Church—State

Who should take care of the elderly?

William Sydnor Jr.

Copyright 2011

Student# B00467406

Law 664: ELDER LAW

Fall 2011

Professor Lynne Marie Kohm
THESIS STATEMENT

Do Natural Law obligations, that require Christians to provide for the welfare of the elderly who are in need, provide an alternative to the fiscally unsustainable government mandated programs of Medicare and Medicaid?

INTRODUCTION

Any repeal of Medicare and Medicaid, being unlikely by legislative action, can most likely be accomplished by the Church displacing the Government as welfare provider to those elderly who are in need. This of course begs the question, why should the Church bear the burden of caring for the elderly in need? And of course the answer can be found in the Holy Bible.¹

¹ Matthew 22:36-40 (responding to the question of “which is the greatest commandment in the law?” Jesus responded by saying: “‘Love the Lord your God with all your heart and with all your soul and with all your mind.’ This is the first and greatest commandment, And the second is like it: ‘Love your neighbor as yourself.’ All the Law and the Prophets hang on these two commandments.”); 1 Timothy 5:1-8 (describing how to care for widows); see also, Acts 2:44-45 (“All the believers were together and had everything in common. Selling their possessions and goods, they gave to anyone as he had need.”); Acts 4:32-34 (stating substantially the same as Acts 2:44-45, however, the verse goes on to state “There were no needy persons among them” implying that the state of neediness had been alleviated by their charitable giving.); Romans 15:25-27 (stating that certain cities were pleased to give to others; furthermore, Paul says “… indeed they owe it to them. For if the Gentiles have shared in the Jews’ spiritual blessings, they owe it to the Jews to share with them their material blessings.”); Matthew 25:34-46 (Christ stating that whoever cares for the sick person is essentially caring for Christ himself; thereby, gaining eternal life); Luke 10:25-37 (Christ speaking in the telling of the parable of the good Samaritan concluding with the exhortation that he “Go and do likewise”; take care of strangers’ needs with one’s own blessings.); Ephesians 4:28 (“He who has been stealing must steal no longer, but must work, doing something useful with his own hands, that he may have something to share with those in need.”); Acts 20:34-35 (stating that Christ said, “It is more blessed to give than to receive.”); James 1:27 (“Religion that God our Father accepts as pure and faultless is this: to look after orphans and widows in their distress and to keep oneself from being polluted by the world.”); Galatians 6:10 (“Therefore, as we have opportunity, let us do good to all people, especially to those who belong to the family of believers.”); 1 John 3:17 (“If anyone has material possessions and
This article starts with an explanation of the foundational Natural Law obligation for Christians to care of, honor, their mothers and fathers, and why this commandment is not restricted to one’s blood relatives. The article then provides an historical background of the provision of welfare; explaining the Church’s role in welfare provision prior to the enactment of the current government programs. Additionally, an explanation of how the Church currently participates in the provision of welfare outlines the current level of involvement by the Church. Thereafter, an explanation of the role of the government in the provision of welfare type assistance in the United States to the elderly specifically the development of Medicare and Medicaid is given.

After the background has been explored this article will explain how Medicare and Medicaid have become unsustainable fiscally while also effectively pushing the Christian provision of welfare out of the picture. Additionally, the abundant, some say overly generous, benefits currently being received by the elderly will be laid out.

Lastly, this article offers a solution that is grounded in Natural Law that will, if adhered to, serve to reinstate the Church into its mandated role as provider of welfare. The Church must take the first move providing fully for the needs of the truly indigent

sees his brother in need but has no pity on him, how can the love of God be in him?”

(See, LEW DALY, GOD’S ECONOMY: FAITH-BASED INITIATIVES AND THE CARING STATE, (2009) (which was a tremendous aid in understanding this area especially how faith-based initiatives have developed an intricate system whereby the government and the Church have become interwoven in the provision of welfare and education).

42 U.S.C. § 1395 et seq. (Medicare); 42 U.S.C. § 1396 et seq. (Medicaid); also, throughout this article the term “welfare provision” or “provision of welfare” will be used to describe efforts by others to provide for the needs as opposed to the wants of some other persons, in this article: the elderly.
elderly (without government assistance); thus, leaving the government with the decision to either continue as is, providing more benefits than receipts allow, or to cut the benefits paid to the elderly. This would allow Congress to exit the welfare business without political consequences; thus, ending the almost absolute tax on earnings currently funding Medicare, and allowing Christian values of generosity and love for one’s neighbor to replace it.

NATURAL LAW OBLIGATIONS RELEVANT TO MEDICARE AND MEDICAID

The Christian Bible is full of exhortations for the faithful to care for the needy. Specifically, the Bible tells us to respect elders and to treat strangers (foreigners) as we would treat ourselves. Probably the most familiar obligation that God gave us is to “[h]onor your father and your mother, so that you may live long in the land the Lord your God is giving you.”

Douglas Stuart, a professor at Gordon-Conwell Theological Seminary recently wrote the following:

Well, if the One Person in the universe in a position to know what the full truth is at all times gives a command, or advice, or a warning as a means of inviting people to think and act wisely, and people decide to pay no attention, it is quite likely that they will sooner or later get into big trouble. … There are consequences. When the Bible is ignored in Christian religion and practice, the vitality of the church is sapped, and usually sapped quite quickly. … The Bible was not inspired to help each of us have a nice ride on our various “personal faith journeys.” It doesn’t endorse consumerism, or an entertainment-based life, or materialism, or the seeking of security in the amassing of wealth, or personal self-realization, or happiness through bigger government, or happiness through smaller government (or through education or medicine or technology or diplomacy or fitness or any such popular human hope). … It shows that what the world we live in considers success is actually a lost life—and that

---

5 See Matthew et al., supra note 1.
6 Leviticus 19:32-34.
7 Exodus 20:12.
what the world we live in considers irrelevant (living not for self at all but for a heavenly Savior and His purposes) is success.\(^8\)

In briefly outlining the textual differences of various versions of the Ten Commandments, Richard Kaplan quoted Rabbi Hertz’s interpretation of the importance of the numbering of the Ten Commandments; specifically, that they can be divided into “man’s duties toward God ... and man’s duties to his fellow-man”.\(^9\) The Commandment to honor thy father and thy mother “is considered an obligation to the Almighty, rather than a mere ‘best practice’ for good relations with one’s contemporaries.”\(^10\) Thus, Kaplan argues that the provision of long-term care to the community should be provided by that “Commandment-observing community” presumably to fulfill one’s duty to God Himself.\(^11\) Kaplan’s concluding suggestion is that “all nursing home costs be covered by Medicare” and that such an expansion of government provision would be more in line with the obligation to honor one’s parents, and thus God.\(^12\)

However a government’s obligations may overlap similar obligations of the Church, it is central to Christian doctrine that the Church must fulfill its obligations; moreover, it may very well be that God’s plan is to use the Churches’ acts of bestowing material blessings to open the heart of the unbelieving recipient allowing an entry of spiritual blessings to follow. Safe to say, Christians have a paramount scriptural obligation to care for the elderly.

---


\(^10\) *Id.*, at 495.

\(^11\) *Id.*

\(^12\) *Id.*, at 515.
At least one scholar has written about Medicare in a sagely satirical manner, showing how Medicare “incorporates and reinforces” each of the Seven Deadly Sins.\(^\text{13}\) Avarice; the manner in which doctor’s are compensated.\(^\text{14}\) Gluttony; the taking of wealth from the less well off working population and providing for the medical needs of the “middle class and the rich”.\(^\text{15}\) Envy; the disproportionate benefits paid to various groups within different geographical regions; as well as, the attempts of providers who “agitate to have ‘their’ services compensated more highly”.\(^\text{16}\) Sloth; the legislators and administrators who choose to ignore the unsustainable fiscal position of the Medicare program.\(^\text{17}\) Lust; the lust of the politicians to cover all people with healthcare (which may have been achieved with the recent passage of the Patient Protection and Affordable Care Act).\(^\text{18}\) Anger; the anger of Republicans in that they are politically vulnerable: to change anything about Medicare is to change a program that “has become a sacrosanct feature of American politics.”\(^\text{19}\) Lastly, Vanity; the “health policy analysts” “have hailed the virtues of Medicare and excused its dysfunctions….”\(^\text{20}\)

\(^{13}\) David A. Hyman, *Medicare Meets Mephistopheles*, 60 WASH. & LEE L. REV. 1165 (2003) (writing satirically as a document that Satan left with the author’s secretary, the author does a great job blending satire with a critical scholarly analysis of the deficiencies of Medicare).

\(^{14}\) Id., at 1173-75.

\(^{15}\) Id., at 1175-77 (calling Medicare “a reverse-Robin Hood health care scheme that robs from the (working) poor and gives to the middle class and the rich”); see also, Peter H. Schuck, *The Golden Age of Aging, and Its Discontents*, 18 ELDER L.J. 25, 32 (2010-2011) (explaining that the income that the present day elderly enjoy far exceeds the income of the average person).

\(^{16}\) Hyman, supra note 13, at 1177-81.

\(^{17}\) Id., at 1182-85.

\(^{18}\) Id., at 1185-89 (arguing also that the Democrats’ lust for power can be seen in the manner in which they campaign to show the Republicans as being against Medicare, and thus the elderly, so as to win the support of the general public).

\(^{19}\) Id., at 1189-90.

\(^{20}\) Id., at 1190-95.
The author also explored how Medicare has served to undermine the American virtues of Thrift and Truthfulness. Specifically, the thriftiness of Americans has been undermined by what the author calls a “pyramid scheme structured on an intergenerational basis”.

Another author has pointed out how the insurance type “risk-spreading”, which Medicare is analogous to, “is less dependable for our care in old age than the risk-spreading we depend on when we drive automobiles, [or] fear fire in our homes….”

The erosion of truthfulness, especially political truthfulness, can be seen by the example of when in 1997 “[m]oving home health care out of Part A ‘saved’ Medicare almost $100 billion…”, but the savings were only to Part A, the expense had been moved but it still had to be paid for somewhere else in the budget.

While his article evokes comparison to C.S. Lewis’s *The Screwtape Letters*, Hyman’s points are clear and the poor (one might say sinful) features of Medicare are laid bare, as well as the deficiency of the government as welfare provider.

**CHRISTIAN/ NATURAL LAW BASED WELFARE PROVISION**

Christian type charity “existed in societies and cultures” before Christianity developed. As far back as ancient Athens children were obligated, by law, to “maintain their elderly parents”. As the Christian community expanded in the early years of the

---

21 *Id.*, at 1195-1201 (arguing that if Medicare were not run by the government, it would have been shut down long ago as a pyramid scheme, and showing how the long term sustainability of Medicare is comparable to that of Enron).


23 Hyman, *supra* note 13, at 1201-03.


25 ROBERT SALLARES, *THE ECOLOGY OF THE ANCIENT GREEK WORLD* 140 (1991); see also, ARISTOPHANES, CLOUDS (showing what can go awry when basic filial responsibility is thwarted).
Church, distinct roles developed in the Church; one of the earliest was that of deacon.\textsuperscript{26} Among the various duties of a deacon, one was to distribute gifts (money and food) “to those [who were] elderly and sick” and thus were not present at worship.\textsuperscript{27} The “early social welfare services” provided by the Church were provided to the elderly, the orphaned, and the sick; furthermore, they were provided for “solely through church collections” and those in need were provided for—“whether Christian or not”.\textsuperscript{28}

It must be kept in mind that welfare provision for the elderly, and the corresponding problems of how to finance such provisions, has only recently become a problem.\textsuperscript{29} Although attainment of old age was less common prior to the 20\textsuperscript{th} century, the Church was quite generous during that time with its provision to charity; giving up to “one-fourth [of its property] to charitable works”, which today would be by comparison 850 billion dollars from the government or 3 trillion dollars from the private sector.\textsuperscript{30} The Church in America around 1890 was “effectively, a large private welfare state built from the resources of society … almost a private mirror image of what government looks like today….\textsuperscript{31} The Church still serves to fill a role in the provision of social welfare today.\textsuperscript{32}

\begin{itemize}
\item \textsuperscript{26} Faherty, \textit{supra} note 24, at 114.
\item \textsuperscript{27} \textit{Id.}
\item \textsuperscript{28} \textit{Id.}, at 117 (listing thirteen different social services provided by the church: burial of the dead, maintenance of widows and elderly, trustees appointed to care for widows, care for orphans, adoption of abandoned infants, ransom for the kidnapped, support for prisoners, room and board for travelers, care for the disabled, support for the unemployed, maintenance for the poor, establishment of banks, and relief to other communities in case of natural disaster).
\item \textsuperscript{29} \textit{See} \textsc{Elder Law: Readings, Cases, and Materials} 2-3 (A. Kimberley Dayton, Molly M. Wood, & Julia Belian eds., Lexis Nexis 3d ed. 2007).
\item \textsuperscript{30} Daly, \textit{supra} note 3, at 6 (Daly’s figures and citation could be questioned for their lack of specificity, but regardless spending one-fourth of a budget on others is certainly not common place today).
\item \textsuperscript{31} \textit{Id.}, at 31.
\end{itemize}
Some have argued “[o]rganizations such as churches … are in the best position to provide [welfare provision] types of services to the elderly.”

Some modern day groups of Christians have sought to put their faith’s scriptural obligations into practice by organizing themselves into groups, Health Care Sharing Ministries (HCSM’s), which “share the burden of … medical expenses.” These groups are not insurance per se. However, they often call their customers’ attention to the monthly premiums charged by insurance companies suggesting that potential members compare the HCSM’s monthly obligation with the monthly premium of various types of health insurance. Moreover, the recently enacted Patient Protection and Affordable Care Act also recognizes HCSM’s as being at least a minimum level of coverage by exempting their members from the Act’s requirement that individuals obtain the specified minimum insurance coverage. The Patient Protection and Affordable Care Act defines HCSM’s as any organization:

(I) which is described in section 501(c)(3) and is exempt from taxation

32 M.L. Reig, The Unspoken Poor: Single Elderly Women Surviving in Rural America, 9 ELDER L.J. 257, 258 (2001) (describing an elderly woman living in a rural area who awaits the weekly visit of a woman from the Methodist church who brings food and fellowship).
33 Id., at 282 (referring specifically to social contact and transportation services).
34 See http://www.healthcaresharing.org/hcsm/ (explaining what Health Care Sharing Ministries are).
35 Id.; see http://www.chministries.org/legalnotices.aspx; see also, VA. CODE ANN. § 38.2-6301 (2008) (exempting HCSM’s from the reporting requirements imposed upon insurance providers).
36 CHRISTIAN HEALTHCARE MINISTRIES, INC., CHRISTIAN HEALTHCARE MINISTRIES MEMBERSHIP INFORMATION BROCHURE, “Participation Levels & Costs” section (not available online, Member Guidelines available by requesting an “Info Pack” available at https://www.chministries.org/getmoreinfo.aspx).
under section 501(a),
(II) members of which share a common set of ethical or religious beliefs
and share medical expenses among members in accordance with those
beliefs and without regard to the State in which a member resides or is
employed,
(III) members of which retain membership even after they develop a
medical condition,
(IV) which (or a predecessor of which) has been in existence at all times
since December 31, 1999, and medical expenses of its members have
been shared continuously and without interruption since at least
December 31, 1999, and
(V) which conducts an annual audit which is performed by an
independent certified public accounting firm in accordance with generally
accepted accounting principles and which is made available to the public
upon request.38

Christian Healthcare Ministries, a HCSM headquartered in Barberton, Ohio, offers health
care expense sharing with some requirements for its participants, namely a participant
must: “be living by biblical principles”; “be an active participant of the Body of Christ”,
affirmed by a pastor; abstain from the use of tobacco, illegal drugs, or drug abuse;
“follow biblical teaching on the use of alcohol”; they go further to say that “[t]hose who
participate in a sinful lifestyle—as described in the Scriptures—do not qualify as
participants in Christian Healthcare Ministries.”39

Other religions, specifically Islam, also have groups trying to meet the public’s
needs. One author has pointed out that there are some within the Muslim Brotherhood
who argue that any political party, which may evolve from the Muslim Brotherhood,
should be separate from “the Brotherhood’s social movement [which] would perform

38 Id.
39 CHRISTIAN HEALTHCARE MINISTRIES, INC., CHRISTIAN HEALTHCARE MINISTRIES:
MEMBER GUIDELINES, § III (A)(1) (not available online, Member Guidelines available by
Another author has written about the development of the Brotherhood in light of the recent revolutions in the middle-east; dispelling fears of what the Brotherhood’s leadership in political parties may lead to, the author wrote, “[o]nce actually in government, … they are likely to try to gain influence in ministries such as health and justice ….”\textsuperscript{41} Evidence that organized religion, regardless of faith or denomination, is and should be concerned with the welfare of the elderly and needy.

**GOVERNMENT/ STATE BASED WELFARE PROVISION**

Governments were to enter the welfare provision business eventually, the English established “Poor Laws” in 1601, which were “the first systematic codification of English ideas about the responsibility of the state to provide for the welfare of its citizens.”\textsuperscript{42} One Scholar has argued that, while the influence of the English idea of welfare provision was pervasive, Imperial Spain actually influenced the early colonies’ ideas of what role government had to play in the provision of welfare.\textsuperscript{43} Regardless of how much influence each had, these ideas of government provision carried over to colonial America; interestingly, Thomas Paine “advocated [for] the creation of a social insurance scheme for the aged” in a pamphlet titled “Agrarian Justice”.\textsuperscript{44} The Civil War Pension program established a system similar to Social Security that provided benefits to soldiers, and their

\textsuperscript{40} Robert S. Leiken & Steven Brooke, *The Moderate Muslim Brotherhood*, 86 FOREIGN AFF. 107, 115 (2007).


\textsuperscript{42} http://www.ssa.gov/history/briefhistory3.html.


\textsuperscript{44} http://www.ssa.gov/history/tpaine3.html (full text of “Agrarian Justice” available at http://www.ssa.gov/history/paine4.html).
widows, who had fought in the Civil War; in deed, the scale of the early role of the government is shown in the fact that “[i]n 1894 military pensions accounted for 37% of the entire federal budget.”

Earlier American provision of welfare by the government, as we know it today, did not exist; Church groups, family, and friends mainly served to take care of those in need in the 19th century. However, early on in the 19th century government was getting involved in poor relief by passing legislation which gave land to those in need after a natural disaster, or establishing poor houses to consolidate services provided to the needy. The role of government became more direct over time, first granting “charters to private charities, then donat[ing] money to these agencies; finally the state ran some institutions itself.”

The provision of welfare was rooted in the private sector in the early part of the 20th century:

Before World War I, the United States had a mixed economy of social welfare, drawing on local churches, missionary societies, larger relief associations such as the St. Vincent de Paul Society, and ethnic and vocational mutual-aid fellowships. In larger towns and cities, there were public institutions for the poor, funds for emergency needs, indigent hospitals, mental wards, and orphanages. Catholics also organized their own hospitals, asylums, and orphanages to protect their poor and vulnerable from Protestant bigotry and proselytization. These combined efforts … reached only a small fraction of those in need.

With the onset of the Great Depression, and the subsequent “New Deal” legislation (specifically the Social Security Act signed into law in 1935), American welfare

---

45 http://www.ssa.gov/history/briefhistory3.html, supra note 42.
46 LAWRENCE M. FRIEDMAN, A HISTORY OF AMERICAN LAW 212 (2d ed. 1985).
47 Id., at 216-18.
48 Id., at 493.
49 DALY, supra note 3, at 30.
provision turned a corner; the government had stepped into the welfare provision sector with all the great force of a soon to be built federal bureaucracy behind it.\footnote{ELDER LAW, supra note 29, at 208-12 (stating at page 210 in an excerpt from the Social Security Administration, http://www.ssa.gov/history/briefhistory3.html, that three approaches developed from the Depression namely “do nothing[,] rely on voluntary charity[,] and expand welfare benefits” from the government; however, the subsequent text doesn’t address the option to “rely on voluntary charity” at all).} In fact the need that came to light during the era of the Great Depression was recognized as being so great that the church and the state would have to work together in order to alleviate all of the need.\footnote{DALY, supra note 3, at 29-37.} It was after World War II that the federal government’s role began to grow; specifically, in health care the “government began to subsidize state and local welfare efforts, particularly … [t]he Hill-Burton Hospital Construction Act of 1947…” provided federal money for hospital construction.\footnote{Id., at 36.}

The government soon felt the need to address the healthcare of the elderly. Adopted in 1965, “Medicare basically pays for acute care for persons aged 65 years and older without regard to their health status or financial resources.” Medicare is divided into two main parts: first, “[p]art A covers hospitalization, short-term nursing home care, and some home health services”, and is funded by a “2.9% payroll tax.” Second, part B covers physician or doctor’s fees, and is funded by “monthly premiums and general Federal revenues.” Generally everyone who works is supposed to be paying taxes into the Medicare system; however, some individuals have obtained exemptions from such

\footnote{LAWRENCE A. FROLIK & RICHARD L. KAPLAN, ELDER LAW IN A NUTSHELL 56 (5th ed. 2010).}

\footnote{Id., at 56-57.}

\footnote{Id., at 56 & 61.}
withholdings.\textsuperscript{56} Specifically, if a minister who: has been duly ordained or licensed; has filed an application (in accordance with specifications in the chapter) along “with a statement that either he is conscientiously opposed to, or because of religious principles he is opposed to, the acceptance … of any public insurance which makes payments in the event of … old age”; and, has informed his church of the same, such minister “shall receive an exemption from the [Medicare payroll tax].”\textsuperscript{57} Section 1402(g) provides a similar exemption for an individual member of a faith; however, the Supreme Court, in a case concerning the applicability of subsection (g) to an Old Order Amish employer, has stated that the exemption is to those self employed and does not allow employers to claim the exemption for all of their employees.\textsuperscript{58}

As the federal government’s expenditures on social welfare increased throughout the 20\textsuperscript{th} century, charitable giving experienced the effect of “crowd out”\textsuperscript{59}. On the one hand, a recent study “found that for every dollar cut from federal welfare spending, congregational social spending [increased] by 40 cents.”\textsuperscript{60} On the other hand, “[a]nother study, focusing on the 1930’s, concludes that … church spending fell by an estimated 30 percent in response to the New Deal.”\textsuperscript{61}

\textbf{CAN THE GOVERNMENT OVER-OBLIGATE ITSELF?}

The debate over Medicare’s and Medicaid’s solvency is robust, and while conclusions are conjecture at best, the sense seems to be that something is broken. One

\begin{flushright}
\begin{footnotesize}
\textsuperscript{56} See I.R.C. §§ 1402(e) & 1402(g) (2008).
\textsuperscript{57} \textit{Id.}, at § 1402(e)(1), see also Elizondo v. Evangelical Lutheran Church in America, No. 7:10-cv-00017, 2010 WL 5633254, at *2 (S.D. Tex. Dec. 17, 2010) (stating that the procedures spelled out in the statute are to be strictly adhered to).
\textsuperscript{58} U.S. v. Lee, 455 U.S. 252, 256 (1982).
\textsuperscript{59} DALY, \textit{supra} note 3, at 40.
\textsuperscript{60} \textit{Id.}, at 40-41.
\textsuperscript{61} \textit{Id.}, at 41.
\end{footnotesize}
\end{flushright}
Scholar’s opinion: “[a]bsent fundamental and immediate changes in Medicare’s fiscal and benefit structure, the Medicare Trust Fund will be exhausted in 2019….”62 One Judge’s opinion: “Medicare costs are skyrocketing and may bankrupt us all….”63 The Congressional Budget Office’s opinion:

Over the next several decades, the continued aging of the population and the growth of health care costs will, under current law, almost certainly boost federal spending significantly relative to the output of the economy. According to the Congressional Budget Office’s (CBO’s) most recent long-term projections, which were issued in June 2010 and were based on the assumption that then-current law would generally remain in place, spending on Social Security and the government’s major mandatory health care programs—Medicare, Medicaid, the Children’s Health Insurance Program (CHIP), and health insurance subsidies to be provided through insurance exchanges—will increase from roughly 10 percent of gross domestic product (GDP) today to about 15 percent 20 years from now. If revenues and federal spending apart from those programs remain near their past levels relative to GDP, the increase in spending on Social Security and the health care programs will lead to rapidly growing budget deficits and mounting federal debt.64

Medicare and Medicaid combined constituted 5 percent of total federal spending in 1970; in 2010 they constituted 21 percent; in 2040 they’re projected to be 34 percent.65 Safe to say: the combination of too many elderly beneficiaries and too few younger workers is setting the stage for deficits in the programs.

Today’s elderly are in a “Golden Age of Aging” according to one author, “receiving far greater levels of social protection and resources than they provided to their

62 Schuck, supra note 15, at 35.
own parents.”\textsuperscript{66} Furthermore, “the elderly constitute a large, growing, and highly
effective voting bloc fully capable of protecting its group interests…”\textsuperscript{67} But this voting
bloc may not be willing to serve themselves, or other more pressing demands may require
their voting against their interests.\textsuperscript{68}

The debate over Medicare and Medicaid is as enormous as the programs have
become; but what exactly is the role of government? According to the Medicare Act
government has obligations to pay certain medical expenses of seniors after they have
reached a certain age.\textsuperscript{69} But certainly an Act of Congress can be changed by a subsequent
Act of Congress; specifically, the recent Patient Protection and Affordable Care Act has
made certain changes to Medicare.\textsuperscript{70} Some figures already assume that the Patient
Protection and Affordable Care Act has cut Medicare by over a half trillion dollars over
the next decade.\textsuperscript{71} Some argue that cuts to Medicare are inevitable; the Governor of
Indiana, Mitch Daniels, recently wrote, “[b]ut the truth is that Medicare is going to have
to change, and we are going to have to find ways to spend less on it, or it will devour the

\begin{footnotes}
\item[66] Schuck, \textit{supra} note 15, at 61-62.
\item[67] \textit{Id.}, at 50.
\item[68] See Richard L. Kaplan, \textit{Analyzing the Impact of the New Health Care Reform
Legislation on Older Americans}, 18 \textit{ELDER} L.J. 213 (2010-2011) (explaining how the
new Patient Protection and Affordable Care Act will likely have a negative effect on the
elderly).
\item[69] \textit{Id.}, at 214.
\item[70] \textit{Id.}
\item[71] Memorandum, Richard S. Foster, \textit{Estimated Financial Effects of the “Patient
Protection and Affordable Care Act,”} (2010), available at
\url{http://graphics8.nytimes.com/packages/pdf/health/oactmemo1.pdf} (explaining that
Medicare cuts in 2010-2019 are estimated to be at $575 billion). But see Presentation,
Douglas W. Elmendorf, \textit{Congressional Budget Office Presentation to the Institute of
judgment, [the Patient Protection and Affordable Care Act] does not substantially
diminish” the rising costs of federal health care programs), available at
\url{http://www.cbo.gov/ftpdocs/115xx/doc11544/Presentation5-26-10.pdf}.
\end{footnotes}
Of course amidst all the debate the obvious question needs to be asked: is Medicare working? The answer is most likely yes.73 “[Five years prior to Medicare’s enactment], 35% of older Americans lived in poverty; in 2008, less than 10% of them did [furthermore] [i]n 1974, only 18% of older Americans were categorized as high-income; in 2006, nearly 29% of them were.”74

These results are a clear improvement over prior attempts to legislate for the public’s welfare. Some jurisdictions used to enact settlement and removal laws which enabled towns to file actions of assumpsit against neighboring towns seeking reimbursement for their own expenses paid out to provide for wandering paupers.75

Also, other countries that provide for the health care expenses of their populations are facing the growing problem of provision of welfare to their elderly; specifically, Sweden has a “National Welfare Model”, which covers everyone, developed out of the great depression era.76 But, pressure to reform the care for the elderly resulted in a transfer of the responsibility of caring for the elderly in Sweden “from county councils to

---

72 MITCH DANIELS, KEEPING THE REPUBLIC: SAVING AMERICA BY TRUSTING AMERICANS 182 (2011). But see REV. GLENN “TEX” EVANS, LIFE IS LIKE THAT 21-23 (1975) (Tex Evans was the founder of the Appalachia Service Project, Inc., and in his book of short stories taken from his ministry, he tells of how the opponents to Social Security at the time of its enactment feared that it would result in negative consequences but that in the end “The sun still comes up just the same!”).
73 Schuck, supra note 15, at 32.
74 Id.
75 See FRIEDMAN, supra note 46, at 492-93; City of Auburn v. Inhabitants of Town of Farmington, 175 A. 475 (Maine 1934); Inhabitants of Town of Gouldsboro v. Inhabitants of Town of Sullivan, 170 A. 900 (Maine 1934).
local authorities.”77 China likewise is seeing a growing elderly population exacerbated by its “policy of one child per family.”78 One author in laying out the state of public healthcare in China today stated that China’s “[o]ld operating models of public health [care provision] cannot meet present requirements.”79 Although, it should be noted that, before pointing out the flaws of China’s system, the author also noted that China has “[used] 1% of the total world health expenses…[to ameliorate] the health problems of 22% of the total world population.”80 Another author stated bluntly that “[p]rotection of citizens’ health is one of the duties of a state” usually expressed in the state’s constitution.81 The fact that other nations provide for the health care of their elderly people through laws of the state is without question.82

So what are the government’s duties as to the provision of welfare, specifically,

77 Id., at 2.
78 Id.
80 Id.
81 Id., at 14, (abstract of article, XU XINYAN, CHINA’S SOCIAL MEDICAL INSURANCE SYSTEM).
82 See U.S.S.R., Measures to Aid Pensioners, 12 ANN. REV. POPULATION L. 156, 159 (1985) (providing a “50 percent State subsidy [for the elderly] buying prescription medicine”); China, Regulations Protecting the Elderly, Standing Committee of the Shanghai Municipal People’s Congress, 15 ANN. REV. POPULATION L. 175, 176 (1988) (providing regulations prohibiting “the ill-treatment of the elderly”, requiring children to support their elderly parents, and requiring the elderly to “budget their own legitimate income”); France, Act No. 89-475 relating to the accommodation of the elderly and handicapped adults in the homes of individuals for payment, 16 ANN. REV. POPULATION L. 151, 153 (1989) (providing essentially that in-home long-term care contracts must be in writing and must contain certain protections for the elderly, and allowing for a “state representative” to order changes to be made in the home); Trinidad & Tobago, Private Hospitals Act, 17 ANN. REV. POPULATION L. 133, 137 (1990) (requiring licensure and oversight for “homes for the elderly”).
health care? The Constitution spelled out what power Congress was to have regarding welfare: “[t]he Congress shall have Power To lay and collect Taxes, Duties, Imposts and Excises, to pay the Debts and provide for the common Defence and general Welfare of the United States ….” But does this require that Congress provide for the welfare of the individual States, or the individual citizens of each of the States?

On the one hand, it seems that the general welfare is aimed at allowing specific provision for the individual; the “[p]romotion and improvement of our people’s health is a corresponding duty to our inalienable right to the ‘pursuit of happiness;’ it is a fundamental obligation of governments, national, state and local, instituted among men to secure man’s inalienable rights.” On the other hand, the Supreme Court has said that the clause’s “true construction undoubtedly is that the only thing granted is the power to tax for the purpose of providing funds for [inter alia] making provision for the general welfare.” However, the Supreme Court has stated clearly “that the Due Process Clause [] generally confer[s] no affirmative right to governmental aid ….” But, the Supreme Court has also stated that “the General Welfare Clause [is not] a limitation upon congressional power [but] rather a grant of power, the scope of which is quite expansive, particularly in view of the enlargement power by the Necessary and Proper Clause.” This question may likely be answered in part in the coming year when the Court hears the appeals concerning the constitutionality of certain provisions of the Patient Protection

---

83 U.S. CONST. art. I, § 8, cl. 1.
85 U.S. v. Butler, 297 U.S. 1, 64 (1936).
87 Buckley v. Valeo, 424 U.S. 1, 91 (1976)(discussing appellant’s argument as to limitations of Article I, § 8 upon congress).
and Affordable Care Act.\textsuperscript{88} However, the church need not wait in an apathetic mode: the Church must act first.

**CONCLUSION: TORTOISE OR HARE; WHO’LL WIN OUT?**

The Government has gotten the fast start in the modern era in providing for the needs of the elderly. As a growing political voting block, the elderly seem to have spawned good faith efforts to protect themselves, albeit at the expense of the church withdrawing from its role. The biggest problem with the central role of welfare provision being filled by the government is that as a neighbor, government is just too cold:

In the past, presidents have declared wars on poverty and promised to create a great society. But these grand gestures and honorable aims were frustrated. They have become a warning, not an example. We found that government can spend money, but it can’t put hope in our hearts or a sense of purpose in our lives. This is done by churches and synagogues and mosques and charities that warm the cold of life. A quiet river of goodness and kindness that cuts through stone. Real change in our culture comes from the bottom up, not the top down. It gathers the momentum of a million committed hearts. So today I want to propose a different role for government. A fresh start. A bold new approach.\textsuperscript{89}

That bold new approach seems to have been the development of the faith-based initiative. An intricate relationship has developed between church and state that is both complex and functional with the faith-based initiative rising to the prominent position:

[T]he faith-based initiative grows out of an antipoverty vision substantially more generous and effective than anything we have ever had in the United States, before or after welfare reform. This surprising truth is illuminated by the confessional ideas that influenced its design. Focused on political order and the nature of the state, these ideas … gained influence and political power in the late nineteenth century, when the Catholic Church, orthodox Calvinists, and other European confessions sought to strengthen the churches’ position in a time when socialism and centralized welfare


\footnote{89 George W. Bush, President U.S., Duty of Hope speech in Indianapolis, Indiana (Jul. 22, 1999).}
systems threatened to marginalize their power and authority. The resulting ‘Christian Democratic’ welfare model—dominant particularly in Germany and the Netherlands—reduced inequality and poverty to levels comparable to those of the Nordic Social Democracies, while elevating the role of religion. The United States, by contrast, with its secular, liberal, market-based welfare system, was and remains, the most unequal and poverty-ridden among advanced countries.  

While noble in their efforts faith-based initiatives have also contributed to the erosion of the church’s position; when the government controls the purse strings, the government has the control.

While this article started with the Commandment to honor your father and mother, the Lord gave an even earlier command when He told the Israelites not to take more food than they needed for each day. It seems as though we are unable to feel satiated with what God has provided for us; “the average person in America today wants about 40 percent more than what [he or she] has.” “People who make $50,000 per year say they feel like they would have enough if they made $70,000 … [however] people who make $70,000 per year say they ‘need’ $98,000 … [despite] how much we have, we always feel like we need a little bit more in this world’s economy.”

If one assumes that the Medicare and Medicaid programs are indeed broken, what can be done? What should be done? Christians must adhere to the Ten Commandments and additionally they must strive to fulfill the Greatest Commandment. So how are

90 Daly, supra note 3, at 94.
91 Exodus 16:4-19; Shane Claiborne, Relational Tithe, Inc., Economy of Love 36 (2010).
94 Exodus, supra note 7; Matthew, supra note 1.
congregations doing this today? Shouldn’t each congregation take a look at its own inner workings and strive to fulfill the commandments as a collective group?

It makes us ask though … as we think about all of the offerings that are gathered on Sunday mornings in congregations like this around the world, where is that money going? Is it still being put at the feet of the apostles and distributed to folks as they have need? It makes us wonder if in our own congregation, if there was a need or a crisis that someone had, would they know how to bring the need before the group so that people can carry the weight of that burden with them? And unfortunately the statistics and studies show over and over that very little of our church offerings are going to meet the needs of the poor among us. And much of the money that we gather on Sunday mornings is going to pay staff and build buildings, and very little of it is really going to meet the needs of the poor.\(^\text{95}\)

“Imagine your church building was destroyed … [w]ould those around you still know you were a Christian?”\(^\text{96}\) This is a difficult question for someone who truly wants to be faithful to his or her religion; the obligations put upon Christians in the scriptures are not to be passed upon because they seem too difficult to deal with today.\(^\text{97}\)

The development of HCSM’s as an alternative to traditional medical insurance is a nice enough thought and certainly, with their restrictions on membership, is a good attempt to take care of the faithful in adherence to some scriptural obligations.\(^\text{98}\) But what about the scriptural obligations that came directly from Christ; what about those who are not yet Christians?\(^\text{99}\) To truly adhere to the obligations imposed by the scriptures, shouldn’t HCSM’s take care of the needs of others regardless of whether or not they have first come to Christ?

Churches face financial burdens all the time, yet the local church, even if it’s run

\(^{95}\) **CLAIBORNE**, *supra* note 91, at 78-79.

\(^{96}\) *Id.*, at 83.

\(^{97}\) **Stuart**, *supra* note 8.

\(^{98}\) *Galatians*, *supra* note 1.

\(^{99}\) *Luke*, *supra* note 1; **Faherty**, *supra* note 24, at 117.
down and needs a new roof or a new coat of paint stands there as a refuge or sanctuary for those in need of spiritual blessings. What is stopping those churches—all churches—from providing material blessings in addition to spiritual? “[E]ach congregation has its own financial challenges … [but] … we must honestly assess what our church budgets say about our true priorities.”\textsuperscript{100} Upon realizing how much money the organist cost the church each month, or how much the flowers are each Sunday, or how much the heating and air conditioning bill is for the huge gymnasium or fellowship hall most people should be astonished. The amount of money that goes out of any individual church for true outreach or mission work is pitiful when compared against the vastly larger sum that is spent in the coddling of the congregation each Sunday.

What if all of the churches in the United States were to make a few rooms for long-term care for the indigent elderly from their community somewhere within the walls of their church? According to the online site “Christianity Today” there were approximately 331,000 churches in 2000\textsuperscript{101}; also, the Congressional Budget Office estimated that in 2006 there were 5.5 million enrollees in Medicaid aged 65 and older and that total federal benefit payments to those aged 65 and older was 36.7 billion, 70 percent of which was for long-term care.\textsuperscript{102} Using these numbers, while knowing they are open for debate, the cost per church would have been 110,876 dollars, if the churches had completely displaced the government’s role for a year (albeit the years don’t directly line up the comparison is meant only to be approximate). While not all churches could have afforded to have paid that much money to provide for long-term care, it must be kept in mind that in a market-

\textsuperscript{100} CLAIBORNE, \textit{supra} note 91, at 89.
\textsuperscript{102} \url{http://www.cbo.gov/ftpdocs/87xx/doc8758/AppendixA.4.1.shtml}.
based economy the rent for the building must necessarily be a portion of the cost which is currently paid by the government. Of course if a church had a few beds in its building and was paying the bill for the medical services, the cost would be much less because there wouldn’t be a need to charge for the rent. The cost of the space is born by the churches regardless of whether it’s used to shower mercy upon their neighbors in need, or if it sits empty 86 percent of the time awaiting the next congregational meal or occasional meeting during the week.

The government is off to a fast start and appears to have won the race. The story is well known that slow and steady will win the race, but the Church has to start before it can contemplate winning. Just how powerful the change would be if each church should truly open its doors is not known. But simply being a conduit of spiritual blessings falls far short of the obligations that the scriptures put upon the faithful. The government turns on the spigot of material blessings (Medicare and Medicaid benefits) and why would an elderly person look anywhere else for provision? But, a look around society and a glance around the pews each Sunday should tell all Christians that working as hard to bestow material blessings on their neighbors as they work to make the church sound and look nice on any given Sunday might just serve to reinvigorate church attendance while fulfilling all of the biblical obligations. Obligations that command every Christian’s attention lest they fail to truly honor their one heavenly Father.