italian Catholic Movement." Diss. (Yale University, March 1955): 15.

<sup>5</sup> Pio Nono is a triple entendre, "*nono*" means "nine"; "*nonno*" means "grandpa" and "*no - no*" is more than an appropriate mnemonic for Pius IX.

<sup>6</sup> The Catholic liberal Lammenais was key figure in the early development of Catholic corporatism because he stressed the importance of intermediary groups as a buffer between isolated individuals and the state, contrary to the formulations of Rousseau.

<sup>7</sup> Syllabus 80, quoted in Weiss 30.

<sup>8</sup> Leo XIII "*Rerum Novarum*"

<sup>9</sup> See Coleman, "Development of Church Social Teaching" Readings in Moral Theology No. 5 Curran & McCormick, eds.(NY: Paulist Press, 1971): 177-178.

<sup>10</sup> The Fribourg Union (1884-91) under the direction of Archbishop Caspar Mermillod (1885-91) reported regularly to Leo XIII. Earlier in 1881, Bishop Mermillod and Archbishop Jacobini had created the *Circolo dei studi sociali ed economiche* in Rome. Eleven years before that, the Geneva Alliance was convened in 1870 by European noblemen who anticipated the turn to the masses by the papacy in the wake of state repression. See Franz H. Mueller's excellent summary of this era in The Church and the Social Question (Washington: AEI, 1984).

<sup>11</sup> *Rerum* 23.

<sup>12</sup> Weiss 71.

<sup>13</sup> Weiss 71, quoting Atti del IV Congresso Cattolico Italiano (Bologna: Felsinea, 1877).

<sup>14</sup> *Rerum* 36.

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<sup>15</sup> Mueller 82, citing George Jarlot, S.J. "Les avant-projets de 'Rerum Novarum' et les 'Anciennes Corporations'" *Nouvelle revue theologique*, 81 (1959): 67. My italics.

<sup>16</sup> Coleman, Readings No. 5

<sup>17</sup> See John M. Najemy, Corporatism and Consensus in Florentine Electoral Politics 1280-1400. (Chapel Hill: UNC, 1982).

<sup>18</sup> Weiss 23 ( footnote 48, quoting V.L. Taparelli, S.J. "Ordini rappresentativi nel loro soggetto." Civiltà Cattolica V (1851) 395-428; 497-518. "Ordini rappresentativi nella loro funzione"; VI (1851): 61-89, 304-321. Civiltà Cattolica is a Jesuit publication.

<sup>19</sup> *Rerum* 37, 38.

<sup>20</sup> *Rerum* 38

<sup>21</sup> *Rerum* 37.

<sup>22</sup> Mueller 82-83.

<sup>23</sup> *Rerum* 36.

<sup>24</sup> Catholic notions of modern capitalism are far more sophisticated in *Mater et Magistra* 91-103 and *Gaudium et Spes* 68.

<sup>25</sup> See the discussion of clientelism and its underlying cultural ritual of petitions to saints in Chapter 2 and appendices.

<sup>26</sup> *Rerum* 17, 22.

<sup>27</sup> Coleman, Readings 178

<sup>28</sup> *Rerum* 6,47,13.

<sup>29</sup> John Courtney Murray, S.J., "Leo XIII: Two Concepts of Government" Theological Studies (Vol. XIV, 1953): 557.

<sup>30</sup> *Quadragesimo* 90.

<sup>31</sup> *Rerum* 39.

<sup>32</sup> Dorothy Day, The Long Loneliness. (NY: Harper & Row: 1952): 267 .

<sup>33</sup> Robert Nesbit's introduction to The Servile State (Indianapolis: Liberty Classics, 1977) 22.

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34 Nesbit 31

35 Nesbit 82

36 Nesbit 96

37 Day 185.

38 Day 268

39 Eugenio Guccione Cristianesimo sociale in Giuseppe Toniolo  
(Palermo, Italy: Renso Mazzone, 1972): 69.

40 Guccione 62. quoting Giuseppe Toniolo, "*Provvedimenti sociali popolari*" (Societa italiana cattolica di cultura: Roma, 1902 ): 104. My translation.

41 Weiss 74 quoting G. Toniolo, "*Il programma dei cattolici di fronte al socialismo*" in Democrazia Cristiana: Concetti e Indirizzi. (Vaticano: Opera Omnia, 1949) Vol. I, 13. Toniolo was advisor to Leo XII and Pius X who appointed him president of Unione Popolare, which later was called Catholic Action.

## CHAPTER 6

### QUADRAGESIMO ANNO AND THE FASCIST BETRAYAL

#### The Church and party politics

Catholics were seeking a type of economic regulation which was above party politics, and corporatism appeared to provide the vehicle. Heinrich Pesch, S.J., (1854-1926) the architect of "solidarism," typified this approach, envisioning industrial or professional organizations which were neither labor unions nor political parties, but rather self governing vocational groupings which presumably would keep politics and government at a distance. Carlo Francesco Weiss, in describing the Church's discomfort with electoral politics writes, "Political interests were considered unreal, political organization a superfluous and malignant excrescence to be eradicated from the spirit and institutions of the Welfare Community." <sup>1</sup> If Catholics entered Parliament, they would have to risk the moral compromises of *combinazioni*, back room agreements with shady collaborators. What reform-minded Catholics would discover, however, was that electoral politics would become unavoidable, even in the case of corporatism.

In 1953 John Courtney Murray wrote that "the Church is not a sort of 'industry council' nor one of the *ordines* of which Pius XI speaks in *Quadragesimo Anno*, clarifying Leo XIII." <sup>2</sup> Murray explains that because the Church's creation was prior to and independent from the state, "the Church as a society is already 'there'. . . Her existence does not derive from

some collective human act of free association . . . " <sup>3</sup> In this sense the Church - as the universal Christian family - is neither "state corporatist" nor "social corporatist" but a preordained natural state of human affiliation. Neither is the institutional Church comfortable with the suggestion that sacred imagery can be reduced to the needs of a lobbying organization.

Nevertheless as the following account details, the Church as a worldly institution was fully capable of acting corporatistically for its own vocational interests, with self-regulating autonomy as its goal. This is not what modern Catholics usually mean by the Mystical Body of Christ, but it is conceptually related to the institutional Church's relations with the state. In the early to mid twentieth century, so ambitious was the Church to achieve its ends, in fact, that it distorted its own earliest notion of corporatism in order to assist the partisan ends of the ruling power. The question was not whether corporatism was political, but in what *sense* was it political: as an principle of social regulation or as a tool of electoral influence? What began as the Catholic corporatism's abstemious disdain for political life turned to a fever of political passion over the worst possible suitor, fascism.

### The descent into the political thicket

In 1886, sixteen years after the expropriation of the Papal States and twenty two years after the Syllabus of Errors, Pius IX decided that the best response to electoral democracy for Catholics in 1886 was no response at all. Referring to the use of the ballot, he told Catholics, " Considering all the

circumstances - it is not expedient" (*non expedit*).<sup>4</sup> His reformist successor Leo XIII was less hostile to electoral politics but still very skeptical about the calls for a Catholic political party, commenting that "to tie the Church to a party and to expect, moreover, that she should offer assistance in overcoming one's political opponents is grossly to abuse religion".<sup>5</sup> This is generally where the Church stands in 1998, but the reason that it does relates directly to what befell the Church politically in this era of early corporatism.

For all the posturing about apolitical purity, moral advocacy by Catholic corporatist groups had unavoidable political repercussions, especially when it specified social remedies. Catholic social reform movements soon represented big numbers: by the 1890s there were 4000 parish groups, 700 workers societies, twenty four daily papers and 155 periodicals.<sup>6</sup> The disingenuousness of the *non expedit* was not lost on Romulo Murri, who recognized the power of vote abstention as an active weapon against the state. He considered it a device to buy time while organizing a new type of Catholic political party, one which was free of ecclesiastical authority.<sup>7</sup>

The "*Opera dei Congressi* " the Catholic Congress, begun in 1874 was among the broadest-based of the Catholic intellectual movements in Italy. Basically it was an auxiliary of the Holy See which convened representatives of mutual aid societies and religious groups to study social reform. Similar to the corporatist Fribourg Union and other Catholic study groups, it was to have a portentous role in the Church's encounter with party politics. Though first conceived in the early corporatist pose as an

"apolitical" social remedy, it plainly served the institutional special interests of the Church. The *Opera dei Congressi*, Webster writes, was "seconding the aspirations of Pius IX & Leo XIII towards more or less integral restoration of the rights of the Church." 8

The pope and the bishops were invested in a conciliatory working relationship with the state, while some members of the Catholic Congress were laying the organizational groundwork for a mass Catholic party. Don Luigi Sturzo shared Murri's sense for the political implications of Catholic association, though more astutely playing on what amounted to the Vatican's clear party disaffection, stressing the "need to form a social conscience . . . to prepare the masses for the struggle and triumph over socialism." 9 In this way Sturzo was technically anti-political, against the Socialist party.

The *Opera dei Congressi*'s position as a political activist group with no partisan agenda would prove difficult to maintain, as would its other intended limitation, namely, subordination to Church hierarchical direction ("confessionalism"). Murri had received a hesitant approval from Leo XIII to use the expression "Christian Democracy" to describe his movement, which was partly framed in terms of reviving the medieval alliance between the papacy and the guild-dominated Italian communes. This was largely Toniolo's vision, but Murri eventually put his youthful emphasis on radical transformation. Leo's approval stipulated the group's submission to Bishops' authority, but when Murri and other young radicals overtook the *Opera dei Congressi*, Leo's successor Pius X dissolved it in 1904.

Murri went on to form the *Lega Democratica Nazionale* in 1905, not as a political party but ostensibly as a proletarian and young peoples' outfit. This time though Murri promised independence from ecclesiastical control. Pius X was meanwhile preaching a tripartite approach for Catholics, a coordination of popular, electoral, and economic Catholic lay forces, but Murri saw it as another attempt by the Vatican to subordinate all Catholic politicism to the Church hierarchy. <sup>10</sup> Murri was ultimately excommunicated, accused of Modernist leanings, and his League condemned. His close colleague Don Luigi Sturzo was instructed never to contact Murri. On the day of Murri's excommunication, March 19, 1909, Murri was elected as a deputy in the Italian Parliament.

The question at the time of Pius X was not whether the Church should stay out of politics, but who should control the politics of Catholics. In 1904, a year after his installation as pope, Pius X allowed Catholics to use the ballot in "emergencies," which virtually delivered an electoral victory for the liberal democrat Giolitti, whose rise was indiscreetly brokered by Count Gentiloni, the head of the Electoral Union of Catholic Action. <sup>11</sup> (The electoral "throw weight" of Catholic Action was later seized upon by Mussolini, which marked the beginning of the end of his rapport with Pius XI). By the election of 1913 Filippo Meda warned the pope that he was "selling votes" as the head of an electoral organization. The Church organ *Osservatore Romano* persisted in exploiting the anti-socialist political rationale, describing Catholics as the 'safety anchor' for Liberals in the struggle with the Socialists. It attributed 228 seats won in Parliament to the effect of Catholic voting. <sup>12</sup>

## Quadragesimo Anno

The single most far reaching public statement at a pope's disposal is the encyclical letter, and more than any other encyclical, *Quadragesimo Anno* ("QA" or "*Quadragesimo*") is the central document of Catholic-school corporatism.<sup>13</sup> It had inevitable political repercussions, but because of its (and the era's) political naiveté, and because of the narrow intellectual circumstance of its drafting, *Quadragesimo*'s attempt to chart a middle course between socialists and "individualists" fell prey to fascist distortions. *Quadragesimo* was conceived as a continuation of Leo XIII's *Rerum* (its name refers to the forty years since *Rerum*'s publication) but it is also a telling example of the limits of papal politicism, despite such an illustrious pedigree. Because of Pius XI's isolated, cloistered perspective *Quadragesimo* has been subject to wildly divergent interpretations, and although at times it is truly inspired, it was not immune to the contamination of its era.

### Nell Breuning's original draft of *Quadragesimo Anno*

Thirty years after the drafting of *Quadragesimo Anno* its ghostwriter, Oswald Nell-Breuning commented on a section which he says "bears the chief blame for the total misunderstanding of the picture of order, or rather outline of social order, developed in QA. . . " <sup>14</sup> Nell-Breuning, who worked in strict secrecy after meeting Pope Pius XI exactly once, was responsible for writing the entire encyclical with the exception of a key passage, paragraphs 91-96, which were written by the pope himself and given to Nell-Breuning to incorporate into the text verbatim. The pope apparently intended the paragraphs as a "benevolent nod" to Mussolini

who the pope feared (correctly) would be infuriated by a message the pope planned to release a short time later ( "*Non Abbiamo Bisogno* ") which deplored the Fascist assaults on members of Catholic Action. 15

Nell Breuning was "completely dismayed" when three years after the release of *Quadragesimo* the pope publicly praised what he called the "QA state" established in Austria's constitution in May 1934. For Nell-Breuning, the term "QA state" was a contradiction of terms. He writes in 1971, "The encyclical wants to establish no specific form of state: the state should merely be relieved of tasks that are not its business. What should be curbed is capitalistic class society, centered on the labor market; it should be converted into a class free society. . . " 16 Nell-Breuning disavows the statist impositions of those regimes calling themselves "corporatist" - a disavowal which the Pope never made. Nell Breuning states flatly that Pius XI "never really understood the phenomenon of fascism. " 17

Nell-Breuning traced the statist misinterpretations of QA to the deeply anti capitalist prescriptions of Vogelsang and Ignaz Seipel, which were thought at the time to have influenced QA. According to Nell-Breuning, no Austrian cooperated on the development of *Quadragesimo*, instead Nell-Breuning credited the thinking behind QA to the Konigswinter Group, a group he frequently participated in and whose discussions he reports were based chiefly on ". . . the 'extremely liberal' thinking of Gustav Grundlach. His was the expression used by Nuncio Pacelli (later Pius XII) 'harmonious cooperation of professions.'" 18 Such "harmony and cooperation" was some distance from the state-centric, radical restructuring of the control of capital which some Austrians were advocating, (and many fascists)

although QA found itself open to just such a radical interpretation by its ambivalent conception of property rights, which some saw as "cryptosocialist." 19

Nell-Breuning blames another key misunderstanding about *Quadragesimo* on the encyclical's use of the Latin expression "curatio" (management), which had enormous implications for QA's position on the role of labor in the ownership of capital. Apparently this lost a great deal in the translation from his original German version, so that what he intended as "sharers in management" resulted in "sharers in ownership." 20 He writes, "The German version of QA that I prepared . . . lets you recognize unambiguously that it understands 'sharers in ownership ' and 'sharers in management' are two different concepts . . . 'sharers in management' meant 'sharers in administration.'" 21

The offending sentence about capital "ownership" appears in section 65 of *Quadragesimo*, although § 64 does explicitly reject the idea that "the wage contract is essentially unjust." Nevertheless, § 65 advises that the wage contract "when possible, be modified somewhat by a contract of partnership" so that "wage-earners are made sharers of some sort in the ownership, or the management, or the profits." The poetic ambiguity of sharing ownership - "somewhat" and "some sort" - left open a variety of interpretations, profit sharing among them. But many interpretations defaulted to what were to become extremely aggressive interpretations of state intervention, characteristic of the socialist and fascist programs of the time.

*Quadragesimo Anno*, especially in the context of 1931 Italy, attempted to object to fascist statism, although not by name, and in passive voice only. In obliquely addressing the Vidoni Pact, by which the Fascist party absorbed all labor syndicates and corporations, *Quadragesimo* addresses the "legal monopolies" which the state grants to "special cooperative corporations" so that "it alone can represent workingmen and employers, and it alone can conclude contracts and labor agreements." <sup>22</sup> Maintaining third-person passive grammar, *Quadragesimo* comments, "there are some who fear the State is substituting itself in the place of private initiative," imposing a new version of corporative institutions which are "excessively bureaucratic and political. . . ." <sup>23</sup> This adds evidence of Catholic corporatism's departure from "state corporatist" values, in the sense of a pronounced state dominance of vocational corporations, although (understandably) it was not stated confrontationally.

Earlier in *Quadragesimo*, the position toward the state is more directly critical, centering on a clear exposition of subsidiarity. The passage makes no mistake about its context: "When We speak of the reform of the social order it is principally the State We have in mind." <sup>24</sup> Then appears the definitive statement of subsidiarity: ". . . it is an injustice, a grave evil and a disturbance of right order for a larger and higher organization to arrogate to itself functions which can be performed efficiently by smaller and lower bodies." <sup>25</sup> Here is the bedrock concept of subsidiarity, conceived essentially as a barrier against excessive state involvement, underscoring its "societal" corporatist qualities.

But the Vatican's insistent attack on the "twin evils" of individualism and collectivism - meaning liberals and socialists - blurred *Quadragesimo's* fascist critique, such as it was. Laying blame primarily on "Individualism," QA makes a point which on its face is innocent enough, in fact it continues in Catholic and communitarian social doctrine almost sixty years later, namely, the necessity for mediating institutions between the state and the citizen. Individualism, QA contends, damaged the organic links among these once flourishing institutions (e.g., the medieval guilds) "leaving thus virtually only individuals and the State. Social life lost entirely its organic form. The State, which now was encumbered with all the burdens borne by associations rendered extinct by it, was in consequence submerged and overwhelmed. . . " <sup>26</sup> The fascist state at the time of *Quadragesimo* is thus spared accountability or blame, described mildly as "overworked," although such careful deference to fascist sensitivities is understandable considering the repressive climate of the time.

The problem was that charting a middle way between the evils of Individualism and Collectivism were not only the Catholic corporatists, but the Fascists who aped them as well with their version of corporatism, "corporativism". *Quadragesimo Anno* does its best to define its concept of association as "in a true sense autonomous," and one which preexists and transcends the state (a point sharply made weeks later in *Non Abbiamo Bisogno* when referring to Mussolini's predations against Catholic Action). <sup>27</sup> But QA's vaguely conceived antipathy toward liberal capitalism left the door open for a non-socialist, hierarchical and authoritarian statism.

*Quadragesimo's* idea of social justice and the activist state

In its call for social justice, *Quadragesimo* strikes some familiar Marxist notes, though without giving credit to Marx. *Quadragesimo* describes two widely divided classes in dramatic terms, "The first, small in numbers, enjoyed practically all the comforts. . . The second class, comprising the immense multitude of workingmen. . . oppressed by dire poverty. . ." <sup>28</sup> QA then accuses that the impoverishment of the many was "quite satisfactory to the wealthy, who looked upon it as the consequence of inevitable and natural economic laws." <sup>29</sup> Pius XI furthermore softens his position on socialism, naming it "much less radical" than communism, allowing that "it even mitigates and moderates. . . class warfare and the abolition of private property." <sup>30</sup>

There are several passages in *Quadragesimo* which amount to a Catholic "labor theory of value," although again, there is no credit to Marx. First quoting Leo XIII's *Rerum*, "'It is only by the labor of workingmen that States grow rich,'" Pius continues, "The huge possessions which constitute human wealth are begotten by and flow from the hand of the workingman. . ." <sup>31</sup>

The problem was that in *Quadragesimo*, Pius' reflection on the role of the state and the nature of property ownership also inspired some egregious fascist excesses. Pius reserves to the State the right of "certain forms of property" which "carry with them an opportunity of domination too great to be left to private individuals. . . " <sup>32</sup> Pius acknowledges that capitalism "is not vicious of its very nature" but in his remedy declares

that it is "[t]he State which should be the supreme arbiter, ruling in kingly fashion," and therefore is the state action which must bear the "standard of social justice." <sup>33</sup> Written in a time of flagrant dictatorship, it is this vision of a "supreme" and "kingly" state which earned Catholic corporatism part of its authoritarian and "state corporatist" reputation. It is to Pius' enduring discredit that in recommending an agency by which labor rights should be enforced, he should turn so forthrightly to the state, which at the time was, obviously, fascist.

Were it not for the blatant presence of fascism, *Quadragesimo*'s call for government to meet the challenge of social justice would appear as activist as what was unfolding in the 1930s in the United States. In fact, there were ties between the Italian government's statist remedies and economic measures in the US which were plainly corporatist and, if not explicitly fascist, then openly in praise of Mussolini.

Nowadays, in a far more fortunate context, the Church's idea of an expansive vision of the state in the pursuit of social justice continues to be a principle of Catholic politicism. There is a passage in *Quadragesimo* which easily could appear in a recent release from the National Conference of Catholic Bishops in support of the continuation of Aid to Families with Dependent Children. *Quadragesimo* states the Church's fears that the burden of charity might be entirely abandoned to the Church: "[The upper class was] content to abandon to charity alone the full care of relieving the unfortunate, as though it were the task of charity to make amends for the open violation of justice." <sup>34</sup> *Quadragesimo* marks the Church's explicit call for justice, rather than simply loving *caritas*, which is due the

disadvantaged (the expression "social justice" did not appear forty years earlier in *Rerum Novarum*).

*Quadragesimo's* call for social justice significantly sharpened focus of Catholic social doctrine and it has served progressively bolder positions since then. The problem at the time of *Quadragesimo* was that interventionist "justice" when enforced by the fascist state, was incurred at a prohibitive expense of freedom.

But *Quadragesimo's* apparent effort to straddle the fence of both socialism and liberalism could have been taken to encouraged the fascists, who were notoriously facile in appropriating other philosophies to justify their immediate needs. In *Quadragesimo* Pius holds that, "the right of ownership . . . is not absolutely rigid . . ." and says the Church has "never denied or called in question the twofold aspect of ownership, which is individual or social accordingly as it regards individuals or concerns the common good. " <sup>35</sup> Though in personal terms *Quadragesimo* holds that "Man's natural right of possessing and transmitting property by inheritance must be kept intact and not be taken away by the State from Man," it reserves to "the public authority, in view of the common good, [to] specify more accurately what is licit and what is illicit for property owners in the use of their possessions," subject to natural and divine law. <sup>36</sup> This was not a timely message to send to Mussolini or Hitler.

In 1937, Amintore Fanfani, a onetime apologist for Fascism and future leading Christian Democrat, characterized Corporativism's approach to the State's jurisdiction over productive property this way:

[The State] reserves for itself the right to replace that property owner who keeps his goods unfruitful either through incapacity or ill will. These concepts. . . bring out the profound moral character of the Fascist corporative doctrine and rightly approach. . . the doctrine on the use of goods which the Catholic church has been preaching for centuries. 37

Though Nell-Breuning has left us his criticisms of Pius XI's misinterpretations of fascism, he does not reflect on his own contribution to QA's rather open ended speculations on the state's power over property. Though QA is magisterial, such a document would have benefited from more than the opinions of one man - or two- under the signature of a religious monarch with the stature of the Roman Catholic pope.

### The Fascist betrayal

Pius XI attempted to be adamantly in control in an era of authoritarian personalities, but he missed opportunities because of it. A rapprochement with the socialists, despite many philosophical similarities with Catholic social doctrine, was rejected out of hand. Coleman writes that Pius was "firm - even excessively so-on the issue of hierarchical control of the laity and the need for an insulating strategy of confessional particularism. Catholic socialists, in this context, were seen as breaking the desired Catholic unity." 38 By 1931 the pope's jealousy toward socialism had in a sense become canonized when he wrote in *Quadragesimo*, "no one can be at the same time a sincere Catholic and a true socialist." 39

Pius' commitment to control was an expensive passion. According to Coleman, by condemning Sturzo and abandoning the PPI, the Vatican

directly aided Mussolini by blocking "a possible collaboration between the Catholic Center Party and the Socialists in Germany which might have forestalled Hitler's rise to power. . . " 40

### The early years of the *Partito Popolare Italiano* (PPI)

At first, dealings between the Church hierarchy and PPI founder Sturzo began optimistically. In 1918, a time rocked by world war and the Russian revolution, Sturzo met Cardinal Pietro Gasparri to propose a new political party. The Church was beleaguered by W.W.I. and wary of the implications of communism and felt a Catholic party it was worth the try, even to the point of accepting the idea of a party founded by Catholics rather than a party of the Catholic religion. The PPI was founded Jan. 18, 1919 and the following November the pope formally lifted the *non expedit*, allowing Catholics to fully participate in the elections.

As a Sicilian priest Luigi Sturzo had introduced his approach to Catholic politics eleven years earlier in a 1908 Christmas Eve speech, in his dual role as mayor of Caltagirone.<sup>41</sup> His approach was more subtle than Murri, justifying his call for a national party independent of ecclesiastical authority not because the papacy was wrong, but simply because the institutional Church had aims which were different from lay people. Because of its sacred connotations, Sturzo felt the use of "Catholic" was inappropriate for the name of a political party (neither was he comfortable with Murri's "Christian Democrats" at the time) but he recognized that the party itself would necessarily be both democratic and Catholic.<sup>42</sup> Sturzo, as with Murri, was sternly critical of capitalism and had in the manner of

Catholic reformers before him stressed grass root remedies. He founded small rural banks based on diocesan parishes and formed a young worker's movement, frequently collaborating with Murri.

### Enter *Il Duce*

As a youth Mussolini has published a novel entitled *The Cardinal's Mistress*, which mocked the Church's moralistic pretensions and in 1908 had described priests as "black microbes who are as fatal to mankind as tuberculosis germs." <sup>43</sup> But by 1919, the year of PPI's founding, with the Fascists fresh from an electoral humiliation (the Socialists had won 156 seats in parliament, the PPI 101, and the Fascists zero) Mussolini set about to eliminate three of his major competitors: the Socialists, the Liberal Democrats and the PPI. <sup>44</sup> The Church would be his tool.

By 1921 Mussolini was arguing that "the Latin and imperial tradition of Rome is represented by Catholicism [therefore]. . . Italy. . . ought to furnish the Vatican with material aid, the material facilities for schools, churches, hospitals and so forth." <sup>45</sup> He brought himself to confess that "[m]y spirit is profoundly religious . . . relations between the Italian State and the Vatican from now on will be very friendly." <sup>46</sup> By November 1922 he had called for rejection of Giolitti's tax on the Church, and when in power he made a gift to the pope of the Ghigi library. When he decreed that the Catholic catechism be taught in state schools, *La Giustizia* swooned, "Mussolini has done more for clericalism in three months than the Partito Popolare in ten years." <sup>47</sup>

*Il Duce* hoped to portray Sturzo as the Church's insolent son, an antipope, declaring, "Don Sturzo has not got a Roman soul. He has the mentality of a pastor and of a Protestant professor like Wilson." 48 Imperialist themes were woven into Mussolini's appeal to nationalist aggrandizement, he declared: "Don Sturzo disowns the Empire and thus disowns the history of Catholicism, rejects the Roman and Christian Empire of Constantine and denies the Sacred Empire of Dante." 49

Sturzo saw this for what it was, dedicating the PPI "against every type of centralizing perversion attempted in the name of the pantheistic State or of the deified Nation," but his efforts were thwarted. 50 In September 1921 Sturzo contemplated an alliance with the Socialists, but the Socialists were wary of a papist plot. The Vatican had warned through *Corriere D'Italia* that Catholics would "sacrifice all" if they were to unite with "atheistic and monopolistic socialism" and "prevent the country from returning to civil liberty and constitutional normalcy." 51

#### Clerical fascists and Sturzo's exit

The brutal assassination by Fascist thugs of socialist leader Giacomo Matteotti in 1924 caused an international outrage, but the Vatican's *Civiltà Cattolica* in August rejected Matteotti's martyrdom. Referring to the Socialist violence of 1919, the Vatican newspaper described Matteotti as a "victim of the political delinquency which he helped create," and it also condemned the PPI and other members of parliament who staged a walk-out to protest the murder (called the "Aventine" secessionists). 52 The article instead praised the Fascists' restoration of order, its repudiation of

Freemasonry, and continued to focus on the Socialist's atheistic class war on private property and the family. Filippo Meda, writing under the pseudonym "Gino Sergi" finally asked the clerical fascists - of which there were many - to explain themselves. "[W]hat motivates you? . . . [you should] account for this intolerable situation . . . you who. . . give credit and proclaim such a system . . . " 53

In the face of the growing support of Mussolini by the Church hierarchy, Sturzo had resigned in 1923. On September 9, 1924 Pius XI declared that the PPI could no longer function as an autonomous body of Catholics in Italian political life, and by Oct. 25, 1924 Vatican minister of State Gasparri was instructed to convey "the desire, nay the command of the Holy Father" that Sturzo leave Rome. 54

The Lateran agreement of February 1929 was the *coup de grace* by Mussolini which the pope perceived as a resolution of the long standing "Roman Question," a grievance based on the state's impositions and expropriations of Church property and the Papal States since 1870. Now Mussolini's state offered to pay indemnities to the Church, and furthermore reinstated state subsidies to the Church. Catholicism was formally proclaimed the state religion once again, though the Fascists did not neglect to enact regulations limiting the Church's role in government. 55

#### Fascism and D'Annunzio

What Mussolini did not eliminate, he embraced and enveloped. Particularly relevant to corporatism was Gabriele D'Annunzio, who first

put into operation a corporatist program from which much of fascist corporativism was fashioned. The year following the birth of the PPI, the Italian imagination was captured by D'Annunzio's audacious attempt to sweep aside the bleak and unsatisfying outcome of World War I for Italians. Though Italy had pretensions of empire, its colonies were limited to Eritrea, captured in 1889 and Somalia, won in 1910, and the 1915 war with the Central powers went badly. 600,000 Italian soldiers were lost - Mussolini was among the returning wounded - and Italy had little to show for its trouble, particularly due to President Woodrow Wilson's rejection of Italy's annexation of Dalmatia and the Fiume regions, promised to the Italians in the Treaty of London.

Compensating for this humiliation, on Sept. 8, 1920, D'Annunzio led troops in an invasion of Fiume and proclaimed a new regime, constituted by ten "corporations" named *corporazioni delle arti e dei mistieri*, directly based on the medieval guilds of Italian artists and craftsmen. Taking the Church's corporatism a step further, it formed a representative government based on these corporations and declared in his constitution- the "*Carta della Reggenza Italiana del Quarnaro*" - that each corporation was a "legal person . . . sending its representatives into the City Council." 56 (Article XX)

In D'Annunzio's domain, membership of all adult citizens was obligatory, defined by broad vocational categories. D'Annunzio's corporate state was organized as follows: salaried workers and small business owners (corporation #1); skilled technical and administrative of all private businesses, industrial and rural excepts co-owners (#2); all skilled workers

of commercial firms, excluding partner-owners (#3); higher level directors of industry who were employees, (not sole owners or co owners) (#4); public employees (#5); "intellectual flowers of the people, young scholars and their teachers" (#6); "those in free employment not otherwise placed in previous corporations" (#7); cooperative producers, workers and consumers not otherwise represented (#8); and all maritime workers (#9).

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The Tenth corporation, however, was so incredibly broad that it verged on the hallucinatory, if not preposterous. D'Annunzio was a literary figure and poet of great renown, but in D'Annunzio's pagan-state balderdash the Tenth Corporation was ". . . like the tenth muse... almost a votive figure . . . the complete liberation of the spirit...the civic sanctuary . . . from the epoch of the Communes - the spiritualized form of human work: work without effort. . ." 58

Mussolini seized on the D'Annunzio's idea of the Corporate State, as well as D'Annunzio's sense of style: the Fascist black shirts (something they shared with priests) and the Roman stiff-arm salute were D'Annunzio's, too. Il Duce managed to stop short, however, of D'Annunzio's brand of unbounded blasphemy. D'Annunzio's militaristic rewrite of the Sermon on the Mount is typical: "Blessed are those who spurn sterile love, to be virgins for this first and last love . . . Blessed are the youths who hunger and thirst for glory, for they shall be satisfied. . . Blessed are those who come back victorious, for they shall see the new face of Rome." 59

Employing religion for the purposes of national aggression was of course nothing new. Some examples from the era included the Catholic magazine of Siena, *La Torre*: "The Roman eagle and the Cross took the same path . . . The saints said that this is God's plan . . . As the pontiff is *primus inter pares* so must Italy be *prima inter pares*. An empire at once Italian and Catholic, then; for empire means *power* and Catholicism *truth*." 60 Webster also tells us, "A Franciscan psychologist, Father Agostine Gemillie, analyzed how the pulpit and laboratory could be combined to serve the armed state, studying men in combat proving that their courage was largely inspired by illusions which could be produced . . ." 61

### Fascism and Rossoni's syndicalism

In the August 10, 1918 edition of *Il Popolo d'Italia*, then-socialist journalist Benito Mussolini reported on the annual convention of the *Unione Italiana del Lavoro* (UIL) whose growing membership (120,000-137,000) reflected that summer's enthusiasm over UIL's labor rights campaign. UIL had advocated a policy of "productive democracy" which would abolish owner absolutism and promote minimum wages, establish Saturday half hours at full pay, improve factory conditions and the confiscate "overprofits." UIL executive board member Edmondo Rossoni thanked Mussolini for his "almost stenographic account of the proceeding." 62 Mussolini was shortly to coopt most of the union leader's program.

Edmondo Rossoni was a revolutionary syndicalist, which meant that he aimed to seize control of the government and run the economy by making the working class its true owners and managers. His vision of a

new government would be organized very similarly to corporatism, in single-category vocational groupings, calling them "corporations," whose mission would presumably transcend party politics. In Rossoni's words, "The syndicalist conception is absolutely antithetical to that of party. . ." 63 He favored compulsory mixed organizations of workers and employers which were to include all Italian capitalist trade associations, but "with his own bureaucrats serving as final policy makers," says Tighino, intending to ultimately deprive the industrialists of their autonomy. 64 On Jan. 24, 1922 Rossoni became the secretary general of the Fascist party's *Confederazioni delle Corporazioni Nazionale*. Rossoni's vision was a vast union confederacy on the scale of the IWW, sufficient to intimidate the state and thus control the national economy. 65

Fascism did not turn out to be the instrument of proletarian empowerment that Rossoni expected, however. Contrary to his vision of a state in service to the proletariat, the proletariat was instructed to serve the state. The Fascists had a different remedy for the "commoditization of labor." As Welk explains: "According to the Fascist conception, labor loses its traditional character of a 'commodity' freely bought and sold in a market, and becomes a solemn duty of the individual towards society, a duty which must be performed under the safeguard and the protection of the state." 66

By the end of 1922 Rossoni became President of the *Confederazioni delle Corporazioni Sindacali Fascisti*, apparently hoping that the compelling leadership of the Fascist party would force the CGII (*Confederazioni Generale dell'Industria Italiana* - later *Confindustria*, the

leading industrialist's group), to obey the directions of what Rossoni billed as "technical experts" but who in reality, says Tinghino, would be Rossoni's hand-picked "highly qualified secretaries who have a defined economic function in the Confederation, in accordance with the directing organs of Fascism." 67

Confindustria would in no way stand for Rossoni appointees taking over the national economy under the guise of corporatist unity. The Parliamentary Economic Alliance would instead develop cozy relations between big business and the fascists: lower business taxes, privatized public transport and communications, (keeping only unprofitable long distance lines) and reduced public expenditures, an agenda which Roland Sarti says amounted to "an endorsement by business and fascism of total classic economic liberalism". 68

Rossoni's hopes for integral corporativism (a derivation of Vogelsang's fusion of management and labor) steadily eroded, beginning with the Chigi palace pact of Dec. 19, 1923, an agreement which within sixteen months resulted in eighteen separate organizations split amongst employers and employees, a victory for Confindustria. Thus, the prevailing authority would not be syndicalism. Furthermore, Fascist Minister of Justice Alfredo Rocco explained, "The corporation is an organization which integrates all factors of production [but] the name of corporation can no longer be applied to the syndical organizations, which are rearranged as solely with employers and solely workers." 69 Rocco neglected to point out that it was through fascist auspices that Rossoni's integral mixed syndicates came to be blocked. He claimed that "the hopes for fascist syndicalism, in

reality, were always for integral corporations." 70 This is also at direct variance with Catholic corporatism, which in *Quadragesimo Anno* and elsewhere had endorsed the idea of separate worker organizations.

The Vidoni Pact at the end of 1925 established exclusive, complementary recognition between the CGII and the Fascist corporations as sole bargaining agents in virtually all labor contracts. Other worker representation was either abolished and subsumed by local fascist unions. Rossoni's plan for *fiduciari di fabbrica*, factory worker trustees, was scrapped. No strikes or lockouts were allowed. Sarti writes, "The CGII, however, remained the citadel of private business" while Fascist corporativism never arrived at the mythical corporative state, where production was regulated by representatives of capital and labor side by side under the benign guidance of the state. 71

As noted earlier, the Italians did briefly institute functional representation. On May 17, 1928 the Italian Chamber of Deputies, the lower house, replaced its old form of political representation with vocational or trade representation. 72 But it was destined to become a powerless chamber, meant only to rubber stamp fascist declarations. Corporatism joined the a long list of fascist co-optations, and its presumed integralism, which Vogelsang and Rossoni had originally intended as an instrument of worker power, was turned by the fascists into a mechanism of the Industrialist elite and a pretext to destroy the syndicalism. Mussolini wrote in 1930 in typically disingenuous style, "It is in the corporation that the Fascist state finds its ultimate expression . . . while socialist syndicalism . . . seeks its ultimate end in the political sphere. . ." 73 The Catholic notion of

organicism adapted nicely to Mussolini's rhetoric of fascism: "it is only through the corporation, that is through the collaboration of all forces converging to one single end - that the vitality of syndicalism is assured."

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The Fascists found the industrialists' ethic of hierarchy and discipline more than congenial, and afforded big business unique discretion, perhaps qualifying as the only economic group with a remnant of corporatist self-regulation. Before fascism, Confindustria was already powerful, representing 144 industrial associations in every region except Calabria/Basilicata. After the 1925 capitulation of syndicalism to the expansionist state and its business collaborators, according to Sarti, "[f]ar from totalitarian, industry remained autonomous." <sup>75</sup> By the compulsory cartel law of 1932, the corporatist notion of *autodisciplina dell categorie* (sectoral self regulation) had placed decisionmaking into the hands of the business elites of the dominant firms. Under the pretext of autarchy, industrial licensing based on past performance and status became a "triumph for economic conservatism" says Sarti, eliminating social mobility and regimenting the peasantry. <sup>76</sup>

It was not without Mussolini's obfuscating touch. On Oct. 6, 1934 Mussolini declared in Milan,

... the present crisis means the end of liberal capitalism, the economic system which emphasized the individual profit motive, and marks the beginning of a new economy which stresses collective interests ... through the corporate system which is based on the self regulation of production under the aegis of the producers ... When I say producers, I do not mean only employers, I mean workers. <sup>77</sup>

## A return of the ancient Roman corporation

The fascist betrayal of Catholic corporatism was made explicit in Article 43 of the Rocco laws of April 1925. It proclaims that the corporation "does not have a juridical personality but is an administrative organ of the state . . . It is very clear that the corporations, since they are organs of the state. . . [are to be] directed by a president, chosen by the Minister of Corporations." <sup>78</sup> It was a repeat of history, of the sort cited by Gierke's explanation of the ancient Roman notion of a corporation.

The Church's anti-liberalism and corporate organicism also added material to the fascist mix of flattery, cooption and imperial pretension. Wrote Rocco, "The old Roman tradition, splendidly renovated by the Catholic church was well inspired by principles of discipline, the hierarchy of submission of individuals to the state . . . " <sup>79</sup> The idea of a corporate personality became now a fascist innovation in Rocco's mind: " . . . fascism is a distinct organism distinct from the citizens, it has its own life and ends." <sup>80</sup> Rocco did not fail to echo the antiliberalist sentiments of the Church: " . . . fascism is not a simple sum of individuals, but an organism. . . to which the ambitions and ends of individuals must be subordinated. The fascist state therefore is truly the social state. " <sup>81</sup>

## Corporatism for export

Corporatism had admirers beyond Italy as we have noted, and Fascist propaganda hoped to exploit corporatism as a cover for Italy's clumsy

attempts at an embarrassingly late colonial expansion in East Africa. 82  
Giusseppe De Michelis' World Reorganization of Corporative Lines proposed the "fruitful grafting of the corporative idea on international economic relations" and "an extension of the regulative principles of the Italian Corporate State." Minus the obvious fascist drawbacks, this idea had elements which proved foresighted, in the form of similar scheme of functional integration in the European community after W.W.II, exemplified by EC precursors such as the European Coal and Steel Consortium and Euratom. 83

A feeble attempt to stand up to Hitler briefly involved Austria in an attempt to implement a non-party authoritarian corporatist regime based on *Quadragesimo Anno*. (Nell-Breuning refers to this). Attempting to impose an authoritarian corporate state on a dissolved parliament, Austrian prime minister Dollfuss received initial support from Cardinal Innizer of Vienna after announcing the program in April 1933 to a meeting of Catholic associations. Dollfuss incorporated nine of the twenty three articles of the Vatican's Austrian Concordat in his new constitution of May 1934. 84 But as in Italy, the hint of a political alliance between Dollfuss and the Socialists drove Innizer and the Vatican away, again undermining another effort to unify against the Fascists. In the previous decade, the Holy See's political instincts were similarly dim. The Vatican's support of Chancellor (and Catholic priest) Ignaz Seipel of Austria led to Seipel's defeat in the 1930 elections and the simultaneous withdrawal of 400,000 Catholics from the Church in Austria. 85

In the US, General Hugh Johnson contributed to Franklin Roosevelt's proposal for the National Industrial Recovery Act, a corporatistic plan calling for the suspension of antitrust laws so that government licensed cartels could set industry wide standards on wages, prices, and competitive practices. Johnson's trade associations were ostensibly self governing but Whitman tells us, "On Gen. Johnson's insistence the President . . . had the authority to impose such Codes as he saw fit. Mussolini's own response to this aspect of the NIRA scheme was "*Ecco un ditatore!*" ('Behold a dictator!)"

<sup>86</sup> On resigning, General Johnson's farewell speech invoked the "shining name" of Benito Mussolini, but with the invasion of Ethiopia in 1935, American public praise disappeared, as did Cole Porter's lyric, "You're the top! You're Mussolini!" <sup>87</sup>

In 1936 the National Union for Social Justice met in Cleveland to nominate William Lemke for President. Fifteen thousand followers heard Dr. Francis E. Townsend speak of his Old Age Revolving Pension Plan, but the stars were Huey Long's Share-Our-Wealth successor Gerald L. K. Smith, and Catholic priest radio celebrity Father Charles Coughlin. With a weekly audience estimated at 30 million - (at 10 million it would have been the largest in the world ) and with donations estimated at \$5 million in 1933, his supposedly *Rerum*-based philosophy called for "state capitalism" and "public ownership of those things that were "too important to be entrusted in private hands." <sup>88</sup> By 1936 his onetime affection for Roosevelt had turned to hatred. As Coughlin's credibility slipped away, he tried one last audacious stroke, declaring, "We are at a crossroads. One road leads toward fascism, the other toward Communism. I take the road to fascism." <sup>89</sup>

There is a temptation to judge the Church harshly in light of the murderous excesses of fascism and the Vatican's deferential tone in parts of *Quadragesimo Anno*. As noted, Pius XI "benevolent nod" to Mussolini in sections 91-96 of *Quadragesimo* should be put in the context of *Non Abbiamo Bisogno* which followed weeks later, released in Italian to make a show of discretion, but soon translated into English and distributed to American audiences by Cardinal O'Connell of Boston.

*Quadragesimo* mentions Catholic Action briefly: "Our beloved sons devoted to Catholic Action. . . aid Us in the solution of social problems . . . " but *Non Abbiamo* takes up the subject in earnest.<sup>90</sup> *Non Abbiamo* is direct and angry, understandably so because the Church's institutional interests and "beloved" personnel had been dealt real and continuing violence. The crux of the matter is that Mussolini, not without reason, had contended that Catholic Action was a political organization which threatened the Fascist Party's interests, and that it had been a refuge for ex-PPI members, harboring enemies and rivals of the Fascist State (which was true). The Church's response was a standard one - that Catholic Action was an apolitical nonpartisan religious study group serving the community good. When it became apparent that the Church would not serve Italy's imperialist ends, Catholic Action became a focus for Mussolini's revenge.

Mussolini was also frustrated by parish priests in Yugoslavia who thwarted *Il Duce's* attempts to incite ethnic rivalries, hoping exploit them with a "rescue" invasion, resolving a crisis which he would create. In Italy,

the Fascists wanted to denationalize the Croats and Slavs living in the Venezia Giulia region, but, writes Kent, these Slovenes and Croats were also Catholics and the parish priests first called attention to the threat by protesting "that religious instruction be given in Italian when their parishioners did not even understand the language." 91

In Africa, the Pope approached Ras Tafari directly to secure his permission for Catholic missionaries to continue work in Abyssinia in a clear rejection of French and Italian patronage. He warned "against the spirit of nationalism" and rejected nationalist propaganda, adding "Nationalism was the scourge of missions and missionaries must keep aloof." 92 On August 3, 1930, the year after the Lateran Accords, the first native Ethiopian bishop was consecrated in Rome, making it clear to Mussolini that Italian Catholic missionaries could not be included in the effort for an imperial presence in the colonies. 93

In early 1931 Mussolini retribution for the Church's noncompliance with his imperialist ambitions was to punish the pope's beloved Catholic Action, accusing it of being in direct competition with Fascist political organizations, particularly those involving young people. 94 Because it was ostensibly an educational entity, the Church claimed institutional and jurisdictional freedom. On Dec. 31, 1929 in the eighth year of his pontificate, Pius XI had published the encyclical "Christian Education of Youth" which constructs its argument for institutional liberty. It argues that schooling "owes its existence to the initiative of the family and of the Church, long before it was undertaken by the State . . . Catholics, no matter what their nationality, in agitating for Catholic schools for their children,

are not mixing in party politics, but are engaged in a religious enterprise." 95

On July 5 1931 *Non Abbiamo Bisogno* leveled a direct refutation of the Fascist claims on education, stating that "the plan - already in part carried out - to wholly monopolize the youth. . . to the complete and exclusive advantage of a party, of a regime, [is] . . . true pagan statolatry. . . " 96

*Non Abbiamo Bisogno* backfired, instead rallying Fascists against the Church until on Sept. 2, 1931, the pope finally agreed to dismantle the separate national directorate of *Azione Cattolica*, quit any development of professional or occupational branches, (which threatened the monopoly of the Fascist Corporations) and restrict Catholic youth groups to religious activities only. Adds De Felice, "The illusion of papal independence had been brought to an end." 97

What remained of Catholic Action nevertheless survived to be a spawning ground for the future Christian Democratic Party. Future CD leader Alcide DeGasperi lived out the war in the Vatican writing for the Vatican bimonthly *Illustrazione Vaticana* under the pen name of Rerum Scriptor. 98 The seeds were sown for a resurrected Catholic presence in a newly conceived political relationship.

### Review Discussion

Corporatism rang in Catholicism's modern era, although more as a meliorist theme than as a detailed political theory. Some early proponents of corporatism aimed to take over the state and replace capitalism with a

worker-dominated regime. Using the medieval guilds as a model, the Vogelsang school of corporatists shared with the syndicalists the idea of "integral" corporations, whose fusion of labor and management would presumably bring the worker out of his plight of subjection and into the leadership of the state. The guilds also provided a vehicle for the fledgling Catholic social doctrine marked by Leo XIII's 1891 encyclical *Rerum Novarum*. Although Leo was not interested in overturning the political order, in *Rerum Novarum* he offered a constructive and sometimes courageous critique of political and economic fundamentals. Leo XIII marginalized the radical reconstructionists by drawing on the spirit of the guilds - rather than structural details - to encourage class harmony instead of revolution. But *Rerum Novarum* was limited by its aristocratic notions of an organic social "stability" and its implications of a preordained inferiority among the lower classes.

*Rerum Novarum* attempted to bring the Church into the modern world by applying Christian principles to emerging political and economic reality, but the popes during the late 19th and early 20th centuries were ambivalent about how fully to involve the Church. Ambitious for their own interests in restoring the Church's special stature in society, but wary of the state's machinations, the papacy vacillated from inspired vision to resentful petulance, often misperceiving the nuances of electoral democracy. The fear of socialism drove the Church to a politics of negation, culminating in the 1923 rejection of Father Luigi Sturzo and his *Partito Popolare Italiano*. Thus aided in the removal of his two main rivals, Socialism and the PPI, Mussolini rewarded papal instrumentality by re-

establishing Catholicism as the Italian nation's Church in the Lateran Accords of 1929.

In many ways, the Catholic corporatism of this era was opposed to the "state corporatist" approach of Italian Fascism and elsewhere. The Church had traditionally represented a social order which, by the Church's own reckoning, preceded and superseded the state in many ways. The Church, through Catholic corporatism, attempted to be "in the state but not of the state," (to paraphrase Augustine) personifying an intermediary institution which stands independent of the state's creation. This credo of institutional autonomy is summed up in the concept of subsidiarity, introduced in *Quadragesimo Anno* and intended as a device to hold Mussolini at bay. Beyond its momentary practicality, subsidiarity was consistent with the Church's cyclical struggles with the aggressions of emperors, would-be or not, and continues as part of the legacy of corporatism.

The central document of Catholic corporatism, *Quadragesimo Anno*, embodied both the flaws and attributes of Catholic corporatism. It is alternately an inspired vision and a puzzling abstraction. Its limited grasp of property as a personal rather than as a productive value, and its ambiguous notions about the state's role in determining the status of property reduced its usefulness as an economic remedy. The parliamentary form of functional representation and other notions of the "QA state" do not appear in the encyclicals *Rerum Novarum* and *Quadragesimo Anno*, but on other occasions were vaguely encouraged by Pius XI, who apparently did not fully understand their implications. But the intentions of *Quadragesimo Anno* and its founding precedent *Rerum Novarum* were noble and

extremely progressive for a conservative world religion. And though it never matured to the level of Marxism or liberalism, the encyclicals did offer thoughtful challenges to both. If specifics were lacking, it was perhaps the necessary condition for a document which spoke to hundreds of millions of worldwide adherents in dramatically different political regimes.

On behalf of its own institutional interests, the Church acted in multimodal fashion in this era, having real repercussions on the state, the business world and the community. As an international organization, the institutional Church attempted to maintain its organic integrity and inviolability by standing up to Mussolini's expansionist foreign policy. In education, it managed to restore itself as a major force in Italian schooling, and it was in this capacity that Catholic Action was allowed to survive the otherwise undeterred aggressions of the Fascist state. The Church defended its professional autonomy more successfully than any other vocational sector, with the possible exception of the industrial elite.

Corporatism's procedural ethic, as much as its substance, represented a type of vocational sovereignty through which the Church won real concessions from one of the world's most notorious dictators. The two clearest stands by the Church against Fascism and Nazism in this period, *Non Abbiamo Bisogno* (1931) and *Mit brennender Sorge*, (1937) were both taken from the standpoint of an institutional defense, protecting Italian Catholic Action groups and the German Catholic clergy, respectively. Whatever victories were won by bargaining with the fascists turned out to be hollow, but the Church was not alone in its credulity for Il Duce, and

ultimately it was the Church which was left standing, rather than totalitarianism. In this sense Catholic corporatism should not be dismissed simply as a tool of tyranny, but conceivably as a defense against it.

Finally, in contrast to the impersonal and exploitive business corporation of the industrial revolution, Catholic corporatism in this period suggested alternative visions of what a corporation could be. *Quadragesimo* suggested "Workmen's Societies" as an apparatus of mutual aid and charity, and thus reasserted a traditionalist, intermediary approach of assistance to the needy and confronted the bureaucratic liberalism of the dawning welfare state. Traces of the Catholic corporatism of the late 19th and early 20th century can be found in the Church-sponsored corporations of today. How the values of Catholic corporatism carried forward from the early 20th century to 1998 is next tested in the contemporary American worlds of education, social service and health care, to which we now turn.

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<sup>1</sup> Weiss 42.

<sup>2</sup> John Courtney Murray, S.J. "Leo XIII: Two Concepts of Government" Theological Studies Volume XIV (1953): 561.

<sup>3</sup> Murray 561.

<sup>4</sup> John N. Molony, The Emergence of Political Catholicism in Italy: PPI 1919-1926, (Totowa, NJ: Rowman & Littlefield, 1977): 17.

<sup>5</sup> Leo XIII Encyclical "*Sapientiae Cristiani*" text in I. Giordani, Le encicliche sociali (Roma: Stadium, 1948): 147.

<sup>6</sup> Molony 25.

<sup>7</sup> Richard A. Webster, The Cross and the Fasces: Christian Democracy and Fascism in Italy Stanford: UP, 1960): 9.

<sup>8</sup> Webster 4

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- 9 Molony 24.
- 10 Molony 32.
- 11 Webster 14.
- 12 Molony 33.
- 13 Pope Pius XI Quadragesimo Anno (May 15, 1931) (On Reconstructing the Social Order)
- 14 Oswald von Nell-Breuning, S.J. "The Drafting of Quadragesimo Anno" Readings in Moral Theology No. 5 Originally published in *Stimmen der Zeit* Curran & McCormick, eds. (NY: Paulist Press, 1971): 63.
- 15 *Non Abbiamo Bisogno* ('We don't need . . .') issued July 6 1931, was released only in Italian as a type of internal memo to church officials, condemning violence by Mussolini's Black Shirts on Catholic Action, the ostensibly religious organization which nevertheless absorbed many activists from the banned Partito Popolari Italiano (PPI).
- 16 Nell-Breuning 64. He further found the pope's statement inexplicable in the context of QA paragraph 86 which reserves to citizens the right to freely choose the form of state.
- 17 Nell-Breuning 63. Nell-Breuning concludes that Pius XI thought in terms of Roman Law which held corporations as creatures of the state - c.f. Section II of this study.
- 18 Nell-Breuning 64, referring to QA 81.
- 19 Ludwig von Mises was one who described it with the term "cryptosocialist" and Chile's leading Catholic newspaper refused to publish QA because of the "imprudence of the pope." Coleman, Readings 185
- 20 Nell-Breuning is referring to QA 65.
- 21 Nell Breuning 66.
- 22 *Quadragesimo* 91-92.
- 23 *Quadragesimo* 95.
- 24 *Quadragesimo* 78.
- 25 *Quadragesimo* 79.
- 26 *Quadragesimo* 78.

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- 27 The statement on autonomous associations is from *Quadragesimo* 83.
- 28 *Quadragesimo* 3.
- 29 *Quadragesimo* 4.
- 30 *Quadragesimo* 113.
- 31 *Quadragesimo* 53.
- 32 *Quadragesimo* 114.
- 33 *Quadragesimo* 101, 109, 110 .
- 34 *Quadragesimo* 4.
- 35 *Quadragesimo* 45
- 36 *Quadragesimo* 49.
- 37 Amintore Fanfani, *Il Significato del Corporativismo* quoted in Webster 158.
- 38 Coleman, *Readings* 184.
- 39 *Quadragesimo* 120.
- 40 Coleman, *Readings* 173.
- 41 Molony 33, who also cites Romolo Murri's *Dalla Democrazia* 43 & 51; and "*I problemi della vita nazionale dei cattolici italiani*" in *La Croce* 233-6.
- 42 Molony 33.
- 43 Speech in Chamber of deputies June 21, 1921 cited in Kent 5
- 44 William G. Welk, *Fascist Economic Policy*. (Cambridge, MA: Harvard UP, 1938): 309.
- 45 Peter C. Kent, *The Pope and the Duce: The International Impact of the Lateran Agreements* (NY: St. Martin's, 1981): 52-3 (quoting Pietro Scoppola *La Chiesa e il fascismo: documenti e interpretazioni* (Bari, 1973).
- 46 Molony 144, citing *Il Popolo D'Italia* 24 Nov. 1922 quoted in Salvemini *Lo Stato* 271. This terrified the masons, meanwhile, who had financed Mussolini and had five cabinet posts.
- 47 Molony 148.

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- 48 Molony 167, citing Popolo D'Italia April 13, 1921.
- 49 Molony 167.
- 50 Molony 157.
- 51 Corriere D'Italia June 22 & 28, 1924.
- 52 Molony 189.
- 53 Molony 189.
- 54 Molony 190.
- 55 Weiss 317, (footnote 38).
- 56 La Reggenza Italiana del Carnaro, Disegno di un Nuovo Ordinamento dello Stato Libero di Fiume (Roma, 1922): Article XX.
- 57 Carta Carnaro 27.
- 58 Carta Carnaro 29
- 59 Speech of May 5, 1915. Webster 47.
- 60 Webster 33.
- 61 Webster 51 (Agostino Gemelli *Il nostro soldato* Milano, 1917)
- 62 John J. Tighino, Edmondo Rossoni: from revolutionary syndicalism to fascism. (NY: Peter Lang, 1991): 92.
- 63 Tighino 61.
- 64 Tighino 138.
- 65 Rossoni had worked closely with the IWW, particularly during the years he spent in the United States. Rossoni reported extensively on the mill strike in Lawrence, Massachusetts and on the Sacco Vanzetti trials.
- 66 Welk 97.
- 67 Tighino 151.
- 68 Roland Sarti, Fascism and the Industrial Leadership in Italy, 1919-1940. (Berkeley: U Cal. Press, 1971): 32.

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- 69 Alfredo Rocco, *La Trasformazione dello Stato*. (Roma, 1927): 409.
- 70 Rocco 409. cf. Nell-Breuning
- 71 Sarti 76.
- 72 Welk 72. The deputy elections designated 800 candidates from fascist syndical associations and another 200 selected by cultural and welfare associations. The 1000 names were presented to the fascist grand council, which selected 400, then presenting the entire list to the electorate for approval or rejection. The first election of this sort occurred on Feb., 27 1929 in which the first entire list was approved by 98.35% of those voting.
- 73 Welk 71.
- 74 Welk 72.
- 75 Sarti 70.
- 76 Sarti 111.
- 77 Welk 117, citing *Syndicato e corporazione* Nov. 1933
- 78 Rocco, 411.
- 79 Rocco 16.
- 80 Rocco 16.
- 81 Rocco 16.
- 82 "to compensate for the loss of its overseas markets, Europe can only enlarge or create markets in the Dark Continent where it has already set up the emblems of its dominion." Giuseppe De Michelis, World Reorganization on Corporative Lines (London: Allen & Unwin, 1935): 174
- 83 De Michelis 229
- 84 Kent 168.
- 85 Kent 119.
- 86 James Q Whitman, "Of Corporatism, Fascism and the First New Deal" 765-766. Also in Mussolini *Opera Omnia* (June 28, 1933): 10 (1958).
- 87 Whitman 748.
- 88 David H Bennet, Demagogues in the Depression (New Jersey: Rutgers UP, 1969): 54, 37, 51-52.

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89 Bennet 231 citing p. 10 of "Conning the News" *New Masses* XXI. 2 (Oct. 6, 1936): 10.

90 *Quadragesimo* 138

91 Kent 48.

92 Kent 63

93 There were fascist enthusiasts within the clergy, however. Gushed one Monsignor Bonomelli : "Alongside the Italian tricolor I see the Cross.. Italy will certainly respect the religion of the natives, but . . . missionaries, upheld and protected by the majesty of the State, can work a healthy transformation..." Webster 30.

94 There was an interesting Youth Cult movement politically at the time. Italy's favorite Fascist theme song was "*Giovanezza*" (Youth). The beginning lyrics are: "Youth! Youth! Springtime of beauty! Fascism is the salvation of our civilization!" ("*Giovanezza/ Giovanezza/ Primavera di bellezza! /Il Fascismo/E la salvezza/Della nostra civiltà*") Fans of Mel Brooks' "Springtime for Hitler" may recognize the similarity.

95 Pius XI, "Christian Education of Youth" 59, 62.

96 *Non Abbiamo Bisogno* 302

97 Kent 120.

98 Webster 130.

## CHAPTER 7

### SOCIAL SERVICES AND THE CATHOLIC CHURCH

#### Introduction

This chapter begins an analysis of three fields of welfare-state activity for contemporary Catholic sponsored organizations - what the Church calls its "institutional witness" - in social services, health care and education. Despite what many imagine to be a wall between church and state, the government's regulatory role and its financial participation in these industries make the state a major partner in Catholic-sponsored institutions. Thus, these religion-sponsored companies which serve the welfare state are necessarily caught up in the interests of the state, even though they are by law not to be "entangled" with the state.

We begin with Catholic-sponsored social services (mostly represented by Catholic Charities) because it most fully combines these three characteristics: (1) it is a significant substitute for the state in its field, (2) it receives most of its revenues from the state, and (3) its corporate organization is identifiably "Catholic." Though Catholic-sponsored health care is also mostly funded by the state (through Medicare and Medicaid) and is a major part of its industry, it is neither as tightly organized as Catholic Charities, nor is it as singularly predominant in its field. And although Catholic parochial schools are also closely bound to the Church, and the single leading industry group in field of private school education, Catholic elementary and high schools do not receive any significant

funding from government. Lastly, Catholic post-secondary education, though funded by government-backed student loans and grants, are neither as professionally predominant as Catholic Charities, nor as accountable to ecclesiastical authority, except in theological matters. Thus, compared to health care and education, Catholic social services most completely encompasses the structure and style of welfare state surrogacy, and best serves to introduce a modern perspective of Catholic welfare corporatism.

However, before any type of Catholic-sponsored welfare state surrogacy is described, some background is necessary to put the Catholic Church's political posture into modern context. Particularly in fields which are so intensely dependent on government money and regulation, the degree to which the Church can maintain its Catholic identity and yet not impede its secular commission is a revealing balancing act, and one which is dependent on a subtle and careful choreography of political footwork.

We have used the traits of Catholic welfare corporatism - organicism, subsidiarity, and multimodality - as a framework by which to consider Catholic concepts of vocation in the Middle Ages and as a formula for social justice among workers in the nineteenth and early twentieth centuries. Our inquiry into contemporary circumstances continues to use these reference points, which are again reviewed and applied in the study's conclusion.

### "The Bishop's Lobby"

What the Church says about itself politically in the US is a primary responsibility of the National Conference of Catholic Bishops (NCCB), an assembly of over 300 active and auxiliary bishops. As the highest level Catholic collectivity in the United States, a look at the NCCB is an essential introduction to contemporary Catholic politicism in its encounter with the modern American state.

The NCCB is both a representative to government for Catholic-sponsored organizations, and is the Catholic businesses community's most comprehensive theological resource. Although it is not an exclusive bargaining agent, it has a limited "meso corporatist" role to play in that it often speaks for a *sui generis* subset of Catholic sponsored agencies and facilities. Catholic-sponsored human services, health care and education have representative organizations in their respective fields as well, but the NCCB shapes an integrated, applied philosophy for the American Catholic Church, and symbolizes in concentrated form the Church's sixty-million-person presence in the US political culture. The NCCB furthermore fits into the coordinates of Catholic welfare corporatism, demonstrating organicism by serving the integral whole of the universal Catholic Church; subsidiarity because it is composed of diocesan "executives" (bishops) with extensive local powers; and multimodality by its effective and simultaneous participation in government, business and civil society.

The NCCB is a "corporation of corporations" in that US bishops are themselves "corporations sole" - one-person civil corporations who take

personal control over the Church-owned property in their districts. Their title of possession is passed on to each bishop's successor and then to *their* successors, potentially forever, consistent with the concept of corporations developed by canon law eight centuries ago. In an organization as plainly hierarchical as the Roman Catholic Church, bishops count for a great deal, both spiritually and materially, exceeded only by the pope, who is himself a bishop, of Rome.

The evolution of the NCCB parallels the growing participation of Catholics in America's destiny. Originating in the war-wracked year of 1917 with the pointedly patriotic title "National Catholic War Council," it was later renamed the "National Catholic Welfare Council," a more accurate reflection of its peacetime mission. After World War II, because Rome found the term "council" vaguely pretentious (potentially confused with Vatican councils) and also because American Catholics' ascendant fortunes contrasted with the word "welfare," the NCCB changed its name to its current form, the National Conference of Catholic Bishops.

The United States Catholic Conference (USCC) is the NCCB's nonprofit civil corporation, which produces and sells a wide range of NCCB publications and videotapes. Their seventy eight page catalog offers policy presentations on several "Current Issues" including Politics, Substance Abuse, Women and the Church, Sexuality, Disabilities, Healthcare, AIDS, Pro-Life and Euthanasia. Under the "Social Justice" heading are Catholic Social Teaching, Poverty and Economic Justice. USCC publications provide Catholic-sponsored institutions with ethical guides, some for specific practical application, most notably the NCCB's Ethical and Religious

Directives for Catholic Health Care Services , often cited explicitly in the official mission statements of Catholic health care corporations. <sup>1</sup>

In health care reform, the political posture of the NCCB and the Catholic Health Association's (CHA) is mostly non confrontational, and offers something for both ends of the political spectrum. The NCCB recommends universal access; "fair" allocation of resources; a "freedom of conscience" which holds that neither providers nor patients should be "forced to submit to procedures contrary to their personal beliefs;" and finally that financial responsibility be shared by individuals, investor-owned (IO) and nonprofit businesses, and government. <sup>2</sup>

As a tax-free nonprofit publishing business, how political is the USCC allowed to be? The USCC determinedly claims the right to be politically relevant, stating that "[I]n a nonpartisan way we [bishops] seek to persuade society of certain fundamental moral issues, not as sectarian but as universal principles." <sup>3</sup> Operating from a five acre office facility in Washington DC, the NCCB/USCC - dubbed "the Bishop's Lobby" - have a combined \$40 million yearly budget, of which about \$5.4 million is spent on publicity and promotion, and \$1 million on legal staff. <sup>4</sup> The NCCB frequently generates amicus curiae briefs and provide testimony at regulatory hearings, but according to IRS regulations, "no substantial part of the activities of [nonprofit organizations shall be] carrying on propaganda, or otherwise attempting, to influence legislation . . . [or benefiting] any political campaign on behalf of any candidate for public office." <sup>5</sup> There was a challenge to the USCC's nonprofit status on this basis in 1989, but the IRS's standard proved sufficiently vague for the Second

District Federal Court to find no "bright line test" on what constitutes "substantial" lobbying by nonprofit corporations.<sup>6</sup>

With what degree of authority does the NCCB speak for Catholics? Vatican II spares few superlatives in defining the bishops' role as "authentic teachers" in the Church, holding that Catholic bishops "by divine institution have succeeded to the place of the apostles . . . he who hears them, hears Christ, and he who rejects them, rejects Christ and Him who sent Christ."<sup>7</sup> Subject to the Roman pontiff's agreement, the bishops' teachings on faith and morals can on rare occasions be taken as "infallible" (*ex cathedra*), to be accepted on faith "absolutely."<sup>8</sup> But this teaching authority is meant in the sense of the Church's "magisterium" - its theologically-based ethical guidance.

As a general rule, the bishops are entitled to the utmost credence from the faithful, but according to the Church's formal position, they do not formally carry the same moral weight in matters of public policy as they do in matters of faith.<sup>9</sup> NCCB statements have an order of official importance. Occasionally the NCCB issues a statement containing what is termed "authentic teaching," but only if the Holy See approves it in advance.<sup>10</sup> When opinions are a product of a majority vote of the Conference, they are called pastoral statements, rather than authentic teachings, and further stratified on four levels: joint pastorals, formal statements, special messages and resolutions.<sup>11</sup> In the NCCB's Statement of the Bishops Committee for Pro Life Activities, their teaching is presented as in some ways tentative, neither infallible nor authentic, as in the case of withholding nutrition and hydration to those in persistent vegetative state (PVS), on which the

bishops state that they "are fully aware that such guidance is not necessarily final." 12

### Electoral throw-weight

There have been individual bishops who have explored the limits of clerical politicism, with mixed results. The tactics of New York's Cardinal O'Connor, who urged votes against "pro-choice" candidates (most famously, Geraldine Ferraro's) - were rejected by 70% of New York Catholics surveyed.<sup>13</sup> At other times in the 20th century the ballot box has been a direct source of political currency between the Catholic Church and elected officials, but in the US, the days of delivering the "Catholic vote" to (or against) candidates seem faded, if not entirely gone. 14

Since the 1960s, writes Patrick Allitt, "it becomes difficult for a historian to discuss 'the Catholic position' on any issue, because Catholics themselves were voicing a wide diversity of opinions and often echoing the diverse opinions of their non Catholic neighbors." 15 Boston's Cardinal Bernard Law, though a personal friend of former President Bush, has also dismissed the idea of a Catholic "religious voting bloc." 16 Although there may not be a single Catholic voting bloc, considering the size and diversity of American Catholicism (and despite the nearly invisible Catholic Left) there may still emerge blocs, plural, of Catholic voters of interest to politicians in the future.

Revised 1983 canon law prohibits clerics from serving as elected public officials, but Catholic bishops are hardly ignored by political

candidates. <sup>17</sup> In Walter Mondale's opinion, "If you are a bishop, you've got some pretty substantial organizational capabilities . . . people . . . money, places to meet, you've got a lot of things any good politician would like to have at his disposal." <sup>18</sup> The Ford-Carter presidential contest - the first national election after *Roe v Wade* - did much to raise politician's awareness level of the bishops, especially as candidate Carter tried hard to woo the NCCB. Carter's failure to win them over further enhanced the bishops' perceived electoral salience. <sup>19</sup>

Religion-based political activism has had a period of success in the US, although there are indications it has peaked. The New Republic's Jeff Rosen described the Religious Freedom Restoration Act of 1993 as "asserting a sweeping congressional power to displace state law. . . creat[ing] a *statutory* right to religious exemptions beyond what the Court has said the First Amendment requires." <sup>20</sup> The Act was ruled unconstitutional by the Supreme Court in June 97.

The election of George Bush, the congressional shift of 1994, and bans on "partial birth" abortions have been credited to the conservative values embraced by the Christian Coalition, some of whose members are Catholic. <sup>21</sup> Yet there are tensions between Protestant conservatives and Catholic conservatives. In September 1996, only a year after it was formed by Ralph Reed, the Catholic wing of the Christian Coalition - the "Catholic Alliance" - split off to form its own group. Though the Catholic Alliance had touted membership figures claiming 30,000 Catholics (Stephen Glass says it was probably 10,000) the fact remains that churchgoing Catholics are more likely to be Democrats than Republicans. <sup>22</sup> Even among Catholic

Republicans there is a generational divide among Catholics which mitigates Catholic conservatism. According to Commonweal, in the 1996 US elections 77% of younger Republican Catholics said they attend church seldom, occasionally or never, and those that do attend are far more moderate than the 1996 Republican party platform. 23

Though the NCCB is not synonymous with the politics of all Catholics, it is American Catholics' most telling leadership group, and its opinions reveal political diversity. The NCCB is at odds with Christian conservatism on some key points, as noted by Michael Novak's attack on the bishops' statements Economic Justice for All and The Challenge of Peace. 24 The NCCB encourages local welfare initiatives, but not at the expense of AFDC and food stamps, declaring, "We cannot support reform that destroys the structures, end entitlements, and eliminates resources that have provided an essential safety net for vulnerable children [including immigrants] or permits states to reduce their commitment in this area." 25 Also the NCCB opposes the death penalty because of its disproportionate effect on minorities, and supports an end to the economic embargo to Cuba. The "Catholic position" in politics as it is expressed by the NCCB is not uniformly conservative, nor predictably partisan, nor always popular. According to one bishop, "nothing is sacred about majority will when it departs from basic moral norms" 26

### Sex and the seamless garment

In their judgment of individual choices in matters of sex, the bishops are not without an astute appeal to the left. Dubbed the "seamless garment"

argument, the NCCB, and later, the Vatican, have attempted to link the life-affirming tone of the bishops' Challenge of Peace, the very popular 1983 anti-nuclear weapons campaign, to the abortion issue. Chicago's late Cardinal Joseph Bernardin introduced this intriguing issue linkage by associating the Challenge of Peace with a sweeping "ethic of life" - against abortion, euthanasia, and physician assisted suicide. <sup>27</sup> John Paul II's 1995 *Gospel of Life* expands on this rationale, pitting a "culture of death" against a "culture of life," insisting that technology requires moral consistency, especially now, when "postmodernism has conditioned us to procedures which were previously considered criminal." <sup>28</sup>

However, apart from the NCCB's sometimes astute navigation of American partisan currents, the bishops' opinions are necessarily affected by their obedience to the Vatican, with negative consequences for their popular appeal. Church attendance experienced a 16 percent drop in the six years following the controversial 1968 encyclical *Humanae Vitae*, but has stabilized since then according to Greeley, retaining a loyal and stable following of churchgoers. <sup>29</sup> Greeley says a key to the post-*Humanae vitae* era are parish priests, which have provided American Catholics a tolerant flexibility such that "almost four-fifths of the weekly church attenders (and at least as large a portion of the weekly communion receivers) do not accept the Church's official sexual teaching." <sup>30</sup>

But this adaptation to the Catholic Church's internal contradiction over sex morals is not new. As far back as 1974 Greeley found that 83% of American Catholics use artificial contraception, 73% approve of remarriage after divorce and 36% supported legal abortion. <sup>31</sup> Greeley adds

that nowadays the pill is the most popular form of birth limitation for Catholics and sterilization the most popular form of Catholic contraception, despite what the hierarchy says. <sup>32</sup> In a corporatist analysis, this amounts to a parish-based subsidiarity which has offset the bishops' more repellent notions of organicism.

### Economic Justice

In a less intimate realm of morality, in the mid-Eighties the NCCB addressed economic "social justice" - exactly the sort of thing which fired the political imagination of *Rerum Novarum* and *Quadragesimo Anno*. But their 1986 pastoral Economic Justice for All failed to stimulate much discussion outside of church groups because comparatively few American Catholics see structural impediments to their upward mobility. <sup>33</sup> The NCCB's widely inclusive "universal" approach further lacks sharp rhetorical dichotomies, and avoids the exploitive-rich-versus-the-oppressed-poor language of Liberation Theology.

The studiously inoffensive tenor of the NCCB's socioeconomic pastoral prompts critics to dismiss it as neither serious theory nor as a specific program. <sup>34</sup> Though Michael Novak has attempted to divine a portentous pro-capitalist spin to the opinions of John Paul II, the USCC's Economic Justice for All resembles a left of center, social democratic, capitalism-with-a-social-conscience (aka "Christian Democrat") position. <sup>35</sup> Rather than follow Novak's cheerleading for big business, the bishops prefer to cite John Paul II's Laborem Exercen: "the principle of the priority of labor

over capital. . . [is that] labor is always a primary efficient cause, while capital . . . remains a mere instrument or instrumental cause." 36

Economic Justice for All reemphasizes *Rerum*'s affirmation of the right to private property and the corporatist principle of subsidiarity, advising the restraint of the large centralized state so that it undertakes only what small and intermediate sized "communitarian" groups cannot first accomplish. Economic Justice also recommends that in the distribution of resources, basics should take priority over luxury; that the common good should hold precedence over individual success; and that the international weapons race should be quit. Repeating long standing Catholic doctrine, the NCCB cites the treatment of the powerless in a society as definitive of its social justice. 37 In essence, Economic Justice's reconciliation of capital and labor at arm's length from the state is vintage nineteenth century corporatism, tempered by the indispensability of the welfare state.

David Hollenbach, one of the chief drafters of Economic Justice For All, was asked how the NCCB and Catholic social doctrine addressed the subjectivity of perceived need, that is, the surprisingly common belief among many wealthy individuals that the 'wolf is at the door,' and for this reason they need every penny - frequently yours - to protect themselves from the impending realities of brutal life. 38 What moral argument is convincing enough for these persons to care about redistribution to the needy?

Hollenbach answered that there are some needs which are concrete and quantifiable - hunger is one - but internationally at least, "perceptions don't cross borders easily." He says that redistributive arguments are more easily made in wealthier societies than ones with widespread poverty, but that for the US, some minimums can be established. Presumably this is a task for the persuasive power and moral authority of the Church, furthered by the public mission of the NCCB. Economic Justice for All may be seen as something less than revolutionary, but there are few US organizations which represent sixty million Americans and have been as willing to argue minimal standards of redistributive justice as persistently and systematically as the NCCB.

Overall, the NCCB has proven nimble and prolific in helping Catholics and Catholic sponsored public benefit corporations maintain their Catholic identities in the midst of American culture and politics. Not overtly partisan, yet in some cases issue-driven, the NCCB lends unity and credence to Catholic social values. In intensely personal matters, the laity has nullified certain of the Church's more restrictive approaches to personal conscience, coincidental with a leveling off in the decline in church attendance.

The Church's laws do not have the consequences of secular authority, yet they do attempt to regulate problematic behavior. In the context of modern America, the result has been that ethical issues and moral questions are put in normative terms, unevenly followed, yet without any devastating schism. As Greeley has pointed out several times, the stubbornness of the Church's hierarchy has thrown the rank and file back

upon their own personal consciences, with the result that they are more inclined to develop a more mature, self-realized faith.

### Catholic social services and Catholic Charities

Service to the needy is the traditional mission of every Catholic church, but more relevant to Catholic welfare corporatism is the network of US Catholic Charities, whose combined \$2.5 billion yearly revenues makes it a leader among non governmental social service providers.<sup>39</sup> Sixty five percent of Catholic Charities' income is from government, much of it earned as a subcontractor of services which the government cannot itself adequately perform.<sup>40</sup> This devolution-by-subcontract originated in the late 1960s, when Title 20 federal funding was first made available to individual states. Overwhelmed by the influx of Great Society dollars, the states then hired independent agencies, the largest of which in many communities was the regional Catholic Charities. Catholic Charities rose to the task, now serving ten million Americans through diocese-based nonprofit corporations which, like the United Way, administer a variety of programs under their umbrella: thrift stores, soup kitchens, housing facilities for AIDS patients or otherwise disabled, children's day care, elderly services and other family assistance.<sup>41</sup>

But the original impulse of Catholic charitable work was to enable the largely immigrant Catholic community to stand independent from what they felt was a Protestant-dominated state. In 1901 Archbishop Williams' primary mission for what was then the Catholic Charities Bureau of Boston was to prevent "the great loss to the faith of so many Catholic children who

in becoming wards of the Cities and State are placed out to board in Protestant families." <sup>42</sup> Cardinal O'Connell later told Catholic Charitable Bureau Director Rev. M. J. Scanlan "to keep an eye on the activities of the [Protestant] social workers who seem to be attempting to carry on a religious propaganda among the immigrants under the guise of social Service work." <sup>43</sup> Ironically, Catholic charitable work has now attracted similar criticism.

Doubts about government persist in another Catholic relief organization with nationwide stature, the St. Vincent De Paul Society (SVDP), which accepts no state funding. <sup>44</sup> Established by the French Catholic liberal Frederick Ozanam in the 19th century as a layman's relief organization, SVDP echoes Catholic corporatism's early wariness of the state, and shares its inclination towards "mutual aid." In Europe since the time of Henry VIII's expropriations of Church property in England, the work of the Church had been largely replaced by government, but according to Susan Walton the "Elizabethan Poor law and the modern state relief which was its heir was formal, cold and at times heartless." <sup>45</sup> Instead, continues Walton, Ozanam encouraged a "personal witness to poverty" which featured direct outreach to the needy rather than what seemed the mechanical relief of the bureaucratized state. <sup>46</sup>

Nowadays Catholic Charities finds itself very involved with government. So necessary have government funds become that critics within the Church worry that in bidding for state contracts, Catholic Charities has been reduced to simply doing the state's bidding, and is surrendering its Catholic identity in the bargain. The perceived threat

stems not solely from government requirements that Catholic Charities perform their social services stripped of overt religiosity, but that the money chase has distorted its mission to suit the government's inconstant notions of social service.

Father Robert Sirico reports that 80% of Massachusetts' Catholic Charities are now devoted to substance abuse programs, even though this represents only one fourth of Catholic Charities' traditional cases.<sup>47</sup> (Catholic Charities of Boston disputes the figure as closer to 15%).<sup>48</sup> Sirico contends that in accommodating federal funding preferences, thrift stores and soup kitchens have been scaled back, and child protective service contracts and adoption programs have virtually disappeared. (Robert Wuthnow and Martin Marty have echoed Sirico's concern).<sup>49</sup> Sirico further argues that the huge government presence amounts to nationalization of private philanthropies, which are inevitably left hanging by government cutbacks or changed policy standards, and then forced into "subsidizing government projects out of private dollars" in order to maintain services at a level suitable to their professional standards.<sup>50</sup>

Though Sirico and others may complain that Catholic Charities are not Catholic enough, some Americans are concerned about an opposite effect, that government is in effect becoming too religious, paying for charitable social services which are also being used as a pretext for religious conversion ("catechesis"). Court challenges in the late 1980s reflected this concern, which among other effects called a halt to US Department of

Housing and Urban Development Community Development Block Grants to those groups described as "pervasively religious." 51

*Bowen v Kendrick*: Case law for religion-sponsored agencies

Of special significance to all US religion-sponsored services is a 1988 Supreme Court decision, *Bowen v Kendrick*. 52 In a close 5-4 decision the Court overturned a district court ruling against the Adolescent Family Life Act (AFLA), a federal program which provides grants to organizations for counseling and education on adolescent premarital sexual relations. AFLA specifically seeks the participation of religious organizations and prohibits the use of its funds for "abortions or abortion counseling or referral." 53

The Supreme Court reversed the lower court and held that AFLA did not violate the establishment clause, using the three-part criteria first set forth in *Lemon v Kurtzman*, namely, that AFLA was (1) motivated by legitimate secular concerns, (2) that the Act did not have the primary effect of advancing religion and (3) did not constitute excessive entanglement of church and state. 54

The district court's had held that AFLA advanced religion because of its specific request for grant applications by religious groups. In the opinion of the lower court, to "presume that AFLA counselors from religious organizations can put their beliefs aside when counseling an adolescent on matters that are part of religious doctrine is simply unrealistic." 55

However, Chief Justice Rehnquist's majority opinion in *Bowen* argues that although AFLA specifically recruits religiously affiliated organizations, it does not *require* that they be religiously affiliated, quoting *Roemer v Maryland Board of Public Works*: "religious institutions need not be quarantined from public benefits that are neutrally available to all." <sup>56</sup> Rehnquist maintains that the "Court has never held that religious institutions are disabled by the First Amendment from participating in publicly sponsored social welfare programs," and further cites the 1899 precedent *Bradfield v Roberts*, which allowed federally funded hospital construction at a Roman Catholic facility. <sup>57</sup>

Another question the lower court raised in *Bowen* was that AFLA involved "pervasively sectarian" organizations and therefore risked an impermissible advancement of religion by indirectly financing religious indoctrination. Among the precedents cited was *Grand Rapids Schools District v Ball*, in which aid to religious schools was held to be an impermissible advancement of religion, describing parochial schools with the term "pervasively sectarian." <sup>58</sup> Rehnquist notes that in *Bowen* no specifics were given by the district court on how they arrived at the opinion that the organizations involved in AFLA were "pervasively sectarian." He also disagrees with the district Court's conclusion that AFLA authorizes impermissible teaching on "matters that are fundamental elements of religious doctrine, such as the harm of premarital sex and the reasons for choosing adoption over abortion." <sup>59</sup> Rehnquist concludes that

the likelihood that some of the religious institutions who receive AFLA funding will *agree* with the message that Congress intended to deliver to adolescents through AFLA [e.g., that premarital sex is harmful and adoption is preferable to abortion] is insufficient to warrant a finding

that the statute on its face has the primary effect of advancing religions." 60

Justice Kennedy's concurrence in *Bowen* doubts "that the term 'pervasively sectarian' is a well founded juridical category," but concludes that even though exclusive or disproportional funding to so-called pervasively sectarian institutions may in some cases impermissibly advance religion, AFLA was not one of those cases. 61

Justice Blackmun dissents that there is an important difference between "running a soup kitchen" and counseling pregnant teenagers, especially when "the religious organization is directly engaged in pedagogy, with the express intent of shaping belief and changing behavior." 62 Citing *Grand Rapids Schools District v Ball*, and other Court decisions relating to religious education, he maintains that, especially among children in the age group targeted by AFLA (college students are assumed less impressionable), the law is careful about when religious approaches are used in the process of education . 63

Blackmun agrees that government support of secular social welfare services by religiously affiliated organizations is constitutional, but that "such recognition has been tied to the nature of the subsidized social service," and illustrates this qualification by quoting *Roemer v Maryland Public Works Board*: "'the State may send a cleric, indeed even a clerical order, to perform a wholly secular task.'" 64 Blackmun expressly points out the Catholic organizations' use of the NCCB's Ethical and Religious Directives for Catholic Health Facilities and reports that a "nurse midwife

working at an AFLA program was even reprimanded for contravening the hospital's religious views on sex when she answered 'yes' to a teenager who asked, as a medical matter, whether she could have sex during pregnancy. "

65

The net result of *Bowen* is that although the government continues to fund "faith-based" social service organizations, the overtly religious aspects of these groups is kept low. Byron Johnson of Lamar University in Texas notes wryly, "We [can] use pet therapy, horticulture therapy, acupuncture. . . but if you mention God, there's a problem." <sup>66</sup> But the taboo against religious rites is expensive. Joe Klein writes that "the 'faith' in faith-based programs is often the very quality that makes them successful," but reports that when Michigan's governor John Engler required that a successful urban mission called "Joy of Jesus" work through a secular intermediary organization, with "no morning prayers or intensive Bible study[, t]he program soon fell apart." <sup>67</sup>

### Religion and social services in Boston: Local cases

Among the Catholic social service professionals interviewed for this study, none of those who worked for organizations with state funding appeared to have any problem whatsoever with limiting their work to the "wholly secular." The distinct impression was that no one wished to jeopardize their professional mission for the sake of strictly secular doctrine. In fact, questions about the extent to which the "Catholic identity" of various agencies and facilities has disappeared seemed somewhat beside the point.

## Pregnancy, abortion and adoption

Even in matters relating to abortion, what many consider the hardened core of Catholic social doctrine, the position of Church-sponsored agencies' is more nuanced than what is commonly assumed, and clearly at odds with televised images of screaming protesters. Father James A. O'Donohoe, a director of Covenant Health Care in Bedford Massachusetts (a Public Juridic Person under canon law and therefore directly owned by the Church) said that, contrary to popular opinion, the official position of the Church is that "abortion is *not* a sin, only the *intent* is a sin." <sup>68</sup> James Gorman, Director of Programs for Catholic Charities of Boston agrees, and adds that compassion for the individual, apart from the act of abortion itself, is axiomatic in Catholic social service. He says that on more than one occasion pregnant women living in Catholic sponsored shelters have briefly left it in order to have an abortion, then returned to the same shelter later that day. The understanding is that the woman is welcome at all times, but that the Church will simply decline to facilitate the abortion by providing her transportation to it. <sup>69</sup>

One Boston area social service office, "Project Rachel," is explicitly sectarian in its approach to abortion, yet is also carefully compassionate. In the aftermath of an abortion Project Rachel believes that religion is the best therapy, using the Catholic sacraments as its therapeutic focus. Project Rachel's chief purpose is to culminate in "reconciliation" (that is, the confession to a priest of the sin of an intentional abortion) so that once forgiven, a woman (or a man who has intentionally facilitated the abortion

in some way) may participate in the rite of communion. Center Director Barbara Thorpe says that the Church has trained 250 priests for this specialized purpose because "sacramental graces are integral to recovery," even among the non-Catholic women who nevertheless come to the center seeking absolution from a Catholic priest. 70

Project Rachel's educational outreach features slide shows and lectures involving pro life issues, but it cannot qualify for public funding, so it is financed directly through the Archdiocese's "Fund for the Unborn," Cardinal Law's specially earmarked anti abortion campaign. Thorpe says that this resource is limited, though, and that research on the repercussions of abortion has been at a standstill because of the government ban on funding for this type of counseling,

But Thorpe was not inclined to portray the government as a particularly sinister force. The Church has constantly recommended adoption as an alternative to abortion, but when Thorpe was asked about the sharp drop in Catholic adoption services (cited by Sirico), rather than to condemn morally relativistic welfare subsidies or to blame religion-phobic government funding policies, Thorpe instead commented that all adoptions have fallen off, not just Catholic ones, because of high profile litigation, such as the "Baby Richard" episode in which a birth parent was allowed to reclaim her child years after an adoption was in place. 71

Catholic Charities' James Gorman agrees that the "kids aren't there" to adopt, but rather than to blame the state for permissive programs, he attributes the increased social acceptance of single parenting and abortion

to general cultural trends.<sup>72</sup> As noted earlier, the NCCB recognizes the state's financial role as essential, and objects to the elimination of programs like WIC - (Women, Infant and Children) which provided income to out of wedlock mothers.

Other practicing Catholic social service workers either pointedly downplayed Catholic doctrine, or at the extreme simply avoided the topic, despite efforts to provoke argument. None of the five pastoral counselors interviewed for this study recognized the NCCB's Directive 36 on dispensation of medications to prevent ovulation for victims of sexual assault (see Chapter Eight).<sup>73</sup> St. Elizabeth's Hospital in Boston staffs several "pastoral counselors" who are available for spiritual guidance to patients, but none interviewed could recall "that sort of thing" happening at any Catholic facility where they had worked. Fran Bogle, a Protestant reverend at St. Elizabeth's, spoke of "encountering the person in the fullness of the faith and in terms of who they are - without religious rightness or wrongness," and another counselor said she'd simply refer a victim of sexual assault seeking Directive 36 treatment to another hospital.<sup>74</sup>

When asked about *in vitro* fertilization, which is specifically disallowed by papal encyclical, (also detailed in Chapter Eight) the pastoral counselors said that those leaving a Catholic hospital to undergo such a fertility treatment elsewhere would not necessarily be leaving the faith. To the contrary, they would be welcomed back at St. Elizabeth's, perhaps to have the baby once it was successfully conceived. Some of the counselor's responses seemed mildly surprising to the priests and nuns in

administrative posts who were questioned, but the counselor's views typified the approach of the Catholic practitioners interviewed.

Perhaps the tentative quality of some pastoral counseling is linked to a bureaucratic "Catch-22," in which the government plays the "free exercise" aspect of the First Amendment against the "establishment" clause. Father Bob Rochon, director of St. Anne's Hospital in Fall River, MA., comments that providing spiritual care is a *requirement* for accreditation by the JCAHO (Joint Commission on Accreditation of Health Organizations), and that JCAHO accreditation is in turn a prerequisite for Medicare and Medicaid funding.<sup>75</sup> Yet, according to Rochon, none of his half-million dollar pastoral care budget is eligible for Medicare or Medicaid funds. In short, though the state requires the presence of religious counseling, it refuses to fund it, despite the conviction among many professionals that what is therapeutic is inseparable from what is uniquely religious.

James Gorman steers widely clear of controversy over theological distinctions, noting that Catholic Charities' business relationship with state government is increasingly good. Gorman claims that whatever church and state issues arise in his work centers on professional standards rather than religious faith. He cites an example from two years earlier when St. Anne's Home in Methuen felt pressured by the Massachusetts Department of Social Services to discharge children prematurely into less expensive treatment. Echoing Sirico's sentiments about "nationalizing" private philanthropy, Gorman says St. Anne's was faced with providing for the children at their own expense in order to maintain their professional principles.

Catholic approaches to information about sexual practices and the NCCB's approach to the use of condoms hardly fits the stereotype of inflexible moral condemnation. The NCCB's Called to Compassion and Responsibility: A Response to the HIV/Aids Crisis simply warns that prophylactics sometimes fail and can invite a false confidence; they recommend chastity.<sup>76</sup> Citing a 1987 NCCB statement about sex education, Richard McCormick says the NCCB's administrative board has "accepted public educational programs that include factual information about prophylactics."<sup>77</sup>

In some cases the Catholic Church is acquiring a reputation for especially well-run sex information programs. In a 1992 study of church-state issues in Springfield, Massachusetts, Demerath and Williams quote a representative of the Family Planning Council of Western Massachusetts who stated flatly that "Cathedral [Catholic] High School has the best sex-education program in the city, although it is formally part of their 'religion' classes. They are not only willing to talk about abortion, but they even invited in one of our staff persons to make a presentation."<sup>78</sup> The study also found that of Springfield clergy surveyed, 90 percent of Catholic priests and sisters agreed that sex education in public schools should be legal, compared to 71 percent of Protestant/Jewish clergy (though this second figure included "evangelical and black pastors [who] expressed rare disapproval.")<sup>79</sup>

In June of 1996 the *Boston Globe* reported that the director and several other workers resigned from the Catholic Charities' Haitian Multi-Service Center in Dorchester after "years of quiet struggle between the center's leaders and its corporate parent, Catholic Charities, over birth control and AIDS-prevention practices at odds with Catholic teaching." 80 At another occasion at St. Patrick's Shelter for Women in Somerville there was a similar resignation, also attributed to Catholic condom policy. Gorman's response was that the news reports neglected to note that the dispute was over the Church's refusal to directly *distribute* condoms at the center, rather than to suppress the use of condoms in all cases. 81

When asked whether Catholic teaching wasn't an impediment to dealing with homosexuals with AIDS, the slightly agitated reply from Sister Madeline Gallagher of St. Helena's House in Boston's South End was, "Why not love an AIDS patient? You don't love someone any less because they're sick," noting that the Church does not consider homosexuality a sin. 82 Neither does the NCCB consider homosexuality a "morally acceptable option," but on the other hand, they add that "not every homosexual is personally responsible for his or her homosexual orientation." 83 The Church's official position is that "Homosexual persons are called to chastity." 84

According to David Garten Director of Housing Development for the Boston Archdiocese's Planning Office for Urban Affairs the Catholic Church "may be the largest provider of AIDS housing in the nation." He points out the AIDS housing is a mission apart from Catholic Charities,

participated in by many different Catholic congregations, citing locally the Sisters St. Joseph's as an extensively committed order. 85

Sister Zita Fleming directs the Office of AIDS Ministry for Boston's Catholic Charities, and embodies the pluralistic and non judgmental tone of much of Catholic service. She says that "no one is rejected by the Church. . . there is no Catholic AIDS, no Protestant AIDS, no Jewish AIDS. There is just AIDS." 86 She underlines that there is great misunderstanding about the Church's position on homosexuality and cites the NCCB's recent pastoral encouraging love and care by Catholic parents for their gay children. Sister Zita coordinates three residential homes for AIDS patients in the Boston archdiocese, Seton Manor in Brighton, Julie House in Lowell, Nazareth Residence for Mothers and Children in Roxbury, and is anticipating the construction of a fourth, the Robert McBride House in the Fenway area of Boston.

### Housing

In addressing other, less high-profile housing projects which the Archdiocese is involved in, Garten avoids the expression "Catholic identity," echoing Gorman and other Catholic social service administrators who do not dwell on the theological "teaching function" of the Church. Instead Garten suggests that the "personality and character [of Catholic housing developments are] better reflected in our track record," which if anything is "Christian rather than Catholic." 87 He notes that the Church owns none of the 1800 units of housing which they have had built and "does not recall" any divestiture of Catholic housing subsequent to *Bowen*. Housing is

instead developed by the Planning Office and then turned over to individual owner-occupiers who would not otherwise be able to own property. <sup>88</sup> Similarly, Sister Madeline Gallagher describes the elderly and disabled housing of St. Helena's in Boston's South End as "strictly a IIUD operation. We follow all the IIUD rules and regulations" and adds that the staff is led by a Jewish social worker and that the tenants are racially and religiously diverse. <sup>89</sup>

Despite the therapeutic community's somewhat paradoxical and ambivalent attitude toward prayer and the specifics of faith, Catholic social service practitioners mostly downplay sectarian differences if it would mean limiting their ability to deliver necessary services. Madeline Gallagher summarizes it best when she says that the roles of Catholics in social service are not of any distinct "school." She says that there are no courses taught in "Catholic" social service at Boston College or at other Catholic schools for men and women religious who wish to work in social service. She says that Christian or Catholic values may be conveyed if teacher or student happen to emphasize these qualities in their own life, but she is careful to rule out any systematic or institutionalized "Catholic" doctrine woven into the teaching or structuring of the profession of social work. <sup>90</sup>

### The Catholic Church and American Pluralism

In the past century, Catholic Charities have come to embrace the pluralist American society which supports it, rather than to retreat into an enclave of ethnic self-involvement. The nearly one and one half billion

taxpayer dollars per year flowing into Catholic Charities is not simply to pay for Catholic services to Catholics, nor is it simply to win Catholic votes. Catholic social services have won the trust of American public by becoming publicly American. Catholics have succeeded in running effective agencies worthy of contract awards and individuals' patronage through a sincere and explicitly pluralist approach to both clients and staff, part of the bargain with government in subcontracting welfare-state services. Catholic Charities' house organ Social Thought repeatedly stresses this theme of pluralism, studiously avoiding confrontational approaches through litigation or moralistic theological prescription. 91

The muted Catholic religiosity is not simply a convenient tactic among agencies eager for government dollars. It is part of an ongoing theological approach, especially among American Catholic theologians. David Hollenbach sees the expanding Catholic affinity for pluralism as consistent with subsidiarity: "The principle of subsidiarity embodies a pluralist model of social interaction. It envisions society as composed of many different groups with many different purposes, needs and legitimate claims." 92 He says the days of promoting Catholicism as "the official religion of the realm" were already on the wane in the 1950s, when some Catholics still were insisting that the Church "had *the* vision" and wished to impose an absolute religious unity on the daily life of politics, science, and the economy, heedless of others' beliefs and dismissive of technical fact. 93 Hollenbach goes on to quote the enormously influential Karl Rahner, who warned of illusions of an all-encompassing religiosity in which "human life can be unambiguously mapped out and manipulated in accord with

certain universal principles proclaimed by the Church and watched over by her in the manner in which they are developed and applied." 94

Bryan Hehir of the Catholic Relief Service (the Church's international charitable agency) has described Catholic Charities as at the "intersection of ecclesiastical pluralism and religious pluralism," and cautions restraint in the use of religious language and reasoning when pursuing policy in a public forum. 95 Hehir says religious symbolism is "indispensable in the effort to both identify the social issues facing the Christian conscience and to mobilize the Church," but disagrees that it should be the dominant mode of policy discourse and hesitates about the "usefulness of public theology in policy discussion. Interdependence points toward the need for systemic solutions which are persuasive for a multiplicity of actors with widely varying faith visions." 96 Mario Cuomo is similarly wary of sectarian heavy handedness (implicitly from the Protestant religious right) and warns against rigid approaches which seek to overtake the social order and which insist that only their terms prevail.

At the same time, Catholic Charities' national president Fred Kammer interprets his organization's religious freedom includes the right to participate in public debate and education, one which simultaneously "transcend[s] and enhance[s] the interests of the state," and deserves "not only respect but support from the public sector." 97 But he recognizes the necessity of collaborating with secular goals. To this end Kammer describes Catholic Charities as determinedly pluralistic, openly seeking to join other groups, and fully accountable to public assessment. Against this backdrop Catholic Charities apply the scope and variety of Catholicism's small-c

catholicity to the Church's institutional work in America's multiethnic culture.

### Review Discussion

The Catholic identity of Catholic Charities and other Catholic sponsored social services is far less pronounced than at the beginning of this century, but this reflects the degree to which a pluralist clientele and a pluralist community of employees have succeeded in informing Catholic values. Catholicism has converged with some of modern American society's public ethics, just as Catholics themselves have successfully adapted to American culture. Religious freedom and religious non-discrimination have struck a balance, even in the treacherous terrain of pregnancy counseling and AIDS, without any grave abandonment of Catholic theological principle.

Though the state may be missing an opportunity to give financial credence to the healing power of prayer and explicit forms of religious devotion, Catholic social services continue without pressing their sectarian point beyond the sustainable limits of a pluralist public morality. The corporatist bargaining compelled by social services' financial and regulatory interdependence with the state can therefore be seen as a progressive means of adaptation by the Church to the state, as much as it is an accommodation of the state to the Church.

There is no indication that Catholic Charities is about to relinquish their funding because of any theological chill or regulatory suppression

beyond the terms of *Bowen v Kendrick*. To the contrary, Catholic theology seems to support the trend to American pluralism in its downplayed moralistic tone. The change in Catholic thinking is not to insist that the public yield to theology but that theology be personalized in a way which empowers the Catholic individual to give meaning to their private faith in a public forum.

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<sup>1</sup> National Conference of Catholic Bishops, Ethical and Religious Directives for Catholic Health Care Services (Washington DC.: United States Catholic Conference) 1996.

<sup>2</sup> Health Progress "Special Section: CHA principles for Healthcare reform" June 1990

<sup>3</sup> Diego Ribadeneira, "Bishops take views to democrats, GOP." Boston Globe July 10, 1996: 1

<sup>4</sup> Denise Shannon, "The Bishop's Lobby" The Humanist. Sept.- Oct. 1993: 21-23.

<sup>5</sup> IRS Section 501 (c) (3) cited in Norman Leon, "Federal Courts: The Second Circuit's Application of Standing In *In Re* United States Catholic Conference: Another Plea for Clarity and Consistency" Brooklyn Law Review 57 Summer 1991: 429

<sup>6</sup> 885 F2nd 1020 (2nd circuit 1989)

<sup>7</sup> Second Vatican Council, Lumen Gentium "Constitution on the Church") Washington, DC. : USCC, 1964: 22

<sup>8</sup> Rev. Kevin D O'Rourke, OP, JCD., and Sr. Jean DeBlois, CSJ, RN, Ph.D., "Removing Life Support: Motivations, Obligations" (Health Progress, July-August 1992). 21

<sup>9</sup> Michael Novak "The Authority of the National Conferences of Bishops: Catholic Social Thought" America Jan. 13 1990: 10-20. Novak is critical of the NCCB's public profile when undertaking temporal matters. Novak says their opinions on public policy are inevitably garbled by the press and this erodes the bishops' credibility in their true field of competence, which is faith.

<sup>10</sup> CIC 455 cited in O'Rourke & deBlois 21.

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- 11 J. Brian Benestad The Pursuit of a Just Social Order Washington DC. : Ethics and Public Policy Center, 1985. 143-144.
- 12 Committee for Pro-Life Activities, "Nutrition and Hydration: Moral and Pastoral Reflections" Origins April 9, 1992: 706.
- 13 Henriot, Peter J. "Pluralism: The Role of the Church in Public Policy" Social Thought (Spring 1988): 37.
- 14 Boston's legendary Mayor Curley attributes one of his late-career losses to a banner in the Boston *Globe* which simply suggested (not as a direct quote but in a vague paraphrase) that the Cardinal's choice wouldn't be Curley.
- 15 Patrick Allitt, Catholic Intellectuals and Conservative Politics in America 1950-1985 Ithaca, NY: Cornell UP, 1993: 12.
- 16 Henriot 42.
- 17 CIC 285, par. 2 prohibits Catholic clergy from holding elected public office. One of the immediate effects in the US was that Massachusetts Congressman Fr. Joseph Drinan resigned from office, succeeded by Barney Frank.
- 18 Timothy Byrns "The Politics of the American Catholic Hierarchy" Political Science Quarterly Fall 1993: 497
- 19 Perhaps Carter's high-profile Protestant evangelist sister Ruth Carter Stapleton was a factor, or perhaps the incipient rivalry of Edward Kennedy stood in the way of a Carter-NCCB rapprochement.
- 20 Jeffrey Rosen, "Anti-Antidisestablishmentarianism" The New Republic, Feb. 24, 1997: 10. Among the lawsuits based on the Religious Freedom Restoration Act is the Catholic Church's challenge to San Francisco's same-sex partners employee benefits.
- 21 Among the high profile host of Catholic conservatives are William F Buckley, Gary Wills, John Lukacs, Russel Kirk, William Simon, J. Peter Grace, Mary Ellen (Mrs. Robert) Bork, Thomas Monaghan, Phyllis Schlafly, William and Robert Bennett and anti-abortion movement leader Paul Weyrich.
- 22 Stephen Glass "After the fall: Why Ralph Reed left the Christian Coalition" (The New Republic May 26, 1997) 14-16
- 23 David C. Leege, "The Catholic Vote in '96" Commonweal 9/27/96: 14
- 24 In the Sixties, Michael Novak started out on the left with books like Open Church and Ascent of the Mountain, Flight of the Dove, and was in

the early ranks of dissenters from the Vatican's stand against contraception. Novak has since antagonized the NCCB by repeatedly challenging how the bishop's level of teaching authority is portrayed. Novak's enthusiasm for capitalism and the business corporation as a means of social redemption, an early stimulus for this dissertation, provoked an attack from the left which typifies the liberal-baiting potential of an unreconstructed view of corporatism. According to Gerald O'Sullivan in the Humanist, "proponents of the 'true Church' who long instead for the days of feudal rule, papal largesse and a society of trade and craft guilds. In short, Catholic fascism." Gerald O'Sullivan "Catholicism's New Cold War: the Church Militant Lurches Rightward" Humanist Sept./Oct. 1993: 27-32.

25 United States Catholic Conference, Moral Principles and Policy Priorities for Welfare Reform (Washington DC.: USCC, 1997) 6-7.

26 Ribadeneira 1

27 The NCCB's political director at the time was Fr. Bryan Hehir, who with Bishop Rausch pressed a social justice agenda (earlier efforts characterized the World Food Crisis in terms of distributive justice, rather than charity) but the NCCB has subsequently backed away from Hehir's politicism. J. Brian Benestad The Pursuit of a Just Social Order (Washington, DC.: Ethics and Public Policy Center, 1982. Hehir is currently a Harvard professor and senior advisor to Catholic Relief Services in Baltimore.

28 Hehir "Get a (culture of) life" Commonweal 19 May 1995: 8.

29 Andrew Greeley, American Catholics Since the Council: An Unauthorized report (Chicago, Ill: Thomas More Press, 1985): 214.

30 Greeley, Council 209.

31 Andrew M. Greeley, The American Catholic (NY: Basic Books, 1977): 272

32 Greeley, American Catholic 213.

33 NCCB, Economic Justice for All Washington DC: USCC, 1986.

34 R. Bruce Douglass, Ed., The Deeper Meaning of Economic Life: Critical Essays on the US Catholic Bishops' Pastoral Letter on the Economy Washington DC., Georgetown UP, 1986): intro.

35 Michael Novak's conservative spin on John Paul II's economics is in The Catholic Ethic and the Spirit of Capitalism (NY: Free Press, 1993). Left wing supporters of Economic Justice for All includes Albert Gore, Mario Cuomo, Edward Kennedy and Michael Harrington. Robert Novak and William Simon's response was critical. See Douglass; also Corbin, "Unfinished . . . Economic Pastoral" Social Thought, Spring 1989; and

Mitchel, "Economic Justice" Catholic World, 1991. Novak's position is the NCCB risks losing its moral authority by being drawn into a public discourse on which the bishops are not as competent as they are in theology. Novak feels open discussion of Bishop's economic opinions will be inevitably garbled by the media and ultimately will harm the Church.

36 John Paul II, Laborem Exercens (On Human Work) Third Encyclical Letter (Washington DC.: USCC, 1981): 25.

37 Pope John XXIII in Mater at Magistra (1963) writes "... where political regimes do not allow to private individuals the possession also of productive goods, the exercise of human liberty is violated or completely destroyed ... in the right of property, the exercise of liberty finds both a safeguard and a stimulus ... This explains the fact that sociopolitical groups and associations which endeavor to reconcile *freedom with justice* within society, and which until recently did not uphold the right of private property in productive goods, have now, enlightened by the course of social events, modified their views and are disposed actually to approve this right." Pope John XXIII, Christianity and Social Progress, Mater et Magistra in Seven Great Encyclicals NY: Paulist Press, 1963.

38 Interview with David Hollenbach, Boston College, July 9, 1997.

39 Robert Sirico, "Charities on the Dole" Wall Street Journal 3/31/95): A12,

40 Sirico A12. Other charities average 37% government funding. Joseph P. Shapiro and Andrea R. Wright, "Can Churches Save America?" US News and World Report, Sept. 9, 1996: 48.

41 Of Catholic Charities' ten million cases, over three million of them are children and over a million elders. Fred Kammer, "We Serve 10 Million in Need." Letter. Wall Street Journal April 25, 1995

42 Archbishop Williams, quoted in Susan Charlotte Walton, "To Preserve the Faith: Catholic Charities in Boston 1870-1930" Diss. Boston University (1983): 128.

43 Boston Archdiocese archives. Letter of R.J. Haberlin, Sec. of Cardinal, to Scanlan, Jan 2, 1917. (RG III D 10 "Catholic Charities Bureau" Dec. 1916-1917) Folder Nine. Scanlan replied by Jan 8 that the US. immigration service would record the names all emigrant juveniles and notify the destination communities of when they would arrive. Boston Archdiocese archives.

44 SVDP accepts some FEMA donations for natural disaster relief. The Salvation Army similarly avoids government funds (only 6% of their budget) and manages to raise about \$1 billion a year in revenues. Robert Sirico, "Charities on the Dole" Wall Street Journal 3/31/95 A12.

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- 45 Walton 144.
- 46 St. Vincent De Paul Quarterly SVPQ 1 (1896): 68
- 47 Sirico 12.
- 48 James Gorman. Director of Programs, Catholic Charities of Boston. Personal Interview 19 May 1997.
- 49 Martin Marty, "Religion, Theology, the Church, and Bioethics" Journal of Medicine and Philosophy 17.3 (June 1992): 274+.
- 50 Sirico 12
- 51 See *Wilder v Bernstein* 645 US 1292.
- 52 *Bowen v Kendrick* 56 LW 4818 (June 29, 1988).
- 53 56 LW 4820, citing AFLA § 300z-10(a).
- 54 *Lemon v Kurtzman* 408 US 602.
- 55 657 F. Supp. at 1563, cited in 56 LW at 4821.
- 56 *Roemer v Maryland Board of Public Works* 426 US 736 (1976).
- 57 56 LW at 4821; *Bradfield v Roberts* 175 US 291.
- 58 *Grand Rapids Schools District v Ball* 473 US 373 (1985).
- 59 56LW at 4824
- 60 56 LW at 4842 (emphasis added) .
- 61 56 LW at 4827.
- 62 56 LW at 4832.
- 63 See *Tilton v Richardson* 403 US at 686.
- 64 *Roemer v Maryland Public Works Board* 426 US at 746. Blackmun's italics.
- 65 56 LW at 4832, footnote 12.
- 66 Shapiro 51.

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48. 67 Joe Klein, "In God They Trust" The New Yorker (June 16, 1997): 46,
- 68 Interview with Father James A. O'Donohoe, J.C.D., Covenant Health Care offices, Bedford, MA., May 29, 1997.
- 69 Gorman interview.
- 70 Interview with Barbara Thorpe, Director "Project Rachel" St. Elizabeth's Hospital, Boston 6/12/97.
- 71 Interview with Barbara Thorpe, "Project Rachel" director, St. Elizabeth's hospital Boston 6/12/97.
- 72 James C. Gorman interview.
- 73 NCCB, Ethical and Religious Directives for Catholic Health Care Services. (Washington, DC. : USCC, 1996).
- 74 Interview, St. Elizabeth's Hospital Pastoral care staff: Martha Sullivan Chaplain(Catholic layperson); Sister Nora O'Connell Chaplain; Edna Lezotte Catholic lay chaplain; Ann Cody (former nun) Chaplain Rev. Fran Bogle Protestant Associate Chaplain United Church of Christ. 6/3/97.
- 75 Interview with Father Bob Rochon, Director, St. Anne's Hospital, Fall River MA. 6/2/97.
- 76 NCCB, Called to Compassion and Responsibility: A Response to the HIV/Aids Crisis (Washington DC: USCC, 1989).
- 77 Richard A. McCormick, , S.J. The Critical Calling: Reflections on Moral Dilemmas Since Vatican II. Washington DC.: Georgetown UP, 1989 : 310.  
citing *The National Catholic Reporter* Dec 25, 1987: 13.
- 78 N.J. Demerath III and Rhys II. Williams, A Bridging Of Faiths: Religion And Politics In A New England City. (Princeton NJ: UP, 1992): 240.
- 79 Demerath and Williams, 240.
- 80 Joseph Doolin the director of Boston Catholic Charities, the "\$27 million social service arm of the Archdiocese, denied that anyone was forced out and suggested that some may have resigned because they were not chosen as interim director. Earlier English classes for non native speakers were banned because they were held in a building in which condoms had been distributed. The Boston Adult literacy fund may withhold their \$10,000 contribution to fund the program." Patricia Nealon "Haitian services center in turmoil." (Boston Globe June 8,. 1996): 13, 17.

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- 81 Gorman interview.
- 82 Interview with Sister Madeline Gallagher, Cathedral Church rectory, Union Park Boston 12/5/96. The Church holds that homosexuality, though occurring "through the centuries and in different cultures" has been considered in Catholic tradition as "intrinsically disordered," yet homosexuals "do not choose" their condition and "must be accepted with respect" though they are "called to chastity." Catechism of the Catholic Church (NY: Doubleday, 1995): 625-626 (§2357-2358)
- 83 NCCB, Called to Compassion and Responsibility (Washington DC: USCC, 1989) 17.
- 84 Catechism of the Catholic Church § 2359 (NY: Doubleday, 1994): 626.
- 85 Interview with David Garten, Director of Housing Development Archdiocese of Boston Planning Office for Urban Affairs Boston 12/18/96.
- 86 Gloria Negri, Boston *Globe* 10/19/97: 9
- 87 Garten interview Dec 18, 1996.
- 88 Garten interview.
- 89 Sister Madeline Gallagher, Cathedral Parish House, South End Boston, Dec 5, 1996.
- 90 Interview with Sister Madeline Gallagher 12/5/97.
- 91 Peter J. Henriot "Pluralism: The role of the Church in Public Policy" Social Thought Spring 1988: 37.
- 92 David Hollenbach, Claims in Conflict (NY: Paulist Press, 1979): 159
- 93 David Hollenbach, Justice, Peace and Human Rights: American Catholic Social Ethics in a Pluralistic World (NY: Crossroad, 1988): 10.
- 94 Karl Rahner, "Theological Reflections on the Problem of Secularization" Theological Investigations 10 (NY: Herder & Herder, 1973): 322, quoted in Hollenbach, Justice 10.
- 95 J. Bryan Hehir "Pluralism in the Church" Social Thought Spring 1988
- 96 J. Bryan Hehir, "The Perennial Need for Philosophical Discourse" in "Theology and Philosophy in Public: a Symposium on John Courtney Murray's Unfinished Agenda" Theological Investigations 40.4 (Dec 1979): 711.

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<sup>97</sup> Kammer, "Pluralism Diamond" Social Thought Spring 1988: 23.

CATHOLIC SPONSORED HEALTH CARE

Among the Catholic Church's "institutional witness," health care involves the most money and the most controversy, and it fully displays the three traits of Catholic welfare corporatism: *organicism* in its Catholic commitment to social justice for the needy; *subsidiarity* in providing health services to patients who are funded by state or who would otherwise be patients at state facilities; and *multimodality* in how it simultaneously serves the community, competes with private sector rivals, and pursues public funds and regulatory support.

Market share

According to the Wall Street Journal, in 1995 Catholic sponsored facilities accounted for about 10% of the entire US health care industry, with about one in six US hospital admissions, nearly \$46 billion in assets and revenues of \$31.9 billion - about twice the earnings and assets of the largest for-profit corporation, Columbia/HCA. <sup>1</sup> Though Catholic health care is not organized into a single business entity, nor does every Catholic facility belong to the same industry association, the largest Catholic health care trade group - the Catholic Health Association (CHA) - represents 425 Catholic sponsors of 600 hospitals, plus over 1000 long term care facilities and 57 multi-institutional systems. <sup>2</sup>

Despite these impressive figures, Catholic health care is declining, with trade publications reporting net income in 1995 down 3.5% from '94, to \$1.3 billion.<sup>3</sup> Competitive pressures have driven many Catholic hospitals to consolidate, sometimes merging with what were previously considered incompatible institutions. The drop-off in religious personnel has paralleled other Catholic-sponsored fields, challenging health care to adapt its Catholic identity to emerging market imperatives.

### "The Preferential Option for the Poor"

Literature from the CHA and the National Conference of Catholic Bishops (NCCB) repeatedly refer to "the preferential option for the poor," a focus of many Papal encyclicals.<sup>4</sup> Pope John Paul II describes it as "a call to have a special openness with the small and weak . . . those that are humiliated and left on the margins of society . . ." <sup>5</sup> The Church claims a "prophetic mandate to speak . . . from the side of the poor, to assess lifestyle as well as social institutions and policies in terms of their impact on the poor." <sup>6</sup>

But Catholic healthcare is not the leader in service to the poor, even among nonprofits. Sister Jean deBlois reports Catholic hospital's acceptance of Medicaid recipients is comparatively low, finding fewer Medicaid-patient days spent in Catholic hospitals than in other nonprofits: 9.3% to 11.1%. <sup>7</sup> Government-run hospitals are far ahead in this category with 19.3% of their patient days paid by Medicaid while for-profit, investor-owned (IO) facilities do the least: 6.4%, according to deBlois. <sup>8</sup>

Hultman found that the chief determinant of a hospital's charity caseload is where the facility happens to be located, not the type of corporation or foundation which sponsors it.<sup>9</sup> Setting aside the aggregate figures for the entire Catholic healthcare industry, those individual Catholic hospitals which happen to be located in needy neighborhoods are distinguished by their care of the poor, but not necessarily because they are Catholic. CHA literature stresses that 71% of Catholic hospitals are in urban areas, and that poverty rates exceeded 20% in 110 communities served by Catholic hospitals in 1990 (twice as many communities as in 1980).<sup>10</sup> Sanders' study of Catholic facilities largely concurs with Hultman, finding no causal relationship between a hospital's charity care output and whether the facility has a lay or religious CEO, or mission effectiveness program.<sup>11</sup>

As for senior citizens on Medicare, deBlois, finds Catholic hospitals in the aggregate are undistinguished in caring for the elderly.<sup>12</sup> Herzlinger and Fonner found virtually no difference in Medicare service among Catholic-owned, investor owned or nonprofits: about 54% of patient days in the average US hospital were covered by Medicare in 1995.<sup>13</sup>

### Nonprofit tax status

In the US, a 501 (c) (3) (nonprofit) status qualifies a corporation for exemptions from federal taxes on corporate income, unemployment, and revenue bonds. IRS rules allows individual contributions to the hospital as deductible for the donor.<sup>14</sup> Almost all nonprofit hospitals are also exempt from state sales taxes and local property taxes, but this has been subject to

court challenge. In California alone, combined state and federal income tax exemptions to nonprofit community hospitals approached \$300 million in 1987.<sup>15</sup>

An important change occurred in April 1983 when Medicare changed to a "prospective reimbursement" method. Rather than case-by-case billing, the government now pays on the basis of predetermined "diagnostic related groups" (DRGs), which are cost categories numbered from 1 to 468 into which patients are fitted by their particular ailment(s). Profit margins have become much tighter since DRGs were introduced, and the bottom line has occasioned new and difficult adjustments for Catholic healthcare - including mergers and consolidations with non-Catholic operations.

Compared to IO's (investor owned for-profits), nonprofit hospitals are assumed to be less exploitive because they are not accountable to earnings-conscious shareholders. Nonprofit hospitals "own themselves" because they have no investors or shareholders to distribute profits to. Whatever earnings remain after expenses (such as salaries) are used to finance its own activities and cannot be distributed as shareholder income. Arrington and Annock say the general impression is that compared to IO's, nonprofits provide more community-oriented services and are more accessible to the uninsured.<sup>16</sup>

Though at first, tax exemption for nonprofit hospitals was justified by their demonstrable service to the poor, the IRS eventually eliminated such qualifications.<sup>17</sup> An IRS ruling in 1956 first gave nonprofit hospitals the

choice to either furnish below-cost services to the needy or use earnings for capital improvements. <sup>18</sup> Then in 1969 the IRS allowed nonprofit hospitals to screen patient admissions for those who could pay (called informally "wallet biopsies"). By 1983 the IRS had reduced the standard of nonprofit charity to simply "promoting community health" - regardless of who benefits. <sup>19</sup> The older notions of nonprofit hospitals as a complete departure from standard health care in their treatment of the disadvantaged seems to be fading. In a 1978 Michigan ruling, the court stated flatly that charitable hospitals were "a thing of the past." <sup>20</sup>

Nevertheless some states have set their own charitable standards in nonprofit healthcare. In Utah County v Intermountain Health Care (1985) the court disqualified the property tax exemptions of two religious-sponsored healthcare facilities, (neither Catholic) because they did not demonstrate free care to the poor equivalent to the value of their tax exemptions, and neither were their rates any lower than other hospitals. <sup>21</sup>

In *Cook v Oschner Foundation Hospital* (1971) ten Louisiana hospitals were compelled to provide evidence of significant services to poor persons. This led to federal regulations which made Hill-Burton construction funds contingent on a standard minimum of charity care (although the program also produced overbedding and ultimately forced the closing of individual hospitals in poor neighborhoods).

The litigious regulatory mood at the state level has inspired the Catholic Health Association to publish the Social Accountability Budget, a workbook which teaches how to calculate - and publicize - the dollar

amounts of community benefits produced by its member hospitals. <sup>22</sup> Other research has been designed to test whether religious nonprofits are more efficient than IOs (and presumably more deserving of taxpayer money). <sup>23</sup> A study by the New England Journal of Medicine found that between 1990 and 1994 overall costs at for-profit hospitals show twice the rate of increase as nonprofits. <sup>24</sup> But Herzlinger and Krasker found "nonprofits required 17 cents of public investment for every dollar of their capital in 1981. . . [while] for-profits required only 2 cents," and further confirmed Utah's finding that nonprofits "do not price less aggressively" than their for-profit competition. <sup>25</sup> LeBlanc found no significant difference in providing unpopular services such as HIV/AIDS. <sup>26</sup>

Nonprofit hospitals argue that they function as quasi governmental agencies, filling in gaps where the government chooses not to be. But IOs argue that they, too, serve patients who would otherwise be in state and municipal hospitals, so why are they not tax exempt? <sup>27</sup>

Sanders found that nonprofits (Catholic or otherwise) apportion about 1% more of their total budgets for "uncompensated care" than do IOs (investor-owned): 4.2% and 3.1%, respectively. <sup>28</sup> Herzlinger reports IO's and nonprofits were about the same in the average number of patient days provided to persons with "poor payment sources:" 14% for IO's and 16% for nonprofits, (both had identical proportions of Medicaid days, 8%). <sup>29</sup> Sullivan found 14.2% Catholic Hospital revenue devoted to "the poor" for a total of over \$5 billion per year. <sup>30</sup> But deBlois says government-run hospitals do *two to ten times as much*, devoting 20%-30% of their budgets to

the uninsured, and Gray found government serving 16.8% of the uninsured population to the nonprofits' 7.9% and for-profits' 6%. <sup>31</sup>

Catholic hospitals are not particularly generous corporate citizens either. Kauffman found in a 1990 survey of 595 acute care US Catholic hospitals, "only 4 percent of the sample made an annual formal payment in lieu of taxes (PILOTs) or paid a user fee to fund the local taxing district's public services." <sup>32</sup> Not for profit organizations sometimes pay PILOTs to offset the costs of the safety and sanitation services a city provides.

#### Personnel relations: Workers and professional elites

Because much has been made of the Church's support of collective labor, one would expect Catholic-sponsored institutions to treat their half-million employees especially well.<sup>33</sup> But some Catholic healthcare managers have been hostile to unions. <sup>34</sup> The California Nurses Association described recent anti-union tactics by Catholic Healthcare West, a chain of 35 southwestern hospitals sponsored by seven orders of Catholic nuns, as "one of the most acrimonious ever in our organization," <sup>35</sup> Sullivan and Craypo found "[t]he labor management atmosphere in most Catholic institutions can be described as tense or hostile, depressing or smug." <sup>36</sup>

Catholic sponsored healthcare facilities are also struggling with increased proportions of non-Catholic staff, and though as we have seen, pluralism is presumably congenial to the ecumenism of Vatican II, but in practice, Catholic values sometimes clash with non Catholic staff. In

January of 1997 a Newton Massachusetts man was awarded \$1.2 million by a jury who found he was unjustly fired by a Catholic hospital because managers believed he was homosexual. 37

The professional staff in Catholic health care facilities has been found to be treated differently from other labor. In particular the professionals can be seen using the nonprofit hospitals as a vehicle for highly profitable side ventures. The Pauly-Redisch model argues that "nonprofits exist to enable doctors to practice their profession and earn the bulk of their income in an institution free of market discipline." 38 Herzlinger and Krasker further accuse nonprofit hospitals of increasing "professional staffs' comfort level through tax exemptions and deferral of capital replacement without providing better, cheaper or more accessible health care in return." 39

Though nonprofits cannot distribute to investors, the nonprofit corporate form can be manipulated to allow lucrative deals for the professionals who work with them. Paul Starr reports that nonprofits shelter highly profitable businesses operated within them run by radiologists and pathologists organized as professional corporations. 40 In what is described as "polycorporate," a parent holding company which operates a nonprofit hospital (with its tax exemptions and reimbursements) "unbundles" subsidiary departments into separate, profitmaking corporations. most commonly, nonprofit hospitals subcontract their emergency room services to a separate profitmaking company which supplies doctors and equipment. Starr claims this method turns nonprofit hospitals into "a beehive of corporate activity." 41

Donald Johnson reports that the profit making subsidiaries of a nonprofit hospitals can sell stock to investors, as long as the two entities are kept separate. <sup>42</sup> Spin-off profitmaking enterprises can include medical office buildings, medical equipment supply operations, laundries, gift stores, restaurants, shopping centers or even contract management firms. <sup>43</sup>

### Business corporations and sponsorship in Catholic health care

How will the pressure of market techniques such as polycorporate restructuring, profitmaking subsidiaries, consolidations and mergers with non-Catholic facilities affect the meaning of a "Catholic hospital?" deBlois reports that in 1985, sixty percent of all Catholic acute care hospitals were part of a multi-institutional arrangement. <sup>44</sup> Fonner cites a 1991 survey of Catholic healthcare managers which found about one third foresaw collaboration with non Catholic hospitals as "very likely" within five years, and about a third of those surveyed indicated that they feared of the loss of their institution's Catholic identity. <sup>45</sup>

Many Church leaders insist that if Catholic sponsored facilities must merge to survive, that they do so with other Catholic corporations whenever possible. In the Boston area, Cardinal Bernard Law persuaded Carney Hospital to drop its plan to merge with Quincy Public Hospital, despite the fact that Carney was sponsored by The Daughters of Charity, an "exempt religious order" which is accountable directly to the Vatican rather than to the local bishop. <sup>46</sup> According to Monsignor Dennis

Sheehan of the Boston Archdiocese, the rationale was that, although Carney's internal administrative input by the Daughters of Mercy is technically free of Archdiocese involvement, the moment it went "public" by seeking to associate itself with another facility in the Archdiocese - even though the other facility was not Catholic - the bishop was drawn into the affair. 47

Sister Marylin Perkins is Counselor for Health Care at the Daughters of Charity, an order of nuns which sponsors a network of 42 hospitals nationwide in the US. 48 She was asked about the Daughters' sponsorship classification - "pontifical right" - which presumably exempts them from the ordinary legal ties to the local bishop, linking them instead directly to the Vatican. (This is a classification not limited to health care, but pertains to Catholic-sponsored institutions in other fields, e.g., Catholic University in Washington DC is of pontifical right). She explained that for practical purposes in their case "pontifical right" means that they are "not *necessarily* legally bound to the bishop" (my emphasis) and that their "direct accountability" to the Vatican is that the Holy See may exercise "reserve power as stewards," but that the Daughters do not require permission for alienation (the sale of property).

When Sister Marylin was asked about the Cardinal's intervention in the merger of Carney, (owned by the Daughters of Charity) she said the decision to forgo the merger with Quincy was made in voluntary cooperation with the bishop, not because of any canonical ruling or even because, as a canonical Public Juridic Person, Daughters of Charity property is ecclesiastical property. The impression given was that although

the Church holds certain canonical influence, it is a persuasive, potential "reserve" right, and that it is a capacity that neither the Church nor its orders are particularly interested in pushing to a test. Sister Marylin said what the issue of mergers with non-Catholic facilities comes down to is frequently not a matter of choice, but "a matter of survival." However she maintains that lay persons should not become involved in Catholic healthcare unless they are congenial to Catholic doctrine and "not just support it but embrace it."

The Catholic Hospital Association however flatly prohibits mergers with for-profit facilities and will retract its organization's certification from those facilities which do.<sup>49</sup> On Feb. 26 1996 the Chicago Archdiocesan office began to strip St. Elizabeth's Hospital there of its official Catholic "identity" because it chose to join a managed care network led by University of Chicago Hospital, rather than the Catholic group favored by Chicago's late cardinal John Bernadin.<sup>50</sup> Although the Church has not pursued civil litigation in the case of businesses using the word "Catholic" without Church approval, the assumption is that whoever would do so would not risk the publicity.

Some Catholic hospitals in East coast cities and the Midwest have proceeded to form partnerships with Colombia/HCA Healthcare, including many at a March 1996 Chicago conference who argued that such partnerships with for-profit corporations did not contradict Church principles.<sup>51</sup> In opposition, Cardinal Bernadin characterized Catholic healthcare as part of "Jesus' healing ministry" and therefore a type of sacrament, asking: "Can a 'sacrament' be something that is bought and sold,

in part or in whole, like a commodity? Can a 'sacrament' become the instrumentality used to return a profit for an investor owned company?" 52

The dividing line between profit and non-profit is not so clear in practice. Covenant Health Systems, a 10 year old Bedford Massachusetts nonprofit organization which took over operations from the Congregation of the Sisters of Charity (the "Grey Nuns") has several nonprofit subsidiaries. According to Director James O'Donohoe, the Grey Nuns, an order founded in 1737 in Canada, discovered that modern market realities and the disappearance of younger nuns in their order meant the aging sisters were facing an old age in complete impoverishment. In exchange for converting some of the facility into a nursing home, the nuns sold their remainder of the properties - including facilities in Cambridge Massachusetts and Bogota Colombia, to Covenant, which subsequently found a mixed structure of profitmaking subsidiaries under a nonprofit umbrella corporation a competitive necessity. 53

Bernadin's speech acknowledged that some Catholic hospitals have for-profit subsidiaries, and was careful not to condemn profitmaking as intrinsically evil or immoral, but nevertheless maintained that healthcare was a special sector - "a fundamental human right" - echoing John Paul II that there are some "goods which by their very nature are not and cannot be mere commodities." 54

Bernadin's comments had more consequence than simply his ethical opinion. Bishops have varying degrees of direct control over Catholic facilities in their diocese, subject to the canon law category of sponsorship,

which in some cases is the archdiocese itself is the sponsor, and in other cases is based outside the archdiocese. The potentially determinative role of individual bishops rankles some lay managers, including one who said, "I'd be happy to conduct our business any way our bishop wants, if he would guarantee to pick up our deficit at the end of the year. If he is not willing to pay up, he has no credibility with me or anyone else who has to run a Catholic hospital in today's impossibly competitive market." <sup>55</sup> Nevertheless according to canon law, the hierarchical status of the bishop is a defining characteristic of what makes a facility Catholic. <sup>56</sup>

### Sponsorship and the Public Juridic Person

What are the canonical specifics of Catholic sponsorship, and what power and responsibility does sponsorship hold? Catholic sponsorship is nowadays broadly construed as a "canonical stewardship" with reserve powers, while day to day operations have been professionalized, and to some extent secularized, because of the necessary inclusion of non-Catholics. <sup>57</sup> Nevertheless, depending on the type of sponsor, decisions as far reaching as a facility's ownership, divestiture, merger or consolidation must involve the Church.

Typically, before the 1960s, individual congregations of nuns or local churches or monasteries were the owners of Catholic healthcare facilities. But nowadays "men-religious" and "women-religious" (monks and nuns) are increasingly rare. Fonner and Tang found nearly 300 Catholic hospitals are sponsored by religious communities whose members' median ages exceed 70, and in about a dozen cases there are fewer than 50 members left

in those communities. <sup>58</sup> Catholic nuns, long the mainstay of Catholic healthcare, lead the decline among religious vocations, although Catholic sisters still amount to over 95% of the leadership of healthcare sponsors, and number half of the CEOs of Catholic healthcare systems. Lay males now constitute 40% of Catholic system CEOs, 75% of hospital CEOs and more than 30% of long term care executives. <sup>59</sup>

Changes to the structure of sponsorship have been explored at least since 1974, when Sister Mary Sengelaub, the Catholic Health Association's first woman- religious CEO, established the framework for nine system network models. <sup>60</sup> Kauffman reports that, anticipating the drop in vocations, consultants at Arthur D. Little advised the CHA to begin creating separate business corporations "to assume ownership of Catholic hospitals in the absence of other viable alternatives." <sup>61</sup> Catholic healthcare has consequently turned to corporate forms which under canon law can acquire healthcare facilities from small religious communities and place them under the direct domain of the greater Church as "ecclesiastical goods." <sup>62</sup> Macpherson has compiled cases of inter-congregational collaboration with other faiths that are accommodated through new sponsorship arrangements, and, more controversially, some successful associations with secular nonprofits. <sup>63</sup>

Two basic forms of Catholic sponsorship which relate to health care as described here are Private Associations of the Christian Faithful (PACFs) and Public Juridic Persons. Canon law (CIC) describes PACFs as organizations created by private agreement among individuals who wish to carry on "apostolic" work, and which are allowed by the bishop to use the

name "Catholic." <sup>64</sup> CIC cites the examples of the Knights of Columbus, Marriage Encounters and the May Day Rosary Procession. <sup>65</sup> Under canon law "[s]uch associations are called private associations even though they are praised or recommended by ecclesiastical authority . . . but not established by, the hierarchy. <sup>66</sup> There are large hospital corporations which are PCAFs, St. Francis hospital in Memphis is one example. <sup>67</sup>

A step up the ecclesial ladder is the "public juridic person" whose canonist construction is true to its medieval corporatist roots by defining it as an association which "transcends the purpose of the individuals that make it up." <sup>68</sup> A public juridic person, says CHA house organ Health Progress, is the vehicle of choice to allow a "continued commitment to Catholic health care regardless of the sponsoring body." <sup>69</sup> A hospital once sponsored by a small, aging monastic community can thus transform itself into a "full-fledged ecclesiastical entity" which, Catholic healthcare trade publications specifically note, are able to acquire the divestitures of other healthcare facilities. <sup>70</sup>

The public juridic form also implies a protective affiliation with the global Catholic Church. The CIC notes that "the civil authority may lack all competence in regard to it - at least in internal matters. Neither can the civil authority interfere in its activity" but hastens to add that this removal from public jurisdiction exists "[i]nsofar as the work of the association did not involve some public good. Hospital public health standards, as opposed to, for instance, the designation of a clerical chaplain, may come into play here." <sup>71</sup>

On the other hand, following Morrissey, the potential attribute of a PACF is that it is not directly accountable to the bishop in matters of finances or policy, nor does it require the bishop's permission to dissolve or divest.<sup>72</sup> However as with Boston's Carney Hospital, even if a sponsoring body is technically exempt from the local bishop, expansion by merger or consolidation can be effectively determined by the bishop, and more so by a cardinal.

When non Catholic corporations are drawn into mergers and consolidations, the exclusivity of "ecclesiastical goods" and the weight of Catholic doctrine is less certain. This is especially telling in the matter of reproductive services. Rev. Thomas Schindler, director of Ethics at Mercy Health Services in Michigan, lists three elements to maintaining a "Catholic identity" in the event of mergers with non-Catholic institutions: prudential judgment, material cooperation and "toleration of evil."

Recalling St. Augustine's view of prostitution in the city of Hippo, Schindler notes "When you have goods and bads tied together, you have no nice, easy, pure way out. In some situations, it is possible to tolerate evil because in stopping it, other greater goods would be lost."<sup>73</sup> (This shares some affinity with Richard McCormick's "proportionate reason" a controversial adaptation of Catholic ethical thought explored in depth later in this chapter).

In the specific case of direct sterilizations, a shared obstetrics unit could be arranged so that "only remote forms of material cooperation exist . . . it would have to be clear that the staff of the Catholic hospital is not

directly involved." 74 This means that though services such as abortions are forbidden on Church-sponsored hospital grounds, affiliations - such as Caritas Christi with Tufts - do occur in which one institution may allow procedures in its own facilities which are not allowable on Catholic hospital premises. Doctors on staff at Catholic hospitals, however, would be "asked to leave" should they be discovered providing services which are forbidden by the Catholic Church. 75

What becomes obvious is that there is a considerable amount of gray area in which the canon-law strictures of the Catholic hierarchy can impinge on the business decisionmaking of Catholic sponsored health facilities. There is tension, but at this point a type of balance has been struck between the Church's interest in maintaining an identifiable "Catholic" presence in the field, while leaving to individual organizations necessary managerial leeway. In some cases, what were once very Catholic operations run by devoted orders of religious men and women have become in varying degrees less Catholic as market realities require. In some cases facilities have cut ties with the Church in all but name. The question then becomes, beyond business decisions, what role does the Catholic Church have in professional applications of bioethics in medical institutions?

### Catholic bioethics and the State

Catholic bioethics looks to government not simply as a regulatory instrument but as a moral agent. Hehir applies three Catholic concepts of state and society to bioethics: (1) Following the Pauline body metaphor (and bedrock corporatism), Catholics conceive of an organic society,

interconnected and interdependent, as though parts of a living body; (2) Catholics have a positive concept of the state, expecting it to respond to (3) an expansive view of the relationship between law and morality.<sup>76</sup> The line between public and private is not as sharp as liberalism's, but it agrees with liberalism's restraint of an activist state in two ways: to protect the human rights of individual persons and to preserve the rights of voluntary organizations.

Elements of nineteenth century Catholic-school corporatism can be seen in Catholic bioethics. Organicism is represented in the vocational-corporatist sense in that the Church expects the medical profession to focus on its ethical mission to society, rather than simply function as a trade association. (Thus it embraces the moral charge to corporatism which is a distinct characteristic of Catholic corporatism).<sup>77</sup> Further - consistent with concept of corporatist subsidiarity introduced in *Quadragesimo Anno* - the Church holds that although the state has important responsibilities in bioethics, medical decisions should primarily be placed in the hands of families and their doctors.<sup>78</sup>

#### "Proportionate reason"

The Catholic theologian Joseph Fuchs explains that Jesus did not add substantively to Aristotle, nor did he issue a new set of concrete written rules, but rather exemplified through his life and relations a new way of living.<sup>79</sup> This emphasis has helped Catholics to feel capable of conducting their lives without, so to speak, "checking the manual" every step of the way, that is to say, Catholics are aided by an ethical philosophy which can

address one's own divinely unique circumstances and challenges. Similarity to Protestant approaches is more than coincidental, but modern Catholic theologians like Fuchs will maintain that this "internal forum" of moral accountability is consistent with the traditional Catholic belief (since Augustine) that all human beings have a capacity to discern natural law - "tell right from wrong" - even if they cannot or will not read the Bible.

Richard McCormick takes things a step further, writing that an action

becomes morally wrong when, all things considered, there is not proportionate reason justifying it. Thus just as not every killing is murder, nor every falsehood a lie, so not every artificial intervention preventing (or promoting) conception is necessarily an unchaste act. 80

But John Paul II increasingly feels that discussions of "proportionate reason" are out of control, and is alarmed by the "systematic dissent" endemic in the Church. His 1993 encyclical *Veritatis Splendor* notably relies on the fixity of Scriptural source material to battle the threat of moral relativism and what he calls "situationism." McCormick counters that situationism "shouldn't be a pretext to tar all approaches providing exceptions to normative statements." 81

Although moral imperatives are the essence of Catholic natural law, the process by which those imperatives are applied in real life has become a challenge to the finality of certain Vatican pronouncements. Furthermore, the dissent which John Paul II refers to in *Veritatis* is not a recent development, but a continuation of the tectonic upheaval caused by *Humanae Vitae* in 1968, in which pope Pius VI overruled the approval of

contraception by an 80% majority of John XXIII's commission on population.

But since *Humanae Vitae*, the ancient expression first used for the Imperial emperors, *Roma locuta, causa finita* ("when Rome speaks, the argument is ended") no longer holds in Catholic theology. The pope's personal veto provoked an instant end to the centuries-old Catholic tradition to cease public debate once the pope has pronounced his decision. Instead Catholics worldwide rose up in protest in their own version of what was, in 1968, a worldwide cultural revolution.

### *Humanae Vitae* and when life begins

The most telling dispute over *Humane Vitae* is not about limiting birth, but encouraging it. The Vatican refuses to accept *in vitro* fertilization (IVF) because it violates "the inseparable connection, willed by God . . . between the two meanings of the conjugal act: the unitive and procreative meaning" <sup>82</sup> This "inseparability" is taken literally to exclude any extra-corporeal procedures among married partners, including artificial insemination.

What has proven so devastating a blow to the Church's credibility is its justifications for disallowing *any* separation of the "unitive and procreative" either to preclude *or promote* conception, among married couples. McCormick says he knows "no one" in the Church who accepts the "simple case" of rejecting *in vitro* among husband and wife, although he does draw the line at participation by third party donors, where McCormick

fears "endless permutations" which "blur genealogy." <sup>83</sup> He says that the key question which the Church should be considering is whether sterilization or contraception helps or hinders the total relationship of marriage, and cites *Gaudium*: "human activity must be judged as it refers to "the human person integrally and adequately considered." <sup>84</sup>

Roman theologians Marcellino Zalba S.J. and Jan Visser CSSR describe the ban on artificial insemination by married couples as too "physicist," and Curran has similarly termed the Catholic hierarchy's intransigence as "biologism" because the "physical structure of the act is made normative and cannot be interfered with." <sup>85</sup> *Humanae Vitae's* condemnation of direct sterilization similarly places reproductive physicality as supreme. Tubal ligations are not allowed for women who simply wish to limit the size of their families, or even as a preventive health measure, to which Häring admonishes, "the tubes are for the women, not the women for the tubes." <sup>86</sup>

#### The Double Effect Principle: Abortion and contraception

Catholic bioethics has provoked confusion even at the highest levels of the Church, especially when it is applied to the issue of abortion when a mother's life is at risk. The late Cardinal Humberto Medieros once told a US Congressional subcommittee that the Catholic Church forbids all abortions, even those which result in saving a mother's life. <sup>87</sup> McCormick puts it somewhat differently: "if pregnancy would threaten the life or health of the mother or risk a seriously defective child, that is insufficient reason for a Catholic hospital to tolerate the procedure." <sup>88</sup> These are both somewhat misleading statements.

Risk to a mother's life is insufficient reason *alone* to conduct a procedure which results in the death of a fetus. The relevant guide is the "double effect" principle which is describe in the context of sterilization (as distinct from abortion) in *Humanae Vitae*. This has been interpreted even in the case of abortions, particularly in the light of intent. Though as noted, the encyclical has been otherwise attacked, it does provide for how the Church appraises situations whose secondary effect may well result in contraception - or even the death of a fetus. *Humanae Vitae* holds that the Church "does not at all consider illicit the use of those therapeutic means truly necessary to cure diseases of the organism, even if an impediment to procreation, which may be foreseen, should result therefrom, provided such impediment is not, for whatever motive, directly willed." <sup>89</sup> The "double effect" principle thus makes provision for sterilization, contraception, or the death of a fetus if it is an unavoidable effect - not the primary or sole intent - of a procedure (such as the removal of a cancerous uterus).

*Humanae Vitae* does hold that direct sterilization is "intrinsically evil" because it "sacrifices a basic human function *without the necessity of preserving life* " (my italics). <sup>90</sup> But what is disallowed is the primary, direct and intentional act of sterilization. In the case of extra uterine ("ectopic") pregnancies, though abortions are illicit, what is construed as a *direct* abortion is substantively different from the removal of a lethal diseased fallopian tube, of which the conceptus is a simultaneous, and therefore unavoidable, victim. <sup>91</sup>

But this also means that sterilization with only a preventive intent, which assumes a pregnancy *might* risk a mother's life - because of high blood pressure or some other potentially threatening health condition - is *not* acceptable. Neither does the high likelihood of a seriously defective child justify sterilization, according to the Church. Contextual arguments based on the totality of good in marriage in which, in *Humanae Vitae's* words, a "less abundant but more rationalized fecundity might transform a materially sterilizing intervention into a licit and wise control of birth" are rejected because such a direct measure by modern man entrusts "to his reason and his will, rather than to the biological rhythms of his organism, the task for regulating birth." <sup>92</sup> Häring counters that if physician and patient agree that "a new pregnancy must be excluded now and forever because it would be thoroughly irresponsible . . . it cannot be against the principle of medical ethics, nor is it against the 'natural law.'" <sup>93</sup>

How these theological arguments play out in practice is in flux. A Sisters of Mercy of the Union study in 1978 proposed that, for the health facilities under their sponsorship, "tubal ligations be allowed when they are determined by patient and physician to be essential to the overall good of the patient." <sup>94</sup> The NCCB intervened however and the Sisters retreated from their position. O'Lane, in a 1979 survey of Catholic hospitals found one out of five (66 of 336 responding) permitted sterilization for medical reasons, and "forty seven percent of the 270 not permitting sterilization reported that their medical staffs were interested in doing sterilizations." <sup>95</sup> Westoff and Jones' 1975 survey reported 9.8% of Catholic wives had been sterilized, compared to 13.9% of non-Catholic wives. Among Catholic

husbands, 9.9% had undergone sterilization procedures, compared to 12.4% of non Catholic husbands. 96

The Church recognizes that sex within marriage has a purpose not limited to the production of offspring, acknowledged in the 1930 encyclical *Casti connubi* and repeated in *Gaudium et spes*: "Marriage to be sure is not instituted solely for procreation. . . " 97 But the Vatican in *Humanae Vitae* insists that every marital sexual act "must remain open to the transmission of life," and argues that this sharing of God's intent to transmit life is said to be preserved even in the case of naturally infertile couples (due to age or generative dysfunction) "since they always remain ordained towards the expressing and consolidating their union." 98 Vacek feels "[i]t seems especially contrived to say that the human sexual act has a procreative meaning even when it is (permanently) infertile" and sums up the Vatican position as "reasoned but not reasonable. " 99

*Humanae Vitae* regards taking into account "the natural rhythms immanent in the generative functions" - the so-called 'rhythm method' of sexual relations during infecund periods - as not an *intentional* frustration of procreation. 100 But the conscious and purposive calculation and temperature-taking involved is difficult to reconcile with lack of intent, and seems to contradict Pius XII's condemnation of reproductive techniques which "convert the home into a biological laboratory." 101

## "Morning after" contraceptives and annulments

The Vatican's discourse on procreation is built on its fundamental understanding of marriage as, to quote *Gaudiam et spes*, "an unbreakable compact between persons. . . [which demands] that the mutual love of the spouses be embodied in a rightly ordered manner. . . "102 Elizabeth McKeown points out that marriage and family is central to Catholic doctrine and provides the basis on which Catholicism justifies much of its social commentary. But she writes "there is very little evidence to suggest that this use of family has been undertaken in a critically self-conscious manner. . . "103 This is especially conspicuous in Church's approach to marriage annulment. Marriage frames the discussion of reproductive matters as fundamentally defined by the "inseparability of the unitive and procreative." Yet the "unbreakable compact" of marriage can in fact be broken by annulment, a matter given recent publicity in the cases of Massachusetts' Sen. John Kerry and Congressman Joe Kennedy.

According to Rev. Michael Smith Foster, the canonical grounds for annulment holds that a marriage may never have been viable because "a particular facet of consent was lacking" at the time of the vows. 104 But if the unitive spirit of marriage is contingent on consent, would it not follow that the procreative is as well, especially since the "unitive and procreative" are inseparable? In the case of rape, in which consent is clearly absent, should a woman be required to bring to term a cellular-level zygote only hours old, when a marriage of ten or more years can be aborted retroactively on grounds of consent? 105

## A Catholic means of indirect contraception for victims of rape

There is for Catholics a circumstance in which drugs used for contraception are appropriate for use by a rape victim, absent proof that an ovum has been fertilized. According to the NCCB:

A female who has been raped should be able to defend herself against a potential conception from the sexual assault. If, after appropriate testing, there is no evidence that conception has occurred already, she may be treated with medications that would prevent ovulation, sperm capacitation, or fertilization. 106

According to Dr. Mark Vonnegut, fertilization cannot be definitively determined for several hours after an assault, so "appropriate testing" leaves room for the "unintended" interference with a fertilized ovum when medications are dispensed. 107

Despite this, a patriarchal "transmission of life" doctrine reigns in Catholic health doctrine. Even though "a conjugal act imposed upon one's partner without regard for his or her condition and lawful desires is not a true act of love" a standard of love (the "greatest commandment") can not justify any act "which is detrimental to the faculty of propagating life." 108 It is this ordering of the physical over the spiritual which presumably prompts Vacek to describes Vatican birth control policy as overly "biological and reductionist." 109

The NCCB holds that a person is morally obliged to use "ordinary or proportionate means of preserving his or her life" but that gravely ill individuals whose death is imminent may forgo means which do not offer "reasonable hope of benefit." <sup>110</sup> In extreme cases where the patient is unable to feed themselves, the NCCB advises that there "should be a presumption in favor of providing nutrition and hydration" to all patients, assuming there is "sufficient benefit outweighing the burdens to the patient and family." <sup>111</sup> Assuming nutrition and hydration brings no comfort to a person close to death, the patient may choose to withhold it. The Church defines euthanasia as ". . . an action or omission which of itself or by intention causes death, in order that *all* suffering may in this way be eliminated (my italics)." <sup>112</sup> Withholding nutrition and hydration can be seen as such an act of omission which causes death through starvation but presumably the case of withdrawn nutrition and hydration would entail liberal use of palliatives with the expectation of "imminent" death. The double effect principle which the Church applies in the case of reproductive matters also holds in terminal illness. It rejects the deliberate use of medications with the primary intent of hastening death, but allows the use of palliative medications to reduce pain even though this may hasten death. <sup>113</sup> Thus, there appears that there is a course, assuming imminent death and some suffering, in which medical means to hasten death is acceptable to the Church's precepts.

Father Bob Rochon of St. Anne's hospital in Fall River MA, (part of the Caritas Christi health system) was asked about the use of palliatives, and

whether Catholic hospitals might have a problem because they might be perceived by the public to be more severely restrictive on the use of drugs than secular hospitals. He responded that "no pain is good" and that pain management is a key aspect of their therapies. Prayer may work for some, he said, but pain alleviation is done on an outpatient basis at St. Anne's, proof that pain alleviation methods among Catholic facilities are not restricted to those facing imminent death. Father Rochon added that patients are counseled one on one and in matters of medical decisionmaking, patients are encouraged to develop "informed consciences" in an "internal forum" rather than simply by interpretations imposed from sources outside the immediate circumstance that the patient may be facing. 114

The Church strongly opposes Oregon's physician-assisted suicide statute, affirmed by the Ninth circuit in 1995 as protected under the Fourteenth Amendment's Due Process Clause. 115 There was a similar statute passed in New York, prohibition of which was held unconstitutional in 1996 under the Fourteenth Amendment's Equal Protection Clause. Symptomatic of the court's predicament in the absence of a clear statutory framework, in Oregon's *Compassion in Dying* case it was noted that the statute's prohibition would probably be *upheld* under Due Process, the reverse conclusion of New York's case. 116

Catholic criticism of these public policy innovations centers around the distinction between "killing and letting die." 117 Consistent with Catholic values which keep skeptical vigilance on technology, there is sympathy for fears of interminable coma perpetuated by technology,

imposed by an impersonal medical system. The NCCB recommends that in the case of terminal illness, emphasis should be on the non-clinical environment of one's home or hospice, with ample palliative care, and in the company of family. <sup>118</sup> The NCCB's advice is given with the added understanding that a person may wish to forgo "heroic" efforts to extend their lives in the absence of reasonable hope of improvement.

The general bioethical debate within the Church, clarified by the NCCB, and which informs the practice of Catholic health care is based on the fundamental Catholic belief that our bodies are gifts from God over which we are stewards rather than owners. Thus, self imposed death is determined to be a morally unacceptable rejection of God's grace. Nevertheless value statements on "unreasonable burdens" and "heroic" efforts must be put in the context of unprecedented state of the art technology. What is a dying patient? Is it one who, without kidney dialysis, would not survive? Should public policy then rightly require and guarantee maximum technological intervention in all cases, including all organ transplants? If technology can go to extraordinary length to extend comatose subsistence, why not a measure of technology to shorten an agonizing death?

The slippery-slope response by the Church is that subjective 'quality of life' arguments might not be limited to the terminally ill, but extended to the less afflicted, and that this might degenerate into highly qualitative definitions of sub-optimal life, e.g. mental illness, physical handicap or "foreseeable" demise, eroding further into a *duty* to die on the part of well

intentioned victims looking to preserve resources for their survivors or for society.

The Catholic argument further sees the role of the physician drastically reformulated, requiring a betrayal of Hippocratic "do no harm" principle and, more concretely, inviting liability lawsuits in which agreements for termination of life between patient and physician may afterward be construed as coerced. Support for physician assisted suicide has been shown to correlate with age: the older the respondent, the less enthusiasm for the procedure - and the psychological repercussions to family and society are seen to be prohibitive. 119

The exact circumstances for withholding nutrition and hydration to PVS patients (Persistent Vegetative State) however, continues to be unclear and controversial especially in the wake of the Cruzan decision, a case in which a young Missouri woman's family was not allowed to remove feeding tubes in the absence of the patient's clear wishes. 120 O'Rourke and deBlois criticize the NCCB's statement on Nutrition and Hydration as inconsistent and unspecified on the question of the futility or uselessness of treatment. 121 The Church itself confesses doubt on the subject, admitting that it "has not resolved the question whether medically assisted nutrition and hydration should always be seen as a form of normal care." 122

### Review Discussion

Catholic sponsored health care is highly dependent on money, technology and the close cooperation of the state. As the number of

Catholic facilities decline along with their market share, many are under pressure to consolidate, merge with other types of facilities, or change their sponsors. How many Catholic health care facilities will choose to become "ecclesiastical property" as a Public Juridic Person under canon law remains to be seen, but even in those cases, the imperatives of running a business in medicine requires a great deal of flexibility.

Although the name "Catholic" is still associated with a huge portion of the American health care industry, what that name amounts to in practice does not correspond with a tightly disciplined corporate regime. There is no single Catholic holding company, nor do many Catholic health care facilities act as though they were a business subsidiary of the Church. Though Catholic sponsored health care is related organically by the ethics of the Church and by the doctrinal interpretations of the NCCB, their practice of medicine is not substantially divergent from the rest of the industry, with the notable exception of reproductive services.

Depending on their form of sponsorship, Catholic health care facilities can be largely not interfered with by the Church hierarchy, thanks also to a continually developing theological discourse within the Church. There are hospital managers who are undoubtedly frustrated with what they consider meddlesome bishops, and Catholicism casts a serious doubt on what are otherwise common reproductive choices, but overall Catholic health care seems to enjoy a significant degree of subsidiarity, in corporatist terms, from the Church itself. And in the mix of their multimodal capabilities, Catholic health systems seem more intent on

business survival and regulatory compliance than an all-consuming obedience to the Vatican.

Despite the Catholic principle of preference for the poor, Catholic health care as a group has not demonstrated a level of charitable service which exceeds other nonprofit facilities. Nor is there an especially favorable treatment of organized labor. Various "polycorporate" business arrangements which include for-profit subsidiaries have furthermore attracted the criticism and legal challenge of competitors who must pay taxes. The Church's clear preference is to keep Catholic health care non profit, an agenda which may be served by a public image which is underscored by high profile stands on bioethics. But at this point, survival has taken precedent over the best intentions.

Church bioethics, especially in abortion, reproductive, and end-of-life issues, may contribute to a Catholic image of a highly principled practice of medicine, but in practice the Church does little to aggressively stand in the way of most patients if they choose those alternatives elsewhere. Despite the Church's condemnation of *in vitro* fertilization and its curious "unitive and procreative" rationale, newer modes of fertilization amount to off-site specializations. Even sterilization or abortions, under the "Double Effect" standard, are permitted if they are the secondary and unintentional repercussions of another procedure. Similarly permitted is the use of palliatives which may secondarily hasten death in cases of terminal illness. But the tumult of *Humane Vitae* is not easily forgotten, and perhaps the decision some have made privately (in their "internal forum") is not to force issues within the profession. The Church actively contributes to the

public's ongoing bioethical discourse, but not always as a judge. In many matters such as PVS and life support termination, the NCCB and the Church is frankly undecided in their efforts to come to grips with fast changing technology.

Religion appears to be kept strictly at the discretion of the patient in Catholic health care, and pressure for catechesis is not evident, nor does their appear to be any organized initiative on the part of the Church to explore links between Catholic prayer, by that name, and healing. In fact, some of the practitioners are so evenhanded in matters of faith that any one particular religion, Catholic included, does not appear to matter. Though Catholic health care still involves a lot of Catholics, Catholicism in this field has grown to become an internal matter of conscience, far more than an external matter or practice. This suits the pluralist facts of life in a society such as the United States, and the Church's sponsorship, to the extent that they wish to remain effective in their witness, makes its peace with culture.

Where the Church hierarchy and the practice of Catholic sponsored institutions have had some particularly spirited clashes is in a field where the profession *is* religion, and for this we turn to the next section on education.

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<sup>1</sup> Rhonda L. Rundle, "Hardly Meek: Catholic Hospitals, In Big Merger Drive, Battle Industry Giants." Wall Street Journal March 12, 1997: 1. Colombia/HCA claims over 300 hospitals with 60,000 beds, and revenues of \$14.6 Billion, assets of \$16 Billion. Joseph Cardinal Bernadin "What makes a hospital Catholic? - a response" America May 4, 1996: 12

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<sup>2</sup> Edwin Fonner Jr., and Boxoing Tang, "Six challenges facing Catholic health care marketing" Journal of Health Care Marketing 15.1 (Spring 1995): 13

<sup>3</sup> Bruce Japsen, "Catholic providers seek recapitalization strategies." Modern Healthcare July 8, 1996: 50-51.

<sup>4</sup> Especially that of Paul VI on whose words was constructed Liberation Theology, see *Popolorum Progressio*, 1967 and *Octogesima Adveniens* 1971.

<sup>5</sup> John Paul II, Address to Bishops of Brazil, July 31, 1980, Cited in No Room in the Marketplace (St. Louis, MO: Catholic Health Association of the United States, 1986): x.

<sup>6</sup> First draft, "Catholic Social Teachings and the US. Economy," Origins Nov. 15, 1984: 346.

<sup>7</sup> Sister Jean Katherine deBlois, "The Catholic Hospital: An Analysis and Critique of the Theological Rationale for Its Identity and Continued Existence" Diss. Catholic University of America (1988): 144.

<sup>8</sup> "Government run" includes local, municipal, state and federal healthcare facilities, so-called "Public" corporations which are created by the state and governed by managers whose authority is derived from the state.

<sup>9</sup> C.I. Hultman, "Uncompensated care before and after prospective payment: The role of hospital location and ownership." Health Services Research 26.5 (1991): 613-22.

<sup>10</sup> Joseph Sullivan, Joseph M. "An Opportunity for Positive Change: We Have the History, Experience, and Will To Preserve a Catholic Presence in Healthcare." Health Progress Sept. 1993: 56-65. Also, about 150 communities where Catholic hospitals are located had nonwhite and Hispanic populations exceeding 20% of the total in the 1990s. (Fonner, 14-15). Blacks, Hispanics and Asians are projected to constitute 47% of the total population in 2050, up from 25% in 1992. Though these demographics alone hardly guarantee poverty, as the Catholic church's own experience with upward mobility this century demonstrates.

<sup>11</sup> Susan M. Sanders, "The Measurement of Charity Care and Community Benefit in Catholic Nonprofit Hospitals: Implications for Tax-Exemption Policy" Diss. U. Chicago, (1991): 212.

<sup>12</sup> deBlois, 145.

<sup>13</sup> Regina E. Herzlinger and William S. Krasker, "Who profits from nonprofits?" Harvard Business Review (Jan-Feb. 1987): 97, Fonner 16.

14 Under Section 170 (c) (2) of the Internal Revenue Code (IRC). Nonprofit hospitals and agencies are also exempt from the communications excise tax, and receive discounts on postal rates.

15 Simpson & Lee, 1987, 7; qtd. in Sanders, 11.

16 B. Arrington and C.C. Hannock "Who really profits from not-for-profits? Health Services Research 25 (2) : 291-304. Also see Sanders 40. The profit = greed equation is further reinforced by a developing story in Texas, where Columbia/HCA is under investigation by the federal government for fraudulent Medicare billing.

17 Sanders 43. The American tradition of tax exemption for charitable activities dates back at least to the 1601 British Statute of Charitable Uses. The US revenue act of 1894 vaguely assumed that the charitable sector had objectives other than profit, but the activity was sufficiently small to track for tax revenue or invite regulatory rigor.

18 I.R.S. Rev. ruling 56-185, 1956-1 C.B. 202 cited in Sanders 46

19 I.R.S. Rev. Ruling 83-157, 1983.2., C.B. 94 cited in Sanders 47 and Rev. Ruling 69-445, 1969-2. C.B. 117., cited in Sanders 46.

20 Christopher J. Kauffman, "The Modern Association: Preserving a Catholic Presence in US. Healthcare System" Health Progress (July-Aug 1990): 37.

21 Kauffman 35-46, 37; Utah County v Intermountain Health Care., Inc., 709. P. 2nd 265 (Utah 1985) qtd. in Sanders 49.

22 Catholic Health Association, Social Accountability Budget: A Process for Planning and Reporting Community Service in a Time of Fiscal Constraint (St. Louis, MO: CHA, 1989). Also Dynamics of Catholic Identity in Healthcare (St. Louis, MO: CHA, 1990), No Room in the Marketplace: The Healthcare of the Poor (St. Louis: CHA, 1989). Also see Pearson & Trocchio "Telling it Like it Is" Health Progress 1990.

23 Kenneth R. White and Yasar A. Ozcan "Church Ownership and hospital efficiency." Hospital and Health Services Administration Fall 1996 41.3: 297.

24 Larry Tye, "Higher costs found at for-profit hospitals." Boston Globe. 13 Mar. 1997: A1+. But beyond the matter of efficiency, according to Stuart Altman, a Brandeis researcher quoted in the article, the key yardstick is service to the poor: "Private, for-profit hospitals will never provide sufficient care to the poor and uninsured"

25 Herzlinger 100, 93.

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- 26 A.J. Leblanc. "Undercompensated, unpopular services in hospitals: The case of HIV/AIDS." Diss. Pennsylvania State University. (1991)
- 27 Posed in Sanders 33.
- 28 Sanders 9.
- 29 Herzlinger 97.
- 30 Sullivan, Joseph M. "An Opportunity for Positive Change: We Have the History, Experience, and Will To Preserve a Catholic Presence in Healthcare." Health Progress Sept. 1993: 60.
- 31 deBlois, 103; also B. Gray (Ed.) "Summary and conclusions" in For profit enterprise in health care (Washington DC: Institute for Medicine, 1986), cited in Sanders, 9.
- 32 Sr. Susan M Sanders, RSM, Ph.D., "Catholic Hospitals and Community Benefit Activities" Health Progress January-February 1994 44-48; 74 at 48.
- 33 Beginning with *Rerum Novarum*, subsequent encyclicals repeat this theme of solidarity, underlined by the NCCB in pastorals like Economic Justice for All.
- 34 Some physicians in managed-care IO health conglomerates have unionized.
- 35 Rhonda L Rundle "Hardly Meek: Catholic Hospitals, In Big Merger Drive, Battle Industry Giant." Wall Street Journal (March 12, 1997) A1, 8.
- 36 Sullivan and Craypo, "Workers Rights in Catholic Institutions" 378
- 37 John B Walsh, who was manager of housekeeping when he was fired, said male employees he supervised began a smear campaign "because it would get him into trouble at the Catholic facility" John Ellement, "Carney loses \$1.2 m in antigay bias case" Boston Globe 3 Jan. 1997: B3.
- 38 M.V. Pauly and M. Redisch "The not-for-profit hospital as a physician's cooperative" American Economic Review 63: 87-99, cited in White & Ozcan 301.
- 39 Herzlinger, 104.
- 40 Paul Starr The Social transformation of American Medicine (NY: Basic Books, 1982): 438.
- 41 Starr 438.

42 Donald E.L. Johnson, "Nonprofit's Taxed Unit Can Sell Stock." Modern Healthcare 11 (June 1981), 90-92.

43 Kauffman 41. In 1986 House Ways and Means committee hearings in Washington reviewed the unrelated business income tax (UBIT) "for activities not substantially related to the [nonprofit] organization's main purpose " (an aspect of nonprofit status more recently applied to lobbying activity) and in 1988 a House subcommittee suggested changes in tax exemptions for sale and rental of medical equipment and income from drug sales.

44 deBlois 118.

45 Fonner 18, 37.

46 Alex Pham, "Catholic hospitals try for balance: Must keep convictions and be profitable, official says." Boston Globe 20 June 1996: 43. This may have implications for Carney's long-standing relationship with Brigham and Women's, a Tufts-affiliated teaching hospital. Ultimately, the Caritas Christi health care system took over sponsorship of Carney from the Daughters of Charity National Health System. See also John Morrissey, "Deal keeps Boston hospital Catholic" Modern Healthcare Nov. 11, 1996: 18. The "exempt religious order" status of the Daughters of Charity and other like it has origins in the "Roman monasteries" described in Chapter Two which accounted to Rome rather than the local German ecclesiastical hierarchy.

47 Interview with Monsignor Dennis Sheehan, Cambridge MA., April 7, 1997.

48 Interview with Sr. Marylin Perkins, Counselor for Healthcare, Daughter of Charity, Albany NY. April 8, 1997.

49 Bruce Japsen "Catholic group bans for-profits" Modern Healthcare June 12, 1995: 2.

50 Paul R. Torrens, "What makes a hospital Catholic? The Chicago case" America April 6, 1996: 9.

51 Bruce Japsen, "Speakers defend Catholic, for-profit ties" Modern Healthcare April 1, 1996: 19.

52 Joseph Cardinal Bernadin "What makes a hospital Catholic - a response" America May 4, 1996: 12.

53 Interview with James O'Donohoe, Covenant Health Systems headquarters, Bedford MA., June 29, 1997.

54 Bernadin 12

55 Torrens 9

56 Rev. Thomas H Vowell, CPPS, JCD. "Preserving Catholic Identity in Mergers" Health Progress March 1992: 28.

57 Rev. Adam J. Maida and Nicholas P. Cafardi, Church Property, Church Finances and Church-related Corporations (St. Louis, CHA: 1983): 304-305

58 Fonner 20.

59 About 20% of Catholic hospitals (as distinct from systems) and 40% of Catholic long term care facilities have Catholic sisters as CEOs. Fonner 20

60 Sister Sengelaub built on earlier attempts by Sister Concilia Moran to formally define sponsorship as "support of, influence on, and responsibility for an institution." Kauffman 29.

61 Kauffman 29. Among the thirty recommendations was to develop issue advocacy and lobbying networks, establish regional desks and move the home office to Washington DC., all of which took place within three years. Kauffman 39, 44.

62 Cf., Canon 1257 Canon Law Society of America, Code of Canon Law (CIC) (Wash DC: CLSA, 1983)

63 Peter Macpherson, "Church and fate." Hospitals and Health Networks March, 1996: 33-36.

64 Relevant canons are 113-123 for private associations and 312-326 for public juridic persons.

65 CIC 299-301

66 CIC 299 § 2

67 Rita M. Schroeder and Mansfield, John I. "Creating a Private Association: The St. Francis Experience". Health Progress Sept. 1986: 53-54.

68 CIC 114 (my italics). This is consistent with the medieval Catholic construction of corporation we have detailed earlier.

69 Bro. Joseph Howarth, "Juridic Person or Private Association: Choosing a Canonical structure" Health Progress September 1986: 51

70 The public juridic person is a status which turns up in the professional literature and emphasizes how it accomplishes a formal status "in the church" and strengthens "growth strategy" by protecting the mission of the association "beyond the lives of the sponsors". Rev. Jordan

Hiite, "An Innovative Way To Continue the Ministry: A Catholic Multi-institutional Healthcare System Achieves Public Juridic Person Status." Health Progress. September 1992: 56-58. Separately incorporated hospitals with autonomous boards can "test alternative sponsors" by becoming a public juridic person. Sister Mary Modde,, "Private Association: Opportunity for Laity" Health Progress September 1986: 46-50.

71 CIC 299 § 2.

72 F.G.Morrissey, "Juridic Status: Canonical Provisions, Possible Applications" Health Progress Sept. 1986: 41-45.

73 Judy Cassidy, "Catholic Identity Is based On Flexible, Reasonable Tradition" Health Progress Jan-Feb. 1994: 165, 25.

74 Rev. Thomas H.Vowell, "Preserving Catholic Identity in Mergers: An Ethical and Canon Law Perspective." Health Progress Mar. 1992: 33.

75 Hehir interview Jan 14 1997.

76 Hehir "Health Care for All" Commonweal May 7, 1993: 8

77 Hehir, "Health Care" 9

78 Sandra Johnson, "After Cruzan: The US. Supreme Court's Decision Settles The Case But Raises New Questions." Health Progress Oct. 1990: 38.

79 Bryan Hehir "Moral Discipleship" lecture series, St. Paul's, Cambridge, MA March 10, 1997.

80 Richard A. McCormick, Critical Calling (Washington DC, Georgetown UP, 1989): 134

81 McCormick 139.

82 Pope Paul VI, Encyclical Letter, On the Regulation of Birth Humanae Vitae (Washington DC: US Catholic Conference Publishing Services, 1968) # 14

83 McCormick 330

84 McCormick 15.

85 McCormick 336, and Charles E. Curran, *Moral Theology: A Continuing Journey* (Notre Dame UP, 1982), 144

86 Quoted in McCormick 15

87 McCormick 107.

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- 88 McCormick 275.
- 89 *Humane Vitae* 15.
- 90 Ashley & O'Rourke p 277
- 91 NCCB Directives 48.
- 92 *Humanae Vitae* 3.
- 93 Bernard Häring Medical Ethics (Notre Dame: Fides, 1973): 90.
- 94 deBlois 281.
- 95 John M. O'Lane MD.. "Sterilization and Contraceptive Services in Cath hospitals" Am. Journal of Obstetrics & Gynecology 133.4 (1979): 355-357
- 96 Charles E Westoff and Elise F Jones "The Secularization of US Birth Control Practices" Family Planning Perspectives 9.5 (1977): 203-07.
- 97 Gaudium et spes, 50 Also compare with similar statements by Pius XI in *Casti Connubii* AAS XXII (1930): 560; and Pius XII: AAS XLIII (1951): 843.
- 98 *Humanae Vitae* 11.
- 99 Edward C. Vacek, "Catholic Natural Law and Reproductive Ethics" (Journal of Medicine and Philosophy 1992) 338.
- 100 *Humanae Vitae* 16 and 14.
- 101 Pius XII, Address to Italian Catholic Union of Midwives, Oct. 29 1951.
- 102 Gaudium et spes 50.
- 103 Elizabeth McKeown "The Seamless Garment" The Deeper Meaning of Economic Life (Washington DC: Georgetown UP, 1986) 134.
- 104 Rev. Michael Smith Foster, "How is a marriage declared null?" The Boston Sunday Globe 20 April 1997: F3.
- 105 NCCB, Ethical and Religious Directives for Catholic Health Care Services. (Washington, DC. : USCC, 1996): 36.
- 106 NCCB, Directives 36.

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- 107 Conversation with Dr. Mark Vonnegut, pediatrician, Barnstable MA. August 1997.
- 108 *Humanae Vitae* 13
- 109 Vacek 338.
- 110 NCCB, Directives 56, 57.
- 111 NCCB, Directives 58.
- 112 Congregation for the Doctrine of the Faith, Declaration on Euthanasia Rome, 1980. (Washington DC: USCC, pub. 704-9): § II.4.
- 113 NCCB Directives 63.
- 114 Interview with Father Bob Rochon, director, St. Anne's hospital, Fall River, MA. June 5, 1997.
- 115 *Compassion in Dying v Washington* 79 F.3rd 790 (9th Cir.) cited in Dwight D Duncan and Peter Lubin, "The Use and Abuse of History in *Compassion in Dying*" Harvard Journal of Law & Public Policy V.20, No. 1 (Fall 1996) 177. Also see Duncan, "Roe v Wade Goes Suicidal" The Catholic World Report May 1996: 42-50.
- 116 *Quill v Vacco* 80 F.3d 716 (2nd Cir.) quoted in Duncan and Lubin: 178
- 117 Duncan, "Roe v Wade Goes Suicidal" The Catholic World Report (May 1996): 42.
- 118 See E. Joanne Angelo, M.D., "Hospice Care: Transforming a Culture of Death into a Civilization of Love" (Washington DC: NCCB, 1993); also Angelo, "The Hospice Model of Care v. Physician Assisted Suicide (Braintree MA: Pope John Center for the Study of Ethics in Health Care, July 1995; Pastoral Care of the Sick and Dying (Washington DC: USCC, 1984)
- 119 57% of 35-44 year olds approve, 54% of those over 55 oppose. Donald E. Duncan, Lecture on Physician Assisted Suicide, DiGiovanni Hall, St. Paul's Parish Cambridge MA, 4/16/97
- 120 In 1990 The US Supreme Court in a five to four opinion upheld a Missouri Supreme court decision to deny Nancy Cruzan's parents' request to withhold tube feeding, allowing their daughter, in PVS (Persistent Vegetative State) to die. The decision turned on a lack of clear and convincing evidence of a patient's previous wishes concerning withdrawal of life support in the event of a prolonged coma from which there was little likelihood of recovery. Subsequent to Justice advice in the Cruzan appeal to the Supreme Court, patients are now encouraged to create informed

consents ("living wills") and medical powers of attorney which specify their wishes given the circumstance of prolonged coma. "Living wills" are not binding in Massachusetts, which defers to a designated Health Care Proxy agreement.

121 O'Rourke and deBlois "Remove Life Support..." Health Progress Jul.-Aug, 1992.

122 Committee for Pro-Life Activities, National Conference of Catholic Bishops Nutrition and Hydration: Moral and Pastoral Reflections (Washington DC: USCC, 1992). See also NCCB Directives p.22.

## CHAPTER 9

### CATHOLIC EDUCATION

Chapter Nine covers three subjects: the first concerns Catholic primary and secondary schools ("Catholic schools" or "parochial schools"), the second deals with Catholic higher education (Catholic colleges and universities) and the third concerns the Church's "magisterium" - its teaching authority in matters of faith. These are separate topics because most Catholic primary and secondary schools are ecclesiastical property and therefore materially bound to the Church, whereas twentieth century Catholic higher education in the US comes in more independent corporate forms.<sup>1</sup> Furthermore, though the magisterium is a far more controversial and theologically portentous matter in American Catholic higher education than it is for grade schools and high schools, the tension between the Vatican's teaching and the practical application of that teaching is not simply a matter of academics.<sup>2</sup> Therefore, though the magisterium is first a matter of "teaching" and is understood most clearly in the context of higher education, it has implications beyond college life and thus will be treated as a related but distinct topic.

#### Catholic primary and secondary education

As with Catholic sponsored healthcare and social service, Catholic parochial schools are giants among non-state providers in a field in which the state otherwise dominates. Two thirds of all US non public secondary students (about a million of the country's fifteen million 9th to 12th

graders) attend nearly fifteen hundred Catholic high schools in the US. <sup>3</sup> Nevertheless the total of nine thousand Catholic primary and secondary schools operating in the US in 1990 reflects a 31 percent drop from its peak of thirteen thousand in the 1960s, not all of it due to the passing of the baby boom. Enrollments and school openings have been flat for years.

Huge drop-offs in religious staff have meant a surge in lay employees. Religious staff in US Catholic schools has dropped 79% since 1967, down from a peak of 94,000 to 20,000 in 1990. <sup>4</sup> However, Catholic schools have in many ways retained their "Catholicity" far more successfully than the other Catholic sponsored institutions. In Catholic high schools, 89% of the students are Catholic, 86% of full-time teachers are Catholic, 99% have Catholic principals and 95% have Catholic administrators. <sup>5</sup>

Though the government generates most of Catholic sponsored health care and social service revenue, for Catholic primary and secondary schools the money role of the government is relatively nonexistent, with the exception of some textbook and transportation assistance. Government aid for non public education through tuition tax credits and vouchers continue to be rare local experiments. One hundred percent of the 910 respondents to a NCEA survey of Catholic high school principals reported zero income from state or federal sources. <sup>6</sup>

#### Administrative details in Catholic schools

According to Sister Ann Dominic Roach, Superintendent of the Catholic School Office of the Archdiocese of Boston, the economic

efficiency of Boston Catholic schools is impressive, with yearly per pupil costs at about \$1800-\$2000 compared to the City of Boston public school per pupil expense of \$7000. Average tuition in Catholic secondary schools nationwide now averages \$4800 (with the suburban Massachusetts' St. Sebastian school reaching a high of \$15,000 per year). <sup>7</sup>

Some Title I and II funding is available to Catholic schools for at-risk students' remedial education, though the disabled in Catholic schools are not subsidized by the state, and therefore are underrepresented in Catholic schools. Federal assistance is available in some cases for textbooks, as well as for transportation for students in cities and towns.

In a series of decisions from 1968 to 1977 allowing aid to private schools, the US Supreme Court has upheld the use of public funds to support parochial schools' purchase of textbooks, assuming those books were already approved for use in public schools. <sup>8</sup> However local state laws have run contrary to federal policy, especially in Massachusetts. Demerath and Williams note that in 1977 the Springfield Massachusetts school department apportioned \$200,000 of their textbook budget (32%) for the purchase of textbooks to be loaned to parochial and private schools. But a 1978 court challenge, *Eleanora F. Bloom et al. v William C. Sullivan et al. as members of the School Committee* declared unconstitutional a 1973 state statute requiring that public schools loan books to private and parochial school students on request. <sup>9</sup>

The Massachusetts state constitution Amendment Article XVIII §2 had been revised in 1974 to allow "grants-in-aid to private higher educational

institutions or to students or parents or guardians" of those attending such schools, a provision which paralleled federal court holdings which found no establishment issue in school loans to students at religiously affiliated colleges and universities. Nevertheless the bulk of the earlier 1917 amendment (of the original 1855 Article of Amendment) still stands, prohibiting the otherwise unexceptionable use of any public money for "founding, maintaining or aiding any school or institution of learning, whether under public control or otherwise, wherein any denominational doctrine is inculcated. . . " 10

The legendary Massachusetts State Senate president William Bulger led statewide refenda ballots in 1982 and 1986 to reverse Amendment XVIII, and thereby to facilitate the potential for voucher funding of secondary and elementary school students, but both votes failed. Demerath and Williams attribute the failures in part to the lack of a distinction between parochial schools and private schools. Many voters apparently felt that aid to private schools meant public funds would subsidize wealthy prep schools. 11

Superintendent Roach feels the era of voucher payments will inevitably arrive. 12 She noted Cleveland's voucher experiment in which 33 of Cleveland's 39 Catholic schools have been allowed to participate in Cleveland's pilot program, but in extremely limited fashion. Though 60% of voucher students attend Catholic schools in Cleveland, this amounts to only 2% of public school students. 13 (Very recently, the US Supreme Court refused to review the Wisconsin Supreme Court's ruling that Milwaukee's school choice program in constitutional).

Superintendent Roach acknowledges that, as with Catholic sponsored health care and social service, Catholic education is increasingly becoming professionalized and lay-staffed. In Boston only 13% of staff are religious, 87% lay, according to Roach. Though nine of the archdiocese high schools are currently unionized, Roach echoes the sentiments of pastoral care workers of St. Elizabeth's Hospital, that although they believe in collective bargaining, interest in unionizing is low. She cites Donna Boyle's finding of little compatibility between the union and the faith community in Fall River. <sup>14</sup>

Personnel policy in Catholic primary and secondary schools is far more rigid than it is in Catholic higher education, although in either case the Church has much to say. Half of Catholic high schools responding said they would terminate the contract of a teacher who publicly announced they were an atheist. <sup>15</sup> The role of the Church in day to day operations is more direct in Catholic primary and secondary schools than it is in Catholic higher education, social service or health care. 65% of respondents to the NCEA high school survey report a "Very or somewhat influential degree of influence" by the diocesan office or religious order. <sup>16</sup>

### The role of faith in grade schools and high schools

Because state funds are virtually nil in Catholic schools, there is no impediment to an unashamedly pronounced emphasis on religion. These are very much "religious schools." As the Vatican's Congregation for Catholic Education (CCE) makes clear, the mission of the Church is to

evangelize "and the schools are an important medium of this." <sup>17</sup> The National Catholic Educational Association (NCEA) aims specifically to teach "a religious dimension in the world of human history." <sup>18</sup> 89% of responding Catholic high schools in a nationwide survey require *non* Catholic students to attend liturgical services. <sup>19</sup> 81% require Catholic students to take eight or more courses in religion (e.g., morality, sacraments, doctrine, Church history) and 75% require that non-Catholic students do the same. <sup>20</sup>

Yet, consistent with postconciliar Catholic doctrine on tolerance and pluralism, the Church is careful to tread an ecumenical path. Acknowledging that many Catholic school students are not Catholic, the schools pledge to "proclaim the Gospel" but remind teachers that to "proclaim or to offer is not to impose, however; the latter suggests a moral violence which is strictly forbidden, both by the Gospel and by Church law." <sup>21</sup>

Course load requirements reflect an emphasis on religion. Catholic High schools on average require almost twice as many course hours of religion as hours of science (not including mathematics). <sup>22</sup> The preference of religion over science is purposive and unapologetic. According to the CCE, "Students learn many things about the human person by studying science; but science has nothing to say about mystery. Teachers should help students begin to discover the mystery within the human person. . . ." <sup>23</sup> Three quarters of Catholic high schools surveyed provide in service training for faculty to instruct them on their role in the school's overall religious mission. <sup>24</sup>

Religious curricula in Boston Catholic schools begins with Old and New Testament texts taught in the 9th grade, Catholic sacraments and morality for sophomores, with 11th and 12th graders offered electives in world religion and human sexuality, all from the point of view of the Catholic Church. Catholic sex education aims "not to supplant parents but to help them" and so rather than eliminate sex education, the NCCB suggests that "parents should not allow continuing anxiety to be translated into indiscriminate opposition to all forms of classroom education in sexuality."

25

Perhaps the most demonstrable effect of Catholic primary and secondary schooling is that they are uniquely effective means of carrying the Catholic faith from childhood into adulthood. The more Catholic schooling a student has, the more Catholic he or she will become. A third of those attending eight or more years of Catholic school will go on to receive weekly communion, which is about twice the number of those attending Catholic schools for less than eight years. Says Andrew Greeley, Confraternity of Christian Doctrine (CCD) "Sunday school" type classes "do not have anywhere near the same effect." 26

### Social Justice in Catholic schools

Catholic approaches to community service are founded on principles of an interconnected, moral inseparability among individuals in the human family - and therefore can be considered in a broad sense "organicist." The NCCB manual To Teach as Jesus Did describes the Church

as an "instrument of salvation and a sign of Christ," and because "Christians are obliged to seek justice and peace in the world," service to the community therefore becomes "central to educational ministry." 27

In Catholic schools, Bryk has measured the effectiveness of this communal ethic and proposes that teachers and students in the voluntary community of Catholic primary and secondary schools care for each other in a way which is more effective than what he calls the "client relations" of public schools. He compares dropout rates of 4% in Catholic schools to 15.4% among public school students. Black dropouts are 7% in Catholic schools, compared to 17.8% in public schools. 28

The Catholic sense of community is linked to service for the disadvantaged. 48% of staff and students in Catholic schools experience a "deep sense of community," and about half of Catholic high school seniors participate in one or more service programs. The Church's social teachings are said to "inform the school philosophy, goals or yearly objectives" in 92.7% of Catholic high schools surveyed. Nearly 73% of Catholic high schools say that Catholic social principles are held as an important criterion in hiring or evaluating teachers. 29

Yet 97.3% of Catholic high school administrators and 94% of teachers are non minority whites, while less than half a percent (0.05%) of school boards include Black, Hispanic or Asian members. 30 Location is also disproportionate. Catholic high schools are located in districts where over 90% of residents are non Hispanic whites. 31 Only 8% of Catholic high schools nationwide enroll more than two out of ten students from low

income families, and about a fifth have no low income students whatsoever.

32

As with Catholic health care, however, there are outstanding examples of service to the disadvantaged in particularly poor neighborhoods. According to Superintendent Roach, the secondary school student population throughout the archdiocese is 71% white and 21% minority, but in some schools minority participation predominate. St. Matthews in Dorchester is "98% Haitian" and the Cathedral School of Boston's South End is virtually "100% minority," with heavy African American and Vietnamese enrollment. 33

Catholic schools favor an "infusion method" which teaches Catholic social justice principles. The method includes mathematical formulas which correlate poverty and disease, and ESL classes using biblical passages as texts. Newark archbishop Theodore McCarrick won national attention with an "anti-sweat" curriculum which joins lessons about exploitive working conditions in textile manufacturer sweatshops with student boycotts of school uniform manufacturers who are not in compliance with equitable labor procedures. All Catholic secondary schools offer social service programs in their communities, conducted for graduation credit as a practicum, in conjunction with retreats based on social justice themes.

Catholic higher education is involved in an even more structured way. David Hollenbach says volunteer service programs are part of Boston College's core curriculum, a philosophy/theology twelve hour weekly

course with over 600 students enrolled and a waiting list. Featured are an inner city volunteer education program and an "integrated services initiative" - a cross disciplinary effort involving social work, law, education and nursing. 34

Boston's most famous recent episode of applied social justice involves the Church's role in Boston school busing crisis of the 1970's, in which leading members of the Church were at the forefront of school desegregation. Sister Mary Augusta Neal was, along with NAACP education chair Ruth Barton, among the first to note the conditions of segregation and disrepair in Boston Schools. Boston's Richard Cardinal Cushing was among the drafters of the "Kiernan Report" which led to the Racial Imbalance Act (RIA) of August 1965. The Kiernan Report was the first to find that half of Boston's blacks were attending schools with over 80% black enrollment.

Cardinal Cushing's successor Humberto Medieros issued a five-point policy in 1974 to prevent the use of Catholic schools as a haven for white flight. Applications for transfer from public schools would not be accepted unless: (1) acceptance improved the racial balance of the school to which he or she is applying (2) there was evidence that the application is due to change in address (3) the family had other children in school (4) the number of acceptances conformed with the average number of acceptances of previous years and (5) all acceptance policies were "consistent with the principles of social justice as enunciated by the official teachings of the Church." 35

Glinski found that in 1974/75 there was an overall decline in enrollment in Catholic schools by 908 students. <sup>36</sup> Yet over 2500 students were said to be accommodated by the parochial schools in or around Boston, as families found ways to defeat the rules by generating phony addresses changes. <sup>37</sup>

Cardinal Medieros' busing policy - and the extent to which Catholic families willfully betrayed it - give historical evidence of the intent and effect of the Church's magisterium - the weight of its moral teaching in application to administrative policy. Of particular relevance is how much the Boston Catholic schools as a system were accountable to the Church hierarchy. The Church's interaction with Catholic colleges and universities provides a different view of how the Catholic faith and Church leadership influences education.

### Catholic higher education

In the case of Catholic higher education, the relevance of Catholic welfare corporatism takes on a second dimension. Here, the dynamic is not simply between Church-sponsored institutions and the state, but there is also a parallel tension between these institutions and the Church itself. Here the Catholic welfare corporatist traits of subsidiarity, multimodality and organicism are not only guides to interactions between institutions in surrogate roles delegated by the secular government, but of the corporations within the greater corporation of the Church. In this way it is analogous to some of the medieval monastic and lay-religious movements of

the Middle Ages, as they struggled with reconciling the hierarchical Church to the practicalities of their work and professions.

While many health care and social service organizations chafe at the limitations imposed on them by Church doctrine, the burden is particularly noteworthy in teaching institutions whose "intellectual product" is in some respect identical to the Church's. The internal concertation of the Church's own intermediary organizations is thus another illustration of the protocol and bargaining technique suggested by Catholic welfare corporatism.

#### Canon Law and Vatican control in higher education

Many Catholic colleges and universities were originally founded by local Catholic religious orders, but nowadays most function as independent corporations which are accountable only to their own (increasingly lay) boards of directors. The Vatican's greatest influence is on so-called "ecclesiastical" universities and faculties, that is, those institutions which pope John Paul II defines as "canonically erected or approved by the apostolic See, which foster and teach sacred doctrine. . . ." and which have the right to confer academic degrees by authority of the Vatican.<sup>38</sup> In the US, universities such as these are rare - Catholic University in Washington DC is one of note - but by vague locutions the Vatican attempts to impose its will on all institutions calling themselves Catholic.

The 1996 apostolic constitution on higher education *Ex Corde Ecclesiae* "contemplates" that even those Catholic Universities which are *not* specifically established or approved by the Holy See, "will make their own

the General Norms . . . 39 (Note that the phrase reads "make their own *the* General Norms" rather than "make their own general norms.") Gallin notes that none of these "non-ecclesastical" US Catholic colleges and universities would be considered a public juridical person under canon law, that is, having the capacity to act in the name of the Church. 40 This criterion for recognition of a corporate group (canon 1257 §2) is founded on medieval legal theory as we have noted, so to this extent relations between US Catholic higher education and the Church are "corporatist" only in a diminished, less traditionally formal sense. Gallin argues that "without juridical personality the institutions do not have *any* standing in the canon law." 41 Neither can the Church supersede the rights of property protected by civil law.

The use of the word "Catholic" however, is a type of franchise over which the Church does assert a property claim, consistent with the Church's approach to Catholic sponsored social service and health care corporations, and set forth by apostolic constitution: "A Catholic University may also be established by other ecclesastical or lay persons; such a University may refer to itself as a Catholic University only with the consent of the competent ecclesiastical Authority." 42 The distinction between acting in the name of the Church and simply using the name of the Church is not widely understood by the laity, however.

### The "Magisterium" and higher education

An even sharper distinction can be drawn over how the Catholic faith is taught when the "magisterium" becomes the substance of a college

course. Canon 812 of the 1985 revised Code of Canon Law reads, "It is necessary that those who teach theological disciplines in *any* institute of higher studies have a *mandate* from the competent ecclesiastical authority" (my italics). <sup>43</sup> The Canon Law Society of America (CLSA) comments that "This terse, new canon caused more apprehension and provoked more opposition than any other provision of [Church] law, " and traces the origin of canon 812 to Germany in 1848 when the Church hierarchy was struggling to retain some control over the teaching of religion in the newly secularized German schools (similar to the creation of "Roman monasteries" during the Investiture era). <sup>44</sup> The controversy stems from the idea that this present canon extends ecclesiastical authority over all teachers of Catholic theology in any Catholic college or university, "ecclesiastical," "public juridic," or not.

An American challenge to Roman hierarchy: Charles Curran

The command of faithfulness to the magisterium borders on the exhaustive throughout *Ex Corde* and *Sapientia*, in at least five separate variations of the following: ". . . Catholic theologians, aware that they fulfill a mandate received from the Church, are to be faithful to the Magisterium of the Church as the authentic interpreter of Sacred Scripture and Sacred Tradition." <sup>45</sup>

These conspicuous and repeated assertions of papal authority, especially Canon 812's revised inclusion of a necessary "mandate" to teach, follows in the wake of the celebrated legal dispute between Charles Curran and the Catholic University of America. <sup>46</sup> Curran is an eminent Catholic

theologian who is now a professor at Southern Methodist University. Author of over twenty five books and former president of both the American Theological Society and the Catholic Theological Society, he holds two doctorates from the most respected pontifical universities in the world, the Gregorian University and the Academia Alfonsiana in Rome, studying under perhaps the two greatest Catholic theologians of this century: Bernard Häring and Joseph Fuchs.

Father Curran first made waves in June 1966 when he presented a paper to the Catholic Theological Society of America disputing the official Catholic teaching that masturbation is always wrong and a matter of grave evil.<sup>47</sup> Subsequent to this and other positions (which Notre Dame planned to publish) the faculty of Catholic University's school of Theology voted unanimously in 1967 for Curran's promotion, as did the academic senate. But in April, Bishop William McDonald announced that he had decided not to renew Curran's contract, with no reasons given. Curran was offered a position in a department other than Theology teaching ethics, but tenure in Theology was not honored.

Curran's argument was that because CUA's board of trustees is autonomous (controlled half by clergy and half lay people) they are therefore in fact "depontificalized" and cannot claim nor do they owe canonical obligation. Though CUA has been considered a pontifical university because it was originally founded with the Vatican, Curran maintained that CUA's "department of Theology *has* a pontifical faculty, not that it *is* a pontifical faculty."<sup>48</sup> Civil litigation upheld CUA's decision.<sup>49</sup>

## Personnel policy in Catholic higher education

The debate in Catholic higher education's personnel policy has been seen as really about the control of the content of Catholic theology. According to Douglas Laycock, religious universities and colleges, "must indulge a hiring preference. They must be free to take into account their need to maintain the necessary core of Catholic faculty or Mormon faculty or whatever." 50

For Laycock academic freedom in a religious institution of higher education is not an absolute, whether or not it is a seminary exclusively dedicated to instructing prospective clergy. 51 Imagining that a professor may attempt to protest the Church's policy on abortion from the lectern, Laycock argues, "The Constitution protects the free exercise of religion from state interference; it does not protect the right of religious dissenters to use the name and facilities of religious institutions." 52 Nevertheless, Laycock does draw the line on racial equality, acknowledging that the State's compelling interest was upheld in the celebrated case of *Bob Jones University v US*. 53

In 1989 at least half a billion dollars of federal and state funds went to religiously affiliated colleges and universities (RACs), in accordance with the 1971 US Supreme Court approval of the use of federal funds to RACs. 54 The First Amendment thus does not preclude government aid to religiously sponsored universities or their students, but the schools have successfully drawn on the Establishment clause to argue that certain of their internal policies, particularly regarding personnel, should remain beyond

government jurisdiction. There has been lively local litigation. Loyola University has been sued for a "Jesuits-only" hiring policy in their philosophy department and in at least six other cases the Church has claimed immunity, including disputes over pay scale, and the rights of gay organizations to exist on campus. 55

### The intellectual chill of Church doctrine

There is anecdotal evidence of how the doctrinaire Church affects the content of course work. According to Director Helen Fagan of Boston's St. Elizabeth's School of Nursing, the school does not teach any procedures contrary to Church doctrine. 56 Maternity students are specially instructed on the Church's position on abortion and physician assisted suicide and euthanasia. In one case an Amherst graduate attending St. Elizabeth's School of Nursing was prevented from submitting a critical assessment of the Church's policy on palliative care and suffering, and another occasion a student's mildly affirmative paper on physician assisted suicide was quietly withdrawn after consultation with her professor. 57

The issue then becomes whether there has been a chilling effect on the intellectual climate of discussions of Catholic theology in higher education. One measure is the precipitous decline in Catholic seminaries: the number of Catholic theology schools in US has been cut about in half since 1966, from 133 to 57 in 1984. 58 In the 15 years from 1968 to 1983, enrollment at the high school and college levels of seminaries declined 74%, and Religious novitiates declined 68% while theologates declined 50%. 59

Of those vastly reduced numbers, the seminarians who continue do so for reasons of personal faith rather than for more communitarian goals, such as social justice. Only one in 100 picked "concern for social justice" as first choice in "most important quality for religious ministry." 60 The erosion in the regard for priestly relevance is reflected among Catholics in general. While in a 1952 survey 72% of Catholics surveyed thought that their parish priests were "able to understand practical problems," by 1974 the percentage had dropped to 48%. 61

### Teaching the Magisterium and learning from the laity

The overarching issue in Catholic higher education then, is not simply the hiring choices of a given institution, but the claim over how the faith of nearly a billion people is conveyed to the world. Part of Vatican II's impressive legacy was a call for an increasing role of the laity in determining their own understanding of morality. This was construed by many Catholics as a more mature approach to discipleship, beyond a perhaps childlike dependency on the received wisdom of father-confessors. One of the key documents of Vatican II, Constitution of the Church in the Modern World (*Gaudium et spes*) advises that "the layman not imagine that his pastors are always such experts that . . . they can readily give him a concrete solution, or even that such is their mission . . . let the layman take on his own distinctive role." 62

Fuchs adds that it is a right and duty for Catholics to practice an "innovative morality" colored by the nuances of our own peculiar

circumstance, for which ready made ethics are not adequate. <sup>63</sup> Vatican II has been seen to encourage a rejection of the rule-bound preoccupation with "things I must do to get in good," purchased through simplistic calculations of prayers and penance. Similar to the issue of biblical 'fundamentalism,' the question becomes how to best adapt traditional doctrine and scriptural truth to the specific lives of the laity. In the words of Archbishop Robert Coffy, "faith-language needs to be immersed in concrete pastoral situations before theologizing. . . " <sup>64</sup>

The tectonic upheaval marked by *Humanae Vitae* in the revolutionary year of 1968 would not have been so far-reaching were it not for the rich premise for change set by Vatican II. That Paul VI should have overruled 80% of John XXIII's population commission was made even more conspicuous by what many saw as a violation of the spirit of Vatican II in how such a far-reaching matter should have been discussed and resolved. Such questions of authority have direct implications not simply how the Catholic religion is taught in schools of higher education, but for the relevance and credibility of the magisterium itself.

Not surprisingly, because the story of the internal upheaval over *Humanae Vitae* was leaked to the general press in 1968, the ruling authorities in Rome continue to have a problem over how publicly to proceed with the project of moral renewal. Nevertheless, the challenge remains to cogently convey matters of faith to mature adults. McCormick writes, "Simply to say 'this is Catholic teaching' *teaches* no one," and he insists that because theology is a public enterprise in which we form our

consciences in a community, the teaching of the magisterium should "enlighten conscience without replacing it." 65

Yet when the eminent Catholic theologian Bernard Häring justified direct sterilization in his book *Medical Ethics*, the response from Cardinal Ratzinger (the Vatican's "Prefect of the Congregation for Doctrine of the Faith") was that such dissent is appropriate only in a closed conversation among theologians in select theological journals. To air these opinions publicly, especially in the mass media, Ratzinger maintains, "runs the risk of causing scandal to the faithful." 66

Joining the call for change in Rome are feminist arguments which appeal to nuanced, specific and contemporary adaptation. John R Donahue cites the rejection by St. Thomas of the ordination of women, on the assumption of the era that a woman was in the state of subjection, such that she could not receive the sacrament of orders. McCormick presents Aquinas' argument about the inferiority of women as a "prescientific global conviction" but says that today, "it would be identified as a colossal cultural bias and would be thoroughly disowned." 67

The papal magisterium insists that artificial insemination is always wrong; that every direct abortion is morally wrong, and that masturbation and direct sterilization are intrinsically evil. These are positions which are all widely disputed among Catholics in the US. McCormick argues that dissent on such issues does not intend to undermine authority but serves as

a high form of loyalty to the magisterium, by protecting it from the kind of self preoccupation that subordinates truth to authority. . . To

negate this critical role its to conceive the magisterium in an utterly pyramidal, other-worldly, and magical way. 68

According to the Vatican Council's Constitution on the Church, (*Lumen Gentium*) "In matters of faith and morals, the bishops speak in the name of Christ and the faithful are to accept their teaching and adhere to it with a religious assent of soul." 69 America's National Conference of Catholic Bishops reflect some of the values of their American faithful, yet are clearly constrained by the pope's wishes in discussing some matters of great salience. But, says McCormick, "If the bishops cannot report the experience and reflection of the faithful, or if, when they do, it is brushed aside, then clearly the presumption of truth that ordinarily accompanies authentic magisterial teaching has been undermined." 70

### Review Discussion

Catholic education, both in the sense of independent business corporations and as corporatist vocational affiliations, attempt to deal with the pressures of greater collectivities such as the state - or the Church - in ways which are consistent with Catholic welfare corporatism: organic, as integral parts of the Church, the nation and their profession; subsidiarist, to the extent that they are free to be individualized; and multimodal in the sense that they act not only as educational professionals, but simultaneously in spiritual life and public policy as well. They do so with varying success.

Though Catholic grade schools and high schools are identifiably Catholic, it is at the expense of public funding. However the US Supreme Court's recent refusal to consider overruling Wisconsin's Supreme Court finding of constitutionality for that state's school choice program is a strong indication of change in this regard. In the "marketplace," Catholic grade schools and high schools continue to be a large part of private education, but their share of the market is dwindling. Their noteworthy performance among the poor, especially in the years before college, gives credence to the Church's notions of economic justice, but this goes largely unrewarded by the state. Arguably, their lack of success in winning voucher reimbursements is a measure of how potent their corporatist lobbying capacities are. At this point they bargain for little.

Catholic universities have more academic freedom than Catholic elementary and high schools, but most are less intensely identified as Catholic (with the obvious exception of religious seminaries). As to the current status of the magisterium, civil law has vindicated the Church's position that the teaching of Catholicism as a religion is a matter for which the hierarchical Church is competent to judge, at least among its employees at Catholic University. But the teaching of Catholic *values* is in flux, with new adaptations pressing their case both in public forums and within the Church itself. As with Catholic sponsored institutions in health care and social service, it is practical experience in society which gives meaning to a faith which might otherwise remain abstract and out of touch.

<sup>1</sup> Among Catholic high schools, legal title to property is 45.7 % held by the diocese; 37% by religious order; 5.6% by school corporation, and 9.8% by the single parish. National Catholic Educational Association. The Catholic High School: A National Portrait. (Washington DC: NCEA, 1985): 198, 214.

<sup>2</sup> According to the Land O' Lakes statement of nine major Catholic universities issued July 20-23 1967, to be fully modern, a Catholic university "must have a true autonomy and academic freedom in the face of authority of whatever kind, lay or clerical, external to the academic community itself." Gallin 8.

<sup>3</sup> NCEA, Portrait 1

<sup>4</sup> Anthony S. Bryk, Valerie E. Lee and Peter B. Holland, Catholic Schools and the Common Good. (Cambridge: Harvard UP, 1994): 33 .

<sup>5</sup> NCEA, Portrait 204.

<sup>6</sup> NCEA Portrait 219.

<sup>7</sup> Interview with Sister Ann Dominic Roach, Archdiocese Catholic School Office, Dorchester, July 15, 1997.

<sup>8</sup> The US Supreme Court rulings which allow government funds for parochial schools textbooks include *Wolman v Walter* 433 US 229 (1977) and *Meek v Pittenger* 421 US at 359-362 (1975). Elsewhere, *Board of Education v Allen* 392 US 236 (1968) upheld state provision of secular textbooks for both public and private school students; *Everson v Board of Education* 330 US 1 (1947) approved busing services equally available to both public and private school children; and *Tilton v Richardson* 403 US 672 (1971) approved federal Higher Educational Facilities act which provided construction grants to "all colleges and universities regardless of any affiliation with or sponsorship by a religious body." (at 676)

<sup>9</sup> Demerath and Williams, Bridging of Faith, 126.

<sup>10</sup> Constitution of Massachusetts, Amend. Art. 18; Forty-sixth Article of Amendment (1917); One Hundred and third Article of Amendment (1974).

<sup>11</sup> Demerath and Williams, Bridging of Faiths, 128.

<sup>12</sup> Roach interview.

<sup>13</sup> Warren Cohen, "Vouchers for good and ill." US News and World Report. (April 27, 1998): 46

<sup>14</sup> Donna Boyle, Diss. Boston College (on the Coyle-Cassidy school district, Fall River, MA).

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- 15 NCEA, Portrait 210.
- 16 NCEA, Portrait 222.
- 17 C.C.E., Religious Dimension 16 par. 34, 33 par. 66.
- 18 C.C.E., Religious Dimension 29 par. 58.
- 19 NCEA, Portrait 11.
- 20 NCEA, Portrait 13
- 21 Congregation for Catholic Education The Religious Dimension of Education in a Catholic School (USCC, Washington DC: 1988): 5 par. 6 (Citing CIC canon 748 § 2).
- 22 In Catholic high schools 428.5 hours of religion are required versus 252.9 hours of science, on average. NCEA, Portrait 199. Other minimum number of clock hours required for graduation are English 546; History/Social science 365.3 and Math 301.9.
- 23 C.C.E., Religious Dimension 39 par. 76.
- 24 NCEA, Portrait 210.
- 25 NCCB, To Teach as Jesus Did (Washington DC : USCC, 1972): 16.
- 26 Andrew M. Greeley, The Catholic Myth (NY: Collier, 1990): 167.
- 27 NCCB, To Teach as Jesus Did 4.
- 28 Bryk, et. al., Catholic Schools and the Common Good. (Cambridge: Harvard UP, 1994)
- 29 NCEA, Portrait 210.
- 30 NCEA, Portrait 198, 221, 224.
- 31 NCEA, Portrait 216.
- 32 NCEA, Portrait 210.
- 33 Roach interview. Teachers at Cathedral, however, report that white students from "Southie" are in fact represented at the school. Overall, the Greater Boston Archdiocese subsidizes 54 inner city schools, including Lynn and Lowell. In all, there are total of 131 elementary Catholic schools and 37 secondary in the Archdiocese, of which the majority are in cities.

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- 34 Hollenbach interview.
- 35 Boston Archdiocese Board of Education: "Desegregation - Boston Schools - "Policy on Admission" 2/25/74. Boston Archdiocese Archives file M3339A.
- 36 G. Glinski, "The Catholic Church and the Desegregation of Boston's Public Schools" New England Journal of Public Policy (Summer/Fall, 1988): 74
- 37 David M. Condon "Politics, Priests and Protests: The Response of the Catholic Church to the Boston Busing Crisis" (B.A. Thesis Harvard U. 22 March 1990): 52, citing Christine H Russell, "Boston Desegregation and White Flight" Integrated Education (Jan/Feb. 1977): 36-39. Also v. Robert Reinhold "Many Boston Students Switch to Parochial Schools" New York Times 9/10/75: C55.
- 38 John Paul II, *Sapientia Christiana* Apostolic Constitution Concerning the Ecclesiastical Universities and Faculties, 15 April 1979 AAS 71 (1979): 469-521) Article 2.
- 39 John Paul II, *Ex Corde Ecclesiae* On Catholic Universities (Washington DC: USCC, 1996): Article 1 §3. (my italics)
- 40 Alice Gallin, O.S.U, ed., American Catholic Higher Education: Essential Documents 1967-1990 (Notre Dame, Ind: UP, 1992) 177, 176; citing canon 116 §1.
- 41 Gallin 178, my italics.
- 42 John Paul II, On Catholic Universities *Ex Corde Ecclesiae* (Washington DC: USCC, 1996): Article 3 §3
- 43 Canon Law Society of America, Code of Canon Law: Text and Commentary James A. Coriden, Thomas J. Green, Donald E. Heintschel, eds. (London: Geoffrey Chapman, 1987): 575
- 44 CIC 575.
- 45 *Ex Corde* Article 4 §3 (with a footnote cite of Vatican Council II Dogmatic Constitution of the Church (*Lumen Gentium*) AAS 57 (1965): 29. Elsewhere in *Sapientia*, Article 26 § 2 reads: "Those who teach matters touching on faith and morals . . . carry out their work in full communion with the authentic Magisterium of the Church, and above all, with that of the Roman Pontiff." Again in *Sapientia*, Article 27 §1 states: "Those who teach disciplines concerning faith or morals do not teach on their own authority but by virtue of the mission they have received from the Church." *Sapientia* Article 39 § 1(2)(a): "true freedom in teaching is necessarily

contained within the limits of God's Word , as this is constantly taught be the Church's Magisterium". *Sapientia* Article 39 § 1(2)(b): "true freedom in research is necessarily based upon firm adherence to God's Word and deference to the Church's Magisterium, whose duty it is to interpret authentically the Word of God." *Sapientia* Article 70: "In studying and teaching Catholic doctrine, fidelity to the Magisterium of the Church is always to be emphasized . . . Hypothetical or personal opinions which come from new research are to be modestly presented as such."

46 *Curran v Catholic University* (DC Sup. Ct. 1989): No. 1562-87.

47 Charles E. Curran Catholic Higher Education, Theology, and Academic Freedom (Notre Dame: UP): 1990

48 Curran 215.

49 "The Catholic University of America" Academe (Sept.- Oct. 1989): Note 5 at 27.

50 Douglas Laycock, "The Role of Religious Academic Communities" From Association of Catholic Colleges and Universities (ACCU), "Exploring our Identity: Catholic and American." Current Issues in Catholic Higher Education (Summer 1994): 7.

51 "[A]ll religiously affiliated institutions must have the constitutional right to interfere with the academic freedom of their incumbent faculty." Laycock 8.

52 Laycock 9.

53 "[T]he Free Exercise Clause does not protect racial discrimination in educational institutions. Period." Laycock 10.

54 Of 210 religiously affiliated colleges and universities responding to a 1978 Notre Dame survey, the median amount of federal aid received was \$129,101 and of the forty percent receiving state aid, the median received was \$94,717. Median federal assistance to students was \$758,108 in Federal funds and \$241,800 in state funds. research grants to Catholic schools would presumably be more than matched by research funding to the medical industry. Marjorie Reiley Maguire, "Having One's Cake and Eating It Too: Government Funding and Religious Exemptions for Religiously Affiliated Colleges and Universities" Wisconsin Law Review. (Sept./Oct. 1989): 1065.

55 Maguire 1067.

56 Interview with Helen Fagan, St. Elizabeth School of Nursing Director June 1997.

57 Interview with Rob Loud, Archivist, St. Elizabeth School of Nursing 6/2/97.

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58 NCCB, Seminarians in Theology A National Profile (Washington DC.: USCC, 1986) 11.

59 Dean R. Hoge, Raymond H. Potvin & Kathleen M. Ferry Research on Men's Vocations to the Priesthood and the Religious Life (Washington DC.: USCC, 1984): 5 Citing Fuerst (1983): 1.

60 NCCB, Seminarians in Theology A National Profile (Washington D.C.: USCC, 1986): 105.

61 Hoge & Potvin 430

62 Second Vatican Council Constitution on the Church in the Modern World (*Gaudium et spes*) (Washington DC: USCC, 1996): 42.

63 Josef Fuchs, "Innovative Morality" Theology Digest Winter 1990: 303.

64 Robert Coffy "The Magisterium and Theology" in *Readings in Moral Theology No 3*, ed Charles E Curran and Richard A McCormick, SJ (Mahwah, NJ: Paulist, 1982): 206-22. cited in McCormick 78

65 McCormick 105, 21, 75.

66 McCormick 114 citing CDF statement of May 10, 1983.

67 McCormick 72.

68 McCormick 134

69 Second Vatican Council Constitution on the Church (*Lumen Gentium*) (Nov. 21, 1964) (Washington DC: USCC, Publication 000-1): § 25 p. 27

70 McCormick 286.

## CHAPTER 10

### SUMMARY AND CONCLUSION

#### Summary

The purpose of this section is as a brief recapitulation of the highlights covered in the chapter summaries presented earlier. The conclusion of the study follows this review.

In Part Two the medieval canon law concept of the "Mystical Body of Christ" was seen as a forerunner to the modern legal construction of a corporation. Beyond its sacred connotations, the Mystical Body of Christ also functioned as a means of legitimizing, defining and protecting the professional independence and public authority of religious vocations, a key precursor to modern corporatism's notion of work associations and their representation.

Demonstrating early signs of organicism, subsidiarity and multimodality, the medieval monastic movement acted as parts of systematic "orders" or affiliations; developed professional skills in social service, medicine and education; and innovated business techniques in finance and capital management. The monastic gift economy, its use of fictive kinship, and its combination of Germanic group ownership and Roman notions of private property, created an early form of institutionalized philanthropy and public service. The medieval monasteries were corporate prototypes of

"mediate social articulation" which integrated the individual, state, Church and society.

Modern understandings of a freely formed "body politic" were traced to the Investiture contest. The Church-state jurisdictional disputes involved professions with public authority and the fiscal control of taxes, tithes and other public benefit funds. Clerics were steadily replaced by secular *ministeriales* and secular universities, a movement crystallized by the establishment of the University of Naples during the imperial reign of Frederick II.

In Part Three, the Catholic corporatist social doctrine introduced in *Rerum Novarum* was seen as mostly a nostalgic vision of class reconciliation through paternalistic, vocationally based social relief remedies, but included the Church's endorsement of independent labor organizations. Later, *Quadragesimo Anno* introduced the concept of subsidiarity as a principle by which to keep the expansionist state at bay. Subsidiarity has also had lasting effect as a credo of localism within the Church.

The Church proved uneven in its attempts to engage modern electoral democracy. Beginning in the nineteenth century with the *non expedit*, a posture to shun elections which ultimately influenced them, disputes arose between the institutional Church and political Catholics over who controlled the Catholic vote. The Vatican's hostility towards communism blocked efforts at a Catholic alliance with the socialists, paving the way for a fascist ascendance.

Mussolini exploited the Church's antipathy towards liberalism and socialism by drawing the Church into a disastrous bargain symbolized by the Lateran Accords, which restored the established Church in Italy by cultivating the Church's instrumental interest in Fascist party government. In the process, Catholic corporatist ideas were converted into Fascist state corporativism, a development which was aggravated by the confusion among the papacy and Catholic intellectuals about how to interpret and apply corporatism. Only when the Church's own vocational interests were threatened did the Church publicly confront the Fascists, belatedly condemning Mussolini and Hitler's "statolatry."

In Chapter Seven we turned to contemporary "Catholic welfare corporatism," first examining the role of the National Conference of Catholic Bishops as a representative organization which aggregates Catholic interests in several ways: as a lobbying group which is political but eludes partisanship; as an interpreter of how Catholic ethics should be applied in professional practice among Catholic-sponsored social services, health care and education; and as the voice of the Church in broad matters of public policy and morals.

We also saw how Catholic-sponsored social services increasingly serve non-Catholics and are staffed by secular and non-Catholic professionals. Post - Vatican II Catholic doctrine encourages this pluralistic approach, a development which furthers Catholic Charities' ability to expand their services as state subcontractors. Catholic Charities has succeeded in

working within the regulatory limits of *Bowen v Kendrick* and appear willing to downplay exclusive Catholic religious identifications.

Chapter Eight described Catholic health care as a loose affiliation whose members have varying ties to the Church, depending on their canonical classification of sponsorship. Its made up of many different types of civil corporations: some are wholly nonprofit, many have profitmaking subsidiaries; others have become parts of non-Catholic systems by affiliation, merger, or takeovers by profitmaking companies. Furthermore, as with most health care, Catholic-sponsored facilities are predominately funded by the state through Medicare and Medicaid, so their accountability toward state policy is necessarily similar to other types of health care systems.

Though the total combined revenue of all Catholic sponsored health care represents a tenth of the industry's market share, this is declining. Under pressure to merge or consolidate, faltering sponsorship associations or declining religious orders are encouraged to convert into the canon law category of Public Juridic Persons, tying ownership directly to the Church. Depending on how popular this conversion process becomes, the Catholic Church may develop into the direct sponsor of one of the largest concentrations of nonprofit healthcare management in the American economy.

When compared to other nonprofit or government providers, the sum total of Catholic healthcare is not demonstrably more effective in its service to the poor, contrary to the Church's public intent. However, those

Catholic facilities which happen to be located in particularly disadvantaged neighborhoods are on a par with other nonprofits in similar geographical placements. Church doctrine is more distinguished as a part of Catholic healthcare in matters of bioethics. Important to the Church's bioethical principles is a "double effect" standard which offers some discretionary scope in applying religious doctrine to the areas where it abstains from non-Catholic medical practice.

In Chapter Nine, Catholic-sponsored education in elementary and high schools show close structural ties to the Church and the local diocese, a circumstance which has removed it from participating substantially in state funding. Though they claim that Catholic principles and its educational style are particularly effective among the inner city poor, they have yet to enter into the mainstream of voucher provisions or other state funding programs, although is changing, especially in light of the US Supreme Court's recent refusal to review the constitutionality of Milwaukee's school choice program.

Catholic-sponsored higher education participates in state tuition funding because US case law finds older students less vulnerable to religious indoctrination. However, as with other Catholic sponsored institutions, Catholic higher education varies in its Catholic identity depending on each corporation's canonical classification. Professionally, Catholic colleges and universities have embraced American values of academic freedom, but case law has found that compliance with the theological standards of the Church is necessary when teaching the Catholic religion.

In the larger issue of the Catholic "magisterium" in matters of faith, the Church has slowly refined the application of Catholic belief to contemporary realities, cultivating a disciplined effort towards mature ethical responsibility, founded on moral absolutes but open to proportionate reason. The magisterium - and the vigor and relevance of Catholicism - is made real by its "institutional witness" in the manner of Catholic welfare corporatism: with organicism, subsidiarity, multimodality.

### Conclusion

The Catholic corporatism of the 1891 encyclical *Rerum Novarum* restored a spiritual sense of personality to the idea of a corporation, imagining it as a living body with a social conscience. But Catholic corporatism never matured into a political theory, instead, as Luigi Sturzo said, the corporations of the encyclicals were symbols of "human relations in the spirit of class cooperation," not the building blocks of a distinct type of political regime.<sup>1</sup> Catholic corporatism was as much about the Church itself as it was about politics, picturing a world made up of collective bodies created in the Church's own image, as vocational groups in a bid for power like the state's. The key to Catholic corporatism then, lies not in its structural details, but in its spirit.

Though corporatism did not live up to its grand promise as a theory, its techniques should not be overlooked, particularly in the case of the welfare state. This study offers Catholic welfare corporatism as a way to look at the behavior of Catholic sponsored public benefit organizations in

their roles as "surrogates" for welfare state services, and to understand how they pursue their interests as a corporate body 'in the state but not of it.' The chief traits used to trace the development of Catholic welfare corporatism over time - organicism, subsidiarity and multimodality - are now presented as the framework for some concluding observations.

### Organicism

Organicism - which imagines a group to be a living organism - is really a form of political poetry (like "holism"), universally applicable to any collective body, and therefore especially vulnerable to how it is construed. At the turn of the century, when it was aimed at rescuing an oppressed industrial work force, organicism was a stirring and imaginative term. But nowadays its early resonance is diminished. For many Catholics, organicism is epitomized by the Latin expression *Hoc est corpus meus* - this is my body - the sacred Eucharistic reference to Christ's martyrdom. Others hear merely "*Hocus pocus*," derisive of the dogma of transubstantiation and religion's capacity to deceive. Though Catholic organic unity may be meaningful in Latin America, Africa, Poland and Cuba, in advanced economies organicism is no longer nearly as compelling as it was. At its worst, political organicism is dangerously susceptible to totalitarian misuse, a biological metaphor which Tillich called the mark of reactionaries who "want to keep dissenting groups in conformity . . . Prussian conservatism and Roman Catholic family glorification agree at this point." 2

Organicism in Catholic welfare corporatism has two interrelated effects, as a theologically based credo which the Catholic Church uses to

encourage a unified faith, and in the specific ways that it influences the daily practice of Catholic-sponsored organizations. What this amounts to in practice for Catholic-sponsored social service, health care and education is an inevitable tension over the Church's patriarchal notions of "family values." Elizabeth McKeown finds little evidence that the Church hierarchy understands "how problematic the assumptions that they make about the family are in relation to contemporary conditions . . . either they must develop a more complex and nuanced concept of the family, or they must seek another foundation for their teaching." 3

Medieval monasticism made imaginative use of the family by inventing fictive kinship and used it as a social refuge. Monasticism became for some an institutionalized form of divorce which not incidentally took in the children who were cut loose as its consequence. Instead, the contemporary Church's reluctance to embrace alternatives to the traditional family is taken as a rejection by those who feel they have no choice. Lectures on conventionality seem particularly hypocritical coming from a clergy which is defined by its celibacy.

In more specifically sexual matters, though Pius XI finally recognized that the purpose of marriage is not simply to have children (in *Casti Connubii* of 1930) the hierarchy persists in a curiously one-dimensional preoccupation with reproduction. The "unitive and procreative" aspects of sex are held as "inseparable" which, by a tortured logic, disallows *in vitro* fertilization among married couples because of its absence of simultaneous physical union. Ultimately the mechanistic details of the Vatican's beliefs appear, in Burtchaell's phrase, "starved for love."

One effect of this debate is that women are now center stage in the Catholic ethical discourse, although this is not entirely surprising, nor is it particularly pacifying. Boston College's Lisa Cahill is not easy to dispute when she writes that Catholic teaching about sex and gender tends to "define women's nature in terms of reproductive function, to tie sexual meaning to the biological structure of sex acts, or to focus on the morality of individual acts instead of on the personal, familial, and social relationships in which they occur." 4

Despite these painful difficulties, the Catholic Church has yet to collapse. To the contrary it has produced a stream of modernizing improvements, especially since World War II. In the US, liturgical changes bear an obvious similarity to Protestantism, such as a new emphasis on Scripture and sermons, and the de-emphasis on the externalized moral authority of priest-centered confession (now called "reconciliation," marked by a "personal relationship with God"). Some Catholics see in these developments a creeping relativism, "situationism," and an erosion of the basic identity of the traditional, hierarchical, "organic" Church.

In the field of Catholic-sponsored public benefit corporations, it is tempting to argue that the Church is selling its soul to stay in business and to keep the flow of government dollars coming, but this is not a complete answer. The Church also generates cogent new applications of fundamental Christian principals and a tolerant, pluralistic maturation of the Catholic faith. Yet the business of social service, health care and education requires some degree of "secularization."

Demerath and Williams describe secularization as a process which "involves demystification and disenchantment with respect to religion's 'meaning' dimension, and disengagement and displacement concerning religious 'belonging.'" <sup>5</sup> But Demerath notes that secularization may actually invigorate religion by offering it something to simultaneously adapt to as well as to defy. <sup>6</sup> Demerath and Williams suggest that secularization is part of a dialectical relationship which engages its opposite, "sacralization," in a way which continually effects change and redefinition in each other. <sup>7</sup> Thus, they add, secularization may not foretell a downfall from "the sacred heights into a meaningless abyss," but rather can be seen as "a transition between two different conceptions of the sacred," especially among those who seek in religion a proxy for their deeply felt secular concerns. <sup>8</sup>

A similar dialectic can be seen among Catholic-sponsored organizations in the welfare industry. Though increasingly driven by the imperatives of business, they also are led by the NCCB in a conscious and persistent effort to invest the Catholic institutional witness with Christian ethical values. It is profoundly more meaningful than brand name marketing. The doctrinal positions of the Church regarding poverty, bioethics, and learning are the result of deep piety and reflection, and in many cases are too annoying to be confused with pandering for popularity. The real-life struggles of Catholic-sponsored work also provide a much needed learning experience for the Church itself, as well as an opportunity for the Church to make real the values that it proposes to teach. This learning exchange, though difficult, is perhaps the most valuable outcome

of organicism, but it is intensified when subsidiarity is allowed to nourish the versatile and responsive potential of the corporation. Organicism, then, is in its most powerful form taken as one half of a two-part system, that is, as part of a matched pair with its companion concept, subsidiarity.

### Subsidiarity

With specific regard to "welfare state surrogacy," can Catholic sponsored institutions be considered as true replacements for the welfare state? For subsidiarity to be a meaningful answer it must amount to autonomous self-regulation by a vocational field distinct from the formal apparatus of the state.

At the outset of this study, subsidiarity was seen in an updated neocorporatist sense as part of mesocorporatism, which emphasizes localism and subsectors, rather than larger scale groupings. Mesocorporatism was considered a potential framework for Catholic-sponsored corporations because many of them are regionally administered and act as subcategories within existing professional fields, rather than constitute an entire economic sector of their own. But mesocorporatism still entails a fundamental corporatist criterion, namely, authorized agency. Writes Schmitter:

Only when specially organized intermediaries are involved - only when the process of deliberation effectively empowers them to represent the collective interests of some group and to take subsequent responsibility for any decisions made - that one can speak of corporatism *strictu sensu*. It is not the same as mere consultation and it is not open to participation by anyone. <sup>9</sup>

To cite a concept developed by medieval canonists, Catholic sponsored organizations - as a group - have no *plena potestas*, that is, no binding power of negotiation which speaks for them collectively. The Catholic Church has the pope as its head, but this is a theological role. Regional bishops may exercise significant influence over business decisions among Catholic sponsored institutions, and the National Conference of Catholic Bishops, the Catholic Health Association and the National Catholic Educational Association may offer guidance and conditional endorsements. But among the various Catholic-sponsored civil corporations there is no single authority which negotiates agreements on behalf of all Catholic sponsored corporations as businesses. Even in the case of canonical "public juridic persons," the strongest category of Church ownership, though these organization technically "speak" for the Church, bishops have neither the time nor training to perform competently as CEOs, nor do they appear to be inclined to do so. There may be a meaningful organic identity conveyed by an association with Catholicism, but in practical decisionmaking terms the Church has only limited binding force.

Catholic sponsored health care and social service agencies fall short of mesocorporatism in another way. Though they perform some of the same work as state facilities, Catholic agencies and hospitals function predominantly as subcontractors. They are without true powers of allocation because unlike the state, they cannot compel taxes from the community nor apportion them according to their own judgment of need. State funding is furthermore restricted to services which can be defined as secular, a reason why Catholic schools receive a comparatively small fraction of public revenues. Also, necessary certification standards are set

by the state and outside professional bodies, not by the Church. Thus Catholic-sponsored organizations do not truly possess the authority of the state.

In welfare production, the lack of a formal intermediating institution in the corporatist sense pertains not only to Catholic organizations, but to the entire welfare industry. That is, modern welfare production necessarily involves a broad scope of overlapping professions, it is not summed up in one field such as "social services" or "health care." At the moment, welfare is not represented as an entire interdisciplinary sector, instead the goals and methods of welfare services are represented by separate job classifications or different professional specialties. Welfare as an integral whole is rather defined by the purchasing power and regulatory judgment of the state.

This is not to say that Catholic-sponsored welfare organizations do not have a collective political consequence. Demerath and Williams suggest that in Springfield Massachusetts, Catholics "run interference" for other faiths which do not have comparable clout with city officials.<sup>10</sup> Catholic sponsored organizations are involved in most fields of welfare production, as well as the single disciplines within in them, and therefore amount to the largest comprehensive welfare industry group outside of the state itself. But because of its religious associations it is somewhat limited in how fully it can be formally engaged by the state. As welfare services become privatized, perhaps there may emerge some investor owned or secular nonprofit group equal to the inclusive scope and size of Catholic sponsored agencies. But in a corporatist sense, there is no formal vehicle of

authoritatively aggregating the interests of the (non-state) welfare industry, including Catholic associations.

A telling signal that subsidiarity is strengthening (relative to the state) is the increasing acceptance of vouchers for tuition at Catholic elementary and high schools. Like Medicaid, educational vouchers would finance individual choice, but as seen in *Bowen v Kendrick*, US case law treats children's education as a special category. The most recent Supreme Court position on Milwaukee allows for local systems to experiment with vouchers. Clearly the tide has turned. At the very least, the argument can be made that if the US Supreme Court has allowed government to pay for textbooks used in Catholic schools, then it would follow that reimbursement of those *courses* taught in Catholic schools which are the same as those in public schools might be similarly allowed. Some objections may likely arise with an "infusion" teaching method which teaches mathematics using examples from the Catholic Bishops' pastoral on economic justice.

A final conclusion regarding subsidiarity among modern Catholic sponsored welfare services is that it challenges the notion that Catholic corporatism is simply a form of "state corporatism." Catholic corporatism's basic tendency toward institutional independence from the state can be seen throughout the entire historical reach of this study, though it is less apparent in the Church's treatment of its own affiliated organizations, when the Church can act much like a state of its own. Nevertheless modern Church sponsorship as well as its corporatist antecedents demonstrate that Catholic corporations are clearly not creations of the state, even though they must be licensed by the state.

## Multimodality

There is nothing new about corporations which operate simultaneously in the three different dimensions of government, business and community. But the overtly moral mission implied by Catholicism gives a special power to Catholic corporations' multimodality. Alternatively, religious identity also threatens the balance of those multimodal capabilities. The more religious an organization appears to be, the less able it may be to participate in the welfare state.

The decrease in Catholic identity among its contemporary organizations is symbolized by the sharp decrease of religious personnel who manage and work for them. In some ways a lower Catholic profile helps its interaction with the US government, but this does not mean that the Catholic Church has abandoned its presence in the arena of political debate. Though the Catholic Church's approach to political involvement nowadays stops short of party politics, (a lesson learned from the Lateran Accords between Pius XI and Mussolini) it has only been since 1979 that John Paul II rescinded electoral office for Church religious personnel, and the Church persists in taking stands on what it considers principles of public policy. It distributes its positions on both sides of the political spectrum: bioethics, human rights, nuclear arms limitation, and a "preferential option for the poor" in economic justice are mostly disparate themes which are not tied to one political party. The Church favors instead a wide "seamless garment" linkage around a "culture of life." Judging from history, however, Catholic politicism has latent potential for partisan focus.

Implicit in Catholic welfare corporatism's informal bargaining weight is the possibility that an issue may someday arise on which the nation's sixty million Catholics more fully agree.

Catholic interpretations on when human life attains legal status are famously at odds with established US law, with direct impact on Catholic institutions. Despite the lack of unanimity among US Catholics on issues of personal morality, the Church continues to operate an extensive communications apparatus in a constant attempt to mobilize public interest in matters of reproductive ethics. Though it may at first appear otherwise, this may not have an entirely negative effect on business. Obviously Catholic hospitals lose patients by rejecting pregnancy termination and some fertility treatments, but the insistence of the Church to run against the grain of popular opinion can also be seen as a principled approach which determinedly places conscience above revenue. "Ethics over profit" may not in the long run prove an unpopular trait when competing with investor owned HMOs. Furthermore, ob/gyn departments in general - not simply in Catholic hospitals - have extraordinarily high malpractice litigation rates, such that many are deliberately set apart under different corporate structures to protect their affiliates. All things considered, Catholic healthcare may ultimately do well to relinquish parts of this specialty to their competitors.

In health care and social services, another trend which may affect the market image of Catholic sponsorship are non-drug and non-surgical therapies, variously described as "mind/body awareness," "meditation," or "acknowledgment of a higher power," in the terminology of step-programs

like Alcoholics Anonymous. Catholic health care treads very carefully in noting the affinity of prayer to these techniques. Among the practitioners of Catholic social services interviewed for this study no information was offered on any organized effort to link Catholic liturgy or prayer to healing or "recovery" therapies (with the notable exception of Barbara Thorpe, whose office accepts no government funds). Yet this association between medicine and faith may someday position faith-based medical and social service institutions at the lead of their industries.

### The Fourth Mode

Among neocorporatists a "fourth mode" has been proposed to refer to corporations' treatment of each other, as distinct from the state's treatment of corporations. Lowi has complained that "special interest liberalism" gives to lobbying groups the same rights as individual persons, and Lowi may be right about the damage this does by increasing their private claims on the state. But what if corporations were to treat each other not only as institutional competitors, but as though they were persons, with the same potential for goodwill and altruism that individuals may sometimes have for each other?

Reinhold Niebuhr would immediately respond that groups cannot achieve the moral discipline of individuals, and that it is dangerous to assume that they could. But this does not necessarily exclude the idea that corporations are capable of some relative scale of ethical behavior, not simply in the sense of "corporate citizens" but in their competition with each other as well. This might seem less improbable when the field is

welfare, in which different standards of fair play are required because of government's decisive presence. Catholic corporatism carries with it a notion of civic "good" which was admired by Kant, Hegel, Durkheim, Keynes and others. Religious sponsorship also places an emphasis on public duty. Is it reasonable to expect, just as individuals might at least *attempt* moral commitment, that group-persons in the welfare business might also be expected to approximate some standards of competitive restraint?

The profit maximizing "rational actor" clichés of realist political theory do not adequately explain the huge increases in the US nonprofit sector. But neither are nonprofits immune to market competition and bureaucratic pressure. Critics note that executive salaries among nonprofits hardly constitute vows of poverty, but the nonprofits in turn point the finger at the market and argue that they must pay the going rates for competent employees. This has been the case at least since the 1950s, when priests who were professors at Catholic universities won the right to income parity with their profession. The market effect on salaries has been essential for Catholic priests and nuns who would otherwise be facing retirement in poverty. But walking a line between principle and practicality is not new among professions whose origins extend to the medieval monasteries' struggle between gifts and simony.

Moral leadership is risky business in an already risky marketplace, and as a matter of survival many Catholic organizations have developed sophisticated hybrids of profit and nonprofit operations, especially in health care. A revealing test of the spirit of Catholic welfare corporatism

then, will be the extent it can guide a "fourth mode" of corporate interaction, that is, whether faith based corporations can survive commercially with their religious identities and principles intact. This also would depend on good faith collaboration among corresponding organizations in business and government, particularly if society is to find the financial resources to provide welfare state services in egalitarian, state-of-the-art ways.

Corporatism is sometimes referred to as a "private interest government" which typically requires that negotiation be conducted away from public scrutiny. Corporatism therefore runs against popular political fashion, which demands: (1) complete transparency to the public of all political processes and persons, in every way; and (2) as much unfettered free market competition as possible. The realistic approach to human nature assumes that unrestrained self interest requires both constant vigilance and structural liberty. But in the case of welfare services, and in a field with so conspicuous a presence among Catholic sponsored agencies, perhaps there an opportunity to relax some of the public's assumptions of moral relativism, and allow a corporatist efficiency to prevail.

On the other hand, by making a point of claiming the moral high ground, Catholic sponsored facilities must also be accountable in quantifiable ways as to how well they serve the poor, and with what justification they might claim regulatory latitude or market relief. Preserving welfare production from the litigious and profit-driven strategies which afflict the rest of the business world would benefit

everyone, but this assumes that religious principles have evident discipline.

Catholic sponsored social services, health care and education enjoy a great deal of trust on the part of the non-Catholic American public, which rightly expects that when its tax dollars go to religion-sponsored organizations, they embrace basic American concepts of fairness, including standards of religious tolerance and (non) preference. When the government runs public benefit facilities in similar lines of work, they are held to standards of non discrimination, fiscal accountability, and justice. No less should be expected from non-government organizations. Similarly, if bureaucrats are expected to be politically agnostic and not to exploit their positions for partisan benefit, so should religion-sponsored agencies resist the temptation to capitalize on their public-funded roles to press sectarian agendas.

### Some final thoughts

For Martin Luther King, political courage was drawn from personal faith or congregational fellowship, rather than from nationally organized religion. He failed to overcome the National Baptist Convention's entrenched, self-interested hierarchy, but King's experience points to two factors which also affirm Catholic welfare corporatism. First, what served Civil Rights so well was what Greeley calls "religious imagination." Matched with a clear perception of reality, religious imagination finds meaning in education, health care and social service, because it tests faith with usefulness, and requires productive change as well as belief. Second, King's

faith in congregations, rather than large organizations, is also accommodated by corporatism, especially when it puts to creative good use the versatile, adaptive potential of the corporation.

Many Catholic theologians have argued that religious sponsored work needs encouragement from government, not simply permission and protection. Others say that in a market system with many alternatives, if some religious method works demonstrably well, then resources will be found, in time, to support them without depending on government money. Religious freedom in the US allows a huge scope of religious practice and, according to the Emory Law Journal, in 1989 religious organizations raised \$54.3 *billion* in charitable contributions. This is hugely disproportionate to the \$11.4 billion raised by human services organizations and the \$10.7 billion raised that year by health organizations (the second and third highest fund-raisers). <sup>11</sup> The question to put to religious contributors, then, is how much more can be done for the needy when donations go to the direct works of religion, rather than to the religion itself? Of the individuals in the daily practice of Catholic sponsored welfare services interviewed, no one complained that there was not enough religion in their work, only that there was not enough money to do what they felt needed to be done.

Perhaps the best answer is a blend of charitable contributions with government funding, in the hope that it amounts to more than the sum of the parts. Though most of their revenues are from government, Fred Kammer says that at Catholic Charities, combined receipts from non governmental sources grew from \$139 million to \$620 million per year

from 1973 to 1993, and the participation of 20,000 volunteers in 1981 grew to 225,000 in 1993. 12

The welfare state is a relatively new invention in politics, which creates an enormous new realm of authority for government. The state's unique power of taxation allows an unprecedented expansion of public benefits, distributed more or less rationally and democratically, but it also created professional roles for the state as direct providers of these services. This is not a particularly oppressive condition among Catholic sponsored organizations, which have done well to the extent that they have mirrored American values of tolerance and pluralism. Accordingly, Catholic welfare corporatism is not meant to imply that the entire welfare state should pass from government hands, only that part of the delivery apparatus be shared and perhaps given some chance to experiment with techniques based in faith. We have seen that there can be rich varieties of corporations - as altruistic, diverse and enterprising (or as organic, subsidiarist and multimodal) as they can imagine themselves to be. A culture such as America's is fertile ground for experimenting with this form, even if it might require suspending the dogma of political correctness, or the insistence that Jesus is in competition for moral preeminence.

The question is not whether Catholic sponsored corporations could replace the US government in service to the poor - the US Catholic bishops have confirmed that they cannot. Even if all faith based institutions combined were to have the financial resources of the government, there are not nearly enough facilities or personnel to carry the load. Neither is it

right that welfare services be considered the exclusive art of the religious. The religious faithful are not the only ones to make personal sacrifices to serve the needy: many non-religious social workers, health professionals and teachers do their work with commitment comparable to the religious, and government workers are equally capable of selflessness and dedication.

Though there is power to be found in an institution's religious identity, careful consideration has to be given about how it is expressed, if it wishes to reach beyond its own special world. Perhaps the hardest lesson for religiously minded citizens is outlined by Michael Walzer:

Democracy is a way of allocating power and legitimating its use. . . What counts is argument among citizens. Democracy puts a premium on speech, persuasion, rhetorical skill. Ideally the citizen who makes the most persuasive argument - that is, the argument that actually persuades the largest number of citizens - get his [or her] way . . . 13

Coleman writes that Christians should be conscious of how religious language sounds to those who are not familiar with it. He says religious people need to be "bilingual" in order to make their case "*only in a discourse of secular warrant and public reason.*" 14

The power of Catholic corporatism lies in what it imagines a corporation to be, but the good it does depends on the people who create it and on the political culture it serves. The Church may not pay sufficient credit to what it learns by its institutional experience in the pluralist, multiethnic, democratic capitalist system of the United States, but Church-sponsored institutions flourish because American political culture suits the Church, as much as the Church serves American society. Modern public

benefit corporations all share origins anticipated in Catholic legal and professional history, but in the US, Catholic-sponsored education, health care and social service also thrives on a characteristically American amalgam of faith, politics and commerce.

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<sup>1</sup> Carlo Francesco Weiss, "Corporatism and the Italian Catholic Movement." Diss. Yale University, March 1955: 261

<sup>2</sup> Paul Tillich, Love, Power and Justice (NY: Oxford UP, 1954): 92.

<sup>3</sup> Elizabeth McKeown, "The Seamless Garment," The Deeper Meaning of Economic Life (Washington DC: Georgetown UP, 1986): 134.

<sup>4</sup> Lisa Cahill, Sex, gender, and Christian ethics (Cambridge (UK): Cambridge UP, 1996): 256.

<sup>5</sup> Demerath and Williams, Bridging of Faiths, 286.

<sup>6</sup> N. J. Demerath, "Religious Capital and Capital Religions." Daedalus (Summer 1991): 32

<sup>7</sup> Demerath and Williams, Bridging of Faiths, 286-187.

<sup>8</sup> Demerath and Williams, Bridging of Faiths, 298.

<sup>9</sup> Philippe C. Schmitter. "Corporatism is Dead! Long Live Corporatism!" Government and Opposition Winter 1989: 63

<sup>10</sup> Demerath and Williams, Bridging of Faiths, 257.

<sup>11</sup> Catherine Knight, "Must God Regulate Religious Corporations?" Emory Law Journal 2.2: 722.

<sup>12</sup> Fred Kammer "We Serve 10 Million in Need," letter, Wall Street Journal 4/25/95. He claims 10.6 million people in need are served by Catholic Charities of which one million are children, 6.4 million adults and 1.1 million elders.

<sup>13</sup> Coleman, 20 quoting Michael Walzer, The Spheres of Justice: A Defense of Pluralism and Equality (NY: Basic Books, 1983): 278.

<sup>14</sup> John A. Coleman, "The Two Pedagogies: Discipleship and Citizenship." Current Issues in Catholic Higher Education. Summer 1994: 20. Italics in the original.

APPENDIX A  
DIFFERENCES BETWEEN GIFTS AND COMMODITIES

<u>Commodity</u>	<u>Gift</u>
completely alienable	spiritual aspect inalienable
finite obligation	open ended obligation
motion mechanical,	motion organic, aims to
can terminate	perpetuate
increase is separable from object	increase is attached to gift
profit taking	appreciation
increase to individual	increase to group
freeform, unwritten	explicit contractual calculation
anticipation of return	
can be between two individuals	requires three-parties

APPENDIX B  
OTHER MODES OF FICTIVE FAMILY

*Confraternity*

Another multimodal dimension of monasticism which multiplied its effect was its status as an adoptive, fictive family. In one sense monasteries "adopted" wealthy patrons by granting them something called confraternity, by which they were associated with the abbey, much as monks from other abbeys with whom they had exchanged prayers and "acts of ritual charity."<sup>1</sup> For other, less wealthy faithful, there was another type of pretend family which religion could offer, one which also provided one of the few available avenues for property acquisition.

*Godparenting*

Beginning about the sixth century, under the official auspices of the Church, the *commater/compater* (godparenting) custom enabled unrelated families to choose a sponsorship arrangement by which property rights could be transferred outside the bonds of matrimony.<sup>2</sup> "Unlike the involuntary ties of kinship, those of ritual sponsorship are formed on the basis of choice. This enables the godparent to serve as a social link connecting divergent income groups, disparate social strata, and separated localities . . . "<sup>3</sup> There is an affinity suggested here between the clientelism of godparenting and the integrative yet hierarchical scheme of corporatism, particularly the nineteenth century Catholic social-doctrine versions of corporatism which sought to integrate labor and management into the same representative bodies.<sup>4</sup> All share the clientelist precedent of

the late-Roman *patrocinium*, but Godparenting added the benefit of the written accountancy and righteous imprimatur of the Church. 5

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<sup>1</sup> S. White 26. An early example from 942 were the monks of Saint Marital, Fleury and Solignac who arranged a formal exchange of prayers, a "gift" which became formalized into a "confraternity" status, a type of associate membership. Confraternity first was extended to other monasteries, then later offered to secular clerics, especially Bishops. Little 62.

<sup>2</sup> Sidney Mintz and Eric R. Wolf "An Analysis of Ritual C-Parenthood (Compardrazgo)" Peasant Society Jack M. Potter, May N Diaz, George Foster, eds., (Boston: Little Brown, 1967) 179.

<sup>3</sup> Mintz and Wolf 190.

<sup>4</sup> The modern equivalent of a godparent's gift of land was stock participation by workers.

<sup>5</sup> Cantor 199.

## WORKS CITED

- Abulafia, David. The Two Italies: Economic Relations Between the Norman Kingdom of Sicily and the Northern Communes. Cambridge: UP, 1977.
- Ahmann, Matthew. "Catholic Charities and Pluralism: Some Problems, Trends and Opportunities." Social Thought. Spring 1988: 4-12.
- Allitt, Patrick. Catholic Intellectuals and Conservative Politics in America: 1950-1985. Ithaca, NY: Cornell UP, 1993.
- Association of Catholic Colleges and Universities. Current Issues in Catholic Higher Education: Exploring our Identity: Catholic and American. Washington, DC: ACCU, 1994.
- . Current Issues in Catholic Higher Education: Social Teaching, Social Action. Washington, DC: ACCU, 1990.
- Baker, Peter. "Religious guides set for federal workplace: Voicing of views allowed." Boston Globe. Aug. 14, 1997: A3.
- Balinski, Rebecca, trans. An Intellectual History of Liberalism. By Pierre Manent. Princeton: UP, 1994.
- Barraclough, Geoffrey. Barraclough, Geoffrey, trans. "The Proprietary Church as an Element of Medieval Germanic Ecclesiastical Law" Mediaeval Germany 911-1250. Vol. II. Essays. By Ulrich Stultz. Oxford: Basil Blackwell, 1939: 35-70.
- Bell, Daniel. Communitarianism and its Critics. Oxford: UP, 1993.
- Belloc, Hilaire. The Servile State. Intro. Robert Nesbit. Indianapolis: Liberty Classics, 1977.
- Benestad, J. Brian. The Pursuit of a Just Social Order: Policy Statements of the US Catholic Bishops, 1966-1980. Washington DC: Ethics and Public Policy Center, 1982.
- Berger, Suzanne, ed. Organizing Interests in Western Europe. NY: Cambridge UP, 1981.
- Bernadin, Joseph Cardinal. "What makes a hospital Catholic? - a response." America. May 4, 1996: 9-12
- Berreby, David. "Unabsolute Truths: Clifford Geertz." The New York Times Magazine. April 9, 1995: 44-47.
- Bianchi, Patrizio. "The IRI in Italy: Strategic Role and Political Constraints." West European Politics. 10 April 1987: 269-290.

- Black, Antony. Guilds and Civil Society in European Political Thought From the Twelfth Century to the Present. Ithaca NY: Cornell UP, 1984.
- Bohan, Ruth. "Just like family: Maplehurst makes seniors feel right at home." Chicago Sunday Tribune. 7 April 1996, Section 17: 1+.
- Bolton, Brenda. The Medieval Reformation. Baltimore: Edw. Arnold, 1983.
- Boston Globe. "Catholic Charity." Editorial. November 18, 1995
- Bottomley, Frank. Attitudes To The Body In Western Christendom. London: Lepus, 1979.
- Bowen v. Kendrick*. 56 LW 4818. US Supreme Ct. 1988
- Brand, Donald R. Corporatism and the Rule of Law: A Study of the National Recovery Administration. Ithaca: Cornell UP, 1988.
- Brinton, Carne, John. B. Christopher and Robert Lee Wolff. A History of Civilization. Englewood Cliffs, NJ: Prentice Hall, 1967.
- Brodeur, Rev. Dennis "The Ethics of Cruzan." Health Progress Oct. 1990: 42-47a
- - - . "The Rights Debate." Health Progress. June 1990: 48+.
- Bryk, Anthony S., Valerie E. Lee, and Peter B. Holland. Catholic Schools and the Common Good. Cambridge, MA: Harvard UP, 1993.
- Bulman, Raymond F. "'Myth of Origin,' Civil Religion and Presidential Politics." Journal of Church and State. (Summer 1991): 525-539.
- Burke, Edmund. Reflections on the Revolution in France. Conor Cruise O'Brien, ed & intro. NY: Pelican, 1969.
- Burtchaell, James T. "Human Life and Human Love." Commonweal. Nov. 15, 1968: 245-252.
- Buxbaum, James M. Corporate Politeia. Washington DC: University Press, 1981.
- Byrnes, Timothy. "The Politics of the American Catholic Hierarchy" Political Science Quarterly. Fall 1993: 497+.
- Cafardi, Nicholas and Jordon Hite. "Applications of Canonical Norms to Health Care Properties." Health Progress. Sept. 1985: 74.
- Cahill, Lisa. "Theology and Bioethics." Journal of Medicine and Philosophy. June 1992: 264-270.

- Callahan, Sidney. "Conscience and Commitment in a Changing Church." Edna Forbes Lecture. St. Paul Church, Cambridge. April 6, 1997.
- Canon Law Society of America, Code of Canon Law (CIC) Washington, DC: CLSA, 1983.
- Cantor, Norman F. The Civilization of the Middle Ages. NY: HarperCollins, 1994.
- Caplis, Sister Regina. "Catholic Social Service and Transcendental Values." Social Thought. Winter 1983: 3-16.
- - - . "Science no Substitute for Spirituality." Social Thought. 1.9 (1983)
- Carlin, David R. "The Suicide of Contemporary Liberalism" America. Sept. 24, 1994: 9-11.
- Cassidy, Judy. "Catholic Identity Is Based On Flexible, Reasonable Tradition" Health Progress. Jan-Feb. 1994: 16+.
- Catechism of the Catholic Church. NY: Doubleday, 1994.
- "Catholic Charity." Editorial. Boston Globe November 18, 1995: 10.
- Catholic Health Association of the United States. No Room in the Marketplace: The Health Care of the Poor. St. Louis, MO: CHA, 1989.
- - - . The Dynamics of Catholic Identity in Healthcare: A Working Document. St. Louis, MO: CHA, 1987.
- Cawson, Allan. Corporatism and Welfare. London: Heinemann, 1982.
- - - , ed. Organized Interests and the State. Beverly Hill: Sage, 1985.
- Centro Italiano di Studi Sull'Alto Medioevo. Il Monachesimo Nell'Alto Medioevo e La Fromazione Della Civiltà Occidentale Spoleto, 1957.
- The Christian Century. "Catholic Bishops on health care reform." May 12, 1993: 513+
- Chroust, Anton-Hermann. "The Corporate Idea and the Body Politic in the Middle Ages." Review of Politics. Oct. 1947
- Chubb, Judith. Patronage, Power, and Poverty in Southern Italy. Cambridge: UP, 1982.
- Coglet, John, et. al. "The Crisis II: What Do The People Say?" Commonweal Oct. 11, 1968: 51-67.
- Cohen, Jessica. "The Greatest Story Never Told." Utne Reader. Mar-Apr. 1997:68-73.

- Cohen, Warren. "Vouchers for good and ill." US News and World Report. April 27, 1998: 46
- Coleman, John A., ed. One Hundred Years of Catholic Social Thought. Maryknoll, NY: Orbis, 1991.
- . "The Two Pedagogies: Discipleship and Citizenship." Current Issues in Catholic Higher Education. Summer 1994: 17-36
- Condon, David M. "Politics, Priests, and Protests: The Response of the Catholic Church to the Boston Busing Crisis." Unpublished ts. Archives of the Archdiocese of Boston.
- Congregation for Catholic Education. Religious Dimensions of Education in Catholic Schools. Vatican City: 1988.
- Congregation for the Doctrine of the Faith. Declaration on Euthanasia. Rome, 1980. Washington, D.C.: USCC, Publication 704-9.
- Constable, Giles. Monastic Tithes. Cambridge: UP, 1964.
- . Medieval Monasticism: A Select Bibliography. Toronto: UP, 1976.
- Convey, Eric. "Bishop calls off merger of Lifespan, St. Joseph." Boston Herald Dec. 12, 1997: 43.
- Corbin, Brian R. "Unfinished Business: Community Economic Development and the U.S. Catholic Bishops' Economic Pastoral." Social Thought. Spring 1989: 35-47.
- Coriel, Sister Bernice. "Values and Vision." Health Progress. March 1992: 34+.
- Cox, Harvey. "The Warring Visions of the Religious Right." Atlantic Monthly. November 1995: 59-69.
- Crepaz, Markus M.L. "Corporatism In Decline? An Empirical Analysis of the Impact of Corporatism on Macroeconomic Performance and Industrial Disputes in 18 Industrialized Democracies." Comparative Political Studies. July 1992: 139-169.
- Curran, Charles E. Catholic Higher Education, Theology, and Academic Freedom. Notre Dame: UP, 1990.
- . Moral Theology: A Continuing Journey. Notre Dame: UP, 1982.
- Day, Dorothy. The Long Loneliness. NY: Harper Row, 1952.

- deBlois, Jean Katherine. "The Catholic Hospital: An Analysis and Critique of the Theological Rationale for Its Continued Existence." Diss. Catholic University, 1988.
- Decarreux, Jean. Monks and Civilization. London: Allen & Unwin, 1964.
- Dedinger, Donald. "Factors Associated with Social Action and Convening: A Study of the National Conference of Catholic Charities." Social Thought. Spring 1978: 3-19.
- De Felice, Renzo. Interpretations of Fascism. Cambridge, MA: Harvard UP, 1977.
- De Jasney, Anthony. "After Socialism, What?" National Review. May 27, 1991: 25-28.
- De La Torre, Antonio. "*Relacionese De Espana Con Federico II Y El Imperio*" Atti del Convegno Internazionale di Studi Federiciani. Palermo: Università di Palermo, Catania e Messina , 1952: 161-167.
- Demerath, N.J., III and Rhys H. Williams. A Bridging of Faiths: Religion and Politics in a New England City. Princeton NJ: UP, 1992.
- - - . "The Moth and the Flame: Religion and Power in Comparative Blur." Sociology of Religion 1994 55.2 105-117.
- - - . "Religious Capital and Capital Religions." Daedalus. (Summer 1991): 21-40
- - - , et al., eds. Sacred Companies: Organizational Aspects of Religion and Religious Aspects of Organizations. NY: Oxford UP, 1998.
- De Michelis, Giuseppe. World Reorganization on Corporative Lines. London: Allen & Unwin, 1935.
- Deutsch, Karl. The Nerves of Government. London: Glencoe, 1963.
- DiDomizio, Daniel. "Catholic Social Teaching: Evolution or Revolution?" The Catholic World (March/April 1992): 91-95.
- Dionne, E.J. "Why the Right is Wrong" Utne Reader. (May-June 1996): 27-32.
- DiScala, Spencer. Renewing Italian Socialism: Nenni to Craxi. NY: Oxford UP, 1988.
- Doerr, Ed. "Vatican Interests Versus the 'Public Interest'" Humanist. Sept.-Oct. 1993: 33-35.
- Douglass, R. Bruce, ed., The Deeper Meaning of Economic Life: Critical Essays on the U.S. Catholic Bishops' Pastoral Letter on the Economy. Washington D.C.: Georgetown UP, 1986.

- Dourley, John P. The Illness That We Are: A Jungian Critique of Christianity. Toronto: Inner City Books, 1984.
- Drew, Katherine Fischer, trans. The Lombard Laws. Philadelphia: U. Penn. Press, 1973.
- Drucker, Peter F. Post Capitalist Society. NY: Harper Collins, 1993.
- Duncan, Dwight G. and Peter Lubin. "The Use and Abuse of History in *Compassion in Dying*." Harvard Journal of Law and Public Policy. Fall 1996: 176-214.
- Durkheim, Emile. On Morality and Society. Robert N. Bellah, ed. Chicago: UP, 1973.
- - - . Division of Labor. Trans. George Simpson NY: FreePress/Macmillan, 1933.
- Einhorn, Eric S. and John Logue. Modern Welfare States. NY: Praeger, 1989.
- Ellement, Joan. "Carney loses \$1.2 million in antigay bias case." Boston Globe January 3, 1997: B1+.
- Elshtain, Jean Bethke. "Catholic Social Thought, The City, and Liberal America." Catholicism, Liberalism and Communitarianism. Kenneth L. Grasso, Gerard V. Bradley, and Robert P. Hunt, eds. Lanham, Maryland: Rowan and Littlefield, 1995: 97-114.
- - - . "Looks that kill." New Republic. Jan. 20, 1997: 23.
- Erdmann, Andrew P.N. "Mining for the Corporatist Synthesis: Gold in American Foreign Economic Policy, 1931-1936." Diplomatic History. Spring 1993: 171-200.
- Field, G. Lowell. The Syndical and Corporative Institutions of Italian Fascism. NY: AMS Press, 1968. (Reprint of Colombia UP, 1938).
- Fonner, Edwin Jr., and Boxiong Tang. "Six challenges facing Catholic health care marketing." Journal of Health Care Marketing. Spring 1995 : 13+.
- Foster, Rev. Michael Smith. "How is a marriage declared null?" Boston Globe. 20 April 1997: F3.
- Freud, Sigmund. Civilization and its Discontents. James Strachey, trans. NY: W. W. Norton, 1961.
- Frug, Gerald E. "The City as a Legal Concept." Harvard Law Review. April 1980: 1057-1153.

- Fuchs, Josef. "Innovative Morality" Theological Digest. Winter 1990: 303-312.
- Galbraith, John Kenneth. The New Industrial State. Boston: Houghton Mifflin, 1985.
- Gallin, Alice, ed. American Catholic Higher Education. Notre Dame: UP, 1992.
- Glass, Stephen. "After the Fall: Why Ralph Reed Left the Christian Coalition" The New Republic. May 26, 1997: 14-16.
- Greeley, Andrew M. The Religious Imagination. NY: Sadlier, 1981.
- . American Catholics Since the Council: An Unauthorized Report. Chicago, Ill: Thomas More Press, 1985.
- Greenfield, Sidney M. The Patrimonial State and Patron-Client Relations in Iberia and Latin America. Amherst, MA: International Area Studies Program, University of Massachusetts, 1976.
- Guccione, Eugenio Cristianesimo sociale in Giuseppe Toniolo. Palermo, Italy: Renzo Mazzone, 1972.
- Hardon, John A, S.J. Religions of the World. NY: Image (Doubleday) , 1963.
- Häring, Bernard. Medical Ethics. Notre Dame: Fides, 1973.
- Harvard Law Review Association. "Developments in the Law: Nonprofit Corporations" 105 Harv. L. Rev 1578 (May 1992).
- Harvey, Rev. Thomas. "A National Housing Vision: We Need More Than A Dream." Social Thought. Winter 1984: 3-15.
- Health Progress. "CHA Principles for Healthcare Reform." June 1990: 52-53.
- Hehir, J. Bryan. "The Act of Disagreeing." Commonweal. March 10, 1995: 7-8.
- . "Get a (culture of) life" Commonweal. May 19, 1995: 8-9.
- . "Health Care for All" Commonweal. May 7, 1993: 7-9.
- . Lecture series. St. Paul Church, Cambridge MA. Fall 1996-Spring 1998.
- . "Papal Foreign Policy." Foreign Policy. Spring 1990: 26-48.
- . "Pluralism in the Catholic Church." Social Thought. Spring 1988: 13-21.

- - - . "Policy Arguments in a Public Church: Catholic Social Ethics and Bioethics" Journal of Medicine and Philosophy. June 1992: 347-364.
- - - . "Reordering the World; John Paul II's *Centesimus Annus*." Commonweal. June 14, 1991: 393-394.
- - - . "The Right and Competance of the Church in the American Case." One Hundred years of Catholic Social Thought. John Coleman, ed. Maryknoll, NY: Orbis, 1991: 55-71.
- - - , et. al., "Theology and Philosophy in Public: A Symposium on John Courtney Murray's Unfinished Agenda." Theological Studies. Dec. 1979: 700-715.
- Heilbrunn, Jacob. "Neocon v Theocon." New Republic. Dec. 30 1996. 20-24.
- Heiman, George, Tr. & ed. Otto Gierke Associations and Law: The Classical and Early Christian Stages. Toronto: UP, 1977.
- Hellman, John. "The Anti-Democratic Impulse in Catholicism: Jaques Maritain, Yves Simon, and Charles de Gaulle during World War II." Journal of Church and State. Summer 1991: 453-471.
- Henriot, Peter J. "Pluralism: The Role of the Church in Public Policy." Social Thought. Spring 1988: 37-47.
- Herzlinger, Regina E. and William S. Krasker. "Who profits from nonprofits?" Harvard Business Review. Jan.-Feb. 1987: 93-105.
- Hightower, Jim. "Chomp!" Utne Reader. March-April 98: 57-104
- Hine, David. "Social Democracy in Italy." Social Democratic Parties in Western Europe. William Paterson & Alistair Thomas, eds. London: Croon Hellm, 1977: 67-85.
- Hirsch, Hans. "The Constitutional History of the Reformed Monasteries During the Investiture Contest." Mediaeval Germany 911-1250. Trans. & intro. Geoffrey Barraclough. Vol II. Essays. Oxford: Basil Blackwell, 1939: 131-174.
- Hite, Rev. Jordan "An Innovative Way To Continue the Ministry: A Catholic Multi-institutional Healthcare System Achieves Public Juridic Person Status." Health Progress. September 1992: 56-58.
- Hobsbawm, Eric. The Age of Extremes. NY: Pantheon, 1994.
- Hoff, Marie D. "Response to the Catholic Bishops' Letter on the US Economy" Social Thought. Winter 1989: 41-52.
- Hollenbach, David. Claims in Conflict. NY: Paulist Press, 1979.

- - - . Justice, Peace and Human Rights: American Catholic Social ethics in a Pluralistic World. NY: Crossroad, 1988.
- - - . "Liberalism, Communitarianism and the Bishops' Pastoral Letter on the Economy" The Annual of the Society of Christian Ethics. Knoxville, TN: Georgetown UP, 1987. 19-40.
- - - . "The Pope and Capitalism." America. June 1, 1991: 590-591.
- - - . "Religion and Political Life." Theological Studies. March 1990: 87-106.
- - - . "Religion, Morality and Politics." Theological Studies. March 1988: 67-89.
- - - , et. al., "Theology and Philosophy in Public: A Symposium on John Courtney Murray's Unfinished Agenda." Theological Studies. Dec. 1979: 700-715.
- Hone, Michael C. "Aristotle and Lyndon Baines Johnson: Thirteen Ways of Looking at Blackbirds and Nonprofit Corporations - The American Bar Association's Revised Model Nonprofit Corporation Act" Case Western Reserve Law Review (1989): 30 Case W. Res 751
- Horgan, Mary Ellen. Personal interview. June 2, 1997.
- Howarth, Brother Joseph. "Juridic Person or Private Association: Choosing a Canonical structure." Health Progress. September 1986: 51
- Hubbard, Howard. "A Call to Harvest, Ministry to America" Social Thought. 1980: 27-39.
- Hultman, C.I. "Uncompensated care before and after prospective payment: The role of hospital location and ownership." Health Services Research. 26.5 (1991): 613-22.
- Hyde, Lewis. The Gift: Imagination and the Erotic Life of Property. NY: Vintage, 1979.
- Japsen, Bruce. "Catholic group bans for-profits." Modern Healthcare. June 12, 1995: 2.
- - - . "Catholic providers seek recapitalization strategies." Modern Healthcare. July 8, 1996: 50-51.
- - - . "Columbia, Catholic link has new foe." Modern Healthcare. June 26, 1995: 10.
- John Paul II. "Address to Bishops of Brazil, July 31, 1980" No Room in the Marketplace. St. Louis, MO: Catholic Health Association of the United States, 1986: x.

- - - . On Catholic Universities *Ex Corde Ecclesiae*. Washington DC: USCC, 1996. Publication 399-X.
- - - . On Human Work *Laborem Exercens* Third encyclical letter, September 14, 1981. Washington DC: USCC, 1995.
- - - . On the Hundredth Anniversary of Rerum Novarum *Centesimus Annus* Encyclical Letter May 1, 1991. Washington DC: USCC, Publication No. 436-8.
- - - . Sapientia Christiana in American Catholic Higher Education: Essential Documents 1967-1990 Alice Gallin, O.S.U., ed. Notre Dame: UP, 1992.
- - - . On Social Concern *Sollicitudo Rei Socialis* Encyclical Letter Dec. 30, 1987. Washington D.C.: USCC Publication No. 205-5.
- Johnson, Donald E.L. "Nonprofit's Taxed Unit Can Sell Stock." Modern Healthcare. June 1981: 90-92.
- Johnson, Sandra. "After Cruzan: The U.S. Supreme Court's Decision Settles The Case But Raises New Questions." Health Progress. Oct. 1990: 38+.
- - - . "Court Erodes Constitutional Supports for Tax Exemptions ." Health Progress. April 1990: 15-16.
- Jolowicz, H.F. Historical Introduction to the Study of Roman Law. Cambridge: UP, 1932.
- Jung, C. G. The Psychology of Transference. R.F.C. Hull, trans. Princeton, UP (Bollingen), 1954.
- Kammer, Fred. "The Pluralism Diamond." Social Thought. Spring 1988: 23-35.
- - - . "We Serve 10 Million in Need." Letter. Wall Street Journal. April 25, 1995
- Kanter, Rosabeth Moss. Commitment and Community: Communes and Utopias in Sociological Perspective. Cambridge, MA: Harvard UP, 1972.
- Kantorowicz, Ernst. Frederick the Second 1194-1250. E.O. Lorimer, trans. NY: Ungar, 1957. (first pub. 1931.)
- - - . The King's Two Bodies. Princeton NJ: UP, 1957.
- Katzenstein, Peter. Corporatism and Change. Cornell UP, 1984.

- Kauffman "The Modern Association: Preserving a Catholic Presence in the US Healthcare System." Health Progress. Jul.-Aug. 1990: 35-46.
- Keane, John. Introduction. Contradictions of the Welfare State. By Claus Offe. Cambridge MA: MIT Press, 1984.
- Kent, Peter C. The Pope and the Duce: The International Impact of the Lateran Agreements. NY: St. Martin's, 1981.
- Klein, Joe. "In God They Trust." The New Yorker. June 16, 1998: 40-48.
- Knight, Catherine. "Must God Regulate Religious Corporations?" Emory Law Journal Spring 1993: 721+.
- Kortenaar, Henry ten. "The Crisis I: Does the Pope Realize?" Commonweal. Oct. 1968: 49-50.
- Koziol, Geoffrey "The Monastic Idea of Justice in the Eleventh century." The Medieval Monastery.
- Lader, Lawrence. Politics, Power and the Church. NY: MacMillan, 1987.
- Ladner, G.B. "Aspects of Medieval thought on Church and State." Review of Politics. Oct. 1947: 4-29.
- Landon, Harold R., ed. Reinhold Niebuhr, A Prophetic Voice In Our Time. Greenwich, CT: Seabury Press, 1962
- Lange, Peter and Sidney Tarrow, eds. Italy in Transition. Totowa NJ: Frank Cass, 1980.
- - - , and Marino Regini, eds. State, market and social regulation: new perspectives on Italy. NY: Cambridge UP, 1989
- LaPalombara, Joseph. Democracy Italian Style. New Haven: Yale UP, 1987.
- - - . Interest Groups in Italian Politics. Princeton: UP, 1964.
- - - . "The Utility and Limitations of Interest Group Theory in Non-American Field Situations." Comparative Politics, a reader. Harry Eckstein and David E. Apter, eds. NY: Free Press of Glencoe, 1963.
- Laqueur, Walter, ed. Fascism: A Reader's Guide. Berkeley: U. of Cal., 1976.
- La Reggenza Italiana del Carnaro. Disegno di un Nuovo Ordinamento dello Stato Libero di Fiume, XII Settembre MCMXIX. Rome, 1920.
- Leblanc, A.J. "Undercompensated, unpopular services in hospitals: The case of HIV/AIDS." Diss. Pennsylvania State University (1991).
- Leege, David C. "The Catholic Vote in '96" Commonweal. 27 Sept. 1996: 11-18.

- Lehman, Nicholas. Rev. of Active Faith: How Christians Are Changing the Soul of American Politics, by Ralph Reed, and The Godless Constitution: The Case Against Religious Correctness, by Isaac Kramnick and R. Laurence Moore. New Republic. July 8, 1996: 32-36
- - - . "Citizen 501 (c) (3)." Atlantic Monthly. Feb. 1997: 18-20.
- Lemarchand, Rene. "Comparative Political Clientelism: Structure, Process, and Optic." Political Clientelism, Patronage and Development. S.N. Eisenstadt and Rene Lemarchand, eds. Beverly Hills: Sage, 1981: 7-34.
- Lembruch, Gerhard and Phillippe C. Schmitter, eds. Patterns of Corporatist Policy-Making. Beverly Hills: Sage, 1982.
- Leon, Norman. "Federal Courts: The Second Circuit's Application of Standing In *In Re United States Catholic Conference: Another Plea for Clarity and Consistency*" Brooklyn Law Review. Summer 1991: 429+ .
- Linehan, Peter and Brian Tierney, eds. Authority and Power: Studies on Medieval Law and Government. Cambridge: UP, 1980.
- - - . "The Spanish Church revisited: the episcopal *gravamina* of 1279." Authority and Power: Studies on Medieval Law and Government. Cambridge: UP, 1980. Linehan, Peter and Brian Tierney, eds.
- Little, Lester K. Religious Poverty and the Profit Economy in Medieval Europe. London: Paul Elek, 1978.
- Lovin, Robin W. Reinhold Niebuhr and Christian Realism. Cambridge, UK: UP, 1995.
- Lowi, Theodore J. The End of Liberalism. 2nd ed. NY: W W Norton, 1979.
- Lutz, Sandy. "Small for-profit chain seeks Catholic group's blessing." Modern Healthcare. Oct. 30 1995: 33-34.
- Lynch, J. H. Simoniackal Entry into Religious Life from 1000 to 1260. Columbus: Ohio UP, 1976.
- Lyttelton, Adrian. The Seizure of Power: Fascism in Italy 1919-1929. Princeton: UP, 1973.
- Macpherson, Peter. "Church and fate." Hospitals and Health Networks. March 20, 1996: 33-36.
- Maguire, Marjorie Reiley. "Having One's Cake and Eating It Too: Government Funding and Religious Exemptions for Religiously Affiliated Colleges and Universities." Wisconsin Law Review. Sept/Oct. 1989: 1061+ .

- Maida, Adam J. and Nicholas Cafardi. Church Property, Church finances, and Church-related Corporations. St. Louis MO: Catholic Health Association, 1983.
- Maier, Charles S. In Search of Stability. NY: Cambridge UP, 1987.
- . "Preconditions for Corporatism." Order and Conflict in Contemporary Capitalism. John H. Goldthorpe, ed. Oxford: Clarendon, 1984. 39-59.
- Malloy, James M., ed. Authoritarianism and Corporatism in Latin America. Pittsburgh: UP, 1977.
- Marty, Martin. "Religion, Theology, the Church, and Bioethics." Journal of Medicine and Philosophy. June 1992: 274+.
- Maslow, A.H. Motivation and Personality. NY: Harper & Bros., 1964.
- McCormick, Richard A., S.J. The Critical Calling: Reflections on Moral Dilemmas Since Vatican II. Washington D.C.: Georgetown UP, 1989.
- . "Notes on Moral theology." Theological Studies. 1980.
- McGeedy, Mary Rose. "Welfare Reform: The View From Covenant House." America. Sept. 24 1994: 7-8.
- McKeown, Elizabeth. "The Seamless Garment" The Deeper Meaning of Economic Life. Washington DC: Georgetown UP, 1986.
- McLellan, Daniel. "A History of the Catholic Charitable Bureau of the Archdiocese of Boston." Diss. U. of Notre Dame, 1984.
- Miller, Arthur Selwyn. "Legal Foundations of the Corporate State". Paper presented at the Annual Meeting of the Association for Evolutionary Economics, New Orleans, LA. 27-28 December, 1971.
- Mitchell, John J. "Economic Justice and the American Promise." Catholic World. May/June 1991: 105-109.
- Modde, Sister Mary. "Private Association: Opportunity for Laity." Health Progress. September 1986: 46-50.
- Molony, John N. The Emergence of Political Catholicism in Italy: PPI 1919-1926. Totowa, NJ: Rowman & Littlefield, 1977.
- "Monasticism." The New Catholic Encyclopedia. Catholic University. NY: McGraw Hill, 1967.

- Monson, R. Joseph. "Social Responsibility and the Corporation: Alternatives for the Future of Capitalism." Paper presented at the Annual Meeting of the Association for Evolutionary Economics, New Orleans, LA. 27-28 December, 1971.
- Morrisey, John. "Deal keeps Boston hospital Catholic." Modern Healthcare. 11 Nov. 1996: 18.
- Morrisey, F.G. "Juridic Status: Canonical Provisions, Possible Applications." Health Progress. Sept. 1986: 41-45.
- . "What makes and institution Catholic?" Jurist. June 1987: 530-540.
- Moynihan, Daniel Patrick "Family and Nation Revisited" Social Thought. 16.2 (1990): 49 - 59
- . "Toward a Post-Industrial Social Policy" Public Interest. Summer 1989: 16-27.
- Muro, Mark. "Shining light on a cardinal's dark side." Boston Globe. July 24, 1992: 21+.
- Mussolini, Benito. Four Speeches on The Corporate State. Rome: "Laboremus", 1935
- Najemy, John M. Corporatism and Consensus in Florentine Electoral Politics 1280-1400. Chapel Hill: UNC, 1982.
- Nanko, Carmen. Campus Ministry: Identity, Mission and Praxis. Washington D.C.: National Catholic Educational Association, 1997.
- National Catholic Educational Association. The Catholic High School: A National Portrait. Washington DC: NCEA, 1985.
- . Those Who Hear You Hear Me. Washington, DC: USCC 1995
- . What Makes a School Catholic? Washington DC: NCEA, 1991.
- National Conference of Catholic Bishops. Basic Teaching in Catholic Religious Education. Washington, DC : USCC, 1973.
- . Catholic Higher Education and the Pastoral Mission of the Church. Washington, DC: USCC, 1980
- . Economic Justice For All. Washington, DC: USCC, 1986.
- . Ethical and Religious Directives for Catholic Health Care Services. Washington, DC: USCC, 1996.
- . Guidelines for Doctrinally Sound Catechetical Materials. November 21, 1990. Publication 419-8. Washington DC: USCC, 1990.

- . Health and Health Care: A Pastoral Letter of the American Catholic Bishops. November 19, 1981. USCC Publication 830-4. Washington DC: USCC, 1982.
- . Moral Principles of Welfare reform. Washington DC: USCC, 1995.
- . Nutrition and Hydration: Moral and Pastoral Reflections. Committee for Pro-Life Activities. Washington DC: 1992.
- . Research on Men's Vocations. Washington DC: USCC, 1984.
- . Seminarians in theology: A National Profile. Washington D.C.: USCC, 1986.
- . To Teach as Jesus Did. Washington, DC: USCC, 1972.
- Nealon, Patricia. "Haitian services center in turmoil: Officials quit amid struggle over Catholic Charities' policies." Boston Globe. June 8, 1996: 13+.
- Negri, Gloria. "Sister Eustace: 'The Saint of the South End.'" Boston Sunday Globe. Oct. 19, 1997: City 1+.
- Nicholas, Barry. An Introduction to Roman Law. Oxford: UP, 1962.
- Niebuhr, Reinhold. Christian Realism. NY: Scribner's sons, 1953.
- . Faith and Politics. NY: Braziller, 1968.
- . Nations and Empires. London: Faber & Faber, 1959.
- Norwich, John Julius. Normans in the South, 1016-1130. London: Longmans, 1967.
- Notre Dame d'Homblieres. The Cartulary and Charters of Notre Dame of Homblieres. Theodore Evergates, ed. of material by Wm. Mendel Newman. Cambridge, MA: Medieval Academy of America, 1990
- Novak, Michael. "The Authority of National Conferences of Bishops: Catholic Social Thought." America. Jan. 13, 1990: 10-21.
- . The Catholic Ethic and the Spirit of Capitalism. NY: Free Press, 1993.
- , ed. Democracy and Mediating Structures. Washington, DC: AEI, 1980.
- . Freedom with Justice. SFO: Harper & Row, 1984.
- . Toward a Theology of the Corporation. Washington, DC: AEI Press, 1981.

- Offe, Claus. Contradictions of the Welfare State. Cambridge, MA: MIT Press, 1984.
- Olson, Mancur. The Rise and Decline of Nations: Economic Growth, Stagflation and Social Rigidities. New Haven: Yale UP, 1982.
- O'Rourke, Rev. Kevin D., deBlois, Sr. Jean. "Removing Life Support: Motivations, Obligations." Health Progress. Jul-Aug. 1992: 20+.
- O'Sullivan, Gerald. "Catholicism's New Cold War: The Church Militant Lurches Rightward." Humanist. Sept/Oct. 1993: 27-32.
- Parson, Talcott, trans. The Protestant Ethic and the Spirit of Capitalism. By Max Weber. London: George Allen & Unwin, 1976 (1930).
- Paul VI. On the Development of Peoples: Populorum Progressio. March 26, 1967. Washington DC: USCC, 1967.
- . On the Regulation of Birth: Humanae Vitae. Washington DC: USCC: 1968.
- Pearson, Virginia, and Julie Trocchio. "Telling It Like It Is: CHA's Social Accountability Budget Helps Facilities Report the Good Work They Do." Health Progress. June 1990: 54-59.
- Peterson, David S. "Conciliarism, Republicanism and Corporatism: the 1415-1420 Constitution of the Florentine Clergy." Renaissance Quarterly. Winter 1989.
- Pham, Alex. "Catholic hospitals try for balance: Must keep convictions and be profitable, official says." Boston Globe. June 20, 1996: 43.
- Pike, Frederick B. And Thomas Stritch, eds. The New Corporatism. Notre Dame: UP, 1974.
- Pope, Stephen. "Agape and human nature: contributions from neo-Darwinism." Social Science Information. 31.3 (1992): 509-529.
- . "Christian Love For The Poor: Almsgiving And The 'Preferential Option.'" Horizons. Feb 12, 1994: 287-312.
- . The Evolution of Altruism and the Ordering of Love. Washington DC: Georgetown UP, 1994.
- . "Leo XIII, *Rerum Novarum*." The New Dictionary of Catholic social thought. Ed. Judith Dwyer. Collegeville, MN: Liturgical Press, 1994: 828-844.
- . Personal interview. June 30, 1997.

- Potter, Jack M., May Diaz and George Foster, eds. Peasant Society: A Reader. Boston: Little, Brown, 1967.
- Powell, James Matthew. "The Economic Policy of Frederick II in the Kingdom of Sicily." Dis., Indiana U., 1960.
- Proctor, Evelyn S. Alfonso X of Castile. Westport, CT: Greenwood Press, 1980.
- Pryor, Frederick L. "Corporatism as an Economic System: A Review Essay." Journal of Comparative Economics. 12 (1988): 317-344 .
- Putnam, Robert D. Making Democracy Work: Civic Traditions in Modern Italy. Princeton: UP, 1993.
- Rahner, Karl. "Changeable and Unchangeable Factors in the Church" Theological Investigations. 1976
- Ressler, Mark A. "A Formulation of Roman Catholic Moral Thought On Fetal Tissue Transplantation And Its Application To The United States Public Policy Debate." DAI 55/12 (1995): 3889. Catholic University of America.
- Ribadeneira, Diego. "Bishops take viewss to democrats, GOP." Boston Globe. July 10, 1996: 1+.
- Rocco, Alfredo. La Trasformazione dello Stato. Roma, 1927.
- Rosen, Jeffrey. "Anti-antidisestablishmentarianism." The New Republic. Feb. 24, 1997: 10-11.
- Rosenfeld, Megan. "Politics and Charity: They All Call Themselves Christians, But in the Battle Over Welfare Reform They're Preaching Two Gospels." Washington Post. August 9, 1995: D1.
- Rosenwein, Barbara H. To Be The Neighbor of St. Peter: The Social Meaning of Cluny's Property 909-1049. Uthaca: Cornell UP, 1989.
- Rundle, Rhonda L. "Hardly Meek: Catholic Hospitals, In Big Merger Drive, Battle Industry Giants." Wall Street Journal. Mar. 12, 1997: A1+.
- Sacred Congregation for Catholic Education. Lay Catholics in Schools: Witnesses to Faith. Rome, 1982.
- Sanders, Susan. "Catholic Hospitals and Community Benefit Activity." Health Progress. Jan-Feb. 1994. 44+
- - - . "The Measurement of Charity Care and Community Benefit in Catholic Nonprofit Hospitals." Diss. U. Chicago, 1991.

- . The Religious Dimension of Education in a Catholic School. Rome, 1988.
- Sarti, Roland. Fascism and the Industrial Leadership in Italy, 1919-1940. Berkeley: U Cal Press, 1971.
- Schietinger, Helen. "Housing; A Critical Need for People with AIDS." Community Development Journal. July 1989: 195-201.
- Schmitter, Phillippe C. "Corporatism is Dead! Long Live Corporatism!" Government and Opposition. Winter 1989: 54-73.
- , and Luca Lanzalaco "L'organizzazione degli interessi imprenditoriali a livello regionale" Stato e Mercato 22 Bologna: Società editrice Il Mulino: 1988
- , and Gerhard Lembruch, eds. Trends Toward Corporatist Intermediation. Beverly Hills: Sage, 1979.
- Schroeder, M. Rita, Mansfield, John I. "Creating a Private Association: The St. Francis Experience." Health Progress. Sept. 1986: 53-54.
- Second Vatican Council. Constitution on the Church in the Modern World (*Gaudium et Spes*, Dec. 7, 1965): Pub. 015-X. Washington DC: USCC, 1996 (Ninth Printing).
- Shannon, Denise. "The Bishop's Lobby." Humanist. Sept. - Oct. 1993: 21-23.
- Shapiro, Joseph P. and Andrea R. Wright. "Can Churches Save America?" U.S. News and World Report. Sept 9, 1996: 46-53
- Shaughnessy, Mary Angela. The Law and Catholic Schools: Approaching the New Millenium. Washington, DC: National Catholic Educational Association, 1993
- Sherman, Howard. "Corporate Foundations of Law and the State." Paper presented at the Annual Meeting of the Association for Evolutionary Economics New Orleans, LA. 27-28 December, 1971.
- Shonfield, Andrew. Modern Capitalism: The Changing Balance of Public and Private Power. NY: Oxford UP, 1965.
- Sigmund, Paul E. "From Corporatism to Neo Liberalism? The Transformation of the Idea of Subsidiarity in Catholic-School Social Thought in Latin America." ts.
- Silverman, Sydel F. "Agricultural Organization, Social Structure and Values in Italy: Amoral Familism Reconsidered" American Anthropologist LXX (Feb 1968).

- Sirico, Father Robert A. "Charities on the Dole." Wall Street Journal. March 31, 1995: A12.
- Soros, George. "The Capitalist Threat." Atlantic Monthly. February 1997: 45-55.
- Starr, Paul. The Social Transformation of American Medicine. NY: Basic Books, 1982.
- Steel, Ronald. "Paradigm regained." New Republic. Dec. 30, 1996: 25.
- Steinfels, Peter. "Archbishop Seeks Reform In the Papacy: Bishops Should Have More Power, He Says." New York Times. Jun. 30, 1996: 14.
- - - . "Bishops' Panel Criticizes Book by Liberal Catholic Theologian." New York Times. April 11, 1996: A20.
- Stewart, Jenny. "Corporatism, Pluralism and Political Learning." Journal of Public Policy. 12.3. (1992): 243-255.
- Streeck, Wolfgang and Phillippe C. Schmitter, eds. Private Interest Government: Beyond Market and State. Beverly Hills: Sage, 1985.
- Stukin, Stacie. "Catholic hospitals to become major unified force." Los Angeles Business Journal. Jan. 22 , 1996: 6A.
- Sullivan, Joseph M. "An Opportunity for Positive Change: We Have the History, Experience, and Will To Preseve a Catholic Presence in Healthcare." Health Progress. Sept. 1993: 56-65.
- Sullivan, Winnifred Fallers. "The USCC and the rebbe." Commonweal. May 20, 1994: 6-8.
- Swedberg, Richard, ed. Joseph A. Schumpeter: The Economics and Sociology of Capitalism. Princeton NJ: UP, 1991.
- Swomley, John. "Papalism and Religious Liberty." The Humanist. Sept-Oct 1993: 24-26.
- Tarrow, Sidney G. Peasant Communism in Southern Italy. New Haven: Yale UP, 1967.
- - - . Democracy and Disorder. Oxford: UP, 1989.
- - - . "Political Dualism and Italian Communism." American Polical Science Review. LXI March 1967: 39-53.
- Thorpe, Francis Newton. The Federal and State Constitutions, Colonial Charters, and other organic laws of the States. Washington DC: Government Printing Office, 1909.

- Tierney, Brian. Religion, law, and the growth of constitutional thought 1150-1650. NY: Cambridge UP, 1982
- , and Peter Linehan, eds. Authority and Power: Studies on Medieval Law and Government. Cambridge: UP, 1980.
- Tillich, Paul. Love, Power, and Justice. NY: Oxford UP, 1954.
- . Theology of Culture. NY: Oxford UP, 1959.
- Tinghino, John J. Edmondo Rossoni: from revolutionary syndicalism to fascism. NY: Peter Lang, 1991.
- Tye, Larry. "Higher costs found at for-profit hospitals." Boston Globe. 13 Mar. 1997: A1+.
- Ullmann, Walter. "The Bible and Principles of Government" The Church and the Law in the Earlier Middle Ages. London: Variorum, 1975: 183-224.
- . "Frederick II's Opponent, Innocent IV, as Melchisedek" Atti del Convegno Internazionale di Studi Federiciani. Palermo: Università di Palermo, Catania e Messina, 1952: 53-81.
- . "Leo I and the theme of Papal primacy." The Church and the Law in the Earlier Middle Ages: 29- 37.
- . "Public Welfare and Social Legislation in the early medieval councils." The Church and the Law in the Earlier Middle Ages. 1-36.
- Vacek, Edwards Collins. "Catholic 'Natural Law' and Reproductive Ethics." Journal of Medicine and Philosophy. June 1992: 329-344.
- . "Proportionalism: One View." Theological Studies. 1985
- Voss, Richard. "A Sociological Analysis and Theological Reflection on Adoption Services in Catholic Charities agencies." Social Thought. Winter, 1985: 32-43.
- Votaw, Dow. The Six Legged Dog: Mattei and ENI. Berkeley: UCal P, 1964.
- Vowell, Rev. Thomas H. "Preserving Catholic Identity in Mergers: An Ethical and Canon Law Perspective." Health Progress. Mar. 1992: 28-33.
- Walston, James. The Mafia and Clientelism: Roads to Rome in Postwar Calabria. NY: Routledge, 1988.
- Walton, Susan Charlotte. "To Preserve the Faith: Catholic Charities in Boston 1870-1930" Diss. Boston University (1983).

- Watkins, Michelle and McNerny, Ralph. "Jaques Maritain and the Rapprochement of Liberalism and Communitarianism" Catholicism, Liberalism and Communitarianism. Grasso, Kenneth L, Bradley, Gerard V. and Robert P. Hunt, eds. Lanham, Maryland: Rowan and Littlefield, 1995: 151-172.
- Watson, Alan. The Law of Obligations in the Later Roman Republic. Oxford: Clarendon Press, 1965.
- Weber, Max. The Protestant Ethic and the Spirit of Capitalism. Talcott Parsons, Trans. London: George Allen & Unwin, 1976 (1930).
- Webster, Richard A. The Cross and the Fasces: Christian Democracy and Fascism in Italy. Stanford: UP, 1960.
- Weiss, Carlo Francesco. "Corporatism and the Italian Catholic Movement." Diss. Yale University, March 1955.
- Weithman, Paul J. "John Courtney Murray - Do His Ideas Still Matter?" America. Oct. 29, 1994: 17-21.
- Welk, William G. Fascist Economic Policy. Cambridge, MA: Harvard UP, 1938.
- White, Kenneth and Yasar Ozcan. "Church ownership and hospital efficiency." Hospital and Health Services Administration. Fall 1996: 297+.
- White, Stephen D. Custom, Kinship and Gifts to Saints: The Laudatio Parentum in Western France 1050-1150. Chapel Hill N.C., UNC Press, 1988.
- Whitman, James Q. "Of Corporatism, Fascism and the First New Deal." American Journal of Comparative Law. 39 (1991): 747-778.
- Wiarda, Howard J. Critical Elections and Critical Coups: State, Society and the Military in the Process of Latin American Development. Ohio U: Center for International Studies, 1979.
- . Corporatism and National Development in Latin America. Boulder, CO: Westview, 1981.
- . From Corporatism to Neo-Syndicalism. Cambridge, MA: Center for European Studies, Harvard U., 1981.
- . Politics and Social Change in Latin America. Amherst, MA: UP, 1974.
- , ed. New Directions in Comparative Politics. Boulder: Westview, 1985.

- Wickham, Chris. Early Medieval Italy Central Power and Local Society 400-1000. Totowa NJ: Barnes & Noble, 1981.
- Wilensky, Harold L. The 'New Corporatism.' Centralization and the Welfare State. Beverly Hills: Sage, 1976.
- Wiletz, Sean. "With God On Our Side." Rev. of Cosmos Crumbling: American Reform and The Religious Imagination by Robert H. Abzug. New Republic. Sept. 12, 1994: 38-41.
- Williams, William Klapp. "The Communes of Lombardy from the VI to the X Century". Studies in Historical and Political Science. Ninth Series, May-June 1891. Baltimore: Johns Hopkins, 1891: 233-318.
- Williamson, Peter J. Corporatism in Perspective. London: Sage, 1989.
- Wilson, Rose and Thomas F. Schindler. "Tradition in Transition; What It Means To Be A Catholic Healthcare Facility Today." Health Progress. October 1990: 26-31.
- Wine, James. Pre-Presidential papers; Memo on Religious Issues, JFK Library Archives.
- Wuthnow, Robert. God and Mammon in America. NY: Free Press, 1994.
- - - . "Understanding Religion and Politics" Daedalus. Summer 1991: 1-19.

#### Interviews Conducted

- Blumenson, Eric. Professor, Suffolk Law School, Boston. Personal interview. June 20, 1997.
- Bogle, Rev. Fran. Chaplain, St. Elizabeth's Hospital, Boston. Personal interview. June 3, 1997.
- Burns, Dorothy. Coordinator of social services, St. Helena's House, Boston. Personal interview. Nov. 11, 1997.
- Cody, Ann. Chaplain, St. Elizabeth's Hospital, Boston. Personal interview June 3, 1997.
- Conway, Shirley. Administrator, Catholic Charities adoption services, Somerville, MA. Telephone interview. June 17, 1997.
- Dunn, Kelly. Archdiocese Office of Health Care Ministry, Boston. Telephone interview. April 25, 1997.
- Dylan, Mary Ann. Office of Pastoral Counseling, Archdiocese of Boston. Telephone interview. May 19, 1997.

- Fagan, Helen. Director, St. Elizabeth's School of Nursing, Boston. Personal interview. June 17, 1997.
- Federoff, Janine. Office of Senator Theresa Murray, State House, Boston MA. Telephone interview. April 8, 1997.
- Gallagher, Sister Madeline. Cathedral Parish house, Boston, MA. Personal interview. December 5, 1996.
- Garten, David. Director of Housing Development, Archdiocese of Boston. Personal interview. December 18, 1996.
- Gillespie, Kay. Property Manager, Moloney Properties, Boston. Personal interview. November 5, 1996.
- Gorman, James. Director of Programs, Catholic Charities of Boston. Personal Interview. May 19, 1997.
- Hehir, J. Bryan. Professor of Theology, Harvard Divinity School. Personal interview. January 14, 1996.
- Hollenbach, David. Professor of Theology, Boston College. Personal interview. July 9, 1997.
- Iannuccillo, Paul. Massachusetts State Representative, D-Lawrence. Telephone interview. March 11, 1997.
- Lezotte, Edna. Chaplain, St. Elizabeth's Hospital, Boston. Personal interview. June 3, 1997.
- Loud, Rob. Archivist, St. Elizabeth's School of Nursing, Boston. Personal interview. June 2, 1997.
- Murphy, Father Bob. Director, St. Helena's House, Union Park, Boston. Telephone interview. Oct. 31, 1997.
- O'Connell, Sister Nora. Chaplain, St. Elizabeth's Hospital, Boston. Personal interview. June 3, 1997.
- O'Conner, Kathleen. CPEN Education director, pastoral counseling, Archdiocese of Boston. Telephone interview. May 19, 1997.
- O'Donohoe, Father James. Director, Covenant Health Systems, Bedford MA. Professor, Boston College Dept. of Theology. Personal interview. May 29, 1997.
- Perkins, Sister Marylin. Director, Healthcare counseling, Daughters of Charity, Albany NY. Telephone Interview. April 9, 1997.
- Pope, Steven. Assistant Professor of Theology, Boston College. Personal Interview. June 30, 1997.

- Ratigan, Sister Ivan. Chaplain, St. Elizabeth's Hospital, Boston MA. Telephone interview. May 20, 1997.
- Roach, Sister Ann Dominic. Superintendent, Catholic Schools, Archdiocese of Boston. Personal interview. July 15, 1997.
- Rochon, Father Bob. Director, St. Anne's Hospital, Fall River MA. Telephone interview. June 5, 1997.
- Sheehan, Father Dennis. Pastor, St. Paul's Church, Cambridge MA. Personal interview. Sept 12, 1996.
- Stockard, Sue. Regional director, Moloney Properties, Boston. Telephone interview. Nov. 5, 1997.
- Sullivan, Martha. Chaplain, St. Elizabeth's Hospital, Boston. Personal interview. June 3, 1997.
- Thorpe, Barbara. Director, Project Rachel pregnancy crisis center. Telephone interview. June 12, 1997.
- Underhill, Bob. Director, St. Vincent De Paul Society, Cathedral parish, Boston MA. Personal interview. September 10, 1996.
- Vonnegut, Dr. Mark. Pediatrician, Harvard Medical School. Personal interview, Barnstable MA. August 1997.
- Wassell, Jean. Coordinator of Congregate Housing, St. Helena's, Boston. Personal interview. November 5, 1996.



