

# PERSPECTIVE Public Policy

## from a Catholic Viewpoint

### Creation, Property Rights, and the Law of Takings

#### Respect for Creation and Responding to Environmental Problems

A proper understanding of how to respond to ecological problems begins with the Bible. The Catholic Bishops of Florida summarized the Bible's teachings on creation as follows:

The Bible tells us that all creation is *good*. In six days God created light, the sky, water, the earth, vegetation, plants, fish, birds, and men and women. After six days, "God saw everything he had made and indeed it was very good." (Gen. 1:31) Creation is a *gift* from God: "O Lord, how manifold are your works! In wisdom you have made them all: The earth is full of your creatures." (Psalm 104:24)

Through Christ all of the elements of creation are related: "All things were created through him and for him." (Col. 1:16) "All things came to be through him." (Jn. 1:3) The letters to the Ephesians and the Colossians teach that Christ is our peace (Eph. 2:16) reconciling Jew and Greek and bringing harmony to all creation. "Through him are reconciled all things whether on earth or in heaven, making peace by the blood of his cross." (Col. 1:20) The deepest reality of things is that they are from and for God. All creation is gathered into one in Christ.

Human beings are the apex of creation because they are made in the image and likeness of God. (Gen. 1:26) God has entrusted the care of all other creatures to human beings: “Have dominion over . . . all the living things that move on the earth.” (Gen. 1:28) (*Companions in Creation, A Pastoral Statement of the Catholic Bishops of Florida, January 1, 1991.*)

These biblical passages reveal two important principles. First, God gave dominion over all other creatures. Second, dominion requires loving stewardship over all of the earth’s resources.

Pope John Paul II, in a message given for the celebration of the World Day of Peace, 1990, emphasized the importance of the first principle. Scripture, he noted, reveals that God could not “rest from all his work” (Gen. 2:3) *until* God entrusted creation to the man and woman. (*Peace with God the Creator, Peace with all of Creation, No.3.*)

This entrustment flows from God’s placement of humans at the apex of creation; a hierarchy affirmed in both Scripture and the Catholic Catechism. (Catechism, No. 342; Lk. 12:6-7; Mt. 12:12)

## Creation continued . . .

Some environmental groups have criticized the Catholic Church and other religious traditions for holding this position. To them, seeing humans in such a position is arrogant and a hindrance to the environmental movement. Some have gone so far to state that the earth is doomed unless western society rids itself of this biblical perspective.

The Christian, however, cannot dismiss revelation. Denying the hierarchy in creation can lead to doctrinal errors such as a kind of pantheism where

everything is seen as God or a denial of the Incarnation. (After all, God became *man*.) Moreover, humanity’s obligation to care for the earth flows directly from its position in the order of creation. Dominion and stewardship go hand in hand.

The Catechism states:

In God’s plan man and woman have the vocation of ‘subduing’ [Gen. 1:28] the earth as stewards of God. This sovereignty is not to be an arbitrary and destructive domination. God calls man and woman, made in the image of the Creator ‘who loves everything that exists,’ [Wis. 11:24] to share in his providence toward other creatures; hence their responsibility for the world God entrusted to them. (No. 373.)

“The dominion granted by the Creator over the mineral, vegetable, and animal resources of the universe cannot be separated from respect for moral obligations, including those toward generations to come.” (No. 2456.)

The Pope’s recent encyclical, *The Gospel of Life*, states that the ‘the dominion’ granted to man by the Creator is not an absolute power” and that one cannot even “speak of a freedom to ‘use and misuse,’ or dispose of things as one pleases . . .” (No. 42; cf. *Sollicitudo Rei Socialis*, No.34.) Indeed, failing to respect the integrity of creation violates the Seventh Commandment against stealing. (Catechism, No. 2415.) When we fail to exercise proper stewardship

E.F. Schumacher, a hero of today’s Greens, reacted to [*Humanae Vitae*] with the words, “If the Pope had said anything different I would have lost all respect for the papacy.” . . . Natural Family Planning, by means of cyclic abstinence, respects the sacred, respects woman, and respects nature. It’s as “green” as can be.

From “On the ‘Greenness’ of Catholicism & Its Further ‘Greening’ by Stratford Caldecott, appearing in the *New Oxford Review*

and respect creation, we set ourselves up in place of God and end up “provoking a rebellion on the part of

nature . . .” (*Centissimus Annus*, No. 73.)

How do we respond to our call to protect and preserve the earth? We begin by acknowledging the problems. The Pope began his 1990 World Peace Day message in such a way stating:

*In our day*, there is a growing awareness that world peace is threatened not only by the arms race, regional conflicts and continued injustices among peoples and nations, but also by a lack of *due respect for nature*, by the plundering of natural resources and by a progressive decline in the quality of life. . . Faced with the widespread destruction of the environment, people everywhere are coming to understand that we cannot continue to use the goods of the earth as we have in the past. (No. 1)

Government has a specific role in addressing environmental issues. “It is the task of the State to provide for the defence and preservation of common goods such as the natural and human environments, which cannot be safeguarded simply by market forces.” (*Centissimus Annus*, No. 40.)

“Not only should each State join with others in implementing internationally accepted standards, but it should also make or facilitate necessary socio-economic adjustments within its own borders, giving special attention to the most vulnerable sectors of society. The State should also actively endeavor within its own territory to prevent destruction of the atmosphere and **Creation**continued . . .

biosphere, by carefully monitoring, among other things, the impact of new technological or scientific advances. The State also has the responsibility of ensuring that its citizens are not exposed to dangerous pollutants or toxic wastes.” (*Peace with God the Creator, Peace with All of Creation*, No. 9)

The Pope also said that the source of our environmental problems has a moral character.

Clearly, an adequate solution cannot be found merely in a better management or a more rational use of the earth’s resources, is important as these may be.

Rather, we must go to the source of the problem and face in its entirety that profound moral crisis *of which the destruction of the environment is only one troubling aspect*. (*Peace with God the Creator, Peace with All of Creation*, No. 5)

As examples of the moral character of environmental problems, the Pope called attention to the “indiscriminate application of advances in science and technology,” the lack of respect for human life, and the “reckless exploitation of natural resources.” Elsewhere, he has linked the problem of the environment to “the problem of consumerism.” (*Centissimus Annus*, No. 37.)

The Christian response to our ecological problems, therefore, demands more than better management of the earth’s resources. It requires changes in the way we live and the way we look at the world. It requires conversion.

## **The Right to Private Property**

The Catholic Church has long recognized the right to private property. The encyclical *One Hundred Years* restates how Catholic social teaching has affirmed the right to possess private property for over a century. At the heart of the Church’s defense of private property is a recognition that the ability to acquire private property is essential to guaranteeing freedom, respecting the dignity of persons, and helping persons meet their basic needs. (Catechism, No. 2402.) Moreover, it is crucial to the preservation and fostering of the family. (Catechism, No. 2211.) For this reason, the Church has consistently condemned economic or political systems that deprive persons of the right to own property.

The right to private property, however, is not absolute. It is limited by its contribution to the common good. This is because “the goods of creation are destined for the whole human race.” (Catechism, No. 2402.) This “universal destination of goods” takes precedence over an individual’s right to private property, even if the property was legitimately acquired by work or inheritance. (No. 2403.)

In the encyclical, *On Social Concerns*, the Pope stated:

It is necessary to state once more the characteristic principle of Christian social doctrine: the goods of this world are *originally meant for all*. The right to private property is *valid and necessary*, but it does not nullify the value of this principle. Private property, in fact, is 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. (No. 42.)

Government and law play important roles concerning private property. Government has an obligation to ensure the right to private property. (Catechism, No. 2211.) Government also has the right and duty to regulate the use of property for the sake of the common good. (Catechism, No. 2406.) Thus, laws restricting the use of private property to safeguard the common good, including the environment, are proper.

### **Takings Legislation: Where the right to property and the need to respect creation meet**

Most people know that the government must pay for property it directly takes by eminent domain or condemnation. What happens if the government indirectly lowers the value of a property through a regulation restricting its uses? Practically every North Dakotan has heard a rancher or farmer talk about burdensome regulations on the use of land. What should be done about such regulations?

Some courts have responded by placing restrictions on when a regulation can occur without compensating an affected landowner. Sometimes, courts have found that regulations require compensation.

However, some individuals and groups, not willing to wait for courts to respond, have proposed “takings laws.” These laws take a variety of forms. They usually require the government to compensate the property owner for any reduction in the value of property caused by a regulation. A related, but different, approach is “assessment laws.” These laws require government agencies to perform an “assessment” before adopting a regulation to determine whether it will reduce the value of a person’s property. Some legislative proposals combine both “takings” and “assessment” laws.

In 1995, 140 such bills were introduced in 48 state legislatures. Most of the bills, however, have not been enacted into law. There are many reasons why few states adopted such proposals. Some bills were considered too costly since they would have required governments to pay for *any* reduction in the value of a person’s property, no matter how small. Some have criticized takings bills for placing too many bureaucratic burdens on governments, especially local governments, trying to protect the health and safety of the community. Others have contended that takings laws will undo necessary environmental and safety regulations.

A more philosophical problem with some takings bills was highlighted by Bishop John J. McRaith of Owensboro, Kentucky when he testified on a federal takings bill on behalf of the United States Catholic Conference. After explaining the Church’s teaching on property rights and the common good, and acknowledging the possible problems of overregulation, Bishop McRaith stated:

Given our teaching on private property and the common good, the US Catholic Conference is very concerned about legislative proposals to expand vastly the concept of property rights in which both the social purpose of private ownership and the social responsibilities (and moral limits) of property owners are diminished. It could give acquisitive individualism a trump over the responsibilities and obligation of individuals and groups, and especially of government, to the common good. We prefer a more modest approach in assessing regulation for its human, economic, social, and environmental

concerns.

We must also remember that proper regulations are intended to protect and foster the common good, usually by protecting the health, safety, and welfare of a community. All of us have a duty to obey the law and to participate in the furtherance of the common good, even if that means limiting what we do with our property. The Washington State Catholic Conference stated in response to a takings ballot initiative in that state: "As a society, we need some regulatory reform, but compensating people for obeying the law is not wise." The better response to undue regulations is to attack the regulation, not to compensate everyone affected by any regulation.

communities for ensuring that ["adult entertainment" businesses] are not adjacent to schools, churches, and day care centers. SB 2388, however, would place additional burdens and costs on communities seeking to protect their children by the use of such zoning ordinances and, therefore, create a disincentive to embark on what is sometimes already a difficult and costly endeavor.

The Legislature later amended the bill so that it only applies to actions by state agencies and not cities, townships, or counties. People disagree on whether the final bill requires compensation when a state regulation reduces the value of a person's property. In its final form, the bill requires that a state agency assess whether a regulation is a taking of property before the regulation is adopted. It also defined what is a taking for purposes of that assessment. The bill did not, however, redefine when a person should be

### **Does North Dakota have a Takings Law?**

The answer to that question depends on whom you ask. During the 1995 session, several legislators introduced Senate Bill 2388 as a takings bill. The original bill covered "taking" by any limitation on the use of any property, real or personal, by any state agency, county, city, or township.

The broad scope of the bill quickly drew criticism. The North Dakota Catholic Conference testified against the original bill because its broad scope would frustrate attempts by local communities to regulate for the health, safety, and welfare of the community. Regulation of obscenity was a particular concern for the North Dakota Catholic Conference. In its testimony before the Senate Agriculture Committee, the Conference stated:

Zoning regulations are the only means available to

compensated for a taking or expressly require compensation. The North Dakota Catholic Conference concluded that the bill was only a moderate “assessment law” and not a “takings bill” and took no further action. Other groups, however, believe that the law does change when a person should be compensated. A court may have to settle the matter.

### **How would a Takings Law work?**

*Takings bills come in various forms. Most would compensate a property owner for a reduction in the value of property more than a certain percentage.*

Example One: A property owner wants to build a ski resort. However, an environmental ordinance prohibits this and most other uses for the property. If the regulation removes all viable economic use of the

land, existing law might entitle the owner to compensation. No takings law is needed.

Example Two: The same as above, but the owner has other possibilities for using the land. These uses, however, are not as profitable as a ski resort and the value of the land is reduced 20%. Some takings bills would require that the government compensate for the 20% reduction.

Example Three: A landowner purchases land to build a pornographic bookstore next to a school. The city, however, passes a zoning ordinance that prohibits “adult entertainment” sites within 500 feet of a school. If used for a pornographic bookstore, the property is worth \$100,000. If put to another use, it is worth only \$70,000. Under some takings bills, the city would have to pay the property owner \$30,000.

**Social Justice Workshop:** Catholic Family Services and Nativity Parish in Fargo are sponsoring a Social Justice Workshop on April 26 and 27, 1996 at Queen of Peace Retreat Center in Fargo. Ron Krietmeyer will give the keynote address on “The Church and the Common Good.” Please try to attend. For further information, call Peter Edwards at Catholic Family Services, 701-235-4457.

## **From the Director . . .**

Kathleen Norris, author of *Dakota: A Spiritual Geography*, has said: “Dakota is a painful reminder of human limits . . .” Those who have seen our state’s vast open spaces or experienced its sometimes severe weather may understand what she means. This reminder is also a chance for spiritual growth. “Nature, in Dakota,” Norris says, “can indeed be an experience of the holy.”

North Dakotans have another opportunity to understand creation. More so than in most states, the lives of North Dakotans revolve around what we do with God’s creation. Our lives are very much tied to the use of our land and natural resources. The proper use of creation is sanctioned and blessed by God. Proper use and ownership of the earth’s resources can be spiritually rewarding.

Catholic teaching affirms both the right to private property and the need to respect creation. Sometimes, however, these two principles appear to come in conflict, such as when our use of property harms the environment or when laws intended to protect the environment unduly infringe on our use of property. This issue of *Perspective* explores these two important principles and public policy proposals where the principles come into play.

