There Are No Strangers Among Us: Catholic Social Teachings And U.S. Immigration Law

Terry Coonan
THERE ARE NO STRANGERS AMONG US:
CATHOLIC SOCIAL TEACHINGS AND U.S.
IMMIGRATION LAW

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You shall not oppress an alien; you well know how it feels
to be an alien, since you were once aliens yourselves in the
land of Egypt.¹

INTRODUCTION

Concern for the immigrant and the lived experience of
immigration are both deeply imbedded in the Roman Catholic
faith tradition. The U.S. Catholic bishops have noted that “[t]he
Judeo-Christian tradition is steeped in images of migration”—
scriptural stories of uprootedness, flight, and exile.² This
Catholic historical memory of immigration has colored the social
teachings of the Church, especially as those teachings have
evolved with greater formality in the past century.³

Church teachings regarding immigration derive from three
principal sources, the first of which is the Judeo-Christian
scriptural tradition. Secondly, concerns about immigration have
informed Church teaching at its most general level—papal

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¹ Exodus 23:9 (New American Bible).
² ONE FAMILY UNDER GOD, A STATEMENT OF THE U.S. BISHOPS’ COMMITTEE
ON MIGRATION 2 (1995) [hereinafter ONE FAMILY UNDER GOD].
³ See RENEWING THE EARTH, CATHOLIC DOCUMENTS ON PEACE, JUSTICE AND
LIBERATION 11–43 (David J. O’Brien & Thomas A. Shannon eds., 1977)
[hereinafter RENEWING THE EARTH] (providing an overview of the historical
background of Catholic social teachings).
encyclicals and letters—and thirdly, they have been addressed with even greater particularity in writings of the U.S. Catholic bishops. The body of Catholic teachings that have evolved propose a distinctive analytical framework for assessing the rights and duties of both immigrants and the countries that receive them.

In an era characterized by legislative restrictionism\(^4\) and popular hostility toward immigrants,\(^5\) Catholic social teachings


Among the changes implemented by the AEDPA was the elimination of judicial review for deportation orders based on certain criminal deportation grounds. See AEDPA, supra § 440(a)(10), 110 Stat. at 1276-77. The AEDPA also expanded the definition of crimes of “moral turpitude” as a deportation ground. See id. § 435, 110 Stat. at 1274–75. Additionally, it increased the number of crimes classified as “aggravated felonies.” See id. § 440(e), 110 Stat. at 1277–78. Moreover, the AEDPA barred relief from deportation to noncitizens convicted of certain crimes. See id. § 440(d), 110 Stat. at 1277. Finally, the AEDPA established a mandatory detention policy for aliens deportable on criminal grounds effective from the moment such aliens were apprehended to the time they were removed. See id. § 440(c), 110 Stat. at 1277.

The IIRIRA effected even more sweeping changes in U.S. immigration law. Like the AEDPA, it limited judicial review of certain immigration decisions. See IIRIRA, supra § 306(a)(2), 110 Stat. at 1666–75. It likewise expanded the definition of “aggravated felonies,” rendering more noncitizens ineligible for relief from deportation. See id. § 321, 110 Stat. at 1701–02. The IIRIRA also expanded the definition of a criminal “conviction” for immigration purposes, thereby making more noncitizens deportable. See id. § 322, 110 Stat. at 1703. The IIRIRA created a new “expedited removal” process enforceable against aliens who arrive without valid travel documents and which by its terms precluded any further hearings or judicial review. See id. § 302(a), 110 Stat. 3009 at 1621. The IIRIRA also greatly limited voluntary departure as a relief from deportation, see id. § 304, 110 Stat. at 1648–51, and required that aliens who are removed from the United States remain outside the country for between five to twenty years, contingent upon their status at the time of removal. See id. § 301(b), 110 Stat. at 1614.

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comprise an increasingly counter-cultural valuation of immigration in America. This article surveys these teachings and their relevance to contemporary U.S. immigration law.

I. JUDEO-CHRISTIAN SCRIPTURES AND THE DEEP MEMORY OF EXILE

Catholic ethicist Drew Christiansen observes that the experience of exile lies at the very heart of the historic memory of the Christian tradition.6 The Catholic faith shares with Jewish tradition the memory of the ancient Hebrews' oppression in Egypt and forced exile in Babylon.7 Such a memory, contends Christiansen, informs Catholic ethical teachings on immigration at a more fundamental level than does even devotion to an abstract notion of universalism.8

It was precisely this memory of exile that underlay one of the bedrock ethical injunctions of the ancient Hebrew people: "You shall not molest or oppress an alien, for you were once aliens yourselves in the land of Egypt."9 Theologian Kenneth Himes (contending that immigration has diluted the “common ethnicity” of America to the nation’s detriment).


See id.

See id.

Exodus 22:20 (New American Bible). Theologians have noted that the only Old Testament command repeated more frequently than that of caring for the stranger is that of worshipping the one God. See William R. O’Neill & William C. Spohn, Rights of Passage: The Ethics of Immigration and Refugee Policy, 59 THEOLOGICAL STUDIES 84, 84 (1998). Another commentator has observed that the moral imperative to love the stranger recurs three dozen times in the five books of the Hebrew Scriptures. See Donald Kerwin, Newcomers: Legal Realities, the Christian Imagination and the Judeo-Christian Tradition of Hope, 26 MIGRATION WORLD MAG., Jan.–Feb. 1998, at 25, 29. Examples of this repeated command would include cites such as the following:

When you reap the harvest of your land, you shall not be so thorough that you reap the field to its very edge, nor shall you glean the stray ears of the grain. Likewise, you shall not pick your vineyard bare, nor gather up the grapes that have fallen. These things you shall leave for the poor and the alien. I, the LORD, am your God.

Leviticus 19:9–10 (New American Bible);

When an alien resides with you in your land, do not molest him. You shall treat the alien who resides with you no differently than the natives born among you; have the same love for him as for yourself; for you too were once aliens in the land of Egypt. I, the LORD, am your God.

Leviticus 19:33–34 (New American Bible);
explains that:

[t]he experience of being in a land not one’s own was to be indelibly impressed upon the imagination of the pious Jew.... The experience of being an alien was never to be forgotten; but the lesson to be learned was not that one should never forgive the Egyptian, nor never permit the experience to occur again. Rather, the lesson was never to

Circumcise your hearts, therefore, and be no longer stiff-necked.
For the LORD, your God, is the God of gods, the LORD of lords, the great God, mighty and awesome, who has no favorites, accepts no bribes; who executes justice for the orphan and the widow, and befriends the alien, feeding and clothing him. So you too must befriend the alien, for you were once aliens yourselves in the land of Egypt. The LORD, your God, shall you fear, and him shall your serve; hold fast to him and swear by his name.

Deuteronomy 10:16-20 (New American Bible);
You shall not violate the rights of the alien or of the orphan, nor take the clothing of a widow as a pledge. For, remember, you were once slaves in Egypt, and the LORD, your God, ransomed you from there; that is why I command you to observe this rule. When you reap the harvest in your field and overlook a sheaf there, you shall not go back to get it; let it be for the alien, the orphan or the widow, that the LORD, your God, may bless you in all your undertakings. When you knock down the fruit of your olive trees, you shall not go over the branches a second time; let what remains be for the alien, the orphan and the widow. When you pick your grapes, you shall not go over the vineyard a second time; let what remains be for the alien, the orphan, and the widow. For remember that you were once slaves in Egypt; that is why I command you to observe this rule.

Deuteronomy 24:17-22 (New American Bible);
Cursed be he who violates the rights of the alien, the orphan or the widow! And all the people shall answer, ‘Amen!’

Deuteronomy 27:19 (New American Bible).
Theologian Frank Crüsemann stresses the importance of these commands for the ancient Hebrews:

The theological status of these rules for protection can hardly be surpassed. The love of God, the act of election in the Exodus, the gift of the land to Israel, the presence of the holy God in his people, the identity of the people of God itself—all this is presented as a reason for protecting strangers. Proximity to this God is incompatible with discrimination against strangers. Any breach of the right of strangers brings about separation from God.

Frank Crüsemann, ‘You Know the Heart of a Stranger,’ (Exodus 23:9). A Recollection of the Torah in the Face of New Nationalism and Xenophobia, in Migrants and Refugees 95, 101 (Dietmar Mieth & Lisa Sowle Cahill eds., 1993); see also Patrick D. Miller, Israel as Host to Strangers (providing an overview of the moral imperative in ancient Israel to extend hospitality to the stranger), in Today’s Immigrants and Refugees: A Christian Understanding 1–19 (National Conference of Catholic Bishops ed., 1988) [hereinafter Today’s Immigrants and Refugees].
do to another what the Jewish people had themselves suffered. Remembering was not for the purpose of harboring a grudge but to learn compassion and practice hospitality.\textsuperscript{10}

The Old Testament imperative to care for the stranger, central as it was to the ancient Jewish moral code, likewise became a foundational element of the Christian-Catholic faith tradition.\textsuperscript{11}

The scriptures of the New Testament, in recounting the life of Jesus, further imbued the Christian tradition in memories of

\textsuperscript{10} Rev. Kenneth R. Himes, OFM, The Rights of People Regarding Migration: A Perspective from Catholic Social Teaching, in WHO ARE MY SISTERS AND BROTHERS? REFLECTIONS ON UNDERSTANDING AND WELCOMING IMMIGRANTS AND REFUGEES 25, 27 (Office for the Pastoral Care of Migrants and Refugees, National Conference of Catholic Bishops, 1996) [hereinafter WHO ARE MY SISTERS AND BROTHERS?]. Theologians have even ventured that the original meaning of the term “Israelite” connoted a certain lack of roots:

The word ‘Israelite’... has various meanings in the Bible, but originally it stood somewhat vaguely for a blending of various peoples whose only common bond consisted in their status (or lack of status) as refugees, resident aliens, and dispossessed people uprooted from their original homeland and frequently at the mercy of the local residents or landlords.


\textsuperscript{11} See Christiansen, supra note 6, at 8 (“Just as with biblical Judaism justice and kindness to the stranger and alien was a fundamental duty of the Covenant, so too with the Christian community true religion consists in care for widows and strangers.”). Recent pronouncements on immigration by Pope John Paul II reflect a self-conscious awareness of this Catholic link to biblical Judaism:

\begin{quote}
God reveals himself in the Old Testament as the One who takes the side of the stranger, the side, that is, of the people of Israel enslaved in Egypt. In the New Law he reveals himself in Jesus, born in a stable on the outskirts of town, ‘because there was no place for them in the inn’ (Lk. 2:7), and who had nowhere to lay his head throughout his public ministry (cf. Mt. 8:20; Lk 9:58) ... The reason, ‘for you were strangers in the land of Egypt’ which constantly accompanies the command to respect and love the migrant, is not only meant to remind the chosen people of their former condition; it also calls their attention to God’s action: on his own initiative he generously delivered them from slavery and freely gave them a land. ‘You were a slave and God intervened to set you free; you have seen, then, how God treated migrants; you must treat them in the same way’: this is the implicit thought underlying the precept.
\end{quote}

uprootedness and exile. Pope Pius XII, in a landmark 1952 statement on refugees, would identify the Holy Family’s ordeal of exile in Egypt as archetypal of every refugee family’s experience. Christian tradition, therefore, recalls that Jesus himself fled persecution in his homeland and lived for a time as a refugee child.

There is, however, a discernible shift in the moral paradigm of the New Testament: whereas in the Old Testament, the Jewish people were called to welcome the stranger because they themselves had once been strangers, in the New Testament, the Christian obligation to do so derives from the conviction that in the face of the stranger, the Christian community encounters the

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12 The U.S. bishops have written:

The New Testament begins with a story of movement—Mary and Joseph travel to Bethlehem where Christ is born. Soon thereafter, the Holy Family flees to Egypt to escape the persecution of male infants. Christ’s adult ministry was itself itinerant, but even as he became known throughout the region, he was rejected in his own town of Nazareth.

ONE FAMILY UNDER GOD, supra note 2, at 2. Other commentators have also noted the transience that characterized the life and ministry of Jesus:

Christ’s entire life is a testimony of pilgrimage: His birth in Bethlehem, the flight to Egypt, His public activity in Palestine, persecution by the Pharisees, and finally His imprisonment and death verdict, among others as a national traitor. Christ knowingly experienced His situation of pilgrimage as witnessed by His words: "The foxes have lairs, the birds in the sky have nests, but the Son of Man has nowhere to lay his head."


13 Edward E. Swanstrom, introducing Pius’s encyclical, would write:

The émigré Holy Family of Nazareth, fleeing into Egypt, is the archetype of every refugee family. Jesus, Mary and Joseph, living in exile in Egypt to escape the fury of an evil king, are, for all times and all places, the models and protectors of every migrant, alien and refugee of whatever kind who, whether compelled by fear of persecution or by want, is forced to leave his native land, his beloved parents and relatives, . . . and to seek a foreign soil.


14 See CHRISTIANSSEN, supra note 6, at 9.
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face of Jesus.\textsuperscript{15} This religious conviction, particular as it is to the Christian tradition, is the foundation of Catholic teachings on immigration.\textsuperscript{16}

Experiences of uprootedness and exile were not mere biblical stories for the nascent Christian Church. Religious persecution and involuntary migration did much to spur the transformation of the early Christian community from a local sect in Israel to a church that transcended national boundaries.\textsuperscript{17} As a consequence, a journeying imagery evolved in the Church's self-understanding that is still extant today.\textsuperscript{18} So too did a deeper

\textsuperscript{15} See One Family Under God, supra note 2, at 3.
\textsuperscript{16} In 1976, the U.S. Catholic bishops observed that [a]mong the victims of political repression and destructive economic structures, immigrants and refugees are doubly marginal on the world's scene. They are normally forced out of their native environment by inadequate resources and unjust distribution of goods; they are also often voiceless, forgotten, and discriminated against in the countries of adoption. Perhaps because of this compounded injustice, Jesus specifically promised his kingdom to those who recognize him in the immigrant: "I was a stranger and you made me welcome." (Mt. 25:35).
\textsuperscript{17} See Woznicki, supra note 12, at 15 ("The migratory movement was one of the important elements in the development of Christian faith."); see also One Family Under God, supra note 2, at 3 ("The rapid growth of the early Church was in large measure due to the considerable freedom of movement within the Roman Empire.... [T]he work of the apostles and of Paul in particular was characterized by constant travel to spread the word of God, punctuated by persecution for their religious beliefs."). Theological commentators have noted how involuntary migration spurred the growth of the early Church:

A scriptural example of forced migration as an occasion for preaching is in the preaching of Philip the refugee: "Devout men buried Stephen and made a loud lament over him. Saul, meanwhile, was trying to destroy the church; entering house after house and dragging out men and women, he handed them over for imprisonment. Now those who had been scattered went about preaching the word. Thus Philip went down to the city of Samaria and proclaimed the Messiah to them.

Michael A. Blume, SVD, Catholic Church Teachings and Documents Regarding Immigration: Theological Reflection on Immigration, in Who Are My Sisters and Brothers?, supra note 10, at 22 n.63 (Office for the Pastoral Care of Migrants and Refugees, National Conference of Catholic Bishops, 1996) (citing Acts 8:2–8) [hereinafter Theological Reflection on Immigration].

\textsuperscript{18} The U.S. Catholic bishops have observed that [t]he journeying imagery that so permeates the Old and New Testaments resonated strongly with the early Church." One Family Under God, supra note 2, at 3. The image of the
theological conviction that the experience of the Church in the
world is akin to that of temporary exile or that of an alien
residing in a foreign land. The theological notion that the
Christian life itself is one of pilgrimage imbues Catholic social
teachings with a special concern for immigrants and their
welfare.

Church as the People of God on a journey home to the Father would prove
fundamental to the thinking of Second Vatican Council:

The joys and the hopes, the griefs and the anxieties of the men of
this age, especially those who are poor or in any way afflicted, these
too are the joys and hopes, the griefs and anxieties of the followers of
Christ. Indeed, nothing genuinely human fails to raise an echo in
their hearts. For theirs is a community composed of men. United in
Christ, they are led by the Holy Spirit in their journey to the
Kingdom of their Father.

Gaudium et Spes: Pastoral Constitution on the Church in the Modern World
(Second Vatican Council, 1965), in CATHOLIC SOCIAL THOUGHT: THE
DOCUMENTARY HERITAGE 166, 166 (David J. O'Brien & Thomas A. Shannon eds.,
1997) [hereinafter Gaudium et Spes]. Commentators note how this journeying
imagery extends even to the Catholic conception of God:

[An] important image in modern Catholic social thought has been the
metaphor of dialogical journey. Here, God is modeled more as a
historical journeyer with humanity and less as a shepherd or rational
designer. This metaphor also carries with it greater emphasis on
God's dialogue with humanity through the promptings of the Holy
Spirit... [U]se of the dialogical journey metaphor [became]
widespread among Catholic academics and popular leaders after the
Second Vatican Council.

Michael J. Schuck, Modern Catholic Social Thought, in THE
NEW DICTIONARY OF
THE NEW DICTIONARY OF CATHOLIC SOCIAL THOUGHT].

The U.S. bishops have noted that

[The idea that a Christian belongs to a world beyond the temporal is
a consistent thread in early Church teaching. Augustine was
expanding on an established tradition when he referred to Christians
as peregrini, a word we might define as registered aliens, strangers
in this life always longing for their true home.

ONE FAMILY UNDER GOD, supra note 2, at 4; see also Christiansen, supra note 6,
at 8 (“Christians have understood their condition as peregrini, pilgrims, or
homines viatores, homeless wayfarers, without permanent homes.”). Pope John
Paul II has recently alluded to this same Christian self-understanding:

[The Church, present in every clime, is not identified with any
particular race or culture since, as the Epistle to Diognetus recalls,
Christians live in their homeland, but as guests; as citizens they
participate in all things, but are detached from all things as
strangers. Every foreign country is a homeland to them and every
homeland a foreign country. . . . They dwell on earth but are citizens
of heaven.’

World Migration Day 1999, supra note 11, at No. 2.

See Pope John Paul II, Solidarity With the Stranger, 43 THE POPE SPEAKS
II. IMMIGRATION AND MODERN CATHOLIC SOCIAL TEACHINGS

A. Rerum Novarum: Magna Charta for Workers

The publication in 1891 of Pope Leo XIII’s landmark encyclical *Rerum Novarum* (The Condition of Labor) ushered in the modern era of Catholic social teachings.\(^{21}\) Twin crises of the

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late nineteenth century Industrial Revolution occasioned the issuance of *Rerum Novarum*: the exploitation of workers by unregulated market capitalism, and the specter of socialist revolt that loomed because of these abuses. Pope Leo viewed both crises with alarm. Seeking to negotiate a via media between Catholic social teachings did not originate with *Rerum Novarum*, but rather, trace their inception to the life and words of Jesus. See John A. Coleman, *A Tradition Celebrated, Reevaluated, and Applied, in One Hundred Years of Catholic Social Thought: Celebration and Challenge* 1, 2 (John A. Coleman ed., 1991). Writers of the patristic era such as Clement of Alexandria, Basil the Great, and Ambrose cultivated the tradition of Catholic social teachings in their insistence that caring for the poor was synonymous with caring for Christ himself, and that almsgiving to the poor was not a matter of charity but of justice. See *id*. Theologians of the medieval period grappled with questions of when tyrannicide or war could be morally justified, and Aquinas’ writings advanced the notion that achieving the common good was the ultimate purpose of the law. See *id*. Coleman, however, asserts that “by common consent *Rerum Novarum* inaugurated a special new beginning for Catholic social thought and, thus, represents a kind of *magna carta* for modern social Catholicism.” *Id.* at 4. Another commentator asserts that in *Rerum Novarum*, “Leo was the first pope to show some grasp of the intolerable suffering of the urban proletariat and to act on this by making the natural rights of the worker official church doctrine.” Stephen J. Pope, *Rerum Novarum, in The New Dictionary of Catholic Social Thought* 828, 843 (Judith A. Dwyer ed., 1994).

22 O’Brien and Shannon note the evolution of these twin crises:

The shift from the land to the city caused massive social dislocation compounded by a lack of housing, and left millions unemployed. The shift from the home to the factory led to miserly wages, deplorable working conditions, particularly for children, and severe strains on families. While the social effects of this revolution were particularly keen in England, few cities in Europe or America escaped. The seeds of discontent sown by this movement found fertile ground in radical social movements, most of which regarded the church as allied with the enemy.


23 Leo denounced the exploitation of the working classes:

[S]ome remedy must be found, and quickly found, for the misery and wretchedness which press so heavily at this moment on the large majority of the very poor. . . . It has come to pass that workingmen have been given over, isolated and defenseless, to the callousness of employers and the greed of unrestrained competition. . . . And to this must be added the custom of working by contract, and the concentration of so many branches of trade in the hands of a few individuals, so that a small number of very rich men have been able to lay upon the masses of the poor a yoke little better than slavery itself.

*Rerum Novarum, supra* note 22, No. 2 at 15. Leo likewise criticized the socialist
such two extremes, Leo articulated principles that might secure both justice for workers and a stable social order.\(^2^4\) Among these principles were the notions that the goods of nature belong equally to all,\(^2^5\) that workers have a right to a just wage\(^2^6\) and a response to these abuses:

To remedy these evils the **socialists**, working on the poor man's envy of the rich, endeavor to destroy private property, and maintain that individual possessions should become the common property of all, to be administered by the State or by municipal bodies. . . . But their proposals are so clearly futile for all practical purposes, that if they were carried out the workingman himself would be among the first to suffer. Moreover they are emphatically unjust, because they would rob the lawful possessor, bring the State into a sphere that is not its own, and cause complete confusion in the community.

*Id.* No. 3 at 15.

\(^2^4\) Commentator David J. O'Brien notes: [Leo] chose the reformist option, evenhandedly condemning both socialism and laissez-faire liberalism. He endorsed workers associations, affirmed the positive responsibility of the state to intervene on behalf of the poor, and upheld the claim in justice to decent wages, hours, and working conditions. . . . *Rerum Novarum* was one expression of Leo's search for an independent middle ground between the perceived extremes of the age. In negative terms Leo issued a plague on both houses of capitalism and socialism; more positively he claimed that the church could reconcile the classes and bring both social order and distributive justice.


\(^2^5\) See *Rerum Novarum*, supra note 22, No. 7 at 17 ("[T]he earth, though divided among private owners, ceases not thereby to minister to the needs of all; for there is no one who does not live on what the land brings forth.").

\(^2^6\) See id. No. 17 at 21 ("[t]he employer's great and principal obligation is to give to every one that which is just. . . . To defraud any one of wages that are his due is a crime which cries to the avenging anger of heaven"); see also *Rerum Novarum*, supra note 22, No. 34 at 31 ("[a]s a rule, workman and employer should make free agreements, and in particular should freely agree as to wages; nevertheless, there is a dictate of nature more imperious and more ancient than any bargain between man and man, that the remuneration must be enough to support the wage earner in reasonable and frugal comfort.").
right to join workers' associations,27 and that ownership of private property, while firmly rooted in natural law, must nonetheless, always serve the common good.28

An important corollary of these principles was the notion that there exists a right to migrate in order to sustain one's family.29 While this remained an implied right in Rerum Novarum, it was a principle that would merit fuller and more explicit elaboration in subsequent Church teachings.30 It is not insignificant, however, that the Church's first formal reflections on immigration evolved on behalf of persons immigrating specifically for reasons of economic want—a group which in contrast is dealt with much more restrictively by current U.S. law.31

27 See id. No. 36 at 32-34.
28 See id. No. 19 at 22 (“Man should not consider his outward possessions as his own, but as common to all, so as to share them without difficulty when others are in need.”); see id. No. 35 at 32 (noting that the State has the right to regulate the ownership of private property “in the interests of the public good.”).
29 See id. No. 35 at 32 (explaining that if ownership of private property were more accessible to workingmen, they “would cling to the country in which they were born; for no one would exchange his country for a foreign land if his own afforded him the means of living a tolerable and happy life”). This indirect reference in Rerum Novarum has been construed as the foundational Catholic encyclical teaching on immigration. See ONE FAMILY UNDER GOD, supra note 2, at 4 (citing Rerum Novarum's “indirect corollary [of the right to migrate to sustain one's family]”). Theologian Kenneth Himes has likewise noted the significance of Leo’s teaching:

In his landmark social encyclical Rerum Novarum Pope Leo XIII made the connection between economics, justice, and migration. . . . His defense of private property and his comment on the linkage of the exercise of that right with migration makes the point that the opportunity to participate in the economic life of a nation is a key factor in the decision to emigrate or not.

30 Pope Pius XII evokes Rerum Novarum for the proposition that families have a right to migrate in search of living space. See infra note 35 and accompanying text.
31 Neither international refugee law nor U.S. asylum law recognize severe economic deprivation as grounds warranting refugee protection or the granting of asylum status. Ethicist Drew Christiansen counts this as a critical legal failure, and asserts that “[t]he pejorative designation of 'economic refugees' in current U.S. practice is repugnant to the spirit of Catholic social teaching.” Drew Christiansen, Sacrament of Unity: Ethical Issues in the Pastoral Care of Migrants and Refugees, in TODAY'S IMMIGRANTS AND REFUGEES, supra note 9, at 91 (National Conference of Catholic Bishops ed., 1988).
B. Exsul Familia: Magna Charta for Refugees

While it was the Industrial Revolution that first engendered Catholic social teaching on immigration, it was the refugee crisis following the Second World War that gave impetus to its continued development. In his Apostolic Constitution Exsul Familia issued on August 1, 1952, Pope Pius XII announced the Church’s commitment to caring for “pilgrims, aliens, exiles and migrants of every kind.”

Pius began with an historical overview of the Church’s traditional concern for migrants and refugees. Recalling a Pentecost Radio Address he had given in 1941, Pius made explicit reference to a right to migrate. Curiously, Pius proposed that such a right attaches in situations where persons agree to leave their native lands and receiving nations agree to admit newcomers. This theoretical model, conceived before the

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32 See ONE FAMILY UNDER GOD, supra note 2, at 4 (explaining that Pius XII issued Exsul Familia in response to the unprecedented populations of refugees and displaced persons following the Second World War).

33 Exsul Familia, supra note 13, at 25. In the tradition of Catholic papal teachings, an apostolic constitution is distinguishable from an encyclical. A constitution “indicates a document which is a solemn enactment carrying juridical binding force, an ordinance coming directly from the [Pope]. . . . [O]nly the most important laws are issued through a Constitution.” Id. at 14 (Editor’s Remarks). A papal encyclical, in contrast, “aims directly at explaining truths and dogmas, not at formally issuing new laws.” Id.

34 See id. at 25-49.

35 Pius asserted that the right to migrate is founded in the very nature of land:

Our planet, with all its extent of oceans and seas and lakes, with mountains and plains covered with eternal snows and ice, with great deserts and tractless lands, is not, at the same time, without habitable regions and living spaces now abandoned to wild natural vegetation and well suited to be cultivated by man to satisfy his needs and civil activities: and more than once, it is inevitable that some families migrating from one spot to another should go elsewhere in search of a new homeland.

Then,—according to the teaching of “Rerum Novarum,”—the right of the family to a living space is recognized. When this happens, migration attains its natural scope as experience often shows. We mean, the more favorable distribution of men on the earth's surface suitable to colonies of agricultural workers; that surface which God created and prepared for the use of all.

Id. at 50. For Pius then, the migration question was framed in the context of family, and was grounded in principles of natural law.

36 Pius explained his “contractual” notion of immigration:

If the two parties, those who agree to leave their native land and those who agree to admit the newcomers, remain anxious to
Second World War, bore little resemblance to the reality of the massive, involuntary displacement of persons that followed the war.\(^{37}\)

Pius, however, asserted a further principle that would have great significance for later Catholic thinking: while recognizing the validity of national sovereignty, Pius insisted that such sovereignty is not absolute.\(^{38}\) Conceding the necessity of regulating immigration, Pius nevertheless argued that a balancing test is required whereby the needs of immigrants are measured against the needs of receiving countries.\(^{39}\)

\[\text{Exsul Familia, supra note 13, at 51.}\]

\(^{37}\) Pius' "contract" notion of immigration had first been introduced in his 1941 Pentecost Address commemorating the fiftieth anniversary of Rerum Novarum. See Himes, supra note 10, at 28. Such a model presumed mutual openness to immigration on the part of both immigrants and receiving countries, and was premised on the assumption that the parties involved viewed immigration as mutually beneficial. See Exsul Familia, supra note 13, at 50.

\(^{38}\) Pius cited to a letter that he had previously written to the American Bishops on December 24, 1948:

You know indeed how preoccupied we have been and with what anxiety we have followed those who have been forced by revolutions in their own countries, or by unemployment or hunger to leave their homes and live in foreign lands.

The natural law itself, no less than devotion to humanity, urges that ways of migration be opened to these people. For the Creator of the universe made all good things primarily for the good of all. Since land everywhere offers the possibility of supporting a large number of people, the sovereignty of the State, although it must be respected, cannot be exaggerated to the point that access to this land is, for inadequate or unjustified reasons, denied to needy and decent people from other nations, provided of course, that the public wealth, considered very carefully, does not forbid this.

\[\text{Exsul Familia, supra note 13, at 51.}\]

\(^{39}\) Addressing a delegation of visiting U.S. Senators in 1946, Pius had urged such a balancing test, even in the face of what he termed "overly restrictive provisions" of U.S. immigration law:

[It is not surprising that changing circumstances have brought about
Familia was in one sense limited by a European mindset and a clerical focus. Nonetheless, it made concern for immigrants and refugees an explicit dimension of Catholic papal teachings, formalizing, in the words of a later commentator, a revolutionary "apostolate on behalf of aliens."41

C. Pope John XXIII and the Era of Vatican II

The accession of Pope John XXIII in 1958 was to prove a watershed moment in the history of the Catholic Church.42 His

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40 The majority of the examples of the Church’s work on behalf of migrants and refugees cited by Pius involved European cases, and more specifically, Italian ones. See id. at 25–60. Papal concerns for orthodoxy and the fear that Catholic migrants might lose their faith also predominate Exsul Familia. See id. at 33–34 (expressing Papal concerns that migrants were contracting marriage without the canonical formalities); Id. at 34 (discussing a society designed to deal with the concern about protecting “from the inroads of heretics the Ruthenian [Greek] Catholics living in Northwest Canada”); Id. at 35 (stating concerns that “some of the priests who emigrated overseas were victimized by material comforts and overlooked the welfare of souls”); Id. at 37 (citing Brazil’s concern that migrant workers, entering Brazil, would, “once they had left their native countries, give up the Christian customs of their ancestors”). Several decades later the U.S. Catholic bishops would appraise both the significance and the limitations of Pius’ writing:

Exsul Familia was limited by a dominant concern with refugees, by the European and Italian scene, and by a clerical outlook and focus on the clergy discipline. Nevertheless, it played an important historical role and brought out clearly the fact that emigration is a natural right. . . . [I]t stated that the natural law and Christian revelation call for an adequate distribution of earthly goods to all peoples, so that if a deficiency exists in his or her own country, a person has a right to emigrate to another. Although the true common good of the country of destination must also be considered, because of human solidarity, the norms of Christian charity and justice favor a broad application of the states’ regulative affirmative laws.

Pastoral Concern of the Church, supra note 16, at 10.

41 Exsul Familia, supra note 13, at 14 (Editor’s Remarks).


Mater et Magistra once again took up “the social question” of the relationship between workers, employers, and the State which had first been examined in Rerum Novarum. John enumerated certain political, social, and economic developments since the time of Pope Leo, and attempted to apply standards of social justice to the postwar world. In so doing, John made specific reference to Pius XII's 1941 Pentecost Address and its assertion that there exists a right of the family to migrate. John revisited this topic in his final encyclical Pacem in Terris. Under a heading entitled “The Right to Emigrate and...
Immigrate,” John declared that “[e]very human being has the right to freedom of movement and of residence within the confines of his own country; and, when there are just reasons for it, the right to emigrate to other countries and take up residence there.”50 In a departure from his thinking in Mater et Magistra, John now framed the right as one belonging not merely to families but to the individual. The right to immigrate, then, was a basic human right. However, in adding the caveat, “when there are just reasons for it,” John still implied that the right to immigrate to other countries was not an absolute one.51 The task

at 131. Commentators noted that in Pacem in Terris, “[t]he incredibly tortured language of papal monarchy was gone, replaced by a language of fraternity, shared concern, and mutual responsibility. . . . [T]he letter spoke of a world that belonged not to Catholics but to all people everywhere.” RENEWING THE EARTH, supra note 3, at 118.

Written at the height of the Cold War, Pacem in Terris spoke with urgency of the need for disarmament and peacemaking. See Pacem in Terris, supra note 45, Nos. 109–19 at 148–50. Equally important, it developed a broad theory of human rights which John proposed as a framework for achieving international peace. See DAVID HOLLENBACH, CLAIMS IN CONFLICT: RETRIEVING AND RENEWING THE CATHOLIC HUMAN RIGHTS TRADITION 64 (1979). Foremost among such rights was “[t]he Right to Life and to a Worthy Standard of Living,” which includes the right to “food, clothing, shelter, rest, medical care, . . . necessary social services,” and security in the event of sickness, unemployment, or old age. Pacem in Terris, supra note 45, No. 11, at 132–33. John also enumerated rights of cultural and moral values, including freedom to express opinions, freedom of information, and rights to education. See id. Nos. 12–13 at 133. Likewise identified were rights to religion and conscience; economic rights, including the right to work, to a just and sufficient wage, and to hold private property; and political rights such as the right to participate in political affairs and the guarantee that one's rights will be juridically protected. See id. Nos. 14, 18–22, 26–27 at 133–35. Consistent with Catholic tradition, John insisted that such rights likewise connote duties: “The natural rights with which we have been dealing are, however, inseparably connected . . . with just as many respective duties.” Id. No. 28 at 135. Among such duties were the obligations of the individual to acknowledge and respect the rights of others, to mutually collaborate, to act responsibly for others, and to preserve life and live it becomingly. See id. Nos. 29–34 at 135–36. Hollenbach notes that Pacem in Terris constitutes the most complete and systematic list of human rights in the modern Catholic tradition. See HOLLENBACH, supra, at 66.

50 Pacem in Terris, supra note 45, No. 25 at 134. John went on to further observe that “[t]he fact that one is a citizen of a particular state does not detract in any way from his membership in the human family as a whole, nor from his citizenship in the world community.” Id.

51 John was nonetheless emphatic that governments acted illicitly when they restricted the right of their own citizens to exercise that right: “We must remember that, of its very nature, civil authority exists, not to confine its people within the boundaries of their nation, but rather to protect, above all else, the common good of the entire human family.” Id. No. 98 at 147.
of specifying the "just reasons" that would warrant the exercise of this basic human right remained for subsequent Catholic teachings to clarify.

*Pacem in Terris* also revisited the topic of refugees which had first been raised in *Exsul Familia*. John decried the "numberless and acute sufferings" of political refugees, stressing that their loss of citizenship from their former homelands did not cause them to lose their basic human rights. John went as far as to assert that among such basic human rights "must be included that by which a man may enter a political community where he hopes he can more fittingly provide a future for himself and his dependents." Nevertheless, the Pope was quick to add a caveat: the receiving state had an obligation to accept such immigrants, but only "as far as the common good, rightly understood, permits." However nuanced, *Pacem in Terris*’ defense of refugees and defense of the right to immigrate further ensconced these notions in the realm of Catholic social teaching.

Concerns for the immigrant did not go unnoticed in the documents of the Second Vatican Council. Intent upon redefining the role of the Church in the world, the conciliar writings espoused a doctrine of individual rights founded upon the notion of human dignity and asserting the claims of the individual over and against society. The Council Fathers articulated this philosophy in *Gaudium et Spes* (Pastoral Constitution on the Church in the Modern World) (1965).
Reflecting upon the vulnerability of migrant workers, they stressed the obligation borne by host countries to such workers.\textsuperscript{58} As it had done in previous decades then, the Church at the time of Vatican II considered immigration in the context of workers' rights, noting anew the specific link between migration and social justice.\textsuperscript{59}

\textbf{D. Instruction on the Pastoral Care of People Who Migrate (1969) and the Teaching of Pope Paul VI}

While the documents of Vatican II evidenced a general concern for immigrants, the Vatican's Sacred Congregation for Bishops undertook a more specific treatment of the topic in its 1969 Instruction on the Pastoral Care of People Who Migrate.\textsuperscript{60}

\textsuperscript{58} The conciliar authors wrote:

\begin{quote}
Justice and equity likewise require that the mobility which is necessary in a developing economy be regulated in such a way as to keep the life of individuals and their families from becoming insecure and precarious. Hence, when workers come from another country or district and contribute by their labor to the economic advancement of a nation or region, all discrimination with respect to wages and working conditions must be carefully avoided.

The local people, moreover, especially public authorities, should all treat them not as mere tools of production but as persons, and must help them to arrange for their families to live with them and to provide themselves with decent living quarters. The native should also see that these workers are introduced into the social life of the country or region which receives them.
\end{quote}

\textit{Gaudium et Spes, supra note 18, No. 66 at 211}. Pope Paul VI would stress his own concern for migrant workers in his 1967 encyclical letter \textit{Populorum Progressio}. Speaking of the need for universal charity, Paul declared:

\begin{quote}
The world is sick. Its illness consists less in the unproductive monopolization of resources by a small number of men than in the lack of brotherhood among individuals and peoples. We cannot insist too much on the duty of welcoming others—a duty springing from human solidarity and Christian charity—which is incumbent both on the families and the cultural organizations of the host countries. . . . The same welcome is due to emigrant workers, who live in conditions which are often inhuman, and who economize on what they earn in order to send a little relief to their family living in misery in their native land.
\end{quote}


\textsuperscript{59} See \textit{PASTORAL CONCERN OF THE CHURCH, supra note 16, at 10} (noting the linkage of migration and social justice concerns in \textit{Pacem in Terris} and \textit{Mater et Magistra}).

\textsuperscript{60} See \textit{SACRED CONGREGATION FOR BISHOPS, INSTRUCTION ON THE PASTORAL
Written in response to changed patterns of migration, the Congregation's Instruction sought to establish new guidelines for Church ministry consistent with the changes of Vatican II.\footnote{The U.S. bishops later acknowledged this purpose of the 1969 Vatican Instruction in their own 1976 reflection upon immigration. See \textit{Pastoral Concern of the Church}, supra note 16, at 11 (explaining that the 1969 Vatican Instruction had sought to conform the pastoral ministry of the Church to migrants with changes introduced by Vatican II). In its 1969 Instruction, the Vatican’s Congregation of Bishops noted the changed nature of migration: The modern, very rapid migrations which occur throughout the world are composed of various elements: they are made up of workers and managers, of young students and of skilled technicians, generous volunteers, refugees and deportees. These ranks of men differ greatly from one another. Nevertheless they are all in particular circumstances of life which are greatly different from those to which they were accustomed in their homeland. \textit{Pastoral Care of People Who Migrate, supra} note 60, No. 15 at 11. Once again in their 1976 letter, the U.S. Catholic bishops would cite the importance of the 1969 Instruction: A new definition of migrant is given. It is more extensive than definitions in previous documents and pronouncements and reflects some contemporary sociological notions on the powerlessness of people. Migrants are people who live outside their homeland or their own ethnic community and need special attention because of real necessity. \textit{Pastoral Concern of the Church, supra} note 16, at 11.} The Instruction began with a greatly expanded definition of what the Congregation termed “the right of emigrating.”\footnote{The Congregation declared: Men have a native right of using the material and spiritual goods which “allow . . . relatively thorough and ready access to their own fulfillment.” But where a State which suffers from poverty combined with great population cannot supply such use of goods to its inhabitants, or where the State places conditions which offend human dignity, people possess a right to emigrate, to select a new home in foreign lands, and to seek conditions of life worthy of man. This right pertains not only to individual persons, but to whole families as well. Therefore “in decisions affecting migrants their right to live together as a family [is to be] safeguarded,” with consideration of the needs of family housing, the education of children, working conditions, social insurance, and taxes. \textit{Pastoral Care of People Who Migrate, supra} note 60, No. 7 at 8.} Even in its expanded form, however, the right still admitted of limitations:
“grave requirements of the common good, considered objectively,” could warrant its restriction by public authorities.\textsuperscript{63} 

The Instruction reflected a traditional insistence of Catholic social teaching: that the enjoyment of rights is inseparable from the exercise of correlative duties.\textsuperscript{64} In this vein of thought, the Instruction asserted that the right of citizens to emigrate could be limited by their duty to serve the common good in their native countries.\textsuperscript{65} The Bishops warned against the phenomenon of “Brain Drain”—the tendency of developed countries to encourage the emigration of especially talented members of underdeveloped countries, most often to the detriment of the underdeveloped sending country.\textsuperscript{66}

\textsuperscript{63} Id. (“Public authorities unjustly deny the rights of human persons if they block or impede emigration or immigration except where grave requirements of the common good, considered objectively, demand it.”). 

\textsuperscript{64} In \textit{Rerum Novarum}, Leo XIII noted that workers had the right to own private property, see \textit{Rerum Novarum}, supra note 22, Nos. 5, 35 at 16, 32; to receive a just wage by which they could support their families, see id. No. 34 at 31; and to join workers’ organizations, see id. Nos. 36–38 at 32–34. To these rights corresponded the duties to work well, to honor equitable agreements that had been freely made, and to refrain from violence and rioting. See id. No. 16 at 20–21. Employers and the wealthy, for their part, enjoyed the right of private ownership, see id. Nos. 7, 8, 35 at 16–17, 17, 32, and the right to protection of the State from “spoliation,” see id. No. 30 at 28–29. The exercise of employers’ rights, however, gave rise to multiple duties: to not treat workers as slaves or chattels, to not tax their laborers beyond their strength or employ them in work unsuited to their age or sex, and to always pay a just wage. See id. Nos. 16–17 at 20–21. 

The writings of John XXIII reiterated the Catholic insistence that rights always connote duties. See \textit{Pacem in Terris}, supra note 45, No. 28 at 135 (articulating the theory of rights and duties). 

\textsuperscript{65} “Even though they have a right of emigrating, citizens are held to remember that they have the right and the duty . . . to contribute according to their ability to the true progress of their own community.” PASTORAL CARE OF PEOPLE WHO MIGRATE, supra note 60, No. 8 at 8 (elaborating on “Service to the Common Good”). 

\textsuperscript{66} The Congregation was harsh in its critique of “Brain Drain.” Especially in underdeveloped areas where all resources must be put to urgent use, those men gravely endanger the public good, who, particularly possessing mental powers or wealth, are enticed by greed and temptation to emigrate. They deprive their community of the material and spiritual aid it needs. The developed regions should not omit to consider this perversion of the common good of the less developed regions. Let them foster the preparation and return to the homeland of artisans and students, once they achieve ability in their fields and receive corresponding diplomas. 

\textit{Id.}
The Congregation likewise contended that an emigrant's right to be received by a host country connotes a duty on the part of the emigrant to "accommodate [himself] to a host community and hasten to learn its language." Finally, the Instruction noted the duties incumbent upon the Church itself: not only was the Church obligated to "offer the consolations of religion to all emigrants," but also to zealously defend "the rights of the human person and of the foundations of his spiritual life."

While the Instruction represented an attempt to update *Exsul Familia*, it still clung to the roseate "contract" notion of immigration alluded to by Pius XII in 1952. Moreover, because the document essentially concerned norms for Church pastoral care, issues such as the world's growing refugee crisis remained beyond its reach.

Shortly after the issuance of the Instruction by the Congregation for Bishops, Pope Paul VI, in his 1971 apostolic letter *Octogesima Adveniens*, called for the promulgation of a statute for migrants. Beyond simply affirming the basic right

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67 *Id.* No. 10 at 9 (citing duties of the emigrant towards the host community).

68 *Id.* No. 4 at 7. The bishops reiterated that "Man, 'whole and entire, body and soul' is the proper object of the Church's pastoral concern." *Id.* No. 5 at 7.

69 Among the general principles noted by the Congregation was the unity of the human family and the manner in which migration ostensibly fosters this unity: "Migrations, which favor and promote mutual understanding and cooperation on the part of all, give witness to and promote the unity of the human family, and confirm that communion of brotherhood among peoples 'in which each party is at the same time a giver and a receiver.'" *Id.* No. 2 at 6; see also, supra note 36 (quoting Pope Pius XII's description of the mutual benefits of migration for sending and receiving countries).

70 Surveying the new social problems facing the world, Pope Paul wrote:

We are thinking also of the precarious situation of a great number of emigrant workers whose condition as foreigners makes it all the more difficult for them to make any sort of social vindication, in spite of their real participation in the economic effort of the country that receives them. It is urgently necessary for people to go beyond a narrowly nationalist attitude in their regard and to give them a charter which will assure them a right to emigrate, favor their integration, facilitate their professional advancement, and give them access to decent housing where, if such is the case, their families can join them.

Linked to this category are the people who, to find work, or to escape a disaster or a hostile climate, leave their regions and find themselves without roots among other people.

Pope Paul VI, *Octogesima Adveniens: A Call to Action on the Eightieth Anniversary of Rerum Novarum* No. 17, in *Catholic Social Thought: The*
to emigrate, Pope Paul II sought the establishment of a fuller range of rights due emigrants.\textsuperscript{71} He would subsequently develop this notion and enumerate such rights with even greater specificity.\textsuperscript{72}

E. The Papacy of John Paul II

Concern for migrants and refugees has been a recurrent theme in the teachings of John Paul II.\textsuperscript{73} His public discourses not only emphasize traditional tenets of Catholic social teachings, but also reflect his experience of the post-war 20th century world.\textsuperscript{74} Beginning in his 1981 encyclical letter \textit{Laborem Exercens}, the Pope reiterated the insistence of his predecessors that there exists a fundamental right to emigrate, particularly in order to find work.\textsuperscript{75} In a pronounced departure, however, from

\textsuperscript{71} See \textit{Pastoral Concern of the Church}, supra note 16, at 9-12 (noting the evolution of Catholic teachings from simple affirmation of the right to emigrate to specification of particular rights for migrant persons).

\textsuperscript{72} Addressing the European Congress on Pastoral Work for Migrants on October 17, 1973, Pope John Paul once more called for a statute for migrants: “‘[t]his statute, . . . which might contain variations from one country to another, would guarantee the rights of migrants to respect of their personality, security of work, vocational training, family life, schooling for their children adapted to their needs, social insurance and freedom of speech and association.’” Id. (quoting \textit{L’Osservatore Romano} (Weekly English ed.), Oct. 17, 1973).

\textsuperscript{73} Over the course of his papacy, Pope John Paul has repeatedly voiced his concern for migrants and refugees, including in annual addresses on the occasion of World Migration Day. See e.g., \textit{World Migration Day 1999}, supra note 11. From 1979 to 1984, these addresses were conveyed in letters from the Cardinal Secretary of State to the President of the Pontifical Commission for the Pastoral Care of Migrants and Tourism. See Blume, supra note 17, at 16 n.6. From 1985 on, John Paul has authored these messages directly and addressed them to the Christian world. Id.

\textsuperscript{74} In 1979, during his first year as Pope, John Paul reminded the World Congress gathered in Rome that “‘emigration is a massive phenomenon of our time, a permanent phenomenon, which is even assuming new forms, and which concerns all continents and nearly all countries.’” Silvano M. Tomasi, C.S., \textit{Migrants and Refugees in the Teaching of John Paul II}, 10 \textit{Migration Today} 28, 29 (1982) (quoting \textit{L'Osservatore Romano} (Weekly English ed.), \textit{Pope John Paul to World Congress on the Problems of the Phenomenon of Migration}, Apr. 2, 1979, at 9).

\textsuperscript{75} Pope John Paul addressed the question of emigration in the context of the work rights of emigrants. He first decried the loss that such emigration constitutes for sending countries:

\begin{quote}
Man has the right to leave his native land for various motives—and also the right to return—in order to seek better conditions of life
\end{quote}
Pius XII's contract notion of migration, Pope John Paul viewed the phenomenon of emigration not so much as something mutually beneficial to both sending and receiving countries, but rather as "a necessary evil." As a consequence, he asserted that great care should be exercised to prevent the exploitation of those whose only recourse was emigration in search of work.

While concern for migrant workers first shaped Pope John Paul's public teachings on immigration, concern for refugees in another country. This fact is certainly not without difficulties of various kinds. Above all it generally constitutes a loss for the country which is left behind. It is the departure of a person who is also a member of a great community united by history, tradition, and culture; and that person must begin life in the midst of another society united by a different culture and very often by a different language. In this case, it is the loss of a subject of work, whose efforts of mind and body could contribute to the common good of his own country, but these efforts, this contribution, are instead offered to another society which in a sense has less right to them than the person's country of origin.


Even if emigration is in some aspects an evil, in certain circumstances it is, as the phrase goes, a necessary evil. Everything should be done . . . to prevent this material evil from causing greater moral harm; indeed every possible effort should be made to ensure that it may bring benefit to the emigrant's personal, family, and social life, both for the country to which he goes and the country which he leaves. In this area much depends on just legislation, in particular with regard to the rights of workers.

Id.

See id. John Paul insisted:

The most important thing is that the person working away from his native land, whether as a permanent emigrant or as a seasonal worker, should not be placed at a disadvantage in comparison with the other workers in that society in the matter of working rights. Emigration in search of work must in no way become an opportunity for financial or social exploitation. As regards the work relationship, the same criteria should be applied to immigrant workers as to all other workers in the society concerned. The value of work should be measured by the same standard and not according to the difference in nationality, religion, or race. For even greater reason the situation of constraint in which the emigrant may find himself should not be exploited. All these circumstances should categorically give way; . . . to the fundamental value of work, which is bound up with the dignity of the human person.

Id.
likewise evolved as a predominant theme.\textsuperscript{78} In his 1987 encyclical letter \textit{Sollicitudo Rei Socialis}, John Paul referred to the world’s refugee crisis as “the festering of a wound.”\textsuperscript{79} In a 1990 Lenten Message, recalling Pope John XXIII’s entreaty in \textit{Pacem in Terris} that the rights of refugees be recognized “precisely because they are persons,” Pope John Paul enumerated such refugee rights.\textsuperscript{80}

\textsuperscript{78} In language reminiscent of \textit{Laborem Exercens}, John Paul in 1985 observed:

\begin{quote}
\[\text{E}migration often constitutes a drama; it is a trial, one could even say, under certain aspects, an evil, a necessary evil. This is true for the person who emigrates and for his family which generally goes through a difficult phase, with all the risks of uprooting; it is true for his own country deprived of a subject who enriches its life, its culture, its drive. In itself, one would be tempted to wish that migrants might be able to return freely to their own fatherland. Even more so, if it is a matter of refugees who have had to undergo displacement to flee from fear, from war, from injustice or from ideological oppression, the best solution... is, over and above the praiseworthy and necessary efforts for integration, repatriation with the guarantee of security.}
\end{quote}


\textsuperscript{79} Pope John Paul II, \textit{Sollicitudo Rei Socialis: On Social Concern No. 24}, in \textbf{CATHOLIC SOCIAL THOUGHT: THE DOCUMENTARY HERITAGE} 393, 409 (David J. O’Brien & Thomas A. Shannon eds., 1997). Noting that the arms race and stockpiling of nuclear weapons lead to a path of death, John Paul observed:

\begin{quote}
The consequences of this state of affairs are to be seen in the festering of a \textit{wound} which typifies and reveals the imbalances and conflicts of the modern world: the millions of refugees whom war, natural calamities, persecution, and discrimination of every kind have deprived of home, employment, family, and homeland. The tragedy of these multitudes is reflected in the hopeless faces of men, women, and children who can no longer find a home in a divided and inhospitable world.
\end{quote}

\textit{Id.}

\textsuperscript{80} Pope John Paul II, \textit{Pope’s Lenten Message: Refugees Now Are ‘Next-Door Neighbors,’} L’\textit{OSSERVATORE ROMANO} (Weekly English ed.), Feb. 12, 1990, at 5. According to John Paul, the rights of refugees include:

\begin{quote}
[I]he right to establish a family or to be reunited with their families; to have a stable, dignified occupation and a just wage; to live in dwellings fit for human beings; to receive adequate education for their children and young people, as well as adequate health care—in a word, all those rights solemnly sanctioned since 1951 in the Convention of the United Nations on the Statute for Refugees, and confirmed in the 1967 Protocol on the same Statute.
\end{quote}

\textit{Id.}
The most comprehensive document of John Paul's papacy concerning refugees is a 1992 presentation entitled *Refugees: A Challenge for Solidarity*. The result of the collaborative efforts of two of the Vatican's pontifical councils, the document began with the assertion that "a world where human rights are violated with impunity will never stop producing refugees of all kinds." The Vatican noted the very limited categories of persons officially recognized as refugees by the United Nations and contended that the U.N. Convention and U.N. Protocol Relating to the Status of Refugees "do not protect many others whose human rights are equally disregarded."

Observing that the signers of the U.N. Convention had expressed a hope that the Convention would inspire protection even beyond its contractual scope, the Vatican called for more formal recognition of "de facto refugees." Included within this category would be persons forced to migrate because of armed conflicts, ill-advised national economic policies, or natural disasters. Moreover, the Vatican urged that a distinction be made between economic migrants who flee life-threatening economic conditions—thereby merit internation protection—and those who emigrate simply to improve their position.

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82 The letter comprised a joint statement by the Pontifical Council for Pastoral Care of Migrants and Itinerant People and the Pontifical Council "Cor Unum." *Id.* at 65.
83 *Id.* at 65-66.
84 *Id.* at 67. The Vatican observed that the United Nations defines a refugee as one who "owing to [a] well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion ... is unable or, owing to such fear, is unwilling to return to [his or her country]." *Id.* at 75-76 n.4 (citing Convention Relating to the Status of Refugees, adopted July 28, 1951, art. I, A.2).
85 *A Challenge for Solidarity*, supra note 81, at 67. The authors of the Vatican document noted:

The first international initiatives took place in a rather limited context. They demonstrated an interest for the sufferings of specifically persecuted persons, which was limited to their individual reasons for leaving their countries. Now that forcibly uprooted people have become multitudes, international agreements must be revised, and the protection they guarantee must be extended to other categories as well.

*Id.* at 68.
86 See *id.* at 67.
87 See *id.* The letter subsequently asserted that "[i]n particular, international agreements should include the obligation to not consider those
further challenge to the international community, the letter even called for the formal recognition as refugees of persons displaced within their own countries.88

Decrying the diminishing protections offered refugees throughout the world, the Vatican noted that national political measures were fast becoming hostile towards refugees.89

Conceding that economic crises might validly limit the ability of countries to accept refugees, the letter nonetheless insisted that the right to asylum could never be denied when people’s lives are truly threatened in their homeland.90 The initial point of reference, declared the Vatican, is not the interests of the State nor even the demands of national security, but rather, the fundamental need of the human person to live in community.91

88 The Vatican observed:

A great number of people are forcibly uprooted from their homes without crossing national frontiers. In fact during revolutions and counter-revolutions, the civilian population is often caught in the cross fire of guerrilla and government forces fighting each other for ideological reasons or for the ownership of land and national resources. For humanitarian reasons these displaced people should be considered as refugees in the same way as those formally recognized by the 1951 Convention because they are victims of the same type of violence.

Id. at 67.

89 The letter observed that despite an increased awareness of interdependence among peoples and nations, some states, guided by their own ideologies and particular interests, arbitrarily determine the criteria for the application of international obligations.

On the other hand, in countries which had in the past offered a generous reception to refugees, there is now a disturbingly similar trend of political decisions aimed at reducing the number of entries and discouraging new requests for asylum.

Id. A case in point—though not one specifically alluded to in the Vatican document—was the 1992 political decision by President George Bush to terminate at-sea asylum screenings of Haitian asylum seekers following the coup against President Jean Bertrand Aristide. In issuing what would be termed “The Kennebunkport Order,” Bush instructed the U.S. Coast Guard to return all refugees to Haiti without first ascertaining their political asylum status. See Exec. Order No. 12,807, 57 Fed. Reg. 23,133, 23,133–34 (1992). In a Supreme Court case that ensued, the majority ruled that neither domestic statutes nor international treaty obligations constrain the U.S. President from forcibly repatriating refugees interdicted on the high seas. See Sale v. Haitian Ctrs. Council, Inc., 509 U.S. 155, 158–59 (1993).

90 See A Challenge for Solidarity, supra note 81, at 67.

91 See id. at 68. John Paul’s insistence that the notion of national
A refugee, asserted the Vatican, is not an object of assistance, but rather, a subject with rights and duties. By way of example, persons fleeing invasion or a civil war have the right to recognition as non-combatants and the corresponding duty to explicitly renounce the use of force. Refugees, insisted the Vatican, have a claim not simply to a guarantee of physical integrity, but to “all the conditions necessary for a fully human existence.” Thus, refugees enjoy the right not simply to food, clothing, housing, and protection from violence, but also to education, medical care, and a modicum of control over their own lives.

The Vatican further asserted that the exercise of the right to asylum cannot be obstructed by deterrent or punitive measures. Singling out the policy of detaining asylum seekers as one such unacceptable measure, the Vatican opined that very few circumstances justify this policy of restriction. Moreover, even sovereignty is not absolute in the face of urgent refugee needs was likewise discernible in his 1987 Message for World Migration Day. Surveying the obligations of countries that receive refugees, John Paul declared: “Rich countries cannot be disinterested in the migratory problem and much less close their frontiers or harden their laws, more so if the gap between the rich and the poor countries from which migration originates widens.”


“Protection,” explained the Vatican, “is not a simple concession made to the refugee. He is not an object of assistance, but rather a subject of rights and duties. Each country has the responsibility to respect the rights of refugees and assure that they are respected as much as the rights of its own citizens.” A Challenge for Solidarity, supra note 81, at 69.

92 See id.
93 Id.
94 See id.
96 In an explicit reference to the Universal Declaration of Human Rights, the letter asserted that the exercise of the right to asylum should be recognized everywhere. See id; see also id. at 76 (citing Art. 14 of the Universal Declaration).

97 The Vatican contended:
in cases where competent government authorities decide that asylum seekers do not qualify as true refugees, authorities remain obligated not to send back asylum seekers to countries where such persons fear life-threatening situations. Finally, the Vatican issued a call for more equitable burden-sharing on the part of the international community in regards to refugee assistance.

Concerned as it is solely with refugees, this 1992 treatise remains a landmark in Catholic social teachings. Unlike Exsul Familia, the focus of the 1992 letter was not confined to Europe, and it made no allusions to Canon Law or more narrow Church concerns such as the need for orthodoxy. Instead, the Vatican addressed the global refugee crisis, citing directly to international human rights documents such as the U.N. Convention and Protocol Relating to the Status of Refugees, and the Universal Declaration of Human Rights. The Vatican letter not only affirmed these U.N. documents, but even more

A person applying for asylum should not be interned unless it can be demonstrated that he or she represents a real danger, or there are compelling reasons to think that he or she will not report to the competent authorities for due examination of his or her case. Moreover, such people should be helped with access to work and to a just and rapid legal procedure.

Id. at 69.


99 Noting that “[i]n large part, neighboring countries bear the burden of [refugee] assistance,” the letter asserted that such a burden “should be shared equitably by the international community.” A Challenge for Solidarity, supra note 81, at 72.

100 See supra note 40.

101 See A Challenge for Solidarity, supra note 81, at 67 (discussing the Convention); id. at 75–76 n.4 & n.5 (citing the Convention & Protocol) and n.12 (citing Article 14.1 of the Universal Declaration).
importantly, called for the recognition of refugee rights that far exceed the scope of protection under current international law.\textsuperscript{102}

John Paul's thinking on the issue of illegal immigrants likewise challenges the limits of current domestic and international law. In a 1995 address entitled \textit{The Church and Illegal Immigrants}, John Paul described the phenomenon of illegal immigration as a "social emergency" which, despite increasingly restrictive immigration laws and reinforced border control systems, seems impossible to halt.\textsuperscript{103} Conceding that illegal immigration should be prevented, Pope John Paul nonetheless noted that governments have frequently tolerated illegal immigrants as a source of cheap labor.\textsuperscript{104} The Pope contended that ultimately, only the elimination of global underdevelopment will stanch the flow of illegal immigration.\textsuperscript{105}

So long as the problem of illegal immigration continues, Pope John Paul insisted, it remains incumbent upon the Church to exercise a special ministry toward the undocumented.\textsuperscript{106} Integral

\begin{itemize}
\item \textsuperscript{102} See supra notes 85–87 (calling for more formal recognition of "de facto" refugees); supra note 88 (urging that internally displaced persons be accorded refugee status); supra notes 90–91 (insisting that national sovereignty is not absolute when refugees face life-threatening situations); supra notes 94–95 (affirming extended notion of refugee rights).
\item \textsuperscript{103} See Pope John Paul II, \textit{The Church and Illegal Immigrants}, 41 THE POPE SPEAKS 8, 8 (1996) [hereinafter \textit{The Church and Illegal Immigrants}].
\item \textsuperscript{104} See \textit{id.} at 8–9. In particular, John Paul noted how "[illegal immigration] has frequently been tolerated because it promotes a reserve of personnel to draw on as legal migrants gradually move up the social ladder and find stable employment." \textit{id.} at 8.
\item \textsuperscript{105} See \textit{id.} at 9.
\item \textsuperscript{106} John Paul wrote:
In particular, [the Church] asks herself how to meet the needs, while respecting the law, of those persons who are not allowed to remain in a national territory. . . . She tackles the problem of how to involve in this work of solidarity those Christian communities frequently infected by a public opinion that is often hostile to immigrants.
\textit{id.} "In the Church," John Paul concluded, "no one is a stranger, and the Church is not foreign to anyone." \textit{id.} at 10. In an address given on January 22, 1999 to a Synod of Bishops gathered in Mexico City, the Pope reflected upon the unique experience of immigration in America:
In its history, America has experienced many immigrations, as waves of men and women came to its various regions in the hope of a better future. The phenomenon continues even today, especially with many people and families from Latin American countries who have moved to the northern parts of the continent, to the point where in some cases they constitute a substantial part of the population. . . . The Church is well aware of the problems created by this situation and is committed to spare no effort in developing her own pastoral
to this mission is the task of providing illegal immigrants with the necessary means of subsistence as well as aid in obtaining residence permits. This latter task, noted the Pope, is even more compelling in instances when immigrants have maintained long-time physical presence in their adopted countries. 

Addressing such countries, John Paul issued a call to avoid racism and xenophobia in their treatment of illegal immigrants. Finally, the Pope called upon governments to implement more equitable legal measures and to offer better protection to immigrants facing life-threatening situations not currently recognized under international law.

strategy among these immigrant people, in order to help them settle in their new land and to foster a welcoming attitude among the local population.

Church communities will not fail to see in this phenomenon a specific call to live an evangelical fraternity. “The Church in America must be a vigilant advocate, defending against any unjust restriction the natural right of individual persons to move freely within their own nation and from one nation to another. Attention must be called to the rights of migrants and their families and to respect for their human dignity, even in cases of non-legal immigration.”


107 See The Church and Illegal Immigrants, supra note 103, at 9.

108 John Paul emphasized that “[t]his kind of effort should be made especially on behalf of those who, after a long stay, are so deeply rooted in the local society that returning to their country of origin would be tantamount to a form of reverse emigration, with serious consequences particularly for children.” Id.

109 Reflecting on the growing hostility that illegal immigrants face, John Paul emphasized that “[i]t is necessary to guard against the rise of new forms of racism or xenophobic behavior, which attempt to make these brothers and sisters of ours scapegoats for what may be difficult local situations.” Id.

110 The Pope declared:

[L]egislation in all the countries involved should be brought into harmony, ... for a more equitable distribution of the burdens of a balanced solution. It is necessary to avoid recourse to the use of administrative regulations, meant to restrict the criterion of family membership, which result in unjustifiably forcing into an illegal situation people whose right to live with their family cannot be denied by any law.

Adequate protection should be guaranteed to those who, although they have fled from their countries for reasons unforeseen by international conventions, could indeed be seriously risking their life were they obliged to return to their homeland.

Id. at 10.
In confronting issues such as refugee protection and the treatment of illegal immigrants, John Paul has called for particular types of legal measures. Addressed as they are to governments, such statements appear self-consciously and overtly political. John Paul's teachings on immigration are not, however, exclusively political. On a variety of occasions—including addresses issued annually on World Migration Day—he has reflected on a wide range of issues concerning the pastoral care and full social integration of migrants and refugees.111

111 Pope John Paul's 1985 Address on World Migrants' Day stressed the right of migrants to be fully integrated into the church communities that receive them. See Migration and Ecclesial Integration, in PEOPLE ON THE MOVE, supra note 78, at 48. His 1987 address reflected upon the mission of the Catholic laity in countries that receive migrants. See Catholic Laity and Migration, supra note 91, at 3. In his 1990 message, John Paul criticized the teaching of sects and new religious movements and their efforts to convert vulnerable Catholic migrants. See Pope John Paul II, Proselytizing of Migrants, 35 THE POPE SPEAKS 437–41 (1990). In 1992, the Pope affirmed the mission of the Church to minister to migrants worldwide. See Church Must Be 'Neighbour' to All, supra note 91, at 1, 4. The Pope's 1993 Message surveyed the challenges facing migrant families and the duties of the Church and the State to assist such families. See Pope John Paul II, Problems of the Migrant Family, L'OSSERVATORE ROMANO (Weekly English ed.), Sept. 29, 1993, at 4.

In the Pope's 1996 address, he noted a new ecumenical trend in migratory movements, whereby "[i]t is non-Christians, increasingly numerous, who go to countries with a Christian tradition in search of work and better living conditions, and they frequently do so as illegal immigrants and refugees." Pope John Paul II, Concern for Migrants and Refugees, 42 THE POPE SPEAKS 12, 13 (1997). Drawing upon a Gospel paradigm, Pope John Paul reiterated the commitment of the Church to such persons: "For her part, the Church, like the Good Samaritan, feels it her duty to be close to the illegal immigrant and refugee, contemporary icon of the despoiled traveler, beaten and abandoned on the side of the road to Jericho." Id.

In his 1997 message, John Paul once again recalled the desperate plight of migrants and refugees:

[The situation of the world's migrants and refugees seems ever more precarious. Violence sometimes obliges entire populations to leave their homeland to escape repeated atrocities; more frequently, it is poverty and the lack of prospects for development which spur individuals and families to go into exile, to seek ways to survive in distant lands, where it is not easy to find a suitable welcome. Solidarity With the Stranger, supra note 20, at 140. "For the Christian," the Pope concluded, "acceptance of and solidarity with the stranger are not only a human duty of hospitality, but a precise demand of fidelity itself to Christ's teaching." Id. at 141. Emphasis upon the Church's spiritual kinship with migrants likewise found expression in his 1999 message:

Catholicity is not only expressed in the fraternal communion of the baptized, but also in the hospitality extended to the stranger, whatever his religious belief, in the rejection of all racial exclusion or
In a departure even from the 1992 Vatican Presentation (Refugees: A Challenge For Solidarity), Pope John Paul has recently suggested that the legal distinction between migrants and refugees has become so blurred that the two groups are now practically indistinguishable. Such a contention—accurate though it may be—moves the thinking of the Pope well beyond the current limits of international and U.S. refugee law.

III. U.S. CATHOLIC BISHOPS: CATHOLIC SOCIAL TEACHINGS APPLIED

While papal teachings on immigration have remained necessarily general, the U.S. Catholic Bishops have applied such teachings and addressed immigration issues facing the United States in much greater detail. Teachings by the U.S. Catholic Church on immigration have found expression primarily in two areas: collective statements and pastoral letters issued by committees of bishops and experts in the name of all the American bishops; and individual statements and congressional testimony by particular bishops or Church spokespersons.

A. Pastoral Letters of the National Conference of Catholic Bishops

One of the first allusions to immigration by the U.S. bishops speaking collectively is found in a 1919 pastoral letter surveying discrimination, in the recognition of the personal dignity of every man and woman and, consequently, in the commitment to furthering their inalienable rights.

World Migration Day 1999, supra note 11, No. 6.

112 The 1992 Vatican presentation issued by the pontifical councils acknowledged a distinction between these two groups: “Although we must always distinguish between refugees and migrants, the dividing line is sometimes difficult to draw, and certain arbitrary interpretations support restrictive policies that are hardly in keeping with respect for the human person.” A Challenge for Solidarity, supra note 81, at 65. In Pope John Paul’s own 1992 Message for World Migration Day, however, this distinction was eclipsed:

People used to emigrate in order to create better possibilities of life; today people emigrate from many countries merely to survive.

Such a situation also tends to blur the distinction between the concepts of “refugee” and “migrant” to the point that the two categories are merged under the common denomination of “necessity.”

Church Must Be ‘Neighbour’ to All, supra note 91, at 1.

113 See Christiansen, supra note 31.
the post-war U.S. religious and political scene. Noting the role that refugees had played in building the nation, the bishops called for greater charity to newly-arrived immigrants. Key to such charity, argued the bishops, was eliminating the sense of distrust so often accorded immigrants.

The designation of 1959 as "World Refugee Year" occasioned further collective reflection by the U.S. Bishops on migration. In a statement entitled World Refugee Year and Migration, the bishops reiterated that migration is a right due in justice to the individual. They also recalled that Pope Pius XII had referred to the "natural right of the individual to be unhampered in immigration or emigration." Calling for a Christian attitude

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115 The bishops began by recalling the historical significance of refugees in America:

Our country had its origin in a struggle for liberty. Once established as an independent republic, it became the refuge of those who preferred freedom in America to the conditions prevailing in their native lands. Differing widely in culture, belief, and capacity for self-government, they had as their common characteristics the desire for liberty and the pursuit of happiness. Within a century, those diverse elements had been formed together into a nation, powerful, prosperous, and contented. As they advanced in fortune, they broadened in generosity; and today, the children of those early refugees are restoring the breath of life to the peoples of Europe.

Id. at 319–20. The bishops argued that an awareness of how refugees shaped American history, necessitates a deeper level of care that should be shown to current waves of immigrants: "There is much to be done in behalf of those who, like our forefathers, come from other countries to find a home in America." Id. at 321.

116 The bishops declared:

[What] [immigrants] chiefly need is that Christian sympathy which considers in them the possibilities for good rather than the present defects, and instead of looking upon them with distrust, extends them the hand of charity. Since many of their failings are the consequence of treatment from which they suffered in their homelands, our attitude and action toward them should, for that reason, be all the more sympathetic and helpful.

Id. at 321.

117 On November 19, 1959, the National Catholic Welfare Conference Administrative Board issued a statement on behalf of the U.S. Bishops entitled "World Refugee Year and Migration." See World Refugee Year and Migration, in People on the Move, supra note 78, 17 (1988) [hereinafter World Refugee Year and Migration].

118 See id. No. 14 at 18. The writers declared that "migration is an absolute need for many refugee and displaced peoples." Id. No. 22 at 19.

119 Id. No. 15 at 18.
toward the problem of immigration, the bishops enumerated general concerns they had regarding U.S. immigration law.¹²⁰ No longer content with simply calling for greater charity toward migrants and refugees, the bishops for the first time addressed the U.S. legal treatment of such persons. The bishops' legal concerns remained general ones, however, and were expressed not as assertions, but rather as questions "raised to stimulate Christian thinking on the concrete problems connected with migration and immigration."¹²¹

The bishops issued a much more assertive analysis of U.S. immigration law in a 1976 resolution and statement entitled The Pastoral Concern of the Church for People On the Move.¹²² The bishops' resolution began with the declaration that immigrants are doubly marginalized: they are typically forced to migrate

¹²⁰ The questions raised by the bishops included the following:

Do our own laws tend to discriminate against the "difficult to resettle" and "hardship" cases? Many students of our immigration laws feel they are designed to favor the best educated, the strongest, and the healthiest immigrants. This in effect bleeds a nation troubled with population problems of its best citizens, leaving behind those who can contribute least to national prosperity. Such ungenerous laws seem to bespeak a spirit of selfishness rather than a genuine desire by a privileged people to help those in need.

Are our basic laws sufficiently sensitive to problems of compassion, such as reuniting of families or the provision of homes for orphan children?

Are we observing the precepts of justice and charity by keeping in our laws prejudicial elements such as token quotas for Orientals or a national-origins clause? . . .

Have we considered the possibility that some regulations designed to keep out criminals and subversives may affront the human dignity of immigrants not belonging to this category? Could we not find less offensive methods for securing the same purpose?

Is the total number of quota immigrants too low, considering the immense economic strength of our nation? It is certainly no kindness to admit immigrants if there are no jobs available, but the ability of our economy to offer jobs has steadily and vigorously risen. Even doubling the present effective quota immigrant level would be an insignificant factor in adding to our work force.

¹²¹ Id. Nos. 31–35 at 19.

¹²² See Pastoral Concern of the Church, supra note 16. This communication of the U.S. bishops consisted of a statement issued by the National Conference of Catholic Bishops' Committee of Migration and Tourism entitled "The Church and the Immigrant Today." Id. at 7. The statement was preceded by a resolution issued in the name of the entire Conference of Bishops summarizing and adopting the longer statement. See id. at 1 ("Resolution on the Pastoral Concern of the Church for the People on the Move").
because of inadequate resources or distribution of goods, and then often face new injustices in their countries of adoption.123 Singling out the newly-passed U.S. law that equalized visa issuance for the eastern and western hemispheres, the bishops criticized the measure for the detrimental effect it would have upon family reunification, particularly for natives of Mexico and Canada.124 The bishops went on to call for very specific legislative remedies to this injustice.125

In a lengthier statement that followed the resolution, the Bishops' Ad Hoc Committee on Migration and Tourism offered an even more extensive critique of then-current U.S. immigration law.126 The critique elaborated upon the reforms called for by the resolution, including the need for increased visa quota numbers to facilitate family reunification of immigrants from Mexico.127

123 See id. at 1.
124 The bishops declared:

We are particularly concerned with the passage in October of 1976 of Public Law 94-571. While it does equalize visa issuance for both the eastern and western hemispheres, it causes a most serious hardship in the matter of family reunification, especially for natives of Mexico and Canada. . . .

[Whereas over the past few years immigration from Mexico, chargeable to the numerical ceiling, has averaged in excess of 40,000 visas per year, this present law now restricts it to 20,000. Secondly, restrictive conditions have been placed in this law which affect alien parents who have children born in the U.S. Both of these restrictions will hinder family reunification.

Id. at 2–3.

125 The bishops recommended the following:

1. That quota-ceilings for natives of Mexico and Canada be increased to 35,000 persons per year.

2. That the American citizen child, regardless of age, be in a position to facilitate his or her parents' immigration.

3. That in light of humanitarian concerns and the preservation of family unity, a generous amnesty procedure be enacted for the undocumented aliens presently residing in the U.S.

4. That the administration and implementation of the immigration laws be reviewed and revised in order to eliminate arbitrary selective enforcement and to reflect humanitarian concerns.

5. That a new and broader definition of the category of "refugee" be given in order that we may provide a haven for oppressed people from any part of the world, regardless of their race, religion, color, or creed.

Id. at 3.

126 See id. at 13–15. The Committee's legal assessments were preceded by a brief survey of Catholic teachings on immigration. See id. at 9–13.

127 See id. at 15–16; see also id. at 3.
The statement also called for a broader definition of the "refugee" category in U.S. law and for better protection of the rights of children born U.S. citizens to deportable alien parents. In unprecedented fashion, the Committee then urged even more fundamental reforms of U.S. law: the amendment of the Civil Rights Act to provide equal treatment for all residents, the enactment of a statute of limitations on deportation, and the

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128 The Committee opined that:

The current definition of refugees in U.S. immigration law is very restrictive in scope. A proposal pending in Congress to adopt the United Nations' definition which is widely accepted both in the United States and abroad as a more realistic definition of a true refugee, should be incorporated into immigration legislation.

*Id.* at 13.

129 Noting that children frequently bear the greatest burden of immigration, the Committee observed:

Most children born in the United States are citizens. But their protection under the Constitution is often an academic question if for some reason one or both of their parents are found ineligible to enter or stay in the United States. The child, a U.S. citizen, is forced to depart with his or her parents. Therefore citizenship laws and the rights of minor citizens ought to be protected in order to avoid the de facto deprivation of rights of minor U.S. citizens prevented from residing in this country with their parents.

*Id.* at 16.

130 The bishops noted that even lawful permanent residents lack rights accorded to citizens:

Foreign born persons in the United States are not covered by the Civil Rights Act of 1964 with respect to their alienage. Also it is legal for private employers to deny employment to a permanent resident alien lawfully in the U.S. because he or she is an alien. The traditions of this country and simple justice make it clear that all persons should be treated equally and that if a person is judged acceptable to be a permanent resident, that should not be a license to discriminate because he or she is foreign born. Therefore, the Civil Rights Act and other legislation ought to be amended to protect and provide equal treatment for all residents and citizens. The areas where equal treatment should be guaranteed are, for example: private employment, housing, ownership of property, civil service jobs, residence, use of federal courts, licenses, armed services, welfare benefits, etc.

*Id.* at 14.

131 The bishops stressed that severe injustice results in the absence of such protection:

Currently no statute of limitations on deportation exists. The basic principle of a statute of limitations ought to be embodied in legislation. At present an immigrant who is a permanent resident and has committed certain crimes may be deported although he or she has been a resident since the age of two and the deportation takes place at age sixty. This is highly inappropriate, since in such a
implementation of a broad-based amnesty program for undocumented aliens.\footnote{132}

Even the administration and enforcement of U.S. immigration law did not escape episcopal scrutiny. Noting that the issuance of visas by U.S. consulates was unreviewable and all too often colored by foreign policy concerns, the Committee called for the establishment of a Visa Review Board.\footnote{133} The bishops also criticized the tactic of sweeps and raids employed by the Immigration and Naturalization Service,\footnote{134} and took the case the conduct may be the result of the person's experience in the United States and not the result of the environment or other factors in his or her country of origin. The protection of individuals, as well as acceptance of this country's responsibility for fostering or influencing behavior, should be reflected in a reasonable statute of limitations.

\textit{Id.} \footnote{132} Terming the presence of undocumented aliens in the U.S. "a most critical social issue," the bishops insisted:

[A] just solution to this problem cannot be achieved apart from legalization of their status, with a residency cutoff date for eligibility but without charging them against the numerical ceilings for immigrants from their countries of origin. Without such legislation, an underground society of undocumented persons may become a more dehumanizing and taxing problem than the current phenomenon.

\textit{Id. at 20.} Acknowledging that a search for work motivated much illegal immigration, the bishops asserted that enforcement measures and even employer sanctions would not stem the influx of undocumented aliens:

The resources of the Immigration Service should be utilized for prevention rather than apprehension and deportation. Preventive control and effective enforcement of the wage and hour laws for all workers (to reduce the economic incentive of hiring undocumented immigrants as cheap labor) will help keep the problem from recurring. The alternative, penalizing employers of undocumented immigrants, would open the door to fraud and to discrimination in hiring: persons who look "foreign" or speak English poorly (or not at all) might not be hired, even though they are citizens or resident aliens, because employers might fear, or pretend to fear, sanctions for hiring an undocumented alien.

\textit{Id.} \footnote{133} See \textit{id.} at 15–16.
\footnote{134} The bishops declared:

The tactic of sweeps and raids is but one indication of the erratic and unequal enforcement of immigration law. The Immigration Service itself admits it cannot enforce the law. This unnecessary suffering and fear and this unequal dispensing of a questionable justice can be eliminated by granting amnesty as proposed and concentrating enforcement on future prevention.

\textit{Id. at 21.}
organization to task for allegedly disseminating faulty information about undocumented migrants.\textsuperscript{135} Finally, the Committee denounced the phenomenon of “Brain Drain” whereby U.S. law encouraged the migration of highly educated persons from developing countries.\textsuperscript{136}

The 1976 letter by the American bishops was notable on several counts. It marked the first collective statement by the bishops addressing not merely U.S. immigration policy, but also specific U.S. immigration laws.\textsuperscript{137} Secondly, the bishops' statement not only enumerated the pastoral concerns of the Catholic episcopacy, but advocated the enactment of particular legal measures and reforms.\textsuperscript{138}

\textsuperscript{135} Examining the role that public opinion played in the treatment of undocumented aliens, the bishops observed that “[m]ost statements about undocumented migrants are based on information supplied by the Immigration and Naturalization Service. The factual basis of the information is admittedly weak. Scattered pieces of information, coupled with broad assumptions, result in what are essentially guesses about the number and impact of undocumented migrants.” \textit{Id.} at 22.

\textsuperscript{136} Assessing the toll of such immigration upon sending countries, the bishops declared:

\textit{[T]he United States should not encourage the movement of skilled and professional people from developing countries. Thus, the special preference afforded by the U.S. to highly skilled persons should be restricted. Our immigration policy should not encourage a flow of educated persons needed for development in other countries, but should instead focus primarily on reuniting families. It does not make good sense to direct foreign aid to developing countries and at the same time receive reverse foreign aid in the form of professional persons whose talents are badly needed in the same countries. The law should, however, provide in a most limited way for the admission of the individual with exceptional talents which cannot be developed or utilized in his own country.}

\textit{Id.} at 14.

\textsuperscript{137} While the bishops' 1959 letter raised concerns of the episcopacy about U.S. immigration policy, it did not address specific immigration laws like the 1976 treatise. \textit{See supra} notes 120–21 and accompanying text.

\textsuperscript{138} This tradition of advocacy would continue in the years following the issuance of \textit{The Pastoral Concern of the Church for People on the Move}. On May 2, 1977, the Catholic bishops adopted a resolution urging an immediate end to all deportation proceedings against Haitian refugees and the granting of amnesty or refugee rights to all Haitians then present in the United States. \textit{See Resolution on Haitian Refugees (May 2, 1997), in 4 PASTORAL LETTERS OF THE UNITED STATES CATHOLIC BISHOPS} 198, 198 (Hugh J. Nolan ed., 1983) [hereinafter \textit{4 PASTORAL LETTERS}]. The growing refugee crisis in Southeast Asia led to a call by the U.S. bishops on February 16, 1978 for greater humanitarian assistance to the thousands of Vietnamese, Laotians, and Cambodians who had fled their homelands. \textit{See Statement on Small-Boat Refugees in Southeast Asia}
New waves of Cuban and Haitian refugees occasioned a request by the bishops in May 1980 that President Carter grant asylum to all boat people landing on America's southern shores. See Resolution on Cuban and Haitian Refugees (May 1980), in 4 PASTORAL LETTERS, supra, at 378. In his 1983 testimony presented on behalf of the U.S. Catholic Conference to the National Commission on U.S. Policy in Central America, Archbishop James Hickey called for all Salvadoran refugees in the United States to be granted the legal relief of Extended Voluntary Departure. See Testimony to the National Commission on U.S. Policy in Central America (Oct. 21, 1983), in 5 PASTORAL LETTERS OF THE UNITED STATES CATHOLIC BISHOPS 29, 39–40 (Hugh J. Nolan ed., 1989) [hereinafter 5 PASTORAL LETTERS].

On November 14, 1985, the National Catholic Conference returned its attention to immigration reform, issuing a brief summary of changes needed in U.S. law. See Resolution on Immigration Reform (Nov. 14, 1985), in 4 PASTORAL LETTERS, supra, at 213–14. The bishops insisted that “any viable program of immigration reform must be based on legalization as its foundation, rather than as an ancillary and conditional component.” Id. at 213. They emphasized that any acceptable program would require the following elements:

- legalization opportunities for the maximum number of undocumented aliens;
- an extensive, aggressive outreach effort to eligible aliens;
- application deadlines and requirements for qualification that are both generous in respect to the number of aliens included and realistic in terms of the time-frame for application;
- no administrative arbitrariness in determining who shall be excluded;
- the provision of adequate appellate recourse for those disqualified by the Immigration and Naturalization Service (INS);
- active participation in planning by representative ethnic groups and by responsible community and denominational migration agencies;
- screening of applications by responsible agencies before submission to the INS in order to ensure eligibility; and
- provision to the newly legalized of the same protections and benefits available to all resident aliens.

Id. The bishops asserted moreover that only when “legalization [was] treated as the centerpiece of immigration reform [would they find] employer sanctions tolerable.” Id. Sanctions, according to the bishops, would be acceptable only if they:

- are part of a generous and fair legalization program that will benefit most undocumented persons now in the country;
- are accompanied by stringent antidiscrimination legislation;
- call for the development of a secure and uniform national employment identification system (e.g., a tamper-proof social security card) required of all applicants for employment; and
- offer substantive reassurances that enforcement will not fall disproportionately on employers employing Hispanics and Orientals and on employers in areas with high concentrations of foreign-born and other minority persons.

Id. at 213–14. Finally, the bishops noted their opposition to any large-scale new programs for temporary agricultural workers or to “reforms” of existing
CATHOLIC SOCIAL TEACHINGS AND U.S. IMMIGRATION LAW

A decade later, as the United States celebrated the 100th anniversary of the Statue of Liberty, the U.S. bishops once again issued a public reflection on immigration. Entitled *Together a New People*, the letter cited the “tradition of welcome” that historically had characterized the U.S. Catholic Church. It further noted that for the first time in its history, the United States was becoming a country of first asylum for refugees fleeing Central America and the Caribbean. Such a development, acknowledged the Catholic hierarchy, was not welcomed by all Americans.

According to the bishops, it was incumbent upon the Church to offer a ministry of both service and advocacy to this new wave of immigrants. Church teachings were clear, insisted the hierarchy, “that the application of basic principles of human rights takes precedence over legal rights.” Specifically, the government’s right to safeguard the common good by controlling immigration should be balanced by the duty to regularize as programs that might negatively impact the protections, wages, and living conditions offered U.S. farmworkers. See id. at 214.


140 See id. at 73.

141 Assessing the impact of the newly-arrived immigrants on American society, the bishops observed:

> Today, as often in our history, immigration is viewed with both optimism and apprehension. A national [sic] debate is underway on how welcoming the country is, how much diversity it can accept and at what pace; how it can diffuse fear and occasional conflict and discrimination in housing, health services and employment; how best it can resolve the critical issues of undocumented workers and their families, of detention of asylum seekers and interception at sea of boat people seeking to reach the shores of the United States.

*Id.*

142 In describing the Church’s ministry of service, the U.S. Catholic Conference cited a 1986 statement by the bishops of Texas:

> The response of the Church must be to offer these people safety, encouragement, food, clothing, health care and the opportunity to practice their faith. Our concern is not to support any particular effort that assists immigrants or refugees, but to help people in need in the tradition of the Church's ministry. As Church, we accept these people regardless of the economic or political causes that generated their journey.

*Id.* at 75. Through the Church’s ministry of advocacy, observed the Catholic Conference, it “promotes the rights of immigrants, migrants and refugees and protects them before local, state and federal institutions.” *Id.*

143 *Id.* at 73.
many undocumented immigrants as possible.\textsuperscript{144} American law, concluded the bishops, must reflect the country's best traditions as symbolized by the Statue of Liberty.\textsuperscript{145}

Concerns about American immigration law continued to trouble the U.S. bishops throughout the late 1980s.\textsuperscript{146} Anticipating calls to reform U.S. legal immigration policy, the Bishops' Committee on Migration identified general principles that should shape such legislative efforts.\textsuperscript{147} In a 1988 statement

\begin{footnotesize}
\begin{enumerate}
\item See id. at 75. The bishops asserted that "[i]t is against the common good and unacceptable to have a double society, one visible with rights and one invisible without rights—a voiceless underground of undocumented persons." Id. at 74.
\item See id. at 75.
\item In September 1987, the bishops contended:
\begin{itemize}
\item A number of unresolved issues remain in the immigration policy area. They include the fate of the residual population of undocumented aliens who did not qualify under the ongoing legalization program and the matter of indiscriminate firings and discrimination in hiring decisions resulting from employer sanctions. Another area of fundamental concern is improving the working and living conditions for all workers in the migrant-labor stream and discouraging agricultural employers from continuing to rely on temporary foreign agricultural labor.
\item A third area of concern is the maintenance of the principle that has governed legal immigration to the United States for most of this century... the concept of family reunification... A fourth area of concern is refugees. The 1980 Refugee Act considered [the annual admission of] 50,000 refugees as the "normal flow." As we are approaching this figure, we must not forget that "special humanitarian concern" implies a spirit of generosity belied by the constantly contracting size of refugee admissions to the United States. Our final concern is about people who are in temporary need of special consideration. A safe-haven policy would meet the immediate needs of foreign nationals stranded here or fleeing to the United States from countries beset by civil strife, war, or natural calamity.
\end{itemize}
\end{enumerate}


\item According to the Bishops' Committee on Migration, any legislative reform should adhere to the following principles:
\begin{itemize}
\item Family reunification must be affirmed as the fundamental precept driving a just immigration system....
\item Temporary labor programs should be gradually excised wherever necessary; permanent workers should receive full rights and those temporary-worker categories that are necessary ought to offer full labor market rights.
\item Every effort should be made to discourage illegal immigration by promoting just immigration law.
\item The endangerment of any nation's valuable human resources
\end{itemize}
\end{footnotesize}
CATHOLIC SOCIAL TEACHINGS AND U.S. IMMIGRATION LAW

addressing the possibility of immigration reform, the bishops also reiterated their insistence that the "right to migrate for work should never be displaced by the exercise of a nation's sovereign right to control its own borders."\footnote{148}

Responding in part to "[t]he acrimony and hostility that has become a part of the immigration debate," the U.S. Bishops' Committee on Migration issued a statement in 1995 entitled One Family Under God.\footnote{149} Devoted entirely to the topic of the social and legal challenges posed by immigration in the United States, the treatise sought to offer "the insights of Catholic social teaching as a springboard for further discussion."\footnote{150} The Committee on Migration discerned two prime areas of contention: questions involving immigrant policy, and questions stemming from immigration policy.\footnote{151} The bishops identified principles that should govern each of these respective policy areas.\footnote{152}

First among the principles governing immigrant policy was the notion that persons fleeing persecution or other "refugee-like situations" require special attention.\footnote{153} The second principle was

\footnotetext[149]{ONE FAMILY UNDER GOD, supra note 2, at 2.}
\footnotetext[150]{Id. Following a survey of the experience of migration in the Old and New Testaments, the document summarized papal teachings on migration and immigration as they had evolved in Rerum Novarum, Exsul Familia, Laborem Exercens, Sollicitudo Rei Socialis, and Centesimus Annus. See id. at 2–6. It also described in brief the pastoral statements of the United States bishops on the topic. See id. at 7–9.}
\footnotetext[151]{See id. at 9. Immigrant policy, asserted the bishops, addresses "the needs and concerns of persons either already here in the United States or those desiring to come here." Id. Immigration policy, on the other hand, involves "the implementation of those policies that facilitate entry through the adjudication of asylum and refugee claims, the appropriate exercise of the nation's right to control its borders, the orderly processing of visas, etc." Id.}
\footnotetext[152]{See id. at 9–13 (detailing immigrant policy concerns); id. at 13–17 (detailing immigration policy concerns).}
\footnotetext[153]{Noting that there are an estimated 20 million refugees throughout the world, the Committee stressed that refugees have unique and compelling needs: These persons, who cannot remain in their homelands for fear of the consequences, are often severely traumatized. . . . By the time they reach the relative safety of a refugee camp or U.S. port of entry, they have exhausted themselves and their alternatives. It is important that the processes designed to enable their claims to refugee status take into account the tremendous stress that refugees face. The
that temporary foreign labor programs do not sufficiently safeguard against the exploitation of workers and should be gradually eliminated.154 A third principle was that family reunification remains the appropriate cornerstone of U.S. immigration law.155 Finally it was suggested that, "every effort should be made to encourage highly skilled and educated persons to remain in or return to their homelands."156

Trauma of their experiences and flight are often accentuated by worries about possible threats to family members left behind. While it is important for refugees and asylees to strive for early employment, there is often . . . some need for transitional assistance. Id. at 10.

154 Reiterating a concern expressed in their 1988 resolution on immigration reform, the bishops asserted that “[t]emporary labor programs that rely on migrant workers have not had a good history in the United States and continue to spawn abusive situations.” Id. Such programs, they insisted, should be gradually eliminated, and “[e]very effort should be made to avoid recreating large-scale ‘Guestworker’ programs.” Id. at 11; see also supra notes 146–47 (addressing the Bishop’s concerns regarding immigration policy and suggestions for legislative reform). The bishops, moreover, had strong words for what they perceived as America’s hypocrisy toward undocumented workers:

We must face squarely the extent to which the presence of persons in illegal status in this country is directly related to our own willingness to use and dispose the labors of these people how, when, and where it suits us. U.S. employers who hire aliens who have entered the United States illegally are no less obligated to treat their employees fairly. The sting of illegal status is the powerlessness of the individual in the face of unscrupulous employers determined to squeeze as much work out of the worker for as little money as possible. Often, illegal workers are exposed to serious health risks, live in squalid housing, are denied pay for work completed, and are subjected to threats and intimidation. It is our complicity in their exploitation that makes efforts to punish them for their presence in this land particularly duplicitous and self-serving.

One Family Under God, supra note 2, at 11.

155 See id. at 11–12. In an implicit rebuke of measures such as California’s Proposition 187, the bishops identified a further obligation on the part of America to the children of the undocumented:

Special consideration should be given to the needs of children. It is unacceptable and arguably contrary to the norms of American society to use or punish children deliberately as a means of penalizing their parents. In this context we are particularly concerned about the children of undocumented immigrants who are frequently in the United States through no choice of their own. Efforts to deny public education, public health, and other basic protections to these children are mean-spirited and ultimately short-sighted, since the well-being of the whole community is affected by the well-being of all of its children.

Id. at 12.

156 Id. The bishops acknowledged that “[w]hile Catholic social teaching is
Foremost among the principles that should govern American immigration policy, declared the Committee, is the fundamental obligation that immigration laws and admission requirements be “transparent, fair, and generous.” In reflecting upon the issue of border enforcement, the bishops began by reaffirming that Catholic social teaching “recognizes not merely the right but the responsibility of states to control their borders.” The critical question, noted the bishops, is “whether border enforcement is done in such a way that the human dignity of those involved . . . is respected and enhanced.”

Persons in deportation proceedings, the Committee continued, should be afforded adequate due process, in particular to ensure that political asylum claims are justly addressed. Moreover, final orders of removal “should result in the actual removal of individuals deemed to no longer have legitimate claims to remain in the United States.” Detention, observed not averse to labor migration in general, it is clearly in opposition to policies that explicitly and intentionally tap the third world’s reservoir of trained, educated individuals in pursuit of selfish interests.”

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157 Id. at 13.
158 Id. at 14.
159 Id. The statement articulated episcopal support for “efforts to make the border patrol more sensitive to the human rights of those undocumented aliens it encounters through the use of independent monitoring mechanisms.” Id.
160 See id. U.S. asylum procedures remained a special area of concern for the bishops. Acknowledging the proliferation of frivolous political asylum cases, the Committee nonetheless expressed reservations about the government policy of denying work authorization to deter such claims. See id. at 15. The Committee likewise acknowledged the legitimacy of government efforts to curb the use of fraudulent travel documents, but cautioned that persons fleeing persecution—especially government-sanctioned persecution—often have no recourse other than false documents to flee a country where their lives may be endangered. See id. at 15–16. Finally, the Committee voiced an insistence that in-country processing of refugees never supplant the complementary system of asylum adjudications for persons already within the territorial boundaries of the United States. See id. at 16.
161 Id. at 14. The bishops declared:

One of the greatest failures of U.S. enforcement policy has been the incapacity of the government to actually bring about the departure of those who have been ordered deported or removed. A result of this breakdown in process has been the proposal and often implementation of a myriad of measures designed to protect the system either by keeping people from gaining access to the asylum process or by incarcerating persons upon arrival. A simpler response would be to fashion deportation and exclusion policy that will actually result in its intended aims.

Id. at 14–15.
the bishops, had become a poor substitute for a policy of effective removal.\textsuperscript{162}

The Committee likewise reiterated its opposition to employer sanctions, asserting that such measures merely drive "easily exploited" aliens "deeper into the underground of our society."\textsuperscript{163} For the same reason, the bishops voiced their opposition to employment verification systems and to proposals that would make even the reception of benefits from private charities contingent upon proving legal immigration status.\textsuperscript{164} The Committee went on to affirm its support for the family preference system of U.S. immigration law, and also called for continued U.S. leadership in the area of refugee resettlement.\textsuperscript{165}

Finally, the Committee asserted that the current American immigration debate had been neither thorough nor thoughtful.\textsuperscript{166} What was absolutely critical, concluded the bishops, was that the tone and spirit of the U.S. immigration debate remain positive if the dignity of the human person was to be safeguarded and enhanced.\textsuperscript{167}

\textsuperscript{162} See id. at 15.
\textsuperscript{163} Id. at 16.
\textsuperscript{164} See id. at 16–17. The bishops were especially critical of measures that would require private charities to verify the immigration status of those they serve. See id. at 17. Characterizing such measures as "antithetical to the moral norms guiding charitable efforts," the bishops further noted that those who staff private charities are often volunteers who lack the legal knowledge necessary for such verification. See id.
\textsuperscript{165} See id. at 16–17. The bishops expressed particular concern over what they perceived as a trend of diminishing U.S. refugee protection. They declared: Recent efforts which aim to significantly cut back the traditional American commitment to refugees—like the proposal to cap refugee admissions for resettlement numerically, the newly announced policy of involuntary return of Cubans intercepted on the high seas, and the repatriation of Haitian children to questionable circumstances—are disturbing. We urge that restrictionist measures aimed at limiting the American response to refugees be avoided and that the United States work to encourage a continued open and flexible response to the needs of refugees by the international community. It is vital that the traditional spirit of generous compassion remain the hallmark of this country's refugee policy.
\textsuperscript{166} See id. at 22.
\textsuperscript{167} See id. at 22–23.
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B. **Personal Statements by U.S. Catholic Bishops**

Apart from their collective statements in pastoral letters and resolutions, numerous U.S. bishops have addressed immigration law concerns in their individual public teachings and addresses. Such teachings evolved throughout the 1980s in response to immigration crises within particular dioceses: the influx of Haitian boat people occasioned a public statement by Archbishop Edward McCarthy of Miami, just as the presence of undocumented immigrants in Los Angeles led then-Archbishop Roger Mahoney to call for certain pastoral and legal initiatives.\(^{168}\)

> See, e.g., Archbishop Edward McCarthy, *South Florida's Refugees from Haiti*, 9 ORIGINS 447 (Dec. 27, 1979). Addressing the U.S. Select Commission on Immigration and Refugee Policy, Archbishop McCarthy criticized the provision of U.S. immigration law that accorded the attorney general discretion to deny asylum claims even after applicants had demonstrated a well-founded fear of persecution. See *id.* at 448. A glaring example of this weakness in U.S. law, declared the Archbishop, was the fact that only 55 of some 9,000 Haitian asylum-seekers had actually been granted asylum. See *id.* McCarthy further noted that asylum processing in Miami was tainted by discrimination and racism:

> Nowhere... is this discrimination more evident than the case of South Florida's boat people. When a group of Cubans arrive by small boat, a regular occurrence, they are quickly processed, given parole status, economic assistance[,] and resettlement outside of Florida if they so wish. This even happens when they innocently disclaim political involvement. On the other hand, Haitians arriving at the same time have the full burden of proof in their individual claims for political asylum. . . .

> It is only natural that this experience should spawn well-founded suspicions that the treatment received by the Haitians is the result of institutional racism. Only 55 out of 9,000 black Haitians are granted political asylum, while there is no publicly recorded case of any one of some 10,000 predominantly white Cuban boat people being denied admission. *Id.*

Archbishop McCarthy concluded his testimony calling for the U.S. government to exercise its discretionary powers to grant political asylum to those Haitians who had applications pending. *See id.* at 449. He likewise demanded that U.S. law be amended so as to conform with the U.N. Convention and Protocol on Refugees. *See id.; see also* Roger M. Mahoney, *Welcoming the New Immigrants*, 15 ORIGINS 518 (Jan. 16, 1986). In his letter to Catholics in the Archdiocese of Los Angeles, Archbishop Mahoney noted that from 1970 to 1980, two million people from other countries had come to California and that half of them had settled in Los Angeles County. *See id.* at 518. Calling for an attitude of welcome and solidarity, the archbishop asserted that “[t]he experience of immigrants in neighborhoods and cities becomes a teachable moment. It leads to the discovery of the importance of interdependence for the contemporary world and of how decisions and lifestyles in one region of the globe affect other regions.” *Id.* at 519. Archbishop Mahoney concluded his
Spokespersons for the U.S. Catholic Conference also authored papers analyzing particular immigration issues, such as the need for an amnesty program for the undocumented.169

The increased anti-immigrant sentiment of the 1990s evoked strong episcopal reactions. The U.S. interdiction of asylum-seekers on the high seas following the 1991 Haitian military coup led to a denunciation of U.S. policy by Archbishop Daniel Pilarczyk, the President of the United States Catholic Conference.170 In 1993, Cardinal Mahony condemned the reflections on the pastoral care of immigrants with a call for legal changes: “On this occasion of National Migration Week, I would like once again to call for extended voluntary departure status for Central American refugees fleeing violence, and for fair immigration legislative reform to legalize those immigrant workers and their families who, in fact, are a contributing part of our society.” Id. at 519–20; see also The Pastoral Care of Hispanic Immigrants, 15 ORIGINS 520 (Jan. 16, 1986) (statement by the bishops of Texas regarding the Church’s obligation to care for the undocumented).

169 In August 1986, representatives of the Catholic Conference’s Migration and Refugee Services published a study assessing the issue of legalizing undocumented immigrants. See Nicholas DiMarzio & Demetrios G. Papademetriou, Legalization: The Right Thing To Do, MRS ISSUE ANALYSIS SERIES PAPER NO. 1 (1986). DiMarzio and Papademetriou asserted that U.S. policy decisions were largely responsible for the presence of thousands of undocumented immigrants in the United States. See id. at 15. According to the authors, both U.S. foreign policy—which generated large-scale flows of quasi-economic migrants—and a de facto laissez faire immigration policy dating back three decades, had “pulled” undocumented workers to the United States. See id. Moreover, a loophole in U.S. law, termed the “Texas proviso,” made it illegal to harbor or transport undocumented aliens but not to employ them. See id. DiMarzio and Papademetriou concluded that “[i]n view of this gross inconsistency in U.S. immigration law, the loose and often capricious enforcement of immigration laws, and the attraction of the United States’ labor market, the United States has basically abandoned its sovereign responsibilities on the question of undocumented immigration.” Id. at 15–16. The authors expressed the further conviction of the Catholic Conference that “the existence of a large, undocumented population in the midst of a free and democratic society is intolerable. From the various alternatives, including that of the status quo, only broad and generous legalization appears to be realistic, appropriate and humane.” Id. at 19.

170 Writing to President Bush, Archbishop Pilarczyk declared:

I write, as President of the United States Catholic Conference, to express our opposition to the forcible repatriation of the Haitians currently seeking to come to the United States.

Persons willing to risk their lives in the dangerous passage from Haiti to this country are not coming for frivolous reasons. They are coming to escape violence and oppression that has, once again, become intolerable. Even if the majority of these desperate people cannot demonstrate that they qualify for political asylum, there are other legal remedies available to them, such as Temporary Protected
growing xenophobia that he discerned throughout the country, excoriating in particular those political leaders who chose to exploit anti-immigrant sentiment. Legislative reform measures in 1995 and 1996, which proposed draconian changes to U.S. immigration law, prompted further criticisms by U.S.

status (TPS), which they clearly merit.

The Haitian people have been beset by many tragedies, compounded most recently by the violent overthrow of the first democratically elected government in their history. Returning interdicted Haitians to Haiti at this particular time will only aggravate this already turbulent situation. Since the United States does not recognize the new military government of Haiti, I urge you to suspend the interdiction agreement.

I urge you to express the compassion and welcome to the stranger in need that is so deeply a part of our national tradition. I ask you to authorize more humane and flexible application of our immigration laws, to continue pressing other regional governments to provide safe haven for more of these refugees, and to halt the repatriation of interdicted Haitian refugees.


171 See Roger Mahony, You Have Entertained Angels Without Knowing It, America, Nov. 27, 1993, at 16–17. Mahony wrote:

I find it necessary to call for both a change in attitude and a change in policy toward the immigrant and immigration.

[Attitudes of suspicion, fear and hatred toward newcomers are on the rise. Rather than recognizing the creative potential of new immigrants, some political leaders have chosen to exploit the most defenseless in our society to divert attention from our unwillingness or inability to confront the more complex causes of economic stagnation, poverty and crime.

The history of the United States is full of instances in which immigrants have been made the scapegoats for social and economic problems. In choosing to exploit the anti-immigrant sentiment, political leaders have played upon some of the more enduring evils in society: selfishness, racism and deeply ingrained cultural prejudices.

Id. at 16. Mahony concluded:

The rights of immigrants are a theme of extraordinary importance in Catholic social teachings and follow from the basic principles of this teaching, which affirm human life and human dignity. . . . The right of persons to enjoy and share in the benefits of the earth is an integral part of that teaching. The right to move across borders to escape political persecution or in search of economic survival is explicitly part of that tradition.

Catholic social teaching takes what many view to be a countercultural position on this matter and insists that the right to immigrate is more fundamental than that of nations to control their borders.

Id.
Bishops and their spokespersons.172 Of particular concern to Church leaders were proposed restrictions on family reunification, refugee protection, and immigrant eligibility for federal benefits.173 Archbishop John Favalora of Miami sharply

172 The U.S. Catholic Conference carefully scrutinized legislative proposals that sought to implement immigration reform. See, e.g., Immigration in the National Interest Act of 1995: Hearing Before the Subcomm. on Immigration and Claims of the House Comm. on the Judiciary, 104th Cong. 199 (June 29, 1995) (Testimony of John Swenson, Executive Director, Migration and Refugee Services) (transcript available from Migration and Refugee Services, United States Catholic Conference). Swenson denounced the detrimental impact of the bill on noncitizens:

While [the bill] provides, on its face, procedural due process, even these rights are linked with terms like “expedited,” “streamlined,” “simplified,” etc. These changes represent a particularly dangerous trend in a nation governed by the rule of law like the United States, by attempting to so severely circumscribe due process rights for these individuals as to potentially make them meaningless.

Id. at 203. Swenson likewise expressed great concern regarding proposals for expedited removal and “credible fear” asylum screening:

This scheme provides essentially no due process protections to asylum seekers, except limited post-removal judicial review and violates U.S. international commitments on the treatment of refugees. There seems to be no provision for administrative or judicial review of a negative determination at any stage in this process. There is no provision for legal representation in any of the interviews. There is no provision for putting on evidence. Those arriving avoid immediate removal only if they affirmatively request asylum or express a fear of persecution—something that persons who have been tortured do not readily do. Even if the individual manages to surmount that initial hurdle, any other immigration officer can challenge admissibility and put the individual into a hearing before an immigration judge.

Id. at 205. Swensen also criticized what he termed the bill’s “proposed evisceration of the family system” of immigration. Id. at 217. Swensen argued the effects of the bill would (1) eliminate parents of U.S. citizens from the immediate relative category; (2) eliminate unmarried sons and daughters of U.S. citizens and lawful permanent residents from visa eligibility; (3) eliminate married sons and daughters, and brothers and sisters of U.S. citizens from visa eligibility; and (4) reduce the current number of visas available to spouses and children of lawful permanent residents. Id. at 216–20.

173 See Donald Kerwin & John Swenson, Remarks to be Presented in the State of Texas for Press Conferences on Immigration (Feb. 1996) (transcript available from Migration and Refugee Services, United States Catholic Conference). Addressing the 100 odd immigration reform bills that had been introduced at the beginning of the 104th Congress, Kerwin and Swenson wrote:

We are deeply concerned about the provisions that attempt to re-engineer the family immigration system. This legislation would reduce family-based immigration by almost 40 percent, by limiting family immigration to spouses, minor children, and some parents. It would eliminate entire categories of close family members who are
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denounced the immigration reform measures that became law in 1996.174

Currently eligible for family visas, such as the siblings and adult children of U.S. citizens, and the adult unmarried children of permanent residents. In addition, it poses strict new obstacles for parents of U.S. citizens attempting to immigrate to the U.S. by requiring that they be at least 65 years old, have more than half their children in this country, and obtain health insurance equivalent to Medicare and Medicaid. ... [T]his legislation, by reducing the number of available visas and constructing unreasonable new eligibility requirements would bar nearly 3 million Americans from uniting with their children and siblings. It is unfair to punish these family members who have been following the immigration rules, have approved visa petitions and have been waiting patiently for years.

Id. at 3. Kerwin and Swenson likewise criticized the effect that summary exclusion proposals would have on legitimate asylum-seekers:

Summary exclusion proposals would allow the implementation of a cursory review process of asylum claims presented by persons who have entered at U.S. ports of entry or have been interdicted at sea and lack the requisite documentation. Under this legislation, an alien could be ordered specially excluded unless the Attorney General determines that she has a credible fear of persecution. ... To put this provision in context, a Bosnian rape victim fleeing her country would be forced to recount her story possibly within minutes of arrival in the United States, most likely to a male officer, perhaps without adequate translation while she is tired and confused.

Id. at 5. Finally, Kerwin and Swenson denounced measures that would severely restrict immigrant eligibility for benefits even in the most dire of circumstances. See id. at 6. They were particularly critical of legal provisions that would require charitable organizations to verify a person's immigration status before assisting him or her. See id. Kerwin and Swenson insisted: "This would be a severe burden on programs such as Catholic Charities whose focus should be on serving the poor, not becoming experts on immigration documentation." Id. at 6–7.


Last year, Congress passed ... laws with the intention of restricting or slowing down continued immigration into the United States. I and my fellow Catholic bishops, along with many others of good will, have gone on record opposing such restrictions. While not denying the good will of those proposing these laws, our opposition was based on our concern for facilitating the re-unification of families; the conviction that immigration has not been detrimental to our American way of life, and fears that such legislation reflects—even if perhaps unintentionally—a growing xenophobia and nativism in our society.

In my judgment, these anti-immigrant measures are part of a growing trend in our society to define living human beings as "problems." People are not to be defined as problems—whether they
In recent years, U.S. Catholic leaders have spoken in support of legal proposals that would modify the harshness and overreach of the 1996 immigration legislation.\textsuperscript{175} Their advocacy now encompasses traditional areas of Church concern such as refugee protection, and newer issues such as the treatment accorded non-citizens with criminal records.\textsuperscript{176} Bishop Nicholas DiMarzio, the

\begin{quote}
are immigrants, elderly, poor or unborn. . . . So it is imperative to point out, with all due respect to our lawmakers, that these laws are having unintended consequences—what we hope were unintended consequences. They affect immigrants already living in the U.S. whose status here is known to the government, in adverse ways that can only be described as heartless, inhumane, and unworthy of our American spirit.
\end{quote}

\textit{Id.} at 2.


\textsuperscript{176} See Testimony of Bishop Nicholas DiMarzio, Auxiliary Bishop of Newark & Chairman, United States Catholic Conference Committee on Migration, Before the House Judiciary Subcommittee on Immigration, Feb. 25, 1999 (transcript available from Migration and Refugee Services, United States Catholic Conference). In addressing the issue of mandatory detention of noncitizens with criminal convictions, Bishop DiMarzio asserted that "[h]uman rights considerations, respect for basic dignity, and the practicalities of cost and efficiency mandate that individuals in proceedings who are not threats to the public safety should not be detained." \textit{Id.} at 2. Assessing the new legal provisions that mandate the detention of criminal aliens by INS, Bishop DiMarzio declared:

\begin{quote}
[We believe the provisions enacted in 1996 went too far. Taken collectively, they: 1) undermine basic human dignity and human rights; 2) unnecessarily separate and divide families; 3) violate fundamental notions of fairness and equal protection under the law, time-honored concepts upon which our nation was founded; and 4) have created an artificial ‘crisis’ in the capacity for detaining truly violent or dangerous individuals.\textit{Id.} at 2. Bishop DiMarzio went on to identify the role of the Church in the legal debate concerning criminal aliens:

Some might ask why the Catholic Church would have an interest in this issue. We are here today, in part, because of the numerous requests the Church receives from immigrant families each week to
Chairman of the U.S. Catholic Conference Committee on Migration, has called for broad revisions of current U.S. immigration law. These revisions are to include modifying the current mandatory detention policy; curbing the retroactive application of new criminal alien provisions; narrowing the definition of aggravated felonies; and restoring judicial discretion in immigration proceedings.177

help loved ones who have languished in detention for several months and even years after having served a criminal sentence, or who are being deported because of a minor crime. In most cases, the person[s] committed the offense years ago and have discharged their debt to society as determined by a court of law. . . . In a disturbing number of these cases . . . the law at the time the offense was committed was such that the immigrant would not have been deportable, would not have been subject to mandatory detention, and would have been afforded the opportunity to pursue avenues of administrative or judicial relief.

Id. at 2.

177 Terming the mandatory detention provisions of the 1996 law “excessive, expensive, and often inappropriate,” Bishop DiMarzio called for their repeal and the restoration of greater flexibility to the system. Id. at 6. He was especially critical of the current legally-sanctioned detention of asylum-seekers, a policy that the Bishop described as “counter to the standards of international law and to the American tradition of harboring those whose basic human rights are threatened.” Id. at 11. He also denounced the retroactive application of new draconian criminal alien provisions: “The retroactivity of the 1996 law strikes against American’s [sic] fundamental notion of fairness, and is destroying the lives of untold number of immigrant families. It also ignores any evidence that an individual has reformed and become a contributing member of the community.” Id. at 8. Bishop DiMarzio likewise found fault with Congress’s expansion of the definition of aggravated felonies:

The INS-created phrase of ‘aggravated felony’ now bears little resemblance to the meaning of those words as used in criminal law. Many crimes classified as misdemeanors and nonviolent crimes come within the expanded definition of aggravated felony. The definition is so broad it includes a list of 21 subcategories, including offenses from theft to perjury. The expansion of the definition has affected an increased number of noncitizens who have committed nonviolent offenses for the first time and are no threat to the public safety.

We believe that Congress should revisit the expanded definition of ‘aggravated felony,’ and especially its application to offenses which are punishable by a sentence of one year or more.

Id. Finally, Bishop DiMarzio recounted the traditional importance of judicial discretion in providing relief from deportation and called for Congress to restore such discretion to immigration judges. Id. at 8–9.
IV. CATHOLIC SOCIAL TEACHINGS ON IMMIGRATION: A BRIEF ASSESSMENT

Catholic teachings on immigration have grown both in comprehensiveness and detail. Such teachings have evolved from a natural law model—discernible in Leo XIII's *Rerum Novarum* and Pius XII's *Exsul Familia*—to the human rights paradigm introduced by John XXIII and advocated even more extensively by John Paul II. Catholic teachings on immigration also reflect an evolution in perspective from one that was initially Eurocentric and dominated by clerical concerns to one that is now global and humanitarian in its approach.

Any assessment of this evolving body of social teachings should perhaps begin with the basic question of whether it is appropriate for the Church, whose expertise lies in the field of theology, to venture appraisals of immigration law. The Church's answer to this question is unequivocal: the human being, "whole and entire, body and soul" is the proper object of the Church's pastoral concern. Immigration law raises ethical issues equally appropriate to Church social teachings as other public policy areas that impact human dignity, such as defense

178 The natural law orientation of early Catholic teachings on migration was typified by the assertion of Pius XII that the right to migrate is rooted in the very nature of the land itself. See supra notes 35 & 38. More recent Catholic teachings situate immigrant rights within the larger constellation of human rights. See supra notes 49–50 and accompanying text. This emphasis on human rights characterizes not only John Paul II's teachings on immigration but his broader theological thinking as well. See Avery Dulles, *Human Rights: Papal Teaching and the United Nations*, AMERICA, Dec. 5, 1998, at 14, 15. (observing that "[o]f all the Popes, no other has given so much emphasis to human rights as John Paul II, who confidently asserts that these rights have their foundation in Christ and the Gospel").

179 The U.S. bishops have observed that "[t]he teaching of the Church on migration has followed a clear evolution, from a juridical and intra-Church preoccupation to an emphasis on pastoral and world-wide service." *Pastoral Concern for the Church*, supra note 16, at 9. The Eurocentric and clerical focus of early Catholic social teachings on migration was typified by *Exsul Familia*'s preoccupation with the European refugee scene and with clergy discipline. See supra note 40 and accompanying text.

180 See *Gaudium et Spes*, supra note 18, No. 3 at 166–67. The Sacred Congregation of Bishops asserted that "the Church not only strives to offer the consolations of religion to all emigrants, but also zealously struggles for the sanction and preservation of the rights of the human person and of the foundations of his spiritual life." *Pastoral Care of People Who Migrate*, supra note 60, at 7.
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spending, education, or health care. The Catholic religious tradition—or any other faith tradition—has a distinctive contribution to offer in the public marketplace of ideas.

A potentially more complex issue is the legitimacy of the American Catholic Church's teaching with such growing particularity about immigration law. As the U.S. Catholic Church moves from speaking about general norms to proposing concrete and specific legal measures, the question arises as to the degree of moral authority which should attach to such teachings. This issue has prompted sharp debate in the theological community. Nevertheless, there is a certain modicum of

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181 J. Bryan Hehir notes that “the ‘right and competence’ of the church to address political, legal, social, and economic issues is rooted in the nature of the church. More precisely, it is rooted in the prophetic ministry of teaching and service that has been articulated in the Catholic social tradition.” J. Bryan Hehir, The Right and Competence of the Church in the American Case, in ONE HUNDRED YEARS OF CATHOLIC SOCIAL THOUGHT 55, 55 (1991).


183 Ethicist David Hollenbach notes that very few commentators doubt that “the Church can and should speak to the moral values, attitudes and general principles involved in public life.” David Hollenbach, A Prophetic Church and the Catholic Sacramental Imagination, in THE FAITH THAT DOES JUSTICE 234, 239 (John C. Haughey ed., 1977). Hollenbach concedes that where there are disagreements, they arise regarding “the ability of the corporate voice of the Church to propose concrete and particular actions as morally obligatory.” Id.

184 Hollenbach notes that authors such as Paul Ramsey have argued against the trend whereby churches offer detailed and particularized ethical prescriptions in their public statements. Id. (referencing PAUL RAMSEY, WHO SPEAKS FOR THE CHURCH? A CRITIQUE OF THE 1966 GENEVA CONFERENCE ON CHURCH AND SOCIETY (1967)). Ramsey insists that the role of churches in the public forum is limited to offering perspectives on political issues based upon their faith traditions. RAMSEY, supra, at 240. J. Bryan Hehir characterizes such an approach as an “educational-cultural” model of church involvement, which contends that the most theologically appropriate and socially effective manner
theological consensus that the greater the degree of particularity in a church social teaching, the less morally obligatory the teaching. The U.S. Catholic bishops themselves seem mindful

for churches to impact public policy is to concentrate on "broad themes of public philosophy, personal character, and family values." Hehir, supra note 181, at 66. This approach, explains Hehir, would prefer a public posture by the Catholic Church that is "strong on perennial principles, but restrained about policy choices." Id. at 67. In contrast to the educational-cultural model, ethicists such as Drew Christiansen insist that the religious tradition of Catholic social teachings can speak with particularity to U.S. law—an example being the ability of the Catholic tradition to offer "a coherent vision of the international system and its role in the defense of human rights—including the right of movement—which may serve as a framework for resolving the political and legal barriers to movement." Christiansen, supra note 6, at 10; see also Christiansen, supra note 31, at 96 (arguing that Catholic social teachings compel working for changes in U.S. law). Hehir characterizes this alternative approach as a "legislative-policy" model of Catholic social ministry, and notes that this has been the preferred modus operandi of the U.S. Catholic Conference of Bishops in recent years. Hehir, supra note 181, at 67. Hehir describes this model as

[a] mix of the exposition of principles espoused in the educational-cultural model, and an application of those principles in the concrete details of the policy debate. The legislative-policy model is based on the conviction that the strength of the Catholic moral tradition resides in two factors: a systematic body of principles and an ability to illustrate the meaning of principles through casuistry. In short, the legislative-policy model believes that Catholic social teaching should be both systematic and specific.

Id. at 67–68.

185 J. Bryan Hehir writes:

[What authority should be attributed to teaching which is a mix of principles and policy choices? [There are] fears that this mix will mortgage the moral authority of the church. If the same authority is attached to both principles and choices, the apprehension would be well-founded. The appropriate response is to distinguish levels of teaching and to espouse a procedural principle for teaching, that is, increasing empirical specificity means declining moral authority. Such an approach, found in the [pastoral letters of the American bishops], seeks to protect principles and allow for advocacy.

... [S]pecific policy [recommendations] must be understood to be not only limited in their authoritative weight, but also open to debate and differing positions within the ecclesial community.

Hehir, supra note 181, at 68. Christiansen stakes out a similar position:

The pastoral letters present both principles of morality, to which they lend their full authority as the church's teachers, and recommendations for public policy, to which less moral certainty is attached. At the level of policy, the bishops' readers are entitled to draw different conclusions of their own. So, while the bishops offer moral guidance through social teaching, they also permit pluralism at the level of action.

Christiansen, supra note 31, at 100.
Rather than channeling resources into the preparation of suggestions that may be useful for the future, the Church is called upon to offer an executive perspective of public policy both at the federal and local level. The Church's role includes the following: the Church's role in the political order includes the following:

- education regarding the teachings of the Church and the responsibilities of the faithful;
- analysis of issues for their social and moral dimensions;
- measuring public policy against gospel values;
- participating with other concerned parties in debate over public policy; and
- speaking out with courage, skill, and concern on public issues involving human rights, social justice, and the life of the church in society.

Whatever the political and economic situation, the Church must be based on the present and the future. The Church's role includes the following:

- education regarding the teachings of the Church and the responsibilities of the faithful;
- analysis of issues for their social and moral dimensions;
- measuring public policy against gospel values;
- participating with other concerned parties in debate over public policy; and
- speaking out with courage, skill, and concern on public issues involving human rights, social justice, and the life of the church in society.

In carrying out this pastoral activity in the social arena, we are confronted with complexity. As the 1971 Synod of Bishops pointed out: "It does not belong to the Church, insofar as she is a religious and hierarchical community, to offer concrete solutions in the social, economic, and political spheres for justice in the world." At the same time, it is essential to recall the words of Pope John XXIII: "It must not be forgotten that the Church has the right and duty not only to safeguard the principles of ethics and religion, but also to intervene authoritatively with her children in the temporal sphere when there is a question of judging the application of these principles to concrete cases."

The application of gospel values to real situations is an essential work of the Christian community. Christians believe the gospel is the measure of human realities. However, specific political proposals do not in themselves constitute the gospel.

\[186\] Writing in September 1987, the U.S. bishops declared:


\[187\] Since the passage of the Refugee Act of 1980, the Office of Migration and Refugee Services of the U.S. Catholic Conference has resettled some 650,000 refugees—nearly 32 percent of the total number who have been admitted to the U.S. in that time—and more than any other single agency. See Testimony of Bishop Nicholas DiMarzio, Chairman, National Conference of Catholic Bishops' Committee on Migration, before The Senate Judiciary Committee Subcommittee on Immigration, Aug. 4, 1999, 1–2 (transcript available from Migration and Refugee Services, United States Catholic Conference); see also Bishop Anthony Bevilacqua, The Pastoral Care of Refugees, Immigrants, and Migrant Workers, 14 Origins, Jan. 17, 1985, at 517 (describing services and pastoral ministries offered by U.S. Catholic Church to immigrants).
immigration that pure theory-based recommendations might otherwise lack.

Ongoing credibility will require that Catholic teachings on immigration continue to evolve, perhaps with more intellectual rigor. One such area for development is the need for a more systematic prioritization in the Church's teachings regarding government obligations to immigrants.\textsuperscript{188} Similarly, if the Church is to insist that severe economic deprivation warrants international refugee protection, it may be incumbent upon the Church to propose certain minimal criteria by which nations could be expected to adjudicate such claims.\textsuperscript{189}

Greater precision in the terminology of Catholic teaching may also be required. For example, the terms "migration," "immigration," and "emigration" have at times been used somewhat interchangeably in Catholic writings.\textsuperscript{190} The American

\textsuperscript{188} Catholic ethicists have noted the absence of any significant prioritization in Catholic Church teachings on immigration. O'Neill and Spohn write:

\begin{quote}
The Catholic Church's social teaching will remain only aspirational unless it can also provide some practical priorities for determining obligations to near and distant neighbors in an equitable admissions policy. The graduated urgency of human rights and duties provides that those whose basic rights are most imperilled have the strongest claim. In descending order, priority would first be accorded victims of persecution, then those suffering systematic deprivation of their basic rights (including subsistence), those suffering denial of less basic rights, and finally those exercising their right to emigrate for economic advantage.
\end{quote}

O'Neill & Spohn, supra note 9, at 100. For his part, Christiansen contends:

\begin{quote}
The poor ought to have priority over other economic migrants in admission to the United States and in eligibility for U.S. citizenship. To effect such a new priority for the poor, privileges for men and women with certain employable skills or professional qualifications need to be strictly limited.... People who have suffered extreme economic deprivation ought to be given the same priority for admission as political refugees from more repressive regimes.
\end{quote}

Christiansen, supra note 31, at 91.

\textsuperscript{189} Christiansen argues that "[d]egraded poverty and economic entrapment, not relative deprivation and increased opportunity, lie behind the assertion of the right to immigrate for economic reasons." Christiansen, supra note 31, at 91. Neither Catholic ethicists nor the Catholic hierarchy, however, have proposed criteria by which governments might assess severe economic deprivation as a ground for granting asylum or refugee status.

\textsuperscript{190} Recent theorists distinguish between the right to emigrate—understood as the right to leave one's country—and the right to immigrate, meaning the right to be incorporated into a new land. Id. at 87. Such a distinction, however, is not consistently evident in Catholic writings on migration. Pius XII, in \textit{Exsul Familia}, spoke of a "right to migrate," explaining that "it is inevitable that some
Bishops might revisit, or at least refine, their characterization of issues as pertaining either to “immigrant” or “immigration” policy—a distinction without a real legal difference.\footnote{191}

**CONCLUSION**

Catholic teachings on immigration, like many of the Church’s other teachings, remain strongly countercultural.\footnote{192} As one commentator noted, the Church recognizes rights for immigrants that few nations would recognize for their own citizens.\footnote{193} Even more fundamentally, the Church ascribes to

families migrating from one spot to another should go elsewhere in search of a new homeland.” *Exsul Familia*, supra note 13, at 50, see also *supra* note 35. John XIII, in his encyclical *Mater et Magistra*, referred to “the right of the family to migrate.” *Mater et Magistra*, supra note 42, No. 45 at 90–91; see also *supra* note 48. In *Pacem in Terris*, John nuanced this assertion, distinguishing between a basic right “to freedom of movement and of residence within the confines of [one’s] country,” and “when there are just reasons for it, the right to emigrate to other countries and take up residence there.” *Pacem in Terris*, supra note 45, No. 25 at 134; see also *supra* note 50 and accompanying text. The Vatican’s Sacred Congregation of Bishops spoke of “a right to emigrate, to select a new home in foreign lands” in the 1969 *Instruction on the Pastoral Care of People Who Migrate*. *Pastoral Care of People Who Migrate*, supra note 60, No. 7 at 8; see also *supra* note 62. Referring to “emigrant workers,” Paul VI called for “a charter which will assure them a right to emigrate.” *Octogesima Adveniens*, supra note 70, No. 17 at 271; see also *supra* note 70. John Paul II, in reflecting on “Work and the Emigration Question,” emphasized that “Man has the right to leave his native land for various motives—and also the right to return—in order to seek better conditions of life in another country.” *Laborem Exercens*, supra note 75, No. 23 at 384. As early as 1959, the U.S. bishops alluded to “the natural right of the individual to be unhampered in immigration or emigration,” recalling that Pius XII had first introduced such a distinction. *World Refugee Year and Migration*, supra note 117, No. 15 at 18; see also *supra* note 119 and accompanying text. The bishops described the purpose of their own letter as an effort to elevate awareness of the “problems connected with migration and immigration.” *Id.* No. 37 at 19; see also *supra* note 121 and accompanying text. If “emigration” is indeed distinguishable from “immigration,” future Catholic teachings should perhaps be clearer not only about the rights that obtain to each respective category, but also the possible differing degrees of government obligation in these areas. Christiansen, for example, notes that “[i]t is frequently asserted that while there is a right to emigrate, there is no right to immigrate.” *Christiansen*, supra note 31, at 87.

\footnote{191} See *supra* notes 151–52 and accompanying text.

\footnote{192} Bishop Carlos Sevilla of Yakima, Washington has observed that “Catholic teaching on migration is a hard teaching. It is a teaching in tension with the realities of international politics and even more with the contemporary political climate in the United States.” Bishop Carlos Sevilla, *The Ethics of Immigration Reform*, 27 ORIGINS 728, 732 (Apr. 16, 1998).

\footnote{193} See Kerwin, *supra* note 9, at 26.
philosophical notions not readily shared by sovereign and secular governments—central of which would be the notion that the universal common good, rather than national self-interest, should govern all policy decisions.\(^{194}\) In this light, Church pronouncements on immigration might most accurately be characterized as supra-legal rather than legal teachings; as reflections not simply on the law but on the human condition, refracted through the prism of theological reflection and centuries of lived experience.

Immigrants, almost by definition are a voiceless constituency. As “aliens,” both in the parlance of ancient biblical scripture and that of modern U.S. immigration law, they have no vote and little legal visibility in their adopted countries. If the Church is to serve as a voice for the voiceless, it is not only appropriate, but imperative that it continue its advocacy on behalf of immigrants. In the end, the Catholic tradition insists that no one is a stranger. In Luke’s Gospel, Jesus is asked by a lawyer, “who is my neighbor?” Jesus responds with the parable of the Good Samaritan, insisting that the moral obligations owed to others are not circumscribed by national boundaries.\(^ {195}\) The tradition of Catholic social teachings on immigration proposes a similar response to that biblical lawyer’s question: we are the neighbors “of absolutely every person.”\(^ {196}\)

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\(^{194}\) The common good is an ancient philosophical principle which maintains that all persons in a social or political entity are entitled to a share in its welfare and well-being. See Sevilla, supra note 192, at 730. In Paeam in Ters, John XXIII extended the reach of this notion from its traditional context of an individual nation or society to that of all nations, terming the enhanced notion that of “the universal common good.” Id.; see also Paeam in Ters, supra note 45, Nos. 132-40 at 152-53; David Hollenbach, Common Good, in THE NEW DICTIONARY OF CATHOLIC SOCIAL THOUGHT, supra note 18, 192-97 (tracing contemporary Catholic social teachings on the common good). A theological reflection on the common good written by Cardinal Joseph Bernadin was read into the Congressional Record in 1993 by Rep. Robert Michel. See Promoting The Common Good Through The Practice of Virtues, 139 CONG. REC. E2479-01 (1993) (Extension of Remarks).


\(^{196}\) Gaudium et Spes, supra note 18, No. 27 at 182.