

UNIVERSITY OF ST. THOMAS LAW JOURNAL

SPRING 2005

VOLUME 2

NUMBER 2



Symposium

Can the Seamless Garment Be Sewn?
The Future of Pro-Life Progressivism

The Consistent Ethic of Life:
A Proposal for Improving
Its Legislative Grasp

Helen M. Alvaré

Fides et Iustitia

ARTICLE

**THE CONSISTENT ETHIC OF LIFE:
A PROPOSAL FOR IMPROVING
ITS LEGISLATIVE GRASP**

HELEN M. ALVARÉ*

I. INTRODUCTION: THE CONSISTENT ETHIC—ITS REACH AND ITS GRASP

In 1984, in a series of lectures delivered alternatively on the occasion of the United States' bishops' publication of their war and peace pastoral,¹ and on the subject of abortion, Cardinal Joseph Bernardin offered a tool he called the "consistent ethic of life."² The consistent ethic proposed that the Church's positions on issues ranging from the taking of human life to attaining a dignified standard of living should be understood and spoken of as a morally coherent whole, given their common source in the notion of the respect due every human life.³ It was hoped that the consistent ethic would assist those laboring on diverse social justice issues to understand their common goals and the interdependence of their work.⁴ This ethic does not demand that all groups work on all issues, but does require that all seek to understand and support one another's work on different but related matters, and, at a minimum, refrain from opposing one another.⁵ By reducing friction and maximizing cooperation between the groups working against killing and those working for dignity of life, the consistent ethic was also

* Associate Professor of Law, Catholic University of America, Columbus School of Law. The author would like to thank the University of St. Thomas School of Law and the members of its Law Journal for organizing this symposium. She would also like to thank Yvette Brown and Daniel Marcinak for their very helpful research assistance.

1. U.S. Conf. of Catholic Bishops, *The Challenge of Peace: God's Promise and Our Response* (U.S. Catholic Conf. 1983) (available at <http://www.osjspm.org/cst/cp.htm>).

2. Joseph Cardinal Bernardin, *A Consistent Ethic of Life: An American-Catholic-Dialogue* (Fordham U., Dec. 6, 1983) (available at <http://www.hnp.org/publications/hnpfocus/BCconsistentEthic1983.pdf>).

3. *Id.* at 5–6.

4. *Id.* at 3.

5. *Id.*

intended to foster increased respect for all its concerns and possibly to improve the legislative chances of each of them.⁶

The longevity and power of the consistent ethic *within* the Church is evident in the agenda promoted even today by the U.S. Conference of Catholic Bishops' (USCCB) Office of Social Development and World Peace, an agenda that is well summarized in a document issued every four years entitled "Faithful Citizenship."⁷ The document takes up the issues of abortion, world peace, development, racism, hunger, health care, freedom of faith, fair employment, education, and housing, among others. It ties them together with the observation that

[t]he central question should not be, "Are you better off than you were four years ago?" It should be, "how can 'we'—all of us, especially the weak and vulnerable—be better off in the years ahead? How can we protect and promote human life and dignity? How can we pursue greater justice and peace?"⁸

Other recent communications from the Catholic bishops to the government showcase the consistent ethic. A 2005 letter from Cardinal William Keeler as Chair of the USCCB's Pro-Life Committee (concerning the threatened U.S. Senate filibustering of pro-life judicial nominees) is characteristic:

[T]his ethic [commitment to the right to life] has profound consequences not only for abortion, but for many other areas of life, including the death penalty, the application of scientific research to human subjects, the right to adequate health care, and the role of the state in promoting the common good.⁹

The consistent ethic is justifiably a source of pride and inspiration for Catholics. Yet there is no concrete evidence that it has become a persuasive, motivating power in lawmaking. Its limited impact can be more clearly sensed, perhaps, by reflecting upon themes that *have* moved law-

6. *Id.* at 5 ("The purpose of proposing a consistent ethic of life is to argue that success on any one of the issues threatening life requires a concern for the broader attitude in society about respect for human life.").

7. U.S. Conf. of Catholic Bishops, *Faithful Citizenship: A Catholic Call to Political Responsibility* (U.S. Catholic Conf. 2003) (available at <http://www.usccb.org/faithfulcitizenship/faithfulcitizenship03.pdf>).

8. *Id.* at 2.

9. U.S. Conf. of Catholic Bishops, Press Release, *Cardinal Keeler Urges Senate to Reject Pro-Abortion Test for Judicial Nominees* (Jan. 6, 2005) (available at <http://www.nccbuscc.org/comm/archives/2005/05-004.shtml>). Cardinal Theodore McCarrick's 2004 statements in the context of a response to Catholic politicians' abortion advocacy: "Now is a time for us to recommit ourselves to actively and unequivocally teaching our people about the sacredness of human life and human dignity and our call to care for the least among us." U.S. Conf. of Catholic Bishops, *Interim Reflections Task Force on Catholic Bishops and Catholic Politicians* (June 15, 2004) (available at <http://www.usccb.org/bishops/intreflections.shtml>). One paragraph later in this same document, he continues: "We believe all life is precious and deserves protection, especially unborn human life. We believe the Gospel teaches that the poor deserve special priority. We share our Holy Father's passion for peace and justice." *Id.*

making during the past two presidential administrations. One such theme is that of reducing the federal government's responsibility for social welfare benefits and increasing private responsibility, a theme showcased in the Personal Responsibility and Work Opportunity Reconciliation Act of 1996,¹⁰ which reduced lifetime entitlements to welfare benefits to 60 months¹¹ and required more work of recipients.¹² Or consider the legislative theme of incentivizing the assumption of private, consumer responsibility for securing services essential to quality of life, particularly health care¹³ and dependent care.¹⁴ This same theme is also present in the current debate regarding possible changes to the social security system,¹⁵ in new education laws that permit "charter" schools¹⁶ and vouchers for private education.¹⁷

Compared with the forward march of these themes, the consistent ethic has not enjoyed prominent success. Abortion on demand remains legal,¹⁸ and federal and state legislative agendas are not addressing with any alacrity or visibility the causes of poverty. This is not to assert that discrete issues along the consistent ethic have not made discrete progress, but rather simply to observe that a noteworthy message of linkage or "consistency" between issues has not tended to arise in campaigns for passage of legislation on consistent ethic issues. The consistent ethic was also absent from

10. 42 U.S.C. §§ 601–619 (2000).

11. *Id.* at § 608.

12. *Id.* at §§ 602, 607.

13. 26 U.S.C. § 125 (2000).

14. *Id.* at § 129.

15. The Republican Party proposes "personal retirement accounts" for younger workers to invest a portion of their income, rather than to turn it over to the Social Security Administration. See Republican Natl. Comm., *Fact Sheets, Strengthening Social Security for the 21st Century* ¶ 6, <http://www.gop.com/news/read.aspx?ID=5159> (Feb. 10, 2005); see also Howard Gleckman & Richard S. Dunham, *Social Security: It'll Take a Helluva Sales Job*, *Bus. Week* 32 (Feb. 7, 2005).

16. According to a leading website for charter schools:

Charter schools are nonsectarian public schools of choice that operate with freedom from many of the regulations that apply to traditional public schools. The "charter" establishing each such school is a performance contract detailing the school's mission, program, goals, students served, methods of assessment, and ways to measure success. The length of time for which charters are granted varies, but most are granted for 3–5 years. At the end of the term, the entity granting the charter may renew the school's contract. Charter schools are accountable to their sponsor—usually a state or local school board—to produce positive academic results and adhere to the charter contract. The basic concept of charter schools is that they exercise increased autonomy in return for this accountability. They are accountable for both academic results and fiscal practices to several groups: the sponsor that grants them, the parents who choose them, and the public that funds them.

U.S. Charter Schools, *Overview*, http://www.uscharterschools.org/pub/uscs_docs/o/index.htm (accessed Sept. 10, 2005); see also Natl. Charter Sch. Clearinghouse, *FAQs*, http://www.ncsc.info/mod.php?mod=userpage&menu=916&page_id=80 (accessed Sept. 10, 2005).

17. See e.g. *Zelman v. Simmons-Harris*, 536 U.S. 639 (2002) (upholding a Cleveland voucher program that allows public monies to be used for vouchers to attend private, including religious, schools).

18. See *Planned Parenthood of S.E. Pa. v. Casey*, 505 U.S. 833 (1992) (upholding a right to abortion even in the last trimester of a pregnancy if a woman's life or health, including emotional health or distress, are at risk).

the 2004 presidential election campaign, which focused on the economic well-being of the majority and on the war in Iraq, not on the defense of life itself or the dignity of life.

While reasons of length forbid me from taking up all possible issues within the consistent ethic, Section II of this article will consider some of the existing obstacles to the passage of consistent ethic legislation, specifically on the high-profile subjects of abortion, educational opportunity, and poverty reduction. In Section III, I will suggest that there are opportunities—empirical, political, legislative, and philosophical—in linking abortion, poverty, and educational attainment that might assist in overcoming obstacles to realizing consistent ethic legislation. In Section IV, I will also assess the role that the Church might play in accomplishing such a legislative strategy, including a discussion of some internal obstacles to its participation, and some strategies for overcoming them.

II. OBSTACLES TO THE LEGISLATIVE SUCCESS OF THE CONSISTENT ETHIC OF LIFE

There are several outstanding obstacles to realizing a consistent ethic legislative agenda. They include party politics and money, and the differing notions of “freedom” and “justice” embraced by the different groups that take up the banner of respect for life, or improved dignity of life.

Regarding party politics, part of what has hobbled the implementation of the consistent ethic are the separate parties which have become associated in the common mind with the two types of causes—roughly defined—embraced by the ethic: Democrats with “dignity of life,” and Republicans with “right to life.” (The Republicans’ phrasing of this matter differs from that of the Catholic Church—the Church adopted the phrase “respect life” to emphasize positive obligations in addition to the obligation to refrain from killing unborn life; I will continue to use this phrase throughout this Article to characterize the Church’s position.) This separation is reinforced by interest groups that also tend to take up one or the other type of issue, and to work far more closely with one instead of both parties, and who thus propel into political office candidates who agree with them on one or a few issues at most. As a result, individual politicians who embrace most or all of the consistent ethic are difficult to find. While there are some groups that explicitly or generally support the range of issues within the consistent ethic—such as the U.S. Conference of Catholic Bishops, state Catholic bishops conferences, Pax Christi,¹⁹ Sojourners,²⁰ and Feminists for Life²¹—

19. Pax Christi USA, *About Us, Statement of Purpose*, http://www.paxchristiusa.org/about_statement_purpose.asp (accessed Sept. 10, 2005) (“Pax Christi USA rejects war, preparations for war, and every form of violence and domination.”).

20. Sojourners, *About Us, Mission*, http://www.sojo.net/index.cfm?action=about_us.mission (accessed Sept. 10, 2005) (“Sojourners is a Christian ministry whose mission is to proclaim and practice the biblical call to integrate spiritual renewal and social justice.”).

they do not appear to be the driving political forces behind the most visible candidates, party messages, or the national legislative agenda.

Furthermore, the sources of the most significant money flowing to candidates and parties are unconcerned with the consistent ethic. Democrats receive some of their largest contributions from unions not focused upon pro-life matters, including those of teachers, corporations, and trial lawyers.²² They also receive millions of dollars from abortion advocates such as EMILY's List.²³ Republicans also receive large donations from corporations, doctors, and trade associations. While pro-life money flows to Republicans, these amounts are modest compared with the amounts given by their other donors and with the amount of abortion advocacy money given to Democrats.²⁴ In sum, one can reasonably conclude that the larger political contributions are not about assisting vulnerable groups in behalf of their dignity of life, and are not about stopping abortion and other direct attacks on human life. But where money is given on the abortion issue in particular, pro-life money goes to Republicans and abortion advocacy money goes to Democrats.

One might also attempt a philosophical explanation as to why the consistent ethic has failed to take prominent legislative hold. There appears to be an important gap in underlying beliefs about the nature of freedom and justice between groups primarily taking up respect for life issues and those taking up dignity of life issues. Groups working mostly on respect for life issues—such as abortion, euthanasia, and assisted suicide—appear to understand themselves to be fighting a war against lies and on behalf of truth. They firmly believe that if people were to open their eyes and really *see* the law or the practice of abortion or assisted suicide, they would accept the truth about vulnerable human life, and no longer accept its destruction. Then, there would be true freedom and justice, both for the unborn child and for the woman. Efforts of pro-life groups today—including the prominent National Right to Life Committee²⁵—are thus heavily weighted toward education about the facts of abortion and euthanasia. The Secretariat for Pro-Life Activities of the USCCB even calls itself “an educational apos-

21. Feminists for Life of America, *FFL's Mission*, <http://www.feministsforlife.org/who/aboutus.htm> (accessed Sept. 10, 2005) (“If you refuse to choose between women and children, . . . [i]f you reject violence, . . . join us.”).

22. See [opensecrets.org, Top 20 PAC Contributors to Federal Candidates, 2003-2004](http://www.opensecrets.org/pacs/topacs.asp?txt=A&Cycle=2004), <http://www.opensecrets.org/pacs/topacs.asp?txt=A&Cycle=2004> (accessed Sept. 10, 2005).

23. See [opensecrets.org, Who Gives, Top All-time Donors, EMILY's List](http://www.opensecrets.org/orgs/summary.asp?ID=D000000113&Name=EMILY%27s+List), <http://www.opensecrets.org/orgs/summary.asp?ID=D000000113&Name=EMILY%27s+List> (accessed Sept. 10, 2005).

24. See [opensecrets.org, Top All-Time Donor Profiles](http://www.opensecrets.org/orgs/list.asp?Order=A&View=P&Format=Print), <http://www.opensecrets.org/orgs/list.asp?Order=A&View=P&Format=Print> (accessed Sept. 10, 2005).

25. Natl. Right to Life, <http://www.nrlc.org/> (accessed Sept. 10, 2005) (contains information on the basic facts of abortion, embryo destruction, and euthanasia).

tolate,” and six of its ten stated objectives are of an educational nature.²⁶ This message of “freedom as truth” is very visible in pro-life pregnancy centers too, especially with their recent push to acquire sophisticated ultrasound machines (even the new “3-D” machines) so that women can “see” the truth about unborn children.²⁷

But for activists concentrating on dignity of life issues—including access to health care, welfare benefits, the living wage, and other issues—freedom and justice are associated more with being in “solidarity” with the less fortunate. The website of the anti-hunger group Second Harvest tells the compelling stories of persons living without enough food.²⁸ Catholic Charities U.S.A., the largest private provider of charitable care in the United States, describes itself simply as providing “vital social services to people in need.”²⁹

Yet understanding freedom and justice too narrowly in terms of one or the other of these themes—truth *or* solidarity—can easily lead to a failure fully to pursue the consistent ethic, through which we understand freedom in a unified fashion to include both respecting truth *and* acting in solidarity, especially with those most in need. This idea was explored explicitly, not in the initial series of consistent ethic speeches made by Cardinal Bernardin in the 1980s, but rather later in the 1990s by Pope John Paul II, particularly in his encyclical *Evangelium Vitae*.³⁰ There, he asserted that it was the denial of the inherent relationship between freedom, truth, and solidarity that had led to the oppression of human persons, whether through killing or through neglect of their basic needs. If freedom without solidarity—without an “inherently relational dimension”³¹—is exalted, he wrote, it ends up “becoming the freedom of ‘the strong’ against the weak who have no choice but to submit.”³² Other human persons become at least strangers, or possibly even “enem[ies],” and there is encouraged a struggle to make one’s

26. See U.S. Conf. of Catholic Bishops, *Pro-Life Activities, About Us*, <http://www.usccb.org/prolife/intro.htm> (accessed Sept. 10, 2005).

27. Neela Banerjee, *Anti-Abortion Groups Use Sonograms to Make Case*, Pitt. Post-Gazette A3 (Feb. 6, 2005) (stating that the Southern Baptist Convention and Focus on the Family have bought a number of ultrasound machines at a cost of \$20,000 to \$30,000 each for use in crisis pregnancy clinics, even buying the most expensive machines so that the mother may see her unborn child in three dimensions).

28. Second Harvest, a group raising awareness of and combating hunger, reminds us that sometimes we need to hear and see this most basic issue from a new perspective. The information provided here takes a closer look at: the realities of living on an impossibly tight budget, stories from people nationwide about their experience of hunger, and the incredible efforts being made to create a hunger-free America.

America’s Second Harvest, *Features*, http://www.secondharvest.org/site_content.asp?s=5 (accessed Sept. 10, 2005).

29. Catholic Charities USA, *About Us*, <http://www.catholiccharitiesusa.org/about/index.cfm?cfid=3705481&cftoken=59390871> (accessed Sept. 10, 2005).

30. Pope John Paul II, *Evangelium Vitae: On the Value and Inviolability of Human Life* (Mar. 25, 1975) (available at <http://www.nccbuscc.org/profile/docs/evange/evanel.htm>).

31. *Id.* at 34.

32. *Id.*

own interests alone prevail.³³ If freedom “loses its essential link with the truth,” he wrote, a human being will “end up . . . taking . . . as the sole and indisputable point of reference for his own choices . . . only his subjective and changeable opinion or, indeed, his selfish interest and whim.”³⁴ Achieving authentic freedom requires respecting the truth about human life, including the inherent illegitimacy of killing, and the right of every person to have their basic human needs met.

Despite these political and even philosophical differences, there is on the horizon an opportunity to help unite or at least “mix” the respect for life and dignity of life constituencies. This opportunity takes the form of the public’s emerging and increasingly urgent concern with the survival and health of marriages and families, and it has empirical, political, and philosophical aspects. Empirically—where the greatest opportunities for unifying the constituencies lie—the public is increasingly aware of the demonstrated relationships between educational achievement, poverty, and abortion. Politically, there are some new facts on the ground in the United States indicating broad and possibly bipartisan support for efforts to assist the family. Philosophically, an emerging unity is evidenced by new proposals to assist marriage and the family that are based on both respect for truth and solidarity with the vulnerable. In what follows, I will more fully explore these empirical, political, and philosophical opportunities for unifying the diverse pro-life constituencies.

III. OPPORTUNITIES TO LINK RESPECT FOR LIFE WITH DIGNITY OF LIFE BY WAY OF THE FAMILY

A. *Empirically Speaking*

In the United States, educational attainment and other know-how are the most important things persons can have in order to provide themselves and their families with the means of living in accordance with their human dignity. These assets, dubbed “the new property” in modern legal literature,³⁵ have far surpassed earlier types of property in their ability to sustain individuals and families. This means, of course, that social justice efforts intended to effect long-term poverty reduction, and thus dignity of life, must focus substantially on the attainment of these assets. This is currently acknowledged not only by the Catholic Church (both at the local and uni-

33. *Id.* at 35.

34. *Id.*

35. See Mary Ann Glendon, *The New Family and the New Property* 3 (Butterworth & Co. 1981); see also Employment Policy Foundation, *E-Mail Trends: For Most Americans, Being Poor is Temporary*, <http://www.epf.org/pubs/newsletters/1998/et980917.asp> (Sept. 17, 1988) (“[A]ny strategy to reduce chronic poverty among the lowest skilled, particularly female householders, must focus on upgrading their workplace skills.”).

versal levels³⁶), but also by the platforms of the Democratic and Republican parties.³⁷

It turns out, however, according to some of today's most prominent sociologists of the family, that children reared outside of traditional family settings—i.e., children reared other than by both of their married biological parents—suffer in the area of educational attainment, and thus in income.³⁸ Low educational attainment, low income, and nontraditional family forms correlate with abortion. These correlations are not seriously disputed in the United States today. Further, these difficulties tend to be suffered disproportionately in the United States by racial and ethnic minorities.

To summarize these correlations: the stability and composition of family life has much to do with the observance or not of respect for life, and with the attainment or not of the dignified standard of living made possible by education. I will explore these relationships in further detail before commenting on their role in the promotion of a consistent ethic of life.

First, with regard to family form and education, recent research confirms that not only single parenthood but also other types of newer family forms are associated with diminished educational outcomes for children.³⁹ In the words of leading sociologists:

[C]onsiderable research during the past few years has shown that family structure during childhood and adolescence affects the subsequent life chances of adults. Individuals who live apart from one or both parents when they are growing up are less likely to graduate from high school, more likely to work at low-wage jobs, and more likely to form unstable families themselves than individuals who grow up with both biological parents. . . . These

36. Pope John Paul II, *Centesimus Annus*, No. 32 (May 1, 1991) (available at http://www.vatican.va/holy_father/john_paul_ii/encyclicals/documents/hf_jp-ii_enc_01051771_centesimus-amus.cn.html) (calling know-how a “form of ownership . . . no less important than land” and calling on society to give universal access to this asset which is “decisive to family well being”); H.R. Subcomm. on Human Resources of the Ways & Means Comm., *Hearing on TANF Reauthorization Proposals*, 109th Cong. (Feb. 10, 2005) (available at <http://www.usccb.org/sdwp/national/tanf05.htm>) (testimony of Kathleen Curran, U.S. Conf. of Catholic Bishops, stating that any commitment to end poverty must include, in the following order, “jobs, training, education,” and the means to take advantage of these, “child care, health care, transportation and other [social supporting mechanisms]”).

37. Democratic Natl. Comm., *Strong at Home, Respected in the World: The 2004 Democratic National Platform for America* 32 (Democratic Natl. Comm. 2004) (“Now, as never before, education is the key to opportunity, essential to a strong America.”); Republican Natl. Comm., *2004 Republican Party Platform: A Safer World and a More Hopeful America* 53 (Republican Natl. Comm. 2004) (Republican platform emphasizing that education, literacy and learning are the “key to prosperity and fulfillment—the foundation on which all other success is built”).

38. See generally William Jeynes, *Divorce, Family Structure and the Academic Success of Children* (Haworth Press 2002); Wendy D. Manning & Kathleen A. Lamb, *Adolescent Well-Being in Cohabiting, Married, and Single-Parent Families*, 65 *J. Marriage & Fam.* 876 (2003); Gary D. Sandefur, Sara McLanahan & Roger A. Wojtkiewicz, *The Effects of Parental Marital Status During Adolescence on High School Graduation*, 71 *Soc. Forces* 103 (1992).

39. *Id.* at 103.

findings have been replicated on numerous data sets and they appear to be consistent across a variety of racial and ethnic groups.⁴⁰

These findings are supported by research now spanning decades,⁴¹ and have persisted while research sampling methods and the ability to control for factors like income have steadily improved.⁴² Additionally, detailed inquiry into this phenomenon has more recently added that it is not only the presence of two parental figures that matters to children's well-being, but also the parents' marital status. Thus, children living in married or cohabiting stepparent families have been found to suffer educational effects similar to those of children residing with a single parent.⁴³ A very recent study further concluded that even if children are living with both biological parents, if those parents are cohabiting versus married, the children's well-being will be diminished, including their educational attainment.⁴⁴ Summarized the author of this study: "It seems that residing outside a two-biological-parent married family can be negatively related to children's well-being."⁴⁵

The matter of controlling for income deserves some additional attention here, as it has proved a bone of contention for years. The outstanding question is this: Would erasing the income gap erase the differences between children reared in different types of households? Or does family form have effects of its own, unrelated to income? On this matter, one conclusion and one important observation have surfaced. First, the conclusion: it appears that the "effects of family structure and changes in family structure [on educational outcomes] persist after controlling for income."⁴⁶ In the words of William Jeynes, who has devoted an entire book to a meta-analysis of every major study of the relationship between family form and education:

The findings from this study indicate that the family structure a child is from has a considerable impact on that child's academic achievement. While some of the effects are due to the impact that a given family structure has on [socioeconomic status], this study confirms the belief, held by most social scientists, that many other factors are at work as well.⁴⁷

Second, an observation has surfaced with respect to studies of children of divorce: it has been suggested that these studies' methods of controlling

40. *Id.* at 103-04.

41. Jeynes, *supra* n. 38, at 1-6.

42. *Id.* at 5.

43. See Manning, *supra* n. 38, at 876.

44. Susan L. Brown, *Family Structure and Child Well-Being: The Significance of Parental Cohabitation*, 66 J. Marriage & Fam. 351, 364 (2004).

45. *Id.* at 364.

46. See Sandefur et al., *supra* n. 38, at 118.

47. Jeynes, *supra* n. 38, at 140.

for socioeconomic data, or teasing out the effects of family “mobility” (the tendency of disrupted families to move to a new location) from the effects of divorce itself, may have underestimated the effects of divorce on children. Indeed, attempts to control for income and mobility in studies of children of divorce may constitute a quixotic venture, as divorce is commonly accompanied by such disruptions and by income drops.⁴⁸ It also hints that these types of consequences of divorce are reversible when, in fact, it simply costs more to raise children in two houses than in one. No governmental entity can realistically make up this difference for the approximately one million children annually who experience their parents’ divorce.

Having noted that family forms alternative to marriage are associated with diminished educational opportunities, it should next be observed that lesser education is correlated directly with lesser income. With the exception of professional degrees (which yield income even greater than the higher, doctoral degree), “each successively higher education level is associated with an increase in earnings” according to the U.S. Census Bureau.⁴⁹

There is also a relationship between all of the above phenomena—nontraditional family forms, diminished educational attainment, lower income—and abortion. Poverty, lower levels of education, and nontraditional family forms all are associated with higher abortion rates. As to family form, single women, or women who are single and cohabiting, are far more likely than married women to have one of the approximately 1.29 million abortions performed annually in the United States.⁵⁰ Single women have 83% of all abortions and married women 17%. Single women who are cohabiting have nearly twice the abortion rate of women who are not cohabiting.⁵¹ And while the question of whether girls and women reared in nontraditional families have a higher abortion rate than those reared in traditional families has not yet been fully studied, it is known that women coming from step-parenting and cohabiting households have more problems than women coming from married households—specifically with regard to sexual or physical abuse—and are at greater risk for unintended pregnancy and thus for abortion.⁵²

48. *Id.* at 138–39.

49. Jennifer Cheeseman Day & Eric Newburger, *The Big Payoff: Educational Attainment and Synthetic Estimates of Work-Life Earnings 2* (U.S. Census Bureau 2002).

50. Physicians for Reproductive Choice and Health & Guttmacher Institute, *An Overview of Abortion in the United States 6* (2005) (available at http://www.agi-usa.org/presentations/abort_slides.pdf).

51. Rachel K. Jones et al., *Patterns in the Socioeconomic Characteristics of Women Obtaining Abortions in 2000-2001*, 34 *Persps. Sexual & Reprod. Health* 226, 228 (2002) (table 1: percentage distribution of women obtaining abortions in 2000 and 1994, and of all U.S. women aged 15-44 in 2000; estimated abortion rates for 2000 and 1994, and percentage change in the rate between the two years; pregnancy rate and proportion of pregnancies ending in abortion in 2000—all by selected characteristics at outcome).

52. See Patricia M. Dietz et al., *Unintended Pregnancy among Adult Women Exposed to Abuse or Household Dysfunction During Their Childhood*, 282 *J. Am. Med. Assn.* 1359 (1999).

Lower income is also correlated with higher abortion rates. Women living at less than two times the poverty level—while they constitute only 30% of all women—have over 57% of all abortions. Only 25% of all abortions are had by women earning more than three times the poverty level.⁵³

Women with less education are also more likely to choose abortion. The 74% of American women of child-bearing age who have not graduated from college have about 84% of all abortions. The 25% of women who have graduated college have only 16.4% of all abortions.⁵⁴

It is also worthy of note that the face of poverty, abortion, lesser education, and nontraditional family forms in the United States is disproportionately African American and Hispanic American. For example, while Hispanics make up about 13% of the U.S. population, they make up 20.1% of the annual abortion rate. African Americans, who also constitute about 13% of the population, make up 31.7% of the annual abortion rate.⁵⁵ This, in turn, is correlated with the lesser educational attainment and income status of these groups, as African Americans constitute 24% of the poverty rate and Hispanics 22%. These groups also complete high-school and college educations less often than non-Hispanic whites,⁵⁶ divorce more often,⁵⁷ head single-parent families more often,⁵⁸ and cohabit more often.⁵⁹

Poverty and lesser education—already correlated with racial and ethnic factors—are also correlated with nontraditional family forms. Unmarried mother households, in particular, suffer “chronic” or long-term poverty at high rates. In a recent survey of twenty-four hundred poor mothers, only 14% were married and living with their husbands, while 69% were single and unattached, 6% cohabiting, and 12% separated from their husbands.⁶⁰

Divorce among the poorer and less educated is also more likely.⁶¹ Although overall divorce rates have declined only slightly since the 1980s, this fact alone masks the reality that college-educated women became “far more stable than they had been in the 1970s, while marriages among those

53. Jones et al., *supra* n. 51, at 228.

54. *Id.*

55. *Id.*

56. Child Trends Databank, *Educational Attainment 1-2*, http://www.childtrends.databank.org/pdf/6_PDF.pdf (accessed Sept. 22, 2005).

57. Administration for Children & Families, *Marriage, Divorce, Childbirth, and Living Arrangements among African American or Black Populations* tbl 2, http://www.acf.hhs.gov/healthy-marriage/about/aami_marriage_statistics.htm (last updated Nov. 12, 2004) (including comparisons between African American, Hispanic and White populations in the United States).

58. *Id.*

59. Amy L. Godecker, Elizabeth Thomson & Larry L. Bumpass, *Union Status, Marital History and Female Contraceptive Sterilization in the United States*, 33 *Fam. Plan. Perspectives* 35, 38 (2001).

60. Sharon Vandievre, Kristin Anderson Moore & Martha Zaslow, *Snapshots of America's Families II: Children's Family Environment*, http://www.urban.org/uploadedPDF/900846_1999_Snapshots.pdf (1999) (reporting on National Survey of America's Families 1999 findings).

61. Jaynes, *supra* n. 38, at 10.

at the bottom of the educational distribution actually became less stable.”⁶² Cohabitation is most frequent among those who have not graduated high school and those whose families relied on welfare while they were growing up.⁶³ And the poor and less educated are also most likely to form single-parent households. In sum, ample empirical evidence demonstrates that the issues taken up by different interest groups are closely and practically inter-related, such that addressing any one of them could have important consequences for the others.

In addition to the problematic implications of the linkage between education, income, family form, and abortion, there are two additional reasons to believe marriage and family issues should be considered important.

The first reason is the ongoing campaign to divorce marriage from childbearing in the public mind. Proponents of same-sex marriage are making headway in the United States by asserting that there is no inherent or necessary relationship between children and marriage.⁶⁴ This argument is made to overcome states’ claims that marriage is restricted to opposite-sex couples precisely because of the state’s interests in children’s well-being.⁶⁵ Whatever one’s opinion is regarding same-sex marriage, its proponents’ insistence on divorcing marriage from children is troubling considering that children’s well-being appears to rest upon the successful long-term commitment of their married, biological parents.

The second reason concerns the high incidence of marital difficulties in the United States—each year there are approximately 47 divorces for every 100 marriages—representing an alarming change in underlying beliefs about the very nature of marriage. This change has been well-described by Andrew Cherlin, one of the country’s most respected marriage and family sociologists. Cherlin has labeled current trends regarding marriage as the “deinstitutionalization” of marriage, i.e., the “weakening of the social norms that define people’s behavior in a social institution such as marriage.”⁶⁶ He writes that marriage was formerly an institution that responded to the expectations of external sources such as family, church, and the larger society, and that the fulfillment of these expectations generated spousal satisfaction.⁶⁷ Marriage has become, however, an institution in which persons seek individual fulfillment and emotional expression by

62. Kathryn Edin, Maria J. Kefalas & Joanna M. Reed, *A Peek Inside the Black Box: What Marriage Means for Poor Unmarried Parents*, 66 J. Marriage & Fam. 1007, 1013 (2004).

63. Larry Bumpass & James A. Sweet, *National Estimates of Cohabitation*, 26 Demography 615, 622–24 (1989).

64. See e.g. William Eskridge, *The Case for Same Sex Marriage* (Free Press 1996); Andrew Sullivan, *Virtually Normal* (Knopf 1995).

65. See e.g. *Goodridge v. Dept. of Public Health*, 798 N.E.2d 941 (Mass. 2003); *Baker v. State*, 744 A.2d 864 (Vt. 1999).

66. Andrew J. Cherlin, *The Deinstitutionalization of American Marriage*, 66 J. Marriage & Fam. 848, 848 (2004).

67. *Id.* at 852.

means of a relationship. There is, in other words, an increasing tendency to see marriage as a purely private accomplishment of a financial and emotional nature,⁶⁸ a milestone of “self-development”⁶⁹ to be shown off with a properly lavish wedding.⁷⁰

Evidence of this thinking among the poor has been chronicled in a recent and important study of poor mothers.⁷¹ Researchers found that for this group, marriage is a sign that they have “arrived economically” and have proved their ability to demand an emotional commitment from one man. The authors learned, for example, that for this group, a certain level of financial security—a “modest row home, car note, furniture, money in the bank, and money to host a ‘decent’ if not big wedding”—is a prerequisite to marriage.⁷² This study is additional evidence that for an economically and socially fragile group, marriage has become nearly completely deinstitutionalized.

It is worth noting that the deinstitutionalization of marriage has been aided by the law and other important social institutions. Courts, for example, have increasingly applied the rights and obligations long associated with marriage to other kinds of relationships, such as civil unions, heterosexual and homosexual domestic partnerships, and cohabitation.⁷³ These pairings, by their innate structure or functioning, tend explicitly to separate sex and procreation from marriage. Similarly, adoption agencies, either with the sanction or through the inattention of courts and legislatures, have increasingly allowed adoption by families other than married couples.⁷⁴ Legislatures have chosen not to regulate new reproductive technologies even when they are used to create children unrelated to one or both persons who will rear them, or for single parent families.⁷⁵ Legislatures’ adoption

68. *Id.* at 853-54.

69. *Id.* at 856.

70. *Id.* at 857 (“People marry now less for the social benefits that marriage provides than for the personal achievement it represents.”).

71. Edin et al., *supra* n. 62, at 1007.

72. *Id.* at 1012.

73. See generally e.g. Grace Ganz Blumberg, *The Regularization of Nonmarital Cohabitation: Rights and Responsibilities in the American Welfare State*, 76 *Notre Dame L. Rev.* 1265 (2001); Milton C. Regan, Jr., *Calibrated Commitment: The Legal Treatment of Marriage and Cohabitation*, 76 *Notre Dame L. Rev.* 1435 (2001).

74. See e.g. David M. Brodzinsky et al., *Adoption by Lesbians and Gays: A National Survey of Adoption Agency Policies, Practices, and Attitudes* 10, http://www.adoptioninstitute.org/howe/Lesbian%20and%20Gay%20Adoption%20Report_final.doc (Oct. 29, 2003) (“Acceptance of adoption applications also varied as a function of the type of adoption program run by the agency. Agencies focusing on special needs adoptions . . . were more likely to accept applications from homosexuals . . . than agencies focusing on international adoptions . . . domestic infant adoption . . . or ones with highly varied programs.”); CBS News, *Single Parent Adoptions Increasing*, <http://www.cbsnews.com/stories/2004/12/17/earlyshow/main661622.shtml> (Dec. 17, 2004).

75. The President’s Council on Bioethics, *Reproduction and Responsibility: The Regulation of New Biotechnologies* 46-79 (2004) (available at <http://www.bioethics.gov/reproductionandresponsibility/index.html>).

of no-fault divorce laws—uncoupled with any provisions to assist marriages—have also contributed to the deinstitutionalization of marriage by appearing to deny any state interest in enduring marriages.

All of this indicates that we are past the point where we can claim as a society to be still waiting for the outcome of our experiment with family forms. One can remember a time, perhaps, after the rise in out-of-wedlock births, when it was thought that an extended family would compensate for the absence of a second parent.⁷⁶ This did not occur.⁷⁷ One can also remember a time when it was proposed that cohabitation,⁷⁸ or freeing up unhappy spouses for remarriage,⁷⁹ could create or restore the stability for any children involved. Yet we now know that remarriage has downward effects on children's well-being, and that cohabitation produces worse results for children than living with a never-married single parent.⁸⁰ Furthermore, cohabitation in a sexual relationship with anyone other than the future spouse is robustly correlated with higher, not lower, divorce rates,⁸¹ resulting in more children, not fewer, experiencing their parents' divorce.

All of this indicates that there is a sort of "missing link" between a traditional set of issues classified as "dignity of life" issues by the Catholic Church—poverty reduction and educational attainment—and the "respect life" issue of abortion. This link is the well-being of marriage and children. Recognizing this fact is not at all to suggest that the Church ought to cease its efforts on behalf of all who lack the necessities of life, regardless of their family form. It is not to suggest that the Church's ongoing pastoral efforts on marriage⁸² are not important, and shouldn't proceed and improve apace, especially in light of increasing knowledge about what helps marriages work.

It is to suggest, rather, that more effort needs to be placed in the Church's legislative agenda upon improving the conditions for the flourishing of marriage and stable families. There are signs that now is an auspicious time for this work, and that in addition to it being empirically

76. More recent research indicates, in fact, that a considerable degree of child care by a relative other than the mother or father "does not positively impact academic achievement and psychological adjustment of mothers and fathers." Jeynes, *supra* n. 38, at 35 (citing Sarah McLanahan & Gary Sandefur, *Growing Up With a Single Parent: What Helps, What Hurts* (Harv. U. Press 1994)).

77. *Id.*

78. *E.g. Marvin v. Marvin*, 18 Cal. 3d 660, 683 (1976) ("The trial period, preliminary to marriage, serves as some assurance that the marriage will not subsequently end in dissolution to the harm of both parties.").

79. See generally Max Rheinstein, *Marriage, Stability, Divorce and the Law* (U. of Chi. Press 1972).

80. Jeynes, *supra* n. 38, at 136–37.

81. Jay Teachman, *Premarital Sex, Premarital Cohabitation, and the Risk of Subsequent Marital Dissolution Among Women*, 65 J. Marriage & Fam. 444, 445 (2003).

82. See *e.g.* U.S. Conf. of Catholic Bishops, *Family Ministry: A Pastoral Plan and Reaffirmation*, <http://www.usccb.org/laity/marriage/index.shtml> (last accessed April 18, 2005).

supportable, a legislative shift toward marriage and family is perhaps more politically viable than before. Among these signs are, first, the surprising appearance and strength of the constituency to defend traditional marriage in the 2004 national elections; and second, the visible participation of new and important allies, both in the defense of traditional marriage, and in state, federal, and private efforts over the last decade to renew the institution of marriage, especially among the poor. I will consider each of these in detail below.

B. *Politically Speaking*

The 2004 national election results appeared to show the salience of “moral issues” in voters’ minds.⁸³ Candidates supporting a “respect life” platform had on average a 4% advantage.⁸⁴ These election results caused what the media portrayed as soul-searching in a Democratic Party publicly allied with proponents of abortion rights and same-sex marriage.⁸⁵ Several critical questions remain, however, regarding the actual effect of this election on political behaviors.

The first question is the extent to which the Democrats are really willing to support pro-life legislation. The Democratic minority leader in the U.S. House of Representatives has explicitly opined that no concrete positions of the party will change.⁸⁶ Yet there are indications at the state level that the Democratic Party is ready to support pro-life candidates for federal office,⁸⁷ a shift that could alter Congressional vote totals in favor of the pro-life outcome.

The second question concerns what the public meant when they said that “moral issues” led their voting. There are indications that Republican Party voters believe “moral issues” include issues other than right to life, such as strategies for alleviating poverty. Senator Rick Santorum, one of the pro-life Republicans who will face a pro-life Democratic opponent in the 2006 elections, has recently joined with four other Senators to announce an “anti-poverty” agenda.⁸⁸

83. David Usborne, *Farewell 2004: US Liberalism: Real Men Don't Windsurf*, Independent on Sun. (U.K.) 12 (Dec. 26, 2004) (available at 2004 WLNR 14713450) (“The exit polls after 2 November said it all. . . . What really surprised the pundits was what the voters said about their choices. Morality, it turned out, was the issue that won the election for Bush.”).

84. Editorial, *I Meant What I Said*, Natl. Right to Life News (Nov. 1, 2004) (available at 2004 WLNR 14593366) (Among the 8% of voters who stated that abortion was their most important issue in 2004, 75% voted pro-life (Bush) and 25% vote in favor of abortion rights (Kerry)).

85. Carla Marinucci, *Dems Give Abortion Foes Space: Party Seeks Broader Appeal on the Issue*, S.F. Chron. A1 (Feb. 7, 2005) (available at 2005 WLNR 1688896).

86. John Cochran, *Finding Faith in the Center*, Cong. Q. Wkly. 562 (Mar. 7, 2005) (available at 2005 WLNR 6930982).

87. Nicole Duran, *Democrats Vow Offensive on Blue State Republicans*, Roll Call (Mar. 21, 2005) (available at 2005 WLNR 4355518) (Pro-life Democrats receiving party support to unseat two pro-life Republicans in the U.S. Senate).

88. Peter Savodnik, *GOP Senators Prepare Poverty Agenda*, The Hill 12 (Mar. 2, 2005).

Voters' opinions on one particular moral issue, however, stand out: preserving marriage as an institution intrinsically connected to healthy child-rearing by virtue of its "opposite-sex" requirement. Both presidential candidates in the 2004 election opposed same-sex marriage, although Democratic candidate John Kerry refused to go so far as to support a federal constitutional amendment ensuring only opposite-sex marriage in the United States. The clearest indication of public opinion, however, was the passage by eleven states (100 percent of states considering the question) of ballot measures intended to prevent states from recognizing gay marriages, and in some cases, to prevent states from providing marital-type benefits to any relationships other than recognized opposite-sex marriages.⁸⁹ Prior to the elections, there was little indication that supporters of traditional marriage would succeed as completely as they did, passing 100 percent of proposed measures to defend marriage even in states where same-sex marriage advocates had poured out-of-state money.⁹⁰ Traditional marriage, it seemed, had its constituency, even without time for a thorough national conversation, or for the development of a strong grass-roots movement. According to polls, about 65% of American voters oppose gay marriage,⁹¹ and this constituency is far more likely to vote their convictions on election day than supporters of same-sex marriage.⁹² Opponents of same-sex marriage are somewhat bipartisan: an ABC News poll found that 45% of Democrats oppose same-sex marriage while 47% support it; 73% of Republicans oppose it, while only 23% support it.⁹³

Many African Americans—including many pastors in a position to influence members of their church⁹⁴—are among the constituency for strengthening marriage and preventing the severing of marriage and childbearing. Hispanics also actively support limiting marriage to opposite-

89. Associated Press, *Voters Pass All 11 Bans on Gay Marriage*, <http://www.msnbc.msn.com/id/6383353/> (Nov. 3, 2004).

90. See American Political Network, *White House 2004 – the Purple States Oregon (7EVS): Kerry Hits 50*, The Hotline (Sept. 28, 2004) (The National Gay and Lesbian Task Force poured money into Oregon to fight a ballot ban on gay marriage after concluding Oregon was one of its "best shots." They donated over \$500,000, helping opponents of the ban collect nearly two times the contributions of its supporters.).

91. The Pew Research Center, *Gay Marriage a Voting Issue, But Mostly for Opponents: Constitutional Amendment Rates as Low Priority*, <http://people-press.org/reports/display.php3?ReportID=204> (Feb. 27, 2004).

92. *Id.*

93. Dalia Sussman, *Gay Marriage Opposition Poll: Most Americans Are against Same-Sex Marriages, But Don't Want Constitutional Amendment*, http://abcnews.go.com/sections/us/Relationships/gaymarriage_poll_030922.html (Sept. 22, 2003).

94. See e.g. Gillian Flaccus, *Conservative Black Ministers Join to Fight Gay Marriages: New Group Sides with Republicans on Homosexuality and Abortion*, San Jose Mercury News 14A (Feb. 2, 2005) (available at 2005 WLNR 1499524) (reporting the gathering of over one hundred black clergymen to unveil a "Black Contract with America on Moral Values," which included opposition to same-sex marriage).

sex couples.⁹⁵ According to several polls, African Americans oppose same-sex marriage by significant margins, with a Gallup Poll showing 64% opposition.⁹⁶ A Field Poll of California Hispanics showed 63% opposing same-sex marriage.⁹⁷

Opposition by these groups to gay marriage is significant given the large Democratic Party membership of African Americans and Hispanic Americans⁹⁸ and their visibility in the public campaigns supporting traditional marriage. From the formation of the Alliance for Marriage—whose slogan is “More Children Raised in a Home with a Mother and a Father”—African American and Hispanic leaders were present.⁹⁹ A leading member of the Board of Advisors of the Alliance for Marriage is Rev. Walter Fauntroy, whose civil rights credentials extend to having coordinated D.C. for Martin Luther King’s March on Washington.¹⁰⁰ African Americans are also active by supporting stable marriage at the grass-roots level, gathering to sign pledges or join coalitions,¹⁰¹ or to participate in celebrations of long marriages. On the occasion of a recent such celebration by the National Christian Methodist Episcopal Church, Bishop Nathaniel Linsey expressed his hope that demonstrating the importance of long-lasting marriages to young couples will help “reinforce family unity within the African Ameri-

95. See Alexandra Alter, *Kerry’s Faith May Have Cost Him Some Catholic Votes*, Miami Herald 1E (Nov. 13, 2004) (available at 2004 WLNR 9709585); Jose Manuel Calvo, *US Hispanics Make Major Inroads into the Bush Administration*, Diario El Pais (Eng.) (Nov. 17, 2004) (available at 2004 WLNR 9855320); Michael Paulson, *Official Chides Christian Right: Moral Majority Called Aberration*, Boston Globe B1 (Feb. 5, 2005) (available at 2005 WLNR 1961799).

96. Flaccus, *supra* n. 94.

97. Mark DiCamillo & Mervin Field, *Release #2109: California Voters Disapprove of Same-Sex Marriages, But Do Not Support Constitution Amendment to Bar Them. Majority Opposes San Francisco Granting Same-Sex Marriage Licenses* 3 tbl. 2, <http://field.com/fieldpollonline/subscribers/RLS2109.pdf> (Field Research Group Feb. 26, 2004) (California opinion among registered voters about allowing same-sex marriages where regular marriage laws apply by subgroup).

98. Wes Allison, *Black Conservatives Gather Momentum*, St. Petersburg Times 1A (Feb. 28, 2005) (available at 2005 WLNR 3040786) (“Polls show African-Americans still hold a dogged allegiance to the Democratic Party. . .”).

99. The website for the Alliance for Marriage lists among its board of advisors many African American leaders, including Dr. Walter Fauntroy of the National Black Leadership Roundtable, Bishop George McKinney of the Church of God in Christ, Vernon Shannon of the AME Zion Church, and Dr. Patricia de Veaux of the African Methodist Episcopal Church; Hispanic leaders on the board include Samuel Rodriguez of the National Hispanic Christian Leadership Conference and Sonia Valdes of the Christian Latin Business Association. Alliance for Marriage, *Board of Advisors*, http://www.allianceformarriage.org/site/PageServer?pagename=bac_board (accessed Sept. 9, 2005).

100. Alliance for Marriage, Press Release, *Bush Victory Reflects Public Support for Federal Marriage Amendment across Party Lines*, <http://www.allianceformarriage.org/site/News2?page=NewsArticle&id=5542> (accessed Sept. 10, 2005).

101. Chip Johnson, *Flash Point for Black Churches: Gay Marriage Issue May Benefit GOP*, S.F. Chron. B1 (Sept. 27, 2004) (available at 2004 WLNR 7620821) (“But for many black clergy in the Bay Area, gay marriage is a flash point for controversy, and even for ministers who are undecided about the election, Democratic support for gay marriage causes genuine concerns.”).

can community.”¹⁰² He also explicitly correlated the “destruction of the black family unit” with many of the problems seen in African American communities. African Americans and Hispanics are also actively participating in the recent spate of federal, state, and private initiatives to strengthen marriage, especially among the poor, including activities funded by the U.S. Department of Health and Human Services’ “Healthy Marriage Initiatives.”¹⁰³

The visible participation of Hispanics and African Americans is an important sign of the inter-party, and inter-group potential of the marriage and family issues. This participation is, at the same time, additional practical evidence of the desire of America’s minorities to promote the family as a means to avoid poverty and related social disorders.

C. *Legislatively Speaking*

There are also signs in some recent legislative initiatives of the potential for greater success for a consistent ethic that better integrates marriage and family issues.

The first and very significant sign of the power of the marriage and family issue was the passage of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA).¹⁰⁴ Passed by a strong bipartisan majority,¹⁰⁵ its first and second congressional findings recite that “[m]arriage is the foundation of a successful society,”¹⁰⁶ and that marriage is the “essential institution . . . which promotes the interests of children.”¹⁰⁷ Currently, amendments proposed to PRWORA which are pending at the time of this draft, would authorize a “Fatherhood Program,” part of which would be directed to helping men prepare for and maintain healthy marriages and married fatherhood.¹⁰⁸ Funds for “demonstration service projects and activities designed to test the effectiveness of various approaches” for promoting marriage and responsible fatherhood would also be

102. Michael J. Rochon, *Showing 'Em How Marriage Is Done*, Indianapolis Star News 1D (Apr. 6, 2001) (available at http://www.allianceformarriage.org/site/PageServc_?PageName_010406_INSTARnews).

103. See Johnson, *supra* n. 101 (“The church program, funded under the federal initiative, sponsored a ‘healthy marriages’ conference in Oakland last week where 150 people from 15 states—including quite a few reverends—spent two days in a marriage-education certification program.”).

104. Pub. L. No. 104-193, 110 Stat. 2105 (1996) (codified as amended in various sections of 42 U.S.C.).

105. See Jill Stewart, *State Throws Money at Welfare Lobby*, Daily News (L.A., Cal.) V1 (Mar. 6, 2005) (available at 2005 WLNR 3570394) (“President Bill Clinton’s 1996 bipartisan welfare reforms are moving millions of people into jobs in 20 key states.”); Wash. Times Editorial Bd., *Welfare Spending: Up 7 Percent a Year*, Wash. Times A16 (Dec. 4, 1996) (available at 1996 WLNR 300896) (PRWORA passed 328-101 in the House and 78-21 in the Senate).

106. Pub. L. No. 104-193 § 101(1), 110 Stat. at 2110.

107. *Id.* at § 101(2), 110 Stat. at 2110.

108. *Personal Responsibility, Work, and Family Promotion Act of 2005*, H.R. 240, 109th Cong. § 119 (Jan. 4, 2005).

made available.¹⁰⁹ These efforts continue to garner bipartisan support¹¹⁰ and predominantly favorable reactions, save from those who continue to be convinced that the well-being of the poor is strictly about money, or that marriage is inherently problematic due to the possibility of domestic violence.¹¹¹ To disagree with such groups is not to condone any strategy that fails to assist the poor with the basic services—predominantly child care, education, and job training—needed to help families in economic crisis transition to stability. It is simply to point out that it is no longer possible to overlook the demonstrated importance of assisting marriage and family directly as a part of any effective, integrated strategy to combat poverty.

Closely related to the efforts to save marriages, and thus protect children's well-being, are the legislative efforts to prevent out-of-wedlock sexual involvement and pregnancy. Expert literature nearly speaks with one voice to the fact that there is a close relationship between premarital sex, cohabitation, and divorce.¹¹² Delaying or preventing teen sexual activity has become a full-blown national effort. We have come to a point where, while there remain divisions about how *best* to reduce teen sexual activity and pregnancy, there is agreement it must be reduced. This is not nothing. Today, only the most extreme sex activists, such as Planned Parenthood (authors of the "I Had an Abortion" t-shirts, "Celebrate Choice" Christmas cards,¹¹³ and "[t]he Abortion Pill 'Grabbit' Pen Holder"¹¹⁴), continue to treat teen sexual activity as a combination of self-realization, entertainment,

109. *Id.*

110. See Cheryl Wetzstein, *Senate Committee OKs Welfare Reform Measure: Bipartisan Bill Does Out \$6 Billion for Child Care*, Wash. Times A10 (Mar. 10, 2005) (available at 2005 WLNR 3718322) ("[T]he bill represented substantial compromises by Republican and Democratic members, Finance Chairman Charles E. Grassley, Iowa Republican, said yesterday at a session to review the bill.").

111. For example, Lisalyn R. Jacobs, V.P. Govt. Rel., Leg. Momentum (formerly NOW Leg. Defense and Education Fund) said,

Emphasis on marriage and family formation sidesteps the underlying causes of poverty . . . such as lack of job training and education, ongoing sex and race discrimination, violence and lack of childcare . . . Further, government involvement in highly personal decisions such as marriage is a departure from our most basic principles; . . . critically important is the fact that because of the prevalence of violence among women forced to turn to public assistance, promotion of marriage can raise particular and severe dangers.

H.R. Subcomm. on Human Resources of the Ways & Means Comm., *Welfare Reform Reauthorization Proposals*, 109th Cong. (Feb. 10, 2005) (testimony of Lisalyn R. Jacobs) (available at <http://waysandmeans.house.gov/hearings.asp?formmode=view&id=2496>).

112. See e.g. Jay Teachman, *Premarital Sex, Premarital Cohabitation, and the Risk of Subsequent Marital Dissolution among Women*, 65 J. Marriage & Fam. 444, 445, 450, 453 (2003) (Premarital sex and cohabitation are associated with approximately a 33% increased likelihood of divorce as compared with marriages not preceded by cohabitation and up to a 166% increased likelihood of divorce for marriages in which the wife both had premarital sex with a man other than her husband and cohabited with him. "[V]irtually all studies of the relationship between premarital cohabitation and divorce have found a positive link.").

113. See Fr. Johannes L. Jacobse, *Planned Parenthood's Christmas Card: "Choice on Earth" or "Slaughter of the Innocents"?*, <http://www.orthodoxytoday.org/articles4/JacobsePPCard.shtml> (posted Dec. 18, 2004); Scott Williams, *'I Had an Abortion' T-Shirt Stirs Debate*, <http://www.jsonline.com/news/metro/aug04/248331.asp> (Aug. 2, 2004).

and an opportunity to co-opt teenagers and others to their positions on abortion and other political issues.¹¹⁵ Only outlying voices continue seriously to argue that teen sexual activity can be morally and practically neutral.¹¹⁶ In sum, today's debate about how best to reduce out-of-wedlock sexual involvement and pregnancy represents real progress, even if we are a long way from agreement on the very best methods to use.

D. *Philosophically Speaking*

One final but foundational indication that a legislative agenda for marriage and family stability could give the consistent ethic greater coherence and practical success is the fact that this agenda understands the two-fold nature of freedom: freedom as requiring both truth telling and solidarity with the vulnerable. As to truth telling, the marriage and family agenda regularly relies on the findings of experienced family researchers about what helps and what hurts couples and children. It does not base its conclusions upon tradition alone, or the preferences of the privileged, but upon increasingly available information about the behavioral correlations of successful family life.¹¹⁷

114. Planned Parenthood, *Planned Parenthood Store*, <http://store.ppfastore.org/miabpigpenho.html> (accessed Sept. 5, 2005) (Planned Parenthood's online store offers an abortion pill necklace pen holder advertised as follows: "Mifepristone, The Abortion Pill 'Grabbit' Pen Holders. Both fun and functional—you'll never be without a pen when you have the Mifepristone [RU-486] Grabbit pen holder around your neck. And they convey an important message! The copy on the pen holder reads: It's Safe. It's Private. And it's finally here.").

115. See e.g. Planned Parenthood, *Sexuality and Relationship Info You Can Trust From Planned Parenthood*, <http://www.teenwire.com> (accessed Sept. 5, 2005) (website especially for teenagers on which Planned Parenthood offers advice about having sex and advice on advocating in favor of legal abortion).

116. See e.g. Mac Edwards, *Sexual Pleasure Has Central Place in the Human Potential*, <http://www.siecus.org/pubs/srpt/srpt0038.html> (accessed Sept. 6, 2005) ("If sexual expertise is expected of adults, children must get a chance to understand the rudiments."); Janine Sharell, *Elders Finds Herself a Campaign Target*, <http://www.cnn.com/ALLPOLITICS/1996/news/9610/09/elders/index.shtml> (Apr. 11, 2005) ("Elders has no regrets about saying masturbation should be part of sex education. . .").

117. See Oklahoma Marriage Initiative, *Oklahoma Marriage Initiative*, <http://www.okmarriage.org> (accessed Sept. 7, 2005) (The Oklahoma Marriage Initiative, one of the most successful efforts among the states, supports a variety of programs to stabilize marriage, including marital communications, conflict skills training, and marriage mentoring.); *Personal Responsibility, Work, and Family Promotion Act of 2005*, H.R. 240, 109th Cong. § 119(b) (Jan. 4, 2005) (The changes proposed to the PRWORA in the current (109th) Congress include authorization for funding projects intended to demonstrate empirical success with helping prepare for and sustain successful marriages.); see also The Coalition for Marriage, Family & Couples Education, *Smart Marriages, Directory*, http://www.smartmarriages.com/directory_browse.html (accessed Sept. 7, 2005) (lists a great variety of programs responding to research concerning what causes marriages to fail); Prevention and Relationship Enhancement Program, *State of the Art Tools for an Extraordinary Marriage, Overview of PREP*, http://www.prepinc.com/main/docs/overview_prep.pdf (accessed Sept. 7, 2005) (An increasingly widely used program, PREP continually seeks evidence of what causes marriages to fail and what programs might address these specific issues.).

As to solidarity, marriage and family activists also regularly study and engage the particularly detrimental effects of failed families upon the poor and upon immigrants and minority Americans. They propose that a genuine desire to assist such groups must include addressing the causes of out-of-wedlock births and marital failures, even if they do not agree on the degree to which the federal government should characterize or promote marriage as a sort of “cure” for poverty.¹¹⁸

Both Democrats and Republicans, liberals and conservatives, can see their ideals reflected in such a synthesis, and there is perhaps enough there for advocates of both perspectives on freedom to begin to see the importance of the other’s proposed “recipe” for freedom.

Having set out the case for, and the promise of, integrating marriage and family issues into the consistent ethic, it must be noted that there are both opportunities and impediments when it comes to the Catholic Church undertaking such a plan. It is to these we now turn.

IV. OPPORTUNITIES AND OBSTACLES: THE CHURCH’S ROLE IN REALIZING THE PROMISE OF THE CONSISTENT ETHIC

There are a number of obstacles to the Church’s communicating how important marriage and family issues are to the success of the consistent ethic. These obstacles, and how the Church might overcome them, are considered immediately below.

First, there is a tendency within the Catholic Church in the United States to use a particular, formulaic recitation of the contents of the consistent ethic. This “formula” includes listing a great number of issues involving human life and dignity at the same time, often without describing how they work together or mutually support one another. While a reader might come away from such a recitation understanding quite basically that all of these issues concern respect for human life, they could easily fail to understand the empirical relationships between issues.¹¹⁹ Sometimes, these link-

118. See e.g. Ronald Brownstein, *Washington Outlook: Promise of Reducing Poverty May Be Found Inside Marriage Vows*, L.A. Times A5 (Oct. 6, 1997) (available at LEXIS, Legal library, ALLNWS file, or <http://www.smartmarriages.com/lATimes.html>); Robert Rector, *Welfare Reform and The Healthy Marriage Initiative*, <http://www.heritage.org/Research/Welfare/tst021005a.cfm> (Feb. 10, 2005) (“Nearly 80 percent of long term child poverty occurs in broken or never-married families. . . . The beneficial effects of marriage on individuals and society are beyond reasonable dispute, and there is a broad and growing consensus that government policy should promote rather than discourage healthy marriage.”).

119. See generally U.S. Conf. of Catholic Bishops, *Cardinal Keeler Urges Senate to Reject Pro-Abortion Test for Judicial Nominees*, <http://www.usccb.org/comm/archives/2005/05-004.shtml> (Jan. 6, 2005) (William Cardinal Keeler wrote a letter to each Senator concerning some Senators’ intention to filibuster all pro-life judicial nominees. “As you know, the [USCCB] is active in the courts on many matters, especially in cases on abortion, the death penalty, civil rights, discrimination and the role of religion in society. . . . This ethic [the commitment to the right to life] has profound consequences not only for abortion, but for many other areas of life, including the death penalty, the application of scientific research to human subjects, the right to

ages surface,¹²⁰ but usually momentarily and unaccompanied by an explanation of how the linkages operate.

The most impassioned statements about the link between family life, respect for life, and human dignity tended to come from Pope John Paul II, who can lay claim to scholarly and pastoral expertise on the family since his days as a parish priest.¹²¹ In an address to the diplomatic corps at the beginning of 2005, Pope John Paul II spoke of families as the “fundamental and irreplaceable condition[] for the happiness of the individual spouses, for the raising of children, and for the well-being of society, and indeed for the material prosperity of the nation”¹²² In his 1981 apostolic exhortation *Familiaris Consortio* (*On the Role of the Christian Family in the Modern World*), he wrote, “Whoever destroys this fundamental fabric of human coexistence, by not respecting its identity and by upsetting its tasks, causes a profound wound in society and provokes harm that is often irreparable.”¹²³ He has noted how a strong family increases the possibility that its members will respect and protect human life.¹²⁴ Cardinal Ratzinger, prefect of the Congregation for the Doctrine of the Faith during the papacy of John Paul II, and now Pope Benedict XVI, has assigned the family the role as the “moral guarantor of continuity for the future,” critical to social well-being,

adequate health care, and the role of the state in promoting the common good.”); Theodore Cardinal McCarrick, *Interim Reflections Task Force on Catholic Bishops and Catholic Politicians*, <http://www.usccb.org/bishops/intreflections.shtml> (June 15, 2004) [hereinafter *Catholic Conference Interim Reflections*] (“We believe all life is precious and deserves protection, especially unborn human life. We believe the Gospel teaches that the poor deserve special priority. We share our Holy Father’s passion for peace and justice.”); U.S. Conf. of Catholic Bishops, *Catholics in Political Life*, <http://www.usccb.org/bishops/catholicsinpoliticallife.shtml> (June 2004) (“We have the duty to teach about human life and dignity, marriage and family, war and peace, the needs of the poor and the demands of justice.”); U.S. Conf. of Catholic Bishops, *Faithful Citizenship: A Catholic Call to Political Responsibility* 2, 11-13, <http://www.usccb.org/faithfulcitizenship/faithfulcitizenship03.pdf> (2003) (The U.S. bishops listed among their concerns the unborn, the hungry, those who lack health care, those lacking freedom of faith, and families in Latin America, Africa and Asia, including all of their basic yet unmet needs. When the document discusses the family, it does not tie it to the choice for life or to the likelihood of economic well-being. Education is not examined in its economic perspective save to say it helps young people “lead productive lives,” nor are impediments to education tied to marriage or family life.)

120. See McCarrick, *supra* n. 119 (Cardinal McCarrick, after mentioning the Church’s attention to the abortion issue, continues: “[b]ut . . . those things which make life truly human—faith and family, education and work, housing and health care—demand our attention and action as well.” Marriage and family are mentioned together as subjects the Church needs to better address for helping to “protect human life from the moment of conception to natural death.”).

121. George Weigel, *Witness to Hope: The Biography of Pope John Paul II* ch. 3 (Cliff St. Books 1999).

122. Pope John Paul II, *State of the World, According to John Paul II: Address to the Diplomatic Corps Accredited to the Holy See* ¶ 5, <http://zenit.org/english/>; *select Documents* (Jan. 10, 2005).

123. *Id.*

124. Pope John Paul II, *Familiaris Consortio* No. 32, ¶ 46 (Nov. 22, 1981) (available at http://www.vatican.va/holy_father/john_paul_ii/apost_exhortations/documents/hf_jp-ii_exh_19811122_familiaris-consortio_en.html).

and even the “order of law.”¹²⁵ It is also worth noting that these thoughts were presaged by *Gaudium et Spes*, (Vatican II’s Constitution on the Church in the Modern World), which was influenced by the thought of the archbishop of Krakow, Karol Wojtyla.¹²⁶ *Gaudium et Spes* mentions the family first in its list of “[s]ome [m]ore [u]rgent [p]roblems.”¹²⁷ It attained primacy of place due to its vital link with the “well being of the individual person and of both human and Christian society.”¹²⁸

Building on the intellectual traditions of Pope John Paul II, the Church in the United States, with all of its varied pastoral, doctrinal, and social-services expertise in the family, could better explore and explain the ample evidence available of the close relationship between the subjects it accords such prominence—abortion, poverty, marriage and the family—and the success of the consistent ethic.

Secondly, there may be a concern in the U.S. Catholic Church that legislative emphasis on stable marriages and families will be interpreted as hard-heartedness toward all nontraditional families. But the Church has often had to distinguish its ultimate hopes and goals from its continued willingness to assist those who deviate from them. It has never faltered in this assistance.

In the area of abortion, for example, the Church constantly struggles to end legal abortion while assisting post-abortion women.¹²⁹ It also repeatedly assures homosexuals of its respect for their persons,¹³⁰ and provides a great deal of assistance to victims of AIDS,¹³¹ while working to prevent same-sex marriage. It is fully capable of seeking to encourage stable marriages and the prevention of divorce while continuing its pastoral and charitable care involving nontraditional families. This may not be an easy mode of operating in a culture with a short attention span. It is in fact likely that

125. See e.g. Zenit.org, *Cardinal Ratzinger on Laicism and Sexual Ethics: “An Aggressive Secular Ideology Which is Worrying”*, <http://zenit.org/english/select> Archives, Nov. 19 (Nov. 19, 2004).

126. Weigel, *supra* n. 121, at 166.

127. Pope Paul VI *Gaudium et Spes*, Nos. 46-52 (Dec. 7, 1965) (available at http://www.vatican.va/archive/hist_councils/ii_vatican_council/documents/vat-ii_cons_19651207_gaudium-et-spes_en.html).

128. *Id.* at No. 47.

129. See e.g. *There Is Hope after Abortion*, <http://hopeafterabortion.org>; *Select Contact Us* (accessed Sept. 10, 2005) (sponsored by the Secretariat for Pro-life Activities of the USCCB, promising “There is hope after abortion,” and inviting women who have had abortions to call “Project Rachel” for help).

130. U.S. Conf. of Catholic Bishops, *Statement on Same-Sex Marriage*, <http://www.usccb.org/laity/marriage/samesexstmt.shtml> (July 1996) (“[T]he Catholic Church teaches emphatically that individuals and society must respect the basic human dignity of all persons, including those with a homosexual orientation.”).

131. See e.g. Catholic Charities, *AIDS Ministry, “What’s in a Name?”*, <http://www.catholiccharitiesoregon.org/503-231-4866/services/aids.asp> (accessed Sept. 7, 2005) (“Most of the pastoral ministries to Oregonians living with HIV or AIDS disease come from Catholic Charities AIDS Ministry—without regard to religious affiliation.”).

the Church has some regret that positive efforts to strengthen marriage may be conflated or overshadowed in the public mind with efforts to prevent same-sex partners from achieving marriage. Yet, these kinds of dilemmas and distinctions are common in the practice and the teaching of the Catholic faith. Avoiding them avoids the truth and is no kindness to the children of today or tomorrow.

Thirdly, another possible obstacle faced by the Church is its reluctance to see the government provide fewer dollars to anti-poverty efforts by using existing, not new, funds for programs on marriage and family. This reluctance shows through in the phrasing of a question in a background document given to social-justice ministry leaders at an annual gathering sponsored by the USCCB's Office of Social Development and World Peace. It asks, "Why should government resources be spent on marriage programs?" which was intended to be answered by the argument, "Others argue that marriage is irrelevant to poverty and government should not provide resources to low-income couples seeking help with their relationship[s]." ¹³² In their internal documents, both the Family, Laity, Women & Youth committees and the Social Development and World Peace offices of the USCCB stress that they believe that strengthening marriage and families has an "important" place in poverty reduction efforts. But they make it clear that they support new money, not existing TANF (Temporary Assistance to Needy Families) money, to accomplish this. ¹³³ They also take care to mention that marriage-strengthening efforts should leave open the possibility that women may leave abusive relationships without penalty. ¹³⁴

It is consonant with the Church's teachings, and with the current needs of the many troubled families in the United States, to warn against short-changing families today in pursuit of future hopes for the family. Yet, care should be taken not to let these sentiments be interpreted as undercutting the actual relationship that does exist between stable family forms, education, and poverty—perhaps by explicitly mentioning this relationship while continuing to pursue help both for the families of today and tomorrow.

A fourth and final impediment to the integration of marriage and family issues into the consistent ethic is the possibility of charges that the Church is violating the proper separation of church and state by speaking on marriage and family legislation. This concern is especially pertinent given the historical and practical fact that church and state both have intrinsic and sometimes overlapping interests in these areas. In particular, both are concerned with the well-being of children, which is dependent on stable fami-

132. U.S. Conf. of Catholic Bishops, *The Annual Catholic Social Ministry Gathering Feb. 20-25, 2004*, "TANF Reauthorization: An Opportunity to Address Poverty," <http://www.usccb.org/sdwp/asmg-04updates.htm#6> (Feb. 25, 2005).

133. U.S. Conf. of Catholic Bishops, *Hearing on TANF Reauthorization Proposals*, <http://www.usccb.org/sdwp/national/tanfrest05.htm> (Feb. 10, 2005).

134. U.S. Conf. of Catholic Bishops, *supra* n. 132.

lies. The Church has additional religious concerns, of course, such as the role parents play in modeling God's love to their children and in passing on the Christian faith. Yet, both church and state increasingly understand the role healthy families play in the success of communities and even nations.

For several reasons, the Church ought not to let this concern hinder its efforts here. Over centuries, the Church has developed an expertise in conveying in the public square ideas drawn from natural law and thus accessible to reason. This has been the Church's method in the abortion debate, where it regularly deploys the best secular evidence about "the way things are" in service of a pro-life message.

It is also the case that the Church has vital, practical experience with the needs of the poor stemming from its charitable works. When representatives of the USCCB speak to the United States Congress on matters concerning social services, they commonly call this to mind: "The Bishops' Conference . . . draws upon the Church's experience living with, serving, and welcoming as members the poor among us. The Catholic community is the largest nongovernmental provider of human services to poor families. We meet the poor in our soup kitchens, shelters and Catholic Charities agencies."¹³⁵ This should provide the Church the kind of confidence in speaking about the needs of the poor that few voices could match.

With its experiences of teaching to a pluralistic society, and serving so many of its members, the Church is not likely to misspeak or overreach when it takes up the cause of marriage and family in the public square. It should, rather, speak often and with confidence about the needs, especially of the poor, for stable marriages and families.

One final note is the fact of lower divorce rates among practicing Catholics, as well as the fact that Catholic practices and teachings regarding marriage are increasingly finding scholarly support among those looking for ways to strengthen marriage. These should give confidence to the Church to continue to spread its marriage and pro-family message in the public square. It turns out, for example, that avoiding cohabitation and premarital sex helps avoid divorce.¹³⁶ Engaging in significant and directed preparation, such as the type the Church requires in its Pre-Cana programs, does too.¹³⁷ Additionally, attempting to live up to a standard of behavior external to the couple has been part of what kept marriages from falling apart in the past.¹³⁸ Christians are taught specifically that, for love of God, one another, and children, their marriage is expected to be permanent, exclusive, and responsibly fruitful. It should be a sign to the world of "what

135. See Curran, *supra* n. 36.

136. Teachman, *supra* n. 112, at 450.

137. McCarrick, *supra* n. 119 (concerning PREP, the most well known secular pre-marital preparation program).

138. See Cherlin, *supra* n. 66, at 848.

God's love looks like."¹³⁹ The disappearance of such external standards is correlated with the harmful "deinstitutionalization" of marriage in society at large; but such standards have never disappeared from the Church's teachings.¹⁴⁰

V. CONCLUSION

Marriage and the family have been buffeted by political and cultural winds like few other institutions in recent decades; both children and communities have felt the effects. We have today, however, something not equally available even thirty years ago: a surfeit of good empirical evidence about the centrality of the family, built on marriage, to human flourishing. This evidence indicates that we have little time to waste and no time for prejudices—against men, women, marriage, or religion—masquerading as serious public policy. We know more completely and surely than ever before the effects on children of their family lives. The presence of stability, security, sincere interest, and sacrificial love (or not) in a home has much to do with its inhabitants' ability to respect life and to attain a dignified standard of living. Any legislative agenda sincerely directed to respecting life and to providing a dignified standard of living for every human being cannot fail to understand how these objectives are achieved by way of the family.

139. Pope John Paul II, *supra* n. 124, at No. 20 (marriage as a sign of the "unfailing fidelity with which God and Jesus Christ love each and every human being").

140. Cherlin, *supra* n. 66, at 852.