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Taking the "Sum Total" of the Common Good in Religious Freedom Discourse

Anthony R. Picarello Jr.

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ARTICLE

TAKING THE “SUM TOTAL” OF THE
COMMON GOOD IN RELIGIOUS
FREEDOM DISCOURSE

ANTHONY R. PICARELLO, JR.*

I. INTRODUCTION	57
II. DEFINING THE “COMMON GOOD”	59
A. An Indivisible Whole.....	59
B. Three Main Components	60
1. Dignity of the Human Person	60
2. Social Well-Being and Social Development.....	61
3. Peace and Security	64
III. THE “COMMON GOOD” IN CURRENT DISCOURSE.....	64
A. Elements of the Concept That Are Present in Current Discourse	65
B. Elements of the Concept That Are Absent from Current Discourse	67
IV. CONCLUSION	68

I. INTRODUCTION

In my work as a lawyer and a policy coordinator for the Catholic Church in the United States, I have noticed that the terms of Catholic Social Teaching are used frequently in the legal and policy debate over religious freedom—but they are also used loosely, even in Catholic circles, and this loose usage has practical consequences.

I recently came across some research that confirmed my experience. Andreas Widmer at Catholic University of America surveyed Catholics and non-Catholics to assess their familiarity with the key terms of Catholic Social Teaching. In general, he found that Catholics who responded to his

* Associate General Secretary and General Counsel, United States Conference of Catholic Bishops (USCCB). These reflections are my own, and they do not represent the views of my employer.

survey said—in high percentages—that they knew the meaning of those key terms but then supplied definitions that were overwhelmingly wrong.¹

The most misunderstood key term is the “common good,” which was the focus of the University of St. Thomas Law Journal Spring 2018 Religious Freedom and Common Good Symposium. Only about 15 percent of Catholics said they *did not* know what the “common good” meant, but only about 10 percent *actually did* know the basic definition.² So fully, 75 percent of those surveyed *thought* they knew what the term “common good” meant, but actually did not know.³

I do not come to this problem as someone who is familiar with every nuance of Catholic Social Teaching and is looking to quibble over the margins of the definitions of its key terms. The point is almost the opposite: in the context of the legal and policy discourse on religious freedom, the deficiencies surrounding the use of the term “common good” are *so great* that they are apparent even to a relative amateur like me—and they have become apparent precisely through their practical consequences.

In short, the problem is this: in legal and policy discourse, religious freedom is mostly cast as opposed to the common good;⁴ and when it is cast as advancing the common good, it is only to the extent that it is perceived as facilitating service to the needy. I think this miscasting has come about as a result of several contributing causes, but one of them is a widespread understanding of the “common good” that is, at best, incomplete.

Yes, religious freedom *does* serve the common good by facilitating aid to the needy, and helping the poor *is* a privileged form of service to the common good; but there is much more to the common good than charitable service, and religious freedom advances those other aspects of the common good as well. And yes, the common good represents a limit on religious exercise; but that does not imply that the two are somehow inherently opposed. In fact, the two are inherently interdependent. Any plausible definition of religious freedom implies at least some minimal concept of the common good, as both a source and a limit; and, as will be explained further below, the concept of the common good in Catholic Social Teaching prominently includes religious freedom.

My hope is to present through this article a more nearly complete, if still rudimentary, account of the “common good” in Catholic Social Teaching, and then to describe how its various elements relate to contemporary

1. Andreas Widmer, *How do we live the vocation to business, starting today?*, LIBERTY & SOLIDARITY CONFERENCE PROCEEDINGS (Sept. 24–26, 2014), <http://business.cua.edu/res/docs/Widmer-L-S.pdf>.

2. *Id.* at 104 (Table 2).

3. *Id.*

4. See, e.g., Sharita Gruberg, et al., *Religious Liberty for a Select Few*, CTR. FOR AM. PROGRESS (Apr. 2018), <https://www.americanprogress.org/issues/lgbt/reports/2018/04/03/448773/religious-liberty-select/>.

legal and policy debates over religious freedom. I will discuss those elements of the common good that are routinely invoked in religious freedom discourse; the benefits that flow from highlighting those elements; and the problems that flow from highlighting them in isolation. I will also discuss the elements of the common good that are routinely overlooked in religious freedom discourse; the harms that flow from their exclusion; and the corresponding benefits of including them in the future.

Once all of these pieces are put in place, I hope the result will be a clearer and more cohesive picture of the relationship between religious freedom and the common good, reflecting that the two are, in fact, integrally linked, interdependent, and inseparable.

II. DEFINING THE “COMMON GOOD”

A good place to start is the basic definition of “common good” that 75 percent of Catholics thought they knew but actually did not. The latest and best distillation comes from Vatican II’s Pastoral Constitution on the Church in the Modern World, *Gaudium et Spes*, which is repeated in the *Catechism of the Catholic Church* and the *Compendium*: “the sum total of social conditions which allow people, either as groups or as individuals, to reach their fulfillment more fully and more easily.”⁵ This definition is indeed a distillation—that is, its content is not new with *Gaudium et Spes*, but it reaches back to Pope Leo XIII’s foundational encyclical of modern Catholic Social Teaching, *Rerum Novarum*, and beyond, and packs a lot into a little sentence.⁶

Tomes could be written to unpack this definition further, but in keeping with the title and overall theme of this article, I want to focus on one aspect of the definition, namely, that it represents a “sum total.” As noted above, that focus is important because more common understandings of “common good” seem to be incomplete—“partial totals,” or maybe “subtotals.”

A. *An Indivisible Whole*

The idea of *aggregating* all the goods of various individuals and groups in society might, however, leave the impression that the common good can also be somehow *disaggregated*—but that is not the case. Concepts of completeness, wholeness, and continuity over time pervade the

5. PONTIFICAL COUNCIL FOR JUSTICE AND PEACE, COMPENDIUM OF THE SOCIAL DOCTRINE OF THE CHURCH para. 164 (2006) [hereinafter COMPENDIUM]; CATECHISM OF THE CATHOLIC CHURCH para. 1906 (2d ed. 1994) [hereinafter CATECHISM]; SECOND VATICAN ECUMENICAL COUNCIL, PASTORAL CONSTITUTION ON THE CHURCH IN THE MODERN WORLD: GAUDIUM ET SPES paras. 26, 74 (1965) [hereinafter GAUDIUM ET SPES].

6. See, e.g., POPE JOHN XXIII, MATER ET MAGISTRA: CHRISTIANITY AND SOCIAL PROGRESS para. 65 (1961); POPE LEO XIII, RERUM NOVARUM para. 51 (1891) [hereinafter RERUM NOVARUM].

idea of the common good; there is a certain *gestalt* to it. As the *Compendium* puts it: “Belonging to everyone and to each person, [the common good] is and remains ‘common,’ because it is *indivisible* and because *only together* is it possible to attain it, increase it and safeguard its effectiveness, with regard also to the future.”⁷

B. Three Main Components

The definition of “common good” in Catholic Social Teaching is not limited to the single sentence excerpted above. Three component parts are also specified: (1) respect for the dignity of the human person; (2) social well-being and development; and (3) peace and security.⁸ I will describe each briefly in turn.

1. Dignity of the Human Person

Respect for each individual person is fundamental to the common good: “*The principle of the common good . . . stems from the dignity, unity and equality of all people.*”⁹ Therefore, if one attempts to pursue the common good by means that violate the dignity of the human person, those means immediately thwart the end, and the effort inherently fails.

Respecting the dignity of the person has many requirements,¹⁰ and I am loath to omit any, especially in light of my broader theme of completeness in treating the elements of the common good.¹¹ One facet of respect for human dignity that stands out, however, is the requirement to respect conscience and to protect religious freedom. The *Catechism* does not leave this point to inference and risk that it may get lost in a sea of other protections, but rather specifies it:

In particular, the common good resides in the conditions for the exercise of the natural freedoms indispensable for the development of the human vocation, such as “the right to act according to a sound norm of conscience and to safeguard . . . privacy, and rightful freedom also in matters of religion.”¹²

7. COMPENDIUM, *supra* note 5. See also *id.* at para. 162 (“The principles of the Church’s social doctrine must be appreciated in their unity, interrelatedness and articulation.”).

8. CATECHISM, *supra* note 5, at paras. 1907–09, 1925.

9. COMPENDIUM, *supra* note 5 (emphasis added).

10. For example, GAUDIUM ET SPES, *supra* note 5, at para. 26, lists the following in addition to freedom of conscience and religious freedom: “food, clothing, and shelter; the right to choose a state of life freely and to found a family, the right to education, to employment, to a good reputation, to respect, [and] to appropriate information” Similarly, the COMPENDIUM, *supra* note 5, at para. 166, specifies “food, housing, work, education and access to culture, transportation, basic health care, the freedom of communication and expression”

11. See, e.g., COMPENDIUM, *supra* note 5, at para. 154 (“Human rights are to be defended not only individually but also as a whole: protecting them only partially would imply a kind of failure to recognize them.”).

12. CATECHISM, *supra* note 5, at para. 1907 (quoting GAUDIUM ET SPES, *supra* note 5, at para. 26).

Likewise, in the *Compendium*, “[e]mphasis is given to the paramount value of the right to religious freedom.”¹³ The *Compendium* later affirms that “[t]he effective recognition of the right to freedom of conscience and religious freedom is one of the highest goods and one of the most serious duties of every people that truly wishes to ensure the good of the individual and of society.”¹⁴

And, of course, the source of the right to religious freedom in Catholic Social Teaching is the dignity of the human person, as explained in the document of the Second Vatican Council declaring that right, which is aptly titled, *Dignitatis Humanae*.¹⁵ The common good therefore does not merely include, but is rooted in, respect for the dignity of the human person, and that respect requires the protection of conscience and religious freedom.

2. *Social Well-Being and Social Development*

The emphasis in Catholic Social Teaching on the primacy of the dignity and value of the human person—which is prior to any claim of society or the state¹⁶—does not lead to a libertarian anthropology or radical individualism because the social nature of the human person is *also* affirmed: “The human person cannot find fulfilment . . . apart from the fact that he exists ‘with’ others and ‘for’ others.”¹⁷ The pursuit of the social dimension of the common good is therefore not at odds with the good of the individual person, but instead advances and is indispensable to the good of the individual person.¹⁸

Social well-being and development are achieved through individuals’ active participation in social groups, in pursuit of goods that are unattainable by individuals acting in isolation.¹⁹ In the private sector, these social

13. *COMPENDIUM*, *supra* note 5, at para. 155.

14. *Id.* at para. 553.

15. SECOND VATICAN COUNCIL, *DIGNITATIS HUMANAЕ* para. 2 (1965) (“[T]he right to religious freedom has its foundation in the very dignity of the human person as this dignity is known through the revealed word of God and by reason itself.”).

16. *RERUM NOVARUM*, *supra* note 6, at para. 7 (“Man precedes the state.”); *CATECHISM*, *supra* note 5, at para. 1930 (“Respect for the human person entails respect for the rights that flow from his dignity as a creature. These rights are prior to society and must be recognized by it.”).

17. *COMPENDIUM*, *supra* note 5, at para. 165.

18. *COMPENDIUM*, *supra* note 5, at para. 106 (“The origin of social life is therefore found in the human person, and society cannot refuse to recognize its active and responsible subject; every expression of society must be directed towards the human person.”); *GAUDIUM ET SPES*, *supra* note 5, at para. 26 (“Hence, the social order and its development must invariably work to the benefit of the human person if the disposition of affairs is to be subordinate to the personal realm and not contrariwise, as the Lord indicated when He said that the Sabbath was made for man, and not man for the Sabbath.”).

19. *CATECHISM*, *supra* note 5, at para. 1882 (noting “the natural tendency for human beings to associate with one another for the sake of attaining objectives that exceed individual capacities”); *CATECHISM*, *supra* note 5, at para. 1936 (“On coming into the world, man is not equipped with everything he needs for developing his bodily and spiritual life. He needs others.”); *GAUDIUM ET SPES*, *supra* note 5, at para. 25 (“[T]he subject and the goal of all social institutions is and must

groups include families, schools, churches, charities, labor unions, sports teams, social clubs, corporations, or other voluntary associations; in the public sector, they are towns, cities, counties, states, federal government, and even the community of nations.²⁰ For all their diversity, these institutions are all different forms of expression of social life.²¹

The state serves as something of a referee among these various social groups. Social justice consists of assuring that all of these groups—families, schools, businesses, etc.—get their due.²² Although all individuals and groups are charged with contributing to and maintaining the common good, it is ultimately the role of the state to manage competing claims of what each individual and group is due, and so “to ensure as far as possible the common good of the society.”²³

Religious groups are among the social groups subject to the decisions of the state in adjudicating competing claims among groups. But religious groups are not simply one among many, as religious exercise contributes to the healthy integration of various groups within the social fabric, contributing to social justice well prior to the engagement of the state. *Dignitatis Humanae* repeatedly emphasizes the inherently social nature of religious activities—including education, family life, worship, public proclamation of the faith, mutual aid, and the establishment of institutions²⁴—and these contribute mightily to social development. Saint Pope John Paul II summarizes well the relationship between the freedom to participate in these various social groups and religious freedom:

the right to live in a united family and in a moral environment conducive to the growth of the child’s personality; the right to develop one’s intelligence and freedom in seeking and knowing the truth; the right to share in the work which makes wise use of the earth’s material resources, and to derive from that work the means to support oneself and one’s dependents; and the right freely to establish a family, to have and to rear children through the responsible exercise of one’s sexuality. In a certain sense, the source and synthesis of these rights is religious freedom, under-

be the human person which for its part and by its very nature stands completely in need of social life.”).

20. See COMPENDIUM, *supra* note 5, at para. 168 (“The individual person, the family or intermediate groups are not able to achieve their full development by themselves for living a truly human life. Hence the necessity of political institutions, the purpose of which is to make available to persons the necessary material, cultural, moral and spiritual goods.”); *id.* at para. 384 (“The political community, a reality inherent in mankind, exists to achieve an end otherwise unobtainable: the full growth of each of its members, called to cooperate steadfastly for the attainment of the common good, under the impulse of their natural inclinations towards what is true and good.”).

21. *Id.* at para. 151.

22. *Id.* at para. 165.

23. CATECHISM, *supra* note 5, at paras. 1898, 1910.

24. DIGNITATIS HUMANAЕ, *supra* note 15, at paras. 3–7.

stood as the right to live in the truth of one's faith and in conformity with one's transcendent dignity as a person.²⁵

The continuing focus on the transcendent dignity of the person prevents this concept of social well-being and development from being reduced to merely socio-economic well-being and development.²⁶ At the same time, socio-economic well-being and development is critical to the common good—while insufficient alone to achieve this end, it is certainly necessary. When individual persons cannot secure for themselves their most basic needs as befits their inherent dignity—needs such as food, clothing, housing, healthcare, education, and the like—it is only by social interaction, in the form of the assistance of their neighbors, acting individually or as groups, that they will come to receive those goods.²⁷

Corresponding to this is a principle of Catholic Social Teaching called the “preferential option for the poor,” which Saint Pope John Paul II described as follows:

This is an option, or a special form of primacy in the exercise of Christian charity, to which the whole tradition of the Church bears witness. It affects the life of each Christian inasmuch as he or she seeks to imitate the life of Christ, but it applies equally to our social responsibilities and hence to our manner of living, and to the logical decisions to be made concerning the ownership and use of goods.²⁸

In sum, the social well-being and development component of the common good underscores that each human person is a social being who both requires the service of, and is required to serve, his neighbor. This obligation of service is strongest with respect to the poorest and most vulnerable, and is not limited to meeting material needs and promoting material flourishing, but extends to relational and spiritual needs and flourishing as well.

25. SAINT POPE JOHN PAUL II, *CENTESIMUS ANNUS* para. 47 (1991) [hereinafter *CENTESIMUS ANNUS*].

26. *COMPENDIUM*, *supra* note 5, at para. 170 (“A purely historical and materialistic vision would end up transforming the common good into a simple *socio-economic well-being*, without any transcendental goal, that is, without its most intimate reason for existing.”); *id.* at para. 334 (“Development, in fact, cannot be reduced to a mere process of accumulating goods and services. On the contrary, accumulation by itself, even were it for the common good, is not a sufficient condition for bringing about authentic human happiness.”); *CENTESIMUS ANNUS*, *supra* note 25, at para. 29. (“[D]evelopment must not be understood solely in economic terms, but in a way that is fully human. . . . The apex of development is the exercise of the right and duty to seek God, to know him and to live in accordance with that knowledge.”); POPE JOHN PAUL II, *SOLLICITUDO REI SOCIALIS* para. 33 (1987) [hereinafter *SOLLICITUDO REI SOCIALIS*].

27. *CENTESIMUS ANNUS*, *supra* note 25, at para. 49 (noting the need for “a concrete commitment to solidarity and charity,” which finds expression in families, and in the charitable activities of the Church and other “intermediate communities.”).

28. *SOLLICITUDO REI SOCIALIS*, *supra* note 26, at para. 42. *See also* *COMPENDIUM*, *supra* note 5, at para. 42. *CENTESIMUS ANNUS*, *supra* note 25, at para. 11.

3. *Peace and Security*

The third and last major element of the common good is “peace, that is, the stability and security of a just order.”²⁹ As Pope Leo XIII commonsensically explained, “it is to the interest of the community, as well as of the individual, that that peace and good order should be maintained.”³⁰ But this peace may only be secured by morally acceptable means.³¹

And as the *Compendium* explains, one of the most important ways to maintain peace is to maintain justice:

Peace is threatened when man is not given all that is due him as a human person, when his dignity is not respected and when civil life is not directed to the common good. The defence and promotion of human rights is essential for the building up of a peaceful society and the integral development of individuals, peoples and nations.³²

Or, in Saint Pope Paul VI’s famous formulation, “If you want peace, work for justice.”³³

Catholic Social Teaching also identifies keeping the peace as one of the “just limits” on the exercise of religion, including “the need for the effective safeguard of the rights of all citizens and for the peaceful settlement of conflicts of rights, also out of the need for an adequate care of genuine public peace.”³⁴ Similarly, the “just demands of the public order” may properly limit religious exercise.³⁵

III. THE “COMMON GOOD” IN CURRENT DISCOURSE

Having surveyed the basic definition of the “common good” and its three essential elements—respect for the dignity of the human person, social well-being and development, and peace and security—and highlighting along the way their connections to religious freedom, I would now like to address how these concepts relate to our current legal and policy discourse over religious freedom. First, I will discuss the elements that have been *present* in the discourse, and then I will turn to those that have been *absent*.

29. CATECHISM, *supra* note 5, at para. 1909.

30. RERUM NOVARUM, *supra* note 6, at para. 36.

31. CATECHISM, *supra* note 5, at para. 1909.

32. COMPENDIUM, *supra* note 5, at para. 494.

33. SAINT POPE PAUL VI, IF YOU WANT PEACE, WORK FOR JUSTICE (1972), http://w2.vatican.va/content/paul-vi/en/messages/peace/documents/hf_p-vi_mes_19711208_v-world-day-for-peace.html; SAINT POPE FRANCIS, EVANGELII GAUDIUM para. 219 (2013) (“In the end, a peace which is not the result of integral development will be doomed; it will always spawn new conflicts and various forms of violence.”).

34. DIGNITATIS HUMANAЕ, *supra* note 15, at para. 7; COMPENDIUM, *supra* note 5, at para. 422.

35. DIGNITATIS HUMANAЕ, *supra* note 15, at paras. 2–4, 7.

A. *Elements of the Concept That Are Present in Current Discourse*

Especially in legal discourse, religious freedom is cast as a balancing of interests—the interests of those engaged in religious exercise on the one hand, and the interests of the government on the other. For example, in the analysis under the federal Religious Freedom Restoration Act (RFRA), if the burden on religious exercise is deemed “substantial,” it triggers strict scrutiny, which requires the government to show that the burden represents the “least restrictive means” of serving a “compelling governmental interest.”³⁶ Similarly, a Catholic understanding of religious freedom is limited by the “just demands of the public order.”³⁷

The resonance between the two is substantial. First and most fundamentally, both reflect that the right to religious freedom is not absolute or boundless—the Catholic understanding of religious freedom is not based on radical individualism, but instead recognizes the inherently social nature of the human person and the value of social peace. Second, both limits would give religious freedom a wide berth. In civil law, only “paramount interests” of “the highest order” qualify for the designation of “compelling.”³⁸ Likewise, the “just demands of the public order” should be applied so that “the freedom of man is to be respected as far as possible and is not to be curtailed except when and insofar as necessary.”³⁹

Although this resonance presents an opportunity to highlight the connection between the common good and religious freedom, it also presents a peril. In particular, I think framing the issue as one of religious exercise versus governmental interest leaves the impression that religious freedom is at odds with the common good. Although such conflicts may indeed arise at the margins, they are not the norm—the relationship of religious freedom to the “common good” as understood in Catholic Social Teaching is overwhelmingly harmonious. Indeed, as described above, religious freedom is a major constitutive element of the common good, indispensable to it and arguably its apotheosis.⁴⁰

In our public policy discourse, the United States Conference of Catholic Bishops (USCCB) and others have emphasized that religious freedom affords the Church the “freedom to serve,” particularly the poor and others

36. 42 U.S.C. §§ 2000bb *et seq.* (1997).

37. See *DIGNITATIS HUMANAE*, *supra* note 15, at paras. 2–4, 7.

38. See *Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah*, 508 U.S. 520, 546 (1993); *Sherbert v. Verner*, 374 U.S. 398, 406 (1963).

39. *DIGNITATIS HUMANAE*, *supra* note 15, at para. 7. At a minimum, the state’s definition “public order” must meet what might be considered a standard of basic rationality under civil law. That is, public order must not be defined “in an arbitrary fashion or in an unfair spirit of partisanship,” but instead “be controlled by juridical norms which are in conformity with the objective moral order.” *Id.* But additional elements of the definition indicate a more demanding standard for the state. That is, public order must also “arise out of the need for the effective safeguard of the rights of all citizens and for the peaceful settlement of conflicts of rights, . . . [for] genuine public peace, . . . and . . . for a proper guardianship of public morality.” *Id.*

40. See *CENTESIMUS ANNUS*, *supra* note 25 and accompanying text.

most in need.⁴¹ Although there are many examples of the charitable works of the Church being threatened by the deprivation of religious freedom, the most prominent would be the threat to the work of the Little Sisters of the Poor, who provide nursing care for the elderly poor. Like many other Catholic charitable organizations, the Little Sisters could not comply in conscience with the regulatory mandate to provide its employees with health coverage for all FDA-approved methods of contraception, which includes sterilizations and some abortifacient drugs and devices;⁴² and like those many others, the Little Sisters sued to challenge that mandate under RFRA and the First Amendment.⁴³

I think the “freedom to serve” approach has been helpful, as far as it goes, in that it highlights one especially important and compelling way in which religious freedom does serve the common good—namely, exercising the preferential option for the poor.⁴⁴ On the other hand, it risks the impres-

41. For example, the educational and advocacy efforts of the USCCB Committee for Religious Liberty (and the Ad Hoc Committee that preceded it) have used the phrase pervasively. The Committee’s monthly e-mailed newsletter is entitled “Free to Serve.” See *Free to Serve: Monthly E-Newsletter*, U.S. CONF. OF CATH. BISHOPS (Apr. 28, 2014), <http://www.usccb.org/issues-and-action/religious-liberty/free-to-serve.cfm>. “Freedom to Serve” was the theme for the third annual “Fortnight for Freedom,” which was observed in 2014. *Third Fortnight for Freedom to be Observed June 21–July 4*, U.S. CONF. OF CATH. BISHOPS (Apr. 28, 2014), <http://www.usccb.org/news/2014/14-069.cfm>. A series of bulletin inserts addressed the “freedom to serve” in a range of areas where it is or has been threatened. See, e.g., United States Conference of Catholic Bishops, *Freedom to serve through education*, FORTNIGHT FOR FREEDOM (2017), <http://www.usccb.org/issues-and-action/religious-liberty/fortnight-for-freedom/upload/8-Education.pdf>; United States Conference of Catholic Bishops, *Freedom to serve migrants and refugees*, FORTNIGHT FOR FREEDOM (2017), <http://www.usccb.org/issues-and-action/religious-liberty/fortnight-for-freedom/upload/1-Migrants-and-Refugees.pdf>; United States Conference of Catholic Bishops, *Freedom to serve the vulnerable*, FORTNIGHT FOR FREEDOM (2017), <http://www.usccb.org/issues-and-action/religious-liberty/fortnight-for-freedom/upload/11-Freedom-to-serve-the-vulnerable.pdf>.

42. The Affordable Care Act requires group health insurance plans to include coverage for certain “preventive health services” for women. See 42 U.S.C. §§ 300gg–13(a)(4) (2019). Pursuant to subsequent regulations issued by several federal agencies, the statutory “preventive services” mandate was construed to include the full range of FDA-approved contraceptive drugs and devices. See 26 C.F.R. § 54.9815-2713(a)(1)(iv) (2019); 29 C.F.R. § 2590.715-2713(a)(1)(iv) (2017); 45 C.F.R. § 147.130(a)(1)(iv) (2017). See also U.S. FOOD AND DRUG ADMINISTRATION, BIRTH CONTROL CHART (Mar. 6, 2018), <https://www.fda.gov/media/99605/download> (describing FDA-approved methods of contraception, including various methods of sterilization and drugs and devices that may interfere with implantation).

43. See *Case Detail: Little Sisters of the Poor v. Azar*, BECKET LAW (Sept. 9, 2019), <https://www.becketlaw.org/case/littlesisters> (summarizing years of federal litigation associated with the Little Sisters’ challenge to the sterilization, contraception, and abortifacient mandate). See also *Zubik v. Burwell*, 136 S. Ct. 1557 (2016) (granting, vacating, and remanding, *inter alia*, adverse decision of the Tenth Circuit Court of Appeals in *Little Sisters of the Poor Home for the Aged, Denver, Colo. v. Burwell*, 794 F.3d 1151 (10th Cir. 2015)). See also David Gibson, *Catholic groups file suit over HHS birth control mandate*, RELIGION NEWS SERVICE (May 21, 2012) https://www.washingtonpost.com/national/on-faith/catholic-groups-file-suit-over-hhs-birth-control-mandate/2012/05/21/gIQAtVrFgU_story.html (describing wave of lawsuits filed by Catholic nonprofit entities challenging sterilization, contraception, and abortifacient mandate).

44. CENTESIMUS ANNUS, *supra* note 25, at para. 57 (“Today more than ever, the Church is aware that her social message will gain credibility more immediately from the *witness of actions*

sion that religious freedom is only worth protecting to the extent it facilitates charitable works, and more particularly, charitable works that enjoy broad public support. Not all do. For example, after decades of bipartisan support, the USCCB's long-standing work in resettling refugees has fallen out of favor recently.⁴⁵ Further, it is not only charitable works, popular or unpopular, that contribute to the common good. For-profit enterprises can contribute substantially as well, by providing employment, facilitating the cultivation of human talents and creativity, and generating necessary goods and services.⁴⁶ These enterprises also have the capacity to engage in religious expression and religiously-motivated action.⁴⁷

B. Elements of the Concept That Are Absent from Current Discourse

Next, I address the elements of the common good that have been missing from the legal and policy discourse over religious freedom, with the hope of plugging those gaps and, in turn, promoting usage of the term "common good" that more nearly encompasses the "sum total" of its elements.

First and foremost, it seems that the direct connection of religious freedom to respect for the dignity of the human person—the first of the three essential elements of the common good—has been virtually absent from either the legal or public policy discussion of religious freedom. It does not seem a stretch to argue that the protection of fundamental human rights is an element of the common good and that religious freedom is one of those fundamental rights. But I do not think the public argument about religious freedom has commonly been cast in those terms. In the future, it should be.

Second, the role of religious freedom in facilitating a wide range of social goods—not just charitable work—has not been discussed widely or otherwise received the attention it deserves. Family life, education, the ethical conduct of business, to name just a few examples, are *also* enabled by religious freedom, and all are activities that promote social development and well-being, which is the second essential element of the common good. Though it is beyond the scope of this study, it would be worthwhile to trace

than as a result of its internal logic and consistency. This awareness is also a source of her preferential option for the poor . . .").

45. See, e.g., Julie Asher, *Agencies 'appalled' by reports U.S. could end refugee admissions*, CATHOLIC NEWS SERVICE (July 20, 2019), <https://angelusnews.com/news/julie-asher/agencies-appalled-by-reports-u-s-could-end-refugee-admissions>. Ted Hesson, *Trump officials pressing to slash refugee admissions to zero next year*, POLITICO (July 18, 2019), <https://www.politico.com/story/2019/07/18/trump-officials-refugee-zero-1603503>.

46. CENTESIMUS ANNUS, *supra* note 25, at para. 43 (describing collaborative and creative nature of human work and its value in providing for human needs). See also *id.* (noting that Catholic Social Teaching "recognizes the positive value of the market and of enterprise, but which at the same time points out that these need to be oriented towards the common good.").

47. See, e.g., *Burwell v. Hobby Lobby Stores, Inc.*, 573 U.S. 682, 692–93 (2014) (affirming that closely-held, for-profit corporations may engage in religious exercise protected by the Religious Freedom Restoration Act of 1993 and rejecting numerous arguments to the contrary).

out in detail the causal chain between religious freedom, the vitality of these mediating institutions, the abundance of their fruits, and the common good in full. This not only would promote a better understanding of religious freedom and the common good among the faithful and the public—which is an end in itself—but would also provide the basis for more persuasive public arguments claiming that religious freedom serves the common good.

Third and finally, the protection of religious freedom also protects peace, the third essential element of the common good. The failure to protect religious freedom is an injustice, which in turn threatens social peace.⁴⁸ Or, with apologies to Paul VI, if you want peace, work for religious freedom. I do not think we are remotely close to a breakdown of public order over religious freedom in the United States. But we would do well to recognize that the durable social peace we enjoy today likely owes much to the respect for the religious diversity that the laws and traditions of the United States have generally afforded. Contemporary situations around the world,⁴⁹ and even anomalous situations from our own nation's past,⁵⁰ dramatically illustrate the connection between the denial of religious freedom and major disruptions of social order.

IV. CONCLUSION

In sum, the concept of the “common good” in Catholic Social Teaching is frequently invoked in contemporary debates over religious freedom but is not well understood. It is a multi-faceted gem, and while many of those facets have been recognized and duly appreciated, others are simply ignored. My hope, in this brief essay, has been to affirm the recognition and appreciation where they exist and promote them where they do not, thereby advancing both religious freedom and the common good.

48. See generally BRIAN J. GRIM AND ROGER FINKE, *THE PRICE OF FREEDOM DENIED: RELIGIOUS PERSECUTION AND CONFLICT IN THE TWENTY-FIRST CENTURY* (2011) (presenting data showing correlation of restrictions on religious exercise with violence and social instability).

49. See, e.g., John Hudson, *Obama Administration Declares Islamic State Genocide Against Christians*, FOREIGN POLICY (Mar. 17, 2016), <https://foreignpolicy.com/2016/03/17/obama-administration-declares-islamic-state-genocide-against-christians/>. United States Conference of Catholic Bishops, *Central African Republic: Christian and Muslim Religious Leaders Work for Peace*, INTERNATIONAL RELIGIOUS FREEDOM (2019), <http://www.usccb.org/issues-and-action/religious-liberty/upload/Central-African-Republic-Backgrounder.pdf> (describing situation of dramatic civil disorder arising out of religious intolerance unrest, and corresponding inter-religious efforts to restore civil society and bring peace to people of all faiths).

50. See, e.g., Carmine A. Prioli, *The Ursuline Outrage*, 33 AMERICAN HERITAGE 22 (Feb–Mar 1982) (describing riots at the Ursuline Convent in Charlestown, Massachusetts on August 11–12, 1834, driven by prejudicial suspicions of Catholics); Elizabeth M. Geffen, *Violence in Philadelphia in the 1840's and 1850's*, 36 PENNSYLVANIA HISTORY: A JOURNAL OF MID-ATLANTIC STUDIES 4 (1969) (describing riots in Philadelphia on May 6–8 and July 6–7, 1844, involving the burning of two Catholic churches, driven by controversy over the requirement that Catholic students had to read from the Protestant Bible in public schools).