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# Quas Primas and the Economic Ordering of Society for the Social Reign of Christ the King; A Third Perspective on the Bainbridge/Sargent Law and Economics Debate

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# **QUAS PRIMAS AND THE ECONOMIC ORDERING OF SOCIETY FOR THE SOCIAL REIGN OF CHRIST THE KING: A THIRD PERSPECTIVE ON THE BAINBRIDGE/SARGENT LAW AND ECONOMICS DEBATE**

BRIAN M. MCCALL<sup>†</sup>

*“It would be a grave error, on the other hand, to say that Christ has no authority whatever in civil affairs, since, by virtue of the absolute empire over all creatures committed to him by the Father, all things are in his power.”<sup>1</sup>*

This quotation summarizes the doctrine of Christ’s kingship which was re-presented to a greatly divided world by Pope Pius XI in 1925 when he established the Feast of Christ the King for the Universal Church on the last Sunday in October. It is absolute in its formulation: “all creatures.”<sup>2</sup> Yet, in what way does Christ’s dominion relate to all creatures? The application of the doctrine to the political and public life of governments and nations may appear obvious, but perhaps less obvious is its

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<sup>1</sup> PIUS XI, ENCYCLICAL LETTER *QUAS PRIMAS* ¶ 17 (1925) [hereinafter *QUAS PRIMAS*].

<sup>2</sup> It corresponds to the following statement of Leo XIII:

His empire extends not only over Catholic nations and those who, having been duly washed in the waters of holy baptism, belong of right to the Church, although erroneous opinions keep them astray, or dissent from her teaching cuts them off from her care; it comprises also all those who are deprived of the Christian faith, so that the whole human race is most truly under the power of Jesus Christ.

*QUAS PRIMAS*, *supra* note 1, ¶ 18 (quoting LEO XIII, ENCYCLICAL LETTER *ANNUM SACRUM* (1899)). Truly, the social reign of Christ the King is for everyone, not just Catholics.

relevance to the formulation and execution of laws affecting private commercial relationships and transactions, such as contract, corporation, and even property law. Some might even assert that the doctrine bears no relation to commercial dealings, which should be ordered primarily in light of economic efficiency.

Stephen M. Bainbridge and Mark A. Sargent have debated whether, and to what extent, the theory of law known as “Law and Economics” is required, supported, permitted, or prohibited by Catholic teaching.<sup>3</sup> Although the theory has been applied or at least proposed as applying to almost every field of law,<sup>4</sup> its original and most obvious application is in the realm of business and commercial law and is therefore where this Article will concentrate—although the conclusions reached about the appropriateness of a Law and Economics analysis is equally applicable to other disciplines. Thus, this Article attempts to add a perspective to the debate about the propriety, from a Catholic perspective, of the Law and Economics movement. Part I briefly summarizes Law and Economics as a system and the positions of Bainbridge and Sargent as they appear in published works. Part II briefly describes the general teaching of the Social Reign of Christ the King as taught by the Church up to and including *Quas Primas*. Part III looks at evidence within the writings of Pius XI that this doctrine explicitly contains principles governing commercial and business matters. Part IV examines the consistency of the conclusions reached in Part III with historic Catholic teaching. Finally, Part V applies these conclusions to the debate about Law and Economics.

### I. THE BAINBRIDGE/SARGENT DEBATE

“Law and Economics” is an approach to the study and practice of law which is both descriptive or predictive, and normative.<sup>5</sup> On the predictive side, the system constructs a view

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<sup>3</sup> See generally Stephen M. Bainbridge, *Law and Economics: An Apologia*, in CHRISTIAN PERSPECTIVES ON LEGAL THOUGHT 208 (Michael W. McConnell et al. eds., 2001); Mark A. Sargent, *Utility, the Good and Civic Happiness: A Catholic Critique of Law and Economics*, 44 J. CATH. LEGAL STUD. 35 (2005).

<sup>4</sup> Sargent, *supra* note 3, at 35 (listing contracts, property, business associations, family law, criminal law, and constitutional law as among those to which the theory has been directed).

<sup>5</sup> See Bainbridge, *supra* note 3, at 208. Although I rely on Bainbridge for a general description of what constitutes “Law and Economics,” Sargent generally

of human activity rooted in rational choice, the so-called “Economic Man,” and then evaluates what effect varying legal rules and outcomes will have on Economic Man when making rational choices.<sup>6</sup> Although practitioners of this school can debate the finer points of this construct, these debates reduce to disagreements over the level of accuracy of the tool,<sup>7</sup> which is still accepted on at least some level. On the normative side, the approach proposes that specific legal rules, which in light of the predictive analysis, should maximize utility, create greater efficiency, or maximize/optimize wealth, the particular phrase depending on the individual author.<sup>8</sup> Thus, ignoring the intricacies, variations, and nuances, Law and Economics proposes that it is right to examine the material effects of legal decisions upon at least a theoretical approximation of economic actors, Economic Man, and then to choose among possible legal rules that rule which produces the greatest material benefit, which can be defined broadly or narrowly.

Stephen Bainbridge, a noted Law and Economics scholar, has argued that the approach of Law and Economics, in both its predictive and normative aspects, is not only correct but inherently Christian.<sup>9</sup> On the predictive aspect, Bainbridge’s work expands upon the thinking of Michael Novak, who argues that the Catholic understanding of the dignity of the person requires an expansive freedom of action and choice, which is only possible in an economic system that precludes any interference by government, regardless of the motive of interference such as redistribution or social justice.<sup>10</sup> Bainbridge asks whether Novak’s economic understanding of human nature as “Economic Man,” or what he describes as “an autonomous individual who makes rational choices that maximize his satisfactions[,] . . . is

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accepts Bainbridge’s definition for purposes of the argument. *See also* Sargent, *supra* note 3.

<sup>6</sup> *See* Bainbridge, *supra* note 3, at 208–09, 219–21.

<sup>7</sup> *See id.* at 220–21.

<sup>8</sup> *See id.* at 209–10.

<sup>9</sup> Bainbridge, *supra* note 3, at 209.

<sup>10</sup> *See generally* MICHAEL NOVAK, FREEDOM WITH JUSTICE: CATHOLIC SOCIAL THOUGHT AND LIBERAL INSTITUTIONS (1984); MICHAEL NOVAK, ON CORPORATE GOVERNANCE: THE CORPORATION AS IT OUGHT TO BE (1997); MICHAEL NOVAK, THE SPIRIT OF DEMOCRATIC CAPITALISM (1982); MICHAEL NOVAK, TOWARD A THEOLOGY OF THE CORPORATION (rev. ed. 1990).

consistent with that of Christianity.”<sup>11</sup> He begins his answer thus:

If Economic Man is a fair description of Adam after the Fall, the rational-choice model used in economics is not a bad model for predicting the behavior of fallen men. At the same time, however, because Christianity’s account of how man fell and the consequences of that Fall provide an answer to Coase’s question about [why humans have certain preferences], our faith gives Christian practitioners of economic analysis a more fully realized account of human behavior.<sup>12</sup>

Although Bainbridge acknowledges that Christianity calls fallen man to transcend this fallen nature—or transcend being Economic Man—he argues that most people, Christian and non-Christian, fail to achieve this higher calling of man.<sup>13</sup> Therefore, the Law and Economics analysis of rational choice is a more accurate understanding of the world as it is and it is on this basis that law must be made. As Bainbridge says: “A realistic social order therefore must be designed around principles that fall short of Christian ideals. In particular, the rules must not be defined in ways that effectively require every citizen to be a practicing Christian. Christian visions of justice therefore cannot determine the rules of economic order.”<sup>14</sup> Thus, even in defending Law and Economics as a mere descriptive tool, Bainbridge argues normatively that the law must be formulated in light of the way men are, rather than what they are called to be.

As to wealth or utility maximization or optimization as the criterion for selecting among competing legal rules, Bainbridge has two main arguments. First, it works. A legal system, which does not interfere with efficient or wealth maximizing rules, benefits everyone in two ways. First, a rising tide raises all boats; everyone is benefited by a larger pie.<sup>15</sup> Second, the minimalist state intervention in the operation of rational choice has produced better economic results than repressive systems such as mercantilism and socialism, and thus, led to their demise.<sup>16</sup> Bainbridge’s second argument is that even if one can

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<sup>11</sup> Bainbridge, *supra* note 3, at 216.

<sup>12</sup> *Id.* at 222.

<sup>13</sup> *Id.* at 222–23.

<sup>14</sup> *Id.*

<sup>15</sup> *See id.* at 211.

<sup>16</sup> *See id.*

make a good theoretical argument that other values, Christian virtues, or “Other Justice” concerns should be taken into account in formulating legal rules, the self-interest of individuals and groups and the state’s use of these values as a pretext for expanding its power make it nearly impossible to implement this approach.<sup>17</sup> Thus, Bainbridge does not reject the existence or desirability of non-economic values; he simply considers them practically irrelevant—and maybe dangerous for personal liberty—in formulating law.

Sargent’s critique of Bainbridge’s position rests on several points. First, he disagrees about the basic definition of human nature as fallen man or “Economic Man,” which account is an incomplete understanding of the human person. Law and Economics is inconsistent with the

Catholic conception of personhood: incarnational, capable of redemption, and oriented toward salvation. Humans are fallen, but redeemable. The human person is capable of more than utility maximization, should not be regarded as interested only in utility maximization, and may be judged in a moral framework that values something greater than the autonomy needed to satisfy individual preferences.<sup>18</sup>

Second, Sargent argues that Bainbridge’s ultimate conclusion that “other values,” or ends other than wealth maximization, are of little or no practical use in legislating or deciding cases is an incomplete assessment of the capabilities of the human capacity. “Catholic tradition, grounded in Aristotle and developed through Aquinas, insists on the capacity of reason to deliberate about ends and not just means. Ends—or preferences—may be shaped by reason and directed toward the Good.”<sup>19</sup> Third, Sargent argues that the ends of wealth maximization are an incomplete understanding of human flourishing as proposed by the Catholic intellectual tradition, which Sargent sees as “more complex than the utility maximization” goal of Law and Economics.<sup>20</sup> Finally, Sargent believes that the rational choice view of human activity does not

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<sup>17</sup> See *id.* at 213–15.

<sup>18</sup> Sargent, *supra* note 3, at 51.

<sup>19</sup> *Id.* at 51.

<sup>20</sup> *Id.* at 52–53.

take sufficient account of the “intrinsically human peculiarities of the economic agent.”<sup>21</sup>

My present purpose is not to critique or dispute the individual arguments of Sargent or Bainbridge. What I wish to note, for now, about both of their arguments is that they are rooted in what I will call an “anthropological” approach. Central to both Bainbridge’s and Sargent’s position is an argument about the nature and capacity of humans, individually or collectively. Bainbridge’s acceptance of the view of Man as an agent of rational choice—either because that is what he is or what we must think of him as for practical purposes—leads him to an acceptance of the predictive and wealth maximization claims of Law and Economics. Sargent’s belief that this theory of the human person, capacity, ends, and flourishing is defective leads him to reject at least the normative claims of Law and Economics. Thus, appeal to a Catholic understanding of the human person appears inadequate to answer the question of the correctness, or lack thereof, of the Law and Economics approach. The doctrine of the Social Reign of Christ the King, as we shall see, is not centered on the question: “what is the nature and end of man,” but rather “what is the nature of the universe as God created it and how does God expect Man, as part of that system of creation, to respond to God?” I term this approach a “cosmological” perspective. I will argue that regardless of the claims about the nature of the human person, this cosmological perspective leads to certain conclusions about the Law and Economics approach.

## II. THE GENERAL DOCTRINE OF THE SOCIAL REIGN OF CHRIST THE KING

The Social Reign of Christ the King expresses the idea that not only does every individual owe obedience to Christ as creator and ruler, but also every group of individuals, or society as a group, owes such obedience. This concept can, as Pius XI demonstrates, be proven both from Sacred Scripture and the teachings of the Church—specifically his predecessors. The opening quotation in this Article, with its reference to creation and the Father giving power to Christ,<sup>22</sup> summarizes the two

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<sup>21</sup> *Id.* at 53.

<sup>22</sup> See *QUAS PRIMAS*, *supra* note 1.

reasons Pius XI cites for the proof of the truth of Christ's social kingship: (1) Christ is King of all societies by virtue of his role as creator, and (2) Christ earns the right to rule over all people by the infinite merits of His sacred passion. Psalm 32 summarizes the meaning of a relationship of a creature to its creator: "Let all the earth fear the Lord, and let all the inhabitants of the world be in awe of him. For he spoke and they were made: he commanded and they were created."<sup>23</sup> By virtue of His Divine nature, Christ is infinitely superior to our human nature and thus, it is only natural that the entire world, not just individuals, be in awe of Him. Throughout the Old Testament, God acts in the capacity of a king; He functions as a lawgiver.<sup>24</sup> When Israel clamored for an earthly king to be set over it, God responded that He has been their king who saved them from the kings of the earth.<sup>25</sup> He reveals detailed laws to govern the nation of Israel.<sup>26</sup> Our Lord Himself confirms His kingship in his interview with Pilate:

Pilate therefore said to him: Art thou a king then? Jesus answered: Thou sayest that I am a king. For this was I born, and for this came I into the world; that I should give testimony to the truth. Every one that is of the truth, heareth my voice.<sup>27</sup>

As Our Lord explained in the preceding verse, His kingdom is not like the transient reigns of earthly kings<sup>28</sup>—it is a kingdom of truth; His law is truth. St. Paul refers to and addresses God as a king, for example, when he says: "Now to the king of ages, immortal, invisible, the only God, be honour and glory for ever and ever. Amen."<sup>29</sup> In the opening lines of the *Apocalypse*, St. John confirms that Christ is "the prince of the kings of the earth."<sup>30</sup> In other words, Christ rules over the kings, or nations, of the world.

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<sup>23</sup> *Psalm* 32:8–9 (Douay-Rheims).

<sup>24</sup> *See, e.g., Exodus* 20–33.

<sup>25</sup> *See Kings* 10:18.

<sup>26</sup> *See, e.g., Exodus* 20–33.

<sup>27</sup> *John* 18:37.

<sup>28</sup> *See id.* at 18:36 (noting that His "kingdom is not of this world"). Sacred Scripture draws a distinction between being "of the world," or derived from the world, and being "in the world." *See, e.g., id.* at 15:19, 17:14. *Compare id.* at 1:10 (Christ "was in the world") *with id.* at 17:16 (but "not of the world"). Thus, Christ's kingdom is not derived from the world but is still present in the world.

<sup>29</sup> *Timothy* 1:17.

<sup>30</sup> *Apocalypse* 1:5.



If Christ's claim as creator were not enough to convince us of His rights over us, He can lay claim to our allegiance by virtue of His act of redemption. As St. Paul says:

He humbled himself, becoming obedient unto death, even to the death of the cross. For which cause God also hath exalted him, and hath given him a name which is above all names: That in the name of Jesus every knee should bow, of those that are in heaven, on earth, and under the earth . . . .<sup>31</sup>

By virtue of His passion and death—even considered solely from the perspective of His human nature—Christ has been raised above us and to Him every knee, even the knee of the rulers of the world, must bend.

Pius XI explains that by virtue of Christ's claim to kingship as creator and redeemer, societies as well as individuals owe Him obligations as king. This teaching is consistent with that of His predecessors. For example, Leo XIII teaches:

[The empire of Christ the King] includes not only Catholic nations, not only baptized persons, who though of right belonging to the Church, have been led astray by error, or have been cut off from her by schism, but also all those who are outside the Christian faith; so that truly the whole of mankind is subject to the power of Jesus Christ.<sup>32</sup>

This statement is all-encompassing. No one is free of the obligations owed to Christ as ruler. In another place, Leo XIII made clear that this obligation encompasses nations as well:

[E]very [civilized community] must have a ruling authority, and this authority, no less than society itself, has its source in nature, and has consequently God for its Author. Hence it follows that all public power must proceed from God. For God alone is the true and supreme Lord of the world. Everything without exception must be subject to Him and must serve him, so that whosoever holds the right to govern, holds it from one sole and single source, namely, God, the Sovereign Ruler of all. "There is no power but from God."<sup>33</sup>

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<sup>31</sup> *Philippians* 2:8–10.

<sup>32</sup> *QUAS PRIMAS*, *supra* note 1, ¶ 18.

<sup>33</sup> LEO XIII, ENCYCLICAL LETTER *IMMORTALE DEI* ¶ 3 (1885) [hereinafter *IMMORTALE DEI*] (quoting *Romans* 13:1).

### III. THE APPLICATION OF *QUAS PRIMAS* TO THE COMMERCIAL AND BUSINESS SPHERE

Having summarized the general teachings on the Social Reign of Christ the King, we will now consider its specific application to commercial societies as opposed to nation states. Our method will be to examine the text of the encyclical for indications of its genres of applications. We will then look at the immediate context of the encyclical and in particular the first encyclical of Pius XI, *Ubi Arcano*.

Turning to *Quas Primas* itself, Pius XI makes it clear that Christ's kingship extends to all creatures. Pius XI emphasizes that this subjugation extends throughout the entire hierarchy of society. He does so by referring to the summit and the basic unit of society: "Nor is there any difference in this matter between the individual and the family or the State; for all men, whether collectively or individually, are under the dominion of Christ. In him is the salvation of the individual, in him is the salvation of society."<sup>34</sup> By referring to the state, the individual, and the family, His Holiness encompasses all of the intermediate levels and associations of society. This would include corporations, partnerships, trade unions, and other business organizations. No one and no group is excluded.

One may attempt, however, to limit this application to people in the public or political spheres alone. Economics and business involve, one might assert, private orderings and are therefore not affected directly by the public acknowledgement of Christ's right to rule individuals and societies. Just as Pius XI condemns the proposition that Christ's kingship has no place in public life, he likewise does so with respect to private affairs: "When once men recognize, *both in private and in public life*, that Christ is King, society will at last receive the great blessings of real liberty, well-ordered discipline, peace and harmony."<sup>35</sup> The reference to both private and public must encompass corporate and commercial associations, whether they are considered private, public, or a cross between the two. Christ's reign affects every aspect of our lives, as Pius XI says: "[I]f this power embraces all men, it must be clear that *not one of our faculties* is

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<sup>34</sup> *QUAS PRIMAS*, *supra* note 1, ¶ 18.

<sup>35</sup> *Id.* ¶ 19 (emphasis added); *see also id.* ¶ 1.

exempt from his empire.”<sup>36</sup> Thus, just as Christ’s law and kingship cannot be excluded from the making of laws affecting abortion, education, and marriage, so too it cannot be dismissed from laws governing business affairs both of individuals and collective associations.

*Quas Primas* itself acknowledges that the malady to which the newly-instituted Feast of Christ the King is a remedy involves economic matters. His Holiness lamented “that insatiable greed which is so often hidden under a pretense of public spirit and patriotism, and gives rise to so many private quarrels; a blind and immoderate selfishness, making men seek nothing but their own comfort and advantage, and measure everything by these.”<sup>37</sup> Pius XI refers to the two pillars of Christ’s Reign as they apply to economics: charity<sup>38</sup> and justice. “[Christ’s Kingdom] demands of its subjects a spirit of detachment from riches and earthly things, and a spirit of gentleness. They must hunger and thirst after justice . . . .”<sup>39</sup> Charity and justice are obligations on all people and nations; they are not optional. Economic law must be evaluated in light of these two hallmarks of the Kingdom Christ has established. Christ reigns over all affairs of His creatures and rules every association, business related or otherwise. These individuals and associations bear obligations not just to insatiable greed, or wealth maximization, but to justice and charity. No decision, whether regarding the enforcement of a promise, the decision to sell a business, or the offering of securities, is outside the realm of Christ’s kingdom, a domain which requires charity and justice.

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<sup>36</sup> *Id.* ¶ 33 (emphasis added).

<sup>37</sup> *Id.* ¶ 24.

<sup>38</sup> It is important to distinguish the Catholic meaning of charity—the natural or supernatural virtue—from the secular understanding of tax-deductible donation. Charity can be defined as “that habit or power which disposes us to love God above all creatures for Himself, and to love ourselves and our neighbours for the sake of God.” 3 THE CATHOLIC ENCYCLOPEDIA 592 (Charles G Herbermann et al. eds., 1908), available at <http://www.newadvent.org/cathen/03592a.htm>. On the obligation of charity binding the individual and community:

Love of neighbour, grounded in the love of God, is first and foremost a responsibility for each individual member of the faithful, but it is also a responsibility for the entire ecclesial community at every level: from the local community to the particular Church and to the Church universal in its entirety.

BENEDICT XVI, ENCYCLICAL LETTER *DEUS CARITAS EST* ¶ 20 (2005).

<sup>39</sup> *QUAS PRIMAS*, *supra* note 1, ¶ 15.

Thus, we have seen that the general description of Christ's reign contemplates an all-encompassing change in society, political as well as economic. Yet, Pius XI does not explicate the details to which he alludes. This is primarily because *Quas Primas* emerges from a long line of Catholic, and specifically papal, teaching touching these issues. Pius XI himself on two occasions in *Quas Primas* refers to his first encyclical, *Ubi Arcano*, and explains that *Quas Primas* is a continuation of this diagnosis of modern errors begun in *Ubi Arcano*.<sup>40</sup> Let us turn then to that encyclical.

This first encyclical of Pius XI was written in 1922, when much of the West was in the denial of the Roaring Twenties.<sup>41</sup> The Great War had put an end to war and brought peace, people told themselves, as they charlestoned away the nights. The Church, however, sees the Truth—the correspondence of the mind to reality—and the Truth was that the world was on the brink of more strife and discord. World War II and all the intense and bloody conflicts that continue to our very day showed the Truth of *Ubi Arcano*'s startling prediction of future discord; the world was sick and needed medicine. In *Ubi Arcano*, Pius XI diagnosed the problems which prevented true peace, that peace which the world cannot give.<sup>42</sup> It is, as he made explicit in *Quas Primas*, the rejection of Christ's Kingship in private as well as public life.<sup>43</sup> The encyclical is a sharp and clear diagnosis of the causes of discord and violence among men. For our purposes, however, we will limit our examination to the part of the diagnosis dealing with economic matters. From the outset, Pius XI indicated his analysis encompassed both politics and economics when he stated that rivalries which give root to war lie in "the manipulations of politics" and "the fluctuations of finance."<sup>44</sup>

In the first place, we must take cognizance of the war between the classes, a chronic and mortal disease of present-day society, which like a cancer is eating away the vital forces of the social fabric, labor, industry, the arts, commerce, agriculture—

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<sup>40</sup> See *id.* ¶¶ 1, 24.

<sup>41</sup> See generally PIUS XI, ENCYCLICAL LETTER *UBI ARCANO DEI CONSILIO* (1922) [hereinafter *UBI ARCANO DEI CONSILIO*].

<sup>42</sup> See *John* 14:27 (Douay-Rheims).

<sup>43</sup> See *UBI ARCANO DEI CONSILIO*, *supra* note 41, at ¶¶ 11–13.

<sup>44</sup> *Id.* ¶ 10.

everything in fact which contributes to public and private welfare and to national prosperity. This conflict seems to resist every solution and grows worse because those who are never satisfied with the amount of their wealth contend with those who hold on most tenaciously to the riches which they have already acquired, while to both classes there is common the desire to rule the other and to assume control of the other's possessions.<sup>45</sup>

This strife over the maximization of individual and class economic self-interest—this economic warfare—is the root of all disorder. What fuels this disease?

Many are intent on exploiting their neighbors solely for the purpose of enjoying more fully and on a larger scale the goods of this world. But they err grievously who have turned to the acquisition of material and temporal possessions and are forgetful of eternal and spiritual things, to the possession of which Jesus, Our Redeemer, by means of the Church, His living interpreter, calls mankind.<sup>46</sup>

Society's end has become disoriented. Economic acquisition and increased production have usurped the true first end of society, the true self-interest of every person—that is obedience to the law of Christ, which is necessary for salvation.<sup>47</sup> What are the means to this end? Again, charity and justice are the answer. The unbalanced attention to material progress is contrary to the charity of Christ's Kingdom where eternal salvation is of primary, not secondary, concern. "It is in the very nature of material objects that an inordinate desire for them becomes the root of every evil, of every discord, and in particular, of a lowering of the moral sense."<sup>48</sup> An inordinate desire for increasing material things makes charity cold and drives unjust decisions. Pius XI teaches that "it is never lawful nor even wise, to dissociate morality from the affairs of practical life, that, in the last analysis, it is 'justice which exalteth a nation: but sin

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<sup>45</sup> *Id.* ¶ 12.

<sup>46</sup> *Id.* ¶ 21.

<sup>47</sup> See *Hebrews* 2:1–3 ("Therefore ought we more diligently to observe the things which we have heard, lest perhaps we should let them slip. For if the word, spoken by angels, became steadfast, and every transgression and disobedience received a just recompense of reward: How shall we escape if we neglect so great salvation? which [sic] having begun to be declared by the Lord, was confirmed unto us by them that heard him."); *Matthew* 28:20 ("Teaching them to observe all things whatsoever I have commanded you . . .").

<sup>48</sup> *UBI ARCANO DEI CONSILIO*, *supra* note 41, ¶ 22.

maketh nations miserable.’”<sup>49</sup> Thus, morality is not something separate from economics, within which sphere people may just pursue self-interest; the Church is not confined to commanding infallible precepts with respect to sexuality and other “personal” issues. She teaches as the viceroy of Christ the King what moral principles need to form economic choices. Note that moral principles, not economic principles, must be sought first.

[I]t is Jesus Christ Who has revealed to the world the existence of spiritual values and has obtained for them their due appreciation. He has said, “For what doth it profit a man, if he gain the whole world [or put in other words maximizes his utility], and suffer the loss of his own soul?”<sup>50</sup>

This statement is qualified lest we interpret it in a Jansenist fashion.

This does not mean that the peace of Christ, which is the only true peace, exacts of us that we give up all worldly possessions. On the contrary, every earthly good is promised in so many words by Christ to those who seek His peace: “Seek ye *first* the kingdom of God, *and his justice*, and all these things shall be added unto you.”<sup>51</sup>

The Church is not unconcerned with economic prosperity but it must be sought, and can in fact only be secured, in its proper order—*after* seeking *first* the kingdom of God and His justice. By definition then, self-interest maximization cannot be the sole, or even primary, arbiter of legal principles and decisions. As St. Thomas says: “Temporal goods are subjected to man that he may use them according to his needs, not that he may place his end in them and be over solicitous about them.”<sup>52</sup>

Pius XI teaches through *Ubi Arcano* and *Quas Primas* that true peace can only come through the acknowledgement of Christ’s Kingdom already present in the world. This kingdom embraces all people, organizations, and faculties. It covers commerce and finance. Some of the ways in which the economic systems in existence in the world of Pius XI, and today, fail to acknowledge Christ’s kingship is by promoting an inordinate

<sup>49</sup> *Id.* ¶ 25 (quoting *Proverbs* 14:34).

<sup>50</sup> *Id.* ¶ 36 (quoting *Matthew* 16:26).

<sup>51</sup> *Id.* ¶ 37 (emphasis added) (quoting *Luke* 12:31; *Matthew* 6:33).

<sup>52</sup> ST. THOMAS AQUINAS, *SUMMA THEOLOGIAE*, pt. II-II, Q. 55, art. 6, at 1425 (First Complete Am. ed. 1947) (1266–1273) [hereinafter *SUMMA THEOLOGIAE*]; see also *SUMMA THEOLOGIAE*, *supra*, pt. II-II, Q. 77, art. 4, at 1517.

desire for material things and economic prosperity in priority to charity and justice. What constitutes an inordinate desire? It is when our primary purpose in creating, executing, and judging economic laws and transactions is economic prosperity rather than seeking *first* the kingdom of God and His justice. This does not mean the efficiency or economic effects of law and policy are irrelevant, but these considerations must be of secondary, not primary importance.

#### IV. *QUAS PRIMAS* AND THE HISTORIC CATHOLIC TEACHING ON ECONOMICS

Is the teaching of Pius XI in *Ubi Arcano* and *Quas Primas* consistent with what the Church has always and everywhere taught with respect to economics? As the Angelic Doctor would recommend, we can begin with the philosopher, Aristotle. Aristotle teaches that economics and its learning are subject to politics, which directs society to its end, the good.<sup>53</sup> He says, “we see even the most highly esteemed of capacities to fall under this [referring to politics], e.g., strategy, economics, rhetoric.”<sup>54</sup> Economics is thus a subordinate discipline. The Catholic philosophical improvement on Aristotle is that even politics, as that which tells what we ought to do, is subordinate to theology. St. Thomas echoes Aristotle when he teaches that man’s purpose in society is to act virtuous, not accumulate riches.<sup>55</sup> St. Thomas concludes “if abundance of riches were the final end, an economist would be king of the people.”<sup>56</sup> Frank O’Hara summarizes this Catholic view of the proper role of economics thus:

The best usage of the present time is to make political economy [or the science of making wealth] an ethical science, that is, to make it include a discussion of what *ought* to be in the economic word as well as what *is*. This has all along been the practice of

<sup>53</sup> ARISTOTLE, *Politica*, in THE BASIC WORKS OF ARISTOTLE 1127 (Richard McKeon ed., 1968).

<sup>54</sup> ARISTOTLE, *Ethica Nicomachea* (W. D. Ross trans.), in THE BASIC WORKS OF ARISTOTLE, *supra* note 53, at 936.

<sup>55</sup> See ST. THOMAS AQUINAS, *De Regno*, bk. I, ch. 14, in AQUINAS: SELECTED POLITICAL WRITINGS (A. P. d’Entrèves ed., J. G. Dawson trans., 1948) (“Videtur autem finis esse multitudinis congregatae vivere secundum virtutem . . . bona autem vita est secundum virtutem; virtuosa igitur vita est congregationis humanae finis.”).

<sup>56</sup> *Id.* (my translation of “si autem ultimus finis esset divitum affluentia, oeconomus rex quidam multitudinis esset”).

Catholic writers. Some of them even go so far as to make political economy a branch of ethics and not an independent science.<sup>57</sup>

The disorientation of economics as independent from theology began with the Protestant revolt. R. H. Tawney describes well the approach to economics that Pius XI in proclaiming the doctrine of the social reign of Christ the King calls the world to return to:

It was the contraction of the territory within which the spirit of religion was conceived to run. . . . What requires explanation is not the view that these [economic] matters are part of the province of religion, but the view that they are not. When the age of the Reformation begins, economics is still a branch of ethics, and ethics of theology; all human activities are treated as falling within a single scheme, whose character is determined by the spiritual destiny of mankind; the appeal of theorists is to natural law, not to utility; the legitimacy of economic transactions is tried by reference, less to the movements of the market, than to moral standards derived from the traditional teaching of the Christian Church . . . .<sup>58</sup>

Melanchthon can be taken as an example of this radical idea born in the sixteenth century. In a debate about economic regulation, Melachthon maintained that “the ‘law of Christ’ as not necessarily to be taken as the basis for the organization of secular society, allowing the magistrates the right to rule it in accordance with civil law.”<sup>59</sup> Calvin taught in connection with usury law that “[c]ertainly, it would be better if all usury could be hunted out of the world and its name unknown, but because that is impossible, it must be permitted a little in the interest of common utility.”<sup>60</sup> The debates over the English usury statute of 1571 show this new cleavage in understanding the connection between the divine and civil economic law. Those opposed to the law prescribing lesser penalties for usury at less than specified rates believed civil law must correspond to divine law and give no quarter to unjust economic activity forbidden by God’s law, even

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<sup>57</sup> Frank O’Hara, *Political Economy*, in 12 THE CATHOLIC ENCYCLOPEDIA 213 (1911), available at <http://www.newadvent.org/cathen/12213b.htm>.

<sup>58</sup> R. H. TAWNEY, RELIGION AND THE RISE OF CAPITALISM 278–79 (Transaction Publishers 1998) (1962).

<sup>59</sup> NORMAN JONES, GOD AND THE MONEYLENDERS 15 (1989).

<sup>60</sup> See *id.* at 18. This statement almost reads like a paraphrase of part of Bainbridge’s argument. See *supra* note 14 and accompanying text.



if the activity was economically beneficial to society.<sup>61</sup> Those supporting the law contended that God's law need not be enacted in economic regulation as the measure of civil law but rather what was beneficial or useful for humanity.<sup>62</sup> This argument is similar to one of Bainbridge's defenses of the normative claims of Law and Economics—it works.<sup>63</sup> Orienting rules to produce more wealth-maximizing results produces more prosperity. In the context of critiquing the free-market approach as the best alternative to Communism, John Pope John Paul II responds:

Another kind of response [to Communism], practical in nature, is represented by the affluent society or the consumer society. It seeks to defeat Marxism on the level of pure materialism by showing how a free-market society can achieve a greater satisfaction of material human needs than Communism, while equally excluding spiritual values. In reality, while on the one hand it is true that this social model shows the failure of Marxism to contribute to a humane and better society, on the other hand, insofar as it denies an autonomous existence and value to morality, law, culture and religion, it agrees with Marxism, in the sense that it totally reduces man to the sphere of economics and satisfaction of material needs.<sup>64</sup>

It is in the context of this 400-year attempt to make economic concerns paramount that *Quas Primas*—and the other social encyclicals, including *Centisumus Annus*—speaks. This doctrine calls us to reassert the obligation of lawmakers, including economic lawmakers, to conform the civil law—which includes all aspects of civil law—to the law of Christ the King.

But even some of the sixteenth-century reformers who would agree with this statement had a difficulty: How do lawmakers know the law of God so as to conform the civil law to it? It is in this milieu that we can understand the papal assertion of the Church's *right* and *competence* to teach definitively on the making of economic laws. Thus, Leo XIII can state in *Rerum Novarum*: "We approach the subject with confidence and surely by Our right [because] the question under consideration is certainly one for which no satisfactory solution will be found

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<sup>61</sup> See JONES, *supra* note 59, at 43.

<sup>62</sup> See *id.*

<sup>63</sup> See *supra* Part I.

<sup>64</sup> JOHN PAUL II, ENCYCLICAL LETTER *CENTESIMUS ANNUS* ¶ 19 (1991) [hereinafter *CENTESIMUS ANNUS*].

unless religion and the Church have been called upon to aid.”<sup>65</sup>  
Likewise Pius XI states:

[It is our] right and [our] duty to pronounce with supreme authority upon social and economic matters. Certainly the Church was not given the commission to guide men to an only fleeting and perishable happiness but to that which is eternal . . . ; however, she can in no wise renounce the duty God entrusted to her to interpose her authority . . . in all things that are connected with the moral law. For as to these, the deposit of truth that God committed to Us and the grave duty of disseminating and interpreting the whole moral law, and of urging it in season and out of season, bring under and subject to Our supreme jurisdiction not only social order but economic activities themselves.<sup>66</sup>

Thus, although the Church does not assert authority over the descriptive study of economic phenomena (the consequences of using wealth or productive assets in a particular way) or the descriptive or predictive aspect of Law and Economics, she in the name of Christ the King asserts divine authority over judging the rightness or wrongness of bringing about, or even encouraging or permitting, those consequences. We can see from this proposition that the doctrine of the Social Reign of Christ the King precludes at least the normative aspect of the Law and Economics approach to commercial law, not to mention any other law. Although a Catholic approach may take into consideration the descriptive data practitioners of Law and Economics produce, these predicted effects cannot form the basis for the moral judgment of whether that result, even if value maximizing, is right or wrong.

What principles then take priority over efficiency and value maximization, which Law and Economics postulates as normative? A complete answer would demand more time than the present work allows. I will only sketch out a few points. The first of which has already been elucidated: seek you *first* the kingdom of God and His justice. The end of Man is eternal salvation. All economic laws must be judged first and foremost not on whether they tend to increase material things but whether

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<sup>65</sup> LEO XIII, ENCYCLICAL LETTER *RERUM NOVARUM* ¶ 24 (1891) [hereinafter *RERUM NOVARUM*].

<sup>66</sup> PIUS XI, ENCYCLICAL LETTER *QUADRAGESIMO ANNO* ¶ 41 (1931) [hereinafter *QUADRAGESIMO ANNO*].

they dispose towards, or increase the likelihood of, souls attaining salvation,<sup>67</sup> and whether they conform to the justice of God. Improving economic conditions may be beneficial if relieving economic difficulties enables people to fulfill their religious duties more easily. Yet, economic improvements cannot be sought if attained through means that violate justice. Justice must be understood in its complete sense—not merely commutative justice but distributive as well. As previously noted, Pius XI spoke much of an inordinate desire for wealth—a desire not directed to a proper end. He says a man cannot desire for himself an increase in wealth “which he does not need to sustain life fittingly and with dignity”<sup>68</sup> or to be used in fulfilling “a very grave precept to practice almsgiving, beneficence, and munificence [which rests upon the wealthy]”<sup>69</sup> as “the Sacred Scriptures and the Fathers of the Church constantly declare in the most explicit language.”<sup>70</sup> Thus, the fact that a particular legal rule produces a more efficient result is neither good nor bad; it is a fact which must be evaluated in terms of its effect on salvation of souls affected by that result and on its accordance with justice. In a sense, and to use the language of Law and Economics, it requires law and policy makers to take into account all externalities to decision making and, most importantly, any effects upon the spiritual state of any people who are involved in or touched by the action. To avoid a socialist misapplication of this principle, it is important to note the understanding of distributive justice contained in Pius XI’s words. A just acquisition of wealth is not an egalitarian one; the amount depends upon the “station in life” of the individual involved. Also, to check a laissez-faire interpretation, the Holy Father notes that charity is not an “option,” or free choice which although laudable by some as merely above and beyond that required by justice; charity is an obligation.

It may be appropriate to pause at this point and focus on two possible objections to my analysis. First, the above analysis, one

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<sup>67</sup> See *IMMORTALE DEI*, *supra* note 33, ¶ 6 (“[C]ivil society, established for the common welfare, should not only safeguard the well-being of the community, but have also at heart the interests of its individual members, in such mode as not in any way to hinder, but in every manner to render as easy as may be, the possession of that highest and unchangeable good for which all should seek.”).

<sup>68</sup> *QUADRAGESIMO ANNO*, *supra* note 66, ¶ 50.

<sup>69</sup> *Id.*

<sup>70</sup> *Id.*

may argue, does not comport with the Church's clear defense of private property. Restricting the use of economic resources so as to comport with charity and justice violates private ownership of those resources. True, the Church has always defended the private ownership of property. For example, Leo XIII states: "For, every man has by nature the right to possess property as his own."<sup>71</sup> Yet, ownership does not involve freedom to use that property as one sees fit without reference to the moral law. As Pius XI teaches: "[T]here must be first laid down as foundation a principle established by Leo XIII: The right of property is distinct from its use."<sup>72</sup> He is likely referring to when Leo XIII said: "The just ownership of money is distinct from the just use of money."<sup>73</sup> John Paul II reaffirms his predecessors: "While the Pope proclaimed the right to private ownership, he affirmed with equal clarity that the 'use' of goods, while marked by freedom, is subordinated to their original common destination as created goods, as well as to the will of Jesus Christ as expressed in the Gospel."<sup>74</sup> The obligations placed on us all as to the use of property do not violate the right to own private property. Yet, this understanding of ownership would differ from one insisting on complete or near complete freedom to use owned property in any way that the owner believes maximizes wealth.

Second, one might argue that the relation of the Social Reign of Christ the King contrasts with passages of Sacred Scripture that suggest an independence of the temporal realm from the things of God. The most famous verse that could be introduced is: "Then he saith to them: Render therefore to Caesar the things that are Caesar's, and to God, the things that are God's."<sup>75</sup> St. Paul also teaches:

Let every soul be subject to higher powers: for there is no power but from God: and those that are, are ordained of God. Therefore he that resisteth the power, resisteth the ordinance of God. And they that resist, purchase to themselves damnation. . . .

For therefore also you pay tribute. For they are the ministers of God, serving unto this purpose. Render therefore to all men

<sup>71</sup> *RERUM NOVARUM*, *supra* note 65, ¶ 6.

<sup>72</sup> *QUADRAGESIMO ANNO*, *supra* note 66, ¶ 47.

<sup>73</sup> *RERUM NOVARUM*, *supra* note 65, ¶ 35.

<sup>74</sup> *CENTESIMUS ANNUS*, *supra* note 64, ¶ 30.

<sup>75</sup> *Matthew 22:21* (Douay-Rheims); *see also Luke 20:25; Mark 12:17.*

their dues. Tribute, to whom tribute is due: custom, to whom custom: fear, to whom fear: honour, to whom honour.<sup>76</sup>

Yet, both of these passages deal with a different subject than at issue in my argument: the obligation of those subject to authority to obey that authority. A command to obey and pay the tribute to the temporal authority, even if unjustly demanded, says nothing about the obligation of the authority, or lawmaker, to demand tribute, or make laws that conform to the Kingdom of Christ. The Social Reign of Christ the King speaks to the obligation of lawgivers to conform the society in their care to the ends of the Social Reign of Christ the King; whereas, the above cited passages of Sacred Scripture deal with the obligations of the governed to obey the governors. Although subjects are urged to render unto Caesar that which is Caesar's, that does not mean that Christ and His Church have no authority to constrain what it is that Caesar may demand.<sup>77</sup>

Let us thus summarize what we have seen so far. The proclamation of Christ as King of the entire world must affect all people and all aspects of their lives. It is only in this sense that we can completely appreciate the weight and necessity of the Church's teaching in economic matters and documents such as *Rerum Novarum* and *Quadragesimo Anno*. Economics is not a neutral science that is separable from moral theology. No law can be evaluated without the salvation of souls and God's justice—commutative and distributive—as the primary pedagogical approach.

#### V. APPLICATION OF THE DOCTRINE TO THE BAINBRIDGE/SARGENT DEBATE

The doctrine of the Social Reign of Christ the King tells us how the universe is ordered, whether or not we in futility attempt to rebel against it. Christ *has* been given all power, and to Him every knee and law must bend. The heuristic approach to law that this cosmological view requires is one that asks how God wants economic matters ordered, and it is in light of the answers to this question that law should be formed. Even if Man acts

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<sup>76</sup> *Romans* 13:1–2, 6–7.

<sup>77</sup> See *supra* notes 58–59 and accompanying text (asserting the Church's right and competence to teach on social and economic matters).

differently, as a result of the Fall or otherwise, this fact is irrelevant. Even if “Economic Man” is a correct description of the actual position of most people’s likely behavior after the Fall, law must reflect the will of *the* Sovereign, Christ the King, not the way His creatures actually act. Laws and legal decisions must direct and lead individuals and society towards results that comport with justice and charity and lead people towards salvation, not mere economic efficiency. In fact, we may need to sacrifice economic efficiency to attain salvation. If we are to cut off our hand or strike out our eye if it leads us into sin,<sup>78</sup> are we not to sacrifice wealth if necessary for salvation?

Thus, the descriptive or even predictive aspect of Law and Economics is not necessarily of no use to legal analysis. It can be used as a tool for estimating how people in fact are likely to react to a legal rule. Law, however, should not merely accommodate the fallen nature of man; law must conform to the law of Christ, which desires the salvation of all. Law must therefore encourage people to transcend their fallen state. As to the normative claims of Law and Economics, although not called to be needlessly inefficient, the Social Reign of Christ the King does not have wealth maximization as its primary goal. Thus, even if Bainbridge is correct in his assertion that Economic Man and rational choice is an accurate description of Man as he is, he is incorrect in his description of the ends of the legal regime as Christ the King established it. Likewise, without either disputing or relying on the anthropological arguments of Sargent, we can refute the claims of Law and Economics without recourse to agreement on this understanding of the human person. Further, the appeal to the doctrine of the Social Reign of Christ the King not only defeats the normative claims of Law and Economics, but also establishes principles for the implementation of an alternative Catholic approach to commercial law and justice, only the most basic principles of which have been touched upon here—justice, both commutative and distributive, and charity applied in harmony with a Catholic understanding of private property and with the aim of leading the people affected by the law to salvation. The right and competence of the Church

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<sup>78</sup> See *Matthew* 18:8–9.

to teach on economic and commercial matters are corollary principles to the acceptance of Christ the King. As Pius XI warned us, we will never attain true peace and prosperity until Christ's reign as King is acknowledged both publicly and privately.