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A Model for Humane Economic Development: Hernando de Soto, Property Rights, and the Preferential Option for the Poor

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*A Model for Humane Economic Development:
Hernando de Soto, Property Rights, and the Preferential Option for the Poor*

A Dissertation

Presented to the Faculty of Theology

McAnulty College and Graduate School of Liberal Arts

Duquesne University

in fulfillment of

the requirements for the degree of

Doctor of Philosophy

by

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Introduction

On a recent trip to Guatemala, I traveled to a small town called Sayaxche, which is located in the northeastern sector of the country. The town is situated in an area that centuries before had served as a place where the ancient Mayans lived. Citizens of Sayaxche today mostly live in small homes, which compared to Western standards, are humble dwellings. The people typically make roofs out of corrugated metal and fashion siding out of mud-brick. The homes lack many of the other normal accoutrements of houses in the United States such as standard electrical and sanitary systems. Many of these homes do not have signs demarcating the formal recognition of a person's property including such ordinary things as a mailbox with a corresponding address or a number on the sidewalk. Originally, when I thought about what it would be like to lack these standard signs, I wondered whether I might take pleasure in the fact that no one could reach me by mail so that I might cut back on a busy lifestyle. Upon further reflection, I realized the difficulty it would cause me to live in a town where no one could identify where I live. I asked myself, "How could I conduct my personal affairs or business dealings without having a permanent address to receive mail? How could I connect with anyone from the outside world when people could not even identify where I live?"

As I became more familiar with Sayaxche, I traveled to both the outskirts of town, where most people worked as farmers, and to the town center, where many entrepreneurs operated stores that sold a variety of goods and services including fruits and vegetables and knockoff clothing products. It was in these stores that I learned to bargain for better deals with the storeowners. At home, I usually did not haggle with the manager of a GAP or Brooks Brothers over the price of a shirt, but in Sayaxche, I did this regularly.

Since prices varied greatly from store to store for similar products, I quickly became an expert in this kind of exchange to get the lowest price for an item. Many of these shopkeepers were excellent entrepreneurs and I marveled at their ability to utilize almost every inch of space to sell their wares. They filled their stores with a variety of eclectic items and the people who owned the shops were always courteous and polite. When they discovered that I was from the United States, the storeowners flocked to me in order to attend to my needs. Growing up in New York, I never experienced such friendly salespersons. As a graduate student, I also never realized that I was “rich” until I arrived in Sayaxche.

After my visit to Sayaxche, it was apparent that I had stepped into a market situation unfamiliar to me in the United States. Although Sayaxche contained many of the trappings of a modern market economy, it lacked many constitutive elements that make this kind of economic system both productive and efficient in the United States and Europe. For example, in almost every store I entered, credit cards were not accepted and shopkeepers used old style ledgers instead of computers to track their inventory of goods. Many businesses in town also lacked a formal address, which was similar to the houses in Sayaxche. This led me to question whether these shopkeepers legally owned their stores. I concluded that a countless number of them were probably operating their businesses outside the confines of established markets. I also noticed that many of the street-vendors always appeared concerned that the police would suddenly arrive to shut down their business. The people of Sayaxche repeatedly told me that street vendors feared eviction from the land upon which they were selling their products because local gov-

ernment officials did not recognize their right to the land on which they conducted their business.

I took away many things from my experience in Sayaxche, but mainly it made me more aware of the large disparities that exist between rich and poor nations and it gave me greater insight into the enormous challenges that people face in these countries because of their poverty. My time in Sayaxche led me to recall the words declared at the Second Vatican Council in *Gaudium et spes*,

Never has the human race enjoyed such an abundance of wealth, resources, and economic power, and yet a huge proportion of the world's citizens are still tormented by hunger and poverty, while countless numbers suffer from total illiteracy.¹

Forty years after the Council, these words unfortunately remain true. Today, many people around the world continue to live in the kind of poverty that is all too familiar to the people of Sayaxche. The United Nations estimates that nearly half of the planet's six billion people live on less than two dollars per day.²

In light of my experience, I thought, "Why did the people of this small town live in such dire poverty? Why were these people so poor when they lived in an area that had large swaths of arable land, possessed industrious workers, and had motivated and talented entrepreneurs? Why was it that people, who possessed many of the trappings of a modern economy, including a number of potentially profitable assets, live so poorly?" These questions challenged me on a number of fronts. Primarily they fueled my desire to find solutions to these questions as a Catholic Christian. The Roman Catholic Church

¹ Austin Flannery, O.P., ed., *Gaudium et spes, Vatican Council II: Volume I: The Conciliar and Post Conciliar Documents* (Northport, N.Y.: Costello Publishing Company, 1996), no. 4.

² The United Nations, *Freedom from Want*. Available online at <http://www.un.org/millennium/sg/report/ch2.pdf> (accessed July 22, 2006).

challenges its followers to place the dignity of the human person at the center of all ethical reflection. Catholic social teaching speaks to the ideal that every person - regardless of such attributes such as race or economic status – is worthy of respect.³ The bishops at the Second Vatican Council made the dignity of the human person the fulcrum of its social teaching with the recognition that there is “a growing awareness of the sublime dignity of human persons, who stand above all things and whose rights and duties are universal and inviolable.”⁴ Catholic social teaching claims that human dignity is the result of human existence. As Charles Curran says,

Human dignity comes from God’s free gift; it does not depend on human effort, work, or accomplishments. All human beings have a fundamental, equal dignity because all share the generous gift of creation and redemption from God.⁵

The tradition puts forth the ideal that a unique and sacred worth is present in each person simply because she or he exists. The aptitudes and abilities each person possesses at birth

³ Throughout the dissertation, I use the term Catholic social teaching to describe the hierarchical documents of the Catholic Church that deal with social issues, beginning with the encyclical *Rerum novarum* of Pope Leo XIII in 1891. When I use adjectives such as “modern,” “contemporary,” and “recent” Catholic social teaching, I am referring to magisterial documents that have been written since the publication of Leo XIII’s *Rerum novarum* and concluding with Pope John Paul II’s *Centesimus annus* issued in 1991. Although there is no official canon of papal documents, generally, however, the following documents are included: *Rerum novarum*, “The Condition of Labor” (1891), Pope Leo XIII; *Quadragesimo anno*, “After Forty Years” (1931), Pope Pius XI; *Mater et magistra*, “Christianity and Social Progress” (1961), Pope John XXIII; *Pacem in terris*, “Peace on Earth” (1963), Pope John XXIII; *Gaudium et spes*, “Pastoral Constitution on the Church in the Modern World” (1965), Second Vatican Council; *Dignitatis humanae*, “Declaration on Religious Freedom” (1965), Second Vatican Council; *Populorum progressio*, “On the Development of Peoples” (1965), Pope Paul VI; *Octogesima adveniens*, “A Call to Action on the Eightieth Anniversary of *Rerum novarum*” (1971), Pope Paul VI; *Justitia in mundo*, “Justice in the World” (1971), Roman Synod; *Evangelii Nuntiandi*, “Evangelization in the Modern World” (1975), Pope Paul VI; *Laborem exercens*, “On Human Work” (1981), Pope John Paul II; *Sollicitudo rei socialis*, “On Social Concern” (1987), Pope John Paul II; *Centesimus annus*, “On the Hundredth Anniversary of *Rerum novarum*” (1991), Pope John Paul II. In addition, two documents of the U.S. Catholic bishops are usually included in this “canon”: *The Challenge of Peace: God’s Promise and Our Response* (1983) and *Economic Justice for All* (1986). All references to Catholic social teaching come from *Catholic Social Thought: The Documentary Heritage*, edited by David J. O’Brien and Thomas A. Shannon. See David J. O’Brien and Thomas A. Shannon, eds., *Catholic Social Thought: The Documentary Heritage* (Maryknoll, N.Y.: Orbis Books, 1992).

⁴ *Gaudium et spes*, no. 26.

⁵ Charles Curran, *Catholic Social Teaching 1891-Present: A Historical, Theological, and Ethical Analysis* (Washington, D.C.: Georgetown University Press, 2002), 132.

constitute a divine vocation, a specific and unique calling to further the development of human society as a whole. Indeed, “The principle of human dignity gives the human person a claim on membership in a community, the human family.”⁶

The commitment of the Catholic Church to the principle of human dignity challenges followers to recognize that to exclude large numbers of people from participation in human affairs is a form of marginalization that is an affront to both human dignity and basic justice. As the U.S. Catholic Bishops stated in their 1986 pastoral letter *Economic Justice for All*,

The ultimate injustice is for a person or group to be treated actively or abandoned passively as if they were nonmembers of the human race. To treat people this way is effectively to say they simply do not count as human beings. This can take many forms, all of which can be described as varieties of marginalization, or exclusion from social life.⁷

In fact, marginalization can take a variety of forms, including those that are economic. When people purposely deny others the right to work, for example, those denied this right often become unable to meet their basic material needs or those of their families. Moreover, they lose the capacity to join in carrying forward God's creative activity. When society denies large numbers of people from exercising this right, the inability to find work is a sign of *inhuman* development, which erodes the foundations of solidarity with all people, especially those in poverty. From the perspective of Catholic social teaching, it is a mistake to call wealthy nations that do not live and work in effective solidarity with people in poverty *developed* nations.⁸ The general thrust of the social teaching of the

⁶ William J. Byron, “Ten Building Blocks of Catholic Social Teaching,” *America* 179 (10/31/98): 3.

⁷ *Economic Justice for All*, no. 77.

⁸ Edward P. DeBerri and James E. Hug, *Catholic Social Teaching: Our Best Kept Secret* (Maryknoll, N.Y.: Orbis Books, 2003), 20.

church contends that all persons have a right to participate in the economic life of society.⁹

Today, Catholic social teaching affirms that to participate in the economic well being of society requires that people have access to legitimate and secure property rights. It insists that private property is an essential element of an authentically social and democratic economic policy, and it is the guarantee of a correct social order.¹⁰ Catholic social teaching requires that ownership of goods be equally accessible to all, so that all may become, at least in some measure, owners.¹¹

A key figure today who argues that poverty is directly linked to denying people their property rights is the Peruvian economist Hernando de Soto. De Soto currently serves as a co-chair with former Secretary of State Madeline Albright for the High Level Commission for the Legal Empowerment of the Poor (HLCLEP) at the United Nations. De Soto also serves as the President of the Institute for Liberty and Democracy (ILD) in Lima, Peru, which he founded in 1980.¹² De Soto believes a major obstacle for many poor people in the developing world is the inability to create a formal way for them to document their assets or possessions through such legally acceptable tools such as deeds,

⁹ For examples of the right to participation in Catholic social teaching, see *Pacem in terris*, no. 26; *Gaudium et spes*, no. 65; *Populorum progressio*, no.28; *Justitia in mundo*, nos. 18 and 71; and *Economic Justice for All*, no. 77.

¹⁰ Pontifical Council for Justice and Peace, *The Compendium of the Social Doctrine of the Catholic Church*, available from http://www.vatican.va/roman_curia/pontifical_councils/justpeace/documents/rc_pc_justpeace_doc_20060526_compendio-dott-soc_en.html#Origin%20and%20meaning; Internet; accessed 22 July 2006.

¹¹ Ibid.

¹² I first learned about the work of Hernando de Soto at a conference I attended in the fall of 2003 for alumni of Georgetown University. The keynote speaker was former President William J. Clinton. When he spoke about the problem of poverty in the developing world, President Clinton talked at length about the work of Hernando de Soto. He discussed his commitment to helping the poor to capitalize on their assets by unifying the property rights systems of diverse nations such as Peru, the Philippines, and Ethiopia.

contracts, and permits. Similar to many of the inhabitants and entrepreneurs I met in Sayaxche, de Soto finds that many of these “individuals live and work in a type of “‘informal sector’ that exists outside a set of widely-recognized and enforceable rules.”¹³ He says,

Pervasive poverty and the absence of the rule of law are inextricably linked. The vast majority of the world’s three billion poor live their daily lives outside the rule of law, in what is often referred to as the “informal sector.” These individuals lack the basic legal protection that recognizes their assets and hard work. As a result, they are denied the opportunity to participate in and benefit from economic activity. They are locked out of the system - in their own countries and in the global marketplace.¹⁴

De Soto contends that by creating protections for the assets that the poor control, these individuals will gain tangible benefits that go beyond property and ownership. Once they achieve legal ownership over their assets, they “will become participants in a system of laws and commerce that can leverage capital and create investment, and with it, gain such real rewards as clean water, medical care, schools, and economic growth.”¹⁵

The purpose of this dissertation is to provide a constructive dialogue between the work of Hernando de Soto and Catholic social teaching in order to assist people in developing nations to escape the cycle of poverty. I argue that de Soto’s insights to protect property rights, in conjunction with the Catholic Church’s theological commitment to promote human dignity and human rights, through a preferential option for the poor, offers practical resources for sound economic development to help those trapped in poverty

¹³ Hernando de Soto, “The High Level Commission On Legal Empowerment of the Poor Mission Statement,” available from <http://legalempowerment.undp.org/html/commission.html#background>; Internet; accessed 22 July 2006.

¹⁴ Ibid.

¹⁵ Ibid.

to become more active participants in the well ordering of society.¹⁶ Thus, I believe a dialogue between de Soto's work and Catholic social teaching can benefit both parties. On the one hand, Catholic social teaching can enhance de Soto's work by connecting his ideas about property rights to a theological anthropology that supports the dignity and social nature of the human person.¹⁷ On the other hand, de Soto's economic analysis can augment Catholic social teaching in three key ways. First, de Soto's work provides a more lucid investigation into the ways that the poor are denied their property rights in developing nations, which effectively curtails long-term economic growth. Second, de Soto's analysis reveals more clearly than Catholic social teaching why gaining ownership over one's assets, such as a home or small business, is a crucial step in the process toward economic development.¹⁸ Finally, de Soto's work provides a better explanation than Catholic social teaching about the kinds of strategies needed to develop partnerships among disenfranchised property owners and government authorities in order to create a more equitable and just legal framework that supports the most efficient and productive use of all people's assets, including those who now live in poverty. I have divided the dissertation into six chapters to examine these issues.

In chapter 1, I introduce the argument that the work of Hernando de Soto offers those who opt for the poor a viable solution to eradicate poverty in the developing world.

¹⁶ I will discuss the origin, meaning, and issues raised by the term "preferential option for the poor" for Catholic social teaching in chapter 1.

¹⁷ For an excellent treatment of the theological anthropology that underwrites Catholic social teaching, especially since the Second Vatican Council, see Charles Curran's chapter entitled, "Anthropology." Curran, *Catholic Social Teaching 1891-Present*, 127-136.

¹⁸ See, for example, *Centesimus annus*, no. 31-32. Although Catholic social teaching correctly supports the right of persons to own property and engage in economic initiative, de Soto's investigation into the ways legal and political institutions in developing nations purposely exclude large numbers of people from utilizing their assets to meet their basic material needs provides sound analysis about the best ways to overcome this problem.

The chapter begins with a brief excursus concerning the problem of poverty in the developing world to grasp the enormous challenges facing those interested in the question of economic development. This part shows how measuring wide scale poverty primarily in terms of a nation's gross domestic product or per capita income does not give an accurate picture regarding the ways poverty reduces a person's basic capabilities. Second, I provide a succinct overview of the common reasons that economists and specialists in the field of economic development give regarding why poverty persists in many places throughout the world. Third, I review the failures of the "The Washington Consensus," which was a set of policy proposals and proscriptions endorsed by the World Bank, The International Monetary Fund,¹⁹ and the World Trade Organization²⁰ to eradicate poverty in the developing world. Next, I introduce the work of Hernando de Soto and his colleagues at the ILD. I argue that he provides an alternative strategy for economic development to the policies endorsed by the Washington Consensus. I then introduce the concept of the preferential option for the poor and why the Catholic Church has made a commitment to this principle as part of its social teaching. I conclude the chapter by ini-

¹⁹ The World Bank is made up of two unique development institutions owned by 184 member countries—the International Bank for Reconstruction and Development and the International Development Association (IDA). The International Bank for Reconstruction and Development focuses on middle income and credit-worthy poor countries, while IDA focuses on the poorest countries in the world. Together they provide low-interest loans, interest-free credit and grants to developing countries for education, health, infrastructure, communications and many other purposes. The International Monetary Fund was established to promote international monetary cooperation, exchange stability, and orderly exchange arrangements; to foster economic growth and high levels of employment; and to provide temporary financial assistance to countries to help ease balance of payments adjustment. The World Bank, "The World Bank: Working for a World Free of Poverty," available from <http://web.worldbank.org/WBSITE/EXTERNAL/EXTABOUTUS/0,,pagePK:50004410~piPK:36602~theSitePK:29708,00.html>; Internet; accessed 22 July 2006.

²⁰ The World Trade Organization is the only global international organization dealing with the rules of trade between nations. At its heart are the World Trade Organization agreements, negotiated and signed by 149 trading nations and ratified in their parliaments. The goal is to help producers of goods and services, exporters, and importers conduct their business. The World Trade Organization, "What is the WTO?" available from http://www.wto.org/english/thewto_e/whatis_e/whatis_e.htm; Internet; accessed 22 July 2006.

tiating a dialogue between the work of Hernando de Soto and Catholic social teaching, which sets up much of the discussion that will follow in the remaining chapters.

I examine in chapter 2 why Catholic social teaching defends a person's right to own and use property and the duties and responsibilities that come with this right. I draw mainly from the papal social encyclicals to frame my analysis.²¹ In the opening section of the chapter, I review why each pontiff since Leo XIII in his 1891 encyclical *Rerum novarum* has defended a person's right to own and use property. I argue that the Catholic Church has mainly defended this right because of its commitment to a theological anthropology that affirms human dignity and the social nature of the person. This historical review uncovers why each pontiff, beginning with Leo XIII and concluding with Pope John Paul II, made the argument that the right to own property supports human dignity and the social nature of the person. Another theme I investigate in this section is the way Catholic social teaching increasingly came to limit the right to own property, especially when the basic material needs of large numbers of people go unmet. I argue that the church's growing awareness about the economic deprivation of the poor over the past century has increasingly led the tradition since *Rerum novarum* to emphasize limitations to the right to own property. Catholic social teaching affirms that private property, in fact, regardless of the concrete forms of the regulations and juridical norms relative to it, is in its essence only an instrument for respecting the principle of the universal destination of goods.²² As a result, the tradition wrestles with a person's legitimate right to own

²¹ See footnote 3 for the encyclicals that makeup the body of Catholic social teaching.

²² Pontifical Council for Justice and Peace, *The Compendium of the Social Doctrine of the Catholic Church*, available from http://www.vatican.va/roman_curia/pontifical_councils/justpeace/documents/rc_pc_justpeace_doc_20060526_compendio-dott-soc_en.html#Origin%20and%20meaning; Internet; accessed 22 July 2006.

property with its commitment to meeting the basic material needs of all persons through its teaching about the universal destination of material goods. The commitment to defend the dignity and social nature of the person has led the church not only to support the right of persons to own property, but also to analyze contemporary economic structures from the perspective of the poor. Catholic social teaching asks whether current economic structures help to contribute to both the dignity and social nature of the human person or whether they marginalize people through denying them their right to utilize the material goods of the earth that are common to all. Thus, a prominent issue raised in Catholic social teaching is how to relate an individual's right to own property with the idea that the use of the material goods of the earth are intended for all people in order to benefit the common good. I close the chapter with a review of the strengths and weaknesses of Catholic social teaching regarding its understanding of the right to private property. In particular, I examine the benefits and drawbacks of the tradition's commitment to linking its teaching about the universal destination of material goods with its defense of property rights.

In chapters 3 and 4, I examine the work of Michael Novak of the American Enterprise Institute and Fr. David Hollenbach, S.J. of Boston College. I draw on their work for two main reasons. First, I want to draw out the benefits associated with their positions regarding the different anthropological dimensions of the human person advanced in Catholic social teaching in order to provide the soundest foundation on which to build an economic system that promotes human dignity. Second, I use these chapters to identify in chapter 6 the way each theologian's theological anthropology can augment the

work of Hernando de Soto to aid him in his quest to secure and defend the property rights of people who now live in poverty.²³

In chapter 3, I contend that Novak's view of the human person stresses the creative potential of active subjects to allow people to use their gifts and talents to meet their basic material needs. The main benefit of Novak's view of the person is that he offers a strong theological foundation on which to build arguments for holding private property, participating in markets, and engaging in entrepreneurship. The chapter begins with an overview of Michael Novak's intellectual development to show why he came to support democratic capitalism in preference to democratic socialism as a system of political economy. Next, I explore the anthropology that underlies his commitment to this kind of system. In this section and throughout the chapter, I draw mainly from his three principal works that argue in favor of democratic capitalism. They are *The Spirit of Democratic Capitalism*, *Free Persons and the Common Good*, and *The Catholic Ethic and the Spirit*

²³ Both Novak and Hollenbach stand in the tradition of Catholic social teaching as supporters of a person's right to own and use property. They disagree, however, about its limits, especially when large numbers of people purposely are excluded from meeting their basic material needs. I contend that Novak and Hollenbach hold opposing views about the right to private property because they stress different anthropological traditions within Catholic social teaching. Novak stresses the libertarian tradition while Hollenbach identifies more with the communitarian tradition. Although Novak's anthropology offers many resources to support one's right to private property, participation in the market, and ability to engage in entrepreneurship, it will become evident that I think that David Hollenbach's anthropology provides a richer view of the human person than the one Novak employs, which borrows heavily from classic libertarianism. Novak's anthropology fails to present enough resources for people to cooperate with each other to stand in solidarity with the poor. In contrast, Hollenbach's commitment to identify the social and cooperative elements of human personhood provides an anthropology that is better suited toward achieving an important goal of Catholic social teaching, which is to structure a closer collaboration between civil society, government institutions, and markets to help the poor to meet their basic material needs. Hollenbach's view of the person offers a richer analysis than Novak's toward identifying the ways economic and government institutions should collaborate with each other to stop hindering the poor from participating in markets. He does this by offering a better explanation of the human person than Novak about why the lack of participation in the market by those in poverty threatens both human dignity and solidarity.

of Capitalism.²⁴ Next, I identify Novak's criticisms of socialism. Then I explicate Novak's support for a market-based system of political economy through an exploration of several questions. First, what does Novak believe are the main criticisms of capitalism, especially as developed within Catholic social teaching? Second, why does Novak believe that Pope John Paul II tempered these criticisms? Third, what new insights does Novak say the late Pontiff brought to these discussions? Fourth, what does Novak think are the benefits of a market economy? Fifth, what does Novak think are the main obstacles toward the creation of these kinds of economic systems within Third World and former communist nations? Sixth, why does Novak support the protection and promotion of property rights? Seventh, what are the shortcomings of Novak's defense of democratic capitalism? I conclude the chapter by speculating about the ways that Novak might respond to these criticisms of democratic capitalism as a system of political economy.

In chapter 4, I examine David Hollenbach's anthropology to contrast his more communitarian vision of the human person to the libertarian anthropology offered by Michael Novak. His anthropology, which is personalist and communitarian, challenges the way the globalization of the market tends to marginalize poor people, especially when government fails to protect people's economic rights. His anthropology is personalist in its insistence that the dignity, worth, and freedom of all human beings must be fully respected in the economic as well as the political domains. It is communitarian in stressing that this dignity and freedom can only be realized in solidarity and mutual interdependence. In the opening section of the chapter, I provide an overview of how the Catholic

²⁴ Michael Novak, *The Spirit of Democratic Capitalism* (Lanham, M.D.: Madison Books, 1982); *Free Persons and the Common Good* (New York: Madison Books, 1989); *The Catholic Ethic and the Spirit of Capitalism* (New York: The Free Press, 1993).

Church came to adopt a vision of human rights as the minimum conditions for participation in community life. I do this primarily through using one of Hollenbach's first major works *Claims in Conflict: Retrieving and Renewing the Catholic Human Rights Tradition*.²⁵ In section two, I look at Hollenbach's view of the common good, especially as discussed in his 2002 book *The Common Good and Christian Ethics*.²⁶ Hollenbach employs the concept of the common good as an intellectual tool to think about the necessary requirements to protect and promote human dignity to challenge the dominant liberal ethos that makes individual autonomy and self-sufficiency primary social goods. As a result, this section addresses the institutional challenges raised by Hollenbach's comprehensive vision of the human person and the common good, especially in regards to the benefits and drawbacks brought about by the globalization of the market.

In chapter 5, I examine the work of Hernando de Soto and his support for promoting and protecting property rights among the poor in the developing world. I seek to identify why de Soto believes the promotion and protection of property rights for the poor can provide them with the necessary capital to escape the cycle of poverty. First, I provide a brief overview of de Soto's early life to explain why he got involved in the struggle to eradicate poverty in the developing world. Second, I define and explicate his major ideas and concepts. The purpose of this section is to elucidate why de Soto thinks the crucial step in the process toward economic development is for the poor to gain owner-

²⁵ David Hollenbach, S.J., *Claims in Conflict: Retrieving and Renewing the Catholic Human Rights Tradition* (New York: Paulist Press, 1979).

²⁶ David Hollenbach, S.J., *The Common Good and Christian Ethics* (Cambridge, MA: Cambridge University Press, 2002).

ship over their assets through the creation of an integrated property rights system.²⁷ I draw mainly in this section from his two influential books on economic development *The Other Path* and *The Mystery of Capital: Why Capitalism Triumphs in the West and Fails Everywhere Else*.²⁸ These works encapsulate Hernando de Soto's ideas about the creation of capital, the nature of property, the devastating effects of working extralegally, and the steps toward creating a unified property rights system. In the final section, I clarify how the ILD helps diverse nations such as Peru, Haiti, Egypt, Mexico, and the Philippines to create integrated property rights systems. I believe the success of the ILD in tracking the assets of the poor and integrating them into a unified property rights system offers support for the viability of de Soto's program to work within diverse cultural settings around the world. I conclude the chapter with an examination of the ways the ILD works with political leaders and members of civil society to incorporate the Institute's methods into the legal systems of poor countries to create unified property rights systems.

I use chapter 6 to tie together several topics alluded to in earlier chapters. My main goal in this chapter is to draw together the common areas of agreement between the Catholic Church's defense of property rights and Hernando de Soto's support for these same rights. I argue that both agree that the ability to protect property rights and expand the realm of ownership among the poor promotes human dignity, freedom, and creativity

²⁷ I borrow from Duncan Kennedy and Frank Michelman that an integrated property rights system is one in which things of value are assigned to owners, who have the following rights with respect to them: (a) they can consume them, or use them to produce other things of value, which they will also own; (b) they can get the state's help in preventing any nonowner from consuming them or using them for production without the owner's consent; and (c) owners have exclusive power to transfer ownership to others, with the state recognizing and then enforcing the transfer. For a full description of their definition of an integrated property rights system, see Duncan Kennedy and Frank Michelman, "Are Property and Contract Efficient?," *Hofstra Law Review* 8 (1980): 711-737.

²⁸ Hernando de Soto, *The Other Path* (New York: Basic Books, 1986); *The Mystery of Capital: Why Capitalism Triumphs in the West and Fails Everywhere Else* (New York: Basic Books, 2000).

and that a key way to safeguard these rights is to create a strong juridical framework between government officials, legal experts, and ordinary citizens. I also draw together how the differing anthropological approaches of Novak and Hollenbach can benefit de Soto's work. I contend that a critical engagement with their different anthropological perspectives offers Hernando de Soto valuable insights about the best ways to structure markets to defend human dignity, enhance human solidarity, and champion the rights of the poor. Finally, I speculate about the ways that de Soto's work can connect with those who want to enact a preferential option for the poor in developing countries. I want to show that those who make the preferential option for the poor can cooperate with de Soto's group to stand in solidarity with the poor. Although his approach does not solve all the problems faced by those in poverty, I conclude that Hernando de Soto's strategy to promote and protect property rights is an important step in the struggle to overcome economic injustice.

Chapter 1

Hernando de Soto and Catholic Social Teaching: Initiating the Dialogue

1. The Problem of Poverty in the World's Least Developed Countries

Today the economic situation for those living in the world's least developed countries (LDCs) remains bleak.¹ For those who live in LDCs the problem is not that these people are being impoverished by globalization, they are largely excluded from it.² “In 2002, LDCs accounted for 11% of the world's population but only 0.6% of world GDP. Their average gross national income per capita was \$438, compared with \$2,848 in other developing countries.”³ Over the period 1979–2001, “LDCs experienced 9.5% more instability in their agricultural production and 49% more instability in their exports of

¹ “Since 1971, the United Nations has used the term least developed countries (LDCs) to denote a category of countries (originally 24, currently 50) that are poor and considered highly disadvantaged in their development process. Countries on this list are considered to have a particularly high risk of failing to overcome poverty, and to need the highest degree of support from the international community in their development efforts. By periodically identifying the LDCs and highlighting their structural problems, the United Nations sends a strong signal to the development partners of these countries and underscores the need for special concessions and benefits in their favor.” United Nations Conference on Trade and Development, “Development and Globalization: Facts and Figures,” available from <http://globstat.unctad.org/html/index.html>; Internet; accessed 20 February 2005.

² I chose to focus on Less Developed Countries (LDCs) primarily because the extreme economic hardship of these nations challenges those interested in questions of economic justice to identify the causes of poverty among those whom it most negatively affects. Another reason why I chose this term is to differentiate some of these nations from those also described by the United Nations as Landlocked Developing Countries (LLDCs) and Small Island Developing States (SIDS). Nations such as Afghanistan and Aruba also suffer from poverty, but the U.N. places these nations in these categories because the causes and roots of their poverty are in many ways directly related to their geographic location. For example, Afghanistan is described by the United Nations as both a LDC and a LLDC. However, when I examine the work of Hernando de Soto in chapter 5, I will show that he challenges the idea that the lack of economic development in LLDCs and SIDS are primarily the result of geography. I want to use the term LDC because its comprehensiveness is more in line with Hernando de Soto's belief that the lack of economic development in these nations is not primarily related to their geographic location, but to a systematic failure of these nations to develop unified property rights systems.

³ United Nations Conference on Trade and Development, “Development and Globalization: Facts and Figures,” available from <http://globstat.unctad.org/html/index.html>; Internet; accessed 20 February 2005.

goods and services than other developing countries.”⁴ In 2002, “their share of world merchandise exports was 0.6%, while that of other developing countries was 31%.”⁵

Measuring a country’s development primarily in terms of gross domestic product or per capita income does not offer a complete picture of the ways poverty affects the freedoms, capabilities, and quality of life people enjoy in LDCs. The Nobel winning economist Amartya Sen argues that another way to evaluate the devastating affects of poverty in LDCs is to identify the ways that it reduces the *basic capabilities* or the substantive freedoms that persons enjoy to lead the kind of life they have reason to value.⁶ From this perspective, a number of non-economic indicators, such as life expectancy of citizens, infant mortality rates, denial of access to basic goods such as healthcare, shelter, and sanitary water, help to uncover the ways that poverty diminishes basic capabilities.⁷ For example, “people in LDCs can expect to live an average of 50 years, compared with 63 years in developing countries as a group. About 95 out of 1,000 children in LDCs die in their first year, compared with 35 out of 1,000 in other developing countries.”⁸ Sen contends that widespread poverty in LDCs not only adversely affects a person’s physical existence, but it “robs the poor of the freedom to satisfy hunger, or to achieve sufficient

⁴ Ibid.

⁵ Ibid.

⁶ Amartya Sen, *Development as Freedom* (New York: Anchor Books, 1999), 3.

⁷ For an excellent treatment about the basic capabilities approach and its impact on women, see Martha Nussbaum, *Women and Human Development* (Cambridge, M.A.: Cambridge University Press, 2001).

⁸ United Nations Conference on Trade and Development, “Development and Globalization: Facts and Figures,” available from <http://globstat.unctad.org/html/index.html>; Internet; accessed 20 February 2005.

nutrition, or to obtain remedies for treatable illness, or the opportunity to be adequately clothed or sheltered, or to enjoy clean water of sanitary facilities.”⁹

The economic deprivation suffered by the poor in LDCs contributes to the growing divide between haves and have-nots. The result of this divide is the increase of those who live in dire poverty. Despite repeated promises of poverty reduction made over the last decade of the twentieth century,¹⁰ the actual number of people living in poverty has actually increased by almost 100 million.¹¹ This occurred at the same time that total world income increased by an average of 2.5 percent annually.¹² Another Nobel Prize winning economist, Joseph Stiglitz, says there can be no dispute about three facts when looking at these figures: “There has been little progress in eliminating poverty; most of the progress has been in Asia, and especially China, and in much of the rest of the world the plight of the poor has worsened.”¹³ For example,

In Sub-Saharan Africa, 46 percent of the population lives in absolute poverty (on less than a dollar a day), and in Latin America and the former Soviet Union the

⁹ Sen, *Development as Freedom*, 4.

¹⁰ In 2000, at the United Nations Millennium Summit, 191 member states resolved, through the United Nations Millennium Declaration, to halve, by the year 2015, the proportion of the world’s people whose income is less than one dollar a day and the proportion of people who suffer from hunger and, by the same date, to halve the proportion of people who are unable to reach or to afford safe drinking water. United Nations, “United Nations Millennium Declaration,” available from <http://www.un.org/millennium/declaration/ares552e.htm>; Internet; accessed 20 May 2006. For a summary of the eight goals adopted by the United Nations in the Millennium Declaration, see United Nations, “Implementing the Millennium Declaration,” available from <http://www.un.org/millenniumgoals/MDGs-FACTSHEET1.pdf>; Internet; accessed 20 May 2006.

¹¹ “In 1990, 2.718 billion people were living on less than \$2 a day. In 1998, the number of poor living on less than \$2 a day is estimated at 2.801 billion.” World Bank, *Global Economic Prospects and the Developing Countries 2000* (Washington, D.C.: World Bank, 2000), 29.

¹² Joseph E. Stiglitz, *Globalization and its Discontents* (New York: W. W. Norton & Company, 2003), 259.

¹³ Ibid.

percentage of the population in poverty is 16 percent and 15 percent, respectively.¹⁴

2. Responses About Why Economic Development Fails to Transpire in LDCs

The hardship felt by the poor living in LDCs has led those who work for economic justice to consider the reasons for the lack of economic development in these nations. They want an answer to the question, “What makes some nations rich and other nations poor?” Today, there are several widespread theories about why it is difficult to sustain economic development in the world’s poorest nations. I summarize below three of the most common reasons given by specialists in the field of economic development for the lack of it in LDCs.

a. Geography Matters

First, Jeffrey Sachs of Columbia University argues that one of the most overlooked reasons for the lack of economic development in many LDCs is simply geography. Many economists neglect the fact that the geographic location of a nation often precludes it from partaking in the benefits that have come with the expansion of the global market.¹⁵ Sachs believes that people in the United States, for example, tend to forget that they inherited a vast continent rich in material resources, immense navigable rivers, and one that possessed thousands of miles of coastline that provided a wonderful foundation

¹⁴ Ibid. An important issue to consider is the great number of people who live in poverty in the United States. According to the U.S. Conference of Catholic Bishops, one in eight Americans lives in poverty. In spite of the seemingly limitless prosperity that many Americans enjoy, 13 million, or 1 in 6, children live in poverty. United States Conference of Catholic Bishops, “Catholic Campaign for Human Development: Poverty in America,” available from <http://www.nccbuscc.org/cchd/povertyusa/index.htm>; Internet; accessed 17 August 2006.

¹⁵ One person who is commonly associated with this position is Jared Diamond, who argues that a decisive factor in explaining the economic growth of a people is geography and environment. See Jared Diamond, *Guns, Germs, and Steel: The Fates of Human Societies* (New York: W. W. Norton & Company, 1999).

for sea-based trade.¹⁶ These are important factors for the successful economic development of the United States.¹⁷ In contrast, many nations around the world lack these advantages. Many of the world's poorest nations are landlocked, which expands their transportation costs. Other kinds of geographical distress are also at play. He says,

Many countries are trapped in arid conditions with low agricultural productivity or vulnerability to prolonged droughts. Most of the tropics have ecological conditions that favor killer diseases like malaria, schistosomiasis, dengue fever, and dozens of others. Sub-Saharan Africa, in particular, has an ideal rainfall, temperature, and mosquito type that make it the global epicenter of malaria, perhaps the greatest factor in slowing Africa's economic development throughout history.¹⁸

As a result, these adversities require countries to undertake additional investments that other, more fortunate, countries did not have to make. Although a landlocked country can build a road to a port in another country, and advancements in medicine can control tropical diseases, geography raises the costs of solving the problems of farming, transport, health, and thereby makes it much more likely that a country will be caught in a poverty trap.

b. Culture Matters

A second reason given for the lack of economic development in many LDCs is that the cultural attitudes, norms, and values of poor people living in these nations impose obstacles to development. As Harvard Professor David Landes says,

If we learn anything from the history of economic development, it is that culture makes almost all the difference. Witness the enterprise of expatriate minorities –

¹⁶ Jeffrey Sachs, *The End of Poverty: Economic Possibilities for Our Time* (New York: Penguin Press, 2005), 58.

¹⁷ Jeffrey Sachs, "Can Extreme Poverty Be Eliminated?," *Scientific American* 292 (September 2005): 58.

¹⁸ Sachs, *The End of Poverty*, 58.

the Chinese in East and Southeast Asia, Indians in East Africa, Lebanese in West Africa, Jews and Calvinists throughout much of Europe, and on and on.¹⁹

Today's adherents to this position can trace the origins of this argument to the sociologist Max Weber. In his well-known work *The Protestant Ethic and the Spirit of Capitalism*, Weber claimed that during the nineteenth century in Germany the entrepreneurial values of Protestants favored economic development in contrast to the static values of Catholics.²⁰ Today, public opinion in affluent countries often attributes extreme poverty to faults with the poor themselves - or at least with their cultural values. The idea that whole societies are condemned to poverty because of their values has a long history, but one that some find objectionable for two main reasons. First, "cultures change with economic times and circumstances."²¹ Second, "they are usually made on the basis of prejudice rather than measurable evidence."²² For example, in the wake of September 11, many Western observers categorized Islamic societies to be unfit for modern economic development. As Sachs says,

The charges of cultural failure are legion: irrationality, fundamentalism, extreme bias against women, antipathy to science. Yet some of the fastest growing economies in the world in the past decade have been Islamic. Between 1990 and 2001, average annual per capita growth in Malaysia was 3.9 percent; in Bangladesh, 3.1 percent; Tunisia, 3.1 percent; and Indonesia, 2.3 percent. These countries also made great strides in equality of girls' education and literacy.²³

¹⁹ David Landes, "Culture Makes Almost All the Difference," in *Culture Matters: How Values Shape Human Progress*, eds. Lawrence E. Harrison and Samuel P. Huntington (New York: Basic Books, 2000), 2.

²⁰ Max Weber, *The Protestant Ethic and The Spirit of Capitalism* (New York: Routledge, 2001).

²⁰ Landes, "Culture Makes Almost All the Difference," 2.

²⁰ Sachs, *The End of Poverty*, 316-317.

²¹ *Ibid.*, 316.

²² *Ibid.*

²³ *Ibid.*, 316-317.

c. Governance Matters

A third reason commonly given for the lack of economic development in LDCs is that development requires a government orientated toward growth and economic expansion. According to this argument, government has many roles to play. They include identifying and financing infrastructure projects, making the needed infrastructure and social services available to the whole population, and creating an environment favorable to investments by private businesses. Finally, governments must also maintain internal security and stability so the safety of persons and property is not threatened. This comes mainly in the form of establishing a judicial system that can define property rights and honestly enforce contracts, and defend the national territory to keep it safe from invasion.

As Professor Sachs says,

When governments fail in any of these tasks – leaving huge gaps in infrastructure, or raising corruption to levels that impair economic activity, or failing to ensure domestic peace – the economy is sure to fail, and often to fail badly. Indeed, in extreme cases, when governments are unable to perform their most basic functions, we talk about “state failures,” which are characterized by wars, revolutions, coups, anarchy, and the like.²⁴

3. Responses to the Challenge of the Lack of Economic Development in LDCs

a. The Washington Consensus

The lack of economic development in LDCs led representatives in the World Bank, the World Trade Organization (WTO), and the International Monetary Fund (IMF) to develop strategies to reduce poverty. John Williamson of the Institute for International Economics suggests that an implicit consensus formed within these organizations over the past fifteen years about the best ways to eradicate poverty in these nations. He origi-

²⁴ Ibid., 60.

nally called this, “The Washington Consensus.”²⁵ He invented the term to refer to the lowest common denominator of policy advice being addressed by the Washington-based institutions to Latin American countries as of 1989.²⁶ The core of this consensus affirmed that rapidly privatizing business and liberalizing trade through the removal of government interference in financial and capital markets spurs economic growth within LDCs.

Stiglitz argues that rapid privatization and trade liberalization led to millions of job losses for people in LDCs.²⁷ Supporters of rapid privatization assumed that state enterprises would become more profitable by trimming their payrolls. However, there were major social costs associated with unemployment in LDCs including urban violence, increased crime, and political and social unrest. Other social costs were more subtle and they included

widespread anxiety even among workers who managed to keep their jobs, a broader sense of alienation, additional financial burdens on family members who managed to remain employed, and the withdrawal of children from school to help support the family.²⁸

Trade liberalization also did not benefit many workers within LDCs. Numerous Western countries continued to protect those economic sectors in which competition from devel-

²⁵ For a full explanation of the term “Washington Consensus,” see John Williamson, *Toward Renewed Growth in Latin America* (Washington, D.C.: Institute for International Economics, 1986). For a summary list of the economic policies endorsed by the Washington Consensus, see the article by John Williamson “Did the Washington Consensus Fail?” available from <http://www.iie.com/publications/papers/williamson1102.htm>; Internet; accessed 20 February 2005.

²⁶ Ibid.

²⁷ Stiglitz, *Globalization and its Discontents*, 56-57.

²⁸ Ibid.

oping countries might have threatened their economies.²⁹ In the Uruguay Round of trade negotiations at the WTO,

markets were opened mainly for the services exported by the advanced countries – financial services and information technology – but not for maritime and construction services, where the developing countries might have been able to gain a toehold.³⁰

“One World Bank calculation showed that Sub-Saharan Africa, the poorest region in the world, saw its income decline by more than 2 percent as a result of the trade agreement.”³¹ Stiglitz demonstrates with this evidence that the policies favored by those who formed the Washington Consensus have not only failed to reduce poverty, but they have actually increased the numbers of those who are poor in LDCs.

b. An Alternative Strategy to The Washington Consensus: Hernando de Soto and the Institute for Liberty and Democracy

The inability to reduce the number of people living in poverty in LDCs by those who formed the Washington Consensus challenges anyone interested in addressing the question of economic development to develop alternative strategies to reduce poverty in these countries. One person who has attempted to address this problem by offering an alternative strategy to spur economic development in LDCs is the Peruvian economist Hernando de Soto of the Institute for Liberty and Democracy (ILD).

After years of investigating the causes of poverty in Peru and other LDCs, de Soto concluded that the lack of formal property rights for homeowners and small business owners remains the fundamental roadblock toward economic development in poor coun-

²⁹ Ibid., 59-61.

³⁰ Ibid., 61.

³¹ Ibid.

tries. The inability of governments in many LDCs to create integrated property rights systems has prevented the poor from entering the market, which disables them from transforming their limited assets into usable forms of capital necessary to elevate them out of poverty. The ILD estimates, “the total value of the real estate held but not legally owned by the poor of the Third World and former communist nations is at least \$9.3 trillion.”³² The principal reason why people in the world’s poorest countries cannot represent their assets is the inability of governments to secure property rights. Usually, the problem is not the form, but the substance of the law. As Article 17 of the Universal Declaration of Human Rights declares, “everyone has the right to own property alone as well as in association with others.”³³ ILD researchers argue that largely the legislation and legal systems of most developing and previously communist nations formally comply with Article 17. In substantive terms, however, some 80% of these countries’ populations either do not have real access to these rights and obligations – or, when they do, are not empowered by them to increase their productivity as effectively as in developed market economies.³⁴ De Soto concludes as long as governments cannot protect the property rights of the poor to enable them to use their assets to enter the marketplace, widespread poverty will persist in LDCs.³⁵

c. The Catholic Church and The Preferential Option for the Poor

³² *The Mystery of Capital: Why Capitalism Triumphs in the West and Fails Everywhere Else* (New York: Basic Books, 2000), 35.

³³ The United Nations, “United Nations Declaration on Human Rights,” available from <http://www.un.org/Overview/rights.html>; Internet; accessed 8 May 2006.

³⁴ Ashraf Ghani, “Economic Development, Poverty Reduction, and the Rule of Law: Successes and Failures,” available from http://www.undp.org/legalempowerment/documentWord/Economic_development.pdf; Internet; accessed 8 May 2006.

³⁵ de Soto, *The Mystery of Capital*, 35.

The desire to respond to the needs of the poor is a concern shared beyond secular institutions such as the ILD. The need to take action on behalf of the poor remains a central commitment for many religious traditions, including Roman Catholicism. According to Pope John Paul II,

The Church's love for the poor, which is essential for her and a part of her constant tradition, impels her to give attention to a world in which poverty is threatening to assume massive proportions in spite of technological and economic progress.³⁶

In order to serve the poor, John Paul reaffirmed the Catholic Church's commitment to a preferential option for the poor in his 1991 encyclical *Centesimus annus*.³⁷ The concept of a preferential option for the poor first arose at the Second Conference of Latin American Bishops at Medellin in 1968 and was defined formally by the bishops in their Third Conference at Puebla in 1979. Since Puebla, "Pope John Paul II, the Congregation for the Doctrine of the Faith, and the bishops of Canada and the United States have all affirmed the preferential option in their respective teachings."³⁸ According to Donal Dorr, to "make an option for the poor is to choose to disengage from serving the interests of the powerful and instead to take the side of those who are relatively powerless,"³⁹ effectively

³⁶ *Centesimus annus*, no. 57.

³⁷ *Centesimus annus*, no. 57.

³⁸ Thomas L. Schubeck, "Ethics and Liberation Theology," *Theological Studies* 56 (1995): 108. See John Paul II, *Sollicitudo rei socialis*, in David J. O'Brien and Thomas A. Shannon, eds. *Catholic Social Thought: The Documentary Heritage* (Maryknoll, N.Y.: Orbis, 1992) nos. 42-45; Congregation for the Doctrine of the Faith (CDF), *Libertatis nuntius* (Vatican City: Vatican Polyglot, 1984) parts 3-4; CDF, *Libertatis conscientia* no. 68, in *Origins* 15 (17 April, 1986): 713-28; *Ethics and Economics: Canada's Catholic Bishops on the Economic Crisis*, G. Baum and D. Cameron, eds. (Toronto: Lorimer, 1984) Document 6: "Ethical Reflections on the Economic Crisis", and National Conference of Catholic Bishops, *Economic Justice for All: Pastoral Letter on Catholic Social Teaching and the U.S. Economy* (Washington, D.C.: United States Catholic Conference, 1986) Introduction no. 16.

³⁹ Donal Dorr, "Poor, Preferential Option For," in *The New Dictionary of Catholic Social Thought*, ed. Judith A. Dwyer (Collegeville, M.N.: Liturgical Press, 1994), 755, emphasis added.

“transforming society into a place where human rights and the dignity of *all* are respected.”⁴⁰ As the U.S. Catholic Bishops said in their pastoral letter *Economic Justice for All*, to make an option for the poor is “to speak for the voiceless, to defend the defenseless, to assess life styles, policies, and social institutions in terms of their impact on the poor.”⁴¹

Dorr calls this option, which remains a key concept in liberation theology, the most controversial religious term since the Reformers cried for salvation through faith alone.⁴² Not surprisingly, not everyone agrees with the option for the poor and challenges to it come on several fronts.⁴³ First, from a theological perspective, it is argued that the preferential option fosters an unjust partiality or favoritism that is counter to the universal love that God shows all people.⁴⁴ Second, regarding its social analysis, “critics see the preferential option conditioning the way liberation theologians select their instrument of analysis, especially their use of Marxist analysis and dependency theory.”⁴⁵ The Congregation for the Doctrine of the Faith, for example, criticized certain theologies of liberation for adopting a preferential option that appeared to pit the poor against the

⁴⁰ Ibid.

⁴¹ *Economic Justice for All*, no. 16.

⁴² Donal Dorr, *Option for the Poor: A Hundred Years of Catholic Social Teaching* (Maryknoll, N.Y.: Orbis Books, 1991), 1.

⁴³ For adversarial perspectives about the concept of the preferential option for the poor, see Dennis P. McCann, *Christian Realism and Liberation Theology: Practical Theologies in Creative Conflict* (Maryknoll, N.Y.: Orbis, 1981); and Michael Novak, *Will It Liberate? Questions for Liberation Theology* (New York: Paulist, 1986).

⁴⁴ Schubeck, “Ethics and Liberation Theology,” 109. See Gordon Graham, *The Idea of Christian Charity: A Critique of Some Contemporary Conceptions* (Notre Dame, I.N.: University of Notre Dame, 1990), 116-18.

⁴⁵ Ibid., 110. See Novak, *Will It Liberate?*, 108-109; and Gary Dorrien, *Reconstructing the Common Good* (Maryknoll, N.Y.: Orbis, 1990), 139.

wealthy. The Congregation charged that this was similar to Marxian class struggle.⁴⁶ Third, certain adversaries have “questioned a corollary of the preferential option, namely, the affirmation that the poor, because of their social location, possess an epistemological privilege.”⁴⁷ In other words, critics challenge the idea that the poor have the ability to know better than the non-poor a certain dimension of reality, namely how God shows love toward his people.

The criticisms raised by those within and outside the church against the concept of the preferential option for the poor are important, but liberation theologians and others provide an adequate defense of it for several reasons. First, theologians who favor this concept argue that “preferential” love does not mean “exclusive” love. They equate the love God shows to human beings to a physician who loves her patients by eradicating the cause of their maladies. Second, this option for the poor does not mean placing in conflict one group against another, but rather, strengthening the whole community by assisting those who are the most vulnerable. For Christians, the preferential option for the poor calls the faithful to respond to the needs of all their brothers and sisters, but those with the greatest needs require the greatest response. Finally, Stephen J. Pope provides a persuasive answer to the charge that the poor have epistemological superiority over the non-poor. He says,

In my judgment, this transition can be further promoted by more carefully differentiating valid claims of insights and sensibilities availed by material poverty from illusory or exaggerated claims of broad class-based epistemological superiority. Certainly some among the poor understand the ways in which Jesus

⁴⁶ CDF, *Libertatis nuntius* part 9, no. 10. See responses to this critique by Juan Luis Segundo, *Theology and the Church: A Response to Cardinal Ratzinger and a Warning to the Whole Church*, trans. John W. Diercksmeier (Minneapolis, M.N.: Seabury/Winston, 1985).

⁴⁷ Schubeck, “Ethics and Liberation Theology,” 110.

preached "good news to the poor" in a manner not attained by the non-poor. Poverty provides a special context for discovering and giving witness to aspects of God's love and providence; yet other arenas can also be found, e.g. the obstetrician who experiences each new birth as a precious gift from God, or an astro-physicist's (or microbiologist's) appreciation of the majesty of creation. These are also "privileged locations" from which aspects of God's goodness, mercy, justice, etc., can be appreciated in special ways. Far from being biased, this understanding of the hermeneutical privilege works against bias by insisting that we submit to the truth as disclosed in the experience of people who have been hitherto ignored.⁴⁸

d. The Preferential Option for the Poor and the Work of Hernando de Soto: Initiating the Dialogue

The Catholic Church's commitment to transform society into a place where people respect human dignity and human rights challenges those who support this option to analyze how contemporary economic structures and systems marginalize those who live in poverty.⁴⁹ Advocates for the preferential option for the poor recognize that much of today's economic development marginalizes millions of people in the world's poorest countries. The current system often denies the poor the right to use their talents to support themselves, families, and local communities. A large number of people today have no way of entering the global market that would enable them to see their qualities appreciated and utilized. Thus, one of the main problems for the poor of the developing world today is that of gaining fair access to local and international markets. De Soto, for example, seriously challenges the idea that poverty in the Third World results from people lacking entrepreneurial skill and talent, nor is it because the people who have been shaped by these cultures are unable to adopt the techniques and practices necessary to benefit from a market economic system. They remain outside of the global market be-

⁴⁸ Stephen J. Pope, "Proper and Improper Partiality and The Preferential Option for the Poor," *Theological Studies* 54 (1993) 250.

⁴⁹ *Gaudium et spes*, no. 29.

cause they do not possess the ability to utilize their assets since they are denied their property rights.⁵⁰ As a result, I contend throughout the dissertation that Hernando de Soto's strategy to help the poor is applicable to those who support the Catholic Church's commitment to a preferential option for the poor. De Soto's work is applicable to those who opt for the poor because it provides valuable insight into the myriad ways in which bureaucratic and legal obstacles deny the poor their right to own and represent their assets. His approach shows how people can opt for the poor to join in solidarity with them by identifying and eliminating the legal and institutional barriers that currently marginalize these people. Although no one approach can solve all the problems faced by those living in LDCs, Hernando de Soto's strategy to promote and protect property rights is an important step in the struggle to overcome economic injustice.

To demonstrate how each party can benefit from one another's ideas and perspectives, it is important to recognize some of the obstacles to link de Soto's work with Catholic social teaching. Catholic social teaching raises significant questions for de Soto's work because he places a heavy emphasis on an individual's *absolute* right to own and use property. Although Catholic social teaching supports the right of a person to own and use property, its more communitarian framework for understanding property ownership and its use challenges de Soto to reconsider the responsibilities that come with property ownership. Indeed, Catholic social teaching contends that private property, regardless of the concrete forms of the regulations and juridical norms relative to it, is in its essence only an instrument for respecting the principle of the universal destination of

⁵⁰ In chapter 6, I will substantiate these claims in my discussion about how the work of Hernando de Soto relates to Catholic social teaching.

goods; in the final analysis, therefore, it is not an end but a means.⁵¹ Thus, a dominant question throughout this work is, “How can Catholic social teaching augment de Soto’s work by linking his ideas about property rights to a theological anthropology that makes the dignity and social nature of the human person central to its social teaching?” Although de Soto attempts to address the needs of the poor by helping them to gain ownership over their assets through solidifying their property rights, he employs a libertarian anthropology that makes it difficult to provide an adequate rationale for why it is important to stand in solidarity with the poor. In contrast, Catholic social teaching, with its commitment to a preferential option for the poor, has led the church to examine which economic structures best serve human dignity and meet the material needs of the poor. Catholic social teaching emphasizes a more organic view of ownership. It views the goods of the earth as intended for all people and it sees the human person as a social creature created in the image and likeness of God who engages in economic activities to satisfy basic human needs, which also allows people to serve the whole of society. The kind of anthropology Catholic social teaching provides can help de Soto to go ever further toward helping the poor to meet their material needs because its more communitarian view of the person in society provides better resources for why it is vitally important to stand in solidarity with the poor. The more communitarian framework of Catholic social teaching for understanding the duties and responsibilities that come with property ownership therefore augments the kind of anthropology de Soto’s employs to underwrite his commitment to property rights.

⁵¹ Council for Justice and Peace, *The Compendium of the Social Doctrine of the Catholic Church*, available from http://www.vatican.va/roman_curia/pontifical_councils/justpeace/documents/rc_pc_justpeace_doc_20060526_compendio-dott-soc_en.html#Origin%20and%20meaning; Internet; accessed 22 July 2006.

Although there are many ways that the theological anthropology that underwrites Catholic social teaching can benefit de Soto's work, his investigation provides this tradition with a more robust investigation into the ways people can use their assets to sustain and generate wealth. Although Catholic social teaching positively supports the right to both own and use property to meet one's basic material needs, it is important to ask whether a simple affirmation of this right leads to any greater clarity about the ways that people can utilize this right effectively to help the poor to fulfill their basic needs. De Soto's many years of working in developing nations, which has allowed him to see the negative impact the disenfranchisement of people's property rights have had on poor people, can provide the tradition with a guide who can both explain why poverty persists in the developing world and offer solutions to eliminate it. Thus, de Soto's work not only uncovers why people are disenfranchised from their property rights, but his analysis lucidly defends the idea that it is necessary to expand the realm of ownership among the poor to create a living environment that produces a greater sense of solidarity among all people, which advances an essential ideal of Catholic social teaching.

Chapter 2

Catholic Social Teaching and the Right to Private Property: History, Strengths, Weaknesses, and Future Directions

In chapter 1, I briefly discussed why poverty in the developing world is a source of hardship for people who live in LDCs. Today, the situation for those living in these nations remains bleak as evidenced by the alarming statistical evidence mentioned earlier. I argued that on the most basic level poverty negatively affects a person's physical existence.¹ I also discussed in chapter 1 that the impact of poverty goes well beyond undermining a person's physical existence. Poverty also diminishes a person's capacity to participate in society as an active and equal agent since people in poverty often cannot access such things as basic education and healthcare. The plight of the poor in the developing world therefore challenges both national governments and non-governmental organizations (NGOs), such as the Catholic Church, to find strategies to eradicate poverty in the developing world. As Pope John Paul II said in his 1993 World Day for Prayer for Peace message,

No country by itself can succeed in such an undertaking. For this very reason, it is necessary to work together, with that solidarity demanded by a world, which has become ever more interdependent. To allow situations of extreme poverty to persist is to create social conditions ever more exposed to the threat of violence and conflict.²

¹ For example, more than 800 million people have too little to eat to meet their daily energy needs. For young children, the lack of food can be perilous since it retards their physical and mental development and threatens their very survival. More than a quarter of children under age five in developing countries are malnourished. See The United Nations, "The Millennium Development Goals Report," available from <http://unstats.un.org/unsd/mi/pdf/MDG%20Book.pdf>; Internet; accessed 29 June 2006.

² Pope John Paul II, "Message of His Holiness Pope John Paul II for the XXVI Annual World Day of Prayer for Peace: If You Want Peace, Reach Out to the Poor," available from http://www.vatican.va/holy_father/john_paul_ii/messages/peace/documents/hf_jp-ii_mes_08121992_xxvi-world-day-for-peace_en.html; Internet; accessed 29 June 2006.

In order to stand in solidarity with the poor, the Catholic Church over the past century has developed a body of social teachings whose purpose primarily has been to enlighten, inspire, and guide moral reform on social matters. Although there is no official canon of Catholic social teaching, general agreement exists on the major documents belonging to this tradition. One of the key issues that the church has repeatedly addressed in these documents is the right of persons to own and use property. The church's worldwide, transnational extent has given it vital experience of nearly all of the economic systems that have been developed, and its historical memory is a long one. It is not surprising, therefore, that the right to own and use property has received extensive treatment in the tradition of Catholic social teaching because issues surrounding who determines and arranges systems regarding the possession and use of the material goods of the earth greatly influences the lives of so many people. A corpus of social teaching without a long-term engagement pertaining to this important right would have left the tradition in the perilous position of being potentially unable to deal with the great and challenging social questions that emerged over the past one hundred years. In order to identify the strengths and weaknesses of the tradition regarding its teachings about this right, the section below provides a historical review of the papal social encyclicals that dealt with the right to private property. To elucidate both the strengths and weaknesses of this tradition about this right, a historical review of this important subject is required. It is to these issues that I now turn.

- a. A History of the Right to Private Property in Catholic Social Teaching

- a. Pope Leo XIII and *Rerum Novarum* on Private Property

Pope Leo XIII wrote *Rerum novarum* in 1891 in the aftermath of a genuine revolution, the Industrial Revolution that began in England with the invention of the steam engine and its application as an energy source for factories. Over the course of time, this revolution spread throughout Western Europe. The advancement of this revolution brought with it a number of changes to the economic and social landscape of Europe. Some of the most important economic changes that took place were advantageous to capital. These included “a steady supply of surplus labor, wages set at the lowest level possible, and the need for long hours of labor by all members of a family merely to survive.”³ Socially, Western Europe experienced a large migration from rural to urban settings. This led to changes in family life including a shift in the family as a unit of production to a unit of consumption.

The immediate problem Pope Leo wished to address in *Rerum novarum* was how to bridge the wide gulf that separated the wealthy few from the impoverished masses. *Rerum novarum* responded to these challenges from the perspective of natural law articulated from within the context of Christendom. Leo at this point in history still assumed the normative status of the Catholic Church in Western Europe as the institution, as Thomas Shannon says, that “legitimated other social institutions as well as having the moral authority to prescribe solutions to various problems.”⁴ Leo saw the natural law as the framework for civil law and, similar to many contemporaries in the Church, viewed it

³ Thomas A. Shannon, “Commentary on *Rerum novarum* (The Condition of Labor),” in *Modern Catholic Social Teaching: Commentaries and Interpretations*, ed. Kenneth R. Himes, O.F.M. (Washington, D.C.: Georgetown University Press, 2005), 134.

⁴ *Ibid.*

in the traditional framework of a predominately static understanding of both nature and society.

His view of society and understanding of natural law led him to point out the ill effects of liberalism and socialism, which were the two dominant ideological systems at the time. On the one hand, Leo criticized liberalism for its excessive individualism and definition of freedom as exemption from external constraint. On the other hand, he expressly condemned socialism for its denial of individual liberty through the suppression of private property. While Leo lauded socialism's eagerness to find a cure for the cupidity stimulated by the free-enterprise system, he saw the proposed solution, namely, the total suppression of private property, as worse than the disease itself.⁵

The core of *Rerum novarum* is its insistence on the concept of private property. In the encyclical, Leo provides four main reasons why people have a right to private property. First, he says the possession of property distinguishes humans from other animals, for property allows human beings to go beyond the animal instincts of self-preservation and the propagation of the species to preparing for the future.⁶ Second, following up the necessity of planning, for human needs recur and demand future provision, Leo asserts we can possess not only the fruits of the earth but also the earth itself; for of the products of the earth human beings can make provision for the future.⁷ Third, according to the natural law, when human beings use their industry to procure the fruits of nature by that act they should possess that portion as their own, and should have a right to

⁵ Ernest L. Fortin, "Sacred and Inviolable": *Rerum Novarum* and Natural Rights," *Theological Studies* 53 (1992): 207.

⁶ *Rerum novarum*, no. 4.

⁷ *Rerum novarum*, no. 6.

keep it without molestation.⁸ Finally, Leo argues that since the family is the first natural society,⁹ within the family the father, in his capacity as its head, has the duty to provide for his family.¹⁰

Leo makes private property a central concept in *Rerum novarum* because he proposed it as a solution to combat the ill effects of the two dominant ideologies, especially socialism. Leo perceived that the socialists were undercutting rights to property and were demanding a redistribution of property – and that implied the right to seize state property. Leo proposed, in contrast, that the ability to own property was a way out of poverty for workers because it provided some level of security. He also believed the denial of the right to own property would remove the necessary incentives to ingenuity and cause the fountains of wealth to dry up.¹¹ As a result, the working principle that Leo established in *Rerum novarum* is that private ownership is rooted in the law of nature (natural law), is in conformity with human nature, is enforced by legitimate civil law, and the authority of Divine Law.¹²

The odd thing about Leo’s teaching on private property is that he appears to give this right a higher status than did St. Thomas Aquinas. This is unusual since in the encyclical *Aeterni patris* (1879) Leo sought to restore Thomism as the perennial philosophy

⁸ *Rerum novarum*, no. 7.

⁹ *Rerum novarum*, no. 10.

¹⁰ Shannon, “Commentary on *Rerum novarum* (The Condition of Labor),” 135-136.

¹¹ Fortin, “‘Sacred and Inviolable’: *Rerum Novarum* and Natural Rights,” 207. See also *Rerum novarum*, no. 22.

¹² See *Rerum novarum*, no. 8.

of Catholicism.¹³ Leo knew that Thomas was a defender of property rights. Although St. Thomas did not provide a formal treatment of the ways in which people acquire property rights,¹⁴ he believed that possession of external things is natural to human beings.¹⁵ In the *Summa Theologica*, Aquinas argued that human beings have competency over the procurement and dispensing of possessions for three reasons.¹⁶ First, when people hold possessions in common, they tend to neglect them. Second, people often avoid work when holding possessions in common, which leads to an inefficient use of resources. Finally, holding possessions in common often leads to discord and quarrelling.¹⁷ St. Thomas, however, believed that the right to possessions had a limitation. Human beings ought to *use* their possessions for the benefit of the common good.¹⁸ He justifies the appropriation of particular resources on general justice. In other words, “on the advantages which such appropriation is likely to bring to all members of the community.”¹⁹ This connection between individual ownership of property and, what we call today, the universal destination of material goods remains an important part of Catholic social teaching.

In contrast, Leo describes the right to own property as a natural right whereas St. Thomas saw that the possession of property to be the result of human positive law. Aquinas

¹³ *Aeterni patris*, no. 31.

¹⁴ John Finnis, *Aquinas: Moral, Political, and Legal Theory* (Oxford: Oxford University Press, 1998), 189.

¹⁵ ST II-II q. 66 a. 1.

¹⁶ ST II-II q. 66 a. 2.

¹⁷ Finnis, *Aquinas: Moral, Political, and Legal Theory*, 190.

¹⁸ ST II-II q. 66 a. 2.

¹⁹ Finnis, *Aquinas: Moral, Political, and Legal Theory*, 189-190.

nas's position is that "a private property system of control is a social convention that *does not violate* the natural law but can be justified on grounds of practical expediency."²⁰ As

Aquinas says,

Now, according to the natural order instituted by divine providence, material goods are provided for the satisfaction of human needs. Therefore the division of and appropriation of property, that proceeds from human law, must not hinder the satisfaction of man's necessity for such goods. Equally whatever a man has in superabundance is owed, of natural right to the poor for their sustenance.²¹

The benefit of Aquinas's teaching is that possession of property may not be a natural right in the way that Leo expresses it. Aquinas recognizes a claim to property that must be respected, but sees the social organization of property or its distribution as a social issue rather than as a right. As Jean Porter says,

Aquinas does not quite say that in a situation of extreme need a poor person has a right to the goods of the rich person. But in effect, he does say that the poor person in this situation is immune from punishment if she takes the goods of the rich.²²

It is possible to argue that in the late thirteenth century many scholars went even further along this path than Aquinas did. As Porter says, some scholastics argued "the claims of the poor for material necessities constituted a right which should be safeguarded by law, and generated new legal institutions for adjudicating and safeguarding these claims."²³

Thus, there is a commitment in the work of St. Thomas that the right that one has over

²⁰ Manuel Velasquez, "Gaudium et Spes and the Development of Catholic Social-Economic Teaching," in *Questions of Special Urgency*, ed. J.A. Dwyer (Washington, D.C.: Georgetown University Press, 1986), 197.

²¹ ST II-II 66.1.

²² Jean Porter, *Nature as Reason: A Thomistic Theory of the Natural Law* (Grand Rapids, M.I.: Williams B. Eerdmans Publishing Company, 2005), 23.

²³ Ibid.

property can be qualified by the needs of others.²⁴ The shift away from Thomas's thinking on private property becomes explicit in *Rerum novarum* 7 when Leo identifies the procurement of ownership of property as the result of one's labor.²⁵

Leo's shift in emphasis in the encyclical borrows more from the tradition of the philosopher John Locke than from those of the Medieval Scholastics. Locke's theory of the social contract rests less on the precepts of natural law than the preservation of the natural right to property. He asserted that private property exists within the state of nature before the presence of governments "because people needed to claim as their own the fruits from the trees in 'the commons' which they had to eat to survive."²⁶ Indeed, in Locke's *Two Treatises of Government*, he secures the rights of the individual against government, including the right to property.²⁷ Locke believed the preservation of property "is the chief reason why individuals place themselves under government, but government does not grant the right to property."²⁸ Instead, according to Locke,

Though the earth and all inferior creatures be common to all men, yet every man has a 'property' in his own 'person.' This nobody has any right to but himself. The 'labor' of his body and the 'work' of his hands, we may say, are properly his. Whatsoever, then he removes out of the state that Nature hath provided and left it

²⁴ Virpi Mäkinen provides an interesting discussion of the ways property rights were qualified during the medieval period in relation to the Franciscan order and their commitment to their vow of poverty. He claims the basis of the qualification to the right to own property is that each person has the higher obligation to him or herself, namely, to his or her self-preservation. Following from this obligation, one has certain rights that cannot be lawfully renounced. No one can give up such a right to self-preservation, even by virtue of the religious reasons. See Virpi Mäkinen, "Individual Natural Rights in the Discussion of Franciscan Poverty," *Studia Theologica* 53 (1999) 53-54.

²⁵ *Rerum novarum*, no. 7.

²⁶ Fortin, "'Sacred and Inviolable': *Rerum Novarum* and Natural Rights," 208. See John Locke, *Two Treatises on Government*, edited with an introduction and notes by Peter Laslett (Cambridge: Cambridge University Press, 1963; reprint, New York: Mentor, 1965; originally published 1690; 2nd ed. 1694; 3rd ed. 1698); 220.

²⁷ John Locke, *Two Treatises on Government*, the First Treatise comprises 175-298 in this volume.

²⁸ Shannon, "Commentary on *Rerum novarum* (The Condition of Labor)," 142.

in, he hath mixed his labor with it, and joined it something that is his own, and thereby makes it his property.²⁹

It is easy to perceive the influence that Locke had on Leo's ideas in *Rerum novarum*. This influence, however, obscured Thomas's earlier emphasis on the use of possessions to benefit the common good, especially the poor. This undercut the earlier ecclesial tradition of the priority of the communality of all property.³⁰

Although Leo's principal concern was with the modern laborer and his earnings, some have argued that his "proclamation of the sacredness of private property benefited the rich as much if not more than it did the poor."³¹ On the one hand, it is possible to argue that the elevation of the right to own property as a natural right gives this important document within the corpus of Catholic social teaching an overtly negative face to those who are poor and marginalized. For if God ordained property rights, He must have ordained the inequalities they necessarily entail. As Dan Usher says about some theologically based justifications for the protection of private property,

God must approve of the plutocrat in his mansion and the bum begging on the street. That divine authority stands behind the great disparities of wealth we observe around us is a proposition which may be congenial to the wealthy but is somewhat difficult for the rest of us to swallow.³²

On the other hand, and more positively, it is possible to reconcile the right to ownership of property with Leo's emphasis on the social obligations that come with ownership. In *Rerum novarum*, Leo discusses that just ownership requires meeting one's obligations to

²⁹ Locke, *Two Treatises on Government*, 221.

³⁰ Shannon, "Commentary on *Rerum novarum* (The Condition of Labor)," 142.

³¹ Fortin, "'Sacred and Inviolable': *Rerum Novarum* and Natural Rights," 208.

³² Dan Usher, "The Justification of Private Property," in *Ethics and Capitalism*, edited by John Douglas Bishop (Toronto: University of Toronto Press, 2000), 70-71.

both the poor and workers. In the case of the poor, this requires the duty of charity or benevolence. Although Leo did not emphasize, like later pontiffs, the role large-scale social institutions play in addressing the needs of the poor, he did provide the grounds to link the natural right to own property with the concept of stewardship. As Patricia Werhane contends,

Thus, *Rerum novarum* challenges both Marxism and economic egoism. It links alienation to poor working conditions and the inability to own property rather than to the nature of work itself. The economic leveler of greed is not socialism nor the market but the obligation *to expand and extend property ownership*. Stewardship thus conceived as linking property with concomitant obligations implies a sense of social justice parallel to the demands of the nineteenth century populists that safeguard individualism without sacrificing the goal of economic redistribution.³³

b. Pius XI and *Quadragesimo anno* on Private Property

Pope Pius XI (Ambrogio Damiano Achille Ratti) wrote *Quadragesimo anno* at the midpoint of his papacy in 1931. His pontificate spanned seventeen tumultuous years (1922-39). From the aftermath of World War I, to the rise of Soviet Communism in Russia, to the spread of fascism in Italy and Nazism in Germany, to the collapse of the international economy that incited a worldwide depression, Pius led the church in a climate thick with political and economic tension. One of the most important achievements of *Quadragesimo anno* was that it commemorated Pope Leo XIII's *Rerum novarum*. Neither of Pius's two predecessors, nor his successor Pius XII, did so. By confirming Leo's work, *Quadragesimo anno* "helped assure that during the century to come, the Catholic Church would treat the task of relating faith to socioeconomic concerns as an integral di-

³³ Patricia Werhane, "The Obligatory Nature of Stewardship in *Rerum novarum* and Its Relevance to the American Economy," in *Rerum Novarum: Celebrating 100 Years of Catholic Social Thought*, ed. Ronald F. Duska (Lewiston, N.Y.: Edwin Mellen, 1991), 197, emphasis added.

mension of its mission.”³⁴ Indeed, Pius, forty years later, built upon the foundation of *Rerum novarum* and introduced new concepts that would significantly add to the body of Catholic social teaching.

The release of the encyclical came after the Vatican had signed the Lateran Treaty and Concordat with the fascist government of Benito Mussolini in 1929. “This treaty had relinquished Vatican claims to sovereignty over the former Papal States, including Rome, officially ratifying circumstances that had obtained since 1870.”³⁵ Even though the church maintained legal jurisdiction over the 108.7-acre state, the Lateran pacts also promised protection for various church ministries including the educating of youth, upholding marriage and the family, and supporting the myriad associations that constituted the lifeblood of the Church’s everyday activities that were important to Pius.³⁶ Mussolini ignored these provisions when he ordered numerous Catholic organizations closed down by the state police on the charge that they were functioning as political rather than religious entities. As a result,

Quadragesimo anno played its part in the pope’s ongoing tightrope walk aimed at maintaining the Church’s mission as distinct from political engagement or civil control, while using ecclesial authority and clout in ways that challenged, if circumspectly, Mussolini’s totalitarian designs.³⁷

In regards to the right to private property, Pius emphasizes a new dimension in *Quadragesimo anno*: the social dimension. *Quadragesimo anno* 44-52 reaffirms Leo’s

³⁴ Christine Firer Hinze, “Commentary on *Quadragesimo anno* (After Forty Years),” in *Modern Catholic Social Teaching: Commentaries and Interpretations*, ed. Kenneth R. Himes, O.F.M. (Washington, D.C.: Georgetown University Press, 2005), 153.

³⁵ *Ibid.*, 152.

³⁶ *Ibid.*

³⁷ *Ibid.*

commitment in *Rerum novarum* to own private property, but it places more emphasis on the use of possessions for the benefit of the common good.³⁸ As discussed earlier, critics of *Rerum novarum* point out that Leo did not sufficiently develop the social dimension of private property to balance the personal dimension. As Matthew Habiger, O.S.B. says,

When distinguishing between ownership and use, *Rerum novarum* places emphasis upon ownership. When the use of private property is mentioned, more emphasis is given to the private dimension, rather than the social dimension of property.³⁹

Pius XI expands the discussion about the use of property in *Quadragesimo anno* 44. He defends Leo's position in *Rerum novarum* against the charge that the Catholic Church upheld the wealthier classes against the working class. Although Pius defends Leo's position, he begins his defense of this right by first highlighting the dual aspect of ownership: it is individual *and* social. He acknowledges that God gives the right to own private property so that individuals can provide for their own needs and for the needs of their families. He then criticizes in *Quadragesimo anno* 45-46 the dangers associated with both liberalism and socialism. Pius argues those who deny the social character of property succumb to individualism while those who deny or reject the individual character of private property fall into collectivism.

Pius sought to find a more adequate solution to correct the ill effects of both these ideologies. He primarily does this by distinguishing, in many ways more forcefully than did Leo, the social dimension of the use of private property. For example, in *Quadragesimo anno* 47, Pius says,

³⁸ Pius XI says, "It follows from the twofold character of ownership, which we have termed individual and social, that men must take into account in this matter not only their own advantage but also the common good." See *Quadragesimo anno*, no. 49.

³⁹ Matthew Habiger, O.S.B., *Papal Teaching on Private Property* (Lanham, M.D.: University Press of America, 1990), 86.

That justice called commutative commands sacred respect for the division of possessions and forbids invasion of others' rights through the exceeding of the limits of one's own property; but the duty of owners to use their property only in a right way does not come under this type of justice, but under other virtues, obligations of which "cannot be enforced by legal action." Therefore, they are in error who assert that ownership and its right use are limited by the same boundaries; and it is much farther still from the truth to hold that a right to property is destroyed or lost by reason of abuse or non-use.⁴⁰

Pius argued, on the one hand, that commutative justice requires that people faithfully respect the possessions of others. On the other hand, how one uses one's possessions, though, while not always legally enforceable, is subject to the dictates of other virtues. As a result, "Pius praises civil efforts to specify duties attaching to use in light of the requirements of the common good, but he warns that in so doing one must take care not to destroy or even weaken property's individual character (47-48)."⁴¹

Quadragesimo anno made an important contribution to Catholic social teaching when it affirmed that the social character of private property requires that owners "take into account not only their own advantage but the common good."⁴² Pius argued, "To define the duties relevant to the common good is the function of government."⁴³ He says that government, when necessary and for the sake of the common good, has the responsibility to define the licit and illicit uses of property. The "natural" right to own property remains intact, but Pius affirmed that when, within proper limits, civil authority "adjusts ownership to meet the needs of the public good, the greater justice of the commonwealth

⁴⁰ *Quadragesimo anno*, no. 47.

⁴¹ Hinze, "Commentary on *Quadragesimo anno* (After Forty Years)," 157.

⁴² *Ibid.*

⁴³ *Ibid.*

that results strengthens the legitimate right to private property (48-49).”⁴⁴ By highlighting the communal dimensions of the use of private property, Pius accentuates the idea that

no matter who owns a piece of property, there is a social function inherent in that property. This social function compels its owner to bear in mind that society is to be served by the material goods which the Creator has intended for everyone. This rules out an excessive individualism.⁴⁵

Not only does this teaching curb an excessive individualism, it emphasizes the importance of entrepreneurial investment of extra income to create employment opportunities for others, which Pius regarded as an act of liberality especially appropriate for his day.⁴⁶

c. John XXIII and *Mater et magistra* on Private Property

Before John XXIII (Angelo Roncalli) became Pope in 1958, Pope Pius XII (Eugenio Pacelli) led the Catholic Church from 1939-1958 through the tumultuous years of World War II and its aftermath. Today, most historians agree that the central issue in the assessment of Pius XII as a man, as a Christian leader, and in the interpretation of his pontificate is the adequacy or inadequacy of his response to Hitler’s attempt at a “final solution of the Jewish problem.”⁴⁷ During his pontificate, Pius never issued a social encyclical to commemorate Leo’s *Rerum novarum*, but through a series of Christmas messages, he attempted to proclaim the basic truths of Catholic social teaching, including the right to procure and use property. In the writings of Pius XII, there is no significant

⁴⁴ Ibid., 158.

⁴⁵ Habiger, *Papal Teaching on Private Property*, 81.

⁴⁶ Hinze, “Commentary on *Quadragesimo anno* (After Forty Years),” 158.

⁴⁷ See British historian John Cornwell’s *Hitler’s Pope: The Secret History of Pius XII* (New York, N.Y.: Penguin, 2000) for a critical assessment of Eugenio Pacelli’s years as Pope. For a more sympathetic assessment of his pontificate, see Ronald J. Rychlak’s *Hitler, the War, and the Pope* (New York, N.Y.: Our Sunday Visitor Press, 2000).

change in the Church's social teaching about private property. "By far the most highly emphasized dimension of Pius XII's teaching on property is its role in the establishment of a just world order."⁴⁸ Thus, Pius accepted *Rerum novarum* and *Quadragesimo anno* and referred to them repeatedly. Although his pronouncements do not modify or surrender the basic principles of Catholic social teaching, the lack of specificity with which he applied these principles has led some historians to judge him complaisant or timorous in the face of overwhelming evils. Thus, John Langan, S.J. concludes,

What Pius XII was able to articulate in his Christmas messages during this time of grave crisis was a constrained and restricted repetition of some central values of the Catholic social tradition of social thought, values such as the importance of maintaining the moral character of the state. But these values could easily be seen as tautologies or platitudes, since they were not joined with a perceptive and forthright statement of the actual political and moral situation of Europe in this gravely disturbed time or with a prophetic willingness to denounce evil. Generality and neutrality prevailed over courageous commitment and principled resistance to evil.⁴⁹

The lack of a strong voice to give new direction to Catholic social teaching, however, changed during the pontificate of John XXIII.

Many church historians agree that the brief pontificate of John XXIII (1958-1963) marked a period of renewal within the Catholic Church. As evidence, they point to his calling of the Second Vatican Council and his writing of two major social encyclicals *Mater et magistra* in May 1961 and *Pacem in terris* in April 1963. Both the Second Vatican Council and John's social encyclicals brought a new tone and openness to the Church's reflection on economic and political issues. As historian Garry Wills says,

⁴⁸ Habiger, *Papal Teaching on Private Property*, 153.

⁴⁹ John Langan, S.J., "The Christmas Messages of Pius XII (1939-1945)," in *Modern Catholic Social Teaching: Commentaries and Interpretations*, ed. Kenneth R. Himes, O.F.M. (Washington, D.C.: Georgetown University Press, 2005), 189.

“The encyclicals and the council amounted to a one-two punch by the prime mover behind them both, Pope John XXIII.”⁵⁰ Even though the most lasting legacy of John’s pontificate was his calling of the Second Vatican Council, his two social encyclicals helped to define a vision of the Church that reached out to secular society. While *Pacem in terris* became important because it served as a platform for Catholic social action on behalf of human rights movements in nations such as Chile, South Africa, South Korea, Poland, Guatemala, El Salvador, the Philippines, Mexico, and East Timor, it was *Mater et magistra* where people discovered most explicitly John XXIII’s teaching about the economic order. As a result, its release accomplished many important things in the history of Catholic social teaching.

First, it was the original encyclical to address the problems of the developing world. Second, *Mater et magistra* analyzed “the growing complexity of social relationships in the controversial section on “socialization,” offered concrete strategies in the agricultural sector, and discussed the social dimensions of private property and a just wage.”⁵¹ Third, the encyclical introduced a methodology that was inductive, which opened the door to regional and national articulations of Catholic social teaching that were appropriate for that region, for example, the Conference of Latin American Bishops (CELAM) and the National Conference of Catholic Bishops of the United States. Finally, Donal Dorr believes *Mater et magistra* provided the foreground for later discussions about the need to develop a preferential option for the poor because it challenged

⁵⁰ Garry Wills, *Why I Am a Catholic* (Boston, M.A.: Houghton Mifflin, 2002), 226.

⁵¹ Marvin L. Mich, “Commentary on *Mater et magistra* (Christianity and Social Progress),” in *Modern Catholic Social Teaching: Commentaries and Interpretations*, ed. Kenneth R. Himes, O.F.M. (Washington, D.C.: Georgetown University Press, 2005), 191.

those interested in Catholic social teaching to ask the question, “With whom do we stand?”⁵²

Regarding the right to private property, sections 104-121 of *Mater et magistra* discuss the importance of this right. Overall, John sees the right to private property as but one of a set of interdependent, universal human rights deriving from the inherent dignity of the human person.⁵³ First, John affirms, in agreement with Leo XIII and Pius XI, that this right is permanent and natural to human beings.

The right of private ownership of goods, including productive goods, has permanent validity. It is part of the natural order, which teaches that the individual is prior to society and society must be ordered to the good of the individual.⁵⁴

John follows these statements with the claim that the right to property is required by natural law and part of the plan of divine wisdom.⁵⁵ Third, he joined Leo by emphasizing that individual ownership comes through one’s labor.⁵⁶ Finally, he continued to go beyond Leo’s teaching by joining with Pius XI, who recovered the Thomistic tradition that emphasized that private property is a right to the extent that it serves a social function, in that it helps to promote right order in society and the stewardship of resources. *Mater et magistra* thus defends the right of private property as “a safeguard” and “stimulus” for the “exercise of liberty” and the “rights of the human person”.⁵⁷

⁵² Dorr, *Option for the Poor*,

⁵³ William O’Neill, S.J., “Private Property,” in *The New Dictionary of Catholic Social Thought*, ed. Judith A. Dwyer (Collegeville, M.N.: Liturgical Press, 1994), 789. See *Mater et magistra*, nos. 112-114.

⁵⁴ *Mater et magistra*, no. 109.

⁵⁵ *Mater et magistra*, no. 111.

⁵⁶ O’Neill, “Private Property,” 788.

⁵⁷ *Ibid.* See *Mater et magistra*, nos. 109-112.

One of John's most important contributions to Catholic social teaching is that the right to private property is never merely personal. Instead, John believed the personal right to private property *presumes* the correlative social duty of ensuring not only a broader but more equitable extension of property rights. This becomes evident in section 115 of *Mater et magistra*. John states, "Now, if ever, is the time to insist on a more widespread distribution of property, in view of the rapid economic development of an increasing number of States."⁵⁸ The benefit that John assumed would come with the extension of property rights was a foundation to secure human liberty personally and stability in the political order socially. That is why he states in *Mater et magistra* 111, "Hence private ownership must be considered as a guarantee of the essential freedom of the individual, and at the same time an indispensable element in a true social order."⁵⁹ John was optimistic that nations could rather easily expand ownership among those who lack property rights. He says,

It will not be difficult for the body politic, by the adoption of various techniques of proved efficiency, to pursue an economic and social policy which facilitates the widest possible distribution of private property in terms of durable consumer goods, houses, land, tools and equipment (in the case of craftsmen and owners of family farms), and shares in medium and large business concerns. This policy is in fact being pursued with considerable success by several of the socially and economically advanced nations.⁶⁰

John's teaching implied that "economic growth that a number of nations had experienced led naturally to increased ownership."⁶¹ Donal Dorr sees this as an "uncritical assump-

⁵⁸ *Mater et magistra*, no. 115.

⁵⁹ *Mater et magistra*, no. 111.

⁶⁰ *Mater et magistra*, no. 115.

⁶¹ Mich, "Commentary on *Mater et magistra* (Christianity and Social Progress)," in *Modern Catholic Social Teaching: Commentaries and Interpretations*, ed. Kenneth R. Himes, O.F.M. (Washington, D.C.: Georgetown University Press, 2005), 200.

tion’ and a “blind spot” in papal analysis and thinking.⁶² When comparing John’s analysis to the obstacles associated with expanding property rights among the poor today, his encyclical appears overly optimistic.⁶³ Nonetheless, and to his great credit, John recognized that the expansion of property rights among the poor is an important step in the process of economic development. Today, John’s insight remains a key contribution to Catholic social teaching.

d. Paul VI on Private Property

Giovanni Battista Montana became Pope on June 21, 1963 and served the church for fifteen years until his death on August 6, 1978. He is most widely known for his overseeing the final sessions of the Second Vatican Council and for his encyclical *Humane Vitae* (July 29, 1968). Paul VI also started the trend, continued and expanded by Pope John Paul II, of addressing social questions by traveling to different places around the world. For example, in 1964 he became the first Pope since St. Peter to visit the Holy Land. In October 1965, he addressed the United Nations in New York on the subject of world peace. In 1969, Paul VI traveled to Geneva, Switzerland, in June for an appearance at the Protestant World Council of Churches and two months later to Kampala, Uganda for a two-day visit, making the first time a pontiff ever visited Africa.

The social writings bearing the signature of Pope Paul VI include two Vatican II documents, *Gaudium et spes* (December 7, 1965) and *Dignitatis humanae* (December 7,

⁶² Donal Dorr, “Pope John XXIII – New Directions?” in *Readings in Moral Theology No. 5: Official Catholic Social Teaching*, eds. Charles Curran and Richard McCormick (New York: Paulist Press, 1986), 85. Dorr’s essay can also be found in his book *Option for the Poor: A Hundred Years of Catholic Social Teaching*, rev. ed. (Maryknoll, N.Y.: Orbis Books, 1992), 113-46.

⁶³ As I will discuss in chapter 5, de Soto’s work shows why John’s analysis was overly optimistic regarding the ease with which people could legitimately secure their property rights in developing nations.

1965), and two letters.⁶⁴ The first of these letters is formally an encyclical, *Populorum progressio* (March 26, 1967), and is addressed to the bishops, priests, religious, the faithful, and to all men of good will. The second letter is an “apostolic letter” addressed to Cardinal Maurice Roy, president of the Laity and Pontifical Commission “*Justitia et pax.*” Written on the eightieth anniversary of *Rerum novarum*, it is entitled *Octogesima adveniens*.

A key issue that the social encyclicals of Paul VI address, especially *Populorum progressio*, is the precariousness of economic development. *Populorum progressio* is widely considered the most critical document within the corpus of modern papal Catholic social teaching regarding the dangers of economic development and the strategies employed to alleviate poverty in developing countries. While previous social documents of the Church tended to balance critiques of liberalism or free market capitalism with equal or stronger critiques of collectivism, this encyclical tilts more in the direction of a critique of the type of capitalism currently practiced.⁶⁵

Pope Paul VI responded to the problem of economic development in *Populorum progressio* by advocating an “integral” development where ownership must cultivate the good of all persons. He placed the human person at the center of all his reflections regarding how to measure the benefits of economic development. Paul believed that development must contribute to the blossoming of what is most authentic and deepest in hu-

⁶⁴ The Council Fathers reaffirmed the principle of private property in their treatment of Economic and Social Life in sections 63-72 of *Gaudium et spes*. Their most explicit statement is found in section 71, “Property and other forms of private ownership of external goods contribute to self-expression and provide people with the opportunity of exercising a role in society and in the economy; it is very important, then, to facilitate access to some ownership of external goods on the part of individuals and communities.”

⁶⁵ Allan Figueroa Deck, S.J., “Commentary on *Populorum progressio* (On the Development of Peoples),” in *Modern Catholic Social Teaching: Commentaries and Interpretations*, ed. Kenneth R. Himes, O.F.M. (Washington, D.C.: Georgetown University Press, 2005), 300.

man beings, that which goes beyond the purely economic or material, that is, the spiritual side of the human person and community. He underwrote his idea of an integral development with the concept of solidarity, which means that the rich nations must be concerned about the poor ones.⁶⁶ They must show that concern in practical ways, “such as giving direct aid, establishing fairer trade relations, and seeing to it that no one is left behind as development advances.”⁶⁷ Paul, therefore, challenged the present system of international trading relations, pointing out that they are such that “poor nations become poorer while the rich ones become still richer.”⁶⁸ In this way, Paul did not assume that poverty stemmed from “purely natural causes or the laziness of the people living in the poorest parts of the world.”⁶⁹ Instead, he severely criticized more than his predecessors did a defective capitalist system that negated the great potential of industrialization for human advancement. He provided criteria in *Populorum progressio* to judge the authenticity of development including the way it affects the family, culture, environment, and human persons. Thus, the great benefit of *Populorum progressio* is that it insists on the ethical and philosophical underpinnings of development and, as a result, it makes substantial contributions to the legacy of Catholic social teaching, including expounding the purpose of economic life, “which is for people and for enhancing being, not having.”⁷⁰

⁶⁶ See *Populorum progressio*, no. 43.

⁶⁷ Deck, “Commentary on *Populorum progressio* (On the Development of Peoples),” 303. See *Populorum progressio*, no. 44.

⁶⁸ Dorr, *Option for the Poor*, 186. See *Populorum progression*, nos. 57-60.

⁶⁹ O’Neill, “Private Property,” 789.

⁷⁰ Deck, “Commentary on *Populorum progressio* (On the Development of Peoples),” 310.

Regarding the right to private property, Paul VI denies in *Populorum progressio* and *Octogesima adveniens* that it constitutes an absolute and unconditional right.⁷¹ Paul calls attention to “‘the moral primacy of the common good’ to denounce the ‘oppressive social structures’ originating in the ‘abuses of ownership’ and ‘power.’”⁷² He strongly affirms the insistence on the universal destination of created things consistent with Catholic social teaching. It is in *Populorum progressio* 22-24 where Paul discusses the human right to private possessions most thoroughly. He subordinates this right to the principle that God created everything on earth for the use of every human being. The Bible, Paul VI argued,

teaches us that the whole of creation is for man, that it is his responsibility to develop it by intelligent effort and by means of his labor to perfect it, so to speak, for his use. If the world is made to furnish each individual with the means of livelihood and the instruments for his growth and progress, each man has therefore the right to find in the world what is necessary for himself.⁷³

After commenting that the Second Vatican Council reaffirmed the idea that the goods of the earth and all that it contains are for the use of every human person, Paul claims that all other rights, including those of property and of free commerce, “are to be subordinated to this principle. They should not hinder but on the contrary favor its application. It is a grave and urgent social duty to redirect them to their primary finality.”⁷⁴ As a result, Allan Figueroa Deck, S.J. claims, “This affirmation of the social purpose of private property is still the strongest in Catholic social teaching.”⁷⁵

⁷¹ See *Populorum progressio*, no. 23 and *Octogesima adveniens*, nos. 43-44.

⁷² O’Neill, “Private Property,” 789.

⁷³ *Populorum progressio*, no. 22.

⁷⁴ *Populorum progressio*, no. 22.

⁷⁵ Deck, “Commentary on *Populorum progressio* (On the Development of Peoples),” 300.

Paul's emphasis regarding the social dimension of property is particularly relevant when comparing his work to earlier statements made by his predecessors within the history of Catholic social teaching. In *Rerum novarum*, Leo XIII initiated the tradition of modern Catholic social teaching with an affirmation that all persons have a right to own personal possessions. In his desire to combat the ill effects of socialism and Marxist ideology, he stressed the right of ownership to the detriment to the social responsibilities that come with it. In *Quadragesimo anno*, Pius XI began to reverse this trend by highlighting the social purpose and duty inherent in the possession of private property. In *Populorum progressio*, Pope Paul VI went further than his predecessors did by placing "the social function before the individual right to private property."⁷⁶ This was an important step within the history of Catholic social teaching.⁷⁷ In asking the question about the actions that flow from an awareness of global poverty and economic injustice, "the pope chose to make the topic of the proper role of private property absolutely central."⁷⁸ Although he takes for granted that the right of private property is a well-established fact and many people accept it, his concern was that owners of private property were not giving sufficient attention to the primary finality of all property. Thus, for Paul, all resources for development are to be pooled and utilized where they can best affect the common good. In

⁷⁶ Ibid.

⁷⁷ Despite the generally positive reception *Populorum progressio* received throughout the developing world, especially in Latin America, there were negative critics, particularly in the English-speaking world. One of the most vocal critics of *Populorum progressio* was Michael Novak, who thought the encyclical was "naïve and lacking in humility." Michael Novak, *The Development of Catholic Social Thought* (New York: Harper and Row, 1984), 134. I address Novak's problems with *Populorum progressio* and Paul VI's view on economic development more thoroughly in chapter 3. For an even more critical assessment of *Populorum progressio*, see Robert Royal, "Populorum progressio," in *Building the Free Society: Democracy, Capitalism, and Catholic Social Teaching*, eds. George Weigel and Robert Royal (Grand Rapids, M.I., and Washington, D.C.: William B. Eerdmans Publishing Company and the Ethics and Public Policy Center, 1993), 114-31.

⁷⁸ Deck, "Commentary on *Populorum progressio* (On the Development of Peoples)," 300.

particular, he believed that wealthy nations have a special obligation to help poor nations attain their fair share of the goods of the earth to meet the demands of social justice. As a result, he does not advocate the elimination of the free market. Rather, he wanted to regulate it in such a way to help level the playing field to establish conditions of equality.

e. Pope John Paul II and Private Property

Karol Wojtyla became pontiff of the Roman Catholic Church on October 16, 1978. During his long and remarkable tenure as Pope, John Paul II made significant contributions to the history of Catholic social teaching. The three social encyclicals he wrote between the years 1981 through 1991 evidence this contribution. His first social encyclical, *Laborem exercens*, issued on September 14, 1981, provides the most comprehensive treatment about the dignity of human work in the corpus of Catholic social teaching. *Sollicitudo rei socialis*, issued in December of 1987 to commemorate the twentieth anniversary of *Populorum progressio*, focused on the issue of human development. Finally, in 1991, John Paul commemorated Leo XIII's *Rerum novarum* with *Centesimus annus*. This important letter addressed both the dramatic changes undermining communism in Eastern Europe and the arguments for and against Western capitalism.

Although Pope John Paul II made many considerable contributions to the history of Catholic social teaching, one of the most important was his commitment to explaining the meaning and dignity of human work. Beginning in *Laborem exercens*, he expounded more than any of his predecessors did “a spirituality of work” that related the moral value of labor to the human desire to come closer to God. John Paul believed that work is a vocation to which God calls all human beings. He said,

Work is a good thing for man - a good thing for his humanity - because through work man not only transforms nature, adapting it to his own needs, but he also

achieves fulfillment as a human being and indeed in a sense becomes “more a human being.”⁷⁹

John Paul believed work augmented human dignity in two key ways. First, human labor allows people to achieve self-realization and contribute to the common good. Work allows human beings to exercise virtue and acquire morally virtuous habits that not only benefit the individual person, but also contribute to the well-being of society. Second, John Paul saw the toil of work as a symbol of the human participation in the cross of Christ. He argued,

By enduring the toil of work in union with Christ crucified for us, man in a way collaborates with the Son of God for the redemption of humanity. He shows himself a true disciple of Christ by carrying the cross in his turn every day in the activity that he is called upon to perform.⁸⁰

The belief that Christ reveals what it means to be most authentically human was a theme that John Paul first raised in his encyclical *Redemptor hominis*. In *Laborem exercens* and throughout his other social encyclicals, John Paul returned to this theme repeatedly. He suggests, “Jesus is one with humanity through the suffering and toil that accompany human labor.”⁸¹ As a result, the toil often accompanied by work allows followers to share in the salvific and redemptive cross of Christ. John Paul believed this was a sign that vividly reveals the dignity of the human person.

⁷⁹ *Laborem exercens*, no. 9.

⁸⁰ *Laborem exercens*, no. 27.

⁸¹ Patricia A. Lamoureux, “Commentary on *Laborem exercens* (On Human Works),” in *Modern Catholic Social Teaching: Commentaries and Interpretations*, ed. Kenneth R. Himes, O.F.M. (Washington, D.C.: Georgetown University Press, 2005), 404.

John Paul's belief in the value and dignity of human work as a vocation from God is a central reason why he argued for the priority of labor over capital.⁸² *Laborem exercens* clearly summarizes his ideas. John Paul contended that the ownership of goods and resources must serve human labor. Since human labor is an expression of our subjectivity, capital must serve persons because it is the result of human work. He said,

In view of this situation we must first recall a principle that has always been taught by the church: the principle of the priority of labor over capital. This principle directly concerns the process of production: In this process labor is always a primary efficient cause, while capital, the whole collection of means of production, remains a mere instrument or instrumental cause. This principle is an evident truth that emerges from the whole of man's historical experience.⁸³

John Paul believed capital serves labor because of the fundamental claim of human dignity based upon the doctrine of creation. He wanted "to ensure that each person, regardless of the type or nature of work, is the fundamental value around which work processes are organized."⁸⁴ His anthropology, which made the human person and the value of her work central elements of his social teaching, denies the idea that the principle of maximum profit should serve as the only economic consideration. By placing labor over capital, he recognized in *Laborem exercens* the legitimacy of labor unions, of workers' participation in policy formation, management, and ownership, and of socializing certain

⁸² Capital in *Laborem exercens* refers to the machines and natural resources that the capitalists own and use in production as well as the whole collection of means by which natural resources are appropriated and transformed. He also speaks about what is commonly referred to as "human capital" in *Laborem exercens* 12, which are those entrepreneurs, owners, or holders of the means of production. John Paul's most important contribution regarding the importance of entrepreneurship comes in sections 31-32 of CE. For an excellent summary of the history and importance of entrepreneurship in modern papal thought, see Francis Hannafey, "Entrepreneurship in Papal Thought," *Louvain Studies* 26 (2001) 217-244.

⁸³ *Laborem exercens*, no. 12.

⁸⁴ Lamoureaux, "Commentary on *Laborem exercens* (On Human Works)," 397.

means of production.⁸⁵ Thus, from the earliest stages of his pontificate, John Paul made explicit what many economists often deny – that there are values behind economics.

Pope John Paul II's commitment to the dignity of the human person and her labor had an enormous bearing on his writings regarding the right to private property. Throughout his social encyclicals, John Paul continued the tradition of his predecessors by reaffirming the right to private property while limiting it to meet the demands of the common good. The only thing that surpasses his reliance on the Catholic interpretation of private property in his social teaching is his commitment to the dignity of the human person. His appeal to this interpretation is central to understanding John Paul's analysis of economic life in the modern world. His most notable statements about the right to private property come in *Laborem exercens* and *Centesimus annus*.

In *Laborem exercens*, John Paul continues to emphasize the value and dignity of human labor by stating that people acquire property through work in order that it serves workers.⁸⁶ He continues the tradition of Paul VI by subordinating the right to private property “to a right common to all to use the goods of creation for the fulfillment of persons.”⁸⁷ Therefore, no claims upon material resources are absolute because the goods of the earth are common to all. John Paul grounds this principle in the mystery of creation, where Yahweh is Lord and the only true owner.⁸⁸ He harkens back to the Thomistic tradition, which views private property as a secondary right. Thus, John Paul argued that

⁸⁵ O'Neill, “Private Property,” 789. See *Laborem exercens*, nos. 64-69, 94-100, 102.

⁸⁶ *Laborem exercens*, no. 14.

⁸⁷ William Werpehowski, “Labor and Capital in Catholic Social Thought,” in *The New Dictionary of Catholic Social Thought*, ed. Judith A. Dwyer (Collegeville, Minn.: Liturgical Press, 1994), 526.

⁸⁸ *Laborem exercens*, no. 12.

private property “is a right to the extent that it serves a social function, in that it helps to promote right order in society and the stewardship of resources.”⁸⁹

John Paul’s most important contributions on the subject of property come in *Centesimus annus*, especially in the fourth section entitled, “Private Property and the Universal Destination of Material Goods.” Here again, the Pope argues that the truth about the human person recognizes both the dignity and the solidarity of human persons. This section deals with private property in this light. John Paul begins this section with an endorsement of Leo’s affirmation of the natural character of the right to private property.⁹⁰ He notes that Leo intended his arguments in favor of private property to oppose socialism in the late nineteenth century. Yet, John Paul follows his more recent predecessors by insisting on stronger obligations for property owners, and stronger restrictions on their prerogatives, than did Leo. “This means that the economic efficacy and the moral adequacy of markets must be evaluated in light of the conviction that the goods of the earth are destined for all humans and not simply for the prosperous.”⁹¹ This is an important conviction. John Paul’s

reliance on the notion of the universal destination of material goods stresses the idea underlying the right of individuals to the goods they need, but puts the stress where Aquinas put it: on God’s creative intention for the goods needed, with somewhat reduced emphasis on the claims of individuals.⁹²

⁸⁹ Lamoureaux, “Commentary on *Laborem exercens* (On Human Works),” 398.

⁹⁰ *Centesimus annus*, no. 30.

⁹¹ Daniel Finn, “Commentary on *Centesimus annus* (On the Hundredth Anniversary of *Rerum novarum*),” in *Modern Catholic Social Teaching: Commentaries and Interpretations*, ed. Kenneth R. Himes, O.F.M. (Washington, D.C.: Georgetown University Press, 2005), 446.

⁹² Finn, “Commentary on *Centesimus annus* (On the Hundredth Anniversary of *Rerum novarum*),” 447.

An equally important feature of John Paul’s understanding about property is shifting the argument from the right *of* private property toward the right *to* private property.⁹³ John Paul changed the nature of the debate regarding property rights in order to promote the idea that the poor needed to *participate* more fully in the economic well-being of their communities.⁹⁴ The inability of the poor to participate in many aspects of the global economy is the standpoint from which Pope John Paul II identified and criticized many problems with modern economic development. He believed the current economic system often denies the poor the right to use their talents to support themselves, families, and local communities. He claimed a large number of people today have “no way of entering the network of knowledge and intercommunication which would enable them to see their qualities appreciated and utilized.”⁹⁵ Economic development often takes place above the heads of the poor.⁹⁶ He concluded that a principal problem for the poor of the developing world “is that of gaining fair access to the international market, based not on the unilateral principle of the exploitation of the natural resources of these countries but on the proper use of human resources.”⁹⁷

Thus, Pope John Paul II to his great credit, “is the first pope to emphasize the need for the creation of wealth. This emphasis corresponds not only to the reality of the

⁹³ Ibid.

⁹⁴ I will address the idea of “participation” more fully in chapter 4 in my discussion of the work of David Hollenbach, S.J.

⁹⁵ *Centesimus annus*, no. 33.

⁹⁶ *Centesimus annus*, no. 33.

⁹⁷ *Centesimus annus*, no. 34.

situation but also to John Paul II's understanding of the human person."⁹⁸ The Pope says that in the modern context, "human work, including creativity, invention, and entrepreneurial effort, explains much of contemporary economic activity."⁹⁹ In paragraph 32 of *Centesimus annus*, the Pope broadens the scope of discussion beyond the "natural fertility of the earth" as the main source of production.¹⁰⁰ He recognizes the increasing role of human capital, which is human scientific knowledge and ingenuity. He says,

In our time, in particular, there exists another form of ownership which is becoming no less important than land: the possession of know-how, technology and skill. The wealth of the industrialized nations is based much more on this kind of ownership than on natural resources.¹⁰¹

Again, he makes personal work the linchpin for his advocacy of ownership because human creativity and ingenuity are gifts from God. These gifts allow people to participate in social life and provide opportunities for individuals to benefit the common good, mainly in the form of producing jobs for ordinary workers.¹⁰² John Paul calls attention to the many benefits that result when people use their creativity and ingenuity to elevate the good of society. He says that persons can use their intelligence to discover the earth's productive potential and they can use their capacity to work in common to transform natural and human environments.¹⁰³ Yet, this purpose of capital ownership, in creating jobs that pay a wage sufficient to ensure that the goods of the earth are accessible to all,

⁹⁸ Charles Curran, *The Moral Theology of Pope John Paul II* (Washington, D.C.: Georgetown University Press, 2005), 212.

⁹⁹ Daniel R. Finn, "Creativity: As a Problem for Moral Theology: John Locke's 99 Percent Challenge to the Catholic Doctrine of Property," *Horizons* 27 (2000): 53.

¹⁰⁰ *Ibid.*

¹⁰¹ *Centesimus annus*, no. 32.

¹⁰² *Centesimus annus*, no. 32.

¹⁰³ *Centesimus annus*, no. 32.

means that ownership becomes illegitimate if it contravenes this goal. Thus, John Paul stated in *Centesimus annus* 43,

Ownership of the means of production, whether in industry or agriculture, is just and legitimate if it serves useful work. It becomes illegitimate, however, when it is not utilized or when it serves to impede the work of others, in an effort to gain a profit which is not the result of the overall expansion of work and the wealth of society, but rather is the result of curbing them or of illicit exploitation, speculation or the breaking of solidarity among working people. Ownership of this kind has no justification, and represents an abuse in the sight of God and humanity.¹⁰⁴

In paragraph 42 of *Centesimus annus*, John Paul provides Catholic social teaching with guideposts about which kind of economy best supports human dignity and the social nature of the person. He said a “free economy” is one that recognizes the fundamental and positive role of business, the market, private property, and the resulting responsibility for the means of production, as well as free human creativity in the economic sector.¹⁰⁵ John Paul’s approval of a free economy supports his notions of work and solidarity because “the ordinary way for humans to partake of the earth is to work with others in production so that, in the process, a portion of that world can meet their needs.”¹⁰⁶ Sustaining a free economy requires a strong juridical framework, where the rule of law governs the market to guarantee the basic needs of the whole of society. He argued that the social teaching of the church supports these kinds of economies when they respect human dignity through allowing broad areas of participation for workers in the life of industrial enterprises and when laborers can work for themselves.¹⁰⁷

¹⁰⁴ *Centesimus annus*, no. 43.

¹⁰⁵ *Centesimus annus*, no. 42.

¹⁰⁶ Daniel R. Finn, “John Paul II and the Moral Ecology of Markets,” *Theological Studies* 59 (1998): 667.

¹⁰⁷ *Centesimus annus*, no. 42.

The right to own property in the social teaching of Pope John Paul II therefore remains “under a ‘social mortgage,’ which means that it has an intrinsically social function based upon and justified precisely by the principle of the universal destination of goods.”¹⁰⁸ The universal destination of material goods means that the primary canon of just distribution of material goods is human need. In light of John Paul’s analysis, Daniel Finn suggests, “Not only do those who own property have a right to it but all persons have a claim on property, a right to have sufficient amounts of it to maintain themselves and those for whom they have responsibility.”¹⁰⁹ The consequence of this teaching is that when large numbers of people remain in poverty, those who have an excess of the earth’s goods and resources have a moral obligation to share them with the community. Indeed, the forces of society and the state should see that the basic needs of the whole society and of individuals are satisfied.¹¹⁰ The combination of these insights provides the theological foundation for John Paul II’s commitment to a preferential option for the poor.¹¹¹ Even though he distances himself from liberation theology by emphasizing love and charity and by referring to the entire tradition of the church, John Paul pays particular attention to the damages caused by the mass of material poverty in the developing world.¹¹² Although John Paul argued that the preferential option is never exclusive or discriminatory toward other groups, there is little doubt, especially in light of his commitment to the

¹⁰⁸ Finn, “John Paul II and the Moral Ecology of Markets,” 668.

¹⁰⁹ Finn, “Commentary on *Centesimus annus* (On the Hundredth Anniversary of *Rerum novarum*),” 446.

¹¹⁰ *Centesimus annus*, no. 32.

¹¹¹ Finn, “John Paul II and the Moral Ecology of Markets,” 668.

¹¹² *Centesimus annus*, no. 57.

principle of solidarity that standing with the poor was an important element of his social teaching.¹¹³

b. Strengths and Weaknesses of Catholic Social Teaching Regarding the Right to Private Property

From Pope Leo XIII to Pope John Paul II, Catholic social teaching has supported a person's legitimate right to own property. Although the tradition made a shift from the past by returning to its Thomistic roots by emphasizing more directly the concept that those who own an excess of property must use their surplus to benefit the common good, Catholic social teaching remains steadfast in its support of a person's right to own property. Catholic social teaching affirms this right today not only from the standpoint of natural law, but from an anthropological conviction about the human person that this right augments human dignity through providing people with the means to participate in the economic well-being of society. Catholic social teaching contends that without this right people lack the resources to provide for their own material needs and for the needs of their families. Thus, each pontiff over the past one hundred years has employed the church's teaching about private property to identify flaws in the economic order.

In the beginning of the tradition, Pope Leo XIII used the church's teaching about private property to condemn socialism. More recently, Pope John Paul II addressed flaws in the economic order by employing the tradition's teaching about private property. On the one hand, he pointed out that a root cause of poverty in the modern world is the inability of millions of people to participate in the global market because so many people

¹¹³ The term "solidarity" appears fifteen times in *Centesimus annus*. Although John Paul does not define the term, Daniel Finn suggests, "it clearly includes both a moral empathy toward all others, especially the well-to-do toward the poor and weak, as well as concrete action in support of this commitment." Finn, "Commentary on *Centesimus annus* (On the Hundredth Anniversary of *Rerum novarum*)," 449.

are denied their legitimate right to own property. On the other hand, he challenged those who own an excess of property to use their entrepreneurial skills and the God-given resources of the earth to enhance the well-being of society. Today, the tradition of Catholic social teaching continues to use its teaching about private property to help followers and all people of good will to work for both personal and institutional renewal regarding contemporary economic life. As a result, in light of its teaching about the ownership and use of property, the tradition continues to try to guide and inspire reflection about the best economic structures to sustain the material needs of all people, especially the poor. Thus, the tradition's "solidaristic" understanding of the human person and support for a person's legitimate right to own property serves, on the one hand, to highlight the benefits of markets and the ways they help people to use their gifts and talents and the goods of the earth to meet productively and efficiently their material needs. On the other hand, social Catholicism uses its anthropology to correct the imbalance of modern market economies, including the fact that they are often driven by a reductionist notion of the person as an isolated individual consumed with maximizing self-interest.¹¹⁴ It is from this anthropological conviction that the tradition has returned to Aquinas's earlier notion that the use of private property must benefit the common good. Indeed, Catholic social teaching claims,

the universal destination of goods entails obligations on how goods are to be used by their legitimate owners. Individual persons may not use their resources without considering the effects that this use will have, rather they must act in a way that benefits not only themselves and their family but also the common good. From this there arises the duty on the part of owners not to let the goods in their possession go idle and to channel them to productive activity, even entrusting

¹¹⁴ John Coleman, S.J., "The Future of Catholic Social Thought," in *Modern Catholic Social Teaching: Commentaries and Interpretations*, ed. Kenneth R. Himes, O.F.M. (Washington, D.C.: Georgetown University Press, 2005), 537.

them to others who are desirous and capable of putting them to use in production.¹¹⁵

Today, this remains one of the most important contributions that Catholic social teaching has made to the contemporary discussion about the ownership and use of property. The advancement of the idea that the material goods of the earth are intended for all people and that the social function regarding the use of property limits an individual's claim of ownership, especially when the material needs of large numbers of people go unmet, adds significantly to a modern understanding of property rights.

In spite of the many positive contributions that Catholic social teaching has made to discussions regarding a person's legitimate right to own property, several problems persist concerning its defense of this right. One of the most pressing issues that the tradition of Catholic social teaching faces is its lack of specificity regarding how to balance, on the one hand, a person's legitimate right to own property with, on the other, how persons should use their possessions to benefit the common good. Although the tradition acknowledges more forthrightly than in the past the challenges associated with the use of property, the tradition fails to address these questions, "When is it proper to distribute one's individual property for the benefit of the common good? What social institution should facilitate these processes? What criteria should people use to evaluate whether these institutions are meeting basic human needs?" These remain important questions. For in an age when multinational firms challenge both civil society and the nation-state because of their ability to move their operations to other nations with less restrictive labor

¹¹⁵ Council for Justice and Peace, *The Compendium of the Social Doctrine of the Catholic Church*, available from http://www.vatican.va/roman_curia/pontifical_councils/justpeace/documents/rc_pc_justpeace_doc_20060526_compendio-dott-soc_en.html#Origin%20and%20meaning; Internet; accessed 22 July 2006.

and property laws, the tradition's reliance on these mediating sources of authority to help the poor appears tenuous in light of this new global situation. The ability of the tradition to answer these questions will determine whether it remains an important participant in debates regarding economic development throughout the world. The tradition of Catholic social teaching will remain important only if it addresses the new questions brought forth with the changes emerging from the signs of the times. The challenge before Catholic social teaching is to translate its teachings about property rights into policy to guide policy studies, advocacy, and social choices. It was important in the past that the largest NGO in the world provided general guidelines and philosophical pronouncements about the duties and responsibilities that come with property ownership. It is also important that it continue to speak out on behalf of the poor by calling for the expansion of this right to those currently excluded from the global market. Indeed, its anthropological presumptions can, if put into policy, make for a more humane society. Yet, without concrete proposals or policy applications to establish these principles within the global market, the relevance of Catholic social teaching to the global discussion about the ownership and use of property will diminish.

Another important issue that Catholic social teaching needs to clarify, especially in light of its commitment to a "preferential option for the poor," is which wing of its anthropological heritage best helps those mired in poverty throughout the developing world. The tradition affirms many of the most important tenets of the liberal tradition, including the right to own and use property, which allows people to engage in business activity. Catholic social teaching also affirms many ideals closely associated with communitarian philosophical traditions. This is evident in the way Catholic social teaching challenges

many aspects of the contemporary global market including the way it denies those who lack purchasing power to enter the market and buy the things they need. Catholic social teaching criticizes this aspect of the global market because it denies people the ability to participate in the economic well-being of society. It also criticizes other elements of the global market in the way it often disenfranchises people from participating in their nation's political and social development.

One area where this tension appears most clearly among supporters of Catholic social teaching is in the way adherents to the tradition understand the kind of role that states should play in the structuring of the global market, especially when the material needs of large numbers of people go unmet. For example, Michael Novak stresses the libertarian tradition of Catholic social teaching because he thinks the institutionalization of “democratic capitalism” helps to promote individual freedom and human creativity. He argues that when people receive the opportunity to pursue their own limited self-interest, they will use their gifts and talents to meet their material needs. Novak concludes that those who favor command economies lack the insight that free and intelligent persons can generate a spontaneous economic order that is more productive, efficient, and better suited to meeting the economic needs of the poor than planned economic systems.¹¹⁶ David Hollenbach, on the other hand, identifies more with the communitarian tradition of Catholic social teaching. Hollenbach contends that social justice deals with and addresses the major institutions that enhance or impede people's participation in creating and benefiting from the common good. His vision of social justice calls attention to the social structures that handicap the poor from entering the global market. He advo-

¹¹⁶ Novak, *The Catholic Ethic and the Spirit of Capitalism*, 101.

cates that governments need to reform the market when they do not help the poor to meet their basic material needs. When the institutional arrangements prevailing in developing countries prevent numerous people from sharing in social goods to the level required by their dignity as members of the human community, this violates the requirements of distributive justice. When important economic and social institutions create barriers that disable the poor from meeting their basic material needs, these institutions require alteration. Thus, I examine in the next two chapters their contrasting visions of the human person. The purpose of this examination is to look at which tradition best represents Catholic social teaching and provides the soundest foundation on which to build a market system that promotes human dignity and human rights. It is to these issues that I now turn.

Chapter 3

1. Michael Novak and His Defense of Democratic Capitalism

a. Novak's Early Intellectual Roots and Support for Democratic Socialism

Michael Novak was born in 1933 to a working class family in Johnston, Pennsylvania. He spent much of his early years training for the priesthood before leaving the seminary to pursue a life as an intellectual. In the early 1960s, his work reflected a struggle to integrate his life as a citizen of the United States with his Catholic religious background. Novak's first published series of essays were entitled *A New Generation: American and Catholic*.¹ In 1964, he published a report on the second session of the Second Vatican Council called *The Open Church*.² Novak positively assessed many of the changes that took place during the Council (1962-1965), especially the church's eventual pronouncement on religious liberty *Dignitatis humanae*. These early works reveal several prominent themes that would later emerge in Novak's writings. They elucidate the benefits associated with American liberal institutions and the ways Catholic religious practices can transform and enrich these institutions by strengthening their moral foundations.

Novak's working class background and interest in Catholic social teaching led him to investigate the political and economic foundations of modern life during the late 1960s and early 1970s. Novak primarily thought of himself as a democratic socialist and he allied himself with democratic socialist writers.³ He acknowledges that during this

¹ Michael Novak, *A New Generation: American and Catholic* (New York, N.Y.: Herder & Herder, 1964).

² Michael Novak, *The Open Church* (New York: Macmillan, 1964).

³ Michael Novak, *The Spirit of Democratic Capitalism* (Lanham, M.D.: Madison Books, 1982), 23.

period that “capitalism remained something of a dirty word.”⁴ It did so because “unlike democracy and pluralism, it seemed less than spiritual, less than communal, and – more strongly – disruptive of community and tradition.”⁵

Catholic scholars such as Lamennais, de Maistre, Chesterton, Belloc, Scheler, and Marcel were his greatest intellectual influences during this period. He adopted what he took to be their negative images of capitalism. He says their “literature contrasted the machines, slums, alienation, competition, and loneliness of modern secular man with the orderly, communal, holistic life of the Catholic past and (romantic) future.”⁶ These scholars taught him to see capitalism as the form of political economy that spurred individualism, utilitarianism, and pragmatism. He contrasted his negative image of capitalism with an ideal medieval Catholic culture. He remained nostalgic for the medieval Catholic village since he saw humanity “as a ‘Mystical Body,’ somehow organically united as the human body is united.”⁷ Novak found writers who stressed corporatism, solidarism, or even non-atheistic forms of socialism intellectually compelling and persuasive.⁸

Novak’s early aversion to capitalism led him to adopt negative images of English philosophers such as John Locke and Adam Smith and American thinkers such as William James and John Dewey.⁹ He experienced “their talk of atomic individuals forming

⁴ Ibid.

⁵ Ibid.

⁶ Ibid.

⁷ Ibid., 24.

⁸ Ibid.

⁹ Ibid.

‘contracts’ and ‘compacts,’ and their way of thinking in a narrowly empirical, pragmatic way”¹⁰ as not only foreign but spiritually wrong. His working class background did not allow him to experience himself as “a lonely individual looking for a social contract.”¹¹ He saw himself as a member of an organic community whose rich series of social networks provided a plethora of friendships and numerous opportunities for civic involvement. He found “the European critique of British individualism and contract theory quite attractive.”¹² The writings of Continental phenomenologists and existentialists, such as Mounier, Sartre, Camus, and Merleau-Ponty, appeared more in tune with the inner reality of freedom and spiritual risk than their British or American counterparts.

Novak’s movement away from these ideas took place in the 1970s. Formerly on the political left, Novak’s “experience in liberal environments led him to ever-deeper dissent – first on foreign policy issues, then on cultural issues such as abortion, the family, and crime.”¹³ Novak acknowledges that his conversion to favor democratic capitalism over democratic socialism was odd at a time when most of his friends were moving in exactly the opposite direction. “Radicalized by the Vietnam War, they were drawn to Marxian analysis and to socialist ideals.”¹⁴ Deeply troubled by conditions in the world, especially by the enormous gap between rich and poor nations, Novak contends many secular and Catholic intellectuals thought democratic socialism provided a more coherent

¹⁰ Ibid.

¹¹ Ibid.

¹² Ibid.

¹³ Michael Cormartie, “The Good Capitalist,” *Christianity Today* 38 (October 1994): 29.

¹⁴ Novak, *The Spirit of Democratic Capitalism*, 26.

and compelling vision to solve the problem of poverty in the modern world. Novak admits that his early admiration for democratic socialism was the result of their call to eradicate poverty. They also influenced him because they used eighteenth century images of town meetings and a view of community based on early village life.¹⁵ The democratic socialist vision, which emphasized the communal dimensions of human existence and the need for ‘social justice,’ appeared more in tune with Catholic social teaching and Novak’s own life’s journey.

Novak’s support for democratic socialism waned when he turned his attention to the causes of wealth and the institutional mechanisms required for its creation. He came to hear the high-minded rhetoric of democratic socialists and their advocacy for distributive justice as unrealistic and utopian as he witnessed its actual shortcomings throughout the 1970s. This period gave him practical insight into the dangers associated with real socialism as practiced in the former Soviet Union and its ex-satellite states throughout Eastern Europe. The long bread lines, the poor health-care, the shorter life expectancy of citizens, and the lack of freedom led Novak to abandon his support for democratic socialism. His desire to investigate the causes of wealth as well as the interrelationships between religion, economics, and politics led him to take a position as a resident scholar at the American Enterprise Institute for Public Policy in 1978. In 1983, he became the George Frederick Jewett Chair in Religion and Public Policy and he now serves as the Institute’s director of social and political studies. Today, he is widely regarded as a key intellectual voice in the “neoconservative” movement.

¹⁵ Ibid., 27.

b. Defining Democratic Capitalism

Today, Michael Novak advocates democratic capitalism as the best form of political economy. He defines democratic capitalism as three systems in one:

a predominately market economy; a polity respectful of the rights of the individual to life, liberty, and the pursuit of happiness; and a system of cultural institutions moved by ideals of liberty and justice for all. In short, three dynamic and converging systems functioning as one: a democratic polity, an economy based on markets and incentives, and a moral-cultural system which is pluralistic and, in the largest sense, liberal.¹⁶

He believes a democratic form of government is only sustainable in practice with a market economy.¹⁷ Novak believes these “pillars of liberty” arose together from the moral aspirations of people “(1) to limit the power of the state, in defense against tyranny and stagnation; and (2) to liberate the energies of individuals and independently organized communities.”¹⁸ Novak credits English and American thinkers such as Montesquieu, Adam Smith, James Madison, and Alexander Hamilton with laying the intellectual foundations for this new order of liberty. He claims that much of the intellectual basis of democratic capitalism is traceable to these members of the Whig tradition.¹⁹

Novak recognizes in these thinkers an unparalleled sense of political realism about the need to constrain the power of government authority. He says,

While some scholars interpret their work as though they were sunny rationalists, the opposite is nearer the truth.... They were not optimistic about the human capacity for reasonableness or virtue.²⁰

¹⁶ Ibid., 14.

¹⁷ Ibid.

¹⁸ Ibid.

¹⁹ Ibid., 88.

²⁰ Ibid.

They were wary of state tyranny and they worried about the repression of individual liberty more than the potential disorder brought about by living in a pluralistic society. These thinkers recognized the potential dangers associated with unleashing individual freedom, but they also clearly saw the drawbacks of living under a unitary social order.

In past social orders before the Enlightenment, Novak notes that more crimes were more likely committed in the call for greater virtue than through commitments to eradicate vice.²¹ Rulers frequently used their authority to determine the practices necessary to live a good life in the name of cultivating virtue. Unfortunately, this typically led to the repression of individual liberty because monarchs often used their absolute power to undermine the dignity of persons. Claiming divine authority, the monarchs of Europe often commanded their subjects to obey their edicts without gaining the consent of the governed. Although this seemed to produce a harmonious social order among the masses, this often came at the expense of individual liberty. Liberal thinkers argued that the harmoniousness of society claimed by older forms of government relied more on the coercive power of monarchs than the practical wisdom and intelligence of the people.

Novak argues liberal thinkers, in contrast, desired to form a new social order where individuals received the opportunity to express their unique gifts and talents. They wanted to create a social order where people received the opportunity to define for themselves the meaning of the good life. They also wanted to give people the necessary civil space in order to put forth diverse visions of it. They understood that this new pluralistic order violated older conceptions of social life.²²

²¹ Ibid., 63.

²² Ibid., 55.

Why did many Enlightenment thinkers favor this more pluralistic order? First, they believed that this new order of liberty would be less inclined to repress individual freedom by eliminating monarchical rule. Second, it would resist the utopian temptation to create a completely harmonious social order by repressing minority voices of dissent. Third, it would curtail the human drive for power by differentiating it into various spheres of influence. Finally, it would no longer advance a view of the good life from the top down, but would fashion it from the ground up by using the common experiences of ordinary people. The system would make it easier for people to work together to gain *consensus* about this end. These thinkers recognized that they were breaking with the past in order to form a new social order that would allow more individual freedom and pluralism.

To accomplish these tasks required a new set of institutions. Novak argues liberal thinkers sought to limit government by creating a social order that differentiated power into three separate spheres: political, economic, and moral/cultural. James Madison, for example, in *The Federalist Papers*, no longer embedded political authority solely in the hands of a monarch, but placed it in the hands of the people through the creation of democratic political institutions.²³ Adam Smith, in *The Wealth of Nations*, placed economic power into markets that were as “free as possible from governmental and religious command”²⁴ Later, Alexis de Tocqueville saw that democratic moral values could be fashioned in the newly created space of civil society, which liberal institutions made pos-

²³ Alexander Hamilton, John Jay, and James Madison, *The Federalist Papers* (Indianapolis, I.N.: Indy Publishing Company, 2002). See especially *Federalist* 10 and 51.

²⁴ Novak, *The Spirit of Democratic Capitalism*, 79.

sible.²⁵ Through the creation of democratic polities, free markets, and vibrant civil societies, liberal thinkers made pluralism and individual liberty the centerpieces of their new social order.

Today, Novak thinks the clearest examples of those who embody the ideals expressed by these liberal thinkers are those who practice democratic capitalism. He says those who favor democratic capitalism are unique because they have chosen, like their liberal predecessors, a form of political economy that makes pluralism and limited government central to its identity.²⁶ They favor this form of political economy because it allows individuals to define for themselves the nature of the good life. That is why Novak believes, “A democratic capitalist society is, in principle, uncommitted to any one vision of a social order. For such a commitment is a violation of transcendence.”²⁷ People who favor democratic capitalism also share the liberal desire to promote individual liberty and pluralism through institutions that differentiate power. He thinks those who practice democratic capitalism agree, “No *one* group may be trusted to see the common good whole and entire, as if by immediate inspection.”²⁸

Novak asks why Christians should support a system that makes pluralism and a commitment to individual liberty central tenets. He says:

If the system genuinely permits pluralism, does it not, in effect, lack unitary vision? Does it not set humans at cross-purposes? Does it not permit some to engage in what to others seems to be evil behavior? Is not it moral *laissez-faire*,

²⁵ Ibid., 68.

²⁶ Novak, *Free Persons and the Common Good*, 49.

²⁷ Novak, *The Spirit of Democratic Capitalism*, 67.

²⁸ Ibid., 58.

howsoever dignified by the name of tolerance, an impermissible concession to errant consciences?²⁹

These are important questions. He notes the Vatican did not look with approval upon liberal, pluralistic societies of the American and British type until the middle of the twentieth century.³⁰ They feared the creation of societies that were so individualistic that they would end in tyranny.

Novak responds to these questions by offering some intriguing thoughts. First, the new kind of liberty offered by democratic capitalism is more challenging and complex when compared to older and more unitary conceptions of liberty. He does not find it surprising that people often feel estranged, isolated, and lonely in these kinds of societies. They feel this way because the experience of the individual self, apart from the community, is part of the newfound sense of freedom provided by living in a pluralistic society. This may be regarded as the necessary other side to any genuine experience of liberty. He says,

For if in relationship to the values and symbols of my family, my church, and my culture I am free to ask such radical questions as “alienate” me from them, it does not follow that I am ill, misused, or deranged. The human capacity to raise questions is testimony to our capacities for the more than finite.³¹

The opportunity to discover the individual self apart from the communities in which we live is part of the experience of liberty. Free persons will experience feelings of isolation as unique individuals. The opposite would be to feel so connected as not to be free.³² To

²⁹ Ibid., 51.

³⁰ Ibid.

³¹ Ibid., 52.

³² Ibid., 53.

appropriate one's own liberty is to learn to experience oneself as a transcendent being who is more than just another cog in the social wheel.

The second issue that Novak responds to is the challenge that pluralistic societies do not provide a unitary religious vision, or sacred canopy, to structure social life. Critics argue that a pluralistic society is more likely to fall into a state of moral relativism. This is because its emptiness creates a moral vacuum. Novak acknowledges that pluralistic societies intentionally do not provide one sacred canopy under which to live. He responds positively to this challenge. He says,

Its emptiness ... represents the transcendence which is approached by free consciences from a virtually infinite number of directions. Believer and unbeliever, selfless and selfish, frightened and bold, naïve and jaded, all participate in an order whose *center* is not socially imposed.³³

This does not mean that its core is completely empty despite the fact that there is not a socially imposed center. In the United States, for example, he says many of its most sacred symbols have a pluralistic content and they function as symbols that point people toward the transcendent. Novak thinks, "Their function is to protect the liberty of conscience of all, by using a symbol which transcends the power of the state and any other earthly power."³⁴ These symbols help people to guard against tyranny and repression of individual conscience. Therefore,

The moral progress to which democratic capitalism calls is not utopian; but it is never at an end in history. The fact that the center is kept empty does not mean that it lacks vitality, but rather that its vitality exceeds the limits of any one instrument by which its nature might be adequately defined.³⁵

³³ Ibid.

³⁴ Ibid., 54.

³⁵ Ibid.

The inability to control the system inhibits Christians from monopolizing the reigns of political authority. Novak thinks this is a positive development for several reasons. First, the liberal tradition begins from its concern for the individual in community.³⁶ The realism of democratic capitalism, which intends to frustrate the “totalistic impulse,” protects the rights and liberties of individual persons.³⁷ The kind of freedom it provides not only protects individuals from tyrannical states, but it protects people from coercive religious bodies who seek to impose doctrine without regard to individual conscience. Second, the space a pluralistic society provides creates opportunities for a variety of civic groups, including religious groups, to shape the moral and cultural practices of society.³⁸ Democratic capitalism places great emphasis on members of civil society, including religious believers, to inculcate the virtues necessary to live in a democratic republic.³⁹ Novak thinks that people of faith must play an important role to shape the underlying cultural matrix of civil society. They possess the ability to infuse the center with their own unique values so that it does not collapse into self-absorption.

Novak’s commitment to pluralism and individual freedom leads him to champion the benefits associated with a market based economic system. He thinks, “Political economy must deal with humans as they are.”⁴⁰ Democratic capitalism resists the idea that the state should control the economic destiny of a people. He contends political democ-

³⁶ Ibid., 48.

³⁷ Ibid., 69.

³⁸ I will discuss the idea that religious communities help to shape and cultivate the moral fabric of civil society in the section entitled “Novak on the Free Market.” It will become evident that Novak thinks that religious communities play a vital role in shaping capitalist institutions and practices.

³⁹ Novak, *Free Persons and the Common Good*, 48.

⁴⁰ Novak, *The Spirit of Democratic Capitalism*, 81.

racy can only work when combined with a market economy because they both share similar moral principles and institutional values.

They share the moral principle that individual freedom limits tyranny. The capacity to engage in commerce and own property provides a check on the political authority of the state. Novak believes that having political liberty without having certain economic liberties is inherently unstable. Having economic liberty provides people with the opportunity to use their gifts and talents to better their lives.

The institutional values political democracy and capitalism share is the desire to create institutions that increase individual liberty. The accomplishment of this objective again comes through diversifying power. In the political realm, the primary institutional mechanism is the constitutional republic, which protects individual liberties by diversifying power into three separate branches of government: legislative, executive, and judicial. In the economic realm, it is the creation of the market, which protects property rights, promotes entrepreneurship, and allows people to trade and sell their goods independent of state authorities. Democratic polities require the promotion and protection of markets because free societies depend upon the realities of economic growth and social mobility. He thinks democracy wins common consent when individuals receive these economic opportunities because, “It yields freedom to dream and realistic fulfillment of dreams.”⁴¹ Without these kinds of economic opportunities, democratic polities often break down and become factious. To stifle economic growth and restrict social mobility is to teach people to see economic realities as a zero sum game where one person’s gain is another’s

⁴¹ Ibid., 16.

loss.⁴² The provision to give people the economic opportunity to engage in commercial activities provides the incentive to make political democracy work. Economic liberty allows individuals to see the benefits that come with political cooperation and the stability provided by the rule of law.

2. Michael Novak on the Failure of “Real Socialism”

a. Socialism’s Principal Goals as a Theory of Political Economy

Michael Novak supports democratic capitalism as a system of political economy because of its ability to limit government, promote individual liberty, and allow pluralism, which makes it a suitable political and economic system for persons who are free. Novak’s enthusiastic support for democratic capitalism has led him to criticize many of the central tenets of socialism as an alternative theory of political economy. As mentioned earlier, Novak’s early intellectual formation led him to favor the goals and aspirations expressed by socialist writers. He admired their desire to eliminate poverty by promoting economic equality. He found their call for workers to join in solidarity with one another to advance an anthropology that was more social in nature. Socialist ideology persuaded him because he thought it was more in line with the organic view of social life found within Catholic social teaching. He says,

In thinking of socialism as a kind of political religion, or perhaps more exactly as a political-economic expression of Jewish-Christian ideals, I tended to give socialists credit for pure idealism. Capitalism might be justified because it works better, but – I tended to agree – it represents an inferior ideal.⁴³

Novak contends that an early weakness in his support for democratic capitalism was that he ceded the moral high ground to socialist thinkers. He found democratic capitalism

⁴² Ibid.

⁴³ Ibid., 198.

lacking high ideals and revolutionary aspirations. The lack of intellectual clarity given to the way democratic capitalism expands human freedom, spurs creativity, and raises the living standards of the poor, mitigated his support for democratic capitalism. Socialist ideals motivated him because they supported the goals of economic equality, unity among workers, and the eradication of poverty. Yet, he never found it persuasive that the accomplishment of all these objectives should come through revolutionary struggle. Novak says democratic capitalism primarily sought practical goals that were less idealistic and revolutionary. Democratic capitalism was more realistic because it dealt more practically with humans as they are.⁴⁴

Novak argues the original goals of socialists were to eliminate poverty, private property, and economic inequality. Early socialists promoted these ideals in order to eliminate what they perceived to be the root cause of discord amongst human beings: the never-ending quest for profit. Novak says,

Positively, socialism once meant the abolition of private property; state ownership of the means of production through the nationalization of industries; state control over all aspects of the economy; the abolition of ‘bourgeois democracy’ through the creation of a classless society; and an international order based upon a class analysis transcending national, cultural, and linguistic frontiers. Socialism meant the banishing of profit motive, which was judged to be the root cause of the exploitation of labor. It also meant the abolition of imperialism, since capital and the profit motive were judged to be the root of empire. Socialism promised a social structure which would end competition between person and person to give to each according to need while taking from each according to ability, a social structure which would thus effect a change in what earlier generations had erroneously regarded as ‘human nature.’ Socialism, it was confidently predicted, would bring about a new type of human being, ‘socialist man.’ Such a human being would act from motives of human solidarity, community, cooperation, and comradeship.⁴⁵

⁴⁴ Ibid., 81.

⁴⁵ Ibid., 190.

Novak came to disparage “real socialism” with his contact with it throughout the 1970’s and 80’s. He found the widespread religious, political, and economic repression within the Soviet Union and its Eastern European satellite states disdainful. This made him look more closely at the limitations of socialism and expound the benefits associated with democratic capitalism. Novak believes socialism remained mired in its high ideals because its intellectual advocates had lost touch with reality. Some of their ideals included the elimination of poverty by government authorities, the elimination of great inequalities in wealth in order to increase freedom of action, and meeting basic material needs through large-scale government programs, even if this involved some loss in the aggregate of goods and services which would otherwise be available.⁴⁶

Novak claims he foresaw the failure of socialism years before the fall of the Berlin Wall and the collapse of the Soviet Union in 1989 and 1991. He realized its high ideals were not producing tangible results. In the political sphere, the centralization and bureaucracy of the state proved to be a thorough instrument of repression.⁴⁷ In the economic sphere, socialist doctrine did not produce the tangible benefits it promised as evidenced by the long bread lines, inefficient use of natural resources, and lack of adequate health-care.⁴⁸ In the moral-cultural sphere, no fully socialist state showed that it could

⁴⁶ Ibid., 202.

⁴⁷ Ibid., 191.

⁴⁸ Although Novak points out the hardships created by the former Soviet Union because of its commitment to socialist ideology, the rapid transition to a free market system since 1991 has created its own negative economic outcomes for the Russian people. For a more thorough review of these matters, see Joseph E. Stiglitz, *Globalization and Its Discontents* (New York: W.W. Norton & Company, 2003).

tolerate the broad range of dissent, human liberties, and human rights achieved by democratic ... states.⁴⁹

b. The Failure of “Real Socialism”

Why did socialism fail so miserably? Novak gives four principal reasons.⁵⁰ First, socialism deprived people of private property.⁵¹ He thinks that the greatest benefit that comes with a regime of private property is that it “limits the power of the state.”⁵² Denying people the right to own property leaves citizens without an important check on the power of the state.⁵³ Second, socialism restricts people from engaging in entrepreneurship and eliminates possibilities for personal initiative.⁵⁴ The inability to engage in these kinds of activities made citizens more likely to obey the unquestioned authority of the state. As Novak says, “A market economy inculcates a type of mentality quite different from that of a command economy. In the place of passivity and obedience, it awakens

⁴⁹ Novak, *The Spirit of Democratic Capitalism*, 191.

⁵⁰ A central point in Novak’s *The Catholic Ethic and the Spirit of Capitalism* is that Pope Leo XIII, in *Rerum novarum*, officially condemned socialism as a theory of political economy. He states, Leo “did not criticize socialism or recommend its reform; he condemned it. He condemned it because it is against natural justice, against nature, against liberty, and against common sense.” (Novak, *The Catholic Ethic and the Spirit of Capitalism*, 41). Novak raises this point to note that a similar condemnation of capitalism does not exist in *Rerum novarum*. Although he admits that Leo criticizes capitalism for its individualism and ability to augment wealth inequalities, among others, it never received the same kind of denunciation as socialism. He argues that John Paul II’s commentary on *Rerum novarum* in *Centesimus annus* confirms the church’s condemnation of socialism. Novak thinks, however, that *Centesimus annus* goes further than *Rerum novarum* because John Paul II recognizes more clearly than his predecessor the benefits associated with a market economy. The key issue is whether Novak’s reading of *Centesimus annus* and assessment of Pope John Paul II’s support for capitalism is correct. In other words, does Pope John Paul II give the same kind of favorable support to capitalism that Novak does in *The Catholic Ethic and the Spirit of Capitalism*? For an excellent analysis of this issue, see Todd David Whitmore, “John Paul II, Michael Novak, and the Differences between Them,” *Annual of the Society of Christian Ethics* 21 (2001): 215-232.

⁵¹ Novak, *The Catholic Ethic and the Spirit of Capitalism*, 46.

⁵² *Ibid.*, 47.

⁵³ *Ibid.*

⁵⁴ *Ibid.*, 46.

the life of active vitality.”⁵⁵ Third, it disregards that natural inequalities exist in the world regarding personal gifts and talents.⁵⁶ The desire to level these natural inequalities stifles social mobility and increases factiousness in society. The irony of socialism is that its original intent was to eliminate these trends, but in reality, it exacerbated them. Finally, Novak says that the fatal conceit of socialism is its mistaken view of reason.”⁵⁷ In the name of rationality, socialism misconstrues, “the nature of practical intelligence as it actually works in society.”⁵⁸ The socialist vision of society flows from the top down, like a pyramid. It employs a geometric view of reason, which fails to consider contingency in historical processes and for the liberty of individual persons.⁵⁹ As St. Thomas Aquinas pointed out centuries earlier, there are different kinds of rationality. In such a field as political economy, Novak argues prudence or *phronesis* is better than geometry to meet human political and economic needs.⁶⁰

3. Novak on the Free Market

a. Novak’s Summary of the Criticisms of Capitalism in Catholic Social Teaching

Novak argues the primary criticism of capitalism in Catholic social teaching is that it derives from an individualistic, mainly Protestant, ethic. Beginning in the nineteenth century, the Vatican thought of democratic capitalism as far away and heretical.⁶¹

⁵⁵ Ibid., 47-48.

⁵⁶ Ibid., 46.

⁵⁷ Ibid.

⁵⁸ Ibid.

⁵⁹ Ibid.

⁶⁰ Ibid.

⁶¹ Novak, *The Spirit of Democratic Capitalism*, 244.

During this period, “the social structure of Catholic Italy, Spain, and Austro-Hungary was still feudal, monarchical, and mercantilist.”⁶² In 1891, when Leo XIII issued *Rerum novarum*, “he was soundly critical not only of certain practices of capitalism but of some of its philosophical bases, especially its individualism and its radical dependence on the free market.”⁶³ Forty years after *Rerum novarum*, in 1931, Pius XI’s *Quadragesimo anno* described individualism and collectivism as “twin evils.”⁶⁴ In this encyclical, Pius did not symmetrically condemn capitalism with socialism, but he did “blast the “tottering tenants of liberalism” and the “evil of individualism.”⁶⁵

Four years later, the Italian Amintore Fanfani, a leading Christian Social Democrat, convincingly summarized many of the same criticisms of capitalism leveled by the papacy in his influential book *Catholicism, Protestantism, and Capitalism*.⁶⁶ In it, he identified why capitalism is incompatible with Catholicism.⁶⁷ Fanfani argued that capitalism produces an unlimited satiety for consumer goods. This unquenchable desire for material possessions derives from a predominately-Protestant ethic. He saw the Protestant ethic as being too individualistic, selfish, and favorable toward utilitarian satisfaction.⁶⁸ Fanfani agreed with Max Weber’s assessment that the spirit of capitalism inevita-

⁶² Ibid., 244.

⁶³ Ibid.

⁶⁴ Ibid.

⁶⁵ Ibid.

⁶⁶ Amintore Fanfani, *Catholicism, Protestantism, and Capitalism* (London: Sheed & Ward, 1935).

⁶⁷ Novak, *The Catholic Ethic and the Spirit of Capitalism*, 17-18.

⁶⁸ Ibid., 19.

bly leads to an “iron cage,”⁶⁹ where the hedonistic acquisition of goods and resources becomes the only ends of economic activity. He concluded that if capitalism became the dominant economic ideology, people would place the procurement of material possessions above family life, prayer, and charity towards the poor.

Novak argues the reluctance to accept the basic tenants of democratic capitalism continued during the Papacy of Paul VI. Novak quotes Paul VI, in *Octogesima adveniens*, as saying,

The liberal ideology ... asserts itself in the name of economic efficiency, for the defense of the individual against the increasingly overwhelming hold of organizations, and as a reaction against the totalitarian tendencies of political powers. Certainly personal initiative must be maintained and developed. But do not Christians who take this path tend to idealize liberalism ... while easily forgetting that at the very root of philosophical liberalism is an erroneous affirmation of the autonomy of the individual in his activity, his motivation and the exercise of liberty.⁷⁰

As of 1982, all the popes from Leo XIII to Paul VI had respected some of the fundamental principles of democratic capitalism, including the limited state and the indispensable role of private property.⁷¹ Novak recognized that their resistance to democratic capitalism was not due to illusions about socialism.⁷² In fact, from the very beginning, Catholic social teaching was alert to socialism’s materialism, atheism, utopianism, and potential for state tyranny.⁷³ However, Novak says he remained critical of the church’s social

⁶⁹ Ibid.

⁷⁰ Novak, *The Spirit of Democratic Capitalism*, 245-246.

⁷¹ Ibid., 246.

⁷² Ibid.

⁷³ Ibid., 246-247.

teaching because it occupied a sort of utopian ground – literally, no place.⁷⁴ He found calls among Catholic intellectuals to find a “middle way” between socialism and liberalism untenable. As a result, Catholic social teaching appeared to him to have become uncharacteristically abstract and otherworldly. He thought it would from time to time make astute and valuable comments about the world, but the platform on which it stood seemed disconnected from real life experience.⁷⁵

b. Novak on the Impact of Pope John Paul II on Catholic Social Teaching

Novak argues a major shift in attitude regarding the tradition’s recognition of the benefits of democratic capitalism emerged during the Pontificate of Pope John Paul II. In *Laborem exercens*, he says John Paul recognized four things about democratic capitalism that went beyond that of his predecessors. First, he distinguished nineteenth century capitalism from recent capitalism.⁷⁶ Second, he recognized that socialist collectivization of property takes power from one class and gives it to another.⁷⁷ Third, he identified as labor many sources of creativity – the work of inventors, intellectuals, and management experts. This broadened the horizon of work within Catholic social teaching beyond the labor performed by “blue collar” workers.⁷⁸ Finally, he emphasized the creativity of modern work by drawing analogously from theological symbols of the Creator and his creation.⁷⁹ Despite these insights, Novak says the history that John Paul provided in *La-*

⁷⁴ Ibid., 247.

⁷⁵ Ibid.

⁷⁶ Ibid., 246.

⁷⁷ Ibid.

⁷⁸ Ibid.

⁷⁹ Ibid.

borem exercens of the legacy of the benefits of democratic capitalism had been as deficient as the views of his predecessors.⁸⁰

c. Novak on Pope John Paul II's Anthropology

Novak argues the release in 1991 of *Centesimus annus* by John Paul II was a turning point for the tradition of Catholic social teaching regarding its assessment of capitalism. He says like a “sonic boom,”⁸¹ the encyclical burst onto the scene as a classic restatement of Christian anthropology.⁸² The encyclical, which first reflects on some of the tragic events of the twentieth century, rejected socialism because of its faulty anthropology, which failed to respect the sanctity of the individual.⁸³ John Paul argued it reduced human beings to a series of social relationships, and the concept of the person as the autonomous subject of moral decision disappeared.⁸⁴ In contrast, Novak says the Pope proposed a tripartite social structure composed of a free political system, a free economy, and a culture of liberty.⁸⁵ Novak notes that the underlying principle of the Pope's anthropology is the creative subjectivity of the human person, together with the resulting subjectivity of society.⁸⁶ The unique characteristic of the human person is the capacity to

⁸⁰ Ibid.

⁸¹ Novak, *The Catholic Ethic and the Spirit of Capitalism*, 114.

⁸² Ibid., 114.

⁸³ *Centesimus annus*, no. 32.

⁸⁴ *Centesimus annus*, no. 13.

⁸⁵ Novak, *The Catholic Ethic and the Spirit of Capitalism*, 115.

⁸⁶ Ibid., 117.

conceive new things and then do them.⁸⁷ As a result, Novak thinks it is proper to call John Paul both a “philosopher of liberty” and a “philosopher of creativity.”⁸⁸

Novak contends the Pope recognized in order to promote human creativity; people must have the ability to engage in enterprise as a vocation, a virtue, and a right.⁸⁹ In order to allow entrepreneurial ingenuity to flourish, John Paul discussed the corollary institutions that allow for this kind of economic activity. Novak says there was never any question in this Pope’s mind that democratic institutions, whatever their faults, are the best available protection for human rights in the political realm.⁹⁰ The unique contribution of *Centesimus annus* is that John Paul now added capitalist virtues and institutions to the economic realm.⁹¹ Novak says John Paul roots the capitalist ethos in the positive thrust of Judaism and Christianity, in their capacity for inspiring new visions and creative actions, “rather than in the negative ‘this-worldly asceticism’ that Max Weber found in the Protestant ethic.”⁹² Novak claims that underlying Weber’s thesis were three main ideas about why a Protestant ethos supported capitalism, namely,

a sense of *duty* toward the acquisition of wealth for its own sake; religious *asceticism* in avoiding luxury, pleasure and consumption; and a sense of *calling*, such that work was undertaken soberly, consciously and industriously.⁹³

⁸⁷ Ibid., 117.

⁸⁸ Ibid., 117.

⁸⁹ Ibid., 118.

⁹⁰ Ibid., 125.

⁹¹ Ibid., 125.

⁹² Ibid., 118.

⁹³ Ibid., 2-3.

Even though Novak credits Weber as the first person to make people familiar with the idea that religion – in particular Calvinism – was one of the great shaping forces of the modern economy, he argues John Paul II offers a richer Catholic anthropology for the right practice of capitalism than his Protestant counterpart.⁹⁴

What are the kinds of capitalist virtues and institutions that John Paul proposes? Novak says the Pope elucidates what these are in what has now become a much-debated paragraph in *Centesimus annus*. In paragraph 42 of *Centesimus annus*, John Paul states,

If by ‘capitalism’ is meant an economic system which recognizes the fundamental and positive role of business, the market, private property and the resulting responsibility for the means of production, as well as free human creativity in the economic sector, then the answer is certainly in the affirmative, even though it would perhaps be more appropriate to speak of a ‘business economy’, ‘market economy’ or simply ‘free economy’.⁹⁵

Novak argues that “point by point” this description of capitalism reflects the experience of nations that since the end of World War II have experienced both political and economic prosperity.⁹⁶ In these nations, “a structure of law has evolved over the centuries, from which slowly emerged the political, economic, and cultural institutions that, together, frame the ‘free society.’”⁹⁷ In fact, Novak claims such neo-liberal thinkers including F.A. Hayek in *The Constitution of Liberty* and Bruno Leoni in *Freedom and Law* particularly stress these non-economic factors.⁹⁸ Novak concludes that John Paul’s description of the institutions necessary to allow human liberty and creativity to prosper are

⁹⁴ Ibid., 3.

⁹⁵ *Centesimus annus*, no. 42.

⁹⁶ Novak, *The Catholic Ethic and the Spirit of Capitalism*, 126.

⁹⁷ Ibid.

⁹⁸ Ibid., 127. See F.A. Hayek, *The Constitution of Liberty* (Chicago, I.L.: Chicago University Press, 1978); Bruno Leoni, *Freedom and Law* (Washington, D.C.: The Liberty Fund, 1991).

similar to his own “tripartite system” described years earlier in *The Spirit of Democratic Capitalism*.⁹⁹

Novak believes the crucial insight that John Paul II uncovered in *Centesimus annus* is that “capitalism rightly understood”¹⁰⁰ flows from a sound understanding of human anthropology. The anthropology the Pope employs recognizes that labor and the desire to create express human subjectivity. The human capacity for work expresses the uniqueness of each created being and it is the wellspring of creativity. As the Creator reflects his uniqueness in the created order, so to does the human person. The cultivation of these uniquely human characteristics finds expression socially through collaborations of labor. As John Paul says,

By means of his work man commits himself, not only for his own sake but also for others and with others. Each person collaborates in the work of others and for their good. Man works in order to provide for the needs of his family, his community, his nation, and ultimately all humanity.¹⁰¹

Work, therefore, is never a solitary activity. It serves as the distinctive contribution that each person offers to the good of society. A truly “free economy” recognizes the gifts and talents of each individual and allows each person to use them for the benefit of society. In fact, Novak thinks the Pope “urges us not to stress an opposition between ‘self-

⁹⁹ Ibid. Novak quotes extensively from pages 56-57 of *The Spirit of Democratic Capitalism* to prove his point. He says, “Democratic capitalism is not a ‘free enterprise system’ alone. It cannot thrive apart from the moral culture that nourishes the virtues and values on which its existence depends. It cannot thrive apart from a democratic polity committed, on the one hand, to limited government and, on the other, to many legitimate activities without which a prosperous economy is impossible. The inarticulate practical wisdom embedded in the political system and in the moral-cultural system has profoundly affected the workings of the economic system. Both political dimensions and the moral climate encouraged this development. At various times in American history, both the political system and the moral-cultural system have seriously intervened, positively and negatively, in the economic system. Each of these three systems has modified the others. (Novak, *The Spirit of Democratic Capitalism*, 56-57.)

¹⁰⁰ See chapter 4 of Novak’s *The Catholic Ethic and the Spirit of Capitalism* for a full description of “capitalism rightly understood.”

¹⁰¹ *Centesimus annus*, no. 44.

interest' and 'the common good.' He urges us, rather, to seek a 'harmony' between 'self-interest' and the interests of society as a whole,' wherever this may be possible."¹⁰² He finds John Paul's view of legitimate self-interest¹⁰³ similar to the realism expressed by Madison and Hamilton¹⁰⁴ in *The Federalist*.¹⁰⁵

Novak says an important contribution of John Paul's anthropology is that human subjectivity serves as a new form of "capital."¹⁰⁶ Traditionally, capital was mainly associated with the ownership of land.¹⁰⁷ Economists often cited the accumulation of land as the most important economic factor toward increasing prosperity. Today, he argues the greatest source of capital, besides the earth, is the human person, who is the source of creativity, invention, and economic initiative.¹⁰⁸ An effective use of this resource takes place when people use their gifts and talents to help transform their natural and human

¹⁰² Novak, *The Catholic Ethic and the Spirit of Capitalism*, 123.

¹⁰³ Novak quotes from *Centesimus annus* 25 as evidence of the Pope's support for the concept of 'legitimate self-interest.' See Novak, *The Catholic Ethic and the Spirit of Capitalism*, 123. Later, it will be important to assess whether Novak reads John Paul correctly about his support of capitalism, the benefits of the market, the concept of legitimate self-interest, and private ownership. Several authors, including David Schindler, D. Stephen Long, and Todd David Whitmore, argue that Novak misreads the Pope on many of these issues. They challenge whether the kind of support that John Paul lends to capitalism and its underlying anthropology so closely matches the kind of support that Novak gives to democratic capitalism, especially in *The Catholic Ethic and the Spirit of Capitalism*.

¹⁰⁴ Novak quotes Hamilton, in a footnote, in *Federalist* 6 rhetorically saying: Have we not already seen enough of the fallacy and extravagance of those idle theories which have amused us with promises of an exemption from the imperfection, the weaknesses, and the evils incident to society in every shape? Is it not time to awake from the deceitful dream of a golden age and to adopt as a practical maxim for the direction of our political conduct that we, as well as the other inhabitants of the globe, are yet remote from the happy empire of perfect wisdom and perfect virtue? (*The Federalist Papers*, No. 6).

¹⁰⁵ Novak, *The Catholic Ethic and the Spirit of Capitalism*, 123.

¹⁰⁶ *Ibid.*, 128.

¹⁰⁷ *Ibid.*

¹⁰⁸ *Ibid.*

environments into places that augment opportunities for collaboration.¹⁰⁹ Certain virtues are required to allow for this kind of collaboration. They include

diligence, industriousness, prudence in undertaking reasonable risks, reliability, and fidelity in interpersonal relationships, as well as courage in carrying out decisions which are difficult and painful but necessary, both for the overall working of a business and in meeting possible set-backs.¹¹⁰

He concludes that enterprise benefits our nature as social beings because, more than ever, work is a communal activity that contributes to the well being of society.¹¹¹

d. Novak on the Benefits of Human Capital and the Practice of Capitalism

John Paul's belief in human capital leads Novak to claim that it is the primary cause of the wealth of nations and more important even than natural resources.¹¹² Novak points to the poverty that exists in Brazil, which has an abundance of natural resources, and compares it to the wealth found in Japan, which lacks an abundance of natural resources, to demonstrate his point.¹¹³ The fact that many wealthy nations exist without possessing an abundance of natural resources proves to Novak that the effective utilization of 'human capital' is the key element toward sustaining economic growth. This leads him to praise the moral and practical superiority of capitalism for two reasons.

First, as a system capitalism is constituted by a set of institutions, nourishing invention, innovation, and enterprise. These are the primary cause of economic development. Second, market systems better recognize the dignity of individuals and respect their choices, better reward cooperation and mutual adjustment, and better precipitate reform, experiment, and steady progress.¹¹⁴

¹⁰⁹ *Centesimus annus*, no. 32.

¹¹⁰ *Centesimus annus*, no. 32.

¹¹¹ *Centesimus annus*, no. 31.

¹¹² Novak, *The Catholic Ethic and the Spirit of Capitalism*, 129.

¹¹³ *Ibid.*

¹¹⁴ *Ibid.*, 157.

Novak concludes, “Both in creativity and in cooperative voluntary activities the capitalist order attains a progressively higher standard of the common good.¹¹⁵ Not only does it attain these objectives better than any alternative system, “Capitalism, for all its faults, is a better system for the poor than any other existing system.”¹¹⁶

e. Novak and the Benefits of Capitalism for LDCs

Novak does not blame wealthy nations for poverty in the developing world.¹¹⁷ Nor does he blame poverty in LDCs on factors such as laziness of workers or a lack of entrepreneurial spirit among business owners. Instead, poverty is the result of a failure to develop truly capitalist systems. In Latin America, for example, he says, “what is called ‘capitalism’ is actually a form of precapitalist, state-sponsored, patrimonial mercantilism that Adam Smith was writing *against*.”¹¹⁸ “Nearly all the economies of Latin America

¹¹⁵ Ibid. For a more extensive description of Novak on this point, see pages 107-109 in *Free Persons and the Common Good*.

¹¹⁶ Novak, *The Catholic Ethic and the Spirit of Capitalism*, 156.

¹¹⁷ In 1982, Novak wrote that one of the most common reasons why Latin American Catholic Bishops mistakenly adopted certain elements of socialist theory was that it provided them with an excuse about the causes of poverty in their nations. He wrote, “Conveniently, socialist theory allows them to blame the United States and other successful economic powers. No passion better fits the Marxist stencil, which offers a universally applicable paradigm: *If I am poor, my poverty is due to malevolent and powerful others.*” Novak, *The Spirit of Democratic Capitalism*, 272-273. In the section entitled, “Latin Catholic Economics,” he identifies that the wealth of the United States resulted from the adoption of certain moral values that promoted commerce and industry. In contrast, Latin America favored other values that did not support these economic practices. Novak says that the Catholic Bishops of Latin America are partially to blame for Latin America’s poor economic development. He says, “They accept no responsibility for three centuries of hostility to trade, commerce, and industry. They seem to imagine that loans and aid should be tendered them independently of economic laws, and that international markets should operate without economic sanctions. After having opposed economics for centuries, they claim to be aggrieved because others, once equally poor, have succeeded as they have not.” Novak, *The Spirit of Democratic Capitalism*, 279.

¹¹⁸ Novak, *The Catholic Ethic and the Spirit of Capitalism*, 156.

are in the grip of the state, and the state in turn is typically bent to the service of a relatively few elite families.”¹¹⁹

His claim that capitalism remains the best economic system for the poor leads him to draw two conclusions about poverty in the developing world. First, the poor are poor because the law locks them outside the dynamism of invention, markets, and enterprise.¹²⁰ Second, state power, exercised by small elites, restricts the creativity and inventiveness of entrepreneurs by creating insurmountable roadblocks to institutions that secure property rights and lend credit. The combination of these factors does not allow small business owners to utilize their gifts and talents to benefit the common good.¹²¹

Novak believes the practical solution toward the development of legitimate capitalist institutions is to reform the political and legal institutions that inhibit small business owners and homeowners from using their assets to spur economic growth. Reform does not depend primarily on the creation of large government programs to redistribute money to the poor. The ability to secure foreign loans for internal economic development is also not the primary way to end poverty. Novak believes these kinds of reforms lead to increased state authority, dependency on foreign countries, and limits the power of civil society. He distrusts them because they view the poor as vulnerable, passive, and awaiting the ministrations of the state. Thus, Novak understands the Catholic principle of subsidiarity, which Pius XI first articulated in *Quadragesimo anno*, that economic decisions should be taken at the lowest level possible that is compatible with good government.¹²²

¹¹⁹ Ibid., 157.

¹²⁰ Ibid.

¹²¹ Ibid.

¹²² See *Quadragesimo Anno*, no. 79.

He presumes that higher levels of government, especially government programs that favor the wide-scale redistribution of wealth through tax programs, have more potential for harm, and therefore require greater justification. Novak believes the theological point subsidiarity makes is not necessarily that lower level economic structures are less likely to be sinful than higher level ones, but that higher level economic structures operated by the government have greater potential for abuse and misuse, and therefore ought to be created when it is necessary to do so. To put it another way, all economic power structures may be equally tainted by sinfulness, but stronger power structures operated by the government contain greater potential for harm if that sinful potential is realized. That is why he thinks there ought to be a presumption against the creation of such economic structures. As a result, it is not surprising that Novak favors economic policies that see the poor as capable, creative, and active.¹²³ Novak contends that the majority of poor people around the world already have the necessary assets to elevate themselves out of poverty. What they lack is secure political and legal institutions that promote ownership, entrepreneurship, commerce, industry, and property rights. He advocates increasing the ability of homeowners and small businesses to enter into the market so that they can use their own resources to promote economic growth. Indeed, many of Novak's ideas regarding the causes of poverty in LDCs are in many ways similar to those of Hernando de Soto, which I will discuss in chapter 6.

f. Novak on the Right to Private Property

The right to own property is a key reason why Novak supports capitalism and its corresponding institutions; primarily, the market. First, Novak supports capitalism be-

¹²³ Novak, *The Catholic Ethic and the Spirit of Capitalism*, 148.

cause its promotion of private property provides a check on state power. The right to own property is an extension of his “realism.” The suppression of property rights in the former Soviet Union and its satellite states restricted individual liberty. The repression of property rights augmented the power of the state. The power of the government to control all aspects of social life, including the economy, led to the usurpation of power by government officials. The restriction to own property stifled invention, decreased productivity, and led to the mismanagement of valuable natural resources. Harvard University historian Richard Pipes agrees with much of Novak’s assessment about the reasons for the collapse of the Soviet Union. He says,

There obviously were many reasons for the collapse of the Soviet Union in late 1991, an event unparalleled in world history – an empire under peacetime conditions, disintegrating in a matter of weeks. But if, as there are good grounds to believe, the prime reason for this collapse was the faltering economy, then it is not unreasonable to conclude that the absence of private property was a major and possibly decisive factor. It affected economic performance in two ways. The citizenry lacked incentives to produce beyond the minimum, since its basic needs were guaranteed whereas doing more brought no significant rewards and could even bring penalties in the form of higher production quotas. But even if, in disregard to such discouragement, a Soviet citizen displayed enterprise, he ran afoul of the bureaucratic apparatus whose self-interest required the stifling of every independent initiative. Thus, the concentration of all economic resources in the hands of the state undermined the nation’s work ethic and inhibited innovation.¹²⁴

Novak believes a regime that promotes and protects property rights is less likely to restrict individual liberty and suppress the independence of civil society. A sound political economy should encourage virtue and cope “with the fact that citizens sometimes sin.”¹²⁵ This is why he favors capitalism and its emphasis regarding individual ownership. As a system of political economy, it differentiates economic power through private ownership

¹²⁴ Richard Pipes, *Property and Freedom* (New York: Vintage Books, 2000), 216.

¹²⁵ Novak, *The Catholic Ethic and the Spirit of Capitalism*, 148.

and it gives entrepreneurs the ability to compete with one another in the marketplace. The ability to buy, sell, and trade goods independent from state owned enterprises mitigates the power of the state to control the activities of its citizens.

A second reason why he favors the right to own property is that it promotes pluralism by offering customers a wide range of goods and services. By increasing the number of private sellers of a particular product, customers receive the opportunity to purchase items that fit their own needs and preferences. A positive contribution of market systems is their ability to offer a variety of goods and services to consumers at affordable prices. Products discarded are those that do not find a niche in the market. This expands the horizon of goods and services available to consumers and it increases their economic independence. Novak believes it is only in places where the right to own private property is protected do people receive the chance to become consumers with a wide-range of choices. This is because nation's that protect property rights give entrepreneurs incentives to invent better goods and services through the protection of patents.

g. Criticisms of Novak support for Democratic Capitalism

The review of Michael Novak's work on political economy shows that he thinks that contemporary Catholic social teaching supports democratic capitalism. Novak contends that Catholic social teaching is not opposed to democratic capitalism and that its proper implementation affirms human dignity, creativity, and elevates the living standards of the poor better than any rival system of political economy. He is interested in showing the practices and attitudes of capitalism, "especially small businesses based on

knowledge of local needs, will benefit large numbers of poor people both here in the United States and in the developing countries of the Third World.¹²⁶

Many theologians criticize Novak's enthusiastic support for democratic capitalism. They challenge his claim that democratic capitalism supports human dignity and benefits the poor. They argue that he does not adequately address several issues. First is the way that capitalism tends to *commodify* all sectors of human life. Second is the way the global market, through the actions of multinational corporations, destabilizes political authority in many developing countries. Third, democratic capitalism exacerbates wealth inequalities between rich and poor, making solidarity with the poor impossible. It is to these issues that I now turn.

i. The Danger of Consumerism

The principal criticism of Michael Novak's work is that he fails to account for the way the global market makes the buying and selling of goods the primary mechanism for community interaction and formation. David Schindler argues, "Consistent with the neo-conservative unawareness of their own monism – the invisible monism of liberalism itself – they are unable to grasp the pope's critique of *consumerism as a "structure of sin."*"¹²⁷ Schindler criticizes Novak's work because it fails to wrestle with the way capitalism makes the constant buying and selling of goods the principal social tool for cultural interaction. Schindler thinks Novak's logic has *a priori* "no conceptual means for identifying (America's) consumerism and materialism as "structures of sin," in the way that is re-

¹²⁶ John Langan, S.J., "Ethics, Business, and the Economy," *Theological Studies* 54 (1993): 110.

¹²⁷ David Schindler, *Heart of the World, Center of the Church: Communio Ecclesiology, Liberalism, and Liberation* (Grand Rapids, M.I.: William B. Eerdmans Publishing Company, 1996), 130.

quired by the present teaching of the present pope.”¹²⁸ Indeed, Novak helps to ensure “America’s consumerism and materialism will not be deeply challenged in their institutional dimensions: because neo-conservatism helps render consumerism and materialism invisible precisely in their institutional dimensions.”¹²⁹

David Schindler’s criticism that Novak’s brand of neo-conservatism renders consumerism invisible, especially on an institutional level, finds support among other theologians. For example, Rodney Clapp contends,

A problematic feature of consumer capitalism is the inescapable barrage of advertising – its coaching and coaxing of multitudinous desires. The New York Times has estimated that the average American is exposed to 3,500 ads per day. So inundated, we are hardly aware of how pervasive and invasive these images and messages are.¹³⁰

The size and strength of the global market suppresses communal solidarity and replaces it with a drive to consume constantly. Therefore,

What worries some people is that the affluent, technologically advanced West seems more and more focused not on consuming to live, but on living to consume. The problem with consumption, and the consumer capitalism that has pushed it to feverish historical extremes, is the fact that it has become so all-consuming.¹³¹

Another danger associated with a consumer culture is that it places great emphasis on bourgeois desires such as being “comfortable” and “safe” to the detriment of other, more heroic virtues that are necessary for developing a reflective and virtuous people capable of sustaining democracy. Indeed, some critics suggest our culture glorifies the “mediocre” and “banal” because we fail to cultivate practices worthy of a free people.

¹²⁸ Ibid., 131.

¹²⁹ Ibid.

¹³⁰ Rodney Clapp, “Why the Devil Takes Visa: A Christian Response to the Triumph of Consumerism,” *Christianity Today* 40 (1996): 18.

¹³¹ Ibid.

For example, in the aftermath of September 11, Stanley Hauerwas sorrowfully notes one way that President Bush challenged the American people to respond to the attacks on the World Trade Center and the Pentagon was to continue to go shopping to support the American way of life.¹³² He raises the question, “For what can freedom mean if the primary exercise of that freedom is to shop?”¹³³ For a people confronted by groups who are willing to die for their beliefs, Hauerwas believes it is frightening to think that the best response to this tragic act of unspeakable violence is to go to the mall to buy the latest CD that exhorts illicit sex, gang violence, and drug use.

Others suggest that the totalizing effects of the world market may not only threaten the integrity of local political structures, but they may challenge religious institutions as mediators of grace and salvation. Critics of the globalization of the market note the promises already offered to consumers by companies such as Nike and Pepsi. In their carefully crafted marketing campaigns that blanket all aspects of the media, they promise people that if they “*Just Do It*” or take part in the “*Choice of a New Generation*,” their lives will magically improve. These large-scale multinational corporations promise a utopian vision that if people just buy the latest pair of \$200 shoes or the largest \$20,000 plasma screen television, life would be greatly improved and much more comfortable. Critics also believe that the global market will even seek to transform the world of physical experience. They point to vacation destinations such as Las Vegas and Disney World. The proprietors operating in these locations promise that taking a gondola ride at the Ve-

¹³² Stanley Hauerwas, “September 11: A Pacifist Response,” in *Dissent from the Homeland: Essays after September 11*, eds. Frank Lentricchia and Stanley Hauerwas (Durham, N.C.: Duke University Press, 2002), 430.

¹³³ *Ibid.*

netian Hotel is just as good as taking one in Venice. Why go to famous historical places like France, Japan, Germany, and China when Disney World's EPCOT center offers replications of these countries cultural icons within a few blocks walk? One can have all these adventures without jet lag or the need to overcome language barriers.

Schindler contends that the most damaging outcome resulting from the drive to consume constantly is that it spawns "spiritual poverty." He argues Novak's vision of capitalism, indeed, all versions of capitalism; inherently rely on a view of the person that is fundamentally determined by self-interest. He says,

Once we recognize...that the market system will itself always-already be proposed in terms of a definite cultural-moral order, any actual market system will always-already embody, however implicitly, some definite notion of self-interest, of the self's relation to the other, of the self in terms of a primacy of "being" or "having" – and thus some definite disposition toward what the pope calls "consumerism."¹³⁴

The disposition toward the primacy of consuming over giving orders human "doing" ontologically prior to human "being." Schindler believes this vision of the human person is contrary to a Christian anthropology that sees persons as created in the image of a self-giving God. He contends that "doing" is not the reason for human existence.¹³⁵ Schindler concludes that Novak does not provide a rigorous Christological critique of liberalism that affirms "a primacy of receptivity *in the beginning and all along the way as the inner form of human action* ("doing")."¹³⁶ He concludes that the current spiritual crisis caused by our consumer culture can only be solved through "a spiritual transformation

¹³⁴ Schindler, *Heart of the World, Center of the Church*, 130-131.

¹³⁵ *Ibid.*, 136.

¹³⁶ *Ibid.*

of our being, which is (logically) prior to, even as it comprehends, a moral-social response.”¹³⁷

ii. Invasion of Multinational Corporations and the Danger to Indigenous Cultures

A second criticism of Michael Novak’s support for democratic capitalism is that he fails to address how many cultures are ill prepared to deal with the negative impact that the globalization of the market has on the maturity of a nation’s political development. In D. Stephen Long’s, “A Global Market – A Catholic Church: The New Political (Ir)Realism,” he recalls through his experience with the Guarifuna, a displaced African tribe presently living in Central America, how the new world economy decimated their culture.¹³⁸ He argues the Guarifuna were unable to deal with the effects of a worldwide global market. Long says that life for the Guarifuna once revolved around the shrimp and lobster plant that existed within the village square. Plant members would take the shrimp and lobster, package it, and eventually export it, usually to the United States. In ex-

¹³⁷ Schindler, “Christology and the Church’s “Worldly” Mission,” 169.

¹³⁸ In *Divine Economy: Theology and the Market*, Professor Long provides a detailed and sustained analysis regarding the shortcomings of Michael Novak’s work on political economy. His primary objections of Novak are his acceptance of Weber’s fact/value distinction, his theory of ‘unintended consequences’, and his labeling of certain theologians as part of the ‘adversary culture’. He places Novak, along with Max Stackhouse, Philip Wogaman, Dennis McCann, and Ronald Preston, in what he calls the ‘dominant tradition’ of how theologians have attempted to relate theology and economics. Although he acknowledges that these theologians offer different public policies on economic matters, he argues that the theological themes they use to relate theology to economics to make it relevant are similar. He says they all share the inability to incorporate specific confessional themes into their strategies to relate theology and economics. Long’s work tries to answer the question how the disciplines of theology and economics are to be related. His primary criticism of modern economics is its lack of historical consciousness. He says economists care little about its own internal historical formation that has shaped its contemporary workings. Christian theology, on the other hand, which makes the revelation of Jesus Christ central to its identity, makes this historical ‘fact’ the pivotal event upon which to evaluate itself and all other disciplines. It is the end to which all other ends point. Long’s confession of Christ does not allow him to accept the neo-classical theory of economics, which makes the ‘utility’ of goods and resources its primary ends. His work attempts to challenge the ‘empty space’ upon which neo-classical economic theory rests. He tries to show the difference that confession of Christ should make in the practice and performance of economics. See D. Stephen Long, *Divine Economy: Theology and the Market* (New York: Routledge, 2000).

change for their labor, many of these people, especially the young people of the village, resisted buying local goods because they wanted to use their limited resources to buy American consumer products. They resisted buying indigenous cultural goods or investing their small wages for future spending in order to feel connected to the global market.

Novak could argue that this is not a problem with capitalist ideology. He could defend his thesis that people such as the Guarifuna need more time to develop the necessary virtues to understand capitalism's capacity for augmenting wealth. In contrast to buying foreign goods, they could learn to invest money back into their local economy by buying local products. Their lack of discipline to save and invest is simply a failure to understand the intricacies of the global economy, not a failure of capitalism as an economic system. He could argue that cultures that fail to develop required capitalist habits cannot expect to eat broadly of capitalism's fruits.¹³⁹

Professor Long contends that the Guarifuna do not lack a diligent work ethic, an unwillingness to use their natural resources for the betterment of their local community, or a misunderstanding of the advantages of capitalism. These people lack a fair chance to enter the global marketplace because multinational corporations undermine the principle of fair competition. The small businesses that Novak champions as reflections of the entrepreneurial spirit often fail in developing nations because people lack the capital resources necessary to compete with large multinational corporations. They do not possess vast amounts of capital reserves to compete with these kinds of companies. Eventually,

¹³⁹ Novak, *The Catholic Ethic and the Spirit of Capitalism*, 8.

“The corporation, with its flexibility, rises to power both in cooperation with and in opposition to the power of the nation-state.”¹⁴⁰

Many multi-national corporations use their extensive capital reserves to challenge the supremacy of the nation-state.¹⁴¹ Corporations use their economic power to gain a competitive advantage within developing markets. They bypass state power because many LDCs do not possess the wherewithal to defend themselves against these kinds of economic intrusions. This shields multinational corporations from competition and it relegates small businesses in these nations to an indentured status. The wages the Guari-funa were paid were insufficient, for example, “to purchase the product they prepared, yet other cultural products were made available to them – Coca-Cola, cigarettes, audiocassettes, World Wrestling Federation mementos, and, on rare occasions, vaccination.”¹⁴²

The contemporary global market challenges the independence of political systems within many LDCs. The global market does not contain an impartial center from which to arbitrate power. This differentiates it from a nation-state. It is not in the interest of a multinational corporation to create these kinds of centers because they do not want citizens to participate in their decision-making processes. Their desire to increase productivity and make exchanges easier makes them less likely to try to develop political coher-

¹⁴⁰ D. Stephen Long, “A Global Market – A Catholic Church: The New Political (Ir) Realism,” *Theology Today* 52 (1995): 357.

¹⁴¹ The other way that multinational corporations challenge state authority is by establishing their company headquarters in countries that possess weak tax collecting agencies similar to the IRS. Thus, by establishing bases of operation in developing nations, these kinds of corporations often have no incentives to put money back into the local economies to raise the general welfare of the people who produce the products of these large firms.

¹⁴² Long, “A Global Market – A Catholic Church,” 357.

ency among the people.¹⁴³ The amorphous nature of the multinational corporation and its unaccountability to local citizens helps to undermine the legitimate political rights of citizens in LDCs. Corporations possess the ability to dismiss claims made on them to establish just working conditions, living wages, and reasonable working hours without a strong government to protect worker's rights. The multinational corporation gains hegemonic influence over the political system. They use this power to undermine developing democracies by curtailing them from establishing viable political cultures. The system of checks and balances championed by Novak disappears and becomes a fragment of its former self.¹⁴⁴ The sweeping power of the global market displaces it. The inability of the global market to protect the rights of citizens leads some to discredit the idea that the globalization of the world economy is one of the great unifying achievements of modernity. This new brand of global capitalism has produced a new Leviathan that usurps power away from local political communities and subverts the mediating influences of civil society.

iii. The Globalization of the Market: How it Marginalizes the Weakest Members of Society

A final criticism of Novak's support for democratic capitalism is that this system of political economy weakens the bonds of social unity necessary to protect the poorest and weakest members of society. For some theologians this makes democratic capitalism incompatible with the Gospel's vision of solidarity with the poor.¹⁴⁵ These theologians

¹⁴³ Ibid., 357-358.

¹⁴⁴ Novak's commitment to political realism, republican democracy, and civil society draws implicitly from Reinhold Niebuhr's work.

¹⁴⁵ The list of thinkers who challenge this tendency of capitalism is long and distinguished. See Donal Dorr, *Option for the Poor: A Hundred Years of Catholic Social Teaching* (Maryknoll, N.Y.: Orbis Books, 1991); Gustavo Gutiérrez, *Evangelización y Opción por los Pobres* (Buenos Aires: Ediciones Paulinas,

contend the globalization of the market has led to an increase in civil strife, shifted resources away from the marginalized, protected those who are more efficient, and eroded the foundations of community life that have historically sustained civic friendship. As Jürgen Multmann says,

Today countries which neither possess appreciable resources or raw materials nor can offer the prospect of worthwhile markets are ignored. They drop out of the global market. Millions become surplus people. No one can use them. They easily become the victims of violence, as in Rwanda, or of the plagues which are coming back again in the guise of epidemics, as in Latin America – not to speak of AIDS in Africa.¹⁴⁶

These theologians generally believe that Christians who do not question the basic operating principles of the global market fail to see that the present system cannot promote an ethic of solidarity with the poor. Several of these theologians argue that to combat the hegemonic influence of the global market requires the church to play a more active role in society to increase the participation in society of those marginalized by the global market. This gives people the necessary resources to challenge the structures of poverty and inequality caused by capitalism. These critics remain convinced that the free market emphasizes egotistical values of productivity, efficiency, and self-interest at the expense of others that support solidarity with the poor and weakest members of society.

These criticisms provide clear evidence that a divide exists between those who support liberal institutions, such as the free market, and those who see the proliferation of these institutions as a challenge to the church's authority to foster an authentic Christian

1987); Stanley Hauerwas, *A Better Hope: Resources for a Church Confronting Capitalism, Democracy, and Postmodernity* (Grand Rapids, M.I.: Brazos Press, 2000); Douglas A. Hicks, *Inequality and Christian Ethics* (New York: Cambridge University Press, 2000); Jürgen Multmann, *God for a Secular Society: The Public Relevance of Theology* (Minneapolis, M.N.: Fortress Press, 1999); and Jon Sobrino, *Christ the Liberator: A View from The Victims* (New York: Orbis Books, 2001).

¹⁴⁶ Multmann, *God for a Secular Society*, 164.

witness in the world. A number of critics of democratic capitalism have put forth an ethical vision that emphasizes that Christians living in Western democratic societies must place themselves in opposition to these dominant political and economic institutions. These writers advocate that the church must resist the globalization of the market because it is the true villain in the modern world. They call for the church to play a more active role by challenging the faithful to rectify problems such as the disparity in wealth that exists between rich and poor within LDCs. The ominous warnings these critics raise against democratic capitalism begs the question: “Is Michael Novak’s advocacy for democratic capitalism problematic?”

h. Novak’s Possible Response to These Criticisms of the Globalization of the Market

The previous section’s review of several frequent criticisms of the achievements of democratic capitalism and Michael Novak’s support for this system of political economy raises many important issues. Today, many see that the expansion of the global market as a dangerous threat that continues to produce a number of harmful effects in modern world. As Jeffrey Sachs says,

At the start of the twenty-first century, Enlightenment hopes for progress embodied in the Millennium Declaration and the Millennium Development Goals have clashed head on with war, AIDS, and the still unmet challenge of extreme poverty in large parts of Africa, Latin America, and Asia. The clash of high rhetoric and poor results has led to the antiglobalization movement, which burst forth dramatically into public view on the streets of Seattle in November 1999.¹⁴⁷

Today, the antiglobalization movement continues to make its mark. Meetings of leaders from the World Bank and the IMF would have most likely continued to be exercises in unqualified praise of globalization without their protests. There was little said about the

¹⁴⁷ Sachs, *The End of Poverty*, 353.

world's poor, the AIDS pandemic, women's rights, and environmental degradation caused by human beings before scores of people took to the streets. The rise of the antiglobalization movement has led the international community to address many of these important issues and they have drawn increased media attention in the ensuing years.

Although Novak would most likely applaud the legitimate moral outrage that fuels members of the antiglobalization movement, I think he would argue that they sometimes fail to recognize the benefits that have resulted from the globalization of the market. These include such things as increased communication, better healthcare, improved food production, as well as substantial reductions in the numbers of people now living in extreme poverty in places such as India and China. As Sachs argues,

By now, the antiglobalization movement should see that globalization, more than anything else, has reduced the numbers of extreme poor in India by two hundred million and in China by three hundred million since 1990.¹⁴⁸

Novak would ask whether theologians who have joined the antiglobalization movement ever provide alternative social structures to make their criticisms more pertinent. Novak might ask these theologians, "What great proficiency does the church possess to speak on the great structural problems caused by global poverty, hunger, and the spread of infectious diseases such as AIDS other than noting how they undermine solidarity with the poor and marginalized? Does the church have the capacity to speak authoritatively on the shape and structure of the global economy with the same kind of authority that it pronounces to have on issues of faith and morals?" Even if the church possessed this kind of proficiency, it is difficult to envision what kind of alternative economic structures the church would provide to the global market to combat the problems already cited. I agree

¹⁴⁸ Ibid.

with Novak that massive efforts to redistribute wealth through large-scale government redistribution programs fundamentally undermine human dignity, causes violence, and diminishes the initiative of persons to seek solutions to difficult social problems.¹⁴⁹ Thus, what benefit do the theologians who repudiate the globalization of the market really offer to the Christian faithful? In fact, Novak appears to ask, “What system is better at affirming human dignity, individual initiative, and creating wealth and prosperity for millions of people than democratic capitalism?”

The persistence of these questions becomes greater for Christians who want to argue for a more disciplined church capable of sustaining communities of solidarity with the poor. The fact that many theologians have attempted to document the shortcomings of the globalization of the market and recover a more distinct Christian language to articulate faithful witness to the world are significant steps toward answering these challenges. The emphasis these theologians place on community life, prayer, non-violence, and the authority of Christ as the norm for Christian discipleship are needed and remarkable theological achievements. However, to respond faithfully to the Second Vatican Council’s challenge to dialogue with the modern world, a great part of that dialogue continues to take place for many Christians within the structures of liberal institutions. Novak would probably contend that these theologians are too pessimistic about the possibilities of capitalism with a human face, in which the remarkable power of trade and investment can be harnessed while acknowledging and addressing limitations through compensatory collective actions. He would most likely remind people that the anti-corporate,

¹⁴⁹ For an interesting analysis of the ways that these kinds of economic initiatives, especially the almost total elimination of private property, undermined human dignity in the former Soviet Union, see Richard Pipes, *Property and Freedom* (New York: Vintage Books, 2000).

anti-trade attitudes have also resulted from an unthinking antipathy to capitalism that reflects a more profound misunderstanding. Novak would say to abandon efforts to reform the globalization of the market, a scenario that could benefit millions of people, appears, as Reinhold Niebuhr might suggest, “irresponsible.”

The negative reading that many theologians give regarding the globalization of the market raises problems for those who want to work to reform this institution. This is not to say that people should not wrestle with the criticisms of the globalization of the market raised by these theologians. Their insights about the dangers of the global market are poignant, demanding, full of vitality, but inevitably frustrating because they appear to do their best work on the other side of the *eschaton*. Christians must continue to ask whether the reading of democratic capitalism that these theologians provide is correct. In other words, do they tell a true story? The fact that presently there exists a vast gap between rich and poor is not a new historical reality that has resulted from the globalization of the market. A superficial reading of history shows that this has always been a persistent problem. Technology and the ability to communicate with people to identify people who live in extreme poverty might have increased, but the enduring problems of evil and the persistence of human beings remaining cruel to one another remain timeless obstacles inherent to the human condition.

Novak allies himself with these theologians when the globalization of the market becomes reckless and fails to promote human dignity¹⁵⁰ Novak, nonetheless, makes the wise prudential judgment that Christians should not abandon the humane expansion of

¹⁵⁰ See Michael Novak’s chapter called, “Against the Adversary Culture,” in *The Catholic Ethic and The Spirit of Capitalism*, 195-220.

the market. He advocates that Christians and others should work to reform the institutions that contribute to the globalization of the market. He says,

These institutions tell citizens which of their behaviors will receive social approval or disapproval.... Such institutions are crucial because the primary form of capital is the human spirit, which is subject to decline as well as progress.¹⁵¹

Novak argues that leaving these institutions to people unchallenged by the Gospel provides support for those who criticize Christianity as an otherworldly religion incapable of dealing with humanity's greatest challenges. He believes that God calls the faithful to work to transform the world into a place that supports human dignity and he finds that Catholicism and its moral resources capable of reforming these institutions. The tradition's commitment to human rights, limited constitutional governments, and responsible free markets, bound by juridical systems that support the growth of civil society, provides resources to challenge those who work within these liberal institutions to make them live up to their highest ideals.¹⁵² Novak champions and calls for the reform of liberal institutions because these structures provide the necessary freedom to act to allow people to make different choices about how they should cultivate democratic values. In particular, Novak thinks the desire for capitalist economic institutions around the world is not surprising since people can scarcely help desiring to express in their institutions and daily practices their God-given capacities for personal economic initiative and creativity.¹⁵³

Novak concludes that democratic capitalism is the best system of political economy for protecting individual liberty, promoting human creativity, and increasing the liv-

¹⁵¹ Ibid., 196.

¹⁵² Ibid., 218-220.

¹⁵³ Ibid., 219.

ing standards of the poor in the developing world. He remains firmly committed to the promotion and reform of liberal institutions and his support for democratic capitalism today remains steadfast. He advocates for Christians not to abandon or abdicate responsibility for this kind of system of political economy, but to live out their vocations in them. As a result, Novak believes that Christians must use the freedom protected by liberal institutions not simply to resist coercion, but to use them to build a more compassionate society that promotes values worthy of disciples of Jesus Christ.

Chapter 4

David Hollenbach, The Catholic Human Rights Tradition, and The Common Good

In chapter 3, my goal was to investigate whether democratic capitalism as a system of political economy is capable of supporting the commitments of Catholic social teaching to affirm human dignity and defend human rights. I used the work of Michael Novak to accomplish this goal because his years of support for democratic capitalism rests on a vision of the human person that draws heavily from thinkers typically associated with the liberal tradition such as Adam Smith and Alexis de Tocqueville. He affirms that this kind of system of political economy promotes an anthropology that upholds individual liberty, augments human creativity, values entrepreneurship, and enhances the economic well-being of more people better than any alternative system. At its best, democratic capitalism provides opportunities to cultivate certain “bourgeois virtues” such as prudence, creativity, and liberality.¹ Novak believes the capacity of democratic capitalism to teach people these kinds of virtues is normally a good thing for persons. To practice capitalism rightly understood, people require virtues such as prudence and frugality to develop attitudes and dispositions that tame the human proclivity for unabashed self-interest. Indeed, those who practice democratic capitalism display a certain kind of “spirit,” which Novak thinks people can learn about and acquire in their places of worship. In particular, he contends Roman Catholicism’s sacramental vision of the world, which places human dignity and human rights at the center of its social teaching, makes it

¹ I borrow the term “bourgeois virtues” from the title of Deidre N. McCloskey’s new book. McCloskey’s work is similar to Novak’s in that she believes that democratic capitalism requires certain virtues in order to sustain it as a system of political economy. McCloskey’s main goal in her work is to write an “apology” for capitalism in its American form, which, I believe, remains one of Michael Novak’s goals in his reflections about democratic capitalism. See Deidre N. McCloskey, *The Bourgeois Virtues: Ethics for an Age of Commerce* (Chicago: University of Chicago Press, 2006).

a suitable institutional actor within civil society to inculcate the practices necessary to sustain the spirit of democratic capitalism as a system of political and economic organization.

Although Michael Novak positively assesses many aspects of democratic capitalism, his heavy reliance on libertarian thinkers to demonstrate support for his position raises a number of challenges from within the tradition of Catholic social teaching. Other theologians who draw more heavily from the communitarian wing of Catholic social teaching question whether this kind of system of political economy and the type of vision of the human person it puts forth actually promotes human dignity and human rights in the ways that Novak claims. One Catholic social ethicist today who provides a more critical assessment of democratic capitalism and its vision of the human person is David Hollenbach. Fr. Hollenbach is a Jesuit priest who currently serves as the director for The Center for Human Rights and International Justice and is the Margaret O'Brien Flatley Chair in Theology at Boston College, where he teaches theological and Christian social ethics. Hollenbach joined the Society of Jesus in 1964 and received his Ph.D. in theological ethics from Yale in 1975. One of his most significant achievements was when he worked as a consultant for the National Conference of Catholic Bishops to draft their 1986 pastoral letter *Economic Justice for All: Catholic Social Teaching and the U.S. Economy*. More recently, he served as President of the Society of Christian Ethics in 1995, received a Fulbright Fellowship in 1996, and received the John Courtney Murray Award in 1998 for outstanding contributions to theology from the Catholic Theological Society of America.

The majority of Hollenbach's academic work focuses on the foundation of Christian social ethics, particularly in the area of human rights. His commitment to human rights has led him to address issues as diverse as inner-city poverty in the United States to the ethical and moral challenges raised by globalization. Hollenbach argues that humans are primarily social beings who flourish through participating in the cultural, political, and economic development of their people. He challenges whether our contemporary ethos, whose primary values are independence and autonomy, is capable of addressing the new kinds of interdependence brought about by globalization. As he says,

When the possibility of attaining good lives and freedom itself are becoming more dependent on new interconnections, however, much more attention must be given to the way the well-being of individuals is shaped by institutional connections with others. Globalization is thus challenging the received tradition of public values that has prevailed in the West for the past several centuries.²

To meet these challenges, Hollenbach presents an anthropology that stresses the communal dimensions of human personhood, which has led him to promote a vision of the common good that calls upon the idea of solidarity, which he defines as a firm and persevering determination to commit oneself to the common good.³ Hollenbach's commitment to an ethic of the common good refutes the charge that pursuing it is quixotic and socially dangerous.⁴ Indeed, Hollenbach presents grounds both in secular and theological terms regarding the ways that religion has been and can be a positive contributor to public conversation about the common good. Hollenbach qualifies his approach by indicating that what it seeks practically speaking is, first of all, the fulfillment of certain

² Hollenbach, *The Common Good and Christian Ethics*, 42-43.

³ *Ibid.*, 227.

⁴ Todd David Whitmore, "Tolerance-Then Solidarity," *America* 188 (2/3/2003): 36.

minimal norms.⁵ These minimal norms are an organic conception of human rights, which he sees as the minimum requirements for participation in social life. He rests his inclusive vision of human rights on an anthropology that is both personalist and communitarian. Hollenbach promotes this kind of anthropology over and against more libertarian conceptions of the human person because the adoption of a comprehensive view of human rights will help to protect the poorest members of society from marginalization and enhance the possibilities for the active participation of all people in the well ordering of society. Hollenbach believes the preservation of human dignity requires positive action in the form of social justice to support those who are vulnerable to *de facto* conditions of unequal and non-reciprocal interdependence.⁶ As a result, Hollenbach sees social justice as the call for the development of institutions that make interdependence in a community of solidarity a realistic possibility.

My goal in this chapter is to use the work of David Hollenbach to show that a more communitarian vision of the human person is better equipped to support the growth of markets that advance the fundamental dignity of human persons and their inalienable rights than the liberal anthropology espoused by Michael Novak. Indeed, I want to show that placing individual freedom and solidarity in society as competing ideals is a false dichotomy. Although I agree with Novak that the expansion of markets continues to raise the material well-being of millions of people around the world, it is apparent that it does so unevenly. This calls for a communal ethic in which both personal economic initiative and social solidarity are valued and embodied. Hollenbach's work is important

⁵ Ibid.

⁶ Hollenbach, *The Common Good and Christian Ethics*, 227.

because it attempts to outline why universal human rights and the global common good are mutually implicating. His call for solidarity and commitment to an inclusive vision of human rights does more than warn people about the dangers associated with the growth of a hegemonic global market in which the economic power of the few controls and dominates the many. It calls for people in both government and civil society to develop practical forms of global interdependence that enhance both the personal and social well-being of people in solidarity with one another. To support these claims, first, I explain why Hollenbach thinks the Catholic human rights tradition and its commitment to a comprehensive vision of human rights aims to achieve this goal. Second, I explicate why Hollenbach thinks the protection of these rights requires a commitment to solidarity in a community of freedom shaped by an ethic of the common good. Finally, I explore whether Hollenbach's ethic is capable of achieving these goals. In particular, I assess the charge that Hollenbach's commitment to social justice leads to the expansion of government and the loss of individual economic initiative. It is to these issues that I now turn.

1. An Examination of Hollenbach's Exploration of the Catholic Human Rights Tradition from Pope Leo XIII to Pope John Paul II

David Hollenbach's *Claims in Conflict* focuses on the development of the Catholic human rights tradition over a span of more than one hundred years. In this work, he argues,

Human dignity is the concrete normative value which the entire tradition has attempted to defend. Respect for the dignity and worth of the person is the foundation of all the specific human rights and more general social ethical frameworks adopted by the encyclicals and other Church teachings.⁷

⁷ Hollenbach, *Claims in Conflict*, 42.

Hollenbach makes clear that the foundation of the Catholic human rights tradition is the dignity of the human person. He says, “The thread that ties all these documents together is their common concern for the protection of the dignity of the human person.”⁸ Kenneth R. Himes agrees with this statement. He believes that modern Catholic social teaching draws an intimate connection between human dignity and human rights. Thus, “human rights give specificity to the language of human dignity; they articulate the freedoms, the goods, and the relationships that are expressive of a person’s dignity.”⁹ Hollenbach focuses on the Catholic human rights tradition, beginning with the work of Pope Leo XIII and ending with Pope John Paul II, to analyze the meaning of human dignity and the purpose of human rights both ethically and morally.

a. Pope Leo XIII: Laying the Foundation for the Catholic Human Rights Tradition

David Hollenbach believes Leo XIII’s *Rerum novarum* marked a turning point in Catholic social teaching because it critically addressed the benefits and shortcomings of liberal democracy and Marxist thought. Hollenbach says, “It was with Leo XIII that the Church began to move from a stance of adamant resistance to modern Western developments in political and social life to a stance of critical participation in them.”¹⁰ Leo recognized the impact of both liberal and Marxist thought, which stressed political and economic equality, respectively.

From a political standpoint, the movement toward democracy in many Western states emphasized individual liberty and autonomy. Liberal thinkers affirmed that per-

⁸ Ibid.

⁹ Kenneth R. Himes, O.F.M., “Commentary on *Justitia in mundo (Justice in the World)*,” in *Modern Catholic Social Teaching: Commentaries and Interpretations*, ed. Kenneth R. Himes, O.F.M. (Washington, D.C.: Georgetown University Press, 2005), 343.

¹⁰ Hollenbach, *Claims in Conflict*, 43.

sons possess political and civil rights, such as speech, press, and assembly. These kinds of rights serve as negative immunities against state coercion to protect individual freedom. A benefit of this conception of liberty was that it provided individuals with the necessary civil space to pursue a conception of the good life apart from outside interference from the state.

Pope Leo XIII, however, criticized many elements of the liberal tradition. He associated the institution of democracy in the political sphere as a potential threat to the development of human persons in the moral sphere. Hollenbach claims the moral threat that Leo perceived was that the movement toward democracy would usher in the belief that human dignity was subjective and that moral values were subject to change by majority rule. Leo countered this threat by arguing that ‘man’ precedes the state because of his worth as a transcendent being. All political and legal institutions must be responsive to the moral claim of human dignity as a non-instrumental value in order to meet the demands of human dignity. Otherwise, they will become both totalitarian and oppressive.¹¹ This led Leo to defend a hierarchical understanding of the social order, which never allowed him fully to endorse liberal democracy. He remained imbued with a paternalistic attitude toward the masses because he thought them incapable of making wise prudential judgments about the proper moral ordering of their lives. Yet, his affirmation that human persons ‘precede’ the state, by virtue of the primacy of the moral claim of every person to respect his or her transcendental worth,¹² allowed Leo to criticize all forms of democratic theory that maintained that basic values and human rights are created by human choice.

¹¹ Ibid., 44-45.

¹² Ibid.

In this way, Leo offered a powerful objection “to all forms of strict moral and political voluntarism.”¹³

Although Leo did not fully endorse all aspects of the liberal tradition, Hollenbach considers his commitment to economic rights an important achievement in the development of the Catholic human rights tradition. Leo’s commitment to economic rights, which included the right to adequate remuneration for one’s labor and the right to private property,¹⁴ allowed him to affirm that human dignity requires protection against treatment as a mere instrument of production. His defense of private property, for example, derives

not simply from the freedom of individual persons to act in a way unimpeded by others, but also from the fact that persons necessarily depend for the preservation of their dignity upon material conditions. All have a right to have these needs fulfilled at least minimally.¹⁵

Leo’s support for a just wage emerges out of his commitment to family life, where wages must be commensurate to allow support for the care of families.¹⁶ Simple commutative justice is inadequate to support and raise a family when the material needs of workers go unmet.¹⁷ To insure that owners would deal fairly with their employees by providing them with a just wage, Leo defended the right of workers to form unions.¹⁸ He defended this right to insure just working conditions, adequate time for family life, and religious devotion.¹⁹ He argued that employers are under a moral and legal obligation to recognize and

¹³ *Ibid.*, 44.

¹⁴ *Ibid.*, 47.

¹⁵ *Ibid.*, 48.

¹⁶ *Rerum novarum*, no. 35.

¹⁷ *Rerum novarum*, no. 35.

¹⁸ *Rerum novarum*, no. 36.

¹⁹ *Rerum novarum*, nos. 36-38, 42.

protect these rights.²⁰ When employers fail to fulfill their obligations to their employees, Leo believed the state has the duty to use its power to intervene to protect the rights of workers.²¹ The result of Leo's defense of these economic rights was that human dignity places a claim on the state to protect workers against those who would reduce them to instruments for their own purposes.²²

b. Pius XI and the Introduction of the Concept of Social Justice for the Catholic Human Rights Tradition

Hollenbach argues the release of Pius XI's *Quadragesimo anno* marked another turning point in the development of the Catholic human rights tradition. As discussed in chapter 2, Pius dealt with Fascism, the Great Depression, and the development of a Communist regime in Russia during his pontificate. In the midst of these major developments, Hollenbach suggests, "Pius XI continued to give major emphasis to the centrality of human dignity as the basis of all human rights."²³ Pius's commitment to human rights led him to criticize as morally objectionable the way modern economic structures functionalize human persons. They often do this by treating people as commodities.²⁴ His criticisms of modern economic structures borrowed heavily from Leo's commitment to see persons as transcendent beings whose dignity made them more than mere physical objects.²⁵ Pius employed this vision of the human person to reject Marxism's support for

²⁰ Hollenbach, *Claims in Conflict*, 48.

²¹ See *Rerum novarum*, nos. 32-34.

²² Hollenbach, *Claims in Conflict*, 46.

²³ *Ibid.*, 50.

²⁴ *Ibid.*, 52. See *Quadragesimo Anno*, no. 83.

²⁵ *Ibid.*

class struggle. Although Hollenbach suggests that Pius presented a ‘blanket’ view of socialism because he did not understand its nuances, there is no doubt that he analyzed all political and economic structures by the criteria of whether they benefited human dignity.²⁶

Hollenbach suggests that the most important contribution that *Quadragesimo anno* made to the Catholic human rights tradition was the introduction of the concept of social justice.²⁷ Hollenbach says, “The concept of social justice is a conceptual tool by which moral reasoning takes into account the fact that relationships between persons have an institutional or structural dimension.”²⁸ Before *Quadragesimo anno*, Catholic social teaching tended to analyze political and economic issues from the standpoint of their impact on individual persons. It tended to neglect interpersonal relationships and the way that political, economic, and cultural institutions shape human events, impact human dignity, and contour the context of human rights. The concept of social justice introduced into Catholic social teaching the “consciousness of institutional change”²⁹ and it placed efforts to specify the framework of human rights within the context of these institutional dynamics.³⁰

Hollenbach says, for example, “The right to private ownership of property will necessarily have different implications in a pre-monetized economy, in a feudal system,

²⁶ Ibid., 53.

²⁷ *Quadragesimo anno*, no. 71.

²⁸ Hollenbach, *Claims in Conflict*, 54.

²⁹ Ibid.

³⁰ Ibid.

and in industrial society.”³¹ This is because different social contexts affect economic institutions, which makes a difference about the ways people understand and enforce property ownership. The movement toward a social justice approach gave adherents of Catholic social teaching the capacity to analyze the impact of political, cultural, and economic institutions on human well-being and development. The tradition moved beyond the idea that human dignity is simply a personal affair. A social justice approach required the Church to look at the way social structures and institutions promote or marginalize persons from participating in society. Hollenbach concludes that Pius’s use of the concept of social justice “marks a major advance in the tradition’s understanding of the way social institutions mediate the claims of human dignity and shape the content of human rights.”³²

c. Pius XII and the Developmental Character of Human Rights

The development of the Catholic human rights tradition continued during the pontificate of Pope Pius XII. Hollenbach argues that he spoke more frequently and more systematically about “the moral roots of social, political, and economic order than had any of his predecessors.”³³ Pius XII’s emphasis on the moral foundations of these orders led him to stress the rule of law and to favor the kind of political institutions associated with constitutional democracies. He believed that social morality is primarily public, which led him to affirm that the dignity of the human person is an “intrinsic element in the very nature of social organization itself.”³⁴

³¹ Ibid.

³² Ibid., 55-56.

³³ Ibid., 56.

³⁴ Ibid., 59.

Similar to his predecessors, Pius's belief in the ontological reality of human dignity led him to reject both legal positivism and moral subjectivism. He found the growth of totalitarian states abhorrent because they treated human beings as mere devices in the social wheel. Pius offered a more positive vision of social life based on a community of morally responsible citizens by making the human person the central moral criterion of society.³⁵ As Hollenbach says, "This positive aspect of his thought brought out an essential characteristic of the moral theory of the modern papacy."³⁶ Human dignity is

an intrinsic element in the very nature of organization itself. All forms of social life are conceived of as essentially moral relationships. They are in service of the dignity of the human person whenever they conform to their own proper inner structure.³⁷

Pius made the task of respecting human dignity a moral task "*present* within the conditions and limits of human life."³⁸ Human dignity, which is both transcendent and finite, remains unconditional, but structured and conditioned "by the limitations and possibilities of persons in society. It is structured by that finite form of mutuality which is transcendental dignity's human form."³⁹ Hollenbach calls these finite conditions, which promote human dignity, human rights.⁴⁰ Although Pius did not call them as such, he clarified the forms of human relationships, which allow society to function. Persons function morally in social institutions such as the family, governments, and business as-

³⁵ Ibid., 58.

³⁶ Ibid., 59.

³⁷ Ibid.

³⁸ Ibid.

³⁹ Ibid.

⁴⁰ Ibid.

sociations. He thought it was important to analyze the ways that these institutions influenced the core value of human dignity, which led him to specify a number of human rights and corresponding duties.

An important contribution that Pius made toward the safeguarding of these rights was the claim that persons had a right to a juridical order that would constitutionally protect these rights. Hollenbach says that Pius believed that the role of government is to promote the common good – “that form of society in which responsible citizens act in a way which leads to mutual respect for rights and dignity. The common good, founded on mutual dignity, is not in opposition to human rights, but rather their guarantee.”⁴¹ The limited role of government and the nature of the common good conceived by Pius affirmed, “human rights cannot be understood apart from social interdependence, nor can social well-being be understood apart from personal rights.”⁴² Although the major difficulty remained how to resolve conflicts between personal and social goods in the concrete, Pius introduced “a strong emphasis on the developmental character of rights...”⁴³

d. John XXIII and the Interdependence of Human Rights

Hollenbach contends the brief pontificate of John XXIII marked “watershed years” for the Catholic human rights tradition.⁴⁴ John’s optimism and candor endeared him to the modern world and his work marked a period of innovation for Catholic social teaching. One of the defining characteristics of John’s view of the modern social order was its increasing interdependence. In *Mater et magistra*, he identified that major social,

⁴¹ Ibid., 61.

⁴² Ibid.

⁴³ Ibid.

⁴⁴ Ibid., 62.

political, and economic changes around the world had increased the need for international cooperation and organization to solve many of the world's problems. To meet these challenges, John reaffirmed that human dignity remains the central moral criterion to analyze the strengths and weaknesses of the contemporary social order. The difference between John's vision of human dignity and that of his predecessors was "his continual emphasis on the fact that human dignity can only exist within a consciously developed context of interdependence."⁴⁵ The affirmation of human dignity as a moral claim must now address human beings, as Hollenbach says, "in association" with one another in a more significant way than was pointed out by his predecessors.

What were the consequences of this new vision of human dignity for the Roman Catholic human rights tradition? In *Pacem in terris*, John elaborated "a theory of human rights as a framework for international and national peace."⁴⁶ The organizing principle of these rights was the dignity of the human person.⁴⁷ Hollenbach believes the importance of *Pacem in terris*

lies primarily in its systematic treatment of the consequences of this basic moral norm in highly organized societies and in the world as a whole. The unifying feature of this teaching about human rights and the way that they protect human dignity is to see them as means for people to partake in community. Human rights neither provide exclusive negative immunity against the community, nor are they the rights of the community against the individual.⁴⁸

They are mechanisms to empower people to partake in their society's political and economic development. These rights, which arise from human dignity, come with certain

⁴⁵ Ibid., 63.

⁴⁶ Ibid.

⁴⁷ *Pacem in terris*, no. 9.

⁴⁸ Hollenbach, *Claims in Conflict*, 65.

duties. John believed that a well-ordered society requires that human beings recognize and observe their mutual rights and duties because persons are social beings. Each person should contribute to the well-being of the social order to allow for the greatest level of participation possible.⁴⁹ “These duties and responsibilities are the responses called for by the dignity of the person in society.”⁵⁰ And, because these rights and duties are intimately personal, people need to exercise them in a community of freedom.

Hollenbach believes that the single foundational norm of human dignity allowed John to present an integrated theoretical framework for human rights. This framework allowed the Roman Catholic Church to present a view of human rights that integrated the liberal concern to secure civil-political rights with the socialist concern to secure social-economic rights. John’s organic view of social life led him to place social-economic rights at least on par with civil-political rights in order to protect and promote human dignity.⁵¹ This is evident in the list of human rights enumerated by John XXIII in *Pacem in terris*. The political rights that John included were “the rights to participate in public affairs and to juridical protection of all one’s human rights.”⁵² Economic rights included

the right to work, the rights to humane working conditions, to appropriate participation in the management of an economic enterprise, to a just wage, to own property within the limits established by social duties.⁵³

John’s social encyclicals maintained that the protection and coordination of these rights were increasingly the task of organized social bodies within society as a whole. Al-

⁴⁹ *Mater et magistra*, no. 72.

⁵⁰ Hollenbach, *Claims in Conflict*, 66.

⁵¹ *Ibid.*

⁵² *Ibid.*, 67. See *Pacem in terris*, nos. 26-27.

⁵³ *Ibid.*, 67. See *Pacem in terris*, nos. 30-33.

though the institution of government is limited and therefore cannot be responsible as the sole guarantor of human rights, it remains indispensable for the protection of all rights.⁵⁴

Hollenbach concludes that the importance of John's defense of human rights was that it tied together the idea that human dignity is not an "abstract or ethereal reality but is realized in concrete conditions of personal, social, economic, and political life."⁵⁵ The fundamental norm of human dignity ties the tradition of Catholic social teaching together. Its history, culminating with the work of John XXIII, has been a process of discovering and identifying those conditions that promote and protect human dignity. Hollenbach says the tradition has called these conditions human rights.⁵⁶ These conditions require the proper ordering of social and political institutions to make the protection and promotion of human dignity possible. Although John did not solve all the problems about how different peoples should protect human worth in its social context in a highly dynamic world, his use of the moral criterion of human dignity shaped a view of human rights that was organic and personal. As a result, John's adoption of rights thinking achieved

a rapprochement with modern Western political thinking and opened a path for Catholics to join in the emancipation of people from despotic rulers in much of the world, especially in Catholic regions like Latin America and the Philippines, as well as participation by the faithful in struggles for justice and peace worldwide.⁵⁷

Later documents of the tradition would try to resolve some of the tensions raised by John's thinking, but it is difficult to imagine that without his contribution to Catholic so-

⁵⁴ Ibid., 66.

⁵⁵ Ibid., 68.

⁵⁶ Ibid.

⁵⁷ Drew Christiansen, S.J., "Commentary on *Pacem in terris* (*Peace on Earth*)," in *Modern Catholic Social Teaching: Commentaries and Interpretations*, ed. Kenneth R. Himes, O.F.M. (Washington, D.C.: Georgetown University Press, 2005), 233.

cial teaching that the church would have had the intellectual resources to defend the dignity of the human person in such a highly interconnected world.

e. Vatican II: Promoting and Defending Human Dignity and Human Rights in a Volatile World

The rise of historical consciousness, which gives more importance to the particular, the contingent, the historical, and the changing, along with the growth of more integrated political and economic structures, provided the Roman Catholic Church with the opportunity to grapple more earnestly with the complexities of defending a unified vision of human rights in a fluid and highly volatile social order.⁵⁸ Church leaders recognized that two negative outcomes could possibly take shape in this new situation. On the one hand, the focus on our historically conditioned situation could make this an absolute claim, which would result in idolatry and enslavement.⁵⁹ On the other hand, a complete or premature withdrawal from historical engagement in the name of pure transcendence also was a temptation.⁶⁰

Hollenbach contends when commenting on *Gaudium et spes* that the church tried to meet these new historical realities by affirming that the conditions of human dignity are historically conditioned ones.⁶¹ The consequence of this teaching is that “it is impossible to specify the conditions of human dignity *a priori*.”⁶² The recognition that the con-

⁵⁸ Charles Curran provides an excellent summary of the shift in ethical methodology that took place at the Second Vatican Council, particularly as seen in the conciliar documents *Gaudium et spes* and *Dignitatis humane*, in the chapter called “Ethical Methodology” of his book *Catholic Social Teaching 1891-Present*. Charles Curran, *Catholic Social Teaching 1891-Present: A Historical, Theological, and Ethical Analysis* (Washington, D.C.: Georgetown University Press, 2002).

⁵⁹ Hollenbach, *Claims in Conflict*, 72.

⁶⁰ *Ibid.*

⁶¹ *Ibid.*, 70.

⁶² *Ibid.*

text of human rights takes shape historically allowed the church to fashion a theological anthropology that defended both the transcendence of the human person and the finite character of human existence. The tensions that human beings experience as both transcendent and finite are the context within which persons realize their dignity. It is this simultaneous presence within the person of the sense of historical limitation and the drive toward transcendence that becomes the focus of the new ethical treatment of personal dignity in *Gaudium et spes*.

The pastoral constitution reveals a fundamental methodological approach to the determination of the scope of valid human rights claims in modern societies. The approach that it takes makes the social nature of the human person central toward understanding how human dignity should be respected in modern societies. This allowed the church to incorporate into its teaching that the increased interdependence of cultural, economic, and political organization in modern societies is a natural outgrowth of our desire for personal fulfillment through participation in community. Hollenbach believes *Gaudium et spes* suggests, “a fruitful way to combine the traditional view of human rights as rooted in human nature with modern historical consciousness.”⁶³

The Council reaffirmed rights that defended the transcendent worth of human persons including those that protected them against coercion and bodily torture. Significantly, the Council added to the Catholic human rights tradition by giving as much importance to social, economic, and cultural rights, defined in relation to historical conditions, which acknowledged the increasing interdependence of persons. The benefit of this teaching, in contrast to both liberal and Marxist versions of human rights, was that

⁶³ Ibid., 75.

the Catholic tradition saw human rights as both “negative immunities and positive entitlements.”⁶⁴ Hollenbach believes,

This conciliar text laid out the most challenging vision of the church's social mission of the modern era. It proclaimed that the Catholic community should be deeply engaged in promoting the dignity of every person, and this proclamation bore significant fruit in the church's participation in the struggle for human rights in Chile, Poland, El Salvador, Korea, the Philippines and elsewhere. It challenged the church to help forge new bonds of global solidarity, mobilizing the church to lead the Jubilee 2000 campaign to alleviate the debt of the poorest countries and to become one of the world's strongest advocates of multilateral approaches in international politics. It taught that Christian faith reveals the deeper meaning of this-worldly activity, calling believers to transform the workplace and the civic forum into more authentic reflections of the communion God wants all people to share in the heavenly city.⁶⁵

f. Paul VI: Advocating Human Rights for an Integral Development

The task of implementing this new vision of human rights came during the pontificate of Paul VI. Paul's social encyclicals each are shaped “throughout by consciousness of the historicity of social institutions. They are also dominated by concern with transnational and international patterns of human interdependence.”⁶⁶ The central concern of these documents is the growing level of poverty, especially as experienced by those living in developing countries. To respond to this concern, Paul called for an integral development, whereby “the development of the person is properly regarded as the realization of the human potential for the knowledge, responsibility, and freedom which are constitutive of personhood.”⁶⁷ Paul believed that the actualization of this kind of per-

⁶⁴ Ibid., 76.

⁶⁵ David Hollenbach, “Joy and Hope, Grief and Anguish: *Gaudium et Spes* 40 Years Later,” *America* 193 (12/5/2005): 12.

⁶⁶ Hollenbach, *Claims in Conflict*, 78.

⁶⁷ Ibid., 79.

sonal development required that people have the opportunity to participate in the various social affairs of society.

The normative standard of integral development therefore includes all those personal and social rights which have been set forward in previous phases of the tradition. The context of these rights and their interrelationships with each other, however, will only be judged accurately when they are viewed in integral relationship with each other.⁶⁸

Economic well-being, therefore, is not simply a minimum standard that is extrinsic or merely instrumental in value to the development of the dignity of the human person. Nor is it a means to a dignified life. “It is, rather, *integral* to the standard of all moral value, human dignity.”⁶⁹

To respect and realize human dignity requires that human societies heed the essentially moral call to mutual interdependence.⁷⁰ In *Populorum progressio*, Paul criticized calls for development that focused exclusively on one dimension of human personality to the exclusion of others.⁷¹ This became even more evident in *Octogesima adveniens*⁷², where the document criticized forms of “both Marxism and liberalism, which programmatically deny the fullness of integral development whether on ideological or strategic grounds.”⁷³ Paul acknowledged that if either of these ideological systems ever became a complete social system, they would deny elements integral to human development. Although Marxist thought helps to explain scientifically structural and economic

⁶⁸ Ibid.

⁶⁹ Ibid.

⁷⁰ Ibid., 80.

⁷¹ *Populorum progressio*, no. 21.

⁷² *Octogesima adveniens*, nos. 32-35.

⁷³ Hollenbach, *Claims in Conflict*, 83.

conflict, and liberal thought helps provide insights into economic and political means for protecting personal self-determination and initiative, independently they fail to provide an adequate and comprehensive vision of the human person. Paul believed that the human person transcended any one particular ideological system. As Hollenbach says, “This concrete transcendence is precisely the dignity of the human person: fully rooted in social and historical conditions, yet always surpassing and judging them.”⁷⁴

On the one hand, the finite character of the human person allowed Paul to assert that a wide range of political options could be employed to address the material deprivation of millions of people around the globe. This increased the range of possibility for governmental action, but the normative concept of the dignity of the human person still kept it (government) limited both in principle and in practice. On the other hand, the transcendent character of human dignity gave Paul the ability to continue to make claims on society: “minimum conditions of material well-being must be met, freedom is to be defended, but in a way which recognizes the needs and dignity of others, and integral development is impossible apart from human solidarity.”⁷⁵ His commitment to both these poles of human ‘being’ allowed him to fashion principles about human dignity, which became mechanisms for discernment about the proper political and economic systems necessary to create the conditions for human flourishing.

These principles and the human rights they entail do not constitute a social or political program. They are, however, both minimum standards that must be met by all such programs, and principles which can shape the conscience of responsible agents.⁷⁶

⁷⁴ Ibid., 84.

⁷⁵ Ibid. See also *Octogesima adveniens*, nos. 43, 46, and 47.

⁷⁶ Ibid.

A society that respects these principles, therefore, is a society that forms its decisions and policies by them.

g. 1971 Synod of Bishops and the Right to Development

Hollenbach argues that the development of the Catholic human rights tradition did not stop with the significant events that transpired at the Second Vatican Council or throughout the papacy of Paul VI. The Council's creation of the international Synod of Bishops provided church leaders with a new forum to express the realities of cultural diversity within the church. In 1971, this new forum turned its attention specifically on the concerns of the churches in Asia, Africa, and Latin America. The Synod released the document *Justitia in mundo*, which incorporated both "the strength of the tradition's theory of human dignity and rights, on the one hand, and differentiated understanding of social relationships characteristic of Paul VI's writings on the other."⁷⁷ The document specified that the protection of human dignity requires a host of rights that work in a dynamic relationship with each other. This is most evident with the document's call for the *right to development*.⁷⁸ Hollenbach contends the right to development is

as an overarching category that includes many of the particular human rights endorsed by the Church. Or, put differently, the right to development is shorthand for a group of fundamental rights that, taken together, constitute the framework and substance of a just social order. Satisfaction of these basic rights can serve as an objective criterion for measuring development.⁷⁹

This right clarifies the tradition's understanding of how the context of rights should be determined. "The concrete context of the demands of dignity can only be specified

⁷⁷ Ibid., 85.

⁷⁸ *Justitia in mundo*, no. 15.

⁷⁹ Himes, "Commentary on *Justitia in mundo (Justice in the World)*," 343.

through an analysis of the kinds of relationships which actually govern human interaction.”⁸⁰ It is impossible to measure human dignity on a linear scale by analyzing the nature of the individual person. It requires a broader analysis that looks at the predominant economic, political, and cultural patterns of human organization and the ways these patterns augment or detract from human dignity. It is from within this context that the document spells out the importance of a relational definition of the demands of dignity.⁸¹

The Synod’s reliance on a relational view of human dignity led it to criticize mechanisms of social organization that marginalized people from participating in shaping the social patterns of human life.

Marginalization or lack of participation thus becomes a primary criterion for judging if human dignity is being violated. Lack of adequate nourishment, housing, education, and political self-determination are seen as a consequence of this lack of participation.⁸²

Members at the Synod employed this perspective and they were especially critical of the growing numbers of people who were ill fed, illiterate, and deprived of political power. They were critical of these trends because they violated the right to development, which Hollenbach says they describe more aptly as the right to participation.⁸³ The Bishops saw the growing numbers of people who remained outside the processes of social change and development as a violation of the conditions necessary for authentic human flourishing. The Bishops at the Synod recognized that a limited number of human potentialities would be realized “as long as persons remain in a condition of extreme marginalization and

⁸⁰ Hollenbach, *Claims in Conflict*, 85.

⁸¹ *Ibid.*, 86.

⁸² *Ibid.*

⁸³ *Ibid.*, 87. See *Justice in the World*, no. 18.

powerlessness.”⁸⁴ Thus, the right to participation “implies that all other rights are expressions of the claims of the person to be a self-determining agent, that is, they are expressions of claims to be a participant in the social, economic, and political process.”⁸⁵ Hollenbach concludes that *Justitia in mundo* provided the church with a way to analyze socially the marginalization of millions of people by identifying the mechanisms that inhibit people from participating in the political, economic, and cultural development of their peoples.

h. Pope John Paul II: Human Dignity, Human Rights, and the Need for Solidarity

Hollenbach’s foundational claim that the dignity of the human person provides the basis for the Catholic Church’s defense of human rights is even more apparent when looking at the work of Pope John Paul II during his pontificate. Even a cursory glance at the writings of John Paul II reveals that human dignity provided the basis for his defense of human rights. From encyclicals such as *Redemptor hominis* to *Evangelium vitae*, John Paul II articulated a comprehensive vision of human rights that specified the political, economic, and cultural requirements necessary to secure human dignity in an increasingly complex and interdependent world. He ardently defended a social vision of the human person, which led him to articulate why it was so important to give people the opportunity to participate in the various political, economic, and cultural communities created by modern societies. He recognized the importance of these communities because they provide the avenues for self-fulfillment and authenticity.

⁸⁴ Ibid.

⁸⁵ Ibid., 88.

Hollenbach considers that one of John Paul's most important contributions to the Catholic human rights tradition was his elevation of the virtue of solidarity to the forefront of Catholic social teaching. Although prior pontiffs had identified the increased political and economic interdependence of human communities, John Paul II went further than did his predecessors by stressing the moral interdependence of human communities. As Hollenbach says, "John Paul II has distinguished the *de facto* interdependence that is inevitable in human life from a moral interdependence that respects the dignity of persons in a reciprocal or mutual way."⁸⁶ Hollenbach thinks it is important to see that normal modes of interdependence can have either negative or positive value. Negative modes of interdependence arise when people are at war or when people deny others their freedom through subjugation or exclusion through law. In these cases, some people exploit others for their own advantage by purposely designing mechanisms of social life to provide benefits for some and disadvantages for others. In contrast, John Paul put forth a vision of solidarity that morally commits persons to producing a society that values the dignity of all participants to create a common good that is founded on equality and reciprocity.⁸⁷ Hollenbach believes John Paul's affirmation of this positive mode of interdependence provides the minimum grounds to enhance the agency and well-being of those who take part in it. "The possibility of such an achievement implies that agency and even human dignity, despite shorter-term conflicts and tradeoffs, are shared achievements."⁸⁸ To exercise the virtue of solidarity requires that people commit themselves to the common

⁸⁶ Hollenbach, *The Common Good and Christian Ethics*, 187.

⁸⁷ *Ibid.*, 188.

⁸⁸ *Ibid.*

good in a community of active and equal agents. Solidarity is not primarily an individual virtue. “It must also be expressed in the economic, cultural, political, and religious institutions that shape society.”⁸⁹

Hollenbach sees in John Paul II’s encyclical letter *Centesimus annus* a clear expression of the idea that the virtue of solidarity requires exercise within the various institutions that shape civil society. This is particularly true for those institutions that deal with the economic development of modern societies. Although John Paul lauded many of the benefits associated with modern economic development, including the way global markets have become vehicles for improving the quality of life for those who already have access to them, he reminded followers of the ways that modern economic institutions tend to isolate and marginalize millions of poor people around the world.⁹⁰ Hollenbach argues that the central concern of *Centesimus annus* is the way that modern economic development tends to marginalize millions of people. He thinks John Paul made it clear that “the market can create problems for democracy and human rights unless it is regulated by norms of justice that emerge from a vision of human solidarity - a vision that we are morally as well as factually interdependent.”⁹¹ Hollenbach questions whether the encyclical endorses ‘really existing capitalism’, like some theologians contend. Thus, John Paul called for major domestic and international changes in the global market-

⁸⁹ Ibid., 189.

⁹⁰ *Centesimus annus*, no. 33.

⁹¹ David Hollenbach, “Solidarity, Development, and Human Rights,” *Journal of Religious Ethics* 26 (1998): 313.

place.⁹² John Paul's long discourse on the social nature of enterprise and economic development challenges attempts to provide a 'rugged individualist' narrative to support capitalism. He uses the concept of solidarity to express that economic development is never a solitary activity. It always takes place within a social matrix that draws on both the material and intellectual resources of various peoples. The exclusion of large numbers of people from these activities not only detracts from the common good. It undermines human dignity in ways that often causes great social ills such as wide-scale unemployment, hunger, and civil conflict.

2. Revitalizing the Tradition of the Common Good

a. The Emergence of Tolerance and the Decline of the Common Good

Hollenbach believes one of the principal goals of the Catholic human rights tradition today is to increase the levels of participation of millions of people around the world now unable to take part in contemporary economic and political systems. Thus, a driving concern of Hollenbach's recent work is the growing marginalization of millions of poor people around the world due to the lack of economic development. He considers this widespread marginalization a threat to human dignity and a failure to promote and protect human rights. Hollenbach considers the marginalization of the poor particularly disturbing because its banality and fixture within today's world is astonishing since so many nations have made public commitments to human rights. During the Cold War, scores of political, civic, religious, and business leaders boasted of their concern for human rights.

⁹² David Hollenbach, "Christian Social Ethics after the Cold War," in *The Global Face of Public Faith: Politics, Human Rights, and Christian Ethics* (Washington, D.C.: Georgetown University Press, 2003), 212.

From 1948 to 1989, however, Cold War ideological strife sadly pushed human rights to the margins of the international agenda. He says,

Over the past half-century hopes that human rights could become truly effective standards of international behavior have risen and fallen like the tides. When the United Nations Universal Declaration of Human Rights was proclaimed in 1948, many saw it as a genuine commitment to ‘never again’ tolerate genocide and to resist the domination of one people by another through the power of moral consensus rather than armed force.⁹³

When the Cold War ended, many thought a renewed commitment to safeguarding and defending human rights would emerge. Hollenbach points to the 1993 U.N. Conference on Human Rights, where 85% of the member states reaffirmed the binding power of the declaration as “beyond question” as evidence that the international community was serious about defending human rights.⁹⁴ Yet, in the decades following the Cold War, and in spite of many public pronouncements, the international community continues to fail to protect a comprehensive vision of human rights. Hollenbach believes this is particularly evident in the aftermath of the terrorist attacks of September 11, 2001, where debates have arisen concerning the universality of human rights. He says,

Some see a rising ‘clash of civilizations’ setting Western nations with their democratic values on a collision course with the religious-moral-legal system of Islamic shariah and with nations guided by Confucian traditions and ‘Asian values.’ President George W. Bush, on the other hand, holds that the human rights associated with Western democracy and free markets are the wave of the global future. Meanwhile, some Western academics of a postmodernist bent reject human rights norms as incorrigibly Western, in the name of a respect for diverse cultures that itself, ironically, sounds somehow Western.⁹⁵

⁹³ David Hollenbach, “Human Rights in Catholic Thought: A Synthesis,” *America* 193 (10/31/2005): 16.

⁹⁴ *Ibid.*

⁹⁵ *Ibid.*

Hollenbach addresses why many countries have failed to meet their high-minded rhetoric about human rights with tangible institutional support. He believes one of the great achievements of modernity is the idea that all people share equal dignity as persons.⁹⁶ He points out that many Western democracies have embedded this idea in their foundational political documents and that many non-Western countries want to secure this notion in their own political charters. This speaks loudly to the persuasiveness and power of this idea. He recognizes this as an enormous achievement that must not be forgotten or negated.⁹⁷ Hollenbach believes, however, the history of this idea has engrained in the modern Western imagination “not only a positive commitment to equality but also the suspicion that pursuing stronger notions of shared goods will lead to oppression and violence.”⁹⁸ This presents major obstacles toward developing an ethic that makes solidarity with the poor and the participation of all the goal of institutions that shape society. Why has this happened?

Hollenbach traces the origins of this development to the latter stages of the Reformation and the early stages of the Enlightenment. The desire to end the wars of religion that had raged throughout the European continent made religious freedom, in the eyes of many, the first freedom. The desire to end civil strife made tolerance a necessary religious attitude. Many thought the best way to promote tolerance was to make religion a private matter. Proponents of privatization believed that religion “must become a private

⁹⁶ Although the Catholic Church was a late entrant into these discussions, the previous section showed that Hollenbach thinks the church today is now one of the leading advocates of this idea. He reiterates this claim in an article entitled, “Human Rights in Catholic Thought: A Synthesis.” See David Hollenbach, “Human Rights in Catholic Thought: A Synthesis,” *America* 193 (10/31/2005): 16-18.

⁹⁷ Hollenbach, *The Common Good and Christian Ethics*, 32.

⁹⁸ *Ibid.*

matter if social peace is to be possible.”⁹⁹ Peace would be possible once religion became private because people would no longer have to fight about comprehensive goods or the meaning of the good life. The advent of religious tolerance would bring about a peaceful coexistence that would allow people in civil society to cooperate with each other to secure a wide variety of limited social goods.

Hollenbach believes the person who gave the best contemporary philosophical expression to this position was the late John Rawls of Harvard University. Hollenbach believes Rawls’s work shares several positive affinities with Catholic social teaching, including the way his ‘difference principle’ bears a notable resemblance to the ‘preferential option for the poor’.¹⁰⁰ Rawls thought that every man and woman ought to be free to hold his or her view about the good life and that these views must inevitably be private. Rawls argued that the reality of pluralism made public discussions about comprehensive goods impossible and that his method of avoidance was the only way to achieve any kind of consensus.¹⁰¹ The primary social benefit of his position was that by privatizing ‘thick’ visions of the good that this would morally constrain people from imposing their vision of the good life on anyone else.¹⁰² Rawls concluded this was the only way that human beings could relate to each other in a pluralistic society such as the United States. Yet, despite this tangible social benefit, Rawls’s denial that debates about our common life in

⁹⁹ Ibid., 24.

¹⁰⁰ David Hollenbach, S.J., “A Communitarian Reconstruction of Human Rights,” in *Catholicism and Liberalism: Contributions to American Public Philosophy*, eds. R. Bruce Douglass and David Hollenbach (New York: Cambridge University Press, 1994), 135.

¹⁰¹ John Rawls, *A Theory of Justice* (Cambridge, M.A.: Harvard University Press, 1971), 3.

¹⁰² Ibid.

the *polis* should wrestle with ‘comprehensive visions’ of the social good renders his work problematic for Hollenbach.¹⁰³

Hollenbach thinks this ideal has become so powerful in the United States that it has spread beyond the realm of religion. Many Americans today consider tolerance to be the highest social aspiration and the range of matters to which tolerance extends has broadened.¹⁰⁴ In fact, there are many indications that tolerance of “diversity occupies the place held by the common good in the thought of Aristotle, Thomas Aquinas, and Ignatius Loyola.”¹⁰⁵ The claim that tolerance holds a preeminent position in American culture runs counter to those who believe that a culture war currently exists in the United States. Hollenbach points to the evidence provided by the social scientist Alan Wolfe, who suggests that the “beliefs and values of the American middle class are still largely homogeneous.”¹⁰⁶ Wolfe finds something close to consensus on what middle-class Americans most highly value today.¹⁰⁷ “This consensus on the *summum bonum* can be summed up in a single word: tolerance.”¹⁰⁸

The assertion that tolerance currently serves as the unifying principle of American culture disturbs Hollenbach because he remains unconvinced that an ethos whose primary values are individual independence and autonomy are capable of addressing the new

¹⁰³ Ibid., 134.

¹⁰⁴ Hollenbach, *The Common Good and Christian Ethics*, 24.

¹⁰⁵ Ibid.

¹⁰⁶ Ibid., 29.

¹⁰⁷ Alan Wolfe, *One Nation After All: What Middle-Class Americans Really Think: About God, Country, Family, Racism, Welfare, Immigration, Homosexuality, Work, the Right, the Left, and Each Other* (New York: Viking Press, 1998), 14-15.

¹⁰⁸ Hollenbach, *The Common Good and Christian Ethics*, 29.

forms of interdependence brought about by globalization.¹⁰⁹ Although tolerance remains a necessary remedy to alleviate ethnic, racial, and religious tensions, tolerance alone cannot address the widespread social ills that plague our increasingly interconnected world. Indeed, people need to pay more attention to the ways globalization challenges the received tradition of public values that have prevailed in the West for the past several centuries.¹¹⁰ What does Hollenbach propose as an alternative ethic?

b. Reengaging the Ethic of the Common Good

Hollenbach posits an ethic of the common good to address the widespread social ills that currently face American society and our world. Essential to this ethic is the idea that the larger good realized in social relationships is greater than the good that can be achieved in the life of a single person considered apart from the community.¹¹¹ Hollenbach argues the roots of this ethic appear in the writings of Aristotle, Thomas Aquinas, and Ignatius of Loyola.¹¹² Aristotle spoke of the common good realized in community not only as nobler but also as ‘more divine’ than the good of persons considered one at a time.¹¹³ Thomas Aquinas built on Aristotle’s insights by identifying the good to be sought by all persons in common with the very reality of God.¹¹⁴ Ignatius of Loyola, the

¹⁰⁹ Ibid., 42.

¹¹⁰ Ibid., 43.

¹¹¹ Ibid., 4.

¹¹² Ibid., 3-6. See also David Hollenbach, “The Common Good Revisited,” *Theological Studies* 50 (1989): 70-94.

¹¹³ Hollenbach, *The Common Good and Christian Ethics*, 4. See Aristotle, *Nicomachean Ethics*, 1094b.

¹¹⁴ Ibid. See Thomas Aquinas, *Summa contra gentiles*, III, 17.

founder of the Jesuits, went even further by linking the order's principal ideal of 'glorifying God' with the terrestrial reality of the common good.¹¹⁵

Hollenbach notes that today identification with the common good is mostly associated with concepts such as the general welfare, public interest, and public goods. He says the general welfare is the most frequently used analogue to the concept of the common good. Those who employ it use the term to address largely economic and utilitarian concerns.¹¹⁶ The danger with this notion is that politicians and policy experts can point to increases in the aggregative good of society while obscuring the marginalization of some or many of society's members.¹¹⁷ The second analogical concept is the public interest, which is a disaggregative theory that breaks down the public good into the effects it has upon the well being or rights of the individuals of society.¹¹⁸ The principal weakness of this concept is that it does not consider the richer understanding of the common implicit in the work of past writers.¹¹⁹ The closest analogue to the ancient notion of the common good is the idea of 'public goods'. Public goods are those goods that are 'non-rivalrous in consumption' and 'non-excludible', which means that its benefits cannot be confined to just some people by excluding others from these benefits. Thus, if a good is there for

¹¹⁵ Ibid., 5. See Jesuit order, *The Constitutions of the Society of Jesus and Their Complementary Norms, A Complete English Translation of the Official Latin Texts* (Saint Louis: Institute of Jesuit Resources, 1996), I.

¹¹⁶ Ibid., 7.

¹¹⁷ Ibid., 7. For example, a nation's GNP might increase precipitously from one year to the next, but this general welfare need not be common to all members of society. The United States consistently ranks first in world GNP, but these figures do not tell us anything about the growing numbers of those who live in poverty within our country.

¹¹⁸ Ibid., 8.

¹¹⁹ Ibid.

all, it is there for everyone; if it is present for anyone, it is present for all.¹²⁰ The problem with this analogy is that “these public goods are largely seen as extrinsic or external to the relationships that exist among those who form the community or society in question.”¹²¹ In all, Hollenbach suggests that each analogy fails to address the more basic question raised by those in the past about the good of being a community or society at all.

In order to revive a robust ethic of the common good, Hollenbach believes that religious communities must play a pivotal role to achieve this goal. He recognizes the irony in arguing that religious traditions offer insights to revive this tradition. The idea of the common good no longer holds a preeminent position in the public philosophy of the West because of the emergence of the serious religious disagreements about the meaning of the good life that arose during the Reformation. The fact that he wants to revive this tradition in an age when religious pluralism is significantly greater than in the past raises several challenges. The principal one comes from those who wonder whether religion should have any voice in shaping public affairs since religious adherents are often seen today as those who strain and deepen social divisions. Hollenbach acknowledges that those who remain skeptical about the role religion should play in public life do so because they can point to several contemporary realities to support their fears. One need only look at the divisive role played by religion in the conflicts of the Middle East, northern India, the former Yugoslavia, Northern Ireland, and numerous other places.¹²² The ability of religious communities to usurp loyalty away from the state and exacerbate sub-

¹²⁰ Ibid. For a richer description of public goods, see Inge Kaul, “Defining Global Public Goods,” in *Global Public Goods: International Cooperation in the 21st Century*, eds. Inge Kaul, Isabelle Grunberg, and Marc A. Stern (New York: Oxford University Press, 1999).

¹²¹ Ibid.

¹²² Ibid., 87.

divisions within the commonwealth raises the question of whether it is a good idea to bring back the common good as a social objective. Opponents do not find it hard to imagine that this may invite new religious conflicts. This objective may encourage believers to use the coercive power of the state to bring about their religious understandings of the good life.

Hollenbach is aware of the real capacity of religion to become a divisive force within society, both domestically and internationally. Those who argue for its inclusion in public life must be aware of its negative consequences.¹²³ Yet, those who seek to exclude religion from public life misunderstand the power of religious communities to enrich society because they base their observations on a selective sample of history.¹²⁴ He says,

There seems to be a propensity to regard all public religion with suspicion and to lump very different forms of religious activity together as ‘fundamentalist,’ ‘dogmatic,’ ‘authoritarian,’ or ‘the religious right.’ When this suspicion shapes the discussion, somehow Mahatma Gandhi, the Revered Martin Luther King, Archbishop Romero of San Salvador, Archbishop Desmond Tutu of Cape Town, Rigoberta Menchú of Guatemala, Bishop Carlos Belo of East Timor, and the numerous followers of each of these leaders get left off the list of significant religious influences in public life.¹²⁵

¹²³ For an excellent treatment of the way religion spurs conflict in the contemporary world, see Mark Jurgensmeyer, *Terror in the Mind of God: The Global Rise of Religious Violence* (Berkeley, C.A.: University of California Press, 2000). The claim that religion creates divisions in public life received systematic expression by the writer Samuel P. Huntington of Harvard University. See Samuel P. Huntington, *The Clash of Civilizations and the Remaking of World Order* (New York: Simon & Schuster, 1998).

¹²⁴ Hollenbach, *The Common Good and Christian Ethics*, 92.

¹²⁵ *Ibid.*, 99. One criticism I have of Hollenbach’s list is that all of his examples of religious people who have made positive contributions to the common good of society share his affinity for public policies generally associated with the political “left.” His examples fails to acknowledge the positive contributions that conservative groups or people on the “right” have made to the common good of society. Figures such as Pope John Paul II and Mother Teresa of Calcutta I think justify this claim.

This obscured view also tends to down play the positive role religious groups have had in the past during the abolitionist, labor, and civil rights movements.¹²⁶ Today, Hollenbach suggests that religious communities continue to play a positive public role. For example, “In numerous places from eastern Europe to Latin America to parts of east Asia, religious communities have helped constitute and strengthen civil society as a domain free from the authoritarian control of the state’s apparatus.”¹²⁷ Hollenbach concludes that religious traditions, if interpreted properly, possess the capacity to contribute to the common good of public life in a way that is fully compatible with pluralism and freedom.¹²⁸ They are most effective when they advocate the cause of the disenfranchised, the poor, and those marginalized because of their race, class, or gender.¹²⁹ The outcome from these engagements can be a more just, free, peaceful, and ultimately more united society.¹³⁰

c. Roman Catholicism and Its Resources to Revitalize the Common Good

Hollenbach suggests that Roman Catholicism in particular offers many resources to help reinvigorate an ethic of the common good. The most important resources that this religious tradition presents to public discussions about the common good are its anthropology and inclusive vision of human rights. First, its anthropology resists the prevailing ethos of Western culture that human well-being is an individual task that requires isolation from the community. The Catholic human rights tradition offers the idea that human persons are essentially social beings whose fulfillment comes through participation in

¹²⁶ Ibid., 92.

¹²⁷ Ibid., 112.

¹²⁸ Ibid., 99.

¹²⁹ Ibid., 93.

¹³⁰ Ibid.

community. Active forms of participation create positive forms of human interdependence, which enhance the well-being and dignity of all persons. From this standpoint, the marginalization of large numbers of people from actively contributing to the well ordering of society not only hurts those excluded, but it harms those who have created the negative conditions of exclusion. The emphasis in Catholic social teaching about the common good, therefore, is both a moral and descriptive concept. As Hollenbach says,

When people interact in a way that expresses reciprocal respect for their dignity as persons their well-being becomes a shared good. The well-being of each party to the relationship is linked with the well-being of the others.¹³¹

As a result, the common good of both the community and individual mutually benefit one another.¹³²

A tangible benefit that could result from the employment of this kind of anthropological vision is that it will help those responsible for making decisions in the political, economic, and cultural institutions that shape civil society to judge whether these institutions allow people to participate and interact with one another as active and equal agents.

Hollenbach says,

The common good, understood this way, is not extrinsic to the relationships that prevail among the members and sub-communities of a society. When these relationships form reciprocal ties among equals, the solidarity achieved is itself a good that cannot otherwise exist.¹³³

When society's institutions exclude large numbers of people, the resulting interdependence becomes genuinely evil. This vision gives the ability to identify when society falls short of what is reasonably attainable.

¹³¹ Ibid., 188.

¹³² Ibid.

¹³³ Ibid., 189.

The second area where this tradition can bolster the common good is to help the international community to support a comprehensive vision of human rights. The Catholic Church today is the world's largest non-governmental organization (NGO). Hollenbach thinks its record of involvement in defending human rights, whose basis stems from human dignity common to all people, makes it a credible institutional ally today in the fight to protect society's weakest members. Since the most fundamental forms of injustice on the global stage are those that marginalize people, countries, or cultures from at least minimal levels of active participation in the common good, the church's commitment to both political *and* economic rights serves as a counterweight to overtly individualistic conceptions of the human person. Indeed, many Western countries today recognize the importance of political and civil rights by giving people the opportunity to vote, enjoy free speech, and benefit from a broad range of movement free from government control. Although these kinds of rights positively help people to join in a nation's political development, they also serve to prevent political marginalization. Yet, many nations fail to recognize that marginalization also takes a wide variety of economic forms. The denial of basic healthcare, the inability to find employment, the lack of adequate food, housing, and clothing, and the incapacity to contract a living wage all prevent large numbers of people from minimum participation in the common good. Hollenbach thinks the Catholic Church's call to support an inclusive vision of human rights challenges nations around the world to establish a "floor" below which no one will fall. Hollenbach thinks that nations that do this are those that truly uphold economic rights.¹³⁴

¹³⁴ Ibid., 198.

3. Social Justice, the Role of Government, and the Principle of Subsidiarity

a. Hollenbach's Commitment to Safeguarding Economic Rights through Social Justice

Catholic social teaching defends the idea that human beings require a number of “economic rights” because social justice demands the institutional development of a framework that enables people both to participate actively in building up the common good and to share in the benefits of the common good.¹³⁵ This is what Hollenbach means by the term *social justice*. “The ‘subject’ of social justice ... is the major institutions that enhance or impede people’s participation in creating and benefiting from the common good.”¹³⁶ This approach allows government authorities and those who work in civil society to evaluate whether the various institutions of society, including those that are economic, prevent people from taking active part in the common good. His commitment to social justice calls attention to the social structures that handicap the poor from entering the global market. He advocates that civil authorities in government need to reform markets when they do not help the poor to meet their basic material needs. Hollenbach shares John Paul II’s conviction in *Centesimus annus* 42 that the creation of a stronger juridical framework between markets, civil society, and political institutions needs to transpire in order to include more people in the processes of decision-making that affect the lives of millions of people. Indeed, when the institutional arrangements prevailing in developing countries prevent numerous people from sharing in social goods to the level required by their dignity as members of the human community, this violates the requirements of distributive justice. Hollenbach concludes that when important economic and

¹³⁵ *Ibid.*, 201.

¹³⁶ *Ibid.*

social institutions create barriers that disable the poor from meeting their basic material needs, these institutions require alteration.

Hollenbach recognizes the role churches and other civic associations play in working with the poor to help them to meet their basic material needs. Through the principle of subsidiarity, Hollenbach stresses that people require space separate from the state to accomplish many basic human goods.¹³⁷ He acknowledges, “Civil society, not the state, is the primary locus in which human solidarity is realized.”¹³⁸ Churches can help those in poverty in a number of ways. They can help the poor to deal with their despair when they cannot find work and they often provide relief for the poor through charitable contributions.¹³⁹ When churches advocate the cause of the disenfranchised, the poor, and the marginalized, Hollenbach sees this as a prime example of the church working for social justice and a just, free, peaceful, and ultimately more united society.¹⁴⁰

b. Hollenbach’s Understanding of the Role of Government and the Principle of Subsidiarity

Although churches and other civic organizations play an important role to bring about greater levels of participation among the marginalized, Hollenbach argues that these institutions alone cannot rectify many of the problems caused by the globalization of the market. These institutions cannot solve many of the problems brought about by the globalization of the market because they lack the power that government has to do such things as enact anti-discrimination laws, enforce property laws, and establish fair tax

¹³⁷ Ibid., 102.

¹³⁸ Ibid.

¹³⁹ Ibid., 93.

¹⁴⁰ Ibid.

codes. The Catholic Church does not seek to control these levers of power in society, nor should it, because of its commitment to the principle of subsidiarity. The proper application of this principle grants people within the church the capacity to remain a source of social vitality in civil society because the strength of the work of its followers comes from their involvement at the grass roots level of people's everyday problems.¹⁴¹ Nonetheless, Hollenbach thinks it wise to remember that John Paul II linked the principle of subsidiarity to the ideas of solidarity and the common good.¹⁴² Civil society alone cannot provide the institutional reforms necessary to alter the economic structures that oppress the poor. Government institutions must *also* work toward these ends because they have the capacity and resources to structure economic systems in ways that do not place excessive burdens on the poor.

c. Does Hollenbach's Commitment to Social Justice lead to an Improper Expansion of Government?

David Hollenbach's view of subsidiarity clearly differs from one that subscribes to the idea that the government that governs least is the one that governs best. Although he acknowledges the important role that "faith-based" communities play throughout the world play toward aiding the poor and marginalized, he believes that their responses will be inadequate if not accompanied by changes in the larger institutional context that is the occasion of so much hardship in developing nations. Thus, only large associations are capable of lowering the walls that serve as barriers toward the creation of an interdependent world. Hollenbach's understanding of subsidiarity, not surprisingly, draws criticism from people such as Michael Novak. He sees Hollenbach's view of subsidiarity as a tool

¹⁴¹ *Ibid.*, 207.

¹⁴² Hollenbach, *The Global Face of Public Faith*, 210.

for making the poor dependent on the ministrations of the state for their economic well-being. Novak thinks that Hollenbach fails to consider whether his work, which claims to limit the role of government, actually expands its power radically through his commitment that government has a moral function: protecting human rights and securing basic justice for all members of the commonwealth.¹⁴³ Indeed, Novak believes Hollenbach fails to consider the benefits the liberal tradition offers to the Catholic social tradition. Novak points to the work of liberal thinkers such as John Locke to show that a liberal is one who pays full respect to another free person. He is grateful that the Catholic tradition has kept alive the tradition of sustained reflection on the common good. Novak suggests, however, that it needs to incorporate more fully what he calls the “classic liberal tradition” for the institutional experiments that have made possible both greater scope for the freedom of the human person, and a broader and deeper achievement of the general welfare. Thus, it is important to identify whether Hollenbach’s commitment to both social justice and the proviso that government should provide a “floor” below which no one should fall are things that will eventually lay the groundwork for the expansion of government.

Hollenbach believes that social justice is more complex than simply lifting regulatory restrictions on the market. Efforts to alleviate it will have to be correspondingly complex.¹⁴⁴ Hollenbach believes government institutions can protect and help the poor in a number of ways to promote an ethic of solidarity. State institutions can do things that faith based communities cannot do to provide a floor below which no one will fall such

¹⁴³ Michael Novak, “The Marriage of Two Traditions,” in *Free Persons and the Common Good*, 145-174.

¹⁴⁴ Hollenbach, *The Global Face of Public Faith*, 210.

as protect the poor from the nightmare of unemployment by seeking balanced growth and full employment.¹⁴⁵ State institutions can also help the poor by providing unemployment insurance, retraining programs, and insure that workers are paid wages commensurate with living in dignity.¹⁴⁶ It is vital to develop this kind of framework if a free economy is to serve freedom in its totality.¹⁴⁷

Indeed, none of Hollenbach's suggestions about the ways government can promote solidarity and an ethic of the common good seeks to replace the power of people in civil society to meet their own material needs mainly through their participation in markets-based enterprises. On the one hand, he admits that today entrepreneurial success is never an isolated activity.¹⁴⁸ It requires the cooperation of many people working toward a common goal. The success of people in business today requires the development of people with 'know-how' and technological skill to navigate a complex information-based economy. To educate great numbers of these kinds of people requires both private and public educational agencies to work for the benefit of the common good. On the other hand, Hollenbach believes that government plays an important role in the development of a free economy by giving shape to it by promoting laws and policies that aim to help those on the margins of society to participate in a nation's economic development. This does not mean that government has to do this by taking over the rightful autonomy that people have in civil society to conduct business to meet their own material needs. These are some of the elements of the 'strong juridical framework' that Hollenbach praises John

¹⁴⁵ Ibid., 208.

¹⁴⁶ Ibid.

¹⁴⁷ Ibid.

¹⁴⁸ Ibid., 209.

Paul II for calling attention to in *Centesimus annus*. Hollenbach's commitment to social justice, therefore, is not a program to expand government, but a useful tool to help both government officials and members of civil society to identify whether current economic policies augment or diminish human dignity. A commitment to social justice, in the way Hollenbach proposes, helps eliminate economic injustice by empowering people in both government and civil society to promote creative solutions to overcome the exclusion of large numbers of people from meeting their own material needs. Only when this takes place will society no longer deny people their economic rights to allow them to participate as active and equal agents in the well-ordering of society. In the next chapter, I want to explain and explore Hernando de Soto's strategy to meet this objective. It is to this issue that I now turn.

Chapter 5

Hernando de Soto and Defending the Poor's Property Rights

1. Hernando de Soto's Early Life and Background

a. Early Life

Hernando de Soto was born in Arequipa, Peru in 1941. Almost one hundred twenty years before his birth, Jose de San Martin of Argentina and Simon Bolivar of Venezuela led Peru's movement for independence from Spain. The achievement of full emancipation took place in December 1824, when General Antonio Jose de Sucre defeated the Spanish troops at Ayacucho, ending Spanish rule in South America. Spain subsequently made futile attempts to regain its former colonies, but in 1879, it finally recognized Peru's independence.

The military became the most prominent societal institution in Peru for many years after its independence in 1879. Military leaders, supported by landed interests with ties to the Roman Catholic Church, controlled the presidency for nearly fifty years following independence (1824-72).¹ In the twentieth century, coups have repeatedly interrupted civilian constitutional government. The historical instability of Peru's political climate often provided roadblocks to Peru's financial stability.

At the age of seven, Hernando de Soto left Peru. Hernando's father decided to move his family to Europe in 1949 to manage a large engineering firm. De Soto says political pressure kept his family out of Peru when he was a child, but his father insisted that he and his brothers return to their native country each summer to stay connected with

¹ Michael Fleet and Brian Smith, *The Catholic Church and Democracy in Chile and Peru* (Notre Dame, IN: Notre Dame University Press, 1997), 79.

their homeland. De Soto acknowledges that it was during these return visits to Peru that he began to think about the causes and effects of poverty. He says,

The way my involvement in these issues began was when I realized, after living in Europe for a long time yet traveling constantly back and forth to my native Peru in Latin America, that Latin America, and Peru of course, were very poor. I hadn't quite realized that as a child. I thought my Peruvian friends, my cousins, my interlocutors when I came to Peru were just as sophisticated, as clever, as skilled as my European friends were when I was a child. It only dawned on me about the age of 17 that I actually came from a poor country. And then I wondered why, since the skills seemed to be the same, at least among elites. So I told myself there must be something that isn't obvious that accounts for the relative wealth of the European, the North American, the West versus the nations of the Third World. Since then I've been interested in finding out what difference it is. And since I couldn't pick it up in the books, I thought it had to do rather in observation, with getting involved in the grassroots. That's how I got involved in this. And about the age of 39 I had made enough money so as to survive, hopefully, for the rest of my life. I started getting more involved in these issues.²

De Soto returned home to Peru in 1980. He came back after he successfully completed his post-graduate work at the *Institut Universitaire de Hautes Etudes Internationales* in Geneva, Switzerland as well as a prosperous business career in Europe as the chief executive of a large engineering consulting company. It was during this time that he dealt regularly with overseas markets, gaining insight into the political nature of international aid and export credits. He soon realized upon his return to Peru that to conduct business in his native country took extraordinary persistence, ingenuity, and bureaucratic shrewdness when compared to Europe and the United States.

b. Founding of the *Institute for Liberty and Democracy* and Writing *The Other Path*

In 1980, Hernando de Soto, along with several business colleagues, founded the Institute for Liberty and Democracy (ILD). De Soto established this think tank to help

² Public Broadcasting Service, "Commanding Heights: An Interview with Hernando de Soto." Available on-line at http://www.pbs.org/wgbh/commandingheights/shared/minitextlo/int_hernandodesoto.html#1 (downloaded May 8, 2006).

the poor of Peru to form nondiscriminatory markets where the law helps everyone to have an opportunity to prosper. De Soto's organization quickly became a major topic of national interest in 1986 when he published his first book *El Otro Sendero (The Other Path)*. The book's title served as an intellectual challenge to *The Shining Path*, a self-described Maoist movement led by Professor Abimael Guzman. Members of The Shining Path employed Marxist ideology to rally the impoverished of Peru to try to overthrow the national government to establish a revolutionary socialist state. De Soto contends The Shining Path's major strength "stemmed from its intellectual appeal to those excluded by the system and its ability to generate a political cause for natural leaders, whether in universities or shantytowns."³ De Soto believes if a government does not give to everyone the impression that it is really trying to improve things, it opens the possibility for the left to protest in the name of all the discontented people. He therefore published *The Other Path* to counter the Shining Path's criticisms of liberal democracy and capitalism. Dealing systematically with their arguments, *The Other Path* was de Soto's defense against the idea that poor Peruvians were a social class naturally disposed against markets and democracy.⁴

The main thesis of *The Other Path* is that the majority of Peruvian people in 1986, around 80% of the population, were poor because they worked outside the formal legal system. One primary reason why so many people remained locked out of the formal legal system was that in postwar Peru, the government had passed an average of 28,000 laws and regulations each year limiting Peruvian's ability to produce and distribute

³ de Soto, *The Other Path*, xiv.

⁴ *Ibid.*, xv.

wealth. For instance, permission to set up a small business and acquire the appropriate licenses took an average of 289 days and cost 31 times the average Peruvian's monthly salary. In the face of such crushing regulatory burdens, most Peruvians operated businesses "extralegally." De Soto discovered that Peru, in fact, had become two nations: one where the legal system bestowed privileges on a select few, and another where the majority of the Peruvian people lived and worked outside the law, according to their own local arrangements. In an effort to understand the size of this 'extralegal' or informal economy, de Soto and a group of colleagues combed the streets and shantytowns of Peru during late afternoons and weekends, talking to people about their work, and counting their businesses and enterprises. *The Other Path* summarized de Soto's findings about the everyday life of poor Peruvian homeowners and entrepreneurs. It showed that many of these people remained mired in poverty because the legal infrastructure of the country denied them their property rights. Over the past fifty years, the millions of poor people who migrated from rural areas to towns and cities to find work in Peru had been locked out of the nation's formal economic system. De Soto concluded that the lack of formal title to property inhibited poor homeowners and entrepreneurs from using their limited assets to secure credit, facilitate routine business transactions, or protect innovations through patents. Peruvians were not resisting democracy in favor of Marxist ideology. On the contrary, most Peruvians, especially small business owners, wanted to live under the rule of law, but the cumbersome property rights system in Peru forced them to work in the informal sector of the economy.⁵ The more people the ILD researchers talked to in the shantytowns and rural byways of Peru, the more they realized that it was not so much

⁵ Ibid., xvii.

that the poor were breaking the law as that the law was breaking them. Even those who had tried to get into the system by applying for titles to their houses and other real estate or licenses to legalize their businesses complained that it was impossible to succeed; wending their way through the bureaucratic obstacles simply took too much time and cost too much money. As a result, *The Other Path* identified genuine problems with Peru's economy to help try to transform it into a modern capitalist system that benefited the majority of the nation's citizens.

By 1987, *The Other Path* became one of the best selling books in Peruvian history and its popularity grew throughout Latin America.⁶ The book's positive reception among the public spurred leaders of The Shining Path to attack de Soto and the ideas promulgated by the ILD in their newspaper *El Diario*. They warned Peruvians that de Soto and the ILD sought to undermine the people's war against the state. Recognizing that the ILD was the primary intellectual influence behind the restructuring and modernization of the Peruvian economy, Guzman called for an all-out offensive to destroy it. In July of 1992, members of The Shining Path took lethal action against those who worked for the ILD. They planted a car bomb outside the Institute's office. The explosion caused the death of three people and injured nineteen others. Guzman was captured in September 1992, and the following year the 17 terrorists who had bombed the ILD's headquarters were apprehended. For de Soto and his colleagues, they saw the attack as an act of cowardice. It demonstrated to them that The Shining Path had lost the war of ideas regarding the causes of poverty in Peru. De Soto believes members of The Shining Path resorted to

⁶ Today, the book has sold over 4 million copies and been translated into 12 different languages.

violence because their ideas to combat poverty in Peru were no longer credible with the public.

In the years following the publication of *The Other Path*, the ILD coordinated efforts with civic and government leaders in Peru to bring into law most extralegal real estate and businesses. As a result, tax income increased by \$400 million a year between 1993 and 1995 and over half a million jobs were created. In towns where people had legal assets, 20 percent more children were enrolled in school. “By 1995, such reforms had brought into the legal system some 300,000 owners whose property on average at least doubled in value. Twenty-five credit institutions began giving loans to these now legal owners.”⁷ By 2000, “some 1.9 million buildings of urban land had entered the legal system, about 75 percent of the extralegal market.”⁸ The reforms sponsored by the ILD helped Peru to achieve high economic growth rates, including the highest in the world (12%) in 1994.

c. Hernando de Soto and *The Mystery of Capital*

In 2000, Hernando de Soto’s influence grew in the area of international economic development with the publication of his second book *The Mystery of Capital: Why Capitalism Triumphs in the West and Fails Everywhere Else*. The book explicates the lessons learned by de Soto and his colleagues at the ILD about the causes of poverty in LDCs throughout the world. He believes a major factor contributing to the rise in poverty in LDCs is the dramatic surge of people moving from rural to urban areas.⁹ Millions of

⁷ de Soto, *The Other Path*, xvii.

⁸ Ibid.

⁹ de Soto, *The Mystery of Capital*, 69.

people around the world have migrated to cities over the past fifty years to gain better access to roads, communication centers, hospitals, and jobs. In China, for example, since Deng Xiaoping introduced capitalist economic reforms in 1979, 100 million people have left their homes in rural areas to move to cities. In Haiti, Port-au-Prince has “grown fifteen times larger; Guayaquil eleven times larger, and Cairo four times larger.”¹⁰ At this rate, 80 percent of the world's urban residents will live in developing countries by 2025.¹¹ The United Nations Global Report on Human Settlements confirms de Soto’s analysis. It says the urban population in LDCs will “double from 2.4 billion in 1995 to 5 billion in 2025.”¹² This means the urban population in LDCs is growing 2.5 times faster than the rural population.¹³ The result of this large-scale migration is an industrial revolution that is in many ways similar to the one experienced by the West almost 200 years ago. The main difference from the eighteenth and nineteenth century Industrial Revolution is that one transpiring around the world today is happening at a much larger and faster pace. For example,

Britain supported just 8 million people when it began its 250 year progression from the farm to the laptop computer. Indonesia is making that same journey in only four decades and carrying a population of more than 200 million.¹⁴

The pace at which this worldwide Industrial Revolution has developed has brought hardship to millions of people in both economic and personal terms. Yet, despite

¹⁰ Ibid., 70.

¹¹ The United Nations, *United Nations Global Report on Human Development*. Available on-line at <http://www.un.org/cyberschoolbus/habitat/background/bg2.asp> (downloaded May 8, 2006).

¹² Ibid.

¹³ Ibid.

¹⁴ de Soto, *The Mystery of Capital*, 71.

the hardship brought about by this revolution, people living in LDCs around the world recognize the benefits associated with the ability to participate in the global market. Although the competition between capitalism and communism ended in the minds of many with the fall of the Berlin Wall in 1989, de Soto finds it ironic, that at the hour of capitalism's greatest triumph, it is also experiencing its greatest hour of crisis. He says,

Capitalism stands alone as the only feasible way to organize rationally a modern economy. At this moment in history, no responsible nation has a choice. As a result, with varying degrees of enthusiasm, Third World and former communist nations have balanced their budgets, cut subsidies, welcomed foreign investment, and dropped their tariff barriers.¹⁵

For years, many developing nations have tried to enter the global capitalist system. Yet, these efforts have often been met with bitter disappointment. From Russia to Venezuela, the past half-decade has been a time of economic suffering, tumbling incomes, anxiety, and resentment.¹⁶ De Soto believes as long as local governments cannot produce a legal infrastructure, which can protect the property rights of the poor to enable them to use their assets to enter the marketplace, widespread poverty will persist in LDCs. He says,

The poor inhabitants of these nations – five-sixths of humanity – do have things, but they lack the process to represent their property and create capital. They have houses but not titles; crops but not deeds; businesses but not statutes of incorporation. It is the unavailability of these essential representations that explains why people who have adapted every other Western invention, from the paper clip to the nuclear reactor, have not been able to produce sufficient capital to make their domestic capitalism work.¹⁷

His contention that the roots of poverty in LDCs do not reside in “cultural factors,” but in the legal obstacles created by local governments that deny people their prop-

¹⁵ Ibid., 1.

¹⁶ Ibid., 1-2.

¹⁷ Ibid., 7.

erty rights, is what led him to argue that the causes of poverty in many LDCs are similar to the foundations of poverty he found in Peru throughout the eighties and nineties. He rejects the suggestion that certain cultural groups are predisposed from exploiting the benefits of a market economy. He says,

These failures have nothing to do with deficiencies in cultural or genetic heritage. Would anyone suggest “cultural” commonalities between Latin Americans and Russians? Yet in the last decade, ever since both regions began to build capitalism without capital, they have shared the same political, social, and economic problems: glaring inequality, underground economies, pervasive mafias, political instability, capital flight, flagrant disregard for law. These troubles did not originate in the monasteries of the Orthodox Church or along the pathways of the Incas.¹⁸

In fact, de Soto believes that people across a wide spectrum of cultures in LDCs share common reasons for their lack of economic development.

The cultural differences that would make for an interesting program on the Discovery Channel or an article in *National Geographic* magazine are cute, are interesting, but that’s not where the basics are. The basics are that all of us Third Worlders have in common a very underdeveloped property rights system, a very underdeveloped legal apparatus, and that’s what keeps you ahead of us. That’s the part I look at. The fact I’m able to find it in different cultures is first of all important to us because it indicates that there are basic principles that account for development, that there are general theories that one can bring together and that, therefore, there are solutions that one can devise on the basis of this information. But it’s not the differences that make it interesting for me to go into any particular part of the Third World; it’s the fact that we’re so similar in spite of the fact that this might be manifested in different cultural forms.¹⁹

Thus, through gaining first-hand experience in countries such as Egypt, the Philippines, Indonesia, and Mexico, de Soto explains in *The Mystery of Capital* that poverty persists at such great levels in many LDCs because these nations have not developed the neces-

¹⁸ Ibid., 9.

¹⁹ Public Broadcasting Service, “Commanding Heights: An Interview with Hernando de Soto.” Available on-line at http://www.pbs.org/wgbh/commandingheights/shared/minitextlo/int_hernandodesoto.html#1 (downloaded May 8, 2006).

sary legal infrastructure to allow poor people to participate in a capitalist economy. As a result, this new world-wide industrial revolution has caused such turmoil because the legal infrastructures of LDCs have not adapted well to life organized on such a large scale.²⁰ In spite of these wide-scale legal obstacles, he concludes it is possible to export the kind of legal reforms enacted in Peru to other LDCs. *The Mystery of Capital*, therefore, is de Soto's latest attempt to promote the goal of the ILD: the enfranchisement of property rights among the poor in the developing world.

2. Hernando de Soto's Major Concepts and Ideas

a. What is Capital?

Hernando de Soto believes the most important questions today facing those interested in economic development are the kinds that deal with the origins and creation of capital. These are central questions because there remains a clear and unsettling paradox: "Capital, the most essential component of Western economic advance, is the one that has received the least attention."²¹ De Soto believes the origins and means to create capital have received scant attention from Western nations for several reasons. Primary among them is that Western nations have largely forgotten their own history about the origin of capital. They have forgotten this critical piece in the puzzle toward economic development because many Western nations have had much success toward integrating their poor into their economies that poverty no longer is the *norm* in places such as the United States and Western Europe.²² He says,

²⁰ de Soto, *The Mystery of Capital*, 70.

²¹ *Ibid.*, 11.

²² Several excellent recent works that examine the effects of poverty in the United States include David K. Shipler, *The Working Poor: Invisible in America* (New York: Knopf, 2004); Amartya Sen, *Development as Freedom* (New York: Anchor Books, 2000); Barbara Ehrenreich, *Nickel and Dimed: On (Not) Getting*

The problem is that most people outside the West hold their resources in defective forms: houses built on land whose ownership rights are not adequately recorded, industries located where financiers and investors cannot see them. Because the rights to these possessions are not adequately documented, these assets cannot readily be turned into capital, cannot be traded outside of narrow local circles where people know and trust each other and cannot be used as collateral for a loan.²³

As a result, what many Western nations have lost is the memory of how the creation of capital began back in the eighteenth century. They have forgotten why the creation of capital was important to their future economic success.

De Soto turns back to the eighteenth century where Western economists such as Adam Smith first explained why capital is the preeminent factor towards economic development. In 1776, when Adam Smith wrote *The Wealth of Nations*, he saw the desire to acquire capital as an outgrowth of the human person's natural progression from a hunting and agricultural society to a commercial one where, through mutual interdependence, specialization, and trade, people could increase their productive powers immensely.²⁴ Smith saw at the dawn of the industrial revolution in Europe that capital is the magic that enhances productivity and increases the surplus value of assets. De Soto agrees with Smith's assessment. He believes capital is crucial for economic development because it serves as the basis for production, generates wealth, and allows for economic specialization, which allows a nation's economy to become more diverse and efficient. But, what is capital? He sees capital as more than the simple accumulation of assets. *Capital is the*

By in America (New York: Owl Books, 2002), William Julius Wilson, *When Work Disappears: The World of the New Urban Poor* (New York: Knopf, 1996).

²³ Public Broadcasting Service, "Commanding Heights: An Interview with Hernando de Soto." Available on-line at http://www.pbs.org/wgbh/commandingheights/shared/minitextlo/int_hernandodesoto.html#1 (downloaded May 8, 2006).

²⁴ de Soto, *The Mystery of Capital*, 42.

engine that stimulates economic growth through the stock of assets accumulated for productive purposes. In other words, capital is the *potential* that an accumulated stock of assets holds to deploy new production. De Soto says today's entrepreneurs, similar to their predecessors from the past, use their accumulated resources to support specialized enterprises and then eventually exchange their products for other things they need. As a result, the more capital a person or business acquires, the more specialization becomes possible, which benefits society in terms of higher productivity.²⁵

If capital is the force that raises the productivity of labor and creates the wealth of nations, why do so many people in LDCs, who possess a wide variety of assets, produce such little capital? One popular reason often given that de Soto seeks to overturn is people in LDCs lack an entrepreneurial spirit. He says,

The cities of the Third World and the former communist countries are teeming with entrepreneurs. You cannot walk through a Middle Eastern market, hike up to a Latin American village, or climb into a taxicab in Moscow without someone trying to make a deal with you. The inhabitants of these countries possess talent, enthusiasm, and an astonishing ability to wring profits out of practically nothing. They can grasp and use modern technology.²⁶

If people in developing countries are not prisoners of dysfunctional cultures, he asks, "What is it that prevents capitalism from delivering them the same wealth it has delivered to the West?"²⁷

De Soto believes the reason why people who live in LDCs find it so difficult to produce capital is that many local governments have failed to create a legal infrastructure that allows home and small business owners to use their limited assets to enter legitimate

²⁵ Ibid., 41.

²⁶ Ibid., 5.

²⁷ Ibid.

markets. To rectify this problem, de Soto advocates the creation of unified property rights systems to help home and small business owners to gain legitimate title over their property. His emphasis on protecting property rights to enhance capital growth makes him critical of economic stimulus programs that focus exclusively on raising per capita income as the primary mechanism to increase economic expansion. He believes these programs often fail to see the potential of “dead” capital available to those living in the developing world.²⁸ He points out that money is only a mechanism that facilitates more easily the exchange of goods and resources. The value of money comes from its legitimate connection to the goods that it represents. Although he acknowledges the usefulness of money, he says,

it cannot fix in any way the abstract potential of a particular asset in order to convert it into capital. Third World and communist nations are infamous for inflating their economies with money – while not being able to generate much capital.²⁹

As a result, it is primarily the accumulation of real wealth in terms of assets, not money, which allows for genuine economic growth.

b. Property and Creating a Representational System

De Soto’s interest in using the limited assets of the poor to spur economic development makes it necessary to address his ideas on property and property rights. He thinks property is a man made construct that has little to do with the physical world. He says, “Property, like pure energy, is a concept; it cannot be experienced directly. Pure energy has never been seen or touched. And no one can see energy. One can only ex-

²⁸ I will explain the meaning of the term “dead capital” later in the chapter.

²⁹ de Soto, *The Mystery of Capital*, 44.

perience energy and property by their effects.”³⁰ When first considering his conception of property, it is strikingly odd because as human beings we live in a world of physical objects, many of which we consider our possessions. For example, the theologian David Klemm defines property as that “which is one’s own; consequently, that over which one has a right of disposal.”³¹ In other words, “property is what is proper to oneself or one’s community; my property is what is my own.”³²

De Soto challenges this common conception of property. He argues that since property is a concept, the key toward unlocking the value of any piece of property, whether it is a home or a small street vending business, is the process that transposes the physical object into “a man-made representative universe where we can disengage the resource from its burdensome material constraints and concentrate on its potential.”³³ De Soto invites people to recognize that material objects themselves are not what make them valuable. What makes a material object (property) valuable is the representational system that helps to identify the most economically and socially useful qualities about the asset. He says, “The moment you focus your attention on the title of a house, for example, and not on the house itself, you have automatically stepped from the material world into the conceptual universe where capital lives.”³⁴ Indeed, “Formal property forces you to think about the house as an economic or social concept. It invites you to go beyond

³⁰ Ibid., 49.

³¹ David E. Klemm, “Material Grace: The Paradox of Property and Possession,” in *Having Property and Possession in Religious and Social Life*, eds. William Schweiker and Charles Mathews (Grand Rapids, M.I.: Williams B. Eerdmans Publishing Company, 2004), 222.

³² Ibid., 223.

³³ de Soto, *The Mystery of Capital*, 49.

³⁴ Ibid., 50.

viewing the house as mere shelter – and thus a dead asset – and to see it as live capital.”³⁵

Consider, for example, when a house changes hands; nothing physically changes. Merely looking at the house tells a person nothing about who owns it. The house looks the same whether I own it, rent it, or sell it to another person. As a result,

Property is not the house itself but an economic concept *about* the house, embodied in a legal representation. This means that a formal property representation is something separate from the asset it represents.³⁶

How is it that a piece of paper representing ownership creates value? De Soto considers that a distinguishing characteristic of a good representational system from a bad one is that it is ‘mind friendly’. In other words, a good representational system, such as a well-constructed property rights system, is one that allows people to grasp and access complicated information in a coherent and simple fashion. Throughout history, human beings have invented representational systems - writing, musical notation, double-entry bookkeeping - to grasp with the mind what human hands could never touch. Time, for example, is real, but it is only possible to manage and organize it with the invention of a clock or calendar. Thus, not everything that is real and useful is tangible and visible. De Soto believes the revolutionary contribution of an integrated property system is that it solves a basic problem of cognition. He says,

Our five senses are not sufficient for us to process the complex reality of an expanded market, much less a globalized one. We need to have the economic facts about ourselves and our resources boiled down to essentials that our minds can easily grasp. A good property system does that - it puts assets into a form that lets us distinguish their similarities, differences, and connecting points with other assets. It fixes them in representations that the system tracks as they travel through time and space. In addition, it allows assets to become fungible so that we can easily combine, divide, and mobilize them to produce higher-valued mixtures.

³⁵ Ibid.

³⁶ Ibid.

This capacity of property to represent aspects of assets in forms that allow us to recombine them so as to make them even more useful is the mainspring of economic growth, since growth is all about obtaining high-valued outputs from low-valued inputs.³⁷

De Soto's conception of property as a representational concept allows people to see the existence of tremendous hidden value in the physical objects that surround them. A formal property representation such as a title, for example, is not a reproduction of the house, like a photograph, but a representation of our concepts *about* the house."³⁸ Formal representation of property, therefore, "represents the nonvisible qualities that have potential for producing value."³⁹ De Soto's identification of property as a representational concept is important because he thinks the movement from seeing property as simply a physical object to seeing the potential value of the object, represented in the form of legal title, provided the means for Western economic development. He says,

Legal property thus gave the West the tools to produce surplus value over and above its physical assets. Property representations enabled people to think about assets not only through physical acquaintance but also through the description of their latent economic and social qualities. Whether anyone intended it or not, the legal property system became the staircase that took these nations from the universe of assets in their natural state to the conceptual universe of capital where assets can be viewed in their full productive potential.⁴⁰

De Soto's insight is important because in the Western world almost every piece of property that exists belongs to someone through its representation in a legal property system. These systems represent property through formal titling mechanisms. He says,

³⁷ Hernando de Soto, "Listening to the Barking Dogs: Property Law Against Poverty in the Non-West," *European Journal of Anthropology* 41 (2003): 180.

³⁸ de Soto, *The Mystery of Capital*, 50.

³⁹ *Ibid.*

⁴⁰ *Ibid.*, 51.

They represent our shared concepts of what is economically meaningful about any asset. They capture and organize all the relevant information required to conceptualize the potential value of an asset and so allow us to control it.⁴¹

As a result, property is the realm where “we identify and explore assets, combine them, and link them to other assets.... This is the place where capital is born.”⁴² When physical assets enter into this representation world through a formal property rights system, this serves as a “hydroelectric plant” for the creation of capital because “assets need a formal property system to produce significant surplus value.”⁴³

c. Dead Versus Live Capital

In many LDCs today, the inability of local governments to create integrated property rights systems, that would allow people to register ownership over their assets more easily, makes economic development nearly impossible. De Soto says,

Imagine a country where nobody can identify who owns what, people cannot be made to pay their debts, resources cannot conveniently be turned into money, ownership cannot be divided through documents, descriptions of assets are not standardized and can not be easily compared, and the rules that govern property vary from neighborhood to neighborhood or even from street to street. You have just put yourself into the life of a developing country or former communist nation; more precisely, you have imagined life for 80 per cent of its population, which is marked off as sharply from its Westernized elite as black and white South Africans were once separated by apartheid.⁴⁴

De Soto uses this example to describe why the economic situation of the poor in the developing world remains so bleak. He contends that only when these nations work with their poor inhabitants to create unified property rights systems will they begin to address the lack of economic development.

⁴¹ Ibid.

⁴² Ibid., 47.

⁴³ Ibid., 48.

⁴⁴ de Soto, “Listening to the Barking Dogs,” 179.

The reason why de Soto thinks it is so important to recognize a person's right to own property is that the legal representation of an asset transforms it into "live" versus "dead" capital. Dead capital is the material asset that a person claims as his or her own, but lacks formal recognition of ownership to the asset in a legitimate property rights system. The ability to enter assets into a formal property rights system allows people to transform their assets into "live" capital, which provides the first step toward increasing wealth and the means toward economic prosperity. In many Western nations today, in contrast to the way things work in the developing world,

every parcel of land, every building, every piece of equipment is represented in a property document that is the visible sign of a vast hidden process that connects all these assets to the rest of the economy. Thanks to this representational process, assets can lead an invisible, parallel life alongside their material existence. They can be used as collateral for credit. The single most important source of funds for new businesses in the United States is a mortgage on the entrepreneur's house. These assets can also provide a link to the owner's credit history, an accountable address for the collection of debts and taxes, the basis for the creation of reliable and universal public utilities, and a foundation for the creation of securities. By this process, the West injects life into assets and makes them generate capital.⁴⁵

An asset becomes "live" capital once it receives legal registration into a formal property system. Once an asset becomes "live" capital, an entrepreneur can utilize his or her asset to create surplus value. Without formal property to extract the economic potential of an asset and convert it into a form that can be easily transported and controlled, the assets of small businesses and homeowners in developing and former communist countries are like water in a lake in the Andes – an untapped stock of potential energy.⁴⁶

⁴⁵ Ibid., 181.

⁴⁶ de Soto, *The Mystery of Capital*, 49.

If capital is born by the representation of an asset in the form of a title or contract, one of the most important benefits that come with transforming an asset into “live” capital is that it makes it more “fungible.”⁴⁷ As de Soto says, “One of the most important things a formal property system does is transform assets from a less accessible condition to a more accessible condition, so that they can do additional work.”⁴⁸ This is apparent when comparing the trading and combining of assets in the Western world from the way it takes place in the non-Western world. In the West, people write standard property descriptions to facilitate the combination of assets.

Formal property rules require assets to be described and characterized in a way that not only outlines their singularity but also points out their similarity to other assets, thus making potential combinations more obvious.⁴⁹

Representations also enable the division of assets without touching them. Whereas an asset such as a factory may be an indivisible unit in the real world, in the conceptual universe of formal property representation it can be subdivided into any number of portions. Citizens of advanced nations are thus able to split most of their assets into shares, each of which can be owned by different persons, with different rights, to carry out different functions. Thanks to formal property, a single factory can be held by countless investors, who can divest themselves of their property without affecting the integrity of the physical asset.⁵⁰

The standardization of commodities and land holdings in the Western world today allows for greater rates of exchange and increases the ability of entrepreneurs to sell and trade their goods on the open market. The formalization of a property rights system reduces transaction costs and increases a property’s exchange value. Without this kind of standardization, trading assets requires an enormous amount of effort just to determine the basics of the transaction. In the non-Western world, people often have to trade real-estate

⁴⁷ Ibid., 56.

⁴⁸ Ibid.

⁴⁹ Ibid., 57.

⁵⁰ Ibid.

faced with these questions: “Does the seller own the real estate and have the right to transfer it? Can he pledge it? Will the new owner be accepted as such by those who enforce property rights? What are the effective means to exclude other claimants?”⁵¹ In many of the world’s poorest countries, de Soto argues such questions remain difficult to answer.

d. Extra-legality

i. What is it?

The inability of many home and small business owners to obtain, use, or trade their assets legally places an enormous burden on people living and working in LDCs. De Soto defines the place where people live and work outside the confines of legally established markets as the “extralegal sector.” He calls it extralegal instead of illegal because most people who work in this sector of the economy do not work in it out of a desire to break the law. They work in it because the system of property laws that govern many LDCs are so cumbersome and out of touch with the rules that govern transactions among the poorer classes that these laws force them to work outside of established and legally proscribed markets. Thus, for homeowners, the extralegal sector is where they make their settlements on land or space without legal title. In the past, people often pejoratively referred to these kinds of people as “squatters.” The United Nations High Commission for the Legal Empowerment of the Poor estimates, “at least one-quarter of urban residents in Latin America are either squatting or living in unauthorized housing.”⁵² In

⁵¹ Ibid., 47.

⁵² High Level Commission On Legal Empowerment of the Poor, *High Level Commission On Legal Empowerment of the Poor: Overview Document*. Available on-line at http://www.undp.org/legalempowerment/documentWord/HLCLEP_Overview.pdf (downloaded May 6, 2006).

regards to where people work and operate their businesses in LDCs, while large enterprises typically operate in the formal economy, small and medium-sized enterprises are marginal in the formal economy. Extralegal entrepreneurs lack access to bank financing and long-term capital. They also cannot enforce legally binding contracts, because they do not have formal title to their business. In *The Other Path*, de Soto shows the majority of home and small business owners in Peru work in this sector of the economy. He estimates today that 42.6% of all housing in Lima houses 47% of the city's population. "Such housing, built by illegal settlers at a cost of years of sacrifice, is today valued at \$8,319.8 million."⁵³ In addition, in the face of countless restrictions, "39,000 vendors have managed to build or acquire 274 informal markets valued at 40.9 million."⁵⁴ In *The Mystery of Capital*, de Soto argues that the ILO discovered that similar problems face home and small business owners outside of Peru in nations such as Haiti, the Philippines, Mexico, and Egypt. De Soto discovered the majority of these people work in this sector because the process to register their title legally to a home or small business is so cumbersome that the choice to work in the extralegal sector is a wise prudential judgment.

ii. Why Do People Work in the Extralegal Sector?

The majority of people who work in the extralegal sector are squatters on state owned land and small business operators who manage vending stations, drive buses and taxis, and conduct trading operations. Most of these people operate in the extralegal sector because it is nearly impossible to become legal owners of a home or small business in many LDCs. In 1986, for example, de Soto and his colleagues performed an experiment

⁵³ de Soto, *The Other Path*, 13.

⁵⁴ *Ibid.*

to ascertain how difficult the process was to gain legal title to a small sewing shop business. Their goal was to create a new and legal business. He says,

The team then began filing out the forms, standing in lines, and making the bus trips into central Lima to get all the certifications required to operate, according to the letter of the law, a small business in Peru. They spent six hours a day at it and finally registered the business – 289 days later. Although the garment workshop was geared to operating with only one worker, the cost of legal registration was \$1231 – thirty-one times the monthly minimum wage. To obtain legal authorization to build a new house on state-owned land took six years and eleven months, requiring 207 administrative steps in fifty-two government offices. To obtain a legal title for that piece of land took 728 steps. We also found that a private bus, jitney, or taxi driver who wanted to obtain official recognition of his route faced twenty-six months of red tape.⁵⁵

De Soto claims the burdensome process to register property legally is not unique to Peru. For example, in the Philippines, the ILD estimates a person who wants to purchase legally a settlement built on state owned land has to form an association with his neighbors to qualify for a state housing finance program. “The entire process could necessitate 168 steps, involving fifty-three public and private agencies and taking thirteen to twenty five years.”⁵⁶ In Egypt,

The person who wants to acquire and legally register a lot on state-owned *desert land* must wend his way through at least 77 bureaucratic procedures at thirty-one public and private agencies. This can take anywhere from five to fourteen years.⁵⁷

Members of the ILD did not find it surprising that “4.7 million Egyptians ... chose to build their dwellings illegally.”⁵⁸ In other parts of Africa, “Less than 10% of the conti-

⁵⁵ de Soto, *The Mystery of Capital*, 20.

⁵⁶ Ibid.

⁵⁷ Ibid., emphasis added.

⁵⁸ Ibid.

ment's land is formally owned, and barely one African in ten lives in a house with title deeds."⁵⁹

iii. How Does Working in the Extralegal Sector Negatively Influence the Poor?

The ILD's findings are important because they uncover an important reason for the lack of economic development in LDCs. The numerous legal obstacles it takes to own a home or register a small business legally limits the capacity of these people to use their assets for productive purposes. As already hinted at, this problem affects two key areas. The first is business. The International Labor Organization reports that since 1990 85% of all new jobs in Latin American and the Caribbean have been created in the extralegal sector. In Zambia, only 10% of the workforce is legally employed.⁶⁰ De Soto argues, "The failure of the legal order to keep pace with this astonishing economic and social upheaval has forced the new migrants to invent extralegal substitutes for established law."⁶¹ This leaves migrants unable to deal with people with whom they are not familiar. "Whereas all manner of anonymous business transactions are widespread in advanced countries, the migrants in the developing world can deal only with people they know and trust."⁶² These kind of ad-hoc business arrangements do not work well. They make it difficult for people to trade large quantities of product. It also makes it difficult to divide labor into smaller units to make markets more efficient. The failure to provide a legal infrastructure that facilitates business "prevents enterprising people from negotiating with

⁵⁹ Robert Guest, "Breathing Life into Dead Capital," *The Economist* (January 17, 2004): 6.

⁶⁰ de Soto, *The Mystery of Capital*, 69.

⁶¹ *Ibid.*

⁶² *Ibid.*, 71.

strangers, which defeats the division of labor and fastens would-be entrepreneurs to smaller circles of specialization and low productivity.”⁶³

In the area of housing, the ILD discovered in a variety of developing nations that the ability to gain legal ownership over real estate is incredibly difficult. The inability to gain formal ownership over one’s home is a principal reason why slums become prevalent in many cities throughout the developing world. UN-Habitat defines a slum as

a group of individuals living under the same roof that lack one or more of the following conditions: access to safe water; access to sanitation; *secure tenure*; durability of housing; and sufficient living area.⁶⁴

In 2003, this group estimated that 924 million people worldwide, or 31.6 per cent of the global urban population, lived in slums in 2001.⁶⁵ In the next thirty years, they project this figure to double to almost 2 billion, unless the international community puts substantial policy changes in place.⁶⁶

De Soto believes there is a direct link between the growth of slums and the inability of people to acquire legal title to their homes. This is because standardizing property rights leads to a formal process that allows developers to build livable and affordable housing. For example,

Bringing the extralegal sector inside the law will open up the opportunity for massive low-cost housing programs that will provide the poor with homes that are not only better built but much cheaper than what they themselves have been building in the extralegal sector. Creating a home in the topsy-turvy world of the extrale-

⁶³ Ibid.

⁶⁴ Rasna Warah, “Slums Are the Heartbeat of Cities.” Available online at <http://www.globalpolicy.org/socecon/develop/2003/1006slums.htm> (downloaded May 8, 2006), emphasis added.

⁶⁵ Ibid.

⁶⁶ Ibid.

gal sector is equivalent to getting dressed by putting on your shoes first, then your socks.⁶⁷

For a new migrant moving from a rural area to a city, he must not only find a spot for his house, but also occupy the land personally. Next, he must set up a tent or shelter made from, depending on the country, “straw matting, mud bricks, cardboard, plywood, corrugated iron, or tin cans – and thus stake out a physical claim. The migrant and his family will then gradually bring in furniture and other household items.”⁶⁸ Developing a home in this haphazard fashion often fails to meet basic safety standards. From random plumbing and sanitation systems, to illegal utility hook ups, the creation of these dwellings produce homes that often rapidly deteriorate. In contrast,

A Western developer typically holds title to the land, which gives him the security to develop the infrastructure (paved roads, utilities, etc.). Then he sells the house, which he proceeds to build according to the buyer’s preferences. The new owners, who have probably borrowed most of the price of the house from a bank, will then move their furniture in and, finally the kids and the cat.⁶⁹

Thus, “creating a home is the equivalent of putting on your socks before your shoes and is thus much less hazardous, expensive, and degrading.”⁷⁰ De Soto concludes the inability to reform the validation process to buy, sell, and trade property that meet the needs of the poor will continue to undermine the development of safe dwellings in such diverse cities as Manila, Bangalore, Bali, and Mexico City. The result of living under these conditions is that it “places enormous social and psychological burdens on residents, which

⁶⁷ de Soto, *The Mystery of Capital*, 193-194.

⁶⁸ *Ibid.*, 194.

⁶⁹ *Ibid.*

⁷⁰ *Ibid.*

often leads to broken homes and social exclusion.”⁷¹ As a result, slum homes will continue to stretch across large swaths of land if no one takes action to reform the property rights system in these urban centers.

3. Creating a Unified Property Rights System

The explosive population growth in many cities throughout the developing world has challenged local governments to develop strategies to deal with the consequences of this large-scale migration to urban centers. The problems in business and housing created by this kind of movement have raised an array of legal challenges for local government institutions in developing countries. De Soto believes primary among the challenges local governments face in LDCs is the creation of legal systems that unify property rights. He thinks the denial of property rights to millions of people has created a legal apartheid among rich and poor that stifles economic growth. The failure to document the assets of small business owners or give title to homeowners denies the poor from using their limited assets to transform them into “fungible” resources necessary to produce capital.

a. Misconceptions About Why People Operate in the Extralegal Sector

De Soto believes governments in developing nations fail to open up their property systems to the poor because they usually operate under the following five basic misconceptions. First, all people who take cover in the extralegal or underground sectors do so to avoid paying taxes. Second, real estate assets are not held legally because they have not been properly surveyed, mapped, or recorded. Third, enacting mandatory law on property is sufficient, and governments can ignore the costs of compliance with that law. Fourth, existing extralegal arrangements or “social contracts” can be ignored. Finally, a

⁷¹ Ibid.

person can change something as fundamental as people's conventions on how they can hold their assets, both legal and extralegal, without high-level political leadership.⁷² The main point that de Soto refutes is the claim that most of these entrepreneurs work outside the legal system to avoid taxes. He says, "Most people do not resort to the extralegal sector because it is a tax haven but because existing law, however elegantly written, does not address their needs or aspirations."⁷³ In addition, they do not operate underground to avoid many hidden costs. For example,

Extralegal businesses are taxed by the lack of good property law and continually having to hide their operations from authorities. Because they are not incorporated, extralegal entrepreneurs cannot lure investors by selling shares; they cannot secure low-interest formal credit because they do not even have legal addresses. They cannot reduce risks by declaring limited liability or obtaining insurance coverage. The only "insurance" available to them is that provided by their neighbors and the protection that local bullies or mafias are willing to sell them. Moreover, because extralegal entrepreneurs live in constant fear of government detection and extortion from corrupt officials, they are forced to split and compartmentalize their production facilities between many locations, there rarely achieving important economies of scale.⁷⁴

De Soto's findings make it apparent that working in the extralegal sector is economically hurtful, devastating, and unfortunately, the norm for most small business owners and homeowners in the developing world. The question therefore remains, "How does a government create an integrated property rights system that helps small business and home owners?"

b. Creating a Unified Property Rights System: Turning to US History

⁷² Ibid., 154.

⁷³ Ibid.

⁷⁴ Ibid., 155.

De Soto responds to this question by turning to the history of the United States and its struggle to establish an integrated property rights system in the nineteenth century. He believes the American experience clearly illustrates that “the history of the adoption of occupancy laws in the U.S. is the history of the rise of extralegals as a political force.”⁷⁵ His work points to the fact that in America’s early years, extralegality was the norm in the United States, a situation which is similar to the one faced today by those in developing countries. The flow of immigrants to the United States and the movement out West produced a situation where large numbers of “squatters” began moving onto settlements of land. The increase in the number of squatters made them a significant political force because of their ability to augment the value of the land on which they settled. Many squatters “did not have the means to cover the costs of the official legal system, so they established their own extralegal arrangements, thus creating new avenues for accessing and holding property on the American frontier.”⁷⁶ In order to turn their labor into a profitable enterprise, squatters eventually demanded that local state governments recognize their work through granting them legal title to the land on which they settled. As a result, local governments throughout the United States faced the difficult choice to either resist squatters or try to integrate them into a formal legal system.

De Soto recognizes that the development of a legal property system in the United States, which allowed for the integration of squatters, did not come without conflict. He notes that some historians see the expansion out West, with the rise in claims associations and miners districts, as a concealment of the fact that squatters stole duly owned property

⁷⁵ Ibid., 136.

⁷⁶ Ibid.

from rightful landowners. Two authors, Terry L. Anderson and Peter J. Hill, in *The Not So Wild, Wild West*, generally agree with de Soto's thesis. They acknowledge, however, that it is possible to narrate the expansion of the western United States as a history of violence. They argue,

Violence certainly occurred, and when it did, it usually took one of two forms. First, violence, or more precisely coercive power, was used by private persons and institutions to defend property rights against intruders. For example, cattlemen's associations flexed their muscle to exclude newcomers from the open range, and vigilante groups acted to enforce laws. Second, violence manifested itself through the exercise of governmental power to take assets from others. The Indian wars of the late nineteenth century were a quintessential example.⁷⁷

De Soto argues that this history of violence is beside the point. He focuses on this period because it shows "that extralegal groups played an important role in defining property rights in the United States...."⁷⁸ He argues that their capacity to develop property rights systems, through a series of extralegal arrangements, ultimately warranted a positive legal response from local governments in the United States. What warranted this kind of response was "an explicit recognition that value added to assets was something the law needed to encourage and protect."⁷⁹ The Supreme Court ruling of *Jennison v. Kirk*, which protected extralegally generated rights and arrangements of miners, and the famous Homestead Act of 1862, which "gave 160 free acres to any settler willing to live on the land five years and develop it,"⁸⁰ eventually gave official sanction to extralegal arrangements that had already been in place for many years. By the end of the nineteenth

⁷⁷ Terry L. Anderson and Peter J. Hill, *The Not So Wild, Wild West: Property Rights on the Frontier* (Stanford, CA: Stanford University Press, 2004), 5.

⁷⁸ de Soto, *The Mystery of Capital*, 136.

⁷⁹ *Ibid.*, 146.

⁸⁰ *Ibid.*, 147.

century, the long and sometimes bitter struggle between what de Soto calls “elitist” law and squatters ended with the recognition that the only way formal law could legitimate itself was by recognizing and embracing “many of the extralegal arrangements of the settlers.”⁸¹

De Soto notes that many benefits came with the recognition of the squatter’s property rights. First, the integration of squatters into the formal property rights system gave them access to the legitimate business world. This gave squatters the capacity to sell and trade their goods without the fear of being shutdown or evicted from their land. Second, their establishment in legitimate business communities gave squatters access to banking institutions, which gave them a source of viable credit. In the past, like today, banks prefer to work with customers who possess legal title to their businesses or homes because they can hold borrowers accountable for paying back their debts. Without legal title to their property, banks usually denied squatters this vital form of capital and this left them unable to sell their home or purchase new equipment, hire more workers, and grow their businesses. Finally, local governments also recognized the benefits that came with the movement of squatters into the legal world. The cost of a squatter acquiring a legal title from the government was the recognition that their business could no longer be “hidden” from financial oversight institutions established by the U.S. government. This movement benefited local governments because they gained access to new forms of revenue in the form of taxable land holdings. The granting of property rights to squatters allowed local governments to monitor the whereabouts of local businesses and this gave them a better sense of the potential taxable revenue flowing in and out of local markets.

⁸¹ Ibid., 148.

Hernando de Soto uses the Nineteenth century history of the United States and its struggle to integrate squatters into a formal property rights system to show that property law is the key toward unlocking the mystery of capital. Today, people in the West no longer view property simply as set of physical objects. They view property in terms of an assets ability to create surplus value. This is possible because a consensus has formed about how to represent, use, and exchange assets through the creation of a unified property rights system.⁸² Legal representation of property detaches and fixes the economic potential of an asset as a value separate from the material object itself. This allows people in the West to realize the potential of an asset and control it for one's benefit. The ability to use assets in this way produces capital and generates real wealth. The challenge today for most non-Western countries is to integrate the formal legal conventions of those who already own property with the conventions of extralegals so that the poor can capitalize on their assets.⁸³

c. Exploring the Basis of Property Law in LDCs

i. Identifying the Pre-Capitalist "Social Contracts"

To establish a legitimate property rights system, de Soto argues governments need to design laws that draw upon the already established "social contracts" between extralegals. As mentioned earlier, de Soto contends the legal systems in developing countries are primarily at fault for the lack of market development. The myriad of obstacles encountered by small business operators and homeowners to legalize their assets is the primary reason why they choose not to enter the legitimate business world. The ILD con-

⁸² Ibid., 157.

⁸³ Ibid.

tends that the arduous task to register property legally for many entrepreneurs makes the move into the black-market almost a foregone conclusion. Most of these people want to enter the legitimate business world, but the failure of local governments to create a reasonable system to secure legal title to property is why millions of small business operators and homeowners have moved into the extralegal sector of the economy.

Although many poor nations have attempted property reform in the past, de Soto contends they have failed to incorporate the informal property laws of extralegals. Since the idea of property is primarily a social construct, property arrangements between people work best when they have formed a consensus “about the ownership of assets and the rules that govern their use and exchange.”⁸⁴ The attempt to create a unified property rights system without taking into consideration the already existing “collective contracts that underpin existing property arrangements”⁸⁵ will most likely fail. In order for formal law to gain legitimacy among extralegals, it has “to connect with the extralegal social contracts that determine existing property rights.”⁸⁶ He thinks this is a fundamental step toward the development of market economies in poor countries.

ii. De Soto’s Solution to Codifying the Social Contracts of Extralegals: Listening to the Barking Dogs

De Soto believes it is possible to connect the people’s extralegal social contracts with formal law through a process he calls, “listening to the barking dogs.”⁸⁷ De Soto believes law is not simply a set of spoken, written, or formalized rules that people blindly

⁸⁴ Ibid., 171.

⁸⁵ Ibid.

⁸⁶ Ibid., 172.

⁸⁷ For a complete introduction to de Soto’s analysis regarding this process, see the chapter entitled, “The Mystery of Legal Failure,” in *The Mystery of Capital*. de Soto, *The Mystery of Capital*, 178-181.

follow. Law represents the formalization of behavioral rules about which most people agree. These rules reflect behavioral propensities and they offer those who follow them tangible benefits. When a particular law fails to offer any tangible benefits, it is not surprising that people choose to abandon it.

Regarding property law, de Soto asserts it is extralegal law that regulates the assets of most citizens in LDCs.⁸⁸ These “consensual rules” among extralegals may not be codified in a similar way to their Western counterparts, but that does not mean there is not a system of organization for these rules. He says,

Whenever we visited an undercapitalized area, whether in Asia, America, or the Middle East, we never stepped into the wilderness. By observing carefully, we were always able to distinguish patterns of rules. In the worst cases, we found a neglected garden – never a jungle.⁸⁹

In the face of great obstacles to the legal registration of their property, entrepreneurs and homeowners in LDCs have generated their own varieties of property rules. To defend their incipient property rights from others, these people “have been forced to work out among themselves their own extralegal institutions.”⁹⁰

De Soto contends the great legal challenge today facing legislators, lawyers, and ordinary citizens in many LDCs is the development of strategies that codifies the extralegal arrangements of small business and home owners into formal law. He says,

The only way you can get the owners to come out and say ‘Yes, I own this’ is by giving them a property right that is more efficient than the existing system and that allows them to defend their property claims.”⁹¹

⁸⁸ Ibid., 175.

⁸⁹ Ibid.

⁹⁰ Ibid., 176.

⁹¹ The Carnegie Council, “The Mystery of Capital: Interview with Hernando de Soto.” Available online at <http://www.cceia.org/viewMedia.php/prmID/100> (downloaded May 8, 2006).

He notes that the formalization of these kinds of rules into an institutionalized and legitimate property rights system took years to develop in many Western nations. This presents an even greater challenge today where the massive growth of cities in developing nations places enormous burdens on existing legal systems to meet the needs of arriving migrants. In order to tackle this great problem, local governments must find out what the extralegal arrangements are and then find ways to integrate them into the formal property system. To accomplish this task, de Soto says, “They will have to go out into the streets and roads and listen to the barking dogs.”⁹² What does he mean by this process?

In a recent trip to Indonesia in 2000, government officials asked de Soto how they should discover the “social contracts” of extralegals to codify them into formal law. Instead of using a technical explanation about how to structure a bridge between the legal and extralegal sectors, de Soto talked about his visit to the rice fields of Bali, where he estimates 90% of the people live in the extralegal sector. De Soto says,

As I strolled through rice fields, I had no idea where the property boundaries were. But the dogs knew. Every time I crossed from one farm to another, a different dog barked. Those Indonesian dogs may have been ignorant of formal law, but they were positive about which assets their masters controlled.⁹³

He suggests that government officials need to listen to their “barking dogs” to discover the “people’s law” by traveling their city streets and the countryside until they make contact with the ruling social contract.⁹⁴ This is similar to the process that de Soto and his colleagues at the ILD employed in Peru when they wanted to take the first step toward

⁹² de Soto, *The Mystery of Capital*, 178.

⁹³ *Ibid.*, 162.

⁹⁴ *Ibid.*

helping the Peruvian government to build a formal property system that embraces all the nations' citizens. He says,

After years of study in many countries, I have become convinced that most extralegal social contracts about property are basically similar to national social contracts in Western nations. Both tend to contain some explicit or tacit rules about who has rights over what and the limits to those rights and transactions; they also include provisions to record ownership of assets, procedures to enforce property rights and claims, symbols to determine where the boundaries are, norms to govern transactions, criteria for deciding what requires authorized action and what can be carried out without authorization, guidelines to determine which representations are valid, devices to encourage people to honor contracts and respect the law, and criteria to determine the degree of anonymity authorized for each transaction.⁹⁵

De Soto's perspective helps government officials and legal experts not only to recognize the importance of property rights for the process of economic growth, but it should help these people to appreciate more fully the importance of having property rights evolve from the bottom up. As Andersen and Hill suggest,

Property rights that evolve from the bottom up – as opposed to the top down – are much more likely to conserve resources and promote investment. The opposite is also true; when property rights are dictated from central authorities with less stake in the outcome, time and effort are often wasted in the process of creating the property rights, and productive investment suffers.⁹⁶

As long as government officials fail to find out how and why the local conventions work and how strong they actually are in practice, de Soto concludes that economic development that benefits the majority of citizens will remain an elusive goal.⁹⁷ The only way that government officials can discover the extralegal social contracts that exist in a given area is by “contacting those who live and work by it.”⁹⁸ He suggests, on the one hand,

⁹⁵ Ibid., 179.

⁹⁶ Anderson and Hill, *The Not So Wild, Wild West*, 8.

⁹⁷ de Soto, *The Mystery of Capital*, 162.

⁹⁸ Ibid., 182.

that if property law is similar to a tree, “the formal property system is diachronic, in the sense that it allows you to trace the origins of each leaf back in time from twig and branch to the trunk and finally to the root.”⁹⁹ The discovery of extralegal property law, on the other hand, has to be synchronic: “The only way an outsider can determine which rights belong to whom is by slicing the tree at right angles to the trunk so as to define the status of each branch and leaf in relation to its neighbors.”¹⁰⁰

iii. Cooperation of the State, Legal Experts, and Extralegals

Hernando de Soto believes most governments in the developing world now recognize that the reason “why their extralegal sectors are growing exponentially is not because people have suddenly abandoned their respect for the law but because they have no alternative for protecting their property and earning a living.”¹⁰¹ He assumes extralegals will only enter the legitimate business world when governments make the trip easy, safe, and cheap.¹⁰² Members of the ILD discovered this first hand when the Peruvian government gave them the task to help small businesses in Lima to gain formal ownership over their property. The ILD designed a program to bring small extralegal entrepreneurs into the legal system. The program was so effective that some 276,000 entrepreneurs recorded their businesses voluntarily in new registry offices the ILD set up to accommodate

⁹⁹ Ibid.

¹⁰⁰ Ibid., 183.

¹⁰¹ Ibid., 178.

¹⁰² Ibid.

them – with no promise of tax reductions.¹⁰³ De Soto notes about the success of this program,

All we had to do was make sure the costs of operating legally were below those of surviving in the extralegal sector, facilitate the paperwork for legalization, make a strong effort to communicate the advantages of the program, and then watch hundreds of thousands of entrepreneurs happily quit the underground.¹⁰⁴

Therefore, government officials, legal experts, and ordinary citizens need to work together to decipher and codify the existing extralegal arrangements. This will help the poor to turn their limited assets into usable forms of capital. As long as the assets of the poor remain undocumented, they will remain sterile in the marketplace.¹⁰⁵ And as long as they remain sterile, the development of a market economy that benefits the majority of people will remain a remote dream.

iv. Obstacles To Creating a Unified Property Rights Systems in LDCs

What are the foreseeable obstacles toward the fulfillment of this goal according to de Soto? First, obtaining synchronic information from people in the extralegal sector requires efforts by government officials to get in touch with extralegal authorities to discover their property arrangements. This is a tremendous legal challenge. De Soto notes this process is difficult, but not impossible. He says,

Although oral traditions may predominate in the rural backwoods of some countries, most people in the undercapitalized sector have found ways to represent their property in written form according to rules that they respect and that government, at some level, is forced to respect.¹⁰⁶

¹⁰³ Ibid., 154.

¹⁰⁴ Ibid., 154-155.

¹⁰⁵ Ibid., 211.

¹⁰⁶ Ibid., 183.

In Haiti, for example, the ILD discovered after an intensive survey of the nation's urban areas, that not one single extralegal plot of land, shack or building whose owner did not have at least one document to defend his or her right – even squatting rights.¹⁰⁷ This is important since 55% of Haiti's population is illiterate.¹⁰⁸ Once government officials obtain documentary evidence of representations, de Soto believes it is possible to deconstruct them to identify the principal rules that constitute the social contract that sustains them. Once these officials have all the relevant information about the ownership of assets among extralegals, the next step is to codify them so that they can be examined and compared with existing formal law. Thus, by gradually discarding “legal” barriers to the formal recognition of property, and by absorbing those laws that are recognized by all, it becomes possible to create a uniform property rights system that benefits the majority of people.

Second, de Soto recognizes that the establishment of legitimate property rights systems requires great political leadership. De Soto is realistic about the difficulties surrounding the reform of property law in LDCs because many elites greatly benefit from established property law. He says, “Many of the statutes that wall off the majority of people from capital may also contain provisions that protect vital interests of powerful groups.”¹⁰⁹ Interestingly, the ILD actually tries to spread awareness among the elites about their loss of control over markets and their limited access to consumers. De Soto believes,

¹⁰⁷ Ibid.

¹⁰⁸ Ibid.

¹⁰⁹ Ibid., 188.

The most powerful group of consumers in any developing country nowadays is from the extralegal sector -- people who do not respect the law. The elites have every interest in establishing a standard legal system because that way they will have the chance to defend themselves in the face of their enormous losses.¹¹⁰

Nevertheless, many of these people likely will resist change to established property law unless they recognize some tangible benefits that will come from identifying and codifying the assets of the poor. In order to capitalize on the assets of the poor by integrating them into a formal property system,

a president or prime minister who is more than a mere technocrat has to take charge and make formalization a pillar of government policy. Only at the highest political level can reform command overwhelming support and wipe out the willful inertia of the status quo. Only the top level of government can prevent bureaucratic infighting and political conflicts from paralyzing the progress of reform.¹¹¹

De Soto concludes it is in the interest of the “elites” of society because without property reform the growth of the extralegal sector will continue to overwhelm the current legal systems in many LDCs. The haphazard property laws that now govern many LDCs that exclude many people from any chance of economic prosperity will lead to social unrest and civil strife. As a result, de Soto believes to help emancipate the poor from poverty is one of the duties of a national leader.¹¹²

¹¹⁰ The Carnegie Council, “The Mystery of Capital: Interview with Hernando de Soto.” Available online at <http://www.cceia.org/viewMedia.php/prmID/100> (downloaded May 8, 2006).

¹¹¹ de Soto, *The Mystery of Capital*, 188.

¹¹² Ibid.

Chapter 6

Hernando de Soto and Catholic Social Teaching: What Have We Learned From the Dialogue?

In chapter 1, I initiated the argument that Hernando de Soto's commitment to secure and promote the property rights of citizens throughout the developing world provides a humane framework for economic development for those who support the Catholic Church's commitment to a preferential option for the poor. In subsequent chapters, I explicated why Catholic social teaching supports an individual's right to own property, the anthropological foundations of this right in Catholic social teaching as exemplified in the work of Michael Novak and David Hollenbach, and why Hernando de Soto champions the expansion of property rights among the poor in the developing world. These chapters provided the background for several questions that I wish to discuss in this chapter.¹ First, "How does seeing the right to private property as a natural or secondary right influence Catholic social teaching and Hernando de Soto's work, especially in regard to his commitment to expanding property rights among the poor?" Second, "Does the Catholic Church's commitment to a comprehensive vision of human rights bolster Hernando de Soto's ability to advance his goal of expanding property ownership among the poor?" Finally, "Does Hernando de Soto's work offer those who opt for the poor a viable solution to eradicate poverty in the developing world?" It is to these questions that I now turn.

¹ I will draw mainly from an interview I conducted with Mr. Hernando de Soto on April 15, 2006 in regards to the questions I would like to address in this chapter.

1. Private Property, Catholic Social Teaching, and Hernando de Soto: Does it Make a Difference if it is a Natural or Secondary Right?

In chapter 2, I argued that Catholic social teaching today affirms the right of persons to own property. It affirms this right because of the tradition's commitment to human dignity and the social nature of the human person. The personalist communitarian anthropology that Catholic social teaching employs sees that persons must possess certain basic goods in order to participate in the well ordering of society. Without the right to own property, people would not be able to contribute to their own economic well-being as well as the economic well-being of their families and society. Although Catholic social teaching continues to affirm the right to private property as a natural right, the tradition gradually has returned over the past one hundred years to its Thomistic origins by linking its commitment to property rights to its teaching about the universal destination of material goods. Today, Catholic social teaching sees the right to own property as a natural right in the sense that it is natural for people to own possessions to live and function in society. Yet, since all the material goods of the earth originally come from God, the tradition affirms that the use of property must also have a social function in order to benefit the common good. The implication of this shift is that when the material needs of large numbers of people go unmet, the needs of those in poverty qualify an individual's right to own property.

In the early stages of the tradition, when Pope Leo XIII in *Rerum novarum* proposed an almost absolute right to private property from the standpoint of natural law, he neglected to outline fully the social dimensions of ownership. Although it is possible to argue that he neglected this dimension of ownership to combat what he perceived were the negative affects of socialist ideology, Leo's failure to delineate the social duties that

come with individual ownership adversely affected the tradition. By placing such a heavy emphasis on the right of individuals to own property, his commitment to the “naturalness” of this right undermined St. Thomas’s earlier view that the use of material goods must benefit the common good, especially the needs of the poor. The doctrine of private property presented in *Rerum novarum* appeared to justify that it is only necessary to attend to the needs of the poor out of personal charity. Even though Leo placed a significant moral responsibility on those people who owned an excess of wealth to share their good fortune with those around them, his argument from a deductive view of natural law that private property is a natural right appeared to give it an absolute status that made it more difficult to attend to the common good and the material needs of the poor.

Although Leo’s predecessors never abandoned the “natural” status of this right, they did qualify it to highlight that the ownership of property comes with certain duties and responsibilities in order to benefit the common good. When Pius XI introduced the concept of social justice in *Quadragesimo anno*, his vision of a more organic view of society and ownership led him to identify the social dimensions of the use of property more than Leo.² Pius’s commitment to social justice gave him the ability to identify the ways social structures and institutions marginalized people from participating in the well ordering of society. His social justice approach, along with the development of a more inductive view of natural law, which emerged with the rise of historical consciousness in Catholic social teaching, led subsequent pontiffs also to stress the social dimensions of ownership.

² See *Quadragesimo Anno*, no. 58 for Pius’s definition of social justice. See *Quadragesimo Anno*, nos. 44-52 for his views about the right to private property.

John XXIII argued in *Mater et magistra* that the expansion of property rights could greatly aid the poor by giving them the legal and institutional protections necessary to promote their own economic well-being. Even though he recognized the benefits associated with expanding property rights among the poor, his optimism curtailed his ability to see the ways economic and political institutions in developing nations purposely exclude these people from participating in legitimate markets.

The optimism expressed by John waned during the pontificate of Pope Paul VI. He stressed more than any other pontiff the shortcomings of capitalism and the ways this economic system marginalizes the poor by creating tremendous gaps between rich and poor because of its commitment to individual property rights. His call for an integral development led to a scathing critique against the dangers associated with the emergence of the global market. As a result, Paul inverted the right to private property by placing the social dimensions of ownership above an individual's right to own property. Even though Paul never repudiated a person's right to own property, his severe criticisms of contemporary capitalism remain the strongest in the history of Catholic social teaching.

In the social encyclicals of Pope John Paul II, his work marks a continued return to the tradition's Thomistic roots. John Paul affirmed that it is natural for a person to own property, but his commitment to an organic view of ownership in conjunction with his constant campaign on behalf of the poor, led him to stress the duties and responsibilities that come with this right. Though he greatly added to the tradition by identifying the importance of human capital in the processes that lead to the creation of wealth, his commitment to a theological anthropology that places human dignity and human rights at the center of moral and ethical reflection led him to argue that those who have an excess

of the earth's goods and resources have a moral obligation to share them to benefit the common good of society.³ Consequently, John Paul II made human need the normative framework to understand the right to private property in Catholic social teaching, which was a similar concern shared by St. Thomas Aquinas and his Scholastic contemporaries.

The tradition's shift in emphasis over the past one hundred years from a focus on the natural right to own property to one that places human need at the center of its teaching about the use of property provides Catholic social teaching with the resources to address the ways that contemporary economic structures either marginalize or include people in the processes of economic development. It does this in three key ways. First, Catholic social teaching and its understanding of the right to private property allows the tradition to point out the dangers associated with making individual autonomy and the maximization of profit the center of society's moral and ethical reflection concerning economic development. Second, Catholic social teaching positively contributes to society by identifying the benefits that come with the promotion of entrepreneurship, economic initiative, and the cultivation of human capital through its teaching about private property. Finally, the tradition's call to create a strong juridical framework between government officials, members of civil society, and those in business to insure that the growth of the global market meets the basic needs of all people also stems from the tradition's teaching about private property.

The return Catholic social teaching has made to its Thomistic origins, by placing human need at the center of its teaching about private property, provides an important avenue for discussion between the work of Hernando de Soto and Catholic social teach-

³ *Centesimus annus*, nos. 31-32.

ing.⁴ Although the tradition continues to teach that the right to private property is a natural right, especially when the naturalness of this right is understood as something that is integral for a person to meet their basic material needs, the tradition places more emphasis today on the positive effects associated with property ownership, especially for those mired in poverty. The key issue for the tradition of Catholic social teaching is not whether people have a “natural” right to possess property. The key issue regarding the right to private property in Catholic social teaching is the positive effects the promotion and protection of this right will have on human dignity and the common good of society. In particular, the tradition wants to identify whether the protection and expansion of this right helps poor people to meet their basic material needs.

When looking at the issue from the standpoint of the tangible effects that promoting and protecting property rights among the poor can have on personal dignity and the common good of society, this is where I believe collaboration between contemporary Catholic social teaching and the work of Hernando de Soto becomes most evident. On the one hand, Catholic social teaching provides sound arguments regarding why human need should determine the basis for the legitimacy of this right. Dating back to the medieval period, St. Thomas held in ST II-II 66.7 that someone in extreme need who takes from another person what is necessary to sustain life is not guilty of robbery or theft. In other words, someone in this situation is free to take from another, in the sense of enjoying immunity from guilt or punishment for the act in question. As Jean Porter says,

This is not equivalent to saying the poor person has a right which could be claimed against the rich person and defended at law, but it does imply that the rich individual cannot lodge a claim against the poor individual for the return of what the latter has taken. Hence, the poor individual cannot defend a claim against the

⁴ See especially ST II-II 66.7.

rich, but neither can the rich individual defend an accusation of robbery or theft against the poor person in such a case. This is at least a subjective immunity, if not a full-fledged subjective right.⁵

The important issue Thomas raised is that human need determines the legitimacy of this right. It is important to recognize that the tradition of Catholic social teaching since Leo XIII has subsequently defended this idea. The tradition affirms that the rich have at least an obligation to share their goods with the poor, at least under certain circumstances. It asserts that the claim in question is not a positive right, in the sense of depending on positive law for its force; rather, it is one of the benchmarks of a just society.

On the other hand, it is possible to argue that the tradition's emphasis on placing human need at the center of its reflection about the right to private property has led Catholic social teaching to neglect the positive effects that the promotion and enforcement of property rights among the poor in LDCs could have for these people to help them to meet their own material needs. If de Soto's analysis is correct, a drawback of the tradition's understanding of this right is that it underestimates the fact that poor people who live in impoverished nations already have many of the necessary assets and resources to meet their basic material needs. The protections that people in these nations lack are the legal and institutional rights that would enable them to use their assets more efficiently and productively to meet their needs. This is where I believe de Soto's work makes a vital contribution to the tradition of Catholic social teaching. Thus, I asked de Soto this question, "What evidence do you see provides the foundation for the right to private property as a natural right?" He responded, "I'm not use to thinking about private prop-

⁵ Porter, *Nature as Reason*, 357.

erty as a natural right.... I think about it as something that is simply indispensable for economic cooperation to take place and for propensity and capital to be created.”⁶

As I discussed in chapter 5, de Soto sees property principally as a human construct that has little to do with the physical world of material goods and resources. He believes the important step toward unlocking the hidden potential of any asset is the representational system that helps to identify the most economically and socially useful qualities about it. He believes the development of integrated property rights systems in LDCs will allow people to use their assets in the most productive and efficient ways possible to help them to meet their basic material needs through their own economic initiative. Not surprisingly, he thinks debates about whether the right to private property is a natural right are not very helpful since there is little dispute over the fact that people require possessions to help them to meet their basic material needs. The key issue is not whether people have a natural right to own possessions. De Soto thinks the key issue that people should discuss is the functionality of the property rights system that facilitates the productive and efficient use of assets. In other words, de Soto wants people to look at the positive tangible effects that a well-organized property rights system will have for the poor living in LDCs. That is why he believes that legalizing property is hardly charity for the poor. “Creating an orderly market that makes owners accountable and gives their homes clear titles worthy of financing will generate an expanding market, encourage law and order, and put money into the pockets of the elite.”⁷ Thus, de Soto’s argument for the right to private property is one that is mainly pragmatic. He states,

⁶ Hernando de Soto, interview by author, 15 April 2006, Pittsburgh, PA, tape recording.

⁷ de Soto, *The Mystery of Capital*, 197.

Well, if you catch it from the point of view of the effects, and the concrete effects it produces (*the creation of an integrated property rights system*), and to this end, immediately get into the issues of distribution of wealth, then the argument is more solid. Therefore, I am not used to looking at it as a natural right. I am used to looking at it as something that actually functions.⁸

It is clear from his statements that the important issue for de Soto is not whether people have a “natural” right to possess things. The important thing for de Soto is the creation of a legal system for people living in LDCs that protects and promotes their property rights. De Soto shows in his research that the creation of integrated property rights system will create the conditions for long-term economic development. The erection of these kinds of systems will allow people in poverty to facilitate more easily the productive and efficient trading, selling, and buying of goods and resources for themselves without relying on foreign aid. Long-term economic development will take place because once people gain legitimate ownership over their assets, the value of their assets; whether it is a home or small business, will immediately increase. This, however, raises an important issue for de Soto.

In the field of economic development today, opponents of his research derisively suggest that his strategy to reduce poverty in LDCs is some kind of “magic bullet.”⁹ Therefore, I asked de Soto, “How does acquiring title to land in a region such as Sub-Saharan Africa, for example, benefit someone in dire poverty who might be malnourished, lacks health-care, or other basic goods?”¹⁰ He responded, “Well, in many ways. First, the moment you have established the recognition of everybody that whatever they

⁸ Hernando de Soto, interview by author, 15 April 2006, Pittsburgh, PA, tape recording.

⁹ In *The End of Poverty*, Jeffrey Sachs contends that de Soto overestimates the positive value that the production of an integrated property rights system will have for people living in LDCs. For a full treatment of this issue, see Sachs, *The End of Poverty*, 321-322.

¹⁰ Hernando de Soto, interview by author, 15 April 2006, Pittsburgh, PA, tape recording.

have, and they always have something, is actually protected by law, and is recognized by everybody else, the value of that, to start off with, starts rising.”¹¹

He then asked me, “Where are you sitting now?”¹²

I responded, “In an office building here at Duquesne University.”¹³

“In an office building?”¹⁴

“Yes.”¹⁵

Then de Soto asked me, “How much do you think that building is worth?”¹⁶

I said, “I don’t know, about five million dollars.”¹⁷

He responded,

All right, five million dollars. Imagine that I went over there and said, ‘I really like this building. I would like to buy it.’ Then we agree on the five million dollars. And just as we were signing, I said, ‘By the way Robert, before I do sign, where is your title to this building?’ And then you say, ‘I don’t have it. But all my neighbors know the building is mine.’ How much is that building going to be worth now? Obviously, it will be worth a lot less than it was before.¹⁸

After I paused to think about de Soto’s remarks, he said,

*Value is in perception.*¹⁹ The perception is that there is a right to the building that everybody recognizes, which will start something off. Indeed, that will immediately start all of the other effects that I have talked about. I never said it was short

¹¹ Ibid.

¹² Ibid.

¹³ Ibid.

¹⁴ Ibid.

¹⁵ Ibid.

¹⁶ Ibid.

¹⁷ Ibid.

¹⁸ Ibid.

¹⁹ Ibid. Emphasis mine.

term. I just do not see what other resources there are. You can get Jeffrey Sachs to pump some money out of the UN, and that is fine, but most of these countries do not have these resources because they are indebted. The important thing is that you are endowing that person with a right and with everything else that goes along with that right. The possibility, among other things, is if he cannot even do anything with that land, which is very possible; maybe one of his ten neighbors can do something with it. Wherever we have gone (*Institute for Liberty and Democracy*), and titled in the countries that we have worked, the first thing that happens is when you go to what was before a supposedly communal or collective administration of land and assets, and you tell them we are going to give it to you legally, in whatever form you decide. And they meet. And usually they parcel it out. In other words, they take their 2000 acres or 10,000 acres; and they parcel it out among themselves this way. They come back and say, 'OK. We've decided to divvy it up this way.' And, once you got that in the social contract, you sign it up and you give away the individual titles.²⁰

De Soto argues that the next crucial step that will take place once homeowners or entrepreneurs gain legitimate title over their assets is the division of labor. He says,

The moment you got your property rights systems over land and over enterprises, the division of labor works, and assets start being transferred to their highest valued use. Therefore, what will happen to that farmer who is malnourished and lacks health care, and other basic goods, is that he may not hold onto land that he cannot do anything with, but somebody else will. Or, he will see at the end of the day, that he can transfer it. Or, he can go and do something about another piece of land elsewhere. But, he can start moving. You cannot do that until you have tradable property rights.²¹

The legal enfranchisement of people's property rights is an important step because when the division of labor takes place, a person who once was a farmer now has the ability to move into some other type of job. He has the potential to become a specialized worker in some other area that is vital to a local community's economic development. As de Soto says,

Nobody is talking about giving things to people that will not be 'fungible,' that cannot be moved. Some people will use it directly, the 1/3 that have, for example, in Peru, and 2/3 will move along. Nevertheless, they will have something of

²⁰ Ibid.

²¹ Ibid.

value that they can pass to somebody else, eventually. And if they don't, and if they don't fall into any categories, somewhere, somehow, someone will be on the right piece of land, and with the right quantity of property, as to be able to divide labor, and they will end up employing those people. Nobody says that that piece of land gives everybody specifically a possession of something that will automatically start to grow. It says that society, in general, will benefit. Indeed, some of them will create the jobs for other people.²²

Thus, de Soto acknowledges that his theory for economic development is not a “magic bullet” that will solve all the problems caused by poverty in the developing world. The question remains, however, “Will it help most people?” I therefore suggested to him, “All right, it (economic development) is something that can't be guaranteed in an absolute way.”²³

He responded, “No, but I can't go around in advance saying, ‘I know who can use the assets.’ So you have to go out and give everyone the chance, and then the system will eventually work.”²⁴ De Soto acknowledges that there are no shortcuts to long-term economic development in LDCs. Even though his proposed solution is not a magic bullet, it is an integral step in the process toward helping people in poverty to address their own economic needs. Thus, he finished this part of our discussion with these words,

Yes, the question is, ‘Will it help most people?’ Yes, it will help most people. It will help most of them a lot. But, when it does and gets the system working, there is no short-term answer for most people. Aid just does not do it. It just does not cover it. It is a very small fragment of the resources that are necessary for real development.... I have never said it is a “magic bullet” in the sense that it immediately produces “this.” What we have seen where we have titled, is overall, in the case of Peru and El Salvador, for example, all these people are much better off than those who were not titled before. 28% more of their children go to school because now there are two more salaries per plot of land than there was before simply because they can now stay there and they know that their land cannot be

²² Ibid.

²³ Ibid.

²⁴ Ibid.

taken away from them. Therefore, an elder brother or wife goes out to get another job. Because they do that, they can afford education. We also know now that they absorb the majority of Peru's mortgages. That the values of their homes, on average, have increased 40% more than those that have not been titled. Therefore, overall, things go better. However, that does not mean that it is going to happen on that land, in that specific place, at a specific time. The process of the division of labor will go, some will become entrepreneurs, some will get richer than others will, and then you have to put all those other things that make for equitable growth and that make for credit. It cannot take off without that first step, without that cornerstone being put into place.²⁵

2. A Question of Anthropology: How can the Personalist Communitarian Theological Anthropological Benefit the Work of Hernando de Soto

In chapters 3 and 4, I discussed the work of Michael Novak and David Hollenbach to investigate the dominant anthropological wings in the tradition of Catholic social teaching. One of my purposes in surveying their work was to identify both the benefits and shortcomings of each of these anthropological heritages in Catholic social teaching. On the one hand, the benefits of Novak's sustained reflections on theological anthropology provides a view of the person that is creative, resourceful, and committed to promoting economic liberty in order to limit the potentially coercive power of the state. In its most positive light, his more libertarian anthropology provides those mired in poverty with an argument for expanding private enterprise and restricting government interference in the organization and operation of markets. Nonetheless, I argued that his anthropology does not allow him to address adequately the ways that the globalization of the market marginalizes those in poverty throughout the developing world.

On the other hand, Hollenbach's anthropology, which is personalist and communitarian, stresses the cooperative and social elements of human personhood where human rights become the minimum mechanisms for participation in community life. Similar to

²⁵ Ibid.

Novak, his anthropological commitments have led him to identify many of the positive aspects associated with the globalization of the market, especially when it promotes human dignity, social solidarity, and justice. Even though he supports markets when they elevate human dignity, I contend that his anthropological leanings provide better resources than Novak for identifying the ways political, legal, and economic institutions isolate the poor from meeting their basic material needs. Hollenbach's commitment to a comprehensive vision of human rights challenges those who give unbridled support to *laissez-faire* market systems. In particular, his claim that economic rights must be respected as much as political rights in order to give persons the necessary protections they need to participate in the well ordering of society challenges those who remain committed to an anthropology that sees people primarily as self-interested individuals who work chiefly for the maximization of profit. Instead, Hollenbach's work presents a strong case for why it is important to see persons as bound together in a web of interdependent networks of work and collaboration in order to identify the practical implications for the assessment of the proper scope of markets. Indeed, Hollenbach places at the forefront of his reflections on theological anthropology the idea that markets are to be judged ethically in light of their consequences for human dignity.

Hollenbach's commitment to a theological anthropology that places human dignity and human rights at the center of his ethical reflection provides an interesting point of contact for dialogue between Catholic social teaching and the work of Hernando de Soto. One of the strengths of Hollenbach's view of human rights is the recognition that the context for the proper functioning of these rights will change depending on the social location of the people these rights mean to protect. Hollenbach presents a normative vi-

sion of human rights that accepts cultural, religious, and gender differences among people as well as their economic and political situations as relevant in the development of moral standards for a globalizing world. In fact, his view of human rights accepts the common humanity of all people while avoiding an abstract idea of universal community that submerges differences in what he calls a “stifling homogeneity.”²⁶ Indeed, he grounds human rights in a framework that respects and celebrates differences among communities and peoples, but with a stipulation. “Communal particularities and different ways of organizing public life through government are to be accepted as long as they respect basic human rights.”²⁷ At a minimum, Hollenbach believes being treated justly “means being treated as a member of this community and in accord with the common human dignity shared by all people.”²⁸ Thus, he considers that the most fundamental forms of injustice on the global stage are those that “marginalize people, countries, or cultures from at least minimal levels of active participation in the common goods that come into existence in the larger surrounding wholes.”²⁹

Hollenbach’s vision of human rights and the anthropology he uses to justify these rights have important implications for the work of Hernando de Soto and his attempt to secure property rights for home and small business owners throughout the developing world. Similar to Hollenbach, de Soto’s commitment to establishing legal property rights rests on an assumption that people, regardless of time, place, or cultural orientation, require property rights in order to participate in the economic well-being of their commu-

²⁶ Hollenbach, *The Common Good and Christian Ethics*, 222.

²⁷ Ibid.

²⁸ Ibid.

²⁹ Ibid., 222-223.

nity. In *The Mystery of Capital*, de Soto calls the legal *disenfranchisement* of these rights among the poor a form of “apartheid,” which segregates the wealthy from the poor as the law once segregated blacks and whites in South Africa.³⁰ Critics of de Soto’s research, however, challenge whether his commitment to securing legal title to assets for the poor in the developing world rests on a *false* anthropological assumption. Opponents who argue that “culture” is the dominant factor in the process toward economic development chastise de Soto for trying to export “Western” ideas about individual property rights to peoples who do not share this same cultural heritage. These critics suggest the world today lacks a consensus about the ways to create economic growth because the proven way - capitalism, even modified by the welfare state - is a peculiar creation of Western culture. In other words, the approach that de Soto espouses, if not inherently alien to other cultures, is at least unfamiliar and unnatural. Opponents of de Soto’s work claim that his logic implicitly accepts a standard economic assumption: human nature is universal: Confronted with the same incentives, people everywhere will respond similarly.

The criticism leveled against de Soto’s work for its foundational commitment to a Western model of property rights echoes similar criticisms made against ethicists such as Hollenbach who argue for a comprehensive vision of human rights based in a foundational commitment to human dignity. Critics attack their “foundationalism” from the standpoint that there is no such thing as “universal” human rights. The very notion of human rights is nothing more than an illusion created during the Enlightenment. They challenge the idea that human rights are moral standards that stand independent of all traditions, cultures, and religions. Indeed, the contemporary awareness of the historical em-

³⁰ de Soto, *The Mystery of Capital*, 15.

beddedness of rationality raises serious doubts in the minds of many about the transcendental character of human rights across history and communal traditions.³¹ The contemporary challenge raised by those who question the foundations on which universal human rights are made today remains important because it presents those who want to make a commitment to these rights account for the ways the justification of human rights norms and the interpretation of their concrete implications vary in notable ways from one philosophical, ideological, or religious tradition to another. Yet, as Hollenbach rightly notes,

Such a rejection of the existence of human rights, however, would be a serious setback for the growing sense of solidarity across cultures in a world where violations of human dignity continue today on a massive scale. Since the moral vocabulary of human rights has become the single strongest way to address this human degradation, to declare on theoretical grounds that it is an illegitimate way of speaking will have serious negative consequences for the lives of many people.³²

I agree with Hollenbach that to abandon the language of human rights would be a serious mistake primarily because the interdependence of today's world requires at least some kind of basic moral vocabulary to allow for dialogue among international actors to discuss the kind of world we all want to live in as human beings. The key is not to abandon a commitment to universal human rights, but to respect the ongoing dialogue about how the universal standards sought by the language of human rights relate to the distinctive and particular self-understanding of different ethnic, cultural, and religious communities throughout the world.

In light of this view, there is no doubt that Hernando de Soto puts forth his program for economic development throughout different regions of the world by adopting

³¹ See, for example, Alasdair MacIntyre, *After Virtue: A Study in Moral Theory*, 67, and Richard Rorty, "Postmodernist Bourgeois Liberalism," 219-20. Found in Hollenbach, *The Common Good and Christian Ethics*, 163.

³² Hollenbach, *The Common Good and Christian Ethics*, 163.

the language of human rights. His support for Article 17 of the United Nations Human Rights Charter provides clear evidence for this claim. Even though he believes it is natural for people to possess things to meet their basic material needs, he acknowledges that the systems that govern these rights must respond to the local and particular needs of various peoples. His desire to enfranchise people in the developing world to gain legal ownership over their assets therefore provides an interesting test case about the possibilities of combining a foundational commitment to human rights while acknowledging that the implementation of these rights must respect cultural, religious, and ethnic diversity. Therefore, I asked de Soto, “What are the anthropological underpinnings of your understanding of economic development and commitment to property rights? In other words, what view of the person are you employing in your view of economic justice?”³³

To answer this question, de Soto first discussed with me his recent involvement in a titling program led by the ILD in Ethiopia, where he worked with that nation’s Prime Minister Meles Zenawi. De Soto claims that Prime Minister Zenawi was at first skeptical of establishing a unified property rights system in his country primarily because of its potential for concentrating wealth in the hands of a few individuals. Eventually, Meles Zenawi agreed to allow de Soto to organize the property rights system in Ethiopia when he saw that members of the ILD had collected numerous samples of property titles that were being handed out by Ethiopians themselves outside of government spheres. De Soto was not surprised that many Ethiopians had taken the initiative to try to document their assets, albeit extralegally. He acknowledged that this was similar to developments

³³ Hernando de Soto, interview by author, 15 April 2006, Pittsburgh, PA, tape recording.

that had occurred in places as diverse from Ethiopia as Mexico and the Philippines. He said,

I have not come across, whether it has been Mexico, the Philippines, Tanzania, a parcel of land, in the extralegal sector, where there is no title, albeit a title that is issued by informal authorities outside of the law by thugs, or mullahs, or whom-ever.... In other words, what I have seen, wherever I have gone, is that people are establishing papered rights to things. Therefore, what I do is I actually bring these documents together. It is based on these documents, and the forms, and the contents that they have, that I begin to design standard forms that people understand.³⁴

De Soto's result led him to make an important statement about his understanding of the human person. He said, "What my anthropology has brought out is that people are creating systems of documented property rights wherever you go. I have not found a place where that is not established."³⁵ De Soto's research in various parts of the world testifies to the universal desire of people to want to own and legally represent their assets. He uses this important insight to dedicate his work to discovering the ways people interact economically in order to work with government officials throughout the developing world to help the poor to gain legal ownership over their assets. He said,

And I go to people in villages and towns throughout the developing world, and I say all right, here is what people with market economic systems do, they have property rights that are fungible, they have property rights that can be mortgaged, they have property rights that can be divided up, they have property rights that are inscribed in some primitive form of ledger, but that are brought together in some kind of order or standard. Does this occur here? That is what I do. Then, I go to them, and say, now, when people got organized in this country, when they organized their enterprises, did they have limited liability, did they institute the right to perpetual succession? Did they have means of taking hierarchical decisions? Do you? I find that they do in very primitive ways that are not organized according to written systems or adding professionals and widespread law. They do it in un-systematic, unprofessional, and fragmented systems. Therefore, what I try to do is find any of the symptoms of a modern institutional system that are present and I

³⁴ Ibid.

³⁵ Ibid.

have found the roots everywhere I have gone. That is what I dedicate my anthropology.³⁶

Hernando de Soto's view of the human person allows him to discover the extralegal arrangements of home and small business owners in different regions throughout the developing world. His insights about the human desire to own property shows that the commitment to establishing property rights is not adverse to people who do not share "Western" cultural values and orientations. His discovery that people across different ethnic, religious, and cultural traditions want to gain ownership over their assets is proof that "culture" is not the principal obstacle toward a nation's economic development.

The fact that "culture" is not the primary impediment to a nation's economic development raises an important question for de Soto and his colleagues at the ILD. If culture is not the principal barrier to development, why has the ILD not developed one system of property rights that can work in every region of the world? I asked de Soto, "You reject the idea that 'culture matters' when discussing the problem of economic development. However, do not some cultural orientations aid economic development more than others do?"³⁷ He responded,

My argument is not against "culture." Let me put it this way. When I wrote *The Other Path*, I noted that much of Peru once was described as unemployed proletariat, victims of dependency, and bad capitalism. I indicated that, no, it is a society that has an enormous amount of energy and entrepreneurial spirit. Therefore, why, simply, did not everybody just read that and then do it in their country. Some people did. But essentially the reason why I have to go country by country is that I have to adapt it culturally. I have to put it in the context of the words and the meanings that they have.³⁸

³⁶ Ibid.

³⁷ Ibid.

³⁸ Ibid.

De Soto acknowledges that to organize an integrated property rights system requires an understanding of local customs and traditions of different peoples in order for these systems to function legally and efficiently. He recognizes that “culture” plays an important role in a nation’s economic development. Yet, he has not found one culture that is incapable of constructing a modern market economic system. He says,

What I am saying when I say, “culture,” that I do not agree with, is those people who say that there are some cultures that are “fit” for economic development with market economies and those that are not. I just simply have never found one that is not. That is where my argument about culture comes into play. Of course there are differences between cultures. That is why I like traveling to different places to look at different cultures. One of the strengths that I think we have at the ILD is that we can talk in different terms. I mean *The Mystery of Capital* is an effort to talk in Western terms. The argument it makes is very different when you have to sell the argument locally. You have to talk in completely different terms. Of course, culture matters, but culture does not determine that you cannot have a modern capitalist system.³⁹

The strength of Hernando de Soto’s anthropology is that it blends a foundational commitment to individual property rights while recognizing that the systems that govern these rights are human creations that must respond to local customs and practices of various peoples throughout the developing world. He refutes the idea that “culture” is the key factor toward a nation’s economic development, especially when people perceive culture as an obstacle to helping the poor to gain legal ownership over their assets. As de Soto says, “... culture is not a wall that cannot be crossed. It is a tunnel that twists and turns and you have to learn how to connect one end to the other.”⁴⁰ By integrating the extralegal property arrangements of people throughout the developing world into one system of property law, de Soto believes this will not only benefit the individual owners of

³⁹ Ibid.

⁴⁰ Ibid.

assets, but this will increase the economic prosperity of an entire nation. Indeed, he stresses that cooperation among political leaders, members of civil society, and those who work in the extralegal sector of the economy is essential to the development of a society that respects the rule of law and promotes the common good of all citizens. The inability to protect legally the property rights of those mired in poverty will continue to place undue burdens on this group of people. Only when a country develops an integrated property rights system that allows the majority of a nation's citizens to participate in the market will this system help those in poverty to meet their basic material needs and become greater participants in the well-ordering of society.

Although de Soto's anthropology positively merges a foundational commitment to property rights with a view of adapting these rights to each nation's particular cultural, religious, and ethnic heritage in a unified system of property law, a weakness of his anthropology is that it lacks a normative center to ground these rights. In chapter 4, I used the work of David Hollenbach to reveal how the dignity of the human person has become the normative center of Catholic social teaching. The vision of the human person that Catholic social teaching employs affirms both the individual and communal aspects of personhood, which provides the tradition with the resources to outline the basic freedoms that human beings require in order to participate in society as equal and active agents. The granting and protection of civil and political rights, such as free speech, become ineffectual for human well-being if society does not join these rights with economic and social rights. The social teaching of the church helps people to see that human well-being requires more than the ability to speak freely or put words on parchments of paper for people to become full and active citizens in society. To affirm human dignity in its most

comprehensive sense requires giving people access to work, to basic healthcare, to education, and to housing. Hernando de Soto's work contributes greatly to affirming human dignity today through its ability to unlock the mysteries pertaining to the creation of wealth. Its ability to identify and eliminate the legal obstacles that deny those in poverty access to the right to own and use their property to meet their basic material needs and the needs of their families provides groundbreaking intellectual and practical resources to help people living in LDCs to escape the cycle of poverty. Despite the many tangible benefits of de Soto's research, however, his primarily pragmatic anthropology does not adequately provide a rationale about why it is necessary to help those living in LDCs to gain ownership over their assets. Thus, a dialogue with a tradition that places human dignity and the needs of the poor at the center of its ethical reflections could provide de Soto with a better foundation on which to advocate the protection and promotion of property rights among the poor in the developing world. It is to these issues that I now turn.

3. Hernando de Soto and The Enfranchisement of Property Rights: An Option for the Poor?

In chapter 1, I discussed that one of the most important developments within Catholic social teaching over the past forty years has been the commitment of the Catholic Church to the principle of the preferential option for the poor. Today, Catholic social teaching proclaims that a basic moral test of society is how its most vulnerable members are faring. In a society marred by deepening divisions between rich and poor, the Catholic tradition recalls the story of the Last Judgment (MT 25) and instructs the faithful to put the needs of the poor and vulnerable first. Indeed, justice at its foundation demands the establishment of minimum levels of participation in the life of the human community for all persons. The option for the poor challenges the Catholic faithful and all people of

good will to work with the marginalized to help them to become full and active participants in society.

The strengths of Catholic social teaching to meet this goal are many, but three in particular stand out. First, its humanistic attitude allows members within the church to reach out to others not only to teach them, but also to learn from them. The humanistic framework that Catholic social teaching offers provides ample room for dialogue among diverse religious and secular groups. Second, its attention to the values of participation and solidarity give meaning to this option. The concept of participation helps to identify how to share power among divergent groups. The concept of solidarity allows people to recognize why it is vitally necessary for people to work together to improve the aggregate well-being of society as a whole. Finally, its prophetic challenge to respect the dignity of all members of society calls both followers and non-believers to work for a more just and equitable division of resources in order to allow all people to meet their basic material needs.

The foundation upon which the church makes this option for the poor is human dignity. The exclusion of large numbers of people from participation in the global marketplace today constitutes a grave threat to it. In order to meet the challenge of making those now excluded by the globalization of the market full participants in society, the church must do more than simply use its social teaching to identify the causes of marginalization. It must seek ways to integrate those now mired in poverty into local and international markets. The desire of those who work within the Catholic social tradition to meet the objective of producing a human society that respects the dignity of all persons requires both teaching and learning from other groups who share this objective. As I

have argued throughout this dissertation, I believe the work of Hernando de Soto provides tangible means and resources for those who work within the Catholic social tradition to move toward the goal of fulfilling this option. If the option for the poor does not mean pitting one group against another, but rather, it calls followers to strengthen the whole community by assisting those who are most vulnerable, members within the church must turn to its social teaching in addition to sources outside of the tradition to meet this objective. I believe Hernando de Soto's strategy to help the poor constitutes one such source. Therefore, I asked him, "How can your views on solidifying property rights among the poor relate to the Catholic Church's commitment to a preferential option for the poor?"⁴¹ He responded, "There is no problem about a preferential option for the poor. I think I have always had a preferential option for the poor because these are the people I am targeting."⁴²

Although de Soto supports the concept of a preferential option for the poor, he also noted its shortcomings, especially in regards to the way this concept developed in Latin and South America in the work of liberation theologians such as his professor and friend, Gustavo Gutiérrez. De Soto said,

The only part, which I have told this to Gustavo, who is a friend of mine, was in his book (*A Theology of Liberation*) he refers to Marxism. The only part I do not like about that is that he does not refer to the other side. Both Marxism and libertarianism both have things to offer. However, if you look only in terms of one, of course you are excluding the other. Of course, I can understand why he did that because in Latin America the kind of people that would come up with a Von Hayek argument or a Milton Friedman argument are really people who use the arguments of libertarians to further their own private interests. In the same way that Left wing dictators use Marxism to justify their dictatorships. Therefore, I have absolutely no problem about a preferential option for the poor. I think it is not

⁴¹ Ibid.

⁴² Ibid.

only the human thing to do. I think it is not only the decent thing to do, it just aspires to all the better sides in me, I also think it is the only practical thing to do because without a majority constituency on the side of development, even for the most cynical reasons that you can think of, it is going to collapse.⁴³

It is interesting that de Soto acknowledges the early links that existed between liberation theology and Marxist thought while still giving a positive assessment to the concept of the preferential option for the poor. This is important since those who originally favored this principle advocated theories of economic development that were decisively at odds with the market-based ideas presented by the ILD. It is also significant that de Soto endorses this concept because his group has no direct connection with the Catholic Church. This lends credence to the idea that key principles of Catholic social teaching, such as the preferential option for the poor, are not only reasonable, but worthy of support among those who do not share the Catholic faith.

Regarding his criticism of the early link that existed between liberation theology and Marxist thought, Hernando de Soto thinks this resulted from the fact that those who typically support market reforms to further the goal of economic development do not understand, or worse, do not care about those in poverty. Scholars beyond de Soto point out that several early proponents of liberation theology originally turned to economic programs favored by socialists to seek solutions to the problem of poverty in Latin America. Many of them did this because they practically equated capitalism with injustice. Since liberation theology marked a break from a traditional Catholic approach to social problems due in part to the grossly inhuman plight of people ravaged by poverty throughout Latin and South America, those working with the poor sought answers about why these

⁴³ Ibid.

people remained mired in poverty to help them to overcome their situation of economic injustice. As Peter Burns, S.J. says,

Hunger, slums, high infant mortality, illiteracy, high unemployment, and low wages were typical throughout the continent when liberation theology was born. There was a strong sense that these problems were not simply due to misfortune or mere circumstance, but were the result of structural forms of exploitation and oppression. It was deeply felt that it was the *system*, in some sense, that was to blame.⁴⁴

Indeed, “the very word capitalism tended to have negative connotations – suggesting foreign domination, exploitation, and concentration of wealth – not just for liberation theologians, but for many Latin Americans generally.”⁴⁵ In the original publication of *A Theology of Liberation*, for example, Guitiérrez called for a radical transformation of the socioeconomic structure, not simply for reforms that would leave capitalism in place.⁴⁶ Later, in *The Power of the Poor in History*, he reiterated his opposition to the capitalist order.⁴⁷ When prominent theologians such as Guitiérrez and José Míguez Bonino disparaged the negative effects of capitalism, it was not surprising that practitioners of liberation theology embraced a broadly Left-wing agenda.⁴⁸ Burns suggests this happened for three main reasons.

First, there was a strongly felt need to concretize the faith-inspired quest for social justice in specific political options.... Second, confronted with the facts of systemic injustice, an almost unanimous identification was made that characterized the system in question as capitalist, and so justified a desire not merely to see

⁴⁴ Peter Burns, S.J., “The Problem of Socialism in Liberation Theology,” *Theological Studies* 53 (1992) 494.

⁴⁵ *Ibid.*, 495.

⁴⁶ Gustavo Guitiérrez, *A Theology of Liberation* (Maryknoll, N.Y.: Orbis, 1988; originally published 1971) 65.

⁴⁷ Gustavo Guitiérrez, *The Power of the Poor in History* (Maryknoll, N.Y.: Orbis, 1983) 133.

⁴⁸ José Míguez Bonino, *Christians and Marxists: The Mutual Challenge to Revolution* (Grand Rapids, M.I.: William B. Eerdmans Publishing Company, 1976).

changes within capitalism, but to replace it with a different kind of socioeconomic system altogether. Third, since traditional Third Way approaches were judged to be accommodating of the capitalist system, and therefore incapable of the radical transformation that was thought to be necessary, the only real alternative appeared to be an unabashed option for socialism.⁴⁹

Hernando de Soto's positive assessment of the preferential option for the poor led me to discuss with him why people who were at least sympathetic to this principle originally turned to Marxian analysis and socialist concepts to address the problems of the poor in Latin and South America. He said,

Let me tell you what the advantage that Gustavo and my other friends have on the Left. Most of my friends in Peru are on the Left. The reason for that is that we are concerned with the same things. The problem with everybody who actually believes in the more liberal options, or more libertarian options, in the European sense of the word, are people who are, in the best of cases, fascinated with the sophistication of a market system, and a capitalist system, but who really do not care about the poor. The problem with those who really do care about the poor is that they really do not understand the market system.⁵⁰

De Soto then discussed with me why he believed this to be the case. He said,

Or, worse, it is they do not want to understand markets because the people who advocate markets are those that have used them for their single benefit and have not cared that the market system has not carried to the rest of the country. Therefore, it is really a Third World dilemma that, in terms of those that are honest and truthful, that are on the Right, and who have understood that markets are best, they just do not care about getting them to the poor and they do believe that "culture matters." On the other side of that coin are those who do care about the poor, but do not care about markets. Therefore, I can understand why at the end one would tend to sympathize with the Marxists because these people do care about the poor. I come from a class of people, I mean, my family has no fortune, I have not inherited a cent.... Everything I did I did by myself. Nevertheless, I belong to that stock of "Whitish" people with whom I find absolutely no identification and no values to share. They just happen to be my cousins, they were the kids I was presented to when I was a child, and, therefore, my tendency is with the Left side. Again, I have problems with the Left side because they do not agree with my reasoning. Therefore, I can also understand that one of the reasons that anybody, who would tend to be with the Left, when they had an option for the poor,

⁴⁹ Burns, "The Problem of Socialism in Liberation Theology," 498-499.

⁵⁰ Hernando de Soto, interview by author, 15 April 2006, Pittsburgh, PA, tape recording.

is because these are your natural neighbors, they are the only people who really care. Therefore, it is a problem of company. Yes, keeping the right company.⁵¹

De Soto's argument that those who identify with the poor mostly favor economic development programs that borrow heavily from socialist strategies challenges him to demonstrate that securing the legal protection of property rights among the poor provides greater prosperity for this group of people than Marxist alternatives.⁵² Even though de Soto generally is unsympathetic to socialist strategies for economic development, it is important to recognize that he uses the concept of "class" to identify that fundamental differences do exist between people regarding access to economic opportunities and basic goods that people possess in society.⁵³ Yet, he does not subscribe to the idea that the solution to this problem is to dissolve private property or deny entrepreneurial activity among those now living at the margins of society. De Soto believes there is no better means to meet the basic material needs of the poor than to allow them to enter the market legally. He says,

We (ILD) do believe that there is no way that you can accumulate the strength to change things unless you have capital. We also agree that it is a very difficult journey between a market economy and monopolies and excessive things. You have to do what the West has done, which is to steer a course between both things. The problem in Latin America is that it is very hard to do that because the only people who really care about the poor are the people on the Left. After a

⁵¹ Ibid.

⁵² One thing that de Soto finds objectionable in his attempt to fulfill this goal is the unhelpful ways that outside groups try to ideologically "position" the work of the ILD. During the 1980's conservatives from Prime Minister Margaret Thatcher of Great Britain to President Ronald Reagan of the United States championed the work of the ILD as the most effective initiative to combat poverty in the developing world. The identification of the ILD with the conservative movement made the work of de Soto and his colleagues suspect in the eyes of many socialists and liberals. Today, it is interesting to note that supporters of the ILD and their initiatives to combat Third World poverty include prominent Democrats in the United States such as former Secretary of State Madeline Albright and former President Clinton.

⁵³ Hernando de Soto, interview by author, 15 April 2006, Pittsburgh, PA, tape recording.

while, you believe that solving the problem of poverty is tied to the Leftist ideology. It is not. It is unfortunate. It is a tragedy. It is a drama.⁵⁴

De Soto's contention that it is a "tragedy" that many who want to help the poor have chosen socialist ideology over market reforms is a criticism sometimes leveled against those in the Catholic Church who have worked on behalf of "social justice" in many places throughout the developing world. Michael Novak, for example, believes liberation theologians made a great mistake by borrowing socialist ideas from Latin America's social scientists.⁵⁵ As discussed earlier, Novak believes socialism is not a cure for excessive state control; it only intensifies it.⁵⁶ Novak believes that some who support Catholic social teaching and its commitment to social justice misunderstand this concept because they fail to see the way it can provide a potential inroad for the dangerous expansion of government power. He thinks the extensive effort under way to commit the Church to 'economic rights' as the means to secure social justice has the potential to become an error of classic magnitude. He says, "It might well position the Catholic Church in a 'preferential option for the state' that will more than rival that of the Constantinian period."⁵⁷ Novak believes the tradition's commitment to economic rights will lead to the expansion of government power because if every human being has the right to be given income, and to be fed, sheltered, and cared for by the state, every person who without ne-

⁵⁴ Ibid.

⁵⁵ Michael Cromartie, "The Good Capitalist," *Christianity Today* 38 (10/24/94): 30.

⁵⁶ Ibid.

⁵⁷ Michael Novak, "Economic Rights: The Servile State," in *Three in One: Essays on Democratic Capitalism, 1976-2000*, edited by Edward W. Younkins (New York: Rowman & Littlefield Publishers, 2001), 157.

cessity exercises that right sells himself into dependency. In that way, human dignity, far from being gained, is lost.⁵⁸

Although Novak provides an insightful warning regarding the potential dangers associated with expanding the role of government in the operations of a nation's economy because of the church's commitment to a wide-range of economic rights, its call for social justice is not an attempt to undermine the rightful autonomy of individuals to engage in private economic initiative. Therefore, I asked de Soto, "Do you believe the Catholic Church's commitment to "social justice" has hindered or helped the advancement of economic development in Latin and South America?"⁵⁹ He responded, "No, I do not think it has hindered it at all. I think that it is the right thing to do. The only thing that has hindered it is that they also do not understand markets."⁶⁰ De Soto argued that throughout the 80's and 90's officials and those in leadership positions within the church tended to be against the "system," which meant they remained skeptical of the benefits promised by those who wanted to introduce market reforms within Latin and South America.⁶¹ As his work shows, the expansion of property rights does not require the creation of wide-scale government programs to redistribute wealth through such things as tax programs. Instead, his work shows that government must play an integral role in the promotion of this kind of right by eliminating the legal and political barriers that currently deny millions of people in the developing world from gaining access over their assets. In developing nations, only the state can command the attention and garner the

⁵⁸ Ibid.

⁵⁹ Hernando de Soto, interview by author, 15 April 2006, Pittsburgh, PA, tape recording.

⁶⁰ Ibid.

⁶¹ Ibid.

overwhelming political support required to wipe out the willful inertia of the *status quo*, since bureaucracies are initially inclined to resist even small changes. Any decision as far-reaching as creating a legal property system, which will include and emancipate the poor, is essentially political and should be developed by creating partnerships between government officials, legal experts, and members of civil society. If governments create the legal property tools that people in poverty require for their enterprises to prosper, they will become part of the legal expanded market. As de Soto says, “If governments do not take them seriously as economic agents, if governments see them only as a nuisance or passive recipients of charity, the resentment among the poor against the *status quo* will only increase.”⁶² The failure of government to meet this challenge will lead to a continued disrespect for the rule of law. It will also encourage the poor to focus on their exclusion from society, which will spread in the form of civil violence, rather than on their aspirations for the future.

Hernando de Soto’s comments illustrate that he is in agreement with Catholic social teaching about the need for government to participate in the proper legal functioning of the market to help individuals to meet their basic material needs. The tradition’s commitment to the right to private property and encouragement of the principle of subsidiarity provides the intellectual framework to think about the institutional role that government should play in the structuring and development of integrated property rights systems in LDCs. Indeed, I think the principle of subsidiarity is particularly relevant to linking de Soto’s work about property rights to Catholic social teaching and its commitment to a preferential option for the poor. This principle states that, in order to protect basic

⁶² Hernando de Soto, *The Other Path*, xxxix.

justice, government should undertake only those initiatives that exceed the capacities of individuals or private groups acting independently. Government should not replace or destroy smaller communities and individual initiative. Rather it should help them contribute more effectively to social well-being and supplement their activity when the demands of justice exceed their capacities.

As mentioned earlier, this does not mean that the government that governs least governs best. Rather it defines good government intervention as that which truly “helps” other social groups contribute to the common good by directing, urging, restraining, and regulating economic activity, as the occasion requires and necessity demands. Therefore, I asked de Soto, “Do you think it (the principle of subsidiarity) has any benefit in relationship to your ideas about solidifying property rights among extralegals in LDCs?”⁶³ De Soto responded positively to this question.⁶⁴ He said that the primary goal of the ILD is not to substitute what people in developing nations have already done as far as establishing property rights over assets. As discussed in chapter 5, de Soto believes people throughout developing nations are already doing this kind of work. He thinks what they are missing are standard terms. When people in developing nations do not have standard terms or uniform titling systems, everybody starts in a different way, which makes the development of a capitalist system that benefits the majority of people difficult. The Institute for Liberty and Democracy, therefore, works with government officials and members of civil society to standardize titles and registries of assets to integrate them into presently fragmented market economies. The role of the state in this process is to be-

⁶³ Hernando de Soto, interview by author, 15 April 2006, Pittsburgh, PA, tape recording.

⁶⁴ Ibid. See question 9 in the interview for a full description of his comments.

come the primary social institution that prescribes the boundaries of property rights. Indeed, legislatures and legal institutions must work together with small home and business owners who operate in the extralegal sector to develop the technical and social infrastructure without which property rights are meaningless.

The important role governments can play in the process to develop unified property rights systems in LDCs will only be effective if they do not attempt to usurp the rightful autonomy of persons who work within civil society to meet their basic material needs. De Soto's research clearly shows that people who live and work in LDCs do not lack entrepreneurial skill or talent, nor do they lack a capacity to understand the benefits of a market-based system of political economy. The growth of wide-scale extralegal markets that operate outside the prescribed boundaries of government law in these nations testifies to the desire of these people to use their reason, ingenuity, and labor to meet their own material needs. The attempt on the part of government to either stop this kind of activity or totally control it will continue to augment the growth of the extralegal sector. Only by connecting the social contracts of those who work in the extralegal sector to established law will governments in LDCs provide the legal infrastructure to increase the level of participation of the poor in the economic development of these kinds of nations.

The integral role that government plays in this process is important. Government, however, cannot accomplish this objective alone. It requires that non-governmental organizations, such as the Catholic Church, work with organizations such as the ILD to help people in government to identify the extralegal social contracts that now regulate business operations in developing nations. As previously mentioned, the Catholic

Church today remains a principal actor within civil society in a number of LDCs since it is the world's largest NGO. Many who live and worship in this community of faith seek opportunities to stand in solidarity with the poor. Participants within the church want to do more than simply proclaim an option for the poor. Members within the church want to stand in solidarity with the poor through participating in programs that partner with both government and civil authorities to help those in poverty to overcome a situation of economic oppression that continues to threaten their dignity as persons. As mentioned earlier, much of the work the ILD currently performs relies on the cooperation of home and small business owners to identify their assets. As de Soto says,

In fact, in all of our titling programs, the majority of people that are on the ground actually helping put these things together are the original squatting chiefs and the heads of the communities. We very much believe in that. We build on them because they know their people best. It is much easier to take them, to bureaucratize them, and to allow them to work with government officers because they know their people.⁶⁵

The ILD takes these extralegal property titles so that they can eventually integrate them into one system of unified property law. One of the greatest challenges the ILD faces to achieve this objective is the difficult time its members have of connecting with these home and small business owners throughout these nations. Government officials who cooperate with the ILD often face a situation of distrust from those who work and operate in the extralegal sector because they typically blame the government as the institution responsible for their situation. Moreover, these people sometimes perceive agents who work for the ILD as a threat because they lack any direct connection to them. Looking at this situation from the perspective of the poor who live and operate outside of established markets, it is not too difficult to understand their level of distrust of foreign workers, al-

⁶⁵ Ibid.

beit non-governmental ones. Therefore, one way that the church's leadership can use its connections among the poor is to lend support to the ILD's program, which promotes strategies for economic growth by working toward the legal enfranchisement of people's assets in developing nations. As a result, the church, as a principal institutional actor within many of these nations, can use its connections with the poor to help members of the ILD to discover and document the assets of those now working in the extralegal sector. Many within these nations already see the church as a firm advocate for the poor and marginalized. The church can use its credibility among the poor to serve them by helping to build partnerships between members of the ILD and those working in extralegal markets. This kind of partnership between the church and de Soto's organization could allow ILD workers to collect and organize the social contracts of extralegals more readily since people most likely would be more willing to trust those they live and pray with than a foreign worker with whom they have no direct connection.

As I have argued throughout this dissertation, I believe that the work of Hernando de Soto and his colleagues at the ILD share many of the same goals as proclaimed by Catholic social teaching. Both share a commitment to property rights because the protection and promotion of these rights are essential for persons because they give them the capacity to use their assets to meet their own as well as their families basic material needs. Both de Soto and members within the church also share a commitment to doing more than simply proclaiming a preferential option for the poor. Both want to work with those in poverty to give them the necessary resources to allow these people to become active participants in the well ordering of society. Those within the church, who want to make this option, should carefully consider adopting de Soto's strategies for capital

growth to further this goal. Indeed, I believe there is no major ideological obstacle for members within the church not to cooperate with the ILD to work toward the legal enfranchisement of people's assets in currently fragmented market systems. The careful assessment of Catholic social teaching and de Soto's research explicated within this dissertation shows a need to develop avenues of cooperation between those who participate in the Catholic Church and those who work for the ILD. A partnership of this kind is needed in order to address the problems of those now mired in poverty throughout LDCs around the world. The church's personalist communitarian anthropology, joined with de Soto's insights to augment capital growth through protecting people's property rights, can lead to a collaboration that will help to further the principal goals of Catholic social teaching, which are to affirm human dignity, defend human rights, and augment the common good by increasing the levels of economic participation of all people.

Appendix

An Interview with Hernando de Soto (April 15, 2006)

1. What evidence do you see provides the foundation for the right to private property as a natural right?

Van der Waag: One of the things I'm interested in this dissertation is that in Catholic social teaching there has been a long legacy of seeing the right to private property as either a secondary right, as part of human positive law, or as a natural right. I am interested in your thoughts regarding the foundations to the right to private property.

De Soto: Let me tell you how I am used to thinking about it. I am not use to thinking about private property as a natural right. I think about it as something that is simply indispensable for economic cooperation to take place and for prosperity and capital to be created.

Van der Waag: OK.

De Soto: That does not mean that I do not recognize that it has a series of other values and that it can make for independence. All sorts of those things. I am in a very specific world, which is the one of developing and former Soviet nations. We are about 5/6 of the world's population.

Van der Waag: Right.

De Soto: Where that kind of reasoning has only led to 1 billion people having any respect for that kind of institution. Therefore, I do not emphasize that because it does not travel well.

De Soto: Have you read *The Mystery of Capital*?

Van der Waag: Yes, of course.

De Soto: I say that private property does concrete, very specific things. For example, Prime Minister Meles Zenawi of Ethiopia called me in.

Van der Waag: Interesting.

De Soto: And he had asked to see me to set up a four-hour appointment. I knew for a long time that the American government and the international community wanted to establish a system of property rights in Ethiopia. They did not see any way out of Ethiopia's famines without agricultural production taking place or any kind of economic development without a property rights system. Originally, he had rejected this. When I sat down with him, I discussed with Prime Minister Meles Zenawi the intellectual depth of what it would take to create an integrated property rights system in Ethiopia. Once it was finished, we agreed to do a project together.

- Conversation interrupted -

De Soto: You are aware that what we do in developing countries is start up the political and legal basis for creating a property rights system. Indeed, so I asked Meles Zenawi one question, "Why have you bought this now in Ethiopia? Why haven't you tried to establish this earlier for the reasons that our American and Western friends gave you?" He said, "Because what you propose it is not theological. In other words, you don't ask me to believe in a right." In other words, Meles Zenawi, coming from a Marxist, macro background, what he meant is there are people who have faith in the system and see it as a way of affirming individuality. I, on the contrary, being a Marxist, he didn't say this, all right, but this is what I'm thinking he could say. He could say, "I'm a Marxist, and I see that property is an argument for establishing individuality." I do not doubt that, but it is also an instrument for concentrating wealth. Because those people who promote the

system also tend to be some of the biggest landowners in the world and they live in countries where they concentrate most of the land and most of the assets in their hands. Take the case of the UK, where 6000 aristocratic families own most of the land, literally, most of it. Or, in the case of Spain, where 0.2% of the population owns 70% of the place. I mean, that also gives cause for civil wars and is the basis of injustice. Therefore, if you go to it that way, you can talk about both sides of it.

Van der Waag: Sure.

De Soto: Well, if you catch it from the point of view of the affects, and the concrete affects it produces, and to this end, immediately get into the issues of distribution of wealth, while you are at it, then, at that moment, the argument is more solid. So, I'm not used to looking at it as a natural right. I am used to looking at it as something that actually functions. I have not thought very much about the natural right and I have never actually been too convinced about it.

Van der Waag: OK. That is interesting. It is really like a practical insight. This is how it (private property) functions in society and these are the benefits. Whether or not it is a natural right, per se, is not the issue.

De Soto: No. I see no reason. Re-reading Locke, and re-reading Jeremy Bentham, and all those people, I can understand that the incentives there, you know, the world works a lot better for it. However, then, use those arguments. I go about it that way because it produces all sorts of results. It cannot just be the natural right for property. It has to be the natural right for everybody to have property for the whole system to work. That is much stronger.

Van der Waag: That is an interesting framework to think about it. I know for myself, and this is an aside, I recently returned from a trip to Guatemala. I was in a small town called Sayaxche, and I was working with my wife delivering eye-care. You see how people in Sayaxche really do have assets. They have many things to work with, but you can definitely tell that they are disenfranchised from those assets in a way that denies them the possibility for capital development. When you see it in action, especially for someone who has lived in the United States his whole life, you really do see the differences about what it means to have that enfranchisement in a system that facilitates property ownership versus one that does not facilitate ownership. Indeed, that is an interesting point.

De Soto: I would add a second reflection based on what you just said. I remember sometime ago talking with Milton Friedman when he came to visit us in Peru. He said, “Look, what you have demonstrated is that these people actually own their assets, but what you have demonstrated is that they do so outside of the law.”

Van der Waag: Right.

De Soto: They can enforce their possession probably even more efficiently outside of the law than inside of it simply through the massive presence of their popular organizations. Now why bring in the state with all its crumby property systems? Let us just let them have it that way.

Van der Waag: Right.

De Soto: That is when I started thinking about... Wait a second now. What is the difference if it is legal or it is not legal? Therefore, I started calling property right, the fact that it works within a system, which is why I started saying it has to have at least six things

working for it, and law can only do these things. So, the reply to it is, is a property rights system natural? No, it is a very artificial human creation. It is natural for people to possess things. Then, probably they have been fighting about their possessions, you know, our ancestors, and us for a few million years so far. Therefore, I do not see the natural thing. What I see is that through law you can create a system whereby all of this is tremendously more productive and leveraged than the other way around. And you can argue it reasonably, in such a way, that it seeps through ideological cracks. And it just gets to a point that everybody gets to a positive position to comply with both the desires of those who believe it is a natural right and all of us who really don't care as long as it gets put into place.

Van der Waag: OK (Laughter). It's interesting because the roots of your argument have a basis in the work of St. Thomas Aquinas, and his work on property, which dates all the way back to the Medieval period. Aquinas saw it (private property) primarily as a secondary right in the way it facilitates things in a very positive way, and that is really the benefit, and that is what the good of it is. And that's really interesting.

2. How do you respond to critics, such as Jeffrey Sachs in *The End of Poverty*, who see your ideas on economic development as a kind of 'magic bullet' theory?

De Soto: I do not think that Jeffrey Sachs has read *The Mystery of Capital*. I have had the opportunity to debate him at the United Nations when we were the only two invited guests of Kofi Annan and his management committee. He has not read it and he has not understood it. I think he has had an American liberal knee-jerk reaction to my work because that is the side he has decided to group his proposals around. Therefore, he actually believes the natural right sort of stuff. During that debate, for example, he said, "Here is what the world is actually composed of. You need agricultural development,

you need infrastructure, you need medical care, and you need education.” He went down a whole list like if it was a dictionary. Then he said, “Property rights are a part of it, which is fine, but it is no magic bullet.” I said, “That isn’t the issue. The issue is that you’ve been doing all the other things in the United Nations, and the only one thing you haven’t done is Article 17 of the Universal Declaration of Human Rights, which is to create a property rights system.” Therefore, my emphasis is not that it is a magic bullet; you need all the other things. It’s just the only piece that’s missing that will make all the other one’s work.

Van der Waag: OK.

De Soto: When I came across that argument, I understood that he had not understood. He even talked at length about the fight against malaria. And I pointed out that...

Van der Waag: Yes, he makes such a big point of getting malaria nets to all these people.

De Soto: I said it is absolutely right to do that. His whole point was all very interesting. At the time of the conference, I said this is all very interesting, but you know, just less than 130 years ago in Washington, DC, Congressman would leave just before the start of summer because of the malaria. When you set up a system of property rights, all of sudden it became interesting to drain the land, and there is no malaria there anymore. So, I’m not saying that property rights are the key to everything. I am saying that of all the reforms that you have put on the board which are part of the UN agenda, the World Bank agenda, or the development strategy of any other country, the only thing that has not been given importance is that one. Moreover, I am saying, is that if you do not get that one into place, all the other one’s will either won’t work, or they’ll work very, very, badly.

The reply to his “magic bullet” is that he just has not read it. He just has not read it. Because the nature of the debates... His replies, and everything, indicate that he is into something else. And that he does not have time to read other people’s books. Like, probably, I do not even have time to read his stuff. Therefore, that is where we are.

Van der Waag: That is interesting. When I read *The End of Poverty* and some of his other comments about your work, I did find that it was short-shrift. Obviously, his use of the term “magic bullet” implies something condescending. I was interested in what you had to say about it since Professor Sachs has made quite a stir here in the United States since he gets into many of these economic development questions.

De Soto: It is also probably part of a political strategy, which consists in you trying to pick a fight. You try to establish yourself. You know, there are probably not very many of us who have actually not only brought thinking to the development table, but programs. We (ILD) are now moving into 33 different countries. We have a high-level commission at the United Nations, which I co-chair with Madeline Albright. The World Bank has taken up our policies through and through. So has the Inter-development Bank. So, there are probably only two economists who have gotten their ideas moving along. And probably at that time he thought it was a good idea to polarize. By the way, I agree with him. I mean, it is obvious that one day we will find the moment to thrash it out. Therefore, it makes a lot of sense. Because that is the way the world moves. Wherever you go, the vote ends up always 52/48. The important thing is to end up on the right side of that fraction.

Van der Waag: (Laughter)

De Soto: He is like many other economists, who are good friends of mine, who have got ideas, and who advice, and give their opinion, but do not actually move programs.

Van der Waag: The institutional structures that actually do something about it.

De Soto: That is right. What we have similar, Sachs and ourselves, though we work from the Third World, and we'll probably get more time to be seen, I have absolutely no doubt that the relative importance about what we're saying, in every sense of the word, will simply overwhelm whatever Sachs is talking about because there is not much substance to what he is saying. It is still some of the traditional do-good stuff, which I repeat, it is hard to attack progress, because who can be against good charity. If you can save a life, for God's sake, do it. If there are people willing to contribute, I think it is fantastic. However, in terms of the emphasis that this should be given, since we have both managed to put the projects we have, we have caught the attention of governments. OK. We both are talking to dozens of heads of state. We are probably the only people doing so, in terms of getting concrete projects off the ground. It probably makes a lot of sense that we fight it out. That is simply the way the democratic and free world lives. So, probably, when it comes to the "magic bullet," it's the kind of thing, even if he hasn't read it, or even hasn't thought it out, it doesn't really matter. Because, what it will permit him to do, eventually, like it will permit me, is to make our ideas clearer in the context of a contrast. And you can't contrast unless you are fighting someone.

Van der Waag: That's true. Interesting.

De Soto: I read Jeff that way. From an intellectual point of view, I really think his contribution is zilch. I mean it is not interesting to say that we have to do all these things. I mean, you go to any country, and they are fighting malaria, and they are just not doing it

that well. He says toss more aid at it. I really do not think that is intellectually interesting. However, aside from that, I do not think that much of his accusation is anything than creating a position for a future battle, which is fine with me.

Van der Waag: What support do you think foreign aid will actually get?

De Soto: It will not fly. It will not fly. However, the other institutional thing will. Today, the budgets for property rights in the World Bank, in the Inter-American Development Fund, in the funding agencies, are all increasing. Moreover, our projects are a subject of heated debate on the ground wherever we go. Therefore, we will just keep on following up and it makes a lot of sense for both of us to fight really.

3. How does acquiring title to land in a region such as Sub-Saharan Africa, for example, benefit someone in dire poverty who might be malnourished, lacks health-care, or other basic goods?

De Soto: Well, in many ways. First, the moment you have established the recognition of everybody that whatever they have, and they always have something, is actually protected by law, and is recognized by everybody else, the value of that, to start off with starts rising. For example, “Where are you sitting now?”

Van der Waag: In an office building here at Duquesne University.

De Soto: In an office building?

Van der Waag: Yes.

De Soto: How much do you think that building is worth?

Van der Waag: I do not know, about 5 million dollars.

De Soto: All right, five million dollars. Imagine that I went over there and said, “I really like this building. I would like to buy it.” Then we agree on the five million dollars. And just as we were signing, I said, “By the way Robert, before I do sign, where is your

title to this building?” Then you say, “I don’t have it. But all my neighbors know its mine.” How much is that building going to be worth now? It will be worth a lot less than it was before.

Van der Waag: (Laughter)

De Soto: *Value is in perception.*¹ That the perception is that there is a right to it that is recognized by everybody, which will start something off. And, that will immediately start all of the other affects that I have talked about. I never said it was short term. I just do not see what other resources there are. You can get Jeffrey Sachs to pump some money out of the UN, and that is fine, but most of these countries do not have these resources because they are indebted. The important thing is that you are endowing that person with a right and with everything else that goes along with that right. The possibility, among other things, is if he cannot even do anything with that land, which is very possible; there might be one of his ten neighbors that can. Wherever we have gone (ILD), for example, and titled in the countries that we have worked, the first thing that happens is when you go to what was before a supposedly communal or collective administration of land and assets, and you tell them, well, you know, we are going to give it to you legally, in whatever form you decide. And they meet. And usually they parcel it out. In other words, they take their, whatever it is, their 2000 acres or 10,000 acres, they parcel it out among themselves this way. They come back and say, “OK. We’ve decided to divvy it up this way.” And once you got that in the social contract you sign it up and you give away the individual titles. What happens after a while is that about 2/3 of them starts moving out. 2/3 start moving out because only 1/3 has the green thumb.

¹ Emphasis mine.

Van der Waag: Yes. OK.

De Soto: And, one of the people, the other 2/3 will, who he was reeling in, was how to make liquor out of the oranges. The other one was on how to repair tractors. The other one was caring for the animals that pulled the plow. The division of labor starts to take place. The moment you got your property rights systems over land and over enterprises, the division of labor works, and assets start to be transferred to their highest valued use. And, so, what will happen to that farmer who is malnourished and lacks health care, and other basic goods, is that he may not hold onto land that he can't do anything with, but somebody else will. Or, he will see at the end, that he can transfer it. Or, he can go and do something about another piece of land elsewhere. Nevertheless, he can start moving. You cannot do that until you have tradable property rights.

Van der Waag: That is a very interesting idea. Once you get the division of labor that person who once was a farmer, can now move into something else, and become a specialized worker in health care, for example.

De Soto: That's exactly it. When you go back to Adam Smith and Karl Marx, they both agreed on the division of labor. Even though they lived 70 years apart, they agreed upon the division of labor. They said, "Something is happening in our time. What accounts for it?" Their reply was the division of labor. The specialization of the "pin factory" kind of argument. The first thing that obviously underlies the pin factory is that you actually need fungible property rights. Nobody is talking about giving things to people that will not be 'fungible,' that cannot be moved. Some people will use it directly, the 1/3 that have, for example, in Peru, and 2/3 will move along. Nevertheless, they will have something of value that they can pass to somebody else, eventually. And if they don't,

and if they don't fall into any categories, somewhere, somehow, someone will be on the right piece of land, and with the right quantity of property, as to be able to divide labor, and they will end up employing those people. Nobody says that that piece of land gives everybody specifically a possession of something that will automatically start to grow. It says that society, in general, will benefit. Indeed, some of them will create the jobs for other people.

Van der Waag: OK, it is not something that is possible to guarantee in an absolute way.

De Soto: No, I cannot go in advance saying, "I know who can use the assets." Therefore, you have to go out and give everyone the chance, and then the system will eventually work.

Van der Waag: That is an interesting argument. When I thought about that question, I thought about the person at the point of fact, meaning, if you have a person who lacks assets. However, if you are thinking about the long-term institutional development about what needs to go on, that is obviously a valid response to it.

De Soto: Yes, the question is, 'Will it help most people?' Yes, it will help most people. It will help most of them a lot. But, when it does and gets the system working, there is no short-term answer for most people. Aid just does not do it. It just does not cover it. It is a very small fragment of the resources that are necessary for real development.

Van der Waag: No, it's (foreign aid) like putting a band-aid on a dam.

De Soto: That's right. This is a little bit more than that. And it starts working. I have never said it is a "magic bullet" in the sense that it immediately produces "this." What we have seen where we have titled, is overall, in the case of Peru and El Salvador, for example, all these people are much better off than those who were not titled before. 28%

more of their children go to school because now there are two more salaries per plot of land than there was before simply because they can now stay there and they know that their land cannot be taken away from them. Therefore, an elder brother or wife goes out to get another job. Because they do that, they can afford education. We also know now that they absorb the majority of Peru's mortgages. That the values of their homes, on average, have increased 40% more than those that have not been titled. Therefore, overall, things go better. However, that does not mean that it is going to happen on that land, in that specific place, at the time. The process of the division of labor will go, some will become entrepreneurs, some will get richer than others will, and then you have to put all those other things that make for equitable growth and that make for credit. It cannot take off without that first step, without that cornerstone being put into place.

4. What are the anthropological underpinnings of your understanding of economic development and commitment to property rights? In other words, what view of the person are you employing in your view of economic justice.

Van der Waag: What I am asking is, "What is your view of the person that you are employing?" In Catholic social teaching, in particular, there has been an emphasis on the dignity of the human person, which frames the tradition's understanding of economic justice and establishing rights and duties. Therefore, I was interested in your anthropology.

De Soto: Let me go back to Meles Zenawi. I sent my people into Ethiopia for 12 days before my meeting with the Prime Minister. So when I went to talk with him, I brought to him property titles that were being handed out by Ethiopians themselves outside of government spheres. I have not come across, whether it has been Mexico, the Philippines, Tanzania, a parcel of land, in the extralegal sector, where there is no title, albeit a

title that is issued by informal authorities outside of the law by thugs, or mullahs, or whomever.

Van der Waag: OK.

De Soto: In other words, what I have seen, wherever I have gone, is that people are establishing papered rights to things. So, what I do, is that I actually bring these documents together. And it is based on these documents, and the forms, and the contents that they have, that I begin to design standard forms that people understand.

Van der Waag: OK.

De Soto: Therefore, my anthropology goes in this sense. I go, and I tell them, I have walked this communal land that you have talked about, and you may remember in one of my books I said every time that I advance 100 meters there is a different dog barking.

Van der Waag: The barking dogs, scenario.

De Soto: Correct. I have found, and I point this out in the book, not one place where a dog barks that actually does not have a piece of paper. Therefore, what my anthropology has brought out, if you want to, is that people are creating systems of documented property rights everywhere. I have not found a place where that is not established.

De Soto: Now, here would be the interesting question. When people like Karl Polanyi started attacking capitalism, head on, about 70 years ago, where he was saying that markets do not work, and all that, were these things going on there, I have no idea. I have no idea when these things started. I am not too sure that people can actually say when....

- conversation interrupted -

De Soto: I do not know that anybody has because most anthropologists are not actually very interested in these kinds of institutions.

Van der Waag: Sure.

De Soto: Or, they are actually very much against them for ideological reasons. All I do is study the present. I have not found from Ethiopia, to Tanzania, to the Philippines, one place where people do not document their property rights. Therefore, my anthropology attempts to find out how people interact. And I go to people in villages and towns throughout the developing world, and I say all right, here is what people with market economic systems do, they have property rights that are fungible, they have property rights that can be mortgaged, they have property rights that can be divided up, they have property rights that are inscribed in some primitive form of ledger, but that are brought together in some kind of order or standard. Does this occur here? And that is what I do, and then I go to them, and say, now, when people got organized in this country, when they organized their enterprises, did they have limited liability, did they institute the right to perpetual succession? Did they have means of taking hierarchical decisions? Do you? And I find that they do in very primitive ways that are not organized according to written systems or adding professionals and widespread law. They do it in unsystematic, unprofessional, and fragmented systems. Therefore, what I try to do is find any of the symptoms of a modern institutional system that are present and I have found the roots everywhere I have gone. That is what my anthropology is dedicated to.

Van der Waag: Right.

De Soto: Do they have forms of taking hierarchical decisions? Do you? And I find that they do in very primitive ways that are not organized according to written systems or adding professionals and widespread law. They do it in unsystematic, unprofessional, and fragmented systems. Therefore, what I try to do is find any of the symptoms of a

modern institutional system that are present and I have found the roots everywhere I have gone. That is what my anthropology is dedicated to. Now, the difference of course, probably with people who are more academic than I am is that I am the only one in my organization who once in awhile writes a book and then documents it.

Van der Waag: (Laughter)

De Soto: But, at the same time, when I have thought of our mission, we (ILD) are not so much a “think” tank, than a “do” tank.

Van der Waag: Yes, just thinking about that point, it is very true. One of the things that attracted me to your work was its practicality.

De Soto: Right.

Van der Waag: I believe that many academics that get into economic development issues never have walked the same streets that you have walked and been with the people with whom you work. And, you know, when you get a bunch of academics in a room, they’ll fight tooth and nail, about this point versus that point, but actually doing something is a different story.

De Soto: Right. In our recent Executive Summary of our Tanzania Study, which we finished about 4 months ago, it shows in the last pages is that my team for Tanzania to pick up all the documented evidence that you will see there, or that is summarized there, was about 970 people. What I have found is the following thing. Every time I decide to lead a life of reflection and seclusion in some beautiful American campus is that anthropologists are people who are dedicated to this kind of thing cannot mobilize the resources that I can when I get a government contract. When I get a government contract, I get millions of dollars to carry it out. It is non-profit, of course. But, I still get millions of dollars and

I can put together huge teams. Therefore, I put together questionnaires and polling, and we are very good at doing that. Moreover, we go out there and we get all that evidence, which I could not do if I did it in the solitude, plus two or three good assistants that you would get in academia. Therefore, like everything, there are two sides of this coin. And the part that falls short is that if I only had more time to write, I would be writing all the time, I could get more of this out. On the other hand, what I am able to do is get an awful lot of evidence.

Van der Waag: Yeah, the hard, concrete, data bears the results.

De Soto: That is right. That is the kind of anthropological underpinnings. It is really a question of systems and of volume.

Van der Waag: Interesting.

5. You reject the idea that “culture matters” when discussing the problem of economic development. However, do not some cultural orientations aid economic development more than others? If not, why?

De Soto: Yes. Absolutely. My argument is not against “culture.” Let me put it this way. When I wrote *The Other Path*, I noted that much of Peru once was described as unemployed proletariat, victims of dependency, and bad capitalism. And I indicated that, “No, it is a society that has an enormous amount of energy and entrepreneurial spirit.” Why, simply, didn’t everybody just sort of read that and then do it in their country. Some people did. Nevertheless, essentially the reason why I have to go country by country is that I have to adapt it culturally. I have to put it in the context of the words and the meanings that they have. There was once when I was talking to President Fox, when I talked to him, I said to him, “What happens if you just say look what we found in Peru and Mexico can’t be that different.” He said have you ever seen a political argument work that way.

He said, “Hey guys, we found out that in Russia everyone likes Goat Cheese, we should like Goat Cheese as well.” He said, “No, you’ve got to Mexicanize it.” So, it’s not that I don’t recognize that culture exists. Moreover, in every country, the first two years when we put these huge teams into place, and what they do is, is adapt things from what we already know to the existing culture. What I am saying when I say, “culture,” that I do not agree with, is those people who say that there are some cultures that are “fit” for economic development with market economies and those that are not. I just simply have never found one that is not. That is where my argument about culture comes into play. Of course there are differences between cultures. That is why I like traveling to different places to look at different cultures. One of the strengths that I think we also have at the ILD is that we can talk in different terms. I mean *The Mystery of Capital* is an effort to talk in Western terms. The argument it makes is very different when you have to sell the argument locally. You have to talk in completely different terms. Of course, culture matters, but culture does not determine that you cannot have a modern capitalist system. In the same way you would have to say, you know, that Muslims do not like automobiles, they do not like penicillin....

Van der Waag: Oh sure, that has been an argument that has gone on against poor people for sometime.

De Soto: I do not believe that any culture gets in the way of progress. For example, one of the first places I started getting my funding in the United States, when I had to give a speech at the State Department, and the question was, it was during Reagan’s time, and I had to give a speech, and the question to them was, “The private sector, development, and the poor: Have you been talking to the right people?” That was the question. The

question was all those guys that Huntington says, you know, who don't look like you, that are not your culture, those guys who don't speak English, the guys who got few teeth, even though some of them might be gold, etc. And do everything backwards, but are entrepreneurs. They are really much closer to you than some of the elites that you actually support every time you invade another country.

Van der Waag: (Laughter)

De Soto: But it means... Culture, you have to understand culture. You probably have to understand that it was wrong to bet on Iraqi elites. You should have found a way of betting directly with the poor people to do the kinds of things you did in Japan, which was rapidly give them property rights. And those were the people that had not traveled, who did not understand you. Automatically, Huntington would have said, "Boy, they lack the Anglo-Saxon attitude and the work ethic...." But they are the one's closer to you. So culture, of course, does matter. What I am saying, and it varies in a variety of ways, is that culture is not an argument for saying that the system does not work. In other words, culture is not a wall that cannot be crossed. It is a tunnel that twists and turns and you have to learn how to connect one end to the other.

Van der Waag: OK, that's what I assumed you would say. It is an argument that traces its roots back to Weber. For example, you look at Ireland today, and it is one of the most prosperous nations in all of Europe.

De Soto: That's right, somebody found the connection. You know, somebody found it in Japan, and they are still just as different from their American counterparts as they were before.

6. A major emphasis in modern Catholic social teaching is the idea of *the preferential option for the poor*, which challenges followers to create conditions for mar-

ginalized voices to be heard, to defend the defenseless, and to assess lifestyles, policies, and social institutions in terms of their impact on the poor. The option for the poor does not mean pitting one group against another, but rather, it calls us to strengthen the whole community by assisting those who are most vulnerable. In light of this teaching, how can your views on solidifying property rights among the poor relate to the Catholic Church's commitment to a preferential option for the poor?

De Soto: There is no problem about a preferential option for the poor. I think I have always had a preferential option for the poor because these are the people I am targeting. Remember, I told you about when George Schultz invited me to talk in front of the Secretary's open forum in Reagan's time, it was about, you know, you have been talking to the wrong people, your real constituents are the Boston Tea Party, are the more bourgeois plus poor people of our continents. So, I do target that class. In addition, I do believe in classes. Classes are a useful way to label certain segments of society. I think Marx had this over libertarians. He knew the importance of pinpointing. He knew the importance of tailoring arguments to specific groups and their objective and subjective economic conditions. Therefore, I am all for that.

Van der Waag: Interesting.

De Soto: Moreover, I am a disciple of Gustavo Gutiérrez. He was my professor. You know, liberation theology.

Van der Waag: Oh sure. That was going to be my next question.

De Soto: Now, in that sense, I have always subscribed to that. The only part, which I have told this to Gustavo, who is a friend of mine, was in his book (*A Theology of Liberation*) he refers to Marxism. The only part I do not like about that is that he does not refer to the other side. Both Marxism and libertarianism both have things to offer. But, if you look only in terms of one, of course, you are excluding the other. And, of course, I can

understand why he did that because in Latin America the kind of people that would come up with a Von Hayek argument or a Milton Friedman argument are really people who use the arguments of libertarians to further their own private interests. In the same way that left wing dictators use Marxism to justify their dictatorships.

Van der Waag: Sure.

De Soto: So, I have absolutely no problem about a preferential option for the poor. It is not only the human thing to do. It is not only the decent thing to do, it just aspires to all the better sides in me. It is the only practical thing to do because without a majority constituency on the side of development, even for the most cynical reasons that you can think of, it is going to collapse.

Van der Waag: Oh, sure. As far as violence, revolution, and all the instability, it creates.

De Soto: The idea of the dual economy was something, that when I was a younger person, people believed was just going to continue forever and ever, and also on the basis of cultural analysis, you know, most of the Indians in the hinterland doing there old primitive things, and the modern people, like in China today, on the coast being up-to-date, and in the twenty-first century, was practical only inasmuch as the other 80% didn't really know what the other 20% were doing. But, now they do. Communications have changed. There are roads and there are newspapers. More than 90% of this country (Peru) read, and those that do not read watch television, and those that do not have a rich uncle in the United States or in Lima, they are not taking it anymore. Even for the most cynical reasons it is not going to last. Apart from that, the option for the poor is something that I always had very much in mind. I started as being a Socialist. Therefore, that is where my preferences were. I did not see how you could look at yourself in the morn-

ing if you did not do something for the rest. Therefore, I absolutely go with that. The only thing I resist, but I would think that Gustavo would never rewrite that Marxism piece the way he did before, is the idea that the Left was the only one who presented the option. Now I can understand that.

Van der Waag: Well, that's why I really asked the question because one of the reasons why I got into your work that way was because of the fact that, looking at market based reforms for understanding the preferential option for the poor as a platform, was what really interested me in your work because liberation theology had gone in a leftist framework to do it in, and when you look at the actual results, it doesn't really help the people it is intended to help. That is why I got interested in your work because primarily you were working with the poor, but providing an alternative strategy to help them.

De Soto: Let me tell you what the advantage that Gustavo and my other friends have on the Left. Most of my friends in Peru are on the Left. And the reason for that is that we are concerned with the same things. The problem with everybody who actually believes in the more liberal options, or more libertarian options, in the European sense of the word, are people who are, in the best of cases, fascinated with the sophistication of a market system, and a capitalist system, but who really don't give a "hoot" about the poor. And the problem with those who really do give a "hoot" about the poor is that they really do not understand the market system.

Van der Waag: (Laughter)

De Soto: Or, worse, they do not want to understand markets because the people who advocate markets are those that have used that for their single benefit and have not cared that the market system has not carried to the rest of the country. So, it's really a Third

World dilemma that, in terms of those that are honest and truthful, that are on the Right, and who have understood that markets are best, they just don't care about getting them to the poor and they do believe that "culture matters." On the other side of that coin are those who do care about the poor, but do not care about markets. Therefore, I can understand why one would tend to sympathize with the Marxists because they care about the poor. I come from a class of people, I mean, my family has no fortune, I have not inherited a cent.

Van der Waag: OK

De Soto: Everything I did I did by myself. I belong to that stock of "Whitish" people with whom I find absolutely no identification and no values to share. They just happen to be my cousins, they were the kids I was presented to when I was a child, and, therefore, my tendency is with the Left side. Again, I have problems with the Left side because they do not agree with my reasoning. Therefore, I can also understand that one of the reasons that anybody, who would tend to be with the Left, when they had an option for the poor, is because these are your natural neighbors, they are the only people who really care. So, it's a problem of company. Yes, it is a matter of keeping the right company.

Van der Waag: This is an aside question, but do you get upset when people try to "position" you?

De Soto: Yes. Yes. It is very upsetting. Sometimes, if I think about it, well before an unlucky moment, I am able to say why that is not important and it does not look like I'm ducking the shot. I do say it all the time, you know, that it is very difficult to position me. As you know, today some of our biggest supporters are President Clinton and Madeline

Albright. They were not before. And that has gotten some of my conservative friends frustrated.

Van der Waag: Well, it is interesting that you mention former president Clinton because that is how I actually first learned about your work. I'm a graduate of Georgetown University. He was giving an alumni interview to President DeGioa (President of Georgetown University) at Gaston Hall in 2003. When the conversation turned to the issue of economic development, President Clinton immediately brought up your name and your work sounded interesting.

De Soto: President Clinton is a great friend and promoter. We have become good friends. However, what happens then, is.... The traditional people who really supported us were the Republicans or the Conservatives. The reason that happened is President Reagan mentioned the work of the ILD at his first appearance at a General Assembly meeting, at a time when the United States was being very aggressive with the United Nations. The American delegate said something like, "I wish you would all get on a steamboat and I'll get on a New York warf and wave to you as you disappear into the sunset." It was this aggressive attitude between the U.S. and the U.N.

Van der Waag: (Laughter)

De Soto: And then all of sudden Reagan goes to the UN and says, "I have a Third World hero." His statements immediately put us in the black books of every Social Democrat in the world and every Socialist. That is where we have been, just painted on the Right, until President Clinton came along and saw through it. Now, we are somewhere in the middle, which is where we should really be. What we really do believe in, however, is we do believe that there is no such thing like the market economy system. We do believe that

there is no way that you can accumulate the strength to change things unless you have capital. We also agree that it is a very difficult journey between a market economy and monopolies and excessive things. You have to do what the West has done, which is to steer a course between both things. The problem in Latin America is that it is very hard to do that because the only people who really care about the poor are the people on the Left side. After a while, you believe, somehow or other, that solving the problem of poverty is tied to the Leftist ideology. It is not. It is not. It is unfortunate. It is a tragedy. It is a drama.

7. Do you believe the Catholic Church's commitment to "social justice" has hindered or helped the advancement of economic development in Latin and South America?

De Soto: No, I do not think it has hindered it at all. I think that it is the right thing to do. The only thing that has hindered it is that they also do not understand markets.

Van der Waag: OK

De Soto: And, are generally, in Latin America, I do not know how they are in other places, but in Latin America, they tend to be very "anti-system." They do not like it, they do not believe in it. That is what has actually hindered, not much, a little bit, because when we had to do the reforms during the 1990's, which have really improved Latin America, whether socially we have been able to keep up, you know, Latin Americans have been able to keep pace with the velocity of changes that are required. Nevertheless, we have had in Peru since 1993 economic growth of about 5% or 6 % a year after not having grown in the 70's and 80's. Thus, things are much better than they were before.

Van der Waag: Are you surprised by the recent elections in nations throughout Latin and South America and what is going on?

De Soto: No, not at all. No, as matter of fact, if you look at the last chapter in *The Mystery of Capital*, it has a subchapter called, “The Ghost of Marx.” In it, I say they are going to come back because we are not doing economic reforms fast enough. So, you know, I’m saying that’s going to happen. But, remember, I just say, if we don’t get there fast enough, if you don’t give them two tools that are required, I mean, if you look at the Washington Consensus, the Washington Consensus is the way it was summed up by a man named John Williamson.

Van der Waag: Sure. Yes.

De Soto: He says there are ten points. For example, fiscal stability, open trade, etc. His last two points, nine and ten, are enterprise and property rights. What I am saying is that everybody agreed that you should do those things but that nobody did anything about them. What I am also saying, if you do not get those two things, the rest are not going to work. The trickle-down is not fast enough. In other words, people on the Right are those who have Right-type arguments and they have had their heyday for the past twelve to fifteen years.

Van der Waag: Now the shift is coming because the trickle has not happened fast enough.

De Soto: This is the way it has always been for the last one-hundred fifty years. There is nothing new. The thing is that the Left can become more Marxist. They can become more pro-American, there is Arab-nationalism, and there is Al-Qaeda, so it takes different forms, but Peru has always sorted between the both. There is no reason why, in fact, that when the Left comes in that they cannot pick up the market type argument and do it

right. Just like, probably, Clinton is closer to a market economy than Bush is in terms of real action taken.

De Soto: So as far as I am concerned, I am not at all surprised. In fact, I think that if Fujimori had not planned sloppily and gotten caught in Chile. You know that he is arrested right now.

Van der Waag: Yes, I know.

De Soto: If he had not done that, he would be running way ahead of everyone else. He probably would have won the first round. What he would have done is that he would have captured the same amount of people, much more, twice the amount of people that Humala has, and he would have said, “You have been excluded. You have been discarded. You have not been paid attention to. I’m going to pay attention to you.” He would have come in with a right wing message and picked them up just as quickly.

Van der Waag: Interesting.

De Soto: The reason that Ollanta Humala, Evo Morales, and Hugo Chavez have picked them up has very little to do with their Leftist stance.² It has to do, rather, with their anti-elite stance. In other words, they said, there are only a few people who have done it, and we are going to correct it. That’s what has polarized it. It is not the fact that they were Leftists. I do not think people even think in those terms. I don’t really.

Van der Waag: I don’t think most people are ideologues that way at all. They see what their actual situation is and say, “Who is actually speaking to me about it.”

De Soto: Who is speaking to me about it? You just said it. That is it exactly. Who is speaking to me about it in a way that I understand. Therefore, somebody comes across,

² Ollanta Humala leads the Union for Peru party, Evo Morales is the President of Bolivia and heads the Movement Toward Socialism (MAS) party, and Hugo Chavez is currently the President of Venezuela and heads the Movement for the Fifth Republic party.

like our friend Clinton, and says to the people of Latin America, “I feel your pain because I know you get up in the morning and you don’t see the future.”

Van der Waag: (Laughter)

De Soto: “I know in the afternoon that I have given you a democracy. And I have found out that you were going to shout to the heavens and that you were not able to shout to the heavens because you had no voice. And the democratic institutions really allow you to elect, but not to participate. You do not have common notice periods, you do not have an Office of Management and Budget, you do not have the institutions actually to have your voices heard, but I am here, and I listen to you. I know you hurt here, that you are not well fed, and I know, that on top of that, you are better fed than you were before, that you are still angry, and to you just surviving is not good enough. You want your kids to go to school.” The politicians on the Left in Latin and South America said it, and they spoke to them, and they picked it up. If they had had a more rightist, populist attitude, such as Alberto Fujimori would have had, the Right would have picked them up. It just so happens that the only people who have that lingo, today, are Leftists.

Van der Waag: Yes, it rather has that populist notion. It’s true.

8. What role do you think “faith-based” communities can play toward helping home and small business owners gain legal title to their assets in developing nations?

De Soto: I do not know much about “faith based” communities. Sorry, you want to talk to me about that.

Van der Waag: One of the things I was thinking about is that you put a lot of weight into developing institutional structures that facilitate market economies, and that is an important component. I was looking at it in terms of Latin and South America where the church still plays a large role in shaping civil society, maybe not in the same way it once

did, but it is still an important social force in civil society. Have you ever worked collaboratively with those types of groups to do the things that you do at the ILD?

De Soto: No. Because the things we do have to do with working with government. In other words, even though we work at the grass-roots level to get our information from there, and to design legislation that is conformity with their anthropological manifestations, in fact, we do not do community work. I mean, we take all of that, and we go to government and say, “OK, you’ve got to change your property laws this way, you’ve got to change your corporations this way, you got to change your constitution because you are not getting to them. You got 29 organizations that are directing the records of property. You need one.” We change all that. In fact, we do not work with the people one by one. No, we work with the people one by one to get an idea of what is stopping them, from their point of view, of getting the tools they need actually to develop economically. Then our client is always the head of state and government. Therefore, I have never met members of faith-based communities. What I do know, interestingly enough, the people who most call us in terms of wanting to know what we do, and trying to tune into what we do, and actually mention us in their political speeches, when they get involved in politics, are evangelists.

Van der Waag: That is interesting.

De Soto: So, all the time they are coming to us. For example, there is an evangelist candidate now in Peru, who has surprised everybody, I think he has gotten close to 4% of the vote. His name is Alberto Lay, an evangelist pastor. Many of these kinds of candidates, actually, take photographs in front of a picture of me.

Van der Waag: Oh, really.

De Soto: Yes, one of the reasons that Alberto Fujimori called us to start implementing, and we did most of his initial reforms in his first 2 to 3 years.

Van der Waag: Right. Yes.

De Soto: The reforms were made. They were all designed by us. We were brought in there by the evangelists. Now, the fact is, I am not an evangelist, I do not go to the services. I do not get involved in the church. However, for some odd reason, either their sponsors in the United States or the pastors who come from the United States, are obviously much more market orientated. Therefore, they have a tendency to sympathize with us. I repeat, “None of us are evangelicals.” However, when these groups have their national meetings, they have these huge meetings and they bring people from all over Peru and other Latin American countries to talk about our reforms, which is the only thing I have seen about “faith-based.” I have not seen it in terms of the Catholic Church, interestingly enough.

Van der Waag: The only Catholic theologian that I have seen that has referenced your work is Michael Novak of the American Enterprise Institute in Washington, DC.

De Soto: That’s right. I do not see it anywhere else. Now, were not involved. It has not hit us one-way or the other. I am not into the “faith-based” thing. I think it is fine. I am glad that they are doing it. I think that there is a lot of very good work taking place. However, since you asked me, what I know about them, this is the only thing I know about them. I do not follow them. I do not follow that. Our paths do not cross.

Van der Waag: It is interesting why I got into in your work and its possible relationship to Catholic social teaching. I got interested in it primarily because the church has had such a long history, especially in its official teaching, of upholding and defending a per-

son's right to own property. Since there is a natural connection between your work, especially in the way you give an institutional face to a person's right to own and use property, and Catholic social teaching, I thought you were natural allies.

De Soto: Well, it's interesting. Somebody mentioned to us, but it was many, many, years ago. It was an account of some Columbian Cardinal who wanted to talk to us. I had understood that generally speaking, the Catholic Church in Peru was not against it. We never had a criticism, whether it is Gustavo Gutiérrez, or the Cardinal of Lima, we get along very well. In the case of Gustavo, of course, with a lot of affection. Some people have told me you would have a logical ally in the church.

Van der Waag: Yes.

De Soto: However, I have never received any sign of attention. Well, I have received it from just about everyone else. I have received it even from Muslim organizations. However, I have never received it from the Catholic Church. As a matter of fact, when you tell me that the church is very supportive of the property based thing, well, you know, when you read a lot of the encyclicals, or the few that I have seen, there is always a reference to the right to private property, but there is a reference to so many things it looks like a UN message. I'm not sure which one they want to emphasize.

Van der Waag: Yes, you are right. One thing Catholic social teaching lacks in its broad outline is specificity about the right to private property. Where does the rubber hit the road? That is why I got interested in your work. Your work provided an answer to those questions. How could it actually work in a real, practical, and institutional sense? That is why I thought there was a natural connection between your work and Catholic social teaching. However, you're right, when you read the documents in their whole, and you

look at the corpus of the body of work over the past one hundred years, there is a back and forth in the tradition between a person's right to own property and its teaching about the universal destination of material goods. I could see how reading these documents, as an outsider, would be very difficult.

De Soto: Well, let me put it this way. It is very interesting what you are saying. Now, I remember, we have collaborated with the Catholic Church, for example, we did manage to empty out many of Peru's jails when we found that 70% of Peruvian's were in jail without being tried. They were in jail for more time than if they had been found guilty. That was part of our property rights program.

Van der Waag: Interesting.

De Soto: The property rights program was basically, you could not go out and have a real state point of view, you have to get all the connecting points. One of the connecting points, of course, is that everybody knows somebody, a cousin, a friend, or a friend of a friend, who is in jail, and unjustly so. Therefore, you have to create the kind of confidence that indicates that, in terms of violating other people's properties, you are willing to look at this again. We get into marriage laws, for example, because we started finding out that the majority of Peruvian women that lived with their husbands were not legally married because there was no way of formalizing property because you did not formalize marriages. To institute our property rights reforms, we restructured 187 laws outside of formal property law so that the property laws could actually work. Another one was jail reforms. In this case, we collaborated very narrowly with a French priest named Roberto Lancier. Now, that I think of it, there are many things we have done in collaboration with priests and members of the church, but we have never heard from the hierarchy. In other

words, we have never had a reason to knock on their door not because they were hostile to us and not because they were not friendly, there were just no signs. There were just no signs.

Van der Waag: Well, maybe my work could serve as bridge.

De Soto: Of course, that is why all of sudden what you are saying has become very attractive to me.

9. One of the most important ideas in Catholic social teaching is the principle of *subsidiarity*. This principle states that, in order to protect basic justice, government should undertake only those initiatives that exceed the capacities of individuals or private groups acting independently. Government should not replace or destroy smaller communities and individual initiative. Rather it should help them contribute more effectively to social well-being and supplement their activity when the demands of justice exceed their capacities. This does not mean, however, that the government that governs least governs best. Rather it defines good government intervention as that which truly "helps" other social groups contribute to the common good by directing, urging, restraining, and regulating economic activity, as the occasion requires and necessity demands. Thus, in light of this principle, two questions come to mind. First, have you ever heard of this principle of Catholic Social Teaching? Second, do you think it has any benefit in relationship to your ideas about solidifying property rights among extralegals in LDCs?

De Soto: Of course, I have heard about subsidiarity. I have even read about it. Of course, it makes sense because wherever we go, remember I told you that we were finding that there were property titles and acts of incorporation in the informal sector that were organized by local authorities or informal governments, in other words, informal governments are issuing paper, in all developing countries...

Van der Waag: Right. Yes. They are doing it locally.

De Soto: They are doing it locally. What we do is plug into them. In other words, we do not substitute what they do. We say they are already doing it. What they are missing are standard terms. If you do not have standard terms, if everybody has a different type of

property title and starts in a different way, then it is not going to work. Therefore, we actually go and standardize what is a fragmented market economy in every developing country. Absolutely. All those pieces of paper, all that anthropological side that you talked about, is working because they have institutions that work. The problem is, remember when Jesus Christ threw the merchants out of the Temple, he threw them out because they converted to a market, right?

Van der Waag: (Laughter)

De Soto: Christ pretty much knew what a market economy was all about. However, it was a very small, little, market. Markets only work when they have depth to them. Markets only work when they have scale to them. Markets only work where the division of labor is possible to a degree that is significant. Therefore, what we have to take are all these fragmented little markets in developing countries and we try to weave them into one system such as you have in the United States. That is the history of the European Union as well. Absolutely, that is what we do. Therefore, we base our institutions, we base whatever we create, on what works. Moreover, we empower them. Therefore, when people say to us, “But wait a second, the people that you are talking to are the people that did these invasions of land and the squatting,” then we go back to US history. We start saying to them, “You know, the guy who kept the peace, they pinned a silver star on him.” The person who started the squatting invasion, you are not going to get him out of the way because he has authority. He actually gave these people their first squatting rights over things. Therefore, what you have to do is make him a real-estate dealer. In fact, in all of our titling programs, the majority of people that are on the ground actually helping put these things together are the original squatting chiefs and the heads of the

communities. We very much believe in that. We build on them because they know their people best. It is much easier to take them, to bureaucratize them, and to allow them to work with government officers because they know their people. Or, give them a space in the private sector as real-estate dealers or as facilitators, and we build on them. Absolutely, I completely agree with that. It is the only way it is going to work.

Van der Waag: Here is another instance where I think there is real connection between your work and an embedded principle in Catholic social teaching. Your work gives intellectual coherency to a principle like subsidiarity. Here is a real practical orientation of what it looks like in practice. Because, again, when you read the official teaching, it's there, it's talked about, but it's never really given any flesh. I think a program like yours really embodies that principle.

De Soto: Very much so. I would be very interested if you were able to create that bridge.

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