Catholic Legal Perspectives
Catholic Legal Perspectives

THIRD EDITION

Bill Piatt
Professor of Law
St. Mary’s University School of Law

Carolina Academic Press
Durham, North Carolina
To my mom, Betty
To my wife, Chris
To my children:
Seana, Bob, Alicia

To my grandchildren:
Fallyn, Max, Rory, William, Julia, Noah, Caroline, Eva, and baby Spence
To my honorary granddaughter, Sophia
And, to my great-great niece, Kyara
Contents

Acknowledgments xi

Chapter 1 · Introduction to the Sources of Law and Catholic Perspectives 3
A. Our Purpose 3
B. Introduction to the Extent and Limits of Papal Infallibility 4
   If The Pope Is Infallible, Why Does He Need Lawyers? 4
      I. Introduction 4
      II. Papal Infallibility 6
         A. Some Historical Perspective and Resentment 6
         B. Contemporary View of Infallibility 10
         C. Anti-Catholic/Anti-Pope Rhetoric Continues 13
      III. “Head of State” (What State?) Immunity 15
         A. Church, State, or Both? 15
         B. Governance and Confusion 18
         C. Attempts to Hold the Holy See Liable in the Sex Abuse Scandal 20
         D. International Action Against the Vatican 22
      IV. The Pope’s Lawyers 25
      V. Conclusion 27
C. Our Approach 28
D. For Further Thought 29

Chapter 2 · Family Issues 31
A. Marriage 31
   1. Marriage and the Legal System 31
   2. The Catholic Church Views Marriage 36
B. Same-Sex Marriage 43
   1. State Approaches and the Federal Response 43
   2. The Catholic Church Opposes Same-Sex Marriage 47
   3. Constitutional Issues — The Legal System Recognizes Same-Sex Marriage 58
      a. DOMA Declared Unconstitutional 58
         United States v. Schlain Windsor, et al. 58
      b. A Constitutional Right to Same-Sex Marriage Announced 68
         Obergefell, et al. v. Hodges, et al. 68
   4. Children of Same-Sex Couples 74
      a. Child Custody Suits 74
b. Gay and Lesbian People as Adoptive Parents in the Legal System 76

c. The Catholic Church Opposes Adoptions by Same-Sex Couples 77

C. Divorce, Annulment, and Separation 80
1. The Legal System 80
2. Teachings of the Church Regarding Divorce, Separation, and Annulment 84
3. The Dilemma, and the Solutions, for Catholics Who Face the Breakdown of a Marriage 87
4. The Role of the Catholic Lawyer or Judge in Divorce Proceedings 93

Opting Out in the Name of God: Will Lawyers Be Compelled to Handle Same-Sex Divorces? 97
I. Introduction 97
A. Right to Opt Out? 100
B. The Role of Lawyers in Same-Sex Divorces 105
II. Accommodation Not Coercion 111

D. For Further Thought 116

Chapter 3 · Life and Death 117
A. Abortion 117
1. Catholic Church Position 118
2. Historical Perspectives 125
3. Roe v. Wade 130
4. Upholding Some Abortion Restrictions 145

Roe v. Wade 130
Casey v. Planned Parenthood of Southeastern Pennsylvania 146
Gonzales v. Carhart 154
Whole Women’s Health v. Hellerstedt 171
5. Judicial Bypass 175
6. Abortion, Demographics, and Race 177
7. Harm to Women 179

B. Stem Cell Research 183
Sherley v. Sebelius 186
C. Miscellaneous Life Issues 196
D. Eugenics and Sterilization 206
Buck v. Bell 211
Skinner v. Oklahoma 213
E. Euthanasia 216

Washington v. Glucksberg 220
Gonzales v. Oregon 230
Bush v. Schiavo 234
F. Death Penalty 243
Gregg v. Georgia 249
G. For Further Thought 269
Chapter 4 · Who Is Allowed to Live and Work in the U.S.A.?

Immigration Issues 271
A. The Catholic Church Views on Immigration 271
B. United States Immigration Law and Policy 272
1. Who Are We? 273
2. Extreme Positions: Bill Piatt, Immigration Reform from the Outside In 274
   a. Historical Extremes 274
   b. Contemporary Extremes 277
      (1) Closed Border Approaches 277
      (2) Open Border Plus Amnesty 279
3. Formal Legal Structure 279
   a. Citizenship 279
   b. Permanent Residents 285
      (1) Family Relationships 285
      (2) Employment-Based Immigrants 288
      (3) Diversity Immigrants 288
      (4) Refugees & Asylees 288
   c. Non-Immigrant Categories 290
   d. Exclusions & Removals 290
C. The American Bishops Respond 290
1. USCCB: Welcoming the Stranger Among Us: Unity in Diversity 290
   A Statement of the U.S. Catholic Bishops 290
2. USCCB: Frequently Asked Questions About the Catholic Church’s Position on Immigration 294
D. Toward Reform 295
1. USCCB Views Reform 295
2. Bill Piatt: Immigration Reform from the Outside In 299
   a. Moving Inward 299
   b. Hope for Resolution 301
   c. Conclusion 303
3. Voices from the Bishops of the Border Region 303
E. For Further Thought 304

Chapter 5 · Feeding the Hungry, Sheltering the Homeless, Treating the Sick 309
A. Feeding the Hungry 309
B. Housing 313
C. Health Care 313
   National Federation of Independent Business v. Sebelius 323
   Burwell v. Hobby Lobby Stores 332
   Zubik v. Burwell 350
D. Education 353
   Goss v. Lopez 354
   Plyler v. Doe 355
Acknowledgments

I am grateful to my research assistant Katja Wolf, LL.M., and to my administrative assistant Maria Vega, for their assistance.

The following entities and publications granted permission to reprint portions of previously-published material included in this book. I wish to thank them for the permission, and for their cooperation and assistance:

- Archdiocese of San Antonio, Texas
- The Journal of Catholic Social Thought
- The Scholar: St. Mary’s Law Review on Race and Social Justice
- United States Conference of Catholic Bishops
- Albany Law Review
- Capital University Law Review
- Regent University Law Review