

Evangelii Gaudium and Catholic Legal Theory
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An authentic faith – which is never comfortable or completely personal – always involves a deep desire to change the world, to transmit values, to leave the earth somehow better than we found it. (EG 183)

Introduction

When Patrick asked us to come up with a topic on which we would speak, I decided I would speak about Pope Francis’ Apostolic Exhortation *Evangelii Gaudium*. I did so for two reasons:

The first is simply that it is a major piece of writing from this Pope. (While it is true that the encyclical *Lumen Fidei* bears Francis’ name, that document was largely written by Pope Benedict; and the new encyclical on the environment is not yet out, and in any event, is narrower in focus..) *Evangelii Gaudium* outlines the key themes this Pope hopes will constitute his pontificate. So, while I may reference some things the Pope has said elsewhere, I think this document is worth our serious reflection.

The second reason is that the document is addressed to all people – including the lay faithful – “on the proclamation of the Gospel in today’s world.” And whatever else our Catholic legal theory project is about, whatever else we are doing, we are proclaiming the Gospel in today’s world.

For me that is an important starting point. Our work to develop a Catholic Legal Theory is not something separate from the commission we have each been given to make disciples of all nations. Francis writes, “In our day Jesus’ command to ‘go and make disciples’ echoes in the changing scenarios and ever new challenges to the Church’s

mission of evangelization, and all of us are called to take part in this new missionary ‘going forth.’” (20) Later in the document he is explicit that proclaiming the Gospel message to different groups and cultures involves proclaiming it in professional and academic circles. (132) That means us.

And I think the Apostolic Exhortation highlights the important of our project. Pope Francis writes that “Differing currents of thought in philosophy, theology and pastoral practice, if open to being reconciled with the Spirit in respect and love, can enable the Church to grow, since all of them help to express ore clearly the immense riches of God’s word.” (40)

So what I’d like to do is to share a few thoughts from, and questions raised by, Pope Francis in this document. I do not intent to present a systematic summary of the document, nor do I claim either that the entirety of the document is relevant to our project. (some of it clearly is not) or that it provides any kind of overall framework for analysis. A lot in the document is not new and Francis intends it as “some guidelines which can encourage and guide the whole Church in a new phase of evangelization.” (17) He is quite clear that his intent is not to “offer a definitive or complete word on every question which affects the Church and the world.” (16) Nonetheless, it offers us a series of thoughts that I think help inform our project, and it provides us with some underlying significant themes that can help us reflect on what should be our foci and how we engage in this task.

What I will share is more a series of points than a coherent whole. Two categories of thoughts. What I inelegantly call more global thoughts that are not about specific content and, more briefly, those that address content of Catholic thought.

[More Global Thoughts – Not about Content]

Joy

I want to start with one of the words in the title of the Apostolic Exhortation – joy. The word joy appears 110 times in the document (and that doesn't count e.g. the 19 additional references to “rejoice” or “rejoicing”).

Pope Francis believes that everything we do should be marked by Christian joy. The opening line of the Exhortation speaks of encouraging “the Christian faithful to embark upon a new chapter of evangelization marked by joy.”

In paragraph 6 he says “Joy adapts and changes, but it always endures, even as a flicker of light born of our personal certainty that, when everything is said and done, we are infinitely loved.” An evangelizing community he later says (24) “is filled with joy; it knows how to rejoice always. It celebrates every small victory, every step forward in the work of evangelization.”

I think Francis is absolutely right in his observation (par.6) that “There are Christians whose lives seem like Lent without Easter.” People who get the suffering part of Christianity, but not the joy. (I often quip that Catholics, particularly, are a lot better at Lent than they are at Easter.)

But the thing is: If someone has gets only the suffering part and not the joy, how can that person evangelize effectively? Pope Francis is clear: “an evangelizer must never look like someone who has just come back from a funeral!” Rather, the most effective evangelization is to “appear as people who wish to share their joy, who point to a horizon of beauty and who invite others to a delicious banquet.” (15) “Instead,” he write, “of seeming to impose new obligations, they should appear as people who wish to share their

joy, who point to a horizon of beauty and who invite others to a delicious banquet. It is not by proselytizing that the Church grows, but “by attraction.” (15)

I start with that because it raises the question of *how* we do what we do. What is the tone in which we engage in our project? Is our work marked by joy? That is:

Do we go forth with confidence, without hesitation or fear?

Do we celebrate small victories or just be miserable about the defeats?

And it is not just about how others perceive us. But about how a lack of joy affects our ability to engage fully. Francis writes (85):

One of the more serious temptations which stifles boldness and zeal is a defeatism which turns us into querulous and disillusioned pessimists, ‘sourpusses.’ Nobody can go off to battle unless he is fully convinced of victory beforehand. If we start without confidence, we have already lost half the battle and we bury our talents.”

(I know many were offended by his use of the term “sourpusses.” But in colloquial terms, it gets across what he is trying to say – don’t be a sourpuss.)

And that means joy is related to something else that is central: hope. A central aspect of discipleship in today’s world is our role as being beacons of hope in troubled times. Timothy Radcliffe, in a wonderful book called *What is the Point of Being Christian*, talks wonderfully on this theme. I think Radcliffe is absolutely correct that hope is the central gift we, as Christians, bring to the world. If Christianity makes any difference in how we live and how we die, it has to include how we convey hope to the world, how we point to what is not yet present.

In *Walking with Jesus*, Pope Francis writes, “The new evangelization is a renewed movement toward those who have lost the faith and a sense of the deep meaning of life. This dynamism is part of Christ’s great mission to bring life to the world, to bring the Father’s love to humankind.... No one is excluded from life’s hope, from God’s love.

The Church is sent to reawaken this hope everywhere, especially where it has been suffocated by difficult and oftentimes inhuman living conditions; where hope cannot breathe, it suffocates.” Without joy, we can’t convey that hope.

Personal Encounter with Jesus Christ

Second, one of the things that flows from Pope Francis’ Ignatian background is his emphasis on personal encounter with Christ. He speaks in *Evangelii Gaudium* of the need for a “renewed personal encounter with Jesus Christ” an “openness” to letting Christ encounter us every day.

Central to Ignatian spirituality is the understanding that we need to encounter Christ in a direct way. St. Ignatius encouraged believers to foster a deep personal relationship with the person of Jesus Christ in how they prayed with scripture and how they lived their lives. Quoting Pope Benedict, Francis says that (7): “Being a Christian is not the result of an ethical choice or a lofty idea, but the encounter with an event, a person, which gives life a new horizon and a decisive direction.”

This is of central importance to our lives as Christians: It is not enough to learn about Christ. To read about Christ. To think about Christ. (To listen to me talk about what Pope Francis writes about Christ.) We need to encounter Christ. To be with Him. We need to see Jesus not as a “topic” within Catholicism, relegating him to someone or something we express beliefs about, but as a person with whom we are in a relationship.

I raise that here in this gathering because it is something that applies to us: We cannot do what we do as purely an intellectual exercise. It must flow from our relationship with Christ. We do it as an aspect of our discipleship, for the sake of God’s Kingdom, not just to make this world a nicer place.

This is why I have always felt strongly that our celebration of the Mass and our including a spiritual exercise as part of our gatherings are not simply nice add-ons, but a centrally meaningful part of our gatherings. That time of communal worship, of prayer, of reflection – of deepening our own relationship with Christ - grounds us in what we do. AND makes sure that what we are preaching is Christ and not ourselves.

Among other things, this reminds us that “in every activity of evangelization, the primacy always belongs to God, who has called us to cooperate with him and who leads us on by the power of his Spirit.” (18)

So, not only here together, but individually, we each need to ask ourselves: What am I doing to deepen my encounter with Jesus? And does my life and work encourage others to deepen their encounter with him?

Individual vs. Communal

The third theme emphasized in the Apostolic Exhortation I think worth mentioning is the communal vs. individual search for meaning. Again, this is not new; we know that a fundamental principle of Catholic thought is that the human person exists in and flourishes in community (and Francis quotes *Gaudium et Spes* that the human person “by nature stand completely in need of life in society” and always exists in reference to society.” (115)

What most struck me with respect to our project is the statement in paragraph 33 of *Evangelii Gaudium* that “A proposal of goals without an adequate communal search for the means of achieving them will inevitably prove illusory...The important thing is not to walk alone, but to rely on each other as brothers and sisters.” (33)

This project in which we are engaged is a communal one. And this gathering itself – in which we are grappling with questions about our goals and methods – is very much in line with what Francis is talking about.

But I will admit that reading the line in paragraph prompted me to wonder whether we do enough in collaboration. Our physical gatherings occur less frequently than they did in the past (although various factors may make it difficult to gather more frequently). Given that, we need to be intentional about exploring more ways to live out the communal dimension of our work and we need to think about whether we sufficiently both applaud those efforts that are collaborative and explore opportunities to work in collaboration.

In that light, I wonder whether there are more things like *Evangelicals and Catholics Together on Law: The Lord of Heaven and Earth* – the joint statement of a number of Catholic and Evangelical law profs published by a year or so ago – that we could be engaging in – both within our own group and with others.

Who we Speak to and How

Fourth, who we speak to and how. In thinking of our project, the question so audience is a significant one. Lisa has already addressed this subject, so in part my comments here underscore hers, but I think there are some things in the document worth mentioning to supplement her comments.

It is not enough to talk among ourselves. Pope Francis in this document criticizes the tendency to “escape from others and take refuge in the comfort of their privacy or in a small circle of close friends, renouncing the realism of the social aspect of the Gospel.” Rather he reminds us

[T]he Gospel tells us constantly to run the risk of a face-to-face encounter with others, with their physical presence which challenges us, with their pain and their pleas, with their joy which infects us in our close and continuous interaction. True faith in the incarnate Son of God is inseparable from self-giving, from membership in the community, from service, from reconciliation with others.” (88)

So we have to work hard to be sure that we are not just speaking to ourselves and those who already agree with us. Rather we must be sure we are going outside of the group.

The Pope says a number of things it is useful to keep in mind in *how* we do that.

First, “We need to be realistic and not assume that our audience understands the full background to what we are saying, or is capable of relating what we say to the very heart of the Gospel which gives it meaning, beauty and attractiveness.” (34)

Some of what we say is self-evident to us, but it is not self-evident to those to whom we speak. Are we sufficiently speaking to where they are, helping them to see where we are?

Second, Francis writes, “[We must learn] to suffer in the embrace of the crucified Jesus whenever we are unjustly attacked or meet with ingratitude, never tiring of our decision to live in fraternity.” (91)

How we respond to attacks matters. I’ve spoken often on this subject. Often when I chide someone about their tone (which I’ve occasionally done via e-mails to the authors of some MOJ posts or FB posts), the response is something on the order of “Well, they started it.” “I’m just responding the way they did.” I think that response is no more persuasive here than it is on a playground of third-graders. We need to respond better than those who oppose us.

Third, Francis writes that we “We need to practice the art of listening, which is more than simply hearing. Listening, in communication,” he says, “is an openness of

heart which makes possible that closeness without which genuine spiritual encounter cannot occur.” (171) Pope Francis asks us to “encounter” each other in Christ, to her “when the other person shares his or her joys, hopes and concerns.

This is not an invitation to water down our beliefs or our proclamation of the Gospel, but an invitation to start with encounter, with love. And Francis is clear it is not about watering down, writing: “The task of evangelization operates within the limits of language and of circumstances. It constantly seeks to communicate more effectively the truth of the Gospel in a specific context, without renouncing the truth, the goodness and the light which it can bring whenever perfection is not possible.” (45)

Fourth, Francis writes “We constantly seek ways of expressing unchanging truths in a language which brings out their abiding newness.” (41) He cites John XXIII’s opening of Vatican II that : “The deposit of faith is one thing...the way it is expressed is another” and JPII that the expression of truth can take different forms.”

This is particularly important for us. I think it is possible to say that part of what our Catholic Legal Theory project can do in the area of law and public policy is to help separate those things that are unchanging and nonnegotiable from those things no longer helpful.

Fifth, Francis writes: “In today’s world of instant communication and occasionally biased media coverage, the message we preach runs a greater risk of being distorted or reduced to some of its secondary aspects.” (330)

That has certainly been true of some of his own utterances. I think this is something we need to be on guard with regarding our own statements. But there is also a related point. Francis writes: “We are living in an information-driven society which

bombards us indiscriminately with data – all treated as being of equal importance – and which leads to remarkable superficiality in the area of moral discernment. In response, we need to provide an education which teaches critical thinking and encourages the development of mature moral values.” (64)

That, I think, speaks directly to work in legal education. No small part of our task is our student’s moral formation. I’ve spoken directly on this theme before. Particularly those of us teaching in religiously affiliated schools perhaps have a role in countering the secular academy’s claim that there are no universal truth-claims. We who are people of faith do believe there are truth-claims – claims having to do, for example, with the dignity of the human person, with the primacy of the common good, and with the importance of solidarity – and we need to convey that to our students. (We may not all agree on what answers those principles give to particular legal questions, but we do agree they have to be part of the calculus.)

Finally, Francis writes “A supposed soundness of doctrine or discipline [can lead] to a narcissistic and authoritarian elitism, whereby instead of evangelizing, one analyzes and classifies others, and instead of opening the door to grace, one exhausts his or her energies in inspecting and verifying. In neither case is one really concerned about Jesus Christ or others. (94)

For me this is a reminder to always keep in the forefront that we are about God’s plan, not our own self-aggrandizement.

Let me end these comments about who we speak to and how with one final quote from the documents. I spoke before of doing what we do with joy. We can also do it with confidence that we can get through to people. Francis reminds us:

“A part of his mysterious love for humanity, God furnishes the totality of the faithful with an instinct of faith – *sensus fidei* – which helps them to discern what is truly of God. The presence of the Spirit gives Christians a certain connaturality with divine realities, and a wisdom which enables them to grasp those realities intuitively, even when they lack the wherewithal to give them precise expression.” (119)

Environmental Challenges to Defending a CLT

The Apostolic Exhortation acknowledges the challenges we face in defending a Catholic Legal Theory. It discusses

(1) challenges created by “attacks on religious freedom or new persecution directed against Christians.” (61)

The Pope speaks forcefully in the document about the fact that religion can not be viewed as something that is restricted to the private sphere, as something that is only about preparing souls for heaven. Rather it must exert “influence on societal and national life,” have “concern for the soundness of civil institutions,” and has a “right to offer an opinion on events affecting society.”

(2) indifference and relativism. “We should recognize how in a culture where each person wants to be bearer of his or her own subjective truth, it becomes difficult for citizens to devise a common plan which transcends individual gain and personal ambitions. (61)

This is something else the Pope has spoken forcefully against. In one conversation he declared “I am continuing the teaching of Benedict XVI regarding the dictatorship of relativism by extending Benedict’s critique of our age to also condemn what I call the throwaway culture.”

(3) “the proliferation of new religious movements, some of which tend to fundamentalism while others seem to propose a spirituality without God.” (63)

This perhaps has less direct relationship to our work.

(4) “The process of secularization [which] tends to reduce the faith and the Church to the sphere of the private and personal. Furthermore, by completely rejecting the transcendent, it has produced a growing deterioration of ethics, a weakening of the sense of personal and collective sin, and a steady increase in relativism. . . . [W]hile the Church insists on the existence of objective moral norms which are valid for everyone, ‘there are those in our culture who portray this teaching as unjust, that is, as opposed to basic human rights.’” (quoting USCCB on Ministry to Homosexuals; 64)

Our Behavior Within Our Group

One final comment before I say a few words about content and that has to do with our behavior within our group.

Francis writes “Differences between persons and communities can sometimes prove uncomfortable, but the Holy Spirit, who is the source of that diversity, can bring forth something good from all things and turn it into an attractive means of evangelization. Diversity must always be reconciled with the help of the Holy Spirit.” (131)

We are a diverse group. We share a commitment to this project, but we don’t all always think of it in the same terms. We share a commitment to seeing Catholic thought reflected in our laws and public policy but do not always agree on what that looks like.

Nevertheless we are a community. We are a family. And the same love with which we approach others should always be a characteristic of our dealings with each other.

Mercy

Everything I've said also relates to one of the other themes of this document and this pope's pontificate that affects how we do what we do: mercy. In the Apostolic Exhortation, Francis quotes Thomas Aquinas saying that mercy is the greatest of the virtues. He later in the document speaks of the need to have mercy and patience toward the objects of evangelization. And, as we know, the Pope recently proclaimed a jubilee year of mercy. His proclamation reminds us that we are called to show mercy because mercy has first been shown to us and that it is not our role to judge and to condemn.

I include that reminder because I do think our tendency is focus too exclusively on justice, forgetting that justice is part of the pictures, but must be tempered by mercy. In his proclamation, Francis called justice "the first, albeit necessary and indispensable step."

Content

Evangelii Gaudium speaks to many of the issues we write and think about. In so doing, it does not claim to offer new, or even in most cases binding proclamations. "Neither the Pope nor the Church have a monopoly on the interpretation of social realities or the proposal of solutions to contemporary problems."

As we know, there is a large area of prudential judgments, but the Church offers us much to consider as we make those judgments.

Let me start with a general observation here. Francis quotes the Vatican II Decree on Ecumenism that "in Catholic doctrine there exists an order or a 'hierarchy' of truths, since they vary in their relation to the foundation of the Christian faith" adding that "this holds true as much for the dogmas of faith as for the whole corpus of the Church's teaching, including her moral teaching."

There is a hierarchy, but he also says – in language that has been quoted frequently, that “in preaching the Gospel a fitting sense of proportion has to be maintained. This would be seen in the frequency with which certain themes are brought up and in the emphasis given to them in preaching.”

He also says “Just as the organic unity existing among the virtues means that no one of them can be excluded from the Christian ideal, so no truth may be denied. The integrity of the Gospel message must no be deformed. What is more, each truth is better understood when related to the harmonious totality of the Christian message; in this context all of the truths are important and illumine one another.”

To me that suggests that, if not actual coordination, we find some way of seeing if we are touching all of the bases. This goes back to my earlier point about the communal nature of this project. With respect to content, should we be engaged in greater cooperation about what we are doing.

I think the same thing is suggested by Francis’ claim that the “Catholic Church is considered a credible institution by public opinion, and trusted for her solidarity and concern for those in greatest need....yet, we find it difficult to make people see that when we raise other question less palatable to public opinion, we are doing so out of fidelity to precisely the same convictions about human dignity and the common good. (65)

Goes to same point about possible need for some coordination; people need to see that there is a totality we are about, that we are not picking and choosing particular pieces to the exclusion of others.

The document itself reflects this totality of vision.

It starts with the centrality of human dignity - “No one can strip us of the dignity bestowed upon us by [God’s] boundless and unfailing love.”

It addresses the poor - “We have to state, without mincing words, that there is an inseparable bond between our faith and the poor.” (48) And he make clear that charity alone is not enough.

It lambasts an economy of exclusion and inequality.- “Just as the commandment ‘Thou shalt not kill’ sets a clear limit in order to safeguard the value of human life, today we also have to say ‘thou shalt not’ to an economy of exclusion and inequality.” (53) And he criticizes both a system premised on trickle-down economics and individuals’ choice to live a lifestyle that excludes other.

It repeats that the family is the fundamental cell of society and speaks of the need to protect the unborn.

It acknowledges the contribution of women in society and the church, but is clear on the issue of an all-male priesthood. (Also in other places Francis has spoken forcefully against gender theories that disregard the naturally inherent differences between men and women, in one interview comparing current gender theory to genetic manipulation, nuclear weapons, and to the tyrannical political programs against humanity of Herod in ancient Jerusalem and even to the 20th century fascists Hitler and Mussolini.)

In most of these situations, the Pope breaks no new ground. The dignity of the human person has always been the fundamental principle of Catholic social thought. The poor have always been a special object of concern. Catholic thought has always staked out a middle-ground position that opposes both the excesses of collectivism on the one

hand and laissez-faire capitalism on the other. The family has always been viewed as the fundamental unit. And so on.

So two comments: First, I include all of these examples because I reject (as I have done since this man became pope) those who claim Francis is more of a challenge to the right than to the left or the other way around. This is a challenge to all of us and his positions do not fall on one side or the other of the political spectrum.

Nor should ours. It is not defensible to like what the Pope says about the economy and ignore what he says about the family. Or to like it when he stands up for the unborn but ignore what he says about the poor.

The second related point is, again, a reminder that we need to speak to all of these issues and to do so in a way that does not seem partisan as we address what is the role of law vs. that of other institutions.