

CATHOLIC SOCIAL THOUGHT, SOCIAL SECURITY DISABILITY, AND INCLUSION OF THE DISABLED IN THE AMERICAN ECONOMY

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I. OUR ANTIQUATED SOCIAL SECURITY DISABILITY PROGRAM

According to the Centers for Disease Control and Prevention, one in five Americans have a disability, defined as a physical or mental impairment that interferes with vision, cognition, mobility, self-care, or independent living.¹ Although most people with disabilities work, a person with a disability is more than three times as likely to live in poverty than a person without a disability.² In recent years, the number of disabled persons who have left the workforce because they have been deemed totally disabled by the Social Security Administration (“SSA”) has dramatically increased. In 1990, 4.3 million Americans received social security disability (“SSD”) benefits; by 2012, this number skyrocketed to almost eleven million recipients.³ From 1990 to 2015, the percentage of working-age persons receiving SSD more than doubled from 2.3 percent to five percent.⁴ Unfortunately, SSD payments are barely adequate to keep disabled Americans out of poverty. According to SSA’s

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¹ Jennifer Calfas, *CDC: 1 in 5 American Adults Live with a Disability*, USA TODAY (July 31, 2015, 9:54 AM), <http://www.usatoday.com/story/news/nation/2015/07/30/american-adults-disability/30881975/>.

² INST. OF MED. OF THE NAT’L ACADS., *IMPROVING THE SOCIAL SECURITY DISABILITY DECISION PROCESS* 35 (John D. Stobo et al eds., 2007) (reporting that the poverty rate among the disabled is about twenty-six percent compared to eight percent for those without a disability).

³ Jagadeesh Gokhale, *Reforming SSDI*, REGULATION, Spring 2013, at 56. The number of disability recipients has remained at about this level through June 2016, with 10,727,541 recipients. See *Number of Social Security Beneficiaries*, SOC. SEC. ADMIN., www.ssa.gov/oact/progdata/icpGraph.html (last visited July 17, 2016).

⁴ Michael Sargent, *How to Reform Social Security Disability so Program Focuses on Needs of Disabled Americans*, DAILY SIGNAL (Feb. 26, 2015), www.dailysignal.com/2015/02/26/reform-social-security-disability-program-focuses-needs-disabled-americans.

statistics, the average monthly SSD payment for January 2016 was only \$1,166.⁵ This amounts to about \$13,992 annually, significantly less than the annual wages of a worker employed full time at the current minimum wage—approximately \$15,080.⁶ Hence, for those who are troubled by the intractable problem of poverty in America, the significant rise in the number of SSD recipients should be alarming. SSD payments provide barely enough to survive and do little more; because most SSD recipients never leave the disability rolls, when SSA finds fellow citizens to be entitled to SSD, SSA in effect condemns them to a poverty-level existence for life.⁷

The SSD program is obsolete, based on a simplistic view of disability that has been superseded by more recent legislation, and in need of fundamental reform. The most serious flaw of the SSD program is its incentives to relegate persons with disabilities to the margins of our society by conditioning SSD on claimants' ability to prove an inability to work.⁸ The SSD program is based on an extreme either/or view of disability—either one is totally disabled or not at all.⁹ Hence, a person with a significant disability that

⁵ 2016 Social Security Changes, SOC. SEC. ADMIN., www.ssa.gov/news/press/factsheets/colafacts2016.html (last visited November 28, 2016).

⁶ The current annual poverty guideline for a single person is \$11,770; for a family of two, it is \$15,930. 2015 Poverty Guidelines, ASPE (Sept. 3, 2015), www.aspe.hhs.gov/2015-poverty-guidelines.

⁷ See Chana Joffe-Walt, *Unfit for Work: The Startling Rise of Disability in America*, NAT'L PUB. RADIO, <http://apps.npr.org/unfit-for-work> ("Going on disability means, assuming you rely only on those disability payments, you will be poor for the rest of your life.").

⁸ The Social Security Act defines disability as the "inability to engage in *any* substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than 12 months . . ." 42 U.S.C. § 423(d)(1)(A) (2012) (emphasis added). Substantial gainful activity is essentially a synonym for work. Hence, the Act requires one to prove a complete inability to work to receive assistance.

⁹ I have argued elsewhere that the SSD program must be reformed to eliminate the either/or fallacy that lies at the heart of the program by, among other things, providing for partial disability payments for persons with significant disabilities that nonetheless retain the ability to perform some types of work. See Ken Matheny, *Cleveland v. Policy Management Systems Corp. and the Need for a Consistent Disability Policy*, 21 HAMLIN J. PUB. L. & POL'Y 283, 310-312 (2000) (arguing that providing partial SSD payments would bring the SSD program into line with the policy of the Americans with Disabilities Act, which exists to enable persons with disabilities to work when possible). The Americans with Disabilities Act, unlike SSD, incorporates a more nuanced understanding of disability in that it acknowledges that most persons with disabilities can, with appropriate support,

limits, but which does not necessarily preclude, the ability to work must nonetheless prove total inability to work to receive assistance. Conditioning assistance on a showing of total inability to work provides incentives for persons with significant, but not totally disabling impairments, “to remain idle and dependent on [SSD] benefits.”¹⁰ Because persons with disabilities are required to leave the workforce to receive very modest benefits, they “exist on the margins of American economic life, largely outside of the world of work and with little disposable income.”¹¹ Unfortunately, being relegated to the margins of society, banished from the world of work, is very likely to last for the rest of a disabled person’s life, since less than one half of one percent of SSD recipients ever return to work.¹² One reason why very few SSD recipients return to work is that proving entitlement to SSD benefits “is an extremely lengthy, arduous, and expensive process.”¹³ SSD claimants frequently must battle SSA for well over a year,¹⁴ and if they are successful, usually have to pay a significant amount of their back benefits to their attorneys, who are necessary to guide them through the bewildering, complex process of proving entitlement to SSD benefits.¹⁵

It is true that SSA provides incentives to SSD recipients to return to the workforce, such as a trial work period, which allows recipients to test their ability to work without losing their benefits.¹⁶ However, the trial work period and other incentives that SSA provides to encourage recipients to return to the workforce have accomplished very little, which is hardly surprising. Once a SSD claimant has fought for over a year (often much longer) to prove that she is totally disabled, she is not likely to risk losing her benefits by returning to work under any circumstances for fear that SSA will ultimately determine that she is in fact not totally disabled and not

work. *See generally* The Americans with Disabilities Act, 42 U.S.C. §§ 12111-17 (1990).

¹⁰ Gokhale, *supra* note 3, at 56.

¹¹ Mark C. Weber, *Beyond the Americans with Disabilities Act: A National Employment Policy for Persons with Disabilities*, 46 BUFF. L. REV. 123, 127 (1998).

¹² *See* Pamela Villarreal, *Disability Versus Work*, NAT’L CTR. FOR POL’Y ANALYSIS (June 21, 2012), <http://www.ncpa.org/pub/ib109> (citing SSA’s statistics).

¹³ Gokhale, *supra* note 3, at 57.

¹⁴ *Id.*

¹⁵ Section 206(a)(2)(A) of the Act provides that representatives are, in general, entitled to twenty-five percent of a claimant’s back benefits. 42 U.S.C. § 406(a)(2)(A)(2012).

¹⁶ *See* 20 C.F.R. § 404.1592 (2006) (setting forth the trial work period provisions).

entitled to further payments.¹⁷ So, SSD recipients stay on the disability rolls for many years and, during that time, whatever skills they acquired from prior work experience deteriorate or become obsolete.¹⁸ By condemning persons with disabilities to live at the margins of our society, banished from the world of work and the dignity and self-esteem that are the natural fruits of participation in the economic life of our society, our antiquated SSD program robs many persons with disabilities of the opportunity to participate in our economic life and to contribute their talents to the common good of our society.¹⁹ Relegating the disabled to the margins of society and a life barely above the poverty level is especially tragic because it has long been known that most persons with disabilities can work.²⁰

II. CATHOLIC SOCIAL TEACHING, THE DISABLED, AND THE RIGHT TO PARTICIPATE IN ECONOMIC LIFE

The heart of Catholic social teaching is its passionate concern for the most vulnerable members of our society, an approach often referred to as the preferential option for the poor.²¹ A crucial element of this preferential option for the poor is Catholic social teaching's emphasis on the right of all people, particularly the marginalized and vulnerable, to participate in the economic and

¹⁷ Gokhale, *supra* note 3 (stating that the lengthy, difficult process of qualifying for SSD saps recipients of the "physical and psychological capacities to return to work"). *See also*, Motoko Rich, *Disabled, but Looking for Work*, NY Times (April 6, 2011), www.nytimes.com/2011/04/07/business/economy/07disabled.html (noting that many beneficiaries build a case to prove they are disabled and fear losing these benefits they fought so hard to obtain).

¹⁸ Gokhale, *supra* note 3 (noting that, during the time SSD recipients are forced out of the workforce, "their health condition may worsen and their psychological preparedness to return to work may erode").

¹⁹ Matheny, *supra* note 9 at 310-11 (arguing that persons with disabilities have a right to work, which is often denied them by the SSD program).

²⁰ *See* Richard V. Burkhauser & Mary C. Daly, *Employment and Economic Well-Being Following the Onset of a Disability*, in *DISABILITY, WORK AND CASH BENEFITS* 59, 87 (Jerry L. Mashaw et al. eds., 1996) (pointing out that "most people with disabilities are capable of work and should have the same access to job programs and the same responsibility to leave the welfare rolls as other Americans").

²¹ *See, e.g.*, THOMAS MASSARO, *LIVING JUSTICE: CATHOLIC SOCIAL TEACHING IN ACTION* 112 (The Classroom ed. 2008) (presenting the observation that the Church's option for the poor is "an abiding commitment, grounded in scripture and tradition, to support social justice by placing oneself on the side of the vulnerable and marginalized").

political life of their respective countries.²² Professor Meghan Clark also stresses that the right (and duty) of all persons to participate in the life of their societies “is absolutely crucial for both human rights and solidarity.”²³

Persons with disabilities are among the marginalized and vulnerable, but Catholic social teaching has had surprisingly little to say specifically about the unique problems facing the disabled. To be sure, the Church strongly affirms the dignity and worth of the disabled:

Persons with disabilities are fully human subjects with rights and duties: “in spite of the limitations and sufferings affecting their bodies and faculties, they point up more clearly the dignity and greatness of man.” Since persons with disabilities are subjects with all their rights, they are to be helped to participate in every dimension of family and social life at every level accessible to them and according to their possibilities.

The rights of persons with disabilities need to be promoted with effective and appropriate measures: “It would be radically unworthy of man, and a denial of our common humanity, to admit to the life of the community, and thus admit to work, only those who are fully functional.”²⁴

Hence, while Catholic social teaching has not fully developed a theology of disability, the Church’s strong emphasis on the right of all to participate in the life of their societies clearly includes the right and duty of persons with disabilities to participate to the maximum extent possible in the life of their society, rather than live as spectators on the margins, receiving disability benefits that allow them, at best, to barely escape a life of poverty. And clearly, one of

²² See *id.* at 86 (“Every person has at once a right and a duty to participate in the full range of activities and institutions of social life. To be excluded from playing a significant role in the life of society is a serious injustice, for it frustrates the legitimate aspirations of all people to express their human freedom.”).

²³ MEGHAN J. CLARK, *THE VISION OF CATHOLIC SOCIAL THOUGHT: THE VIRTUE OF SOLIDARITY AND THE PRAXIS OF HUMAN RIGHTS* 8 (2014).

²⁴ PONTIFICAL COUNCIL FOR JUSTICE & PEACE, *COMPENDIUM OF THE SOCIAL DOCTRINE OF THE CHURCH* § 148 (1st ed. 2005) (quoting Encyclical Letter, John Paul II, *Laborem Exercens* § 22) (Sept. 14, 1981).

the keys to enabling persons with disabilities to participate in the life of our society is the right to work.

One of the defining characteristics of Catholic social teaching is its emphasis on the meaning of work, the dignity of those who work, and the fundamental rights that all workers possess.²⁵ Work is the primary activity that allows persons to participate not only in the ongoing work of creation, but also to participate in the life of the community by promoting the common good; all persons who are capable of work must have a place at the great “workbench” of the world, working alongside their fellow workers to contribute to the common good and to “participate in God’s creative activity.”²⁶ As the United States Conference of Catholic Bishops stressed, social justice demands that a society act boldly to ensure that all persons who are able must have the opportunity to participate in the life of their society: “*Social justice implies that persons have an obligation to be active and productive participants in the life of society and that society has a duty to enable them to participate in this way.*”²⁷

The right and duty of persons to use their talents through work to participate in the ongoing creative activity of God and man has been a central theme of Catholic social teaching since its inception—the publication in 1891 of Pope Leo XIII’s enormously important encyclical, *Rerum Novarum*.²⁸ *Rerum Novarum* was the first encyclical to address the dire circumstances of workers in the late nineteenth century; it was by no means a radical document and rejected socialism.²⁹ However, the Pope courageously affirmed basic rights that workers should have, including the right to form unions

²⁵ See, e.g., MICHAEL J. SCHUCK, THAT THEY BE ONE: THE SOCIAL TEACHING OF THE PAPAL ENCYCLICALS 1740-1989 147 (1991) (citing Saint John Paul II’s teaching that through work “humanity participates in God’s creative activity through labor”). Because in Catholic social teaching, work is the primary way that humans participate in God’s ongoing creative activity in the universe, work takes on supreme importance in Catholic social teaching.

²⁶ See RICHARD A. SPINELLO, THE ENCYCLICALS OF JOHN PAUL II: AN INTRODUCTION AND COMMENTARY 118-19 (2012) (discussing some of the central points of Saint John Paul II’s encyclical, *Laborem Exercens*).

²⁷ U.S. CATHOLIC BISHOPS, ECONOMIC JUSTICE FOR ALL: PASTORAL LETTER ON CATHOLIC SOCIAL TEACHING AND THE U.S. ECONOMY 17 (1986).

²⁸ See generally DAVID J. O’BRIEN & THOMAS A. SHANNON, CATHOLIC SOCIAL THOUGHT: THE DOCUMENTARY HERITAGE (Orbis Books, 1992) (compiling the most important documents that comprise Catholic social teaching in the nineteenth and twentieth centuries).

²⁹ See Encyclical Letter, Pope Leo XIII, *Rerum Novarum* (May 15, 1891), in O’BRIEN & SHANNON, *supra* note 28, at 14, 18-19 (rejecting socialism as a solution for the unjust treatment of workers under capitalism).

and the right to a just wage, and implicit in Pope Leo's affirmation of workers' rights is an important insight into the ultimate purpose of work: "work has the characteristic of being necessary to the human person as a human person."³⁰ The importance of work as an affirmation of the human person continues as a thread through Catholic social teaching, as is the related theme of the right and duty of humans to participate to the extent possible in the common vocation of human society through work.

Subsequent encyclicals built on Pope Leo XIII's insights into the meaning of work and affirmed over and over the right of the human person to participate in the life of God and humanity through work. Pope Pius XI, in *Quadragesimo Anno*, emphasized the eternal significance of a person's participation through work by proclaiming that every worker "by doing his duty is working usefully and honorably for the common good, and is following in the footsteps of him, who, being in the form of God, chose to be a carpenter among men, and to be known as the son of a carpenter."³¹ Jumping ahead thirty years to Pope John XXIII's encyclical, *Mater Et Magistra*, one continues to read of "the nobility inherent in work."³² Pope John XXIII's emphasis on the nobility of work derives from his view that the ultimate end of all economic activity is to provide each person in the human community with an opportunity to "develop and perfect himself."³³ In so doing, the Pope teaches, through work, each person participates in "the labor of Jesus Christ himself . . ."³⁴

Hence, one of the great themes of Catholic social teaching from its earliest years is that through work the human person participates in the life of the community where she dwells, and through work contributes to the common good while participating in the creative activity of Christ himself.

In one of the greatest documents in the history of the Church, *Gaudium Et Spes*, a theological masterpiece produced by the Second Vatican Council, the Church continued to affirm the transcendent value of work and the moral imperative that society should do all in

³⁰ John F. Donovan, *Pope Leo XII and a Century of Catholic Social Teaching*, in *THE HEART OF CATHOLIC SOCIAL TEACHING: ITS ORIGINS AND CONTEMPORARY SIGNIFICANCE* 55, 63 (David Matzko McCarthy ed., 2009).

³¹ Encyclical Letter, Pope Pius XI, *Quadragesimo Anno* (May 15, 1931), in O'BRIEN & SHANNON, *supra* note 28, at 42, 74.

³² Encyclical Letter, Pope John XXIII, *Mater Et Magistra* (May 15, 1961), in O'BRIEN & SHANNON, *supra* note 28, at 84, 102.

³³ *Id.* at 96.

³⁴ *Id.* at 126.

its power to promote each person's right to participate in the life of the community through her labor.³⁵ In *Gaudium Et Spes*, the Council noted "a growing awareness of the exalted dignity proper to the human person, since he stands above all things, and his rights and duties are universal and inviolable."³⁶ Among these inviolable rights, the Council states, is the right to employment.³⁷ Work matters greatly, the Council teaches, because through it, one "not only alters things and society, he develops himself as well. He learns much, he cultivates his resources, he goes outside himself and beyond himself."³⁸

Pope John XXIII's successor, Pope Paul VI, reaffirmed the teachings of the Church regarding work in his encyclical, *Octogesima Adveniens*.³⁹ The Pope strongly reaffirmed the teaching of the Second Vatican Council that "the beginning, the subject, and the goal of all social institutions is and must be the human person."⁴⁰ Consequently, Pope Paul VI observed, "[e]very man has the right to work [and] to a chance to develop his qualities and personality" through his or her work.⁴¹

Hence, from *Rerum Novarum* through *Octogesima Adveniens*, one of the central themes of Catholic social teaching is the inviolable dignity of the human person and the human person's right and duty to participate in promoting the common good, in developing her personality and uniqueness, in participating to the fullest extent possible in the life of the community where she dwells, and in participating in God's creative activity in the world by using her gifts, whether they are great or modest, through work, which is, as mentioned above, both a right and a duty. One of the central

³⁵ Pastoral Constitution on the Church in the Modern World, Second Vatican Council, *Gaudium Et Spes* (Dec. 7, 1965), in O'BRIEN & SHANNON, *supra* note 28 at 166

³⁶ *Id.* at 181.

³⁷ *Id.*

³⁸ *Id.* at 186.

³⁹ Encyclical Letter, Pope Paul VI, *Octogesima Adveniens* (May 14, 1971), in O'BRIEN & SHANNON, *supra* note 28, at 265.

⁴⁰ *Id.* at 270 No. 14 (quoting Second Vatican Council, *supra* note 35, at 180).

⁴¹ *Id.* I would like to note that many of the documents that comprise Catholic social teaching use masculine pronouns to refer to all persons. Nonetheless, I believe that there is nothing in the Church's teaching regarding work and the right to participate in the life of the human community and the redemptive work of Christ that suggests in any way that the Church's teachings do not apply equally to women as well as men. However, in my own comments, I have chosen to use both masculine and feminine pronouns to emphasize that the Church's teachings apply to all persons.

tenets of Catholic social teaching is that “[w]e are fulfilled as human beings when we cooperate with others for our good and theirs.”⁴² One of the most fundamental ways that we cooperate with others is through work. I believe, therefore, based on Catholic social teaching, that a just society is one that fundamentally prioritizes providing the opportunity to work to all of its members to the full extent that each person and the society is able to do so.⁴³

In all of Catholic social teaching, no one has written more powerfully or movingly about work than Saint John Paul II.⁴⁴ For John Paul II, work was the essential key to “the whole social question.”⁴⁵ Work is the key to social justice because, according to John Paul, “work is a fundamental dimension of man’s existence on earth.”⁴⁶ Through work, one more fully becomes a “person,” a term that holds special significance in John Paul’s writings.⁴⁷ It is crucial to note that for John Paul, the transcendent value of work did not depend on the type of work being performed; rather, it depended on

⁴² David M. McCarthy, *Modern Economy and the Social Order*, in THE HEART OF CATHOLIC SOCIAL TEACHING, *supra* note 30, at 129, 134.

⁴³ Accordingly, I will argue below that the Social Security Disability program, despite its noble aim to ensure that everyone who is disabled will have adequate income to ensure a dignified existence, is, nonetheless, fundamentally flawed in that it requires persons with disabilities to leave the workforce and be denied the right and duty to contribute to the common good.

⁴⁴ See generally Ken Matheny, *The Disappearance of Labor Unions and the Social Encyclicals of Popes John Paul II and Benedict XVI*, 23 S. CAL. INTERDISC. L.J. 1, 6-22 (2014) (assessing the enduring significance of *Laborem Exercens*’ teachings on the meaning of work and the dignity of working people). See also SPINELLO, *supra* note 26, at 111-33 (providing an excellent discussion of Saint John Paul II’s social encyclicals); Ken Matheny, *Catholic Social Teaching on Labor and Capital: Some Implications for Labor Law*, 24 ST. JOHN’S J. LEGAL COMMENT. 1, 10-13 (2009) (discussing John Paul’s teachings on the priority of labor over capital and the close relationship between work and the very meaning of existence).

⁴⁵ John Paul II, *supra* note 28, § 3.

⁴⁶ *Id.* § 4.

⁴⁷ See, e.g., RICHARD A. SPINELLO, THE GENIUS OF JOHN PAUL II: THE GREAT POPE’S MORAL WISDOM 103-06 (2006) (discussing the crucial importance of John Paul’s “personalist norm,” which is a fundamental key to his teachings). As Professor Spinello has written, the Great Pope’s personalism insists on “the dignity and absolute worth of every human person.” SPINELLO, *supra* note 26, at 14. John Paul lived under the rule of the Nazis and later under the rule of communism, whose ideology subordinated the person to the state, and John Paul’s personalism “was undoubtedly influenced by his experience of totalitarianism in his native Poland.” *Id.*

the fact that the one performing the work is a person.⁴⁸ Hence, work exists “‘for man’ and not man ‘for work’” because each human being is a person, a being of transcendent value that expresses personhood through performed work.⁴⁹ Everyone who works, whether the work is highly skilled and intellectual or unskilled and physical, is worthy of the greatest respect because through work a person “governs the world with God; together with God he is its lord and accomplishes good things for himself and for others.”⁵⁰ Hence, for Saint John Paul II, work matters greatly because “through work man not only transforms nature, adapting it to his own needs, but he also achieves fulfillment as a human being and indeed, in a sense, becomes ‘more a human being.’”⁵¹

I will have more to say below regarding some possible implications of Saint John Paul II’s powerful teachings about the value and meaning of work, but, before moving on, I think it is necessary to make two points. First, John Paul is by no means saying that a person’s value as a person is achieved solely through work. In John Paul’s writings, all persons are “ends in themselves,” beings with inherent, transcendent value.⁵² For John Paul, all persons’ “rightful due is to be treated as an object of love” and loving each person as a unique being of eternal value is “a requirement of justice.”⁵³ Hence, to return to the focus of this paper—disability policy—there are indeed many, many persons with disabilities so severe that no reasonable person would expect them to work. The fact that such persons cannot work by no means diminishes their value as persons.

Second, on the other hand, if our disability programs were inspired by Catholic social teaching, the emphasis would clearly be on providing every opportunity for every person with severe disabilities who can perform some work, even if only part-time or on a sporadic basis—every reasonable incentive and opportunity to more fully realize her humanity through work, which is the human person’s opportunity to share in the creative work of God.

⁴⁸ John Paul II, *supra* note 28, § 6 (“[T]he basis for determining the value of human work is not primarily the kind of work being done but the fact that the one who is doing it is a person.”).

⁴⁹ *Id.*

⁵⁰ PONTIFICAL COUNCIL FOR JUSTICE & PEACE, *supra* note 24, § 265.

⁵¹ John Paul II, *supra* note 28, § 9.

⁵² SPINELLO, *supra* note 26 at 46 (emphasizing that for Saint John Paul II, persons are always ends in themselves and must never be treated as mere means to an end).

⁵³ KAROL WOJTYLA, LOVE & RESPONSIBILITY 42 (1981).

Unfortunately, our current SSD program discourages work by conditioning economic assistance on a total withdrawal from the labor force. In the light of Catholic social teaching, forcing all persons with disabilities to the margins of society is incompatible with justice and a violation of their dignity as persons.

Saint John Paul II's successors have strongly reaffirmed his teachings on the meaning of work, the dignity of work, and the right and duty of each person who is able to participate in her society by contributing to the common good through work. Pope Benedict XVI issued his major social encyclical, *Caritas In Veritate*, in 2009.⁵⁴ The main theme of this encyclical, which has direct implications for work and disability policy, is that charity is the guiding principle “not only of micro-relationships (with friends, with family members or within small groups) but also of macro-relationships (social, economic and political ones).”⁵⁵ From this basic principle, Pope Benedict concluded that “[t]he economic sphere is neither ethically neutral, nor inherently inhuman and opposed to society. It is part and parcel of human activity and precisely because it is human, it must be governed in an ethical manner.”⁵⁶ Therefore, the principles of justice apply to all economic activity because this activity “is always concerned with man and his needs.”⁵⁷ Hence, Pope Benedict reaffirms the personalism of St. John Paul II by insisting that it is the human person above all things (including profit) that is the subject and goal of all human activity.⁵⁸

Moving from these first principles to practical application, the Pope offers guidance on “how work can be structured so the governing principle of the workplace will be that of the worker-as-person in relation to other persons”⁵⁹ Pope Benedict writes:

[Just work] means work that expresses the essential dignity of every man and woman in the context of their particular society: work that is freely chosen, effectively associating workers, both men and women,

⁵⁴ Encyclical Letter, Pope Benedict XVI, *Caritas in Veritate* (June, 29, 2009).

⁵⁵ *Id.* § 2.

⁵⁶ *Id.* § 36.

⁵⁷ *Id.* § 37. This key principle that all economic activity exists to serve the person and her needs is at the heart of Catholic social teaching: “[e]conomic activity and material progress must be placed at the service of man and society.” PONTIFICAL COUNCIL FOR JUSTICE & PEACE, *supra* note 24, § 326.

⁵⁸ Pope Benedict XVI, *supra* note 54, § 36 (stating that the Church’s social teaching holds that “authentically human social relationships of friendship, solidarity and reciprocity” can be realized within economic activity).

⁵⁹ Matheny, *supra* note 44, at 33.

with the development of their community; work that enables the worker to be respected and free from any form of discrimination; work that makes it possible for families to meet their needs and provide schooling for their children, without the children themselves being forced into labour; work that permits the workers to organize themselves freely, and to make their voices heard; work that leaves enough room for rediscovering one's roots at a personal, familial and spiritual level; work that guarantees those who have retired a decent standard of living.⁶⁰

For Pope Benedict, as for Saint John Paul II, work matters. Indeed, it matters greatly because it enables the human person to develop her talents, to participate in the life of her society, to establish solidarity with fellow workers, and to achieve the dignity of independence for one's self and one's family. As will be discussed further below, the importance of work to the meaning of one's very existence implies that our current SSD program, which forces persons with disabilities completely to leave the workforce and to be excluded from their right and duty to participate fully in our society and to contribute to the common good is morally wrong even though motivated by good intentions.⁶¹

The most recent contribution to Catholic social teaching is Pope Francis' *Laudato Si'*.⁶² Although this encyclical deals primarily with the environmental crisis, it is a wide-ranging document with important pronouncements on many topics, including the transcendent value of human work.⁶³ Pope Francis, observing that Jesus, by spending most of his life on earth as a working person, a carpenter, "sanctified human labour and endowed it with a special significance for our development."⁶⁴ Pope Francis agrees with the words of Saint John Paul II, who taught

⁶⁰ Pope Benedict, *supra* note 54, § 63.

⁶¹ At this point, I should again state that I fully support total and permanent disability payments for persons who have extremely severe disabilities and who under no circumstances can be expected to work. I also strongly believe that these persons should receive adequate financial support to live with dignity, instead of having to persist at or barely above the poverty level. Our treatment of persons with such severe disabilities, persons who cannot reasonably be expected to work even part-time, is a *national disgrace*.

⁶² Encyclical Letter, Pope Francis, *Laudato Si'* (May 24, 2015).

⁶³ *Id.*

⁶⁴ *Id.* § 98.

that, “by enduring the toil of work in union with Christ crucified for us, man in a way collaborates with the Son of God for the redemption of humanity.”⁶⁵

These are powerful words and they represent the heart of Catholic social teaching from the nineteenth century to today about the dignity of human labor. Pope Francis strongly reaffirms the Church’s teachings regarding work. Francis writes that to understand “the proper relationship between human beings and the world around us, we see the need for a correct understanding of work”⁶⁶ Francis makes it clear that when he refers to work, he means all productive human activity, whether manual labor or intellectual labor, both of which are equal in dignity.⁶⁷ Pope Francis writes that the Benedictine monks had a revolutionary insight when they came to realize the spiritual significance of manual labor; in our day, we have come to understand that work is one of the main keys to full human development.⁶⁸ Pope Francis writes that “[w]ork should be the setting for [a] rich personal growth, where many aspects of life enter into play: creativity, planning for the future, developing our talents, living out our values, relating to others, giving glory to God.”⁶⁹ Indeed, “[w]e were created with a vocation to work.”⁷⁰ Therefore, helping the poor, such as those who are unemployed and those whose economic welfare is jeopardized by physical and mental disabilities, must “be a provisional solution in the face of pressing needs.”⁷¹ The “broader objective should *always* be to allow” the poor to create a “dignified life through work.”⁷²

To sum up, from *Rerum Novarum* through *Laudato Si*, Catholic social teaching has developed an understanding of work that differs significantly from the understanding of work that underlies the SSD program. From the secular viewpoint, work is merely a means to an end, the way that people acquire the money that is necessary to maintain their existence; this is the impoverished view of work that underlies SSD benefits. If a person

⁶⁵ *Id.* (quoting John Paul II, *supra* note 28, § 27).

⁶⁶ *Id.* § 125.

⁶⁷ *Id.* (observing that “[u]nderlying every form of work is a concept of the relationship which we can have and must have with what is other than ourselves”).

⁶⁸ Pope Francis, *supra* note 62, §§ 126-27.

⁶⁹ *Id.* § 127.

⁷⁰ *Id.* § 128.

⁷¹ *Id.*

⁷² *Id.* (emphasis added). In the SSD context, the primary focus should be on providing support for persons with disabilities to find meaningful employment, whether on a part-time or a full-time basis, ensuring the adequate availability of resources to live a dignified life.

becomes unable to work and, therefore, unable to earn money, SSA's answer is to relegate the disabled person permanently to the margins of our society and send a monthly check that is barely adequate to meet basic needs. SSD is a form of assistance that is undoubtedly superior to merely requiring the disabled to fend for themselves as best as they can—the Social Darwinist approach which has been rightly rejected. By contrast, the Catholic perspective on work is richer and truer to the human experience. In Catholic social teaching, “[w]ork is a fundamental right and a good for mankind, a useful good, worthy of man because it is an appropriate way for him to give expression to and enhance human dignity.”⁷³ Therefore, the Church states, “*Work is a good belonging to all people and must be available to all who are capable of engaging in it.*”⁷⁴

We are thus faced with two radically different perspectives regarding work. The secular perspective views work as a means to an end, the way that most people acquire the goods that are necessary for continued existence, an existence that, to the secular mind, has no transcendent purpose. Our SSD program assumes that this is the correct view. I argue that this view is utterly mistaken. The human person is not a cog in a machine, a factor of production, a depository of abilities to be exploited for no other purpose than to create more consumer goods and services. The human person, on the contrary, is an end in itself, not an object to be used. A human's right to participate in society, to contribute to the common good, and to find joy by having the opportunity to use talents and create a meaningful existence ought to be the first principles on which all law concerning work, including disability law, should be based.⁷⁵

III. SOME POSSIBLE REFORMS CONSISTENT WITH CATHOLIC SOCIAL TEACHING

So far I have argued that a serious defect on our current SSD program is that it requires persons with disabilities to drop out of the workforce and move to the margins of society as a condition of assistance. I believe that a disability program based on Catholic social teaching would not force the disabled out of public life, depriving them of their right and duty to participate to the fullest extent possible in our economy. In this section, I would like to move

⁷³ PONTIFICAL COUNCIL FOR JUSTICE & PEACE, *supra* note 24, § 287.

⁷⁴ *Id.* § 288.

⁷⁵ Clark, *supra* note 23 at 26 (discussing John Paul II's fundamental belief that work exists for the full development of the human person).

from theory to practice by suggesting some of the ways a disability program based on Catholic social teaching might differ from our current system.

What follows, however, is not at all intended to present the only possible implications that follow from Catholic social teaching. My aim in this part is more modest, to sketch briefly a series of specific changes that I believe follow from Catholic social teaching. I am aware, of course, that others who are also troubled by our current SSD program might disagree with some of these proposals. This section serves only as a first step to what I hope can be serious discussions about improving the lives of disabled Americans while ensuring that they receive the necessary financial assistance to thrive. Finally, before discussing some specific ideas, I am aware of course that in a pluralistic society we rightly base law and public policy on principles that are accessible to all citizens, no matter what their religious beliefs might be or indeed if they have any religious beliefs at all. However, because of its profound insights into the nature of the human person and the person's inviolable dignity, I believe that Catholic social teaching should be one of the sources we should consult when we consider reforming our current antiquated system. Therefore, I offer the following ideas based on my understanding of Catholic social teaching.

A. Partial and Temporary Disability Benefits

Under the current system, one is either totally disabled or not disabled at all; that is, to receive assistance, a person with disabilities must prove to the SSA a total inability to work.⁷⁶ Although a person who is engaged in very limited work activity can receive SSD benefits, this is possible only if the work results in no more than negligible earnings.⁷⁷ For many, disability recipients proving to the SSA that they are totally disabled can take many years.⁷⁸ Except for persons with obvious severe disabilities, many persons with disabilities must fight for years through a four-tier

⁷⁶ See 20 C.F.R. § 404.1505 (2012) (setting forth the basic definition of disability under the Act as a person that “must have a severe impairment(s) that makes [her] unable to do [her] past relevant work or any other substantial gainful work that exists in the national economy”).

⁷⁷ Cf. 20 C.F.R. § 404.1574 (2006). The earnings threshold in 2017 for non-blind individuals is \$1170 a month and \$1820 a month for blind individuals. Cf. www.ssa.gov/oact/cola/sga.html (last visited November 28, 2016)

⁷⁸ See Gokhale, *supra* note 3, at 57 (observing that qualifying for SSD benefits “is an extremely lengthy, arduous, and expensive process”).

administrative review process, and possible appeal to federal court, to finally establish that they are disabled.⁷⁹ The time and money that the disabled person must invest to prove her case create a strong disincentive for the disabled person to attempt to return to work because of fear of losing the benefits that she has struggled for years to obtain.⁸⁰ Therefore, even though many SSD recipients retain the ability to do work at some level,⁸¹ less than one percent of recipients return to work in any given year.⁸² Indeed, according to a study by the Center for Studying Disability Policy, only 2.8 percent of disability recipients return to work within ten years of receiving benefits, “even though the health status of many disability recipients improves over time.”⁸³

SSA implicitly recognizes that many disability recipients, despite significant impairments, can perform at least some work; hence, SSA regulations provide for a trial work period during which a beneficiary can test her ability to work for up to nine months without losing benefits.⁸⁴ The trial work period, which has been in existence since 1980, has achieved very little.⁸⁵ So, in 1999, Congress created the Ticket to Work Program, which provided for workplace and vocational training to help SSD recipients return to

⁷⁹ The disability determination process’ four steps (with some minor exceptions) include: an initial determination, a reconsideration determination, an administrative law judge hearing, and a review by SSA’s Appeals Council. 20 C.F.R. § 404.900 (2015). If the claimant is denied benefits at the last step, she may appeal to federal district court. *Id.*

⁸⁰ Cf. Gokhale, *supra* note 3 (discussing the disincentives that disabled persons face regarding a possible return to the workforce). Also, cf. Rich, *supra* note 17 (observing that the fear of losing even modest benefits and health coverage for the uncertainties of the market discourage SSD recipients from attempting to return to work).

⁸¹ See Romina Boccia, *Social Security Disability Insurance: Benefit Offsets Encourage Work—But Achieve Little to No Savings*, HERITAGE FOUND. (July 15, 2015), www.heritage.org/research/reports/2015/07/social-security-disability-insurance-benefit-offsets-encourage-workbut-achieve-little-to-no-savings (observing that there is a “broad continuum of disability along which beneficiaries’ conditions fall” and that “a substantial number of disability beneficiaries have marginal work capacity that goes unused” because the current SSD system is poorly designed).

⁸² *Id.*

⁸³ Villarreal, *supra* note 12.

⁸⁴ 20 C.F.R. § 404.1592 (2006).

⁸⁵ Cf. Boccia, *supra* note 81 (observing that despite several work incentive provisions, less than one percent of SSD recipients leave the disability rolls in any given year due to work activity).

work. The program has been a failure as well.⁸⁶ The reality that these well-intentioned attempts to encourage SSD recipients to return to at least part-time work have failed is no surprise because recipients fear losing the benefits that they fought for many years to obtain.⁸⁷

I have argued, along with others, that our all-or-nothing SSD program should be replaced by a program that provides total disability for those with severe disabilities and partial or temporary disability benefits for persons with significant or temporary disabilities that nonetheless can work at least part time.⁸⁸ Such changes would make SSD consistent with the superior, “common sense” approach to disability found in the American with Disabilities Act (“ADA”), which quite sensibly acknowledges that many persons with disabilities not only can work but, indeed, have a right to work.⁸⁹ By refusing to recognize that disability is a continuum, not an either/or condition, we have an irrational system that fails to distinguish between, for example, “a person who qualifies [for disability payments] with lower back pain” and “someone who loses all of his senses and all of his limbs.”⁹⁰ Therefore, because disability is a continuum and most persons with disabilities retain abilities that enable them to contribute to the common good, I argue that we must discard the all-or-nothing view of disability that underlies the SSD program and make two fundamental changes: (1) the provision of permanent partial

⁸⁶ *Id.* (“Despite direct assistance and incentives to participate in Ticket to Work, the program has a dismal participation rate: 0.4 percent of eligible ticket holders had signed on with an employment network as of 2012.”). A recent Washington Post report reveals that the Ticket to Work initiative continues to fail, citing the National Council on Independent Living, which bluntly state that the program has not done “anything to help employment of people with disabilities. Lydia DePillis, *We’ve tried to smooth disabled people’s path back to work. Why isn’t it helping?*, The Washington Post (Dec. 23, 2015), www.washingtonpost.com/news/wonk/wp/2015/10/23/after-years-of-trying-to-make-it-easier-for-disabled-people-to-work-it-s-as-hard-as-ever.html.

⁸⁷ Villarreal, *supra* note 12.

⁸⁸ Matheny, *supra* note 9, at 310 (rejecting our social security disability system’s all-or-nothing approach).

⁸⁹ See Matthew Diller, *Dissonant Disability Policies: The Tension Between the Americans with Disabilities Act and Federal Disability Benefit Programs*, 76 TEX. L. REV. 1003, 1005 (1998) (arguing for the superiority of the ADA’s view of disability because the ADA “establishes the principle that the inclusion of people with disabilities into all aspects of society is a civil right”).

⁹⁰ ERIC R. KINGSON & EDWARD D. BERKOWITZ, SOCIAL SECURITY AND MEDICARE: A POLICY PRIMER 139 (1993).

disability benefits and (2) the provision of temporary disability benefits.

The provision of permanent partial disability benefits serves two purposes. First, provision of partial benefits recognizes that, although a serious disability might not prevent one from performing all occupations in the American economy, a disability, such as a serious back problem, heart disease, post-traumatic stress disorder, or intellectual disability, limits their earnings capacity and job opportunities. With permanent partial disability benefits, such persons can exercise their right to work while receiving benefits to live above the poverty line. In addition, persons with permanent partial disability benefits should be provided Medicare benefits for life because they do suffer from significant disabilities and cannot afford to lose the health insurance that makes it possible to receive treatment for those same disabilities, such that they can continue to exercise their right under Catholic social teaching to participate in God's work through their own work.

Models for permanent partial benefits exist, most notably the Veterans Affairs ("VA").⁹¹ In this author's opinion, SSA could benefit by studying the VA's disability program, which acknowledges that disability is a continuum, not an all-or-nothing dichotomy.

As for temporary disability benefits, there would be many ways to design such a program to allow persons with disabilities to test their work-related abilities (as opposed to our current focus on their disabilities) without fear of losing benefits and descending into poverty. I would like to suggest just two possibilities. One possibility is to provide temporary benefits to persons who are no longer able to perform past relevant work.⁹² Persons who are unable to perform past work because of disabilities need time and assistance while they attempt to find other employment. Temporary benefits would provide such assistance. Another possibility is to provide temporary

⁹¹ Walter Y. Oi, *Employment and Benefits for People with Diverse Disabilities*, in *DISABILITY, WORK AND CASH BENEFITS*, *supra* note 17, at 103, 122. Oi writes: It is instructive to review the policy of the Department of Veterans Affairs. An individual with a service-connected disability is evaluated and assigned a rating, which fixes the size of the monthly compensation. There is no earnings test; everyone who is entitled to a pension gets it irrespective of his or her earnings in the labor market. . . . [Consequently,] the employment rate was 79.9 percent for those with a service-connected disability.

⁹² The definition of past relevant work is "work that [the claimant has] done within the past 15 years, that was substantial gainful activity, and that lasted long enough for [the claimant] to learn to do it." 20 C.F.R. § 404.1560 (2012).

disability benefits to persons who would like to look for work without fear of losing their benefits and having to fight a prolonged battle to become entitled again. Temporary disability benefits could be provided for a set period of time, say, thirty-six months, during which time the disabled person could search for work without fear of losing benefits or Medicare coverage.⁹³ If the recipient obtains employment and is able to sustain employment above the substantial gainful activity (“SGA”) guidelines,⁹⁴ then benefits would be suspended. However, if the recipient must leave employment or reduce earnings to below SGA because of the impairments, temporary benefits would be reinstated automatically. Realizing that there is a safety net instead of a reduction to penury would embolden disabled persons to test their ability to work without fear of economic catastrophe.

Because these benefits are temporary, the recipient would have an incentive to search for suitable employment because she would know that after a thirty-six month period, she would eventually lose benefits if she did not find a job. However, providing automatic reinstatement of benefits if a work attempt failed because of the claimant’s disability and guaranteeing continued Medicare benefits during the temporary disability benefit period would provide a solid safety net to help the disabled person if her attempts to work failed because of her disabilities.

B. Raise the Substantial Gainful Activity Limits

Another very important step to enable persons with disabilities to work without fear of financial ruin would be to raise significantly the amount of money a recipient could earn while continuing to receive disability benefits. In general, a person who is engaging in SGA is not entitled to benefits.⁹⁵ SSA regulations establish monthly SGA limits, and in general, if a person is working and earnings exceed these limits, the person is not disabled.⁹⁶ In

⁹³ Medicare coverage for those found to be entitled to Social Security Disability begins after a twenty-four month waiting period. 42 U.S.C. § 1395p(g)(1) (2010).

⁹⁴ See generally 20 C.F.R. §§ 404.1571-1575 (2012) (laying out the thresholds for substantial gainful activity).

⁹⁵ See 42 U.S.C. § 423(d)(1)(A) (2016) (stating that, for individuals to be found disabled, they must not be able to engage in SGA as a result of a medically determinable mental or physical impairment).

⁹⁶ *Substantial Gainful Activity*, SOC. SECURITY ADMIN., www.ssa.gov/oact/cola/sga.html (last visited November 30, 2016)

2016, the SGA limit for non-blind disabled persons is \$1,130 per month.⁹⁷ The current SGA limit is significantly below the poverty guidelines for a family of two.⁹⁸ I believe that the risk of losing benefits that often took years to obtain in order to work at poverty-level wages would deter most rational persons from attempting to work at all.

Interestingly, the SGA limits for blind, totally disabled persons is much higher, being \$1,820 per month in 2016.⁹⁹ There is no clear rationale why SGA limits for blind claimants should be much higher than the limits for other disabled claimants. Prior to 1978, the SGA amounts for both blind and non-blind claimants was the same.¹⁰⁰ In 1978 Congress amended the Act to provide for the higher SGA limits for blind recipients. Senator Birch Bayh supplied the apparent justification for raising the SGA limits exclusively for blind recipients by observing that blindness was a “distinct and unique condition,” which resulted in blind persons facing “largely artificial impediments when they seek to enter and compete in the labor market.”¹⁰¹

Although few would disagree that blind Americans face significant difficulties in the labor market, I can perceive no persuasive reason for treating blind persons differently from other disabled persons with regard to SGA. After all, persons with other serious impairments, such as multiple sclerosis, schizophrenia, hearing loss, or amputation of upper or lower extremities also face daunting barriers to employment.¹⁰² I argue, therefore, that the SGA limits for non-blind persons with disabilities should be set at the same levels established for the blind. The higher threshold would make it easier for persons with disabilities to work—at least part-time work—without fear of losing their benefits, and the higher threshold would help SSD recipients to pull themselves out of poverty. In accordance with Catholic social teaching, raising the SGA limits would make it more likely that disabled persons could

⁹⁷ *Id.*

⁹⁸ *Poverty Guidelines*, U.S. DEPT OF HEALTH & HUM. SERVICES (Jan. 25, 2016), www.aspe.hhs.gov/poverty-guidelines.

⁹⁹ *Substantial Gainful Activity*, *supra* note 96.

¹⁰⁰ Deputy Commissioner Susan M. Daniels, Testimony to the House Committee on Ways and Means (Mar. 23, 2000) (testimony available at www.ssa.gov/legislation/testimony_032300.html).

¹⁰¹ *Id.*

¹⁰² All of these impairments are considered to be as disabling as blindness by SSA. See, 20 C.F.R. Pt. 404, Subpt. P, §§ 1.05 (amputations of upper and lower extremities), 2.10 (hearing loss), 11.09 (multiple sclerosis), and 12.03 (schizophrenia).

exercise their right and perform their duty to use their talents to contribute to the common good and to enhance their dignity as persons by helping them rise out of poverty, escaping the marginalization that current SSD program forces on them. Such a reform would assist the disabled to participate in God's creative activity in the world through work.

C. Other Possible Measures that Go Beyond Reform of the Social Security Act

As mentioned above, the percentage of persons with disabilities who have been forced into permanent unemployment by current policies has increased at an alarming rate with approximately five percent of working age Americans on the disability rolls, up from 2.3 percent in 1990.¹⁰³ Competing in a global market, the United States cannot afford to squander the talents and abilities of so many people. To compete effectively in the world market, we need the talents of all Americans who are able to contribute.¹⁰⁴

In addition to amending the Act, there are four other measures I will briefly mention which I think should be considered. I believe that all of these proposals are consistent with Catholic social teachings regarding the meaning of work, social solidarity, and the right of all to participate in economic activity. First, make it possible for persons with disabilities to upgrade their skills by providing free college education at public colleges and universities for students with significant disabilities. Second, provide relocation assistance to help persons with disabilities who receive a job offer from an employer in another part of the country. Obviously, most persons with disabilities who have been out of work for months or years have depleted their savings. Often they live in parts of the country, such as the dying coal fields of Appalachia or the decaying inner cities in the Northeast and Midwest, where few jobs are available. They need to go to where the jobs are. A federal program to assist persons with disabilities who have a job offer to relocate would not only benefit the disabled person; it would also benefit

¹⁰³ Sargent, *supra* note 4.

¹⁰⁴ DEAN BAKER & JARED BERNSTEIN, *GETTING BACK TO FULL EMPLOYMENT: A BETTER BARGAIN FOR WORKING PEOPLE* 94 (2013) (stating that having millions of working age persons who are not contributing to our society is a calamity for our nation). *See also*, Matheny, *supra* note 9 at 21 (arguing that moving thousands of disabled Americans into work would not only allow us to take advantage of their skills but also to benefit from their enhanced purchasing power).

society by tapping into the talents of these persons and making them taxpayers and consumers.

Third, reward employers who welcome persons with disabilities into their companies. Congress could consider helping employers integrate persons with disabilities into their enterprises by, for example, paying one half of the disabled employees' salaries for a set period of time, two to three years for example. This would be expensive, but on the other hand, persons with disabilities could benefit the economy by contributing their talents and abilities to the country's economic life, becoming taxpayers, and becoming consumers with disposable income to purchase consumer goods. This would very likely augment corporate profits and make it possible that employers would hire more workers to produce the consumer goods in response to higher demand.

Fourth, provide tax incentives to employers to encourage telecommuting. Many persons with disabilities cannot work because their disabilities make it difficult for them to work in a traditional workplace. For example, persons with musculoskeletal disabilities often face difficulties getting to the workplace, either by private vehicle or public transportation.¹⁰⁵ Social Security regulations specifically mention such physical impairments, such as gross anatomical deformities,¹⁰⁶ spinal disorders,¹⁰⁷ epilepsy,¹⁰⁸ Parkinson's,¹⁰⁹ and others that greatly limit the ability to get to the workplace for those afflicted by these impairments. In addition, certain mental impairments, such as social anxiety disorder,¹¹⁰ agoraphobia,¹¹¹ and various personality disorders,¹¹² can cause marked difficulties dealing with co-workers and supervisors. However, with the tremendous strides in computer technology of recent years, millions of workers have the ability to telecommute

¹⁰⁵ SSA regulations specifically mention inability to use standard public transportation as a crucial factor when evaluating disability. 20 C.F.R. §§ 1501-1599, app. 1, § 1.00(2)(b)(2)(2016)

¹⁰⁶ See 20 C.F.R. §§ 404.1501-1599 app. 1, § 1.02 (2016) (discussing the various types of anatomical deformities that make it difficult for disabled persons to stand and walk).

¹⁰⁷ See *id.* § 1.04 (discussing serious spinal impairments such as herniated nucleus pulposus, spinal arachnoiditis, spinal stenosis, and so on).

¹⁰⁸ *Id.* § 11.02.

¹⁰⁹ *Id.* § 11.06.

¹¹⁰ *Id.* § 12.06.

¹¹¹ *Id.*

¹¹² 20 C.F.R. §§ 404.1501-1599 app. 1, § 12.08 (2016).

from their homes.¹¹³ Telecommuting has the potential to enable persons with disabilities who cannot sustain employment in traditional work settings the opportunity to work from home. Many Americans have disabilities, which make it difficult to work the traditional forty-hour workweek in the traditional office setting. However, technological advancements are making the traditional workplace less relevant, and the potential benefits for the disabled could be significant. Government policy that provides incentives for employers to use telecommuting technology to help disabled Americans re-enter the workforce should be studied because the potential benefits to the disabled and to society could be significant.¹¹⁴

IV. CATHOLIC SOCIAL TEACHING IN A PLURALISTIC SOCIETY

This paper has explored possible implications of Catholic social teaching for reforming the outdated SSD program. Perhaps the central contribution Catholic social teaching makes regarding persons with disabilities is the right to participate in economic activity and the right/duty to use one's talents to the fullest extent possible to contribute to the common good.¹¹⁵

Of course, in a pluralistic society, legislation cannot be based on religious teachings. Legislation must appeal to the common reason of all citizens, whether they have religious convictions or none at all. However, in a pluralistic society, the Church does retain the right and the duty to be part of the conversation regarding crucial public policy issues. In this paper, therefore, I have tried to deduce specific policy implications for the SSD program from the general principles set forth in the Church's social teaching. Many Catholics and other persons of good will not agree with the specific policy changes I have discussed. However, I believe these proposals are consistent with Catholic social teaching's preferential option for the poor, its emphasis on the right and duty of all to use their talents

¹¹³ Alina Tugend, *It's Unclearly Defined, but Telecommuting is Fast on the Rise*, N.Y. TIMES (March 7, 2014), <http://nyti.ms/P6a8GK>.

¹¹⁴ Cf. Jane Anderson & Frank Douma, U.S. Dept. of LAB. *Telework for Workers with Disabilities Pilot Project* (Nov. 3, 2009), <https://www.dol.gov/odep/reserach> 6 (telework can sometimes provide the most viable work options for the disabled).

¹¹⁵ See PONTIFICAL COUNCIL FOR JUSTICE & PEACE, *supra* note 24, § 333 ("Everyone has the right to participate in economic life and the duty to contribute, each according to his own capacity, to the progress of his own country and to that of the entire human family.").

to participate in their society's economic activity and to contribute to the common good, and the Church's teachings on solidarity—which means that all of us are responsible for all of us.¹¹⁶ When the time comes to reform the SSD program, the social teachings of the Catholic Church, which originated in the nineteenth century and have been expanded and updated to the present day, have much to say concerning the welfare and dignity of all persons with disabilities. These teachings cannot be ignored and should be given serious consideration when our outdated SSD program is reformed to reflect current insights into disability, particularly that disability is not an all-or-nothing matter, but a continuum. Many persons with disabilities can work but are discouraged to do so by current policy. We must do all that we reasonably can do to provide the disabled with the opportunity to use their talents to contribute to the common good. The teachings of the Catholic Church point the way to a better SSD program grounded in fundamental Church teachings on the dignity of work, the right to participate, and human solidarity.

¹¹⁶ See Encyclical Letter, John Paul II, *Sollicitudo Rei Socialis* (Dec. 30, 1987), in O'BRIEN & SHANNON, *supra* note 28, at 395, 421 (stating that a commitment to the common good means recognizing that “we are *all* really responsible *for all*”).