Justice and law are two different concepts. What was perfectly legal in the past is now scandalously illegal and considered outrageously unjust. Think of a few examples of what was totally legal: slavery; prohibiting women from voting and owning property; child labor; and discrimination in all types of public and private action based on age and race and religion and gender and disability. Respected and educated lawyers and judges helped create and interpret and enforce the laws of slavery and child labor and public and private discrimination of all types. Other lawyers helped challenge the injustices of these laws.

Law is one thing. Justice another.

As students of the law, we are to learn what the law is. As students of justice, we are to learn what justice is. As students of law and justice, we are called to reduce the gap between law and justice.

As we look back one hundred years, it seems obvious that segregation and child labor and discrimination on the basis of age, gender, disability and race was unjust, but it was perfectly legal. Lawyers made careers and money based on these laws. Either it made sense then or many people, including lawyers, were just not thinking about justice.

One hundred years from now, what laws and practices of today will people look back at in horror and shake their heads wondering how the people in early 2000s could have tolerated such blatant injustices? How about two hundred years, or five hundred?

We must study justice in order to evaluate current laws.

Catholic social thought offers one way of thinking about justice. Reviewing the principles of Catholic social thought can provide a set of justice criteria with which to examine current law. It can be a way to hold up contemporary law to the light of justice and evaluate it.

Catholic social thought is an attempt at a comprehensive, integrated, and evolving vision of the principles of justice. It does not sketch out a perfect system of justice. It has some glaring weaknesses that will become apparent as it is examined. But it can help calibrate the balance of current law on the scales of one theory of justice.

Catholic social thought is not a precise term. As usually understood, it includes a number of documents written by popes and councils of bishops that teach and address a range of challenges of life in modern society including serious political, economic, and social issues. Most people point to the 1893 statement on the condition of labor issued Pope Leo XIII as the first statement of Catholic social thought. The major statements of the popes are called encyclicals. Catholic social thought also includes statements by world-wide groups of bishops, as well as proclamations by regional and national groups of bishops. Their goal is to set out criteria for just responses to contemporary problems. These reflections are grounded in scripture and build on the teachings of earlier church leaders and theologians.
As a practical matter, many Catholics have little idea that the documents you are going to study even exist. Though most Catholics are fully aware of the church position on matters of abortion, marriage, sexuality, and individual personal morality, they know very little about church teachings on other social issues such as the role of global justice, human rights, the preferential option for the poor, racial justice, economic justice, peace, or criminal justice. The social teachings have not been given the same emphasis in preaching, education, and practice. Thus, these documents are often described as the “church’s best kept secret.”

To help introduce the ideas of Catholic social thought as they might apply to law and justice, I am providing you brief selections from two law review articles. Principles of law, justice, and Catholic social thought are subject to significant disagreement. These articles do not settle any disagreements, they begin the discussion. I hope our examination of these principles this semester will assist you as you seek the best answers to these questions in your professional and personal lives. I look forward to learning with you.

It may be argued that the purpose of a law school is not to study what the law ought to be, but what the law is. Some would hold that the school should turn out experts in the technique of enabling clients to profit from every loophole in the law, and obtain their objectives without risk of being sued or convicted.

Without minimizing the importance of these technical skills, I should like to plead for greater attention to matters of good and evil, right and wrong. In practice, law professors and law reviews deal at length with the reasons for and against the existing legal practice. Jurisprudence, in its study of legal principles, has to consider whether the law is what it ought to be, and how it can be improved so as to better to secure the rights of individuals, the common good, and other transcendent goals. This kind of study inevitably impinges on ethical questions treated in Catholic social teaching. Unless the principles are clarified, the conclusions will often be unsound.

It is important, I submit, for every student of law to be made aware of the principles of justice and social order that the law is intended to sustain. Sometimes a given principle will be decisive for determining what the law ought or ought not to be. For example, any law that denies inalienable human rights is unacceptable. Very often, however, the law must strike a compromise between giving full scope to one principle or another. The exercise of personal rights sometimes has to be curtailed for the sake of the common good, for example, in times of war or national emergency.

Biblical and Christian social teaching is an excellent resource that no publicly minded lawyer can afford to ignore. An education that pays due attention to this ethical component will greatly assist lawyers in every aspect of their high calling.

Catholic Social Teaching

Over the centuries, and especially in the past 150 years, the Catholic Church has built up a body of social teaching that is intended to contribute to the formation of a society marked by peace, concord, and justice toward all. This body of teaching, based on reason and revelation, has been refined through dialogue with Greek philosophy and Roman law, as well as the experience of the Church throughout two millennia, in interaction with many cultures in Europe, the Americas, and other continents. It seems safe to say that no other institution has developed a body of social teaching rivaling that of the Catholic Church, in depth, coherence, and completeness. Unlike the Church's strictly doctrinal teaching, which is addressed specifically to believers, Catholic social teaching is directed to all persons of good will, including those of any or no religion. It presupposes only that its addressees are interested in building a just and peaceful society on earth.

The Church's social teaching is found in many places. One may look, in the first place, to the documents of the Second Vatican Council, especially its Declaration of Religious Freedom
and its Pastoral Constitution on the Church in the Modern World. Of almost equal importance is
the series of social encyclicals issued by the popes since Leo XIII's Rerum Novarum (1891). The
present pope, John Paul II, has issued four important encyclicals that I would characterize as
social. In the United States, the National Conference of Catholic Bishops and the United States
Catholic Conference published numerous statements touching on law and public policy. Since
this body of social teaching is so vast, I cannot undertake even to summarize it here, beyond
indicating a few major headings.

Five Basic Principles

The initial principle, I would say, is the inviolable dignity of every man and woman.
According to Catholic teaching each human person is by nature a subject of rights and of duties.
In this respect, the Catholic Church endorses the statement of the Declaration of Independence to
the effect that all human beings are endowed by their Creator with certain inalienable rights,
including life, liberty, and the pursuit of happiness. From this it follows that no ruler or society
may arbitrarily deprive its citizens, or anyone else, of life, liberty, or property. Slavery as an
institution is unacceptable. Torture and cruelty are affronts to human dignity. Among the
fundamental human rights, the Catholic Church, like the First Amendment in the American
Constitution, recognizes is the right to the free exercise of religion. Since the Second Vatican
Council, the Church affirms the legitimacy of arrangements in which no particular faith is
established as the religion of the State. According to Catholic teaching, all religions should
enjoy the freedom to worship and propagate their beliefs, provided only that they do not violate
the rights of others or transgress the just requirements of public order.

A second principle is the priority of the common good. All of us live in interdependence
with others; we are by nature co-responsible for the welfare of all the persons affected by our
conduct. For this reason we must collaborate for the good of each and all. The interests of the
individual should not be given preference over those of society as a whole, nor should the
interests of the totality be allowed to override the rights of individual persons.

From the principle of the common good follows a third, scarcely distinguishable from it--
solidarity. This adds to the notion of the common good the idea that all are to regard and treat
one another as persons who have a right to be loved. Ideally, human beings should deal with one
another as friends, as members of an extended family, thus contributing to a civilization of love
or social charity. The sense of solidarity prompts us to have special solicitude for those who are
at greatest risk: the widow and the orphan, the poor and defenseless, the sick and the aged, the
migrant and the refugee.

A fourth principle of Catholic social teaching is that of subsidiarity. Society is to be as
free as possible, encouraging individuals and smaller groups to exercise their initiative rather
than rely for all things on the authority of the State. The higher agency intervenes only at the
point where the problems become too great for lower or smaller bodies to handle. This principle
emphatically defends the rights of the family as the basic cell of human society, where new life
is conceived and nurtured. The same principle guarantees the freedom of voluntary groups to
associate with one another, to form societies for their mutual benefit, and to initiate and carry on
commercial, cultural, and charitable enterprises. Opposing totalitarianism and the excesses of the
welfare state, subsidiarity protects freedom of association, expression, and communication. On
the other hand, the principle of subsidiarity makes provision for the intervention of the higher
authority of the State where required for the sake of the common good.

As a fifth and final principle, I would list care of the environment. In recent years it has
become alarmingly evident that human beings have the capacity to ravage the earth, to
extinguish whole species of animal life, and to mutilate the beauty of God's creation. It is urgent
for us to become more conscious that the resources of creation are given to us in trust, to be
preserved for the use and enjoyment of all peoples, including future generations.

What is the view developed in modern Catholic social thought about the role of law as a tool to achieve social justice? Or, stated differently, what is the promise and peril we face by looking to our legal system to achieve justice as justice is defined in Catholic social thought? In my discussion, I will not be approaching this issue as either a philosopher or a theologian, for I have been trained to be neither of those. Rather, my thoughts are those of a Catholic and a lawyer, because I have been challenged to be both of these. I hope that this will be the beginning of a fruitful discussion of this topic and an invitation to those of all faiths to explore the connection between the value of justice that we share, and the tool of the law that we are privileged to serve.

Before exploring what Catholic social thought teaches on law's role in attaining justice, there is a threshold question to answer. That question is: what is justice? As any architect will tell you, one must have a blueprint for what is being built before it makes sense to select the tools for building that structure. And so, before asking what the law can do to build justice, it is essential to explore what justice is, and how we will know it when we see it.

Throughout history, the task of defining justice has been undertaken by most human enterprises--be they governments, legal systems, political movements, philosophies, or religious traditions. The Catholic Church has been an active participant in this quest to articulate a vision of justice.

Over the past century, a series of documents on Catholic social thought has been written to explicate what has been generically referred to as "the social question." In doing so, of course, these documents have grappled with defining justice. Naturally, the question of social justice was not first discovered with the modern social encyclicals. Instead, the relationship of religious values to social questions is as ancient as those values and those questions themselves. While the scope of this discussion is limited only to the social encyclicals of the past century, this limitation is not intended to diminish in any way the ancient roots and traditions upon which those encyclicals build.

In 1891, Pope Leo XIII promulgated the first great social encyclical, Rerum Novarum ("Of New Things"). This so-called "Magna Carta" of Catholic social teaching focused on the rights of workers and the exploitation of the labor force. At the time it was first issued, Rerum Novarum attracted a great deal of attention--and, indeed, criticism--for questioning basic social assumptions of its day and challenging both radical socialism and unbridled capitalism. Rerum Novarum was also a bold assertion by the Catholic Church that while its primary role is clearly religious ministry, this role does not preclude, and sometimes requires, intervention in the temporal affairs of this world.

A brief look at Catholic social thought since 1891 demonstrates that over the past century these social encyclicals have responded to a wide variety of social issues--and they continue to
question basic social assumptions. After Rerum Novarum grappled with labor, its progeny explored other questions. They tackled economic justice, human rights, international relations, urbanization, class conflict, ecology, evangelization, ecumenism, consumerism, education, and the age-old questions of the origin of human life and the authorship of human death.

If one reads through these encyclicals as a whole, a complex but consistent definition of justice can be gleaned. Although the specific social issues addressed in each encyclical vary, their underlying vision of justice is remarkably consistent. As I see it, justice as defined in Catholic social thought has three essential features: dignity, freedom, and charity. And, without all three of these, a society cannot call itself just.

If the quest for justice can be viewed as a quest for a society imbued with dignity, freedom, and charity, we can turn to the second part of this discussion and explore what law's role is in achieving such a vision of justice. I said before that I am an optimist, and I am. But, even I recognize that much work still remains for those who seek justice.

As we strive toward building justice what tools should we use? Is law one of them? As I mentioned, Catholic social thought has not been entirely explicit on the exact means to the noble end of justice. Rather, selecting these means is left to the informed discernment of people of good will. It must be this way. While the core tenets of justice remain timeless and universal, the exact means of achieving them effectively may vary depending on time and place.

When articulating a vision of justice and suggesting the means to that end, the Catholic vision does not link itself with any political system or regime. Instead, the Church has explicitly rejected such a role. In the words of Pope John Paul II's 1987 encyclical Sollicitudo Rei Socialis ("On Social Concern"): "[T]he church does not propose economic and political systems or programs nor does she show preference for one or the other, provided that human dignity is properly respected and promoted, and provided she herself is allowed the room she needs to exercise her ministry in the world." Given this position, it would not be seemly for there to be detailed legislative or judicial guidance in the social encyclicals. Nevertheless, over time various encyclicals have suggested a role for many different institutions in the pursuit of justice.

Thus, when Catholic social teachings describe a role for law in pursuing justice, we face a two part challenge: first, discerning what that role is and, second, exploring in a practical way how that role plays out in our particular legal system. I happen to believe that, at its best, our democratic system is compatible with the Catholic vision for law's role in advancing justice. But, that is not to say that there do not remain particular challenges to reconciling the two. I hope that as I discuss a framework in which to consider the law's role, you will consider the practical application of these principles.

The role that the social encyclicals describes for law as a tool for advancing justice is one that I would describe as superficially inconsistent yet internally coherent. Law is described with a curious mix of cautious restraint and respectful enthusiasm. The social teachings posit that law should be used wisely and well where it is most effective and necessary. However, where it is not the best tool to advance justice, law best helps ensure it by doing nothing to interfere with its achievement through the use of better tools. Hence, understanding the role of law as envisioned
in Catholic social thought requires understanding what law does best. In the basic scheme outlined in the social encyclicals, I discerned five areas in which the law was perceived to have an appropriate role to play. Uniting all five of these areas is the way in which they advocate law's value as a tool to advance justice by advancing the common good.

The first and the primary role that the social encyclicals contemplate for the civil law is to be a reflection of an eternal moral law. Catholic social thought on what law can best accomplish is based on a lengthy tradition of a "relationship between civil law and moral law." This tradition teaches that changeable human laws are at their best when they reflect an unchangeable law often described as "being written on the human heart." This tradition is, of course, the natural law tradition that is a crucial underpinning of Catholic legal thought.

Thus, the first role envisioned for law in building justice is to serve as a mirror that reflects basic moral truths and ensures that the justice served by those moral truths is translated into concrete and enforceable human form. This raises a number of challenging practical questions particularly, I think, for Americans. These include discerning the basic tenets of the moral law; handling disagreement respectfully; considering the consequences of conscientious objection from unjust laws; and distinguishing unchangeable essentials from those questions on which there can, should, or must be legitimate political debate.

Closely connected is a second role for law, and one of its most important, both within domestic regimes and internationally. That role is to serve as a safeguard for fundamental human rights. We reflected on that list of rights earlier. In his 1963 encyclical, Pacem in Terris ("Peace on Earth"), Pope John XXIII stated, "The chief concern of civil authorities must therefore be to ensure that these rights are recognized, respected, co-ordinated, defended and promoted." When it comes to safeguarding this core set of rights, law is a particularly potent tool. This is especially true in places where there is an imbalance of power, and an unbiased legal system may be the only force strong enough to support those who are weakest and contain those who are strongest. For, as Pope John Paul II urged in Centesimus Annus ("One Hundred Years"), "the more that individuals are defenseless within a given society, the more they require the care and concern of others, and in particular the intervention of governmental authority." Thus, a second great role envisioned for the law is to be an impartial guardian of fundamental rights--particularly for those least able to guard those rights for themselves.

Law also has a third critical role, albeit a more mundane one. That is the job of creating and maintaining civil order, a prerequisite for peace and justice. "[T]he common good requires 'peace,' that is, the stability and security of a just order." It is peace and stability that make it possible for those in a just society to live without fear of chaos and with confidence that their expectations will be respected. Thus, in the mundane rules of traffic regulations, deed recording, and building codes there is a foundation for order. This can make it easier for those in society to enjoy the collective benefit of stability and security. This makes the more active pursuit of good possible since energy need not be directed toward controlling chaos. One of my favorite descriptions of law in this mundane and undramatic role is taken from Evangelium Vitae. There it was said that "a state ruled by law [is] a community in which the 'reasons of force' are replaced by the 'force of reason.' This role of law as a tool to maintain peace and order is envisioned on the international level as well as the domestic. In its ability to regulate
relationships among states, international law has at least some potential in creating stability and order in the worldwide arena. Again, in our complex world, the absence of disorder, wherever possible, makes it more likely that good can be actively pursued.

Law's fourth role is that of channeling resources toward those projects that advance justice but require coordinated efforts or substantial resources. The social teachings, beginning most forcefully in Rerum Novarum, place a high premium on the right to private ownership of property and roundly condemn social collectivism. Yet, as Gaudium et Spes observes, "The complex circumstances of our day make it necessary for public authority to intervene more often in social, economic and cultural matters in order to bring about favorable conditions which will give more effective help to citizens and groups." For example, it was suggested that in an agricultural society, such intervention might include "roads; transportation; means of communication; drinking water; housing; health services; . . . education; religious and recreational facilities; and the supply of modern installations and furnishings for the farm residence." Naturally, accomplishing any of these projects involves the law—-from the tax code authorizing funding sources, to the health codes setting minimum safety standards. The role that the law should play in this area will necessarily vary depending on a particular society's needs. Nevertheless, there is a role here for the law and lawyers to help realize necessary and just advances.

The fifth role contemplated for law is to provide a just mechanism for dispute resolution. Thus far, I have been speaking primarily of law as a legislative matter. I do not mean to do this at the expense of discussing the law's role in advancing justice from the judicial perspective. While there is a legislative role in setting standards and principles, law is also a way of resolving disputes justly—either among individuals or between individuals and a government. Without the law to serve this dispute resolution function well and fairly, the best legislative work can be quickly undone if there is no system for correcting violations of just statutes.

As we strive to "embrace the entire horizon of the good" by building justice, I am confident that there is an important, although not unlimited, role for law. Translating justice into reality for our modern world is a daunting task. Catholic social thought, for me, makes this task a bit more daunting because while it answers my questions, it also questions my answers about how to accomplish that task. In these uncertain times, the task of building justice requires the minds and hearts of many workers wielding different tools in different ways. For those whose tool of trade is law there is a particular challenge. It has been said, "woe to you who are lawyers." I'd like to leave you with the thought that, for those who do justice and walk humbly with God there can also be true "joy to you who are lawyers." You hold in your hands a powerful tool from which to build justice. Catholic social thought offers guidance on how to use that tool wisely and well. Equally important, it challenges all who work with law to reach for a more perfect understanding of what justice is and how to bring it to a world that longs for it and for the peace it brings.