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Immigration and Evil: The Religious Challenge

Michael Scaperlanda, *University of Oklahoma*



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Immigration and Evil: The Religious Challenge

MICHAEL SCAPERLANDA*

I want to thank Professor Amy Uelman, Director of Fordham's Institute on Religion, Law & Lawyer's Work for her dedicated work in bringing this wonderful conference to life and for asking me to be a part of it. She deserves a round of hearty applause.

My job this morning, as I understand it, is to paint a broad panoramic scene, providing, along with Professor Legomsky's response, the landscape for the exploration of today's topic: Immigration Law and Policy in Light of Religious Values.

First, a caveat, and because law professors like nuance, three other caveats within the caveat. I come at this topic from within the Catholic-Christian tradition. I claim no expertise in other religious traditions or in comparative religions. And it would be presumptuous of me to pretend to speak with any authority on the interrelationship of immigration law and policy and religious values, broadly and ecumenically defined. Additionally, I think that there is greater possibility for fruitful conversation in a conference like this when each participant engages in dialogue from his or her core. Therefore, I will speak specifically within the Catholic tradition, leaving it to others to draw out points of convergence and divergence between the Catholic tradition as I (a non-theologian and lay person offering only one Catholic perspective – these are the other three caveats) present it and other faith traditions.

My paper is titled: *Immigration and Evil: The Religious Challenge*. Most of us in this room have vivid pictures imprinted on our brains of various evils associated with transnational migration – human trafficking, and the exploitation of woman and children in the sex-trade especially; hundreds of thousands and even millions of displaced persons fleeing persecution, hunger, civil war, and social unrest, seeking a new life for themselves and their children; coyotes collecting the life savings of some of these desperate individuals and then abandoning them in the desert to die; families torn apart by borders and poverty; lives spent in the shadows of society out of fear of *la migra*. The list could continue indefinitely, and

* Gene and Elaine Edwards Family Chair in Law and Associate Dean for Research, The University of Oklahoma College of Law. I am deeply indebted to two wonderful and engaging scholarly communities: The Community of Immigration Law Professors and The Community of Scholars Dedicated to Catholic (and more broadly Christian) Legal Theory. I am grateful to my research assistant, Rev. James Goins, for his research and his insight.

many of you could contribute gut-wrenching stories that would bring these evils into bold relief.

“The Religious Challenge” subtitle is deliberately ambiguous, suggesting both the challenges posed by the particular evil to religious communities, at least to those religious communities that place themselves at the service of humanity, and the challenge that religious communities can issue to the broader community, including those members of the political community charged with formulating and implementing immigration, asylum, and border enforcement policies.

As to the former, there is a rich tradition of religious communities responding to the needs of immigrants of all faiths or no faith at all, providing material needs in the form of social, educational, and legal services to the documented and undocumented alike. In Oklahoma, for example, a state that is only about four percent Catholic, the Catholic Charities Immigration Office has been the only institutional provider of legal services for the poor who have immigration law issues.¹

Transnational (and specifically cross-cultural) migration also poses special challenges to religious communities charged with tending to the spiritual lives of immigrants who are adherents to that community’s faith.² How to welcome new arrivals, tend to their religious and spiritual formation, respecting (and often celebrating their culture) while also integrating them into their new community has presented quite a challenge. During the course of this conference, we will get a closer look at some of these challenges and the responses of various religious communities.

I will focus on the other challenge. Specifically, what, if anything, can religious values contribute to the development of immigration law and policy?³ In doing so, I will address four “evils” associated with transnational migration, exploring ways that religious values might inform the debate. “Evil is a privation. . . . [I]t is the *absence of some good which*

1. See <http://www.catholiccharitiesok.org/immigration.html> (last visited May 8, 2006).

2. See generally Pontifical Council for the Pastoral Care of Migrants and Itinerant People, *The Love of Christ Towards Migrants*, available at http://www.vatican.va/roman_curia/pontifical_councils/migrants/documents/rc_pc_migrants_doc_20040514_erga-migrantes-caritas-christi_en.html (last visited May 8, 2006).

3. In 2003, for example, the Catholic Bishops of the United States and Mexico addressed some of the immigration issues facing policy makers in the two countries. See Committee on Migration of the United States Conference of Catholic Bishops (USCCB), *A Pastoral Letter Concerning Migration from the Catholic Bishops of Mexico and the United States, Strangers No Longer: Together on the Journey of Hope*, Chapter IV (2003), <http://www.usccb.org/mrs/stranger.shtml> (last visited June 9, 2006). I have also written in this area. See Michael Scaperlanda, Op-Ed., *Confused in the Heartland*, DAILY OKLAHOMAN, April 1, 2006; Michael Scaperlanda, *Immigration Justice: A Catholic Christian Perspective*, 1 J. CATH. SOC. THOUGHT 535 (2004); and Michael Scaperlanda, *Who is My Neighbor?: An Essay on Immigrants, Welfare Reform, and the Constitution*, 29 CONN. L. REV. 1587 (1997) [hereinafter Scaperlanda, *Who is My Neighbor*].

should be present.”⁴ Lack of solidarity between rich and poor nations, an immigration policy that favors the wealthy and talented over the marginalized and needy, and a domestic policy that further marginalizes the immigrant population make my list as evils two through four. I would suspect that many (if not most) of you in this room would agree that one or more of these three things are, if not “evils,” at least highly problematic. Therefore, I will only briefly develop each one in light of a more extended development of the evil that that I want to focus on and that I think will generate some controversy: emigration itself.

Yes, emigration itself. The author of the Old Testament Book of Lamentations, provides us with a glimpse of this reality: “How deserted lies the city, once so full of people! How like a widow is she, who once was great among the nations! After affliction and harsh labor, Judah has gone into exile. She dwells among the nations; she finds no resting place.”⁵ “[M]ourning and weeping” in Babylon, the Psalmist cries out: “But how could we sing a song of the Lord in a foreign land.”⁶ I want to suggest that the loss of even one member of a great community is a loss of a good for all residing in that community. And, the loss of the tangible presence of home and culture is a loss of a significant good for the emigrant.

Several years ago when I was just beginning to investigate how Catholic Social Teaching might inform immigration law and policy, I read Pope John Paul the Great’s 1981 encyclical letter, *Laborem Excercens* (On Human Work), which he published on the 90th anniversary of Leo XIII’s *Rerum Novarum*, the first modern papal encyclical devoted to Catholic Social Teaching. In reaffirming the right of every human person to emigrate, John Paul II added, “emigration is in some aspects an evil.”⁷ At the time, I was concentrating on the Church’s understanding of the receiving country’s obligations toward immigrants so I didn’t linger on the Pope’s words or ponder their meaning. But, I must confess that I was taken back by this characterization of emigration as an evil, and I knew that one day I would return and reflect more deeply and critically on this passage.

This conference has given me the occasion to return to this scene of my discomfort and ask two related questions. What caused my negative visceral reaction? And what exactly did the Pope mean by “emigration is

4. CHARLES JOURNET, *THE MEANING OF EVIL* (Michael Barry trans., P. J. Kenedy & Sons 1963) (“[P]rivation can be taken in two senses. Broadly speaking it can designate any lack or absence of good. In the strict sense privation is opposed to mere negation or absence. . . . To be unable to see is a mere negation or absence in minerals or plants; in man it is a privation, an evil. St. Thomas, to make quite clear that he understands privation in this sense as opposed to mere absence, invariably defines evil as the privation of some good which should be present.” *Id.* at 27-28 (emphasis in original)).

5. *Lamentations* 1-3.

6. *Psalm* 137.

7. Pope John Paul II, *Laborem Excercens*, ¶ 23 (1981), available at http://www.vatican.va/edocs/ENG0217/_INDEX.HTM (last visited May 8, 2006).

in some aspects an evil?" My discomfort grew out of my intuitions about freedom. How can it be in any sense evil for someone to seek a better or different life elsewhere? What I didn't fully realize at the time was the extent to which my intuitions of freedom were formed breathing a cultural air thick with the notion that each individual is an autonomous and sovereign self-creator and self-chooser. As a Catholic, I never intellectually bought into the notion that "[a]t the heart of liberty is the right to define [and act upon] one's own concept of existence, of meaning, of the universe, and of the mystery of human life,"⁸ but I couldn't help but be influenced by this anthropology. As Jean Bethke Elshtain observes: "The view of the self as an 'autonomous and sovereign chooser is so deeply entrenched that in late twentieth century America, at least, it is simply part of the cultural air that we breathe."⁹

This secular liberal anthropology – this understanding of the human person – untethers the individual from her native culture, its history, its tradition, its development, its politics, its economics, its arts, and its education. She has no responsibility for the common good of her native land. She is the *chooser*, and if she chooses to alienate herself from family and country in order to build a different life in a different country who is to say she is wrong?¹⁰ Joseph Carens makes the liberal theorists point succinctly: "In the original position [behind Rawl's veil of ignorance] one would insist that the right to migrate be included in the system of basic liberties [because] it might prove essential to one's plan of life."¹¹

Catholicism proposes a radically different understanding of the person and her place in the community. She is *chosen* by the true sovereign prior to becoming a *chooser*. As the prophet Isaiah said: "The Lord called me from birth, from my mother's womb he give me my name."¹² God created the world and all that is in it, giving human beings a special place, endowing His reasoning creature with His own image, the *imago dei*, allowing us to be co-creators with Him. God *chose* each person, placing her within a particular family, a particular culture, and at a particular time. And, he gives us freedom, allowing us to become *choosers* of our own life's plan.¹³

8. *Planned Parenthood of Southeastern Pennsylvania v. Casey*, 505 U.S. 833, 851 (1992).

9. Jean Bethke Elshtain, *The Dignity of the Human Person and the Idea of Human Rights*, 14 J.L. & RELIGION 53, 58 (1999-2000).

10. See generally Rev. John Coughlin, *Law and Theology: Reflections on What it Means to be Human from a Franciscan Perspective*, 74 ST. JOHN'S L. REV. 609 (2000).

11. JOSEPH H. CARENS, *MIGRATION AND MORALITY: A LIBERAL EGALITARIAN PERSPECTIVE*, IN *FREE MOVEMENT: ETHICAL ISSUES IN THE TRANSNATIONAL MIGRATION OF PEOPLE AND MONEY* 26 (B. Barry & R. Goodin eds., 1992).

12. *Isaiah* 49:1.

13. I have treated this issue more fully in the context of *Casey's* mystery passage in Michael Scaperlanda, *Rehabilitating the "Mystery Passage": An Examination of the*

But how should we, the chosen, consciously choose to spend our lives as the drama of our own short history unfolds within the larger drama of human history? If we recognize that our life is a gift given by God with the cooperation of our parents, we will also realize that God has given us – placed us within – a particular family, a particular culture, and a particular history. It is within this society that we are nurtured, civilized, and begin to flourish as human beings. For some – only a few throughout history I suspect – God has called to live a life away from family, culture, and that culture's common story. For the rest, He has chosen them to cultivate the vineyards where they were planted.

To fully see this picture from Catholic-Christian anthropology, we must first use a wide-angle lens before switching to the telephoto. Catholics understand the human person and her relationship to community through the person and life of Jesus Christ and what he reveals about the nature of God and the nature of the human person. As the Vatican II's document, *Gaudium et Spes* (the Church in the Modern World) teaches: "The truth is that only in the mystery of the incarnate Word does the mystery of man take on light. . . . Christ . . . by the revelation of the mystery of the Father and His love, fully reveals man to man himself and makes his supreme calling clear."¹⁴

Christian scripture provides us a glimpse of the mystery of the Trinity – one God existing in an eternal and loving community of three self-donating Persons: the Father, Son, and Holy Spirit. As the new Compendium of the Social Doctrine of the Church states: "The revelation in Christ of the mystery of God as Trinitarian love is at the same time the revelation of the vocation of the human person to love. This revelation sheds light on every aspect of the personal dignity and freedom of men and women, and on the depths of their social nature."¹⁵ The Catholic faith teaches that in love abundance transcends the physical laws of scarcity because love – the practice of self-donation, of giving oneself and one's life completely for others – provides the guiding principle, emanating from the Godhead, taught by the prophets, incarnated in the person of Jesus through Mary's simple yet profound "yes."¹⁶ For an in depth look at the potential

Supreme Court's Anthropology Using the Personalistic Norm Explicit in the Philosophy of Karol Wojtyła, __ J. CATH. LEG. STUD. __, (forthcoming 2006).

14. Second Vatican Council, Pastoral Constitution on the Church in the Modern World: *Gaudium et Spes* ¶ 22 (Dec. 7, 1965), *available at* http://www.vatican.va/archive/hist_councils/ii_vatican_council/documents/vat-ii_cons_19651207_gaudium-et-spes_en.html [hereinafter *Gaudium et Spes*].

15. His Eminence Cardinal Renato Raffaele Martino, Pontifical Council for Justice and Peace, Compendium of the Social Doctrine of the Church, ¶ 34 (June 29, 2004), *available at* http://www.vatican.va/roman_curia/pontifical_councils/justpeace/documents/rc_pc_justpeace_doc_20060526_compendio-dott-soc_en.html (last visited May 9, 2006).

16. See *Luke* 1:26-38. Mary's "yes" to God serves as profound witness to those who see life as gift. See MARÍA RUIZ SCAPERLANDA, *THE COMPLETE IDIOT'S GUIDE TO MARY OF*

contributions of Trinitarian theology to the development of a more human theory of justice, I recommend Amy Uelman's insightful work in the area of torts and products liability.¹⁷

A Catholic anthropology understands that the human person enters community partly "because of [the person's] needs or deficiencies, which derive from [his] material individuality. In this respect, unless [the person] is integrated in [a community, he] cannot attain the fullness of [his] life and accomplishment."¹⁸ Recognizing our dependence on others does not, however, lead to a mere grudging acceptance of communal living and communal rule. In other words, the Catholic views the person as inherently communal. Rejecting political theories that view community as a necessary annoyance, a Catholic anthropology understands that the person seeks membership in community not only because of his needs but also because of his dignity.¹⁹ Communal membership is essential "because of [the human beings] very perfections, as person, and [his] inner urge to communication of knowledge and love which require relationship with other persons. In [his] radical generosity, the human person tends to overflow into social communications in response to the law of superabundance inscribed in the depths of being, life, intelligence and love."²⁰

Moving from the wide angle to the telephoto, we see that the person is born into a particular community, which devotes some of its resources to her development. It is in that community that the person matures, develops her potential, and begins to flourish. As she develops, her parents and teachers give her more and more freedom, and she must choose how to spend her freedom. Will she spend this freedom seeking power, accolades, comfort, pleasure, or riches, thinking only of herself, or will she spend this freedom and her talents in service to others? If she chooses to spend her freedom in service to others, she will, in turn, contribute positively to the development of her family and her community, and her culture.

Emigration causes a disruption in the community, resulting in the alienation of the emigrant from her home. As John Paul II observed, the emigrant "must begin life in the midst of another society united by a different culture."²¹ Gustavo Pérez Firmat's autobiographical account,

NAZARETH (Penguin 2006); MARÍA RUIZ SCAPERLANDA, *THE SEEKERS GUIDE TO MARY* (Loyola Press 2002).

17. See Amelia Uelman, *Toward a Trinitarian Theory of Products Liability*, 1 J. CATH. SOC. THOUGHT 603 (2004), reprinted in *RECOVERING SELF-EVIDENT TRUTHS: CATHOLIC PERSPECTIVES ON AMERICAN LAW* (Michael Scaperlanda & Teresa Collett eds., CUA Press forthcoming 2007).

18. JACQUES MARITAIN, *THE PERSON AND THE COMMON GOOD* 48 (John J. Fitzgerald trans, Univ. Notre Dame Press 1966) (1947). "[S]ociety is . . . indispensable to the accomplishment of human dignity." *Id.* at 49.

19. *Id.* at 47.

20. *Id.* at 47-48.

21. Pope John Paul II, *supra* note 7, at ¶ 23.1.

Next Year in Cuba: A Cubano's Coming of Age in America, describes refugees as

amputees. Someone who goes into exile abandons not just possession but a part of himself. This is true especially of children, who leave before achieving a durable, portable identity. Just as people who lose limbs sometimes continue to ache or tingle in the missing calf or hand, the exile suffers the absence of the self he left behind. I feel the loss of that Cuban boy inside me. He's my phantom limb, at times dogging me like a guilty thought, at other times accompanying me like a guardian angel.²²

This amputation, the separation of the emigrant from her community, constitutes, at the very least, a physical evil in the sense that the mutual giftedness of person and community has been damaged, leaving the emigrant wounded, incomplete, and in need of healing. The country left behind also suffers material evil because emigration entails, to quote Pope John Paul II,

the departure of a person who is also a member of a great community united by history, tradition and culture. . . . [I]t is the loss of a subject of work, whose efforts of mind and body could contribute to the common good of his own country, but these efforts, this contribution, are instead offered to another society which in a sense has less right to them than the person's country of origin.²³

I want to go farther and suggest that, in many circumstances, emigration can be the result of a moral evil as well as a physical evil. The Catholic Encyclopedia defines physical evil as "all that causes harm to man, whether by bodily injury, by thwarting his natural desires, or by

22. GUSTAVO PÉREZ FIRMAT, *NEXT YEAR IN CUBA: A CUBANO'S COMING OF AGE IN AMERICA* 22 (Anchor 1995). Firmat does distinguish, it should be noted, between the "immigrant" and the person in "exile."

The exile and the immigrant go through life at different speeds. The immigrant is in a rush about everything – in a rush to get a job, learn the language, set down roots, become a citizen. He lives in the fast lane, and if he arrives as an adult, he squeezes a second lifetime into the first, and if he arrives as a child, he grows up in a hurry.

Id. at 121.

In contrast, the exile's,

life creeps forward an inch at a time. If the immigrant rushes, the exile waits. He waits to embark on a new career, to learn the language, to give up his homeland. He waits, perhaps indefinitely, to start a new life. If immigration has an accelerated birth, exile is a state of suspended animation that looks every bit like a slow death."

Id. at 122.

While the immigrant may not feel like an amputee, I am suggesting that he is one nevertheless. Something invaluable has been lost.

23. Pope John Paul II, *supra* note 7, at ¶ 23.1.

preventing the full development of his powers.”²⁴ In contrast, moral evil is “the deviation of human volition from the prescriptions of the moral order and the action which results from that deviation.”²⁵ To the extent that one person (or community of persons) uses another person (or community of persons) instrumentally as an object for their own purposes, a moral evil is present.²⁶ Persecution and unjust economic structures are two examples of moral evil that can cause people to leave their homes and their countries in search of a better life. In these situations, someone other than the émigré is the subject causing or furthering the evil; the émigré is merely an object in the eyes of the controlling subject. In the case of unjust economic structures, the émigré is an object cast aside like an old toy no longer desired by a child. In the case of persecution, the émigré is a thing that must be controlled or destroyed. In both cases, the controlling powers fail to respect the personhood – the inherent and inviolable dignity – of the émigré.

To the extent that the emigrant seeks to live for herself, rejecting or abandoning her country of origin out any one of a myriad of disordered and selfish desires, her decision to emigrate can also be considered an objective moral evil. And, to the extent that she does not act out of complete ignorance of her obligation to live and work for the common good of her community, we can call her action subjectively morally evil as well. In this situation, she has used her community of origin instrumentally for her own selfish ends, disregarding it when it no longer serves her own life’s project.²⁷ That emigration is, in some cases, a moral evil does not mean that the state ought to limit the freedom to emigrate or adjudicate reasons for emigration.²⁸ The police power of the state does not have to be and should not be exercised to stamp out every moral evil. Additionally, I suspect that the state is ill equipped to adjudicate whether a person desires

24. 1 THE CATHOLIC ENCYCLOPEDIA (Robert Appleton Co. 1907), available at <http://www.newadvent.org/cathen/index.html> (last visited May 9, 2006).

25. *Id.*

26. I develop this argument more fully in Scaperlanda, *supra* note 13.

27. Is the evil in the nature of wicked corruption, yet another sign of the underlying tragedy of the human family as the would-be immigrant is corrupted by greed at the prospect of near paradise on earth saturated with wealth and creature comforts? Or, is the evil more in the nature of the loss of original goodness, an echo of the restlessness of Adam and Eve? I leave to the theological experts the intricacies, the meaning, and the mystery of evil. See, e.g., CHARLES JOURNET, THE MEANING OF EVIL (Michael Barry trans., 1963).

28. The relationship between law and morality is a complex and highly contested one that goes far beyond the scope of this essay. Rather than wade into these deep jurisprudential waters, I’ll simply point to contract law as an illustration that the law does not and never has attempted to stamp out all moral evil. See, e.g., CHARLES KNAPP, NATHAN CRYSTAL & HARRY PRINCE, PROBLEMS IN CONTRACT LAW 40 (Aspen 5th ed. 2003) (“Whatever may be the moral obligations that arise from the act of promising, it appears that no legal system has been willing to base legal liability on that fact alone; something more will be needed.”).

to emigrate for purely selfish reasons or because human development and flourishing are impossible in the home country.

Religious values, though, can and should play a vital role in the discussion of emigration and immigration for at least two reasons. First, the religious lens may be able to bring into focus truths about the person and community missed by prevailing theories, helping us to better calculate and understand the cost of emigration/immigration. For example, while a liberal egalitarian might see the physical evil – the loss of some good – in the refugee situation because the person who is forced to flee his home under threat of persecution lacks an equal opportunity to pursue his own life's project, the liberal egalitarian, with his focus on autonomy, might miss the cost to the alien and to her native land associated with voluntary emigration. Second, and as discussed below, religious values can help inform the debate over immigration law and policy in the broader context.

But let's get real. I can hear some of you here thinking, sure maybe the decision to emigrate is at times in some sense an evil, but Scaperlanda you are ignoring the various, and often much worse evil, that push people toward the decision to emigrate. And, I would agree, we must acknowledge the physical and often times moral evils that cause people to make the decision to emigrate. Emigration might be the lesser of two evils in the face of famine, drought, war, lack of religious freedom, or lack of economic opportunity. As the Second Vatican Council recognized, "human freedom is often crippled when a man encounters extreme poverty."²⁹ In this situation, the person often fails to "become conscious of his [own] dignity," and he cannot "rise to his destiny by spending himself for God and for others."³⁰ The same is true when the evil inflicted is the physical and moral evil visited upon persons by an oppressive and unjust regime. At a certain point, the flourishing of the person and his family depends upon leaving.

Emigration involves the loss of some good for both the émigré and her country of origin, and I have now come to understand that in that aspect it involves an evil. That is why, I suspect, Pope John XXIII, while recognizing "the right to freedom of movement," limited the human "right to emigrate to other countries" to those situations where there are "just reasons for it."³¹ Both the right to emigrate and the limitations on that right serve human values, respecting the authentic freedom and dignity of the person situated within a community of persons. Complementing this right

29. *Guadium et Spes*, *supra* note 14, at ¶ 66.

30. *Id.*

31. Pope John XXIII, *Pacem in Terris*, ¶ 25 (1963), available at http://www.vatican.va/holy_father/john_xxiii/encyclicals/documents/hf_j-xxiii_enc_11041963_pacem_en.html (last visited May 9, 2006).

to emigrate is an obligation of receiving states to accept immigrants.³² Although states have a right to control their borders “in furtherance of the common good,”³³ the exercise of its sovereignty “cannot be exaggerated to the point that [immigration is] denied to needy and decent people from other nations” “for inadequate or unjustified reasons.”³⁴ It follows then, that “[m]ore powerful economic nations, which have the ability to protect and feed their residents, have a stronger obligation to accommodate migration flows.”³⁵

I now turn briefly to the other three “evils” mentioned at the outset of this essay: Lack of solidarity between rich and poor nations, immigration laws favoring the wealthy and talented over the poor and marginalized, and domestic policies that further marginalize immigrant populations. Recognition of the inherent and inviolable dignity of the human person – every person is sacred – provides the key for addressing these other three evils. In his post-synodal exhortation, *Ecclesia in America*, Pope John Paul II developed this point:

[T]he foundation on which all human rights rest is the dignity of the person. God’s masterpiece, man, is made in the divine image and likeness. . . . The Gospel shows us how Christ insisted on the centrality of the human person, . . . defending men, women and even children who in his time and culture occupied an inferior place in society. The human being’s dignity as a child of God is the source of all human rights and of corresponding duties The dignity is common to all, without exception, since all have been created in the image of God. Jesus’ answer to the question ‘Who is my neighbor?’ demands of each individual an attitude of respect for the dignity of others and of real concern for them, even if they are strangers.³⁶

Since emigration always involves a loss – “an absence of some good which should be present” – addressing the causes of emigration should be a

32. See, e.g., Pope Pius XII, *Exsul Familia Nazarethana* (1952); Pontifical Council for the Pastoral Care of Migrants and Itinerant People, *The Love of Christ Towards Migrants* ¶ 21, available at

http://www.vatican.va/roman_curia/pontifical_councils/migrants/documents/rc_pc_migrants_doc_20040514_erga-migrantes-caritas-christi_en.html (last visited, May 8, 2006).

33. A Pastoral Letter Concerning Migration from the Catholic Bishops of Mexico and the United States, *Strangers No Longer: Together on the Journey of Hope* ¶ 39 (2003), available at <http://www.usccb.org/mrs/stranger.shtml> (last visited May 8, 2006) [hereinafter Pastoral Letter].

34. *Id.* at ¶ 30 (quoting Pope Pius XII, *supra* note 32).

35. Pastoral Letter, *supra* note 33, at ¶ 36.

36. Pope John Paul II, *Post-Synodal Exhortation, Ecclesia in America* ¶ 57 (Jan. 22, 1999), available at

http://www.vatican.va/holy_father/john_paul_ii/apost_exhortations/documents/hf_jp-ii_exh_22011999_ecclesia-in-america_en.html.

focal point in the development of a country's immigration law and policy. In other words, humanitarian relief, foreign aid, economic development assistance, and other measures that recognize the dignity and common humanity of persons in every nation of the globe should not be viewed as unrelated to the emigration/immigration question because, to the extent that human suffering is stymied and human flourishing promoted, many of the factors that push people toward the decision to emigrate will be eradicated. To borrow from Gregory of Nazianzen:

“Let us put into practice the supreme and primary law of God. He sends down rain on just and sinful alike, and causes the sun to rise on all without distinction. . . . He has given abundantly to all the basic needs of life, not as private possession, not restricted by law, not divided by boundaries, but as common to all, amply and in rich measure. His gifts are not deficient in any way.”³⁷

Because of the dignity of each and every person, we have an obligation to stand in solidarity with the poorer nations of the world, recognizing that the resources we enjoy are meant for the common good of all. An evil enters the world to the extent that we neglect this duty.

We will not eliminate all the push factors even if we are successful in limiting them. Therefore, it is necessary to address the third evil in light of the twin concepts of solidarity and the universal destination of goods. To the extent that wealthier and more highly skilled people have a) a better chance at flourishing without emigrating and b) a greater opportunity to help their country develop than poorer, less skilled, and more marginalized people (an intuition that may not prove true in certain circumstances) – or to turn it around, to the extent that the poor and marginalized have a greater need to immigrate to have a chance at full human development (authentic and rightly ordered freedom) – an immigration policy ought to favor the poor and marginalized, at least where the receiving country can absorb them without great harm to its own poor. An immigration system, like ours, that favors the best and brightest and imposes extra burdens on the poor is, therefore, evil in the sense that we are diverting our resources to those who can benefit us the most rather than those most in need.³⁸

Domestic policies that marginalize the immigrant population are a fourth type of evil associated with immigration law and policy. In the interest of time, I'll provide just one example. During the past decade, governmental savings on social safety net spending has come

37. Saint Gregory of Nazianzen, *Sermon*, reprinted in Catholic Church, II THE LITURGY OF THE HOURS 96 (Catholic Book Pub. Co. 1976).

38. *But see* MICHELL PISTONE & JOHN HOFFNER, STEPPING OUT OF THE BRAIN DRAIN: APPLYING CATHOLIC SOCIAL TEACHING IN A NEW ERA OF MIGRATION (Lexington Books forthcoming 2007) (arguing that what is called the “brain drain;” the movement of highly skilled individuals from developing countries to developed countries, benefits the developing countries in the long run).

disproportionately at the expense of legal permanent resident aliens.³⁹ The law can provide some solutions by recognizing the equal dignity and worth of all denizens. But much of the work of welcoming the stranger falls to churches, civic organizations, schools, families, and individuals. The Catholic Bishops of Mexico and the United States provide some practical suggestions in their pastoral letter “Strangers No Longer: Together on the Journey of Hope.”⁴⁰

This morning we have explored one evil associated with e/immigration and mentioned three others. The fact that “emigration is in some sense an evil,” as Pope John Paul II notes, does not mean that good doesn’t often result from emigration/immigration. “Migration . . . helps people to get to know one another and provides opportunity for dialogue and communion or indeed integration at various levels.”⁴¹ With that in mind, I would like to close with an extended quote from Ireland’s President, Mary McAleese. Addressing the Irish exodus, it will resonate, I am confident, with the experience of many national communities. Speaking of the Irish emigrant, she said: “So many left without hope or prospect of ever coming back. They came with hearts flooded with loneliness, planted themselves in new places and they had to grow a new heart now for this new place. But, of course, the heart they had for Ireland never, ever diminished.”⁴² The potato famine

precipitated the greatest calamity in the history of Ireland. It triggered a terrible exodus. In a very short time we would go from being a population of 10 million to a population of 5 million. It sparked one of the greatest migrations in human history. . . . That which was a disaster then . . . is now regarded as a blessing. Irish culture, which used to be the domain of Ireland herself, is now enriched by this extraordinary scattering that took place right across the world. They went like spores all over the globe – to the United States and every part of it, to Australia, the Britain, to Canada. And where two or more were gathered in the

39. See, e.g., *Soskin v. Reinertson*, 353 F.3d 1242 (10th Cir. 2004) (upholding Colorado’s decision to strip certain medical benefits from legal aliens). In a footnote in his dissent, Judge Robert Henry quoted *Leviticus* 19:33-34: “If an alien will reside with you in your land, you shall not persecute him. The alien who resides with you shall be to you like a citizen of yours, and you shall love him like your yourself, because you were aliens in the land of Egypt. I am the YWWH, your God.” *Id.* at 1265, n.1. See also Scaperlanda, *supra* note 3.

40. Committee on Migration of the United States Conference of Catholic Bishops (USCCB), *supra* note 3.

41. Pontifical Council for the Pastoral Care of Migrants and Itinerant People, *The Love of Christ Towards Migrants* ¶ 2, available at http://www.vatican.va/roman_curia/pontifical_councils/migrants/documents/rc_pc_migrants_doc_20040514_erga-migrantes-caritas-christi_en.html (last visited, May 8, 2006).

42. Mary McAleese, Commencement Address, at the University of Notre Dame (May 25, 2006), available at <http://newsinfo.nd.edu/content.cfm?topicid=17702>.

name of Ireland, they brought her music, her dance, her literature, her faith, her values, and they brought them as gift to their new culture, to their new community. And because they were intellectually curious and because they were people who brought love with them, they drew in from the ambient cultures. . . . Irish culture is so dynamic, so many phenomenal tributaries flowing into it, drawing in cultures and the richness of cultures from their friends, from their colleagues, from those they live with in immigrant communities all over the world.⁴³

Yes, immigration is in some sense an “evil” as I have defined it. And, yes, our response to the plight of our neighbors is often inadequate and uncharitable and, in this sense, an “evil.” But, there is hope because the One who is Sovereign over all can turn tears of sorrow into a gentle rain cultivating the fields for a fruitful harvest in the next generation.

43. *Id.*
