

A Christian Response to Laws That Require Immoral Acts

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Introduction

IN THE PARABLE OF THE RICH YOUNG MAN (Matt 19:16–23),¹ the young man asks Jesus what good he must do to gain eternal life, and Christ tells him to keep the commandments.² The young man is not satisfied and tells Jesus that he has observed them, but still wants to know what he lacks. Jesus answers, “If you wish to be perfect, go, sell what you have and give to [the] poor, and you will have treasure in heaven. Then come, follow me” (Matt 19:20–21). When this passage is read in light Christ’s Sermon on the Mount (Matt 5–7),³ it becomes clear that Christ calls each one of us to God

¹ References to the Bible are to the *New American Bible*, rev. ed.

² “‘You shall not kill; you shall not commit adultery; you shall not steal; you shall not bear false witness; honor your father and your mother;’ and ‘you shall love your neighbor as yourself’” (Matt 19: 16–19).

³ For a sample of the numerous works on the Sermon on the Mount, see: Dale C. Allison Jr., *The Sermon on the Mount: Inspiring the Moral Imagination* (New York: Crossroad, 1999); St. Augustine, *The Lord’s Sermon on the Mount*, trans. John J. Jepson (Westminster, MD: Newman Press, 1948); St. John Chrysostom, *The Preaching of Chrysostom: Homilies on the Sermon on the Mount*, trans. Jaroslav Pelikan (Philadelphia: Fortress, 1967); Jeffrey P. Greenman, Timothy Larsen, and Stephen R. Spencer, eds., *The Sermon on the Mount through the Centuries: From the Early Church to John Paul II* (Grand Rapids, MI: Brazos, 2007); Robert A. Guelich, *The Sermon on the Mount: A Foundation for Understanding* (Waco, TX: Word, 1982); Servais Pinckaers, *The Pursuit of Happiness—God’s Way: Living the Beatitudes*, trans. Mary T. Noble (Staten Island, NY: Society of St. Paul, 1998); Pinckaers, *The Sources of Christian Ethics*, trans. Mary T. Noble (Washington DC: Catholic University of America Press, 1995); Charles H. Talbert, *Reading the Sermon on the Mount:*

by a conversion of heart through the grace of the Holy Spirit.⁴ Those who listen attentively to Christ's word open themselves to becoming the blessed of the beatitudes, beginning with those blessed as the poor in spirit and proceeding with those who mourn, who are meek, who hunger and thirst for righteousness, who are merciful, who are clean of heart, who are peacemakers, and finishing with those who are persecuted for the sake of righteousness and for Christ.⁵

It is not easy to open our hearts to God when we enjoy worldly wealth, power and pleasures. The rich young man who observed the commandments went away sad after hearing Christ's words, "for he had many possessions" (Matt 19:22). Yet, Christ calls each of us to "be perfect, just as your heavenly Father is perfect" (Matt 5:48). The challenge is particularly acute when laws in our nation require us to act immorally. Not only must we refuse to do the law's bidding, but, as Christians, we are called to go beyond the "shalt not" of the commandments and strive for the "shall do" of the beatitudes. We face a twofold sacrifice—the pain inflicted on us by a law that we cannot obey in good conscience⁶ and the pain suffered by us

Character Formation and Decision-making in Matthew 5–7 (Grand Rapids: Baker Academic, 2004); and the recent book of my mentor and teacher who introduced me to serious study of the Sermon, William C. Mattison III, *The Sermon on the Mount and Moral Theology: A Virtue Perspective* (Cambridge: Cambridge University Press, 2017).

- ⁴ In his encyclical *Veritatis Splendor* (1993), §16, Pope Saint John Paul II begins with the dialogue between Jesus and the rich young man and links Christ's call to "come, follow me" with the beatitudes (§16). The beatitudes are the next step beyond observing the commandments—a step that rises to the practice of self-giving love as an interior urge made possible by grace (§§16–17). It involves a radical conversion of heart, a "*holding fast to the very person of Jesus*, partaking of his life and his destiny, sharing in his free and loving obedience to the will of the Father" (§19). Following Christ in this manner is "the *effect of grace*, of the active presence of the Holy Spirit in us" (§21). See Dietrich Bonhoeffer, *The Cost of Discipleship*, trans. R. H. Fuller (New York: Simon & Schuster, 1959), 70–76, for a discussion of the young man's struggle in the face of Christ's call to follow him.
- ⁵ The beatitudes appear in Matt 5:3–12: "Blessed are the poor in spirit, for theirs is the kingdom of heaven. Blessed are they who mourn, for they will be comforted. Blessed are the meek, for they will inherit the land. Blessed are they who hunger and thirst for righteousness, for they will be satisfied. Blessed are the merciful, for they will be shown mercy. Blessed are the clean of heart, for they will see God. Blessed are the peacemakers, for they will be called children of God. Blessed are they who are persecuted for the sake of righteousness, for theirs is the kingdom of heaven."
- ⁶ Conscience is not an application of general moral norms to an individual situation merely as an assessment used to inform an autonomous personal decision on how to act. Pope Saint John Paul II rejected this definition when he quoted the Second

in our efforts to bring love where there is hate.⁷ Christ calls us to this task when he says that if someone strikes us on the cheek we should turn the other one to him as well (Matt 5:39).⁸ We should be willing to suffer not only the blow of an immoral law but also the sacrifice of self to make the situation right.

This article examines five cases which involve laws in our nation that presently require immoral action and then concludes with a sixth case in which the U.S. Supreme Court recently invalidated the application of such a law to a particular contract but left open a way still to use the law to impose immoral action. In each of the six cases, the article explains the evil of the law as a transgression of one of the commandments, which, if one is to remain moral, requires civil disobedience. It then explains how the person who follows the commandment and suffers the negative fall-out from the consequences of civil disobedience nevertheless is called by Christ to go beyond and be perfect by following the beatitudes. Although more than one beatitude may be relevant in each case, this article examines only one, and a different one at that, for each case. The purpose of the article is to illustrate by these six examples how the beatitudes operate on a practical basis in the concrete circumstances of everyday life to satisfy Christ's call to perfection.⁹

Vatican Council in *Veritatis Splendor* to describe the true meaning of conscience: "In the depths of his conscience man detects a law which he does not impose upon himself, but which holds him to obedience" (§§54–55). Conscience has binding force as the application to particular cases of the law God has written naturally on one's heart (§58–59). It is not infallible, and for this reason, in order to have a good conscience, a person must seek the truth—the objective truth received from God's word (§§62–63). This truth is sought in the Divine Law (e.g., the Ten Commandments and the beatitudes), which cannot err. See Thomas Aquinas, *Summa theologiae* [ST] I–II, q. 91, a.4, resp. It is also sought in the teachings of the Catholic Church (*Veritatis Splendor* §64). Still, even if one's conscience is in error, one is bound to follow it; otherwise, one would be doing something one considers evil (ST I–II, q. 19, a.5, resp.).

⁷ As in the prayer attributed to St. Francis of Assisi, one prays to be an instrument of the Lord's peace and to live one's aspiration that "where there is hate, may I bring love," no matter the cost.

⁸ See John McKenzie, "The Gospel according to Matthew," in *The New Testament and Topical Articles*, vol. 2 of *The Jerome Biblical Commentary*, ed. Raymond Brown, Joseph Fitzmeyer, and Roland Murphy (Englewood Cliffs, NJ: Prentice-Hall, 1968), 72, which states that "the customary principle of self-defense [an eye for an eye] is rejected by this saying of Jesus; and the customary principle is not replaced by another principle of self-defense."

⁹ Servais Pinckaers, in *Sources of Christian Ethics*, 134–67, examines several different interpretations of the beatitudes. He raises the problem that some see the

Before starting in, it is important to set the context of humility within which Christ calls us to live a Christian life. The first beatitude lays a foundation for all the others in this respect, as we can see when Christ calls the rich young man to give up his possessions and come follow him. Blessed are the poor in spirit. Before we can hope to follow Christ we must shed our undue attachment to possessions, power, and pleasures, which give rise to the pride of Adam.¹⁰ We can begin this process by practicing “a certain measured deprivation” of these things in order to free our attention and devotion to God.¹¹ However, there are also times in our lives when God calls us to experience a deeper poverty. This deeper poverty, which can exist in such states as illness, loneliness, old age, a bleak future, and guilt from sin,¹² “keeps the poor man in obscurity, an object of misunderstanding, lack of consideration, scorn and injustice on the part of the powerful and well-off, . . . [and] causes profound psychological wounds that mark a man for life, because it attacks his self-esteem and drains his strength.”¹³ Like Job’s poverty, it “wounds our will and penetrates to our depths to accomplish its work there.”¹⁴ In such poverty, the poor person who is open to God feels “a strong sense of his need for God’s help . . . [which

beatitudes as preaching impossible behavior but rejects this view as one based on a morality of obligation. He turns rather to St. Augustine, who finds the Sermon on the Mount to be a perfect charter for practical Christian life. Rather than a morality of obligation, St. Augustine presents this charter as a morality of happiness based on an attraction to truth and goodness, accomplished through the grace and gifts of the Holy Spirit, and aided as a way of life by the virtues. Mattison develops this interpretation of the beatitudes more fully in *The Sermon on the Mount and Moral Theology*, seeing an intrinsic relationship (a continuity of activity) between the qualifying conditions and the rewards of the beatitudes that explains them “as both ethical exhortations that guide action in this life preceding full entrance into the kingdom as well as descriptions of the eschatological deliverance offered by God and only fully known in the end times” (40). It is this view taken in the present article that permits a discussion of how the beatitudes operate on a practical basis in the concrete circumstances of everyday life.

¹⁰ Augustine states that “*the poor in spirit* are rightly understood here as the humble and those who fear God, that is, those who do not have an inflated spirit,” as opposed to “the haughty [who] seek and love the kingdom of the earth” (*The Lord’s Sermon*, 13–14). Talbert gives examples in the Old Testament of the poor in spirit who live with the right disposition of humility in contrast to those with haughty hearts (*Reading the Sermon*, 50).

¹¹ Pinckaers, *Pursuit of Happiness*, 51.

¹² Pinckaers, *Pursuit of Happiness*, 44–46.

¹³ Pinckaers, *Pursuit of Happiness*, 42.

¹⁴ Pinckaers, *Pursuit of Happiness*, 51.

causes him to] be humble and trusting before Him.”¹⁵ He draws nearer to God, becoming like a child¹⁶ who truly listens to God.¹⁷ It is through true poverty—physical, mental, and spiritual—that God shows us the way to the kingdom of heaven. The other beatitudes taught by Christ on the mount build on this first beatitude by providing other specific ways in which we can draw ever closer to God through the grace of the Holy Spirit.¹⁸

Law Preventing Health Care Facilities from Prohibiting Euthanasia

Thou Shalt Not Kill

A law that requires an organization to act in a certain way is a law that requires the individuals making choices for that organization to act in that way. One cannot avoid moral responsibility for the choices one makes by hiding behind a corporate shield. One of the moral responsibilities of individuals making choices for a health care facility is to safeguard the lives of its patients from assisted suicide.¹⁹ So when a law prohibits the health facility from preventing one of its physicians from writing a prescription to end the life of her patient, it prohibits the individuals making choices for the facility from doing their moral duty. They have a choice between following the law and violating their moral duty on the one hand or following their

¹⁵ Pinckaers, *Pursuit of Happiness*, 40–41.

¹⁶ See Matt 18:3, where Christ states that “unless you turn and become like children, you will not enter the kingdom of heaven.”

¹⁷ To listen to is to obey. “Obey” comes from the Latin *ob-audire*, meaning to listen to.

¹⁸ The type of action envisaged by the eighth beatitude on persecution is not initiated by our own will with the help of the Holy Spirit until something happens to us, namely, that we are persecuted. Christ does not call us to seek persecution, but when we are persecuted for the sake of righteousness and because of Christ, our embracing that persecution as a way to follow Christ rests at the summit of action that Christ calls perfect and completes the path from humility through the other beatitudes. Christ said “No one has greater love than this, to lay down one’s life for one’s friends” (John 15:13).

¹⁹ United States Conference of Catholic Bishops (USCCB), *Ethical and Religious Directives for Catholic Health Care Services*, 6th ed. (Washington, DC: USCCB, 2018), §60, states: “Catholic health care institutions may never condone or participate in euthanasia or assisted suicide in any way. Dying patients who request euthanasia should receive loving care, psychological and spiritual support, and appropriate remedies for pain and other symptoms so that they can live with dignity until the time of natural death.”

moral duty and violating the law on the other. One health facility²⁰ in Colorado faced this choice and chose the latter.

In 2019 Cornelius Mahoney, a terminally ill patient, was dying from a painful form of cancer that had spread throughout his body. He requested a prescription from his doctor, Barbara Morris, to end his suffering by ending his life. Dr. Morris, who was employed by Centura Health,²¹ was willing to support his choice by providing the prescription. One Colorado law, the End-of-Life Options Act, gives a dying patient a right to request such a prescription, called a medical aid-in-dying medication,²² and gives his physician the right to write the prescription for home use.²³ Another Colorado law states that health care facilities such as Centura may not “limit or otherwise exercise control over the physician’s independent professional judgment concerning the practice of medicine or diagnosis or treatment.”²⁴ So the law prohibited Centura Health from interfering with the physician’s decision to provide the prescription as allowed by law. When Centura Health was apprised of the situation it violated this law by prohibiting Dr. Morris from prescribing the medication for Mahoney to end his life at home.

On August 21, 2019, Mahoney and Dr. Morris filed a complaint for declaratory relief in the District Court of Arapahoe County, Colorado.²⁵ They sought relief from Centura Health’s violation of the law that prohibited the health facility from interfering with the physician’s judgment in accord with the Colorado End-of-Life Options Act. Following the filing of this complaint, Dr. Morris was fired and Mahoney eventually received the prescription he requested from another doctor and ended his life at home on November 5, 2019.²⁶ However, Dr. Morris did not drop the claim that the law requires the health facility to permit its physicians to write prescriptions to end the lives of their terminally ill patients at home.

²⁰ In this article, when a corporation or business is named as an entity facing a moral choice, one should understand that the reference is to the individuals making choices for that entity.

²¹ Centura Health is a subsidiary of Catholic Health Initiatives, which is a national Catholic health-care system.

²² Colorado End-of-Life Options Act of 2016, Colorado Revised Statute no. 25-48-103.

²³ Colorado End-of-Life Options Act, C.R.S. no. 25-48-106.

²⁴ Colorado End-of-Life Options Act, C.R.S. no. 25-3-103.7(3).

²⁵ Complaint for Declaratory Relief, *Mahoney v. Centura Health Corp.*, 2019 WL 6456775 (Colo. Dist. Ct. August, 21, 2019) (No. 2019CV031980).

²⁶ JoNel Aleccia, “Terminally Ill, He Wanted Aid-In-Dying; His Catholic Hospital Said No,” *KHN*, January 29, 2020, khn.org/news/when-aid-in-dying-is-legal-but-the-medicine-is-out-of-reach/r.

On October 7, 2019, Dr. Morris amended her complaint against Centura Health and claimed that Centura Health retaliated by terminating her for her good faith compliance with the law and her use of independent medical judgment.²⁷ This suit is still wending its way through various pleadings.²⁸

The Colorado law governing this case requires an immoral act by the individuals running the health care facility by requiring them to participate in the immoral act of its physician. The physician acts immorally by writing a prescription to end the life of her patient, which “by intention, causes death in order to eliminate suffering [and] constitutes a murder gravely contrary to the dignity of the human person and to the respect due to the living God, his Creator.”²⁹ It violates the fifth commandment and “must always be forbidden and excluded.”³⁰ Pope Francis in a recent address confirmed that “we can and must reject the temptation—also induced by legislative changes—to use medicine to support a possible willingness to die of the patient, providing assistance to suicide or directly causing death by euthanasia.”³¹

The health care facility acts immorally if it does not act to prevent the physician’s immoral act in this case. Germain Grisez, writing extensively on the question of cooperation with the immoral acts of others, states that Catholic hospitals having a managing arrangement with providers of evil must “entirely exclude from it the evils other parties provide.”³²

²⁷ First Amended Complaint and Jury Demand, *Morris v. Centura Health Corp.*, 2019 WL 10890356 (Colo. Dist. Ct. October 7, 2019) (no. 2019CV31980), ECF nos. 171, 182. See Associated Press, “Colorado doctor challenges firing over assisted suicide,” *Washington Times*, October 8, 2019, washingtontimes.com/news/2019/oct/8/colorado-doctor-challenges-firing-over-assisted-su/.

²⁸ The latest pleading at the time of this writing is Defendants’ Motion for Certification of Interlocutory Appeal . . . and Motion for Temporary Stay, *Morris v. Centura Health Corp.*, 2020 WL 6142008 (Colo. Dist. Ct. October 14, 2020) (no. 2019CV31980). It is possible that if the case goes to trial the court may find the law invalid, but until it does so the law stands.

²⁹ *Catechism of the Catholic Church* [CCC], §2277.

³⁰ CCC, §2277.

³¹ Pope Francis, “Address to the National Federation of the Orders of Doctors and Dental Surgeons,” September 20, 2019. See also Pope Saint John Paul II, *Evangelium Vitae* (1995), §65: “. . . confirm[ing] that euthanasia is a grave violation of the law of God, since it is the deliberate and morally unacceptable killing of a human person.”

³² Germain Grisez, *Difficult Moral Questions*, vol. 3 of *The Way of the Lord Jesus* (Quincy, IL: Franciscan, 1997), 396. For a general discussion of the principle of cooperation in the case of euthanasia, see Daniel P. Sulmasy, “Assisted Suicide, Euthanasia, and the Principle of Cooperation,” in *Walk as Children of the Light: The Challenge of Cooperation in a Pluralistic Society*, ed. Edward Furton and Louise

Otherwise, the board members and administrators responsible for the hospitals' administration "at least materially cooperate in [the actions of these parties] in a way that hardly can be justified."³³ Furthermore, even if the provider herself is acting with a sincere conscience, "Catholic hospital administrators are responsible for their own acts."³⁴ The American bishops likewise have stated that "Catholic health care organizations are not permitted to engage in immediate material cooperation in actions that are intrinsically immoral, such as . . . assisted suicide."³⁵ Not only is there an immoral participation by the health care facility in the evil act of the physician, but this participation can give scandal and undermine its witness to the faith. Centura Health had a moral obligation to prohibit its physicians from engaging in the euthanasia promoted by Dr. Morris, even when by doing so it broke the law and may yet have to pay damages if Dr. Morris wins her suit.

Blessed Are They Who Mourn

While the fifth commandment mandates the refusal to obey a civil law that requires participation in direct euthanasia, Christ fulfills the moral law of this commandment by calling us to do more. He calls us to be perfect by living the beatitudes. In this case, a number of beatitudes are relevant, but one is particularly helpful in heeding Christ's call: Blessed are they who mourn. In this beatitude Christ calls a physician to encounter her patient in full awareness of his suffering and to mourn with that patient in a way that celebrates his life. Suffering "drains our energy and leaves us helpless when it strikes."³⁶ In doing so, it awakens us from a superficial knowledge of our religion, "compels us to take the Lord seriously and to yield to Him, entering into the mystery of His Incarnation, Passion, and Resurrection."³⁷ It compels us to listen to (*ob audire*) God, thus following Christ, who "learned obedience from what he suffered" (Heb 5:8). In our experience of suffering, Christ "invites us to unite our pain to His" through faith in his Incarnation and "to endure suffering and to draw from it, and from

Mitchell (Boston: National Catholic Bioethics Center, 2003), 235–50. More generally, Andrew M. Cummings explores the complex notion of cooperation with evil as it developed through the last few centuries, in *The Servant and the Ladder: Cooperation with Evil in the Twenty-First Century* (Herefordshire: Gracewing, 2014).

³³ Grisez, *Difficult Moral Questions*, 399.

³⁴ Grisez, *Difficult Moral Questions*, 400.

³⁵ USCCB, *Ethical and Religious Directives*, §70.

³⁶ Pinckaers, *Pursuit of Happiness*, 80.

³⁷ Pinckaers, *Pursuit of Happiness*, 84.

mourning itself, a work of life” through faith in his Resurrection.³⁸ Suffering itself does not make us happy, but it is the pathway to eternal happiness “because Christ chose it as an effective means of coming close to men and because He overcame it in His Body.”³⁹ Suffering thus becomes “at the heart of our life, the crucible in which the gold of a new love is formed.”⁴⁰ It provides occasion for the patient to mourn in his own suffering and for the physician to mourn by sharing in that suffering as a matter of love. This means wanting to help the patient to bear the sorrow willingly for the sake of, and in imitation of, Christ, respecting the fact that the patient’s life is a gift from God who made the patient in his image. Of course, none of this is possible without our first being moved by the grace of the Holy Spirit.

The administrators of the health facility can live this beatitude by encouraging its physicians to mourn with their patients and by hiring physicians who have experienced, or are willing to experience, this type of involvement with their patients. It might consider sending those who are not yet experienced to a place that specializes in compassionate care for the dying. During the first year of his novitiate as a Jesuit, Fr. James Martin spent some time at a hospice run by Mother Teresa’s sisters in Jamaica. They cared for the poor, the sick and the dying in the slums of Kingston. Fr. Martin remarks that “despite their punishing schedule the sisters always seemed full of joy.”⁴¹ When asked how they could be so cheerful, they quoted Mother Teresa, now Saint Teresa of Calcutta: “We care for Christ in his distressing disguise.”⁴² Their cheerfulness was not only truly genuine, but infectious, helping Fr. Martin to deepen his understanding that the poor are not merely a category, but individuals—not pitiable, but dear brothers and sisters.⁴³ To understand the poor, Mother Teresa insisted that her sisters experience poverty themselves as Jesus experienced it “in order to be true carriers of God’s love.”⁴⁴ She helped people discover God’s

³⁸ Pinckaers, *Pursuit of Happiness*, 84–86. See also Joseph Ratzinger (Pope Benedict XVI), *Jesus of Nazareth*, vol. 1, *From the Baptism in the Jordan to the Transfiguration*, trans. Adrian J. Walker (New York: Doubleday, 2007), 87, on the second beatitude: “Those who do not harden their hearts to the pain and need of others, who do not give evil entry to their souls, but suffer under its power and so acknowledge the truth of God—they are the ones who open the windows of the world to let the light in.”

³⁹ Pinckaers, *Pursuit of Happiness*, 86.

⁴⁰ Pinckaers, *Pursuit of Happiness*, 87.

⁴¹ James Martin, *My Life with the Saints* (Chicago: Loyola, 2006), 163.

⁴² Martin, *My Life with the Saints*, 163.

⁴³ Martin, *My Life with the Saints*, 176–77.

⁴⁴ Brian Kolodiejchuk, ed., *Mother Teresa, Come Be My Light: The Private Writings of the “Saint of Calcutta”* (New York: Doubleday, 2007), 233–34, quoting Mother

presence in the midst of their suffering, defining suffering as “but a kiss of Jesus, a sign that you have come so close to Jesus on the Cross that He can kiss you.”⁴⁵ As a training ground for learning how to put the true meaning of mourning into practice by embracing love through suffering, such a place as Mother Teresa’s hospices would be ideal.

Law Requiring Businesses to Support Same-Sex Marriages

Thou Shalt Not Commit Adultery

In *Masterpiece Cakeshop v. Colorado Civil Rights Commission*,⁴⁶ that commission claimed that the owner of the cakeshop had discriminated on the basis of sexual orientation in violation of the Colorado Anti-Discrimination Act when he refused to provide a custom-made cake to celebrate a gay couple’s wedding. The owner refused on the basis that to participate in the celebration of this wedding would involve him in an act that his religion proscribed since marriage is an act only between a man and a woman. He explained that “to create a wedding cake for an event that celebrates something that directly goes against the teachings of the Bible, would have been a personal endorsement and participation in the ceremony and relationship that they were entering into.”⁴⁷ The U.S. Supreme Court found that the hostile manner in which the commission applied the law violated the Free Exercise Clause, but they never reached the issue whether the owner could refuse to bake the cake if the commission had not been hostile.

Nevertheless, the court’s dicta gave some indication of the way the court might rule in the future and paved the way for other courts to find a constitutional exercise of state power that requires owners of such businesses as Masterpiece Cakeshop to bake the cake. The court stated that “the Court’s precedents make clear that the baker, in his capacity as the owner of a business serving the public, might have his right to the free exercise of religion limited by generally applicable laws.”⁴⁸ It explained that while “religious and philosophical objections are protected, it is a general rule that such

Teresa, “Charity: Soul of Mission,” January 23, 1991.

⁴⁵ Kolodiejchuk, *Mother Teresa*, 281–82, quoting Mother Teresa to a Missionaries of Charity sister, April 8, 1977.

⁴⁶ *Masterpiece Cakeshop v. Colorado Civil Rights Commission*, 138 S. Ct. 1719 (2018).

⁴⁷ *Masterpiece Cakeshop*, 138 S. Ct. at 1724. The owner had told the couple, “I’ll make your birthday cakes, shower cakes, sell you cookies and brownies, I just don’t make cakes for same sex weddings” (at 1724).

⁴⁸ *Masterpiece Cakeshop*, 138 S. Ct. at 1723–24.

objections do not allow business owners and other actors in the economy and in society to deny protected persons equal access to goods and services under a neutral and generally applicable public accommodations law.⁴⁹

One state supreme court did follow this direction. The Supreme Court of Washington in *Washington v. Arlene's Flowers, Inc.*,⁵⁰ concluded that an exercise of state power requiring a business to support a same-sex marriage was constitutional. It determined that a florist violated the Washington Law Against Discrimination (WLAD) when it discriminated in public accommodations on the basis of sexual orientation by refusing to sell a custom floral arrangement for a gay couple's wedding.⁵¹ The florist stated that her refusal was based on her conviction that "biblically marriage is between a man and a woman."⁵² The court noted that "she believes that participating, or allowing any employee of her store to participate, in a same-sex wedding by providing custom floral arrangements and related customer service is tantamount to endorsing marriage equality for same-sex couples."⁵³ Nevertheless, the court concluded that, even "assuming that it substantially burdens [the florist's] religious free exercise, the WLAD does not violate her right to religious free exercise under either the First Amendment [of the United States Constitution] or article I, section 11 [of the Washington Constitution] because it is a neutral, generally applicable law that serves our state government's compelling interest in eradicating discrimination in public accommodations."⁵⁴ Therefore, the florist was subject to damages as well as to an injunction that required her to offer gay couples on a nondiscriminatory basis the services she customarily provided to others.⁵⁵

⁴⁹ *Masterpiece Cakeshop*, 138 S. Ct. at 1727. The court expressed its fear that if the protection of clergy against having to perform a same-sex wedding "were not confined, then a long list of persons who provide goods and services for marriages and weddings might refuse to do so for gay persons, thus resulting in a community-wide stigma inconsistent with the history and dynamics of civil rights laws that ensure equal access to goods, services, and public accommodations" (at 1727).

⁵⁰ *Washington v. Arlene's Flowers, Inc.*, 441 P.3d 1203 (Wash. 2019), *petition for cert. filed*, September 12, 2019 (no. 19-333),

⁵¹ *Arlene's Flowers*, 441 P.3d at 1222.

⁵² *Arlene's Flowers*, 441 P.3d at 1212. The florist did serve gay and lesbian customers in the past for other, non-wedding-related flower orders, and she would have been happy to sell bulk flowers and "raw materials" to the same-sex couple, but she believed that to create floral arrangements would be to use her "imagination and artistic skill to intimately participate in a same-sex wedding ceremony" (at 1212).

⁵³ *Arlene's Flowers*, 441 P.3d at 1212.

⁵⁴ *Arlene's Flowers*, 441 P.3d 1237.

⁵⁵ *Arlene's Flowers*, 441 P.3d at 1212, 1237–38.

Marriage is a “covenant by which a man and a woman establish between themselves a partnership of the whole of life.”⁵⁶ This union “achieves the twofold end of marriage: the good of the spouses themselves and transmission of life.”⁵⁷ Chastity is “the successful integration of sexuality within the person,” and “sexuality . . . becomes personal and truly human when it is integrated into the relationship of one person to another, in the complete and lifelong mutual gift of a man and a woman.”⁵⁸ On the other hand, sexual pleasure is morally disordered when it “is sought outside of ‘the sexual relationship which is demanded by the moral order and in which the total meaning of mutual self-giving and human procreation in the context of true love is achieved.’”⁵⁹ It is a violation of the sixth commandment. Therefore, homosexual acts, which “do not proceed from a genuine affective and sexual complementarity,” can be approved “under no circumstances.”⁶⁰ Concerning participation in this violation of the sixth commandment, the Congregation of the Doctrine of the Faith states: “In those situations where homosexual unions have been legally recognized or have been given the legal status and rights belonging to marriage, clear and emphatic opposition is a duty. One must refrain from any kind of formal cooperation in the enactment or application of such gravely unjust laws.”⁶¹

Therefore, both the owner of the cakeshop and the florist had a moral obligation to refrain from formal cooperation in the laws that required them to use their artistic talents for the purpose of furthering a same-sex marriage. Formal cooperation is to contribute to another’s act by an act in which one intends the means or the end of the other’s act.⁶² The wedding

⁵⁶ CCC, §1601.

⁵⁷ CCC, §2363. William E. May, *Catholic Bioethics and the Gift of Human Life*, 3rd ed. (Huntington, IN: Our Sunday Visitor, 2013), 85, states that the marital act “is inherently love-giving (unitive) and life-giving (procreative).”

⁵⁸ CCC, §2337. In *Love & Responsibility*, trans. H. T. Willetts (New York: Farrar, Straus, and Giroux, 1981), 226, Pope Saint John Paul II discusses this integration as the meeting of two orders, “*the order of nature*, which has as its object reproduction, and *the personal order*, which finds its expression in the love of persons and aims at the fullest realization of that love.” Only when a couple chooses to participate in creation when they choose to marry do “they put their sexual relationship within the framework of marriage on a truly personal level” (227).

⁵⁹ CCC, §2352, quoting Congregation for the Doctrine of the Faith (CDF), *Persona Humana* (1975), 9.

⁶⁰ CCC, §2357.

⁶¹ CDF, “Considerations Regarding Proposals to Give Legal Recognition to Unions between Homosexual Persons,” June 3, 2003.

⁶² See Grisez, *Difficult Moral Questions*, 873, defining formal cooperation by using “*intending* in the broad sense, which includes both willing precisely what is chosen

is the means to the end of same-sex marriage, and baking a cake or creating a floral arrangement specifically designed for use at the wedding is contributing to the same-sex marriage by its intention to further the wedding. It would not have been formal cooperation if the bakeshop owner or the florist had sold a cake or a floral arrangement that was not designed for the wedding, because those sales could honestly be done without intending to further the wedding, even if they knew that the cake or floral arrangement would be used at the wedding.⁶³ But specifically designing the cake or floral arrangement for the same-sex wedding is intentionally furthering the wedding, which is the means to same-sex marriage, even if the actor opposes the end of same-sex marriage. Both the bakeshop owner and the florist in our two cases recognized this distinction when they properly distinguished between selling items specifically designed for the same-sex wedding and items that could be used for other purposes. They had a moral obligation to, and did, refrain from the former, even though in the florist's case the law subjected her to damages and to an injunction requiring her to offer gay couples the services she provides to others. If the florist disobeys the injunction, she could be held in contempt and could lose her business.⁶⁴

Blessed Are the Meek

The civil penalties from refusal to obey the law are bad enough, but those in the position of the shop owners may experience further difficulty in the temptation to sin. The proponents of same-sex marriage are a vocal group, and, as shown by the actions of the Colorado Civil Rights Commission in *Masterpiece Bakeshop*, they can be quite hostile.⁶⁵ Such hostility, combined

and willing the end in view," and then stating that "contributing to another's wrongdoing is formal cooperation if, and only if, the act by which one contributes agrees in bad intending with the wrongful act with which one cooperates."

⁶³ Consider, for example, the case of a nurse assigned to assist at an abortion. It is formal cooperation for her to accede to using her judgment to select implements that would help bring about the abortion, but it is not if she were asked to prepare the patient or to adjust the lights in the operating room, since neither of these acts need be directed toward bringing about an abortion (Grisez, *Difficult Moral Questions*, 357–58).

⁶⁴ The baker in *Masterpiece Cakeshop* also continues to be harassed by those who oppose his position. On June 15, 2021, a district court in Colorado ordered the baker to pay a \$500 penalty for refusing to bake a cake to celebrate a transgender person's transition from male to female despite the fact that it is against his religious beliefs; *Scardina v. Masterpiece Cakeshop, Inc.*, no. 2019CV32214 (Colo. Dist.Ct. June 15, 2021), scribd.com/document/512130525/Autumn-Scardina-v-Masterpiece-Cakeshop-Inc-Denver-District-Court-Ruling.

⁶⁵ For the backlash by various groups against attempted legislation in different states

with the punishment inflicted for disobeying the law, can lead shop owners who have disobeyed the law to feel anger, fear, prejudice and a host of other bad feelings. Like the elder son in the parable of the prodigal son (Luke 15:11–32), one can do all the right things by being obedient, hard-working, and desirous of being good, and yet foster within oneself feelings of resentment, pride and selfishness.⁶⁶ If one accedes to the temptation of these feelings, one abandons love, leaving one's good actions empty and without value.⁶⁷ As Christ taught in the Sermon on the Mount, the fifth commandment, against killing, is also against anger such that "whoever is angry with his brother will be liable to judgment" (Matt 5:22).

In dealing with the hostility of proponents of same-sex marriage, Christ fulfills the law of the commandments by calling us to be meek. He calls us to suffer the violence of this injustice without turning in on our ourselves. Rather, through grace and prayer we need to turn out toward those who do us the injustice, realizing that we are all sinners and that we should forgive our opponents as God forgives us.⁶⁸ This cannot be done in a meaningful way without the grace of God, who makes us truly human by converting our hearts from stone to flesh (Ezek 11:19; 36:26). When we accept God's grace, we come alive to the fifth commandment through the strength of our meekness by which we love God and love our neighbor because of God. Christ associated with sinners and other outcasts of society; the very reason he did this was his love for the sinner who is made in the image of God. Christ's love reaches out to sinners to draw them to himself by his word and his example. In the midst of his agony on the Cross, Christ prayed to his Father to forgive those who unjustly put him to death (Luke

to protect religious freedom laws with regard to same-sex marriage, see L. Darnell Weedon, "Marriage Equality Laws Are a Threat to Religious Liberty," *Southern Illinois University Law Journal* 41 (2017): 229–31.

⁶⁶ See Henri J. M. Nouwen, *The Return of the Prodigal Son: A Story of Homecoming* (New York: Doubleday, 1992), 71, describing the nature of the elder son in the parable.

⁶⁷ As St. Paul says in 1 Cor 13:1, "If I speak in human and angelic tongues but do not have love, I am a resounding gong or a clashing cymbal." The emptiness of one's heart is strikingly portrayed in Edwin Arlington Robinson's poem *Richard Cory*. Richard Cory was "a gentleman from sole to crown" who "glittered when he walked," and "one calm summer night / Went home and put a bullet through his head." Paul Simon's song "Richard Cory," from Simon and Garfunkel's album *Sounds of Silence*, is based on Robinson's poem and tells an even sadder story of people who still want to be like Richard Cory after he put a bullet in his head.

⁶⁸ For a beautiful passage that elaborates this concept of meekness, see Pinckaers, *Pursuit of Happiness*, 55–72.

23:34). Christ loves the other person regardless of their faults or failings.⁶⁹ He calls us to love in like manner.

This does not mean that we should not fight against the injustice. The bakeshop owner and the florist were right to oppose the imposition of a law that required them to affirm a life-detracting act. However, they were also right to remain open to doing business with the very people who sought to impose this law when it came to such life-affirming acts as birthdays, funerals and everyday living. The bakeshop owner stated that he would make cakes for the same-sex couple, just not for their wedding,⁷⁰ and the florist stated that she would be happy to sell bulk flowers to the same-sex couple, just not flowers specially designed.⁷¹ Their openness suggests a truly forgiving love in which the meek are blessed.

Law Requiring Group Health Plans to Provide Abortifacient Drugs

Thou Shalt Not Kill

A law that requires an employer's participation in a process that leads to abortion prohibits the employer from obeying the fifth commandment.⁷²

⁶⁹ Christ turned the law of worldly justice that said "love your neighbor and hate your enemy" (Matt 5:43) into a law of heavenly justice that said "love your enemies, and pray for those who persecute you, that you may be children of your heavenly father" (5:44–45). Thus, he called us to "be perfect, just as your heavenly Father is perfect" (5:48). Henri Nouwen, in his commentary on this passage, explains that "once we are in God's house as sons and daughters of his household, we can be like him, love like him, be good like him, care like him" (see Nouwen, *Return of the Prodigal Son*, 125). He adds that, "to become like the Father whose only authority is compassion, I have shed countless tears and so prepare my heart to receive anyone, whatever their journey has been, and forgive them from the heart" (129). It is through grief, forgiveness and generosity that one becomes truly compassionate—free to love in genuine solidarity with one's neighbor (128–33).

⁷⁰ *Masterpiece Cakeshop*, 138 S. Ct. at 1724.

⁷¹ *Arlene's Flowers*, 441 P.3d at 1212.

⁷² In *Evangelium Vitae*, Pope Saint John Paul II states that, "among all the crimes that can be committed against life, procured abortion has characteristics making it particularly serious and deplorable" and that the popular acceptance of abortion in behavior and law "is a telling sign of an extremely dangerous crisis of the moral sense" (§58). Mincing no words about this murder of an absolutely innocent human being, he states that "procured abortion is *the deliberate and direct killing, by whatever means it is carried out, of a human being in the initial phase of his or her existence, extending from conception to birth*" (§58). He states that "the texts of *Sacred Scripture* never address the question of deliberate abortion, . . . but they show such great respect for the human being in the mother's womb that they require as a logical consequence that God's commandment 'You shall not kill' be

The Patient Protection and Affordable Care Act (ACA) does just that. The ACA, enacted in 2010, mandated that group health plans for certain large employers provide coverage for women's preventive care, and directed the Health Resources and Services Administration (HRSA) of the Department of Health and Human Services (DHS) to establish guidelines for this care.⁷³ The HRSA then issued guidelines that defined preventive care to include, among other things, certain contraceptive services, including abortifacient drugs.⁷⁴ Although the administering agencies—the DHS and the Departments of Labor and the Treasury—allowed exemptions to the contraceptive mandate for certain religious employers and expanded these exemptions over the succeeding years,⁷⁵ some of these exemptions still can be had only if the employers notify their insurance company, their third-party administrator (TPA), or the DHS (who then notifies the insurance company or TPA) that they are eligible to claim, and are claiming, the exemption.⁷⁶ Upon notification, the insurer or TPA is then obliged by law to perform all payment, notice, and provision of services for contraceptive coverage through the employer's plan.⁷⁷

The moral problem with this process is that it involves the employer directly in the killing of an unborn child by the employer's use of an insurance company or TPA that funds abortifacient drugs for its employees.⁷⁸

extended to the unborn child as well" (§61).

⁷³ Coverage of Preventive Health Services, 42 U.S.C. no. 300gg-13(a) (2010).

⁷⁴ Religious Exemptions and Accommodations for Coverage of Certain Preventive Services under the Affordable Care Act, 82 Fed. Reg. 47792–794 (October 13, 2017). Intrauterine devices (IUDs), Plan B, and ella, which are included on the list, are abortifacients because they “cause changes in the uterine lining that interfere with implantation of an already formed embryo,” thus making embryonic survival impossible (June Mary Zekan Makdisi, “The Affordable Care Act: Does It Improve Health and Does It Live up to Human Rights Standards?,” *Intercultural Human Rights Law Review* 10 [2015]: 143).

⁷⁵ See Religious Exemptions, 47792–835, for a history of the regulatory changes on exemptions until 2017.

⁷⁶ Coverage of Certain Preventive Services under the Affordable Care Act, 80 Fed. Reg. 41323 (July 14, 2015), 78 Fed. Reg. 39876, 39879 (July 2, 2013).

⁷⁷ Coverage of Certain Preventive Services under the Affordable Care Act, 80 Fed. Reg. 41323 (July 14, 2015), 78 Fed. Reg. 39876, 39879 (July 2, 2013). See also Accommodations in Connection with Coverage of Preventive Health Services, 29 C.F.R. no. 2590.715–2713A(b) (January 14, 2019), describing the process.

⁷⁸ For a discussion of the disturbing trend in the United States to mandate the immoral insurance coverage of abortifacient contraceptives by employers, see Richard S. Myers, “US law and Conscientious Objection in Healthcare,” in *Cooperation, Complicity and Conscience: Problems in Healthcare, Science, Law and Public Policy*, ed. Helen Watt (London: Linacre Center, 2005), 296–315.

To understand the employer's involvement, it is helpful to understand how the employee, the insurance company, and the employer each participate in the immoral act of abortion. An employee's use of abortifacient drugs under the rubric of contraception is in fact an act that intentionally kills the already conceived unborn child—an act that violates the fifth commandment and is seriously immoral. The employee not only intends the end of her act (preventing the having of children) but also intends the means (killing an unborn child), even if she does not desire the means other than to further her end.⁷⁹ The intention of the means makes the act immoral.⁸⁰ An insurer or TPA who pays for the abortifacient drugs used by an employee to avoid having children intends the end of its act (obeying the law) but also intends the means (funding the killing of an unborn child). The means is a participation in the killing of an unborn child, and its intention by the insurer or TPA makes their act immoral. An employer who permits its insurance plan or TPA to pay for the abortifacient drugs used by an employee to avoid having children intends the end of its act (obeying the law) but also intends the means (cooperating through its own

And more generally, for the disturbing trend to coerce medical professionals into acts violating their conscience, see Wesley J. Smith, "The Medical Conscience Crisis," *Human Life Review* 46 (2020): 31–41. Christopher Kaczor, in "A Defense of Conscientious Objection in Health Care: A Reply to Recent Objections," *Proceedings of the American Catholic Philosophical Association* 92 (2018): 41–58, discusses why the reasons brought forward to abolish conscientious objection are inadequate, and Jason T. Eberl and Christopher Ostertag, in "Conscience, Compromise, and Complicity," *Proceedings of the American Catholic Philosophical Association* 92 (2018): 161–74, show how the claims of conscientious Catholic health care providers are justified not only on religious grounds but also on rationally defensible public policy grounds.

⁷⁹ Some employees may be oblivious to the fact that abortifacient drugs kill an already-conceived child. In this regard, some types of ignorance remove sin, but not if its absence would not have restrained the employee from using the drugs or if the ignorance is willful or negligent. See *ST* I–II, q. 76, a.1, resp., stating that a man sins in ignorance "if a man's will be so disposed that he would not be restrained from the act of [a sin]," and I–II, q. 76, a. 3, resp., stating that a man is not excused from sin when "ignorance is voluntary, either directly, as when a man wishes of set purpose to be ignorant of certain things that he may sin the more freely; or indirectly, as when a man, through stress of work or other occupations, neglects to acquire the knowledge which would restrain him from sin. For such like negligence renders the ignorance itself voluntary and sinful, provided it be about matters one is bound and able to know."

⁸⁰ See *ST* I–II, q. 18, a. 4, ad 3, where Aquinas affirms that an act is not good unless it is good from its object (means), its circumstances and its end altogether. If any one of these is not good, then the act is not good as a whole.

insurer or TPA in funding the killing of an unborn child). The means is a participation in the killing of an unborn child, and its intention by the employer makes the employer's act immoral.

Grisez discusses an analogous case with the same result. He considers the case of a Catholic hospital working with an insurer to provide a range of services including insurance for immoral activities such as sterilization and abortion.⁸¹ He states that even if the hospital intends to "provid[e] health care as an apostolate without being involved in immoral procedures," and agrees with its insurer that the hospital will not refer its employees to the immoral services, it still "will have intended to arrange that the immoral procedures be done as a necessary means to 'the provision of health care as a Gospel mission.'"⁸² Grisez concludes that "making the arrangement would be formal cooperation in the other party's supplying them," and would be immoral as a choice of bad means even if to a good end.⁸³

In 2017 the administering agencies attempted through two rules to relieve employers from the need to file notices or certifications of their exemption.⁸⁴ The notification process was the way in which the employers transferred their obligation of abortifacient contraceptive coverage for their employees under the ACA to their insurer or TPA. Without the notification process, the insurer or TPA becomes automatically responsible for the coverage. These rules were challenged, and in 2019 the Third Circuit Court of Appeals⁸⁵ upheld a preliminary injunction prohibiting their enforcement. In 2020 the U.S. Supreme Court in *Little Sisters of the Poor Saints Peter and Paul Home v. Pennsylvania* reversed the Third Circuit's decision and remanded for further proceedings.⁸⁶ If the two rules become

⁸¹ Grisez, *Difficult Moral Questions*, 396–97.

⁸² Grisez, *Difficult Moral Questions*, 396–97.

⁸³ Grisez, *Difficult Moral Questions*, 397.

⁸⁴ See Religious Exemptions and Accommodations for Coverage of Certain Preventive Services Under the Affordable Care Act, 83 Fed. Reg. 57536 (November 15, 2018); 45 C.F.R. no. 147.132 ("Religious Exemptions"). See also Moral Exemptions and Accommodations for Coverage of Certain Preventive Services Under the Affordable Care Act, 83 Fed. Reg. 57592 (Nov. 15, 2018); 45 C.F.R. no. 147.133 ("Moral Exemptions").

⁸⁵ *Pennsylvania v. President of the United States*, 930 F.3d 543 (3d Cir. 2019), *rev'd and remanded*, *Little Sisters of the Poor Saints Peter and Paul Home v. Pennsylvania*, 140 S. Ct. 2367 (2020). See also *California v. U.S. Department of Health & Human Services*, 941 F.3d 410 (9th Cir. 2019), *vacated*, *Little Sisters of Poor Jeanne Jugan Residence v. California*, 141 S. Ct. 192 (2020), attempting to uphold a similar preliminary injunction.

⁸⁶ *Little Sisters of the Poor Saints Peter and Paul Home v. Pennsylvania*, 140 S. Ct. 2367 (2020).

operative, the removal of the notification process still does not remove the insurer or third-party administrator from being part of the employer's plan. As mentioned above, an employer who permits its insurance plan or TPA to pay for the abortifacient drugs used by an employee intends to cooperate through its insurer or TPA in funding the killing of an unborn child, making its act immoral.

On the other hand, if an insurer, even the employer's insurer, were to provide contraceptive coverage that is truly independent of the employer and the employer's plan—"i.e., provided through a separate policy, with a separate enrollment process, a separate insurance card, and a separate payment source, and offered to individuals through a separate communication"⁸⁷—the employer would not be a participant in the process and would not be acting immorally if its employees contracted for this insurance. The result of all this is that where the employer allows its insurer or TPA to fund abortifacient drugs for its employees as part of its plan, the arrangement, even though required by law, is immoral formal cooperation and requires the employer to disassociate itself from the insurer or TPA even if this affects the economic viability of its organization and leads to its ultimate demise.

Blessed Are They Who Hunger and Thirst for Righteousness

An organization (more specifically, those who run it) must avoid cooperation in the immorality of abortion because it violates God's law that one not kill. This is a minimum requirement of God's call to love, but Christ calls us to go beyond the commandment by truly hearing the cry of the oppressed aborted children and yearning to make the situation right by the actual sacrifice of our time, treasure, and talent in overcoming the slaughter of innocents. This yearning is the hunger and thirst for righteousness that makes one blessed. We cannot hope to develop this yearning on our own. It is an act of love moved by the Holy Spirit and penetrating much deeper in

⁸⁷ Supplemental Brief for Petitioners, 2016 WL 1445914, *1, in *Zubik v. Burwell*, 136 S.Ct. 1557 (2016): "The government could simply impose a regulatory requirement directly on insurance companies that . . . the insurance company must make available to plan beneficiaries a separate plan providing the excluded contraceptive coverage, and must separately contact beneficiaries to inform them of the availability of that plan and how to enroll. These separate plans could take the form of individual insurance policies or of group health plans sponsored by the government. Under this regime, the government would not need to require the petitioner to supply the identity of its insurer; nor would the government or the insurer need any form or authorization from the petitioner to make that separate coverage available" (at *3).

our souls than a mere desire to be good. We need to be open and say yes to Christ's call. Christ calls us to give of ourselves not counting the cost.⁸⁸ He says "if anyone wants to go to law with you over your tunic, hand him your cloak as well" (Matt 5:40). The cloak, the heavier outer garment protecting against cold and rain,⁸⁹ was the more important of the two for the wearer. A Christian response calls us not only to give up the tunic of economic loss, but to give up the cloak of personal comfort in order to hunger and thirst for righteousness on behalf of the totally vulnerable lives who have yet to see the light of day. We need more than a worldly sense of commutative justice to accomplish this act; we need the Holy Spirit.

An organization whose members hunger and thirst for righteousness against abortifacient drugs may pursue any number of possible ways to stop the culture of death taking the vulnerable lives of our children. It may offer counseling services to help mothers and fathers understand what a wonderful gift God gives them in their unborn child and how they may cope with difficulties in their lives in order to bear and raise the child. It may encourage active participation in walks, vigils, volunteer work at local crisis pregnancy centers, legislative reform, and other activities to save the lives of the unborn. It may make a special effort to offer jobs to those who need the work to support young families. It may make charitable donations to help those who lack the means to provide proper food, housing, child-care, and education for their child. It may encourage prayer. These are only some of the ways that an organization may choose to satisfy its hunger and thirst for righteousness by hearing the cry of the voiceless oppressed.

Law Requiring Businesses to Pay Social Security

Thou Shalt Not Steal

In *United States v. Lee*⁹⁰ an Amish employer claimed that the payment of social security taxes prescribed by the law violated his First Amendment Free Exercise rights and those of his employees. While the participation in government support programs does not violate most Christian religions,

⁸⁸ See St. Ignatius of Loyola, "Prayer for Generosity": "Eternal Word, only begotten Son of God / Teach me true generosity / Teach me to serve you as you deserve / To give without counting the cost / To fight heedless of wounds / To labor without seeking rest / To sacrifice myself without thought of any reward / Save the knowledge that I have done your will. Amen" (loyolapress.com/catholic-resources/prayer/traditional-catholic-prayers/saints-prayers/prayer-for-generosity-saint-ignatius-of-loyola/).

⁸⁹ McKenzie, "The Gospel according to Matthew," 72.

⁹⁰ *United States v. Lee*, 455 U.S. 252 (1982).

the Amish religion proscribes such participation based on their belief that “the church community should take care of its own members,” coming together as a community to finance disasters that occur.⁹¹ The court accepted the “contention that both payment and receipt of social security benefits is forbidden by the Amish faith [and therefore] compulsory participation in the social security system interferes with their free exercise rights.”⁹² Nevertheless, the court concluded that there was no constitutional violation because this limitation on religious liberty was essential to accomplish the overriding governmental interest of an insurance system that requires mandatory contributions from employees for its fiscal vitality. The taxation system would not work if there were a “myriad exceptions flowing from a wide variety of religious beliefs.”⁹³ The court added that “when followers of a particular sect enter into commercial activity as a matter of choice, the limits they accept on their own conduct as a matter of conscience and faith are not to be superimposed on the statutory schemes which are binding on others in that activity.”⁹⁴ Therefore, according to the court, “some religious practices [must] yield to the common good.”⁹⁵

The failure generally to care for needy members of one’s own community is a violation of the seventh commandment. Property is a gift from God destined for all.⁹⁶ While the appropriation of goods as private property is legitimate to assure security and help provide for one’s basic needs, each person is “a steward of Providence, with the task of making it fruitful and communicating its benefits to others.”⁹⁷ As regards the poor, it becomes a duty. John Chrysostom states that “not to enable the poor to share in our goods is to steal from them and deprive them of life. The goods we possess are not ours, but theirs.”⁹⁸ Thus, the duty to succor the poor is a mandate

⁹¹ Daniel Kelley, “As U.S. Struggles with Health Reform, the Amish Go Their Own Way,” *NBC News*, October 6, 2013, nbcnews.com/healthmain/u-s-struggles-health-reform-amish-go-their-own-way-8C11345954 (quoting Donald Kraybill).

⁹² *Lee*, 455 U.S. at 257.

⁹³ *Lee*, 455 U.S. at 260.

⁹⁴ *Lee*, 455 U.S. at 261.

⁹⁵ *Lee*, 455 U.S. at 259. The court reached a similar conclusion in *Bowen v. Roy*, 476 U.S. 693, 699–701 (1986), in which the court upheld a federal statutory scheme that required benefit applicants and recipients to provide their social security numbers despite the fact that it violated the petitioners’ religious beliefs to obtain and provide a social security number for their daughter.

⁹⁶ CCC, §2401.

⁹⁷ CCC, §§2402–4.

⁹⁸ CCC, §2446, quoting St. John Chrysostom, *Homiliae In Lazaro* 2, 5. St. Gregory the Great adds: “More than performing works of mercy, we are paying a debt of justice” (*Regula pastoralis* 3.21 [PL, 77:87], quoted in CCC, §2446). St. Thomas

of the seventh commandment. The Amish realize this Christian duty by focusing on care for the members of their own community in need.⁹⁹ They believe that their time and material goods are not their own, and as stewards they must share their goods with those in need in their community.¹⁰⁰ For them, the duty is so important that while they “pay their full bill of taxes—income, real estate, estate, sales, and taxes for both public and their private schools, . . . the large majority rejects both commercial and state insurance.”¹⁰¹ They feel that involvement in government insurance programs “would lead to the demise of spontaneous mutual aid within their community.”¹⁰² Hence, the religious objection to social security taxes.

This conflict between the governmental interest in an insurance system

Aquinas elaborates that “whatever certain people have in superabundance is due, by natural law, to the purpose of succoring the poor,” and “each one is entrusted with the stewardship of his own things, so that out of them he may come to the aid of those who are in need” (*ST* II–II, q. 66, a. 7, resp.). Aquinas goes even further to state that “it is not theft, properly speaking, to take secretly and use another’s property in a case of extreme need: because that which he takes for the support of his life becomes his own property by reason of that need” (*ST* II–II, q. 66, a. 7, ad 2). For a discussion of Aquinas’s concept of private property, see Francis Feingold, “Is the Institution of Private Property Part of the Natural Law? *Ius gentium* and *Ius naturale* in Aquinas’s Account of the Right to ‘Steal’ When in Urgent Need,” *Proceedings of the American Catholic Philosophical Association* 92 (2018): 189–210.

⁹⁹ James A. Cates, *Serving the Amish: A Cultural Guide for Professionals* (Baltimore, MD: Johns Hopkins University Press, 2014), 13.

¹⁰⁰ Cates, *Serving the Amish*, 17. See also Steven M. Nolt, *The Amish: A Concise Introduction* (Baltimore, MD: Johns Hopkins University Press, 2013), 41: “The Amish believe that church members bear a divine responsibility to care for one another in times of crisis, such as the aftermath of a house fire or the need to pay a major medical bill.” Their *Rules of a Godly Life* states that “you must distribute of your goods to the needy, and do it wisely, willingly, and from the heart (Rom 12:13; 2 Cor 9:7)” (Nolt, *The Amish*, 121). They follow St. Paul’s exhortation in Gal 6:2: “Bear one another’s burdens, and so you will fulfill the law of Christ” (Donald B. Kraybill, Steven M. Nolt, and David L. Weaver-Zercher, *Amish Grace: How Forgiveness Transcended Tragedy* [San Francisco: John Wiley, 2007], 14).

¹⁰¹ Cates, *Serving the Amish*, 13.

¹⁰² Donald B. Kraybill, “Introduction: The Struggle to be Separate,” in *The Amish Struggle with Modernity*, ed. Donald B. Kraybill and Marc Alan Olshan (Hanover, MD: University Press of New England, 1994), 14. See also Donald B. Kraybill, *The Riddle of Amish Culture*, rev. ed. (Baltimore, MD: Johns Hopkins University Press, 2001), 277, adding that “insurance programs defy the stance of *Gelassenheit*—of waiting and submitting to divine destiny—because they guarantee a favorable financial outcome,” and that involvement in such programs “entails economic involvement with, and reliance on, the world—a violation of the biblical injunction of separation [which] would destroy dependency on the church and erode its centrality in the lives of members.”

and the Amish interest in keeping their faith does not occur for all Amish workers. In 1965, before *Lee* was decided, Congress provided an exemption from social security taxes for self-employed Amish workers,¹⁰³ and in 1988, six years after *Lee* was decided, this exemption was extended to Amish employees working for Amish employers.¹⁰⁴ Still, “non-Amish employers must continue to deduct Social Security taxes if they hire Amish employees.”¹⁰⁵ This last group of Amish employees may be able legally to avoid paying social security taxes by rearranging to work for their employer as independent contractors.¹⁰⁶ However, the employer may not be obliging, in which case the employee may lose the job. This can be extraordinarily burdensome on an employee who needs the job to feed himself and his family.

Blessed are the Merciful

An Amish employee respects the seventh commandment by refusing to take a job that requires payment of social security taxes. If he were to take the job, he would violate his duty under the commandment to give to the needy by his encouraging the demise of spontaneous mutual aid within the community. Yet a Christian response extends beyond this mere refusal. An Amish Christian is one who opens his or her heart to embrace the very culture of spontaneous mutual aid at the basis of this refusal—truly to live mercy through the charity of real compassion for the needs of others and with a real desire to help. It is not only to give the needy their due but to feel their misery as one’s own with an eagerness to drive it away: Aquinas states that “justice without mercy is cruelty . . . [and] it is necessary that

¹⁰³ Tax on Self-Employment Income: Definitions, 26 U.S.C. no. 1402(g) (March 23, 2018).

¹⁰⁴ The Exemption Act of 1988, 26 U.S.C. no. 3127 (providing a social security tax exemption for employers and their employees who are members of “a recognized religious sect” whose “established tenets” oppose participation in the Social Security Act program).

¹⁰⁵ Kraybill, *Riddle*, 279.

¹⁰⁶ Before 1988, when only self-employed Amish were exempt, “some businesses organized themselves as legal partnerships so the employees—owners or partners in this case—were considered self-employed and exempt,” while in other cases the Amish worked together as a “crew but kept individual records and collected their pay separately to qualify for the self-employment exemption” (Kraybill, *Riddle*, 279).

both be joined together.”¹⁰⁷ Blessed are the merciful.¹⁰⁸

This mercy pertains even when the object of that mercy is a sinner. In the Bible, God’s people are compared to a faithless woman whom God betroths “with justice and with judgment, with loyalty and with compassion” (Hos 2:21), for “merciful and gracious is the Lord, slow to anger, abounding in mercy” (Ps 103:8). Christ speaks of this mercy in the parable of the prodigal son, where the father wants his children to be free to love, thus allowing the younger son to leave home and lose everything in radical rejection of the father’s love, and yet feeling the son’s sin pierce him to the heart as he yearns for his son’s return with outstretched arms.¹⁰⁹ It is in this compassion that he “ran to his son, embraced him and kissed him” upon his return (Luke 15:20). Mercy in this sense is not pity, whereby one stands aloof from the poor person and tosses a few coins to assuage one’s concern. It is the effort to get past instinctive feelings of fear and repulsion, to feel that person’s suffering, and to hasten like the Good Samaritan (Luke 10:29–37) to give him all the help he needs.¹¹⁰

A shining story of such forgiveness and compassion evolved from a 2006 shooting in an Amish schoolhouse near Nickel Mines, Pennsylvania. A gunman killed five Amish children and injured five others, causing profound grief within and outside the Amish community. Yet within hours of the incident, some Amish people reached out to the killer’s family to express their sorrow, their forgiveness, and their gracious concern.¹¹¹ The parents of several of the slain children invited members of the gunman’s family to their daughters’ funerals, and more than half of the seventy-five mourners at the gunman’s funeral were Amish.¹¹² Some of the parents who had just buried their children offered condolences and hugs to the wife of the gunman at the gravesite.¹¹³ Several weeks after the shooting, members of the gunman’s family and the Amish families who had lost children gath-

¹⁰⁷ Thomas Aquinas, *Super Matt 5*, lec. 2 (no. 429), in *Commentary on the Gospel of Matthew, Chapters 1–12*, trans. Jeremy Holmes and Beth Mortensen (Lander, WY: Aquinas Institute for the Study of Sacred Doctrine, 2013), 139.

¹⁰⁸ The Amish consider the beatitudes among the most important texts in Scripture. An Amish minister stated: “Forgiveness is all about Matthew 5 and the Sermon on the Mount and loving our enemies” (Kraybill, *Amish Grace*, 88).

¹⁰⁹ See Nouwen, *Return of the Prodigal Son*, 95–96, describing the father in relation to the younger son in the parable.

¹¹⁰ Pinckaers, *Pursuit of Happiness*, 116.

¹¹¹ Kraybill, *Amish Grace*, 43–44.

¹¹² Kraybill, *Amish Grace*, 45.

¹¹³ Kraybill, *Amish Grace*, 45.

ered to share their grief and tears.¹¹⁴ Also, several Amish people donated to the gunman's family to help provide relief.¹¹⁵ According to one report based on interviews with the Amish, "granting forgiveness was a natural, spontaneous, and quite ordinary thing" which sprang from "spontaneous expressions of faith, not as mandates from the church."¹¹⁶ In other words, God moved the Amish in this case by his grace to which they said yes. Without removing the horror of the tragedy or the grief of the victims' families and community, this forgiveness brought healing and hope to the gunman's family despite the sadness and sorrow.¹¹⁷

This story of forgiveness illustrates the true meaning of mercy. A Christian response to the legally required payment of social security in a job may well be to give up that job under the Amish requirement to avoid involvement in government insurance, but it is grounded on more than the desire to satisfy a stated duty. It is grounded on the desire to cultivate a true sense of mercy in one's soul which one sees in the Amish response to the killing of their children and which Christ calls us all to embrace.

Law Requiring Engagement in an Unjust War

Thou Shalt Not Kill

Although mandatory conscription into the armed forces (the draft) came to an end in 1973, there is always the possibility that it will be reinstated during a future period of war. So, it is relevant to examine how this conscription to fight sometimes mandates immoral action and how we are called by Christ in this circumstance not just to refuse to fight but to go beyond this in finding other ways to promote the love of neighbor in service to one's country. In *Gillette v. United States*,¹¹⁸ the court addressed the claim of selective conscientious objection by a soldier who did not object to war generally but only to the Vietnam conflict. The court described the soldier as "a devout Catholic, [who] believes that it is his duty as a faithful Catholic to discriminate between 'just' and 'unjust' wars, and to forswear participation in the latter."¹¹⁹ However, the court rejected the soldier's free

¹¹⁴ Kraybill, *Amish Grace*, 46.

¹¹⁵ Kraybill, *Amish Grace*, 46–47.

¹¹⁶ Kraybill, *Amish Grace*, 49. An indication of the way in which the Amish nurture this faith is their deferring to others, as is shown in their Christmas song, *Joy*, sung to the tune of *Jingle Bells*. The lyrics are "J-o-y, J-o-y, / J-o-y for Joy, / Jesus first, / Yourself last, / And Others in between" (Kraybill, *Amish Grace*, 114).

¹¹⁷ Kraybill, *Amish Grace*, 47, 52.

¹¹⁸ *Gillette v. United States*, 401 U.S. 437 (1971).

¹¹⁹ *Gillette*, 401 U.S. at 440–41.

exercise claim and upheld the Army's denial of his discharge.¹²⁰

It is a precept of the divine law that one shalt not kill, and Aquinas affirms that "human law cannot make it lawful for a man to be slain unduly," such as in an unjust war.¹²¹ Laws that require one to fight in an unjust war are contrary to the divine law and "must nowise be observed, because, as stated in Acts [5:29], *we ought to obey God rather than man*."¹²² Justice William Douglas emphasized this point in his dissent when he stated that the petitioner was "a Catholic [who] has a moral duty not to participate in unjust wars."¹²³ Nevertheless, the court sustained the denial of the discharge and stated that "our cases do not at their farthest reach support the proposition that a stance of conscientious opposition relieves an objector from any colliding duty fixed by a democratic government," that the conscription laws in this case "do not work a penalty against any theological position," and that the burdens on the petitioners "are strictly justified by substantial governmental interests," which in this case was "the Government's interest in procuring the manpower necessary for military purposes."¹²⁴

The Army's refusal to discharge the petitioner did work a penalty against his theological position that it is a serious sin to kill in an unjust war. The U.S. Conference of Catholic Bishops has affirmed "the Catholic teaching that the state's decision to use force should always be morally scrutinized by citizens asked to support the decision or to participate in war," and that this moral scrutiny "can produce a posture of responsible participation in the government's decision, or conscientious objection to some reasons for using force, some methods of using force, or even some specific branches of the service because of the missions they may be asked to perform."¹²⁵ As a result, the bishops support "the right of selective

¹²⁰ *Gillette*, 401 U.S. at 461–63.

¹²¹ *ST I–II*, q. 100, a. 8, ad 3; *II–II*, q. 40.

¹²² *ST I–II*, q. 96, a. 4, resp.

¹²³ *Gillette*, 401 U.S. at 470 (J. Douglas dissenting in no. 325). To explain the Catholic duty, Justice Douglas quoted Pope John XXIII in *Pacem in Terris* (1963), §51, to say: "Since the right to command is required by the moral order and has its source in God, it follows that, if civil authorities legislate for or allow anything that is contrary to that order and therefore contrary to the will of God, neither the laws made nor the authorizations granted can be binding on the consciences of the citizens, since we must obey God rather than men" (*Gillette*, 401 U.S. at 470n2). He also cited several other texts on Catholic doctrine to underscore the fact that "a Catholic has a moral duty not to participate in unjust wars" (*Gillette*, 401 U.S. at 470).

¹²⁴ *Gillette*, 401 U.S. at 461–62.

¹²⁵ USCCB, "Statement on Registration and Conscription for Military Service"

conscientious objection (SCO) as a moral conclusion,” even though “SCO has not yet found expression in our legal system,” despite the “experience of the Vietnam war [which] highlighted the moral and political significance of precisely this question.”¹²⁶ In this case the only moral alternative for one such as the petitioner is to disobey the law and refuse to kill. The penalty will probably be a dishonorable discharge and a serious fine and/or imprisonment.

Blessed Are the Peacemakers

The proper moral response to disobey the law is but the first step to a Christian response. After stating that “public authorities should make equitable provision for those who for reasons of conscience refuse to bear arms,” the Catholic Catechism says that “these are nonetheless obliged to serve the human community in some other way.”¹²⁷ A Christian response not only avoids violation of the fifth commandment, but it realizes the inherent meaning of the commandment by promoting in a positive way respect for human life, which is created by God in his image. In this way the commandment links directly with the beatitude that blesses the peacemakers.¹²⁸

There are many ways in which one can promote respect for human life. One can work within one’s community to overcome injustice, inequality, envy, distrust, and pride, all of which threaten peace.¹²⁹ Oftentimes one can promote respect for life through small acts of kindness, such as a smile to recognize another person on the street, a move to help a person having trouble opening a door, a calm voice to inspire others to listen to each other in a meeting, a sacrifice of time to help at a homeless shelter, or a letter to warm the heart of a friend. More directly in the case of an unjust war, one can speak up against its injustice, even if it means suffering recrimination and rejection. Dorothy Day stated in 1965 that, “unless we use the weapons of the spirit, denying ourselves and taking up our cross and following Jesus, dying with Him and rising with Him, men will go on fighting, and often from the highest motives, believing that they are fighting defensive

(February 14, 1980), usccb.org/issues-and-action/human-life-and-dignity/war-and-peace/statement-on-registration-and-conscription-for-military-service-1980-02-14.cfm.

¹²⁶ USCCB, “Statement on Registration and Conscription for Military Service.”

¹²⁷ CCC, §2311.

¹²⁸ See CCC, §2302, stating that “by recalling the commandment, ‘You shall not kill,’ our Lord asked for peace of heart.”

¹²⁹ CCC, §2317.

wars for justice and in self-defense against present or future aggression.”¹³⁰ By speaking truth to power, even just by our willingness to suffer the consequences of our civil disobedience, we can soften hearts and promote true respect for human life.¹³¹ One does this in love, not hate, by taking Martin Luther King’s advice in the civil rights movement to channel one’s resistance toward the unjust act, not the person doing the act.¹³²

One also can promote respect for human life by mitigating the violence that others have suffered in the war, such as by caring for the wounded and the dying. Corporal Desmond T. Doss, whose story was made famous by the movies *The Conscientious Objector* (2004) and *Hacksaw Ridge* (2016), was a Seventh Day Adventist who refused to carry a weapon but nevertheless was allowed to serve as a combat medic in World War II. His bravery in the midst of serious danger in Guam and the Philippines earned him two Bronze Stars, and his heroic rescues in the Battle of Okinawa earned him the Congressional Medal of Honor. He faced the reality of suffering caused by war, reached out in compassion to live in solidarity with his comrades as he shared and mitigated their pain, and through this mercy helped to bring peace. This peace does not have the modern connotation of a mere absence of conflict but rather the biblical connotation inherent in the beatitude that defines the attitude of a person who is “ready to fight for peace, conquer it, defend it, and spread it around him.”¹³³ As with all the other beatitudes, we cannot truly become a peacemaker without God’s grace.

¹³⁰ Dorothy Day as quoted in Mark and Louise Zwick, “Dorothy Day, Prophet of Pacifism for the Catholic Church,” *Houston Catholic Worker* 17, no. 5 (September–October 1997), cjd.org/1997/10/01/dorothy-day-prophet-of-pacifism-for-the-catholic-church/.

¹³¹ By one’s willingness to undergo punishment for breaking the law and by maintaining that the law is unjust in a public way, one also avoids the scandal that might otherwise occur from one’s breaking the law (Germain Grisez, *Living a Christian Life*, vol. 2 of *The Way of the Lord Jesus* [Quincy, IL: Franciscan, 1993], 879–80).

¹³² Martin Luther King Jr., *Stride Toward Freedom: The Montgomery Story* (Boston: Beacon, 1958), 91–92.

¹³³ Pinckaers, *Pursuit of Happiness*, 146–48. In fact, this peace may divide people “by reason of the demands of the Gospel and the hardness of some hearts” (151). It is “a militant peace, such as is found in the Word of God, a peace which opposes sin in man and stirs up the reaction of the forces of evil within him” (152). Thus, Christ says: “Do you think that I have come to establish peace on the earth? No, I tell you, but rather division. From now on a household of five will be divided, three against two and two against three” (Luke 12:51–52). The true peacemakers are the “sons of God” who “image the only Son” and “bring to the world the peace and reconciliation which can only come from [God]” (162–63).

Governmental Contract Law Requiring Approval of Adoptions by Unfit Couples

Honor Thy Father and Thy Mother

In *Fulton v. City of Philadelphia*,¹³⁴ the city closed the intake of new referrals by a state-licensed foster care agency, Catholic Social Services (CSS), and did not offer it a new contract because it failed to provide services to married same-sex couples. The agency sought a preliminary injunction requiring the city to renew their contractual relationship without requiring it to certify same-sex couples. It maintained that “it cannot certify a same-sex married couple as foster parents consistent with its religious views”—that “as an affiliate of the Catholic Church, [it] adheres to the belief that marriage is between a man and a woman, . . . [and] will only certify foster parents who are either married or single; it will not certify cohabitating unmarried couples, and it considers all same-sex couples to be unmarried.”¹³⁵ The district court denied the injunction, the circuit court affirmed this denial, but then the U.S. Supreme Court reversed and remanded for further proceedings.¹³⁶

The Supreme Court in *Fulton* determined that the city’s action in contractually requiring CSS not to reject foster or adoptive parents on the basis of their sexual orientation violated the Free Exercise Clause of the First Amendment. Under *Employment Division, Dept. Hum. Res. of Or. v. Smith*, “laws incidentally burdening religion are ordinarily not subject to strict scrutiny under the Free Exercise Clause so long as they are neutral and generally applicable.”¹³⁷ Although it did not reach the question of neutrality, the court held that the contractual requirement was not generally applicable because it contained a provision allowing exemptions. Therefore, the court applied the strict scrutiny test to hold that the contractual clause violated the Free Exercise Clause.

However, the strict scrutiny test does not apply in a case where the contractual provision is neutral and generally applicable. Justice Samuel Alito’s concurring opinion notes that “the First Amendment’s Free Exercise Clause tolerates any rule that categorically prohibits or commands

¹³⁴ *Fulton v. City of Philadelphia*, 922 F.3d 140 (3d Cir. 2019), *rev. and remanded*, nos. 19-123, 2021 WL 2459253 (June 17, 2021).

¹³⁵ *Fulton*, 922 F.3d at 148.

¹³⁶ *Fulton*, 2021 WL at *4, *9.

¹³⁷ *Fulton*, 2021 WL at *4, citing *Employment Division, Dept. Hum. Res. of Or. v. Smith*, 494 U.S. 872 at 878–82 (1990).

specified conduct so long as it does not target religious practice.”¹³⁸ Therefore, Justice Alito concludes, all that the city needs to do to continue its behavior is to eliminate the exemption from its nondiscrimination clause.¹³⁹ This would not be difficult. Justice Alito points out that the city had never used the exemption clause, so, as he tartly puts it, “if the City [eliminates the clause], then, voilà, today’s decision will vanish—and the parties will be back where they started.”¹⁴⁰ In other words, the city may still close the intake of new referrals by CSS and refuse to offer it a new contract if CSS fails to provide services to married same-sex couples. Thus, the problem remains that the city can require immoral action on the part of CSS despite the Supreme Court’s reversal in *Fulton*.

Social bodies involved in the placement of children have a particular moral duty under the fourth commandment “to support and strengthen marriage and the family” as “the natural environment for initiating a human being into solidarity and communal responsibilities.”¹⁴¹ To place children with couples whose way of life opposes the essence of marriage violates this duty. The essence of marriage is “an intimate one, requiring the commitment of the couple to a new life of unique love requiring exclusivity, faithfulness, and permanence in order to create an environment that will ensure the best formation of children in their being, identity, solidarity, and bonding.”¹⁴² This intimacy provides strength and stability to the family through its transformation of a man and a woman into one flesh embracing the fruit of their union. Not all children have the benefit of family in this fundamental sense, but it is the type towards which all adoptive placements should be oriented. Unmarried couples and same-sex couples who live as if they were married oppose the fundamental nature of family by both their example and their justifications.¹⁴³ Therefore, it is the duty of an adoption agency to exclude placements with these couples, and, if the state denies the agency its license¹⁴⁴ to operate unless it desists, then

¹³⁸ *Fulton*, 2021 WL at *10 (J. Alito concurring).

¹³⁹ *Fulton*, 2021 WL at *13.

¹⁴⁰ *Fulton*, 2021 WL at *13.

¹⁴¹ CCC, §§2210, 2224.

¹⁴² John Makdisi and June Mary Zekan Makdisi, “The Transformation of Marriage as a State Institution,” *Intercultural Human Rights Law Review* 14 (2019): 413.

¹⁴³ The true significance of the family is that it is “an institution created by procreation within the framework of marriage, . . . directly dependent on the parents for its existence and functioning, . . . and a complement to and extension of [the parents’] love” (John Paul II, *Love & Responsibility*, 242).

¹⁴⁴ Justice Alito notes that “the power that the City asserts is essentially the power to deny CSS a license to continue to perform work that it has carried out for decades

the agency must give up its license. Catholic adoption agencies in a number of jurisdictions have done just that.¹⁴⁵

Blessed Are the Clean of Heart

An adoption agency that refuses to place children with unfit couples despite its being denied a license to operate has taken the first step toward a Christian response by not violating the fourth commandment. However, a true Christian response is more than just a negative; it is a positive attempt to practice justice and love of neighbor. God calls us to “make justice your aim: redress the wronged, hear the orphan’s plea.”¹⁴⁶ Servais Pinckaers claims that “here it is a question of the interior purity which cleanses the heart,” and he quotes Ezekiel to say: “I will sprinkle clean water upon you to cleanse you from all your impurities, and from all your idols I will cleanse you. A new heart I will give you, and a new spirit I will put within you, and I will remove from your bodies your hearts of stone and give you hearts of flesh.”¹⁴⁷ It is God who effects this new heart of flesh within us through his grace and calls us to say yes to this grace.¹⁴⁸ One way to say yes when one’s status as an adoption agency is removed is to find other ways to direct adoptive placements to fit couples.

One way in which this might be done is to convert the adoption agency to a counseling center. Expectant parents who want to give their child up for adoption often need counseling just to understand the real meaning of marriage and its major importance to the growth and development of their child. The center may offer help in resolving economic, emotional, familial and other problems that may be obstacles to keeping one’s child, and help to direct expectant parents to a healthy choice of adoptive parents for their child. It may also help prospective adoptive parents—both fit and unfit—to understand the values of marriage and why adoption requires

and that religious groups have performed since time immemorial” (*Fulton*, 2021 WL at *45 [J. Alito concurring]).

¹⁴⁵ See USCCB, “Discrimination against Catholic Adoption Services,” usccb.org/issues-and-action/religious-liberty/discrimination-against-catholic-adoption-services.cfm (agencies forced to end their adoption services include Catholic Charities of Boston, Catholic Charities of San Francisco, and Catholic Charities affiliates in Illinois).

¹⁴⁶ Isa 1:17.

¹⁴⁷ Pinckaers, *Pursuit of Happiness*, 130, quoting Ezek 36:25–26.

¹⁴⁸ Not only do we grow in love of God and neighbor, but hearing the orphan’s plea and doing something positive about it helps us to avoid the temptation to a type of pharisaical hypocrisy that “conceal[s] impurity of heart and pride beneath the outward appearances of legality” (Pinckaers, *Pursuit of Happiness*, 134).

the fitness of a couple or single individual who respects those values. Too often society has reacted against “the values of marriage and of the various positive aspects and dimensions of human sexuality” because it “saw purity chiefly within the context of sin and prohibition.”¹⁴⁹ Marriage is so much more. The members of a counseling center with the purpose of offering the help described here would manifest the beauty of the virtue of purity in the context of marriage and would come to see God in the eyes of the children they help. Blessed are the clean of heart.

Conclusion

We have now come full circle in discussing the beatitudes as Christian directives, taught to us by the Son, whereby the Holy Spirit works within our souls to lead us to the Father. The beatitudes infuse the commandments with life by calling us to step beyond the external world of “do not” into the internal world of “do.” Having started with the first beatitude—blessed are the poor in spirit—we find that, by shedding our attachment to the temptations of this life in possessions, power, and pleasures, we are able to realize our need for God’s help and our desire to hear God’s Word. The subsequent beatitudes form us further in our relationship to God and neighbor, incorporating God’s Word within our lives so that, totally dependent on God’s grace, we make our way as pilgrims toward God in the development of virtue. Now in the final beatitude—blessed are the persecuted—we realize the result of the grace that God bestows on us through the beatitudes. No longer are we people of this world.¹⁵⁰ We are citizens of heaven (Phil 3:20). And because we are not people of this world, the world hates us (John 15:19; 17:14). Because we want to live religiously in Christ Jesus, we will be persecuted (2 Tim 3:12). Yet, we find in this beatitude a kinship with the early Christians, who “exhibited a bright and exultant joy which sprang out of the very sufferings of persecution.”¹⁵¹

Persecution becomes the lived reality in which all the other beatitudes converge,¹⁵² and in the midst of the pain of persecution we find true happi-

¹⁴⁹ Pinckaers, *Pursuit of Happiness*, 134–35.

¹⁵⁰ In his prayer after the last supper discourses, Jesus prays to the Father for all the people about whom he says twice that “they do not belong to the world any more than I belong to the world” (John 17:14, 16).

¹⁵¹ Pinckaers, *Pursuit of Happiness*, 167–68.

¹⁵² See Pinckaers, *Pursuit of Happiness*, 175: “The persecuted disciple experiences poverty when he is despoiled; he is led to practice meekness in the face of the violence done to him; he weeps and grieves over his separation from those he loves; he knows hunger and thirst for justice when he is condemned; he has ample opportunity to practice mercy and forgiveness; he strives to keep his heart pure of

ness in our conviction of faith, cemented in love of Christ, that our hope of eternal happiness in God will be realized through the beatitudes. Joy for persecuted Christians comes from “an awareness of a new life sprung up and flourishing in the depths of their souls, a life which is beyond death, infused in them by the risen Christ to whom they have surrendered themselves.”¹⁵³ In realizing the full circle of the beatitudes, we realize the path of our pilgrimage to God along which we hope to merit by God’s grace the kingdom of heaven. It is telling that the reward for the blessed in the first beatitude is the kingdom of heaven (Matt 5:3), as is the reward for the blessed in the eighth beatitude (Matt 5:10). By following all the beatitudes from beginning to end, we are constantly focused on our ultimate end who is God, starting with faith and ending in charity.¹⁵⁴ N.V

all duplicity despite the traps set for him; he seeks peace in the midst of the war waged against him.”

¹⁵³ Pinckaers, *Pursuit of Happiness*, 181.

¹⁵⁴ Through humility, the poor in spirit know in faith that God, who is the center of all, loves them, and through peacemaking, they return this love in charity; see Mattison, *Sermon on the Mount*, 47–48, 51–52.