Work, the Social Question, Progress and the Common Good?

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BOOK REVIEW

WORK, THE SOCIAL QUESTION, PROGRESS AND THE COMMON GOOD?

HARRY G. HUTCHISON[†]

RECOVERING SELF-EVIDENT TRUTHS: CATHOLIC PERSPECTIVES
ON AMERICAN LAW. Edited by Michael A. Scaperlanda & Teresa
Stanton Collett. Catholic University Press, 2007.

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INTRODUCTION

The pursuit of the common good has been an important topic throughout American history. Several conceptions of the common good (perhaps conflicting) sparked the Revolutionary War, the Nation's founding documents, and the formation of the United States. Developing a proper conception of the common

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good has been a task that has bedeviled countless scholars, theologians, and the Nation's founders. Achieving the common good has proved to be even more elusive.

The Declaration of Independence is a political document meant to secure certain self-evident truths and political goods for many, but not necessarily all of the populace.¹ The Declaration is framed in largely moral tones that resonated with a people who, at the time of its inception, had learned political and moral philosophy, if only indirectly, from John Locke and Pierre Bayle's teaching on the necessity of freedom of conscience.² While Locke asserts that a state that does not respect rights is acting beyond its proper power and "imposes no duty of obedience,"³ he appreciates the possibility that "rights tend not to 'government and order . . . but anarchy and confusion.'"⁴ Still, it is possible to conclude that the Declaration implies, by linking human rights to the Creator,⁵ that rights, if they exist, originate outside of human experience.

According to philosopher Chantal Delsol, rights standing alone are deeply unsatisfying. She suggests that

[w]e find ourselves in a society that is waiting, but does not know what it is waiting for. The feeling of being locked in implies the dream of liberation and implies, too, the suspicion of something hidden beyond the confines of daily life, however adequate daily life is claimed to be.⁶

¹ But see Abraham Lincoln, Speech at Springfield, Illinois (June 26, 1857), reprinted in 2 THE COLLECTED WORKS OF ABRAHAM LINCOLN 398, 405-06 (Roy P. Basler ed., 1953) (arguing that the authors of the Declaration of Independence intended to include all even if it were obvious that all were not then actually enjoying equality).

² See, e.g., DAVID A.J. RICHARDS, TOLERATION AND THE CONSTITUTION 90 (1986) ("Locke and Bayle give conscience a moral interpretation and weight associated with their conception of the proper respect due to the highest-order interest of persons in their freedom . . .").

³ WILLIAM A. EDMUNDSON, AN INTRODUCTION TO RIGHTS 30 (2004).

⁴ *Id.* (discussing Locke and quoting JOHN LOCKE, THE SECOND TREATISE OF GOVERNMENT 115 (Bobbs-Merrill 1952) (1690)).

⁵ See THE DECLARATION OF INDEPENDENCE para. 2 (U.S. 1776) ("We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights . . .").

⁶ CHANTAL DELSOL, ICARUS FALLEN: THE SEARCH FOR MEANING IN AN UNCERTAIN WORLD, at xxvii (Robin Dick trans., 2003); see also Harry G. Hutchison, *A Clearing in the Forest: Infusing the Labor Union Dues Dispute with First Amendment Values*, 14 WM. & MARY BILL RTS. J. 1309, 1311 (2006).

Richard Swenson contends that because humans now live with unprecedented problems, we have been disarticulated from our own past and do not know how to deal with the present, let alone the future.⁷ Since the founding ideals of the American republic have been transmuted into a collective and individual capitulation to radical human autonomy, human choice (both individually and collectively) may therefore promise meaning in a life that confronts endless possibilities and problems.⁸ Against this backdrop, political success may depend upon the reclamation of the moral high ground.⁹ If true, the restoration of the idea of the common good to its proper place may issue forth in future political victories¹⁰ and correlative human flourishing. Who could quibble with a philosophical principle that urges citizens to look beyond their own self-interest and instead work for the greater common interest as a solution to the evils, both intentional and inadvertent, that afflict our land?¹¹

Many problems both in our nation and in the world appear to be connected to the availability and content of work and the disparities in power among individuals and groups generated by ideological, economic, and political conditions, which have allowed injustices to persist or have created new ones.¹² Distinguished Catholic labor law scholar David Gregory illuminates the importance of work by emphasizing Pope John Paul II's decision to make "Catholic social teaching on the rights of workers a central theme of his pontificate, with the magnificent labor encyclicals *Laborem Exercens*, *Sollicitudo Rei Socialis*, and *Centesimus Annus*."¹³ *Centesimus Annus* states that the Church's

teaching also recognizes the legitimacy of workers' efforts to obtain full respect for their dignity and to gain broader areas of participation in the life of industrial enterprises so that, while cooperating with others and under the direction of others, they

⁷ See RICHARD A. SWENSON, MARGIN: RESTORING EMOTIONAL, PHYSICAL, FINANCIAL, AND TIME RESERVES TO OVERLOADED LIVES 41 (1992).

⁸ See *id.*

⁹ See, e.g., Lew Daly, *In Search of the Common Good: The Catholic Roots of American Liberalism*, BOSTON REV., May/June 2007, at 23, 23.

¹⁰ See *id.*

¹¹ See *id.*

¹² See JOHN PAUL II, ENCYCLICAL LETTER *LABOREM EXERCENS* ¶8 (1981) [hereinafter *LABOREM EXERCENS*].

¹³ David L. Gregory, *Not the Bishops' Finest Hour: Economic Justice with Cerberus Unchained?*, 47 J. CATH. LEGAL STUD. 293, 293 (2008).

can in a certain sense “work for themselves” through the exercise of their intelligence and freedom.¹⁴

Ignoring the problem of work and its accompanying regulation, as well as the teachings embedded in papal encyclicals, may impair the Nation’s capacity to attain the common good.

However, insisting that the attainment of the common good is a collective goal leads to two problems. First, achieving the common interest based simply on “faith in America and its potential to do good”¹⁵ is inadequate.¹⁶ Instead, some observers are inclined to embrace President Franklin D. Roosevelt’s contention “that democracy cannot live without that true religion which gives a nation a sense of justice and of moral purpose.”¹⁷ Consistent with this impulse,¹⁸ during the 1930s some members of the Catholic press had little doubt that the New Deal’s vision of social justice was rooted in Christian thought.¹⁹ At the same time, *Commonweal*, a Catholic magazine publication, urged readers to recognize that President Roosevelt’s triumph in 1932 was “likewise the Catholic opportunity to make the teachings of Christ apply to the benefit of all.”²⁰ One commentator insists that the New Deal was the first time in modern history “when a Government in any nation has set out to give practical application to the principles of the Sermon on the Mount.”²¹ Congruent with the possibilities associated with the realization of secular salvation, the common good, as thus identified, materialized as nothing less than a rapturous epiphenomena.

Second, the attempt to establish the common good occurs concurrently with existence of intractable social problems, insofar as man is incapable of eliminating all forms of evil. These evils include death and disease, emotional and economic pain borne by children and adults, and dysfunctional behavior by individuals, groups, and nation-states. Human attempts to eliminate affliction have troubled mankind well before Thomas

¹⁴ JOHN PAUL II, ENCYCLICAL LETTER *CENTESIMUS ANNUS* ¶43 (1991) [hereinafter *CENTESIMUS ANNUS*] (footnote omitted).

¹⁵ Daly, *supra* note 9, at 23 (quoting Michael Tomasky, *Party in Search of a Notion*, AM. PROSPECT, Apr. 16, 2006).

¹⁶ *See id.*

¹⁷ *Id.* (internal quotation marks omitted).

¹⁸ *See id.*

¹⁹ *See id.*

²⁰ *Id.* (internal quotation marks omitted).

²¹ *Id.* (internal quotation marks omitted).

Aquinas wrote his great *Summa Theologica*, which included his discourse on the problem of evil.²² Human knowledge and human capacity become visible as obvious shortcomings in attempts to eradicate malevolent activity from the face of the earth. Understanding man's inherent inability to solve all problems on terms that all will consider just and good has sparked philosopher Peter Kreeft to exclaim that all of us are ignorant.²³ As Kreeft suggests, it is no wonder that when the Delphic oracle declared Socrates the wisest man in the world, Socrates understood this to mean that he alone recognized that he did not have wisdom. That recognition itself was "true wisdom for man."²⁴

Given the limits of human wisdom, historic events come into view at inconvenient moments. Francis Cardinal George argues that the "blow the Second World War dealt to humane ideals and values was so great" that a new start had to be made wherein "a fundamental legal structure [is] decided upon on the basis of 'responsibility before God.'"²⁵ Thus, if human progress and the common good are to be achieved, or are even achievable, they must rest on a sound foundation recalling President Roosevelt's admonition that democracy must reclaim true religion. Against this background, Michael Scaperlanda and Teresa Collett offer a series of essays in *Recovering Self-Evident Truths: Catholic Perspectives on American Law*²⁶ that revive the connections between faith and reason and between truth and hope as the foundation for progress.

Given the importance of work in papal encyclicals and the increasing demands of the regulatory state, this Review concentrates on three central and related concerns that surface in Scaperlanda and Collett's book: (1) the difficulty of finding a basis for acknowledging any shared truths during America's current epoch, (2) the question of labor in a pluralistic society,

²² See PETER KREEFT, *FUNDAMENTALS OF THE FAITH: ESSAYS IN CHRISTIAN APOLOGETICS* 54 (1988).

²³ See *id.* at 57.

²⁴ See *id.*

²⁵ Francis Cardinal George, *Foreword* to *RECOVERING SELF-EVIDENT TRUTHS: CATHOLIC PERSPECTIVES ON AMERICAN LAW*, at xi, xi (Michael A. Scaperlanda & Teresa Stanton Collett eds., 2007).

²⁶ *RECOVERING SELF-EVIDENT TRUTHS: CATHOLIC PERSPECTIVES ON AMERICAN LAW* (Michael A. Scaperlanda & Teresa Stanton Collett eds., 2007) [hereinafter *RECOVERING SELF-EVIDENT TRUTHS*].

and (3) the relative balance between state intervention, on the one hand, and voluntary associations, properly-formed communities, and individual autonomy on the other. Scaperlanda and Collett supply a multi-layered corrective to the current state of affairs by challenging critical assumptions, including the prevailing view that moral reasoning must be separated from trenchant questions that plague law and public policy. The editors and their colleagues offer legal theory and human wisdom that “is deepened and anchored by the exposition of a Christian anthropology.”²⁷

Despite their thorough attempt, difficulties haunt Scaperlanda and Collett’s venture. They concede that self-evident truth can no longer be presumed, and thus, they ask, “[H]ow can ‘law’ be used as a tool to facilitate our ongoing experiment in representative self-governance in a country that seems to have lost its shared moral foundations?”²⁸ Philosopher Alasdair MacIntyre shows that “key episodes in the history of philosophy were what fragmented and largely transformed morality.”²⁹ Fragmentation gave birth to Immanuel Kant and John Stuart Mill’s “attempt to develop accounts of morality in the name of some impersonal standard,” which was an “understandable response to the loss of shared practices necessary for the discovery of goods in common.”³⁰ Kant and Mill’s project is “doomed to failure, however, exactly because no such standards can be sustained when they are abstracted from the practices and descriptions that render our lives intelligible.”³¹ Methodist theologian Stanley Hauerwas explains that modern moral philosophy becomes part of the problem, as a result of its stress on autonomy, like its corresponding attempt to free ethics from history, because it “produces people incapable of living lives that have narrative coherence.”³² Undaunted by MacIntyre’s work and Hauerwas’ analysis, Scaperlanda and Collett provide a double-layered perspective on American law that is grounded in the teaching of the Roman Catholic Church and is Catholic in its

²⁷ Cardinal George, *supra* note 25, at xi–xii.

²⁸ Michael A. Scaperlanda & Teresa Stanton Collett, *Introduction to RECOVERING SELF-EVIDENT TRUTHS*, *supra* note 26, at 2.

²⁹ Stanley Hauerwas, *The Virtues of Alasdair MacIntyre*, FIRST THINGS, Oct. 2007, at 35, 36.

³⁰ *Id.*

³¹ *Id.*

³² *Id.*

claim that “universal truths [are] accessible to all through reason and experience.”³³ Scaperlanda and Collett offer the hypothesis that the American Constitution “was adopted by and for a community of persons with the purpose of securing the ‘Blessings of Liberty’ ”³⁴ and argue that “[t]he Constitution itself places textual and structural limits on government, facilitating authentic freedom by creating room for civil society to work and flourish.”³⁵

Scaperlanda and Collett’s work delineates the claim that “liberty and equality lie at the core of our [being and] identity.”³⁶ Uncertainties come into view on two planes. First, the editors admit that ordered liberty presents a paradox with the competing claims of the individual and the collective (the Nation, society, and government) requiring a criterion of judgment.³⁷ Second, they offer what may be an ultimately impossible proposition: “[W]e the people of the United States desire to promote ordered liberty in a pluralistic society that treats all persons as equals.”³⁸ The meaning of liberty has been in conflict with equality and pluralism for some time. Since the “book is offered in the spirit of strong pluralism,”³⁹ its approach raises the foundational question whether the volume can truly enter into a conversation with pluralists who reject the notion of, and even the search for, objective truth that is common to all. This is not simply a new-found conflict. Hugo Grotius, a sixteenth century Dutch philosopher, observed that “there is no single best type of life for people of all kinds to lead, and therefore there is no single best kind of political state to facilitate a best life.”⁴⁰ Pluralism, “if combined with the idea that governments are essentially compacts among diverse persons holding diverse views of the good life,” is a revolutionary notion⁴¹ that may impair, rather than fortify, the concept of objective truth.

Scaperlanda and Collett’s enterprise is held together by the authors’ persistence in pursuing objective truth as the criterion

³³ Scaperlanda & Collett, *supra* note 28, at 2.

³⁴ *Id.* at 3.

³⁵ *Id.*

³⁶ *Id.* at 4.

³⁷ *See id.*

³⁸ *Id.*

³⁹ *Id.* at 8.

⁴⁰ EDMUNDSON, *supra* note 3, at 20.

⁴¹ *Id.*

of judgment.⁴² Objective truth may be in conflict with the concept of pluralism, which declines to concede that rights necessarily have a moral footing in truth. Government officials who seek to wield or increase state power, ostensibly to achieve the common good, may have an interest in denying the truth. Nevertheless, consistent with the editors' intuition, Francis Cardinal George states that Catholic anthropology elicits values, "which should equip Catholic legal thought for dialogue with secular disciplines and secular culture by opening up a space of truth in what is common to all."⁴³

The volume is anchored to the teaching of Pope John Paul II, but the editors' search for objective truth provokes perplexing questions. For instance, can political liberalism be squared with a principled understanding of Pope John Paul II's doctrinal contributions? Second, does a faithful reading of Pope John Paul II lead to conflicting understandings of principles, particularly when and if scholars attempt to concretize ideas such as solidarity? For example, does a principled conception of solidarity include American labor unions, when and if they can be accurately characterized as involuntary associations? Third, can there be an effective Catholic contribution to the Nation until there is again clarity about Catholic ways of living and thinking that enable Catholic perspectives to "alter lives in a meaningful way and win the war for America's soul?"⁴⁴ After all, an open debate has broken out among faithful Catholics over whether popes and bishops can be infinitely permissive toward the freedom demanded by theologians to follow "what they understand to be the requirements of their own discipline."⁴⁵ Should Catholics accept Avery Cardinal Dulles' perceptive contention that the Constitution of the Church maintains "that the judgments of the pope and of individual bishops, even when not infallible, are to be accepted with religious submission of mind?"⁴⁶ Finally, can liberalism be coherently conceived within parameters provided by Catholic social thought?

⁴² See Scaperlanda & Collett, *supra* note 28, at 4.

⁴³ Cardinal George, *supra* note 25, at xii.

⁴⁴ Randy Lee, *Epilogue* to RECOVERING SELF-EVIDENT TRUTHS, *supra* note 26, at 341, 346.

⁴⁵ Avery Cardinal Dulles, *The Freedom of Theology*, FIRST THINGS, May 2008, at 19, 19.

⁴⁶ *Id.*

In Part I, this Review begins to answer these questions by concentrating on several of the essays contained in *Recovering Self-Evident Truths*.⁴⁷ This examination addresses the topics of Catholic Christian anthropology; the Catholic conception of community, freedom, solidarity, subsidiarity and the common good; American liberalism; and human work, which is central to social life and the Church's teaching. This analysis will examine the labor question and the relative balance between centralizing authority and individual activity. It is unlikely that all will agree that Catholic teachings supply an appropriate corrective to distorted notions in law and public policy debates,⁴⁸ thus, questions surface. Coherence may flounder on two levels. First, what virtues (values) do all Catholics share? Second, why should a nation (even one tied to a natural rights lineage) that appears to be somewhat dependent on Protestant presuppositions,⁴⁹ which stress the authority of the individual believer, accept Catholic insights⁵⁰—which emphasize tradition and the authority

⁴⁷ The covered essays include: Scaperlanda & Collett, *supra* note 28, at 1–14; Kevin P. Lee, *The Foundations of Catholic Legal Theory: A Primer*, in RECOVERING SELF-EVIDENT TRUTHS, *supra* note 26, at 15, 15–35; Lorenzo Albacete, *A Theological Anthropology of the Human Person*, in RECOVERING SELF-EVIDENT TRUTHS, *supra* note 26, at 39, 39–51; Benedict M. Ashley, O.P., *A Philosophical Anthropology of the Human Person*, in RECOVERING SELF-EVIDENT TRUTHS, *supra* note 26, at 52, 52–65; Avery Cardinal Dulles, S.J., *Truth as the Ground of Freedom: A Theme from John Paul II*, in RECOVERING SELF-EVIDENT TRUTHS, *supra* note 26, at 69, 69–84; Robert K. Vischer, *Solidarity, Subsidiarity, and the Consumerist Impetus of American Law*, in RECOVERING SELF-EVIDENT TRUTHS, *supra* note 26, at 85, 85–103; Robert John Araujo, S.J., *The Constitution and the Common Good*, in RECOVERING SELF-EVIDENT TRUTHS, *supra* note 26, at 104, 104–27; Christopher Wolfe, *Why We Should (and Should Not) Be Liberals*, in RECOVERING SELF-EVIDENT TRUTHS, *supra* note 26, at 131, 131–51; Thomas C. Kohler, *Labor Law: "Making Life More Human"—Work and the Social Question*, in RECOVERING SELF-EVIDENT TRUTHS, *supra* note 26, at 163, 163–90; Russell Shaw, *Afterword: Catholics and the Two Cultures*, in RECOVERING SELF-EVIDENT TRUTHS, *supra* note 26, at 333, 333–40; and Lee, *supra* note 44, at 341–48.

⁴⁸ Cardinal George, *supra* note 25, at xii.

⁴⁹ John Locke, a "latitudinarian product of the English reformation" and "perhaps the leading philosophical influence on the formation" of the United States suggested that a Christian civil ruler should not tolerate Catholicism because Catholics "answer to a higher earthly, civil authority than the rulers of their own country." Nicholas P. Miller, *The Dawn of the Age of Toleration: Samuel Pufendorf and the Road Not Taken*, 50 J. CHURCH & ST. 255, 266–69 (2008) (discussing Locke's views).

⁵⁰ This is not to say that natural rights cannot supply a basis for agreement between Protestants and Catholics. See Harry G. Hutchison, *Rediscovering the Natural Law in Reformed Theological Ethics*, 49 J. CHURCH & ST. 773, 773–75 (2007) (book review).

of the Church—as a corrective? Why should an avowedly secular nation submit to the claim that Christianity is threatened by a culture that refuses to acknowledge the gift of faith?⁵¹ It is plausible that swiftly proliferating forms of Protestantism, focused solely on autonomy and individual salvation, have contributed to societal fragmentation. It is doubtful that Catholics have fully escaped this fracturing impulse.

Part II considers the application of Roman Catholic teachings to a framework provided by New Deal phenomenology and President Roosevelt's attempt to regulate the lives and the livelihood of the Nation's citizens. This focus is informed by American scholar Lew Daly's euphoric embrace of the New Deal as the quintessential example of a Catholic conception of the common good, but also by Pope John Paul II, who, following Pope Leo XIII, suggests that work is the key to the social question. Daly's article *In Search of the Common Good: The Catholic Roots of American Liberalism* was widely acclaimed upon publication. After making the case that politicians have begun to tap into "the longstanding relationship between Christianity and civic humanism," Professor John Fea argues that "Daly makes a compelling case that New Deal liberalism was the product of . . . the views of [Pope] Leo XIII as channeled through the Catholic progressivism of Father John Ryan."⁵² Though an accurate understanding of Pope Leo XIII's views confirms that, following Pope Pius IX, he was leery of liberalism,⁵³ the passage of New Deal statutes provoked President Roosevelt's Secretary of Labor, Frances Perkins, to exclaim that for the first time in American history a government stirred by the moral rights of workers was intent on dispensing social justice.

Though the New Deal was ostensibly animated by principle, it is unlikely that principles can be completely "abstracted from the practices and descriptions that render our lives intelligible."⁵⁴

⁵¹ Cardinal Dulles, *supra* note 47, at 70, 79–84.

⁵² Posting of John Fea to Religion in American History, Religion and the Common Good, <http://usreligion.blogspot.com/2007/07/religion-and-common-god.html> (July 7, 2007).

⁵³ See, e.g., Robert P. Kraynak, *Pope Leo XII and the Catholic Response to Modernity*, 49 MODERN AGE 527, 529–30 (2007), available at http://findarticles.com/p/articles/mi_m0354/is_4_49/ai_n25358087. I am indebted to David Gregory for this observation. He points out that Pope Leo XIII evidently subscribed to Pope Pius IX's *Syllabus of Errors*. David Gregory's comments are on file with the author.

⁵⁴ See Hauerwas, *supra* note 29, at 36.

Therefore, it is necessary to gather the moral lessons supplied by the history of human interactions with New Deal policies. These interactions provide a plinth on which to assess the morality of the liberal state's massive intervention in human lives. The application of principles is always more open to debate and provides less certainty than the pure enunciation of principles; thus, application can yield different results.⁵⁵ In harmony with this observation, the promise of the common good as represented in the New Deal materializes in conflict with the notions of equality, freedom, community, and the public interest. This conflict underscores Dorothy Day's doubts about society's reliance on the "great, impersonal mother, the state,"⁵⁶ as well as her keen support for the principle "that charitable functions should be performed at the most feasible local level of society."⁵⁷ As thus understood, taking personal responsibility for improving the lives of one's neighbors is a form of social and moral progress.

MacIntyre illuminates the difficulty of attaining desirable forms of social and moral progress. He insists that society can only move toward a shared understanding of justice and the common good within the context of a tradition and in a community whose primary bond is a "shared understanding both of the good for man and . . . community and where individuals identify their primary interests with reference to those goods."⁵⁸ It is not clear whether the United States can provide such a community. If not, can self-evident truths receive an adequate hearing in a society that does not know what it is waiting for, even if we embrace Richard Garnett's persuasive claim that a proper account of the human person and human dignity presumes that "we live less in a state of self-sufficiency than in one of 'reciprocal indebtedness?'"⁵⁹ Still, I argue that progress toward a proper account of the common good may be possible if

⁵⁵ Cardinal George, *supra* note 25, at xii.

⁵⁶ See, e.g., Harry Murray, *Dorothy Day, Welfare Reform, and Personal Responsibility*, 73 ST. JOHN'S L. REV. 789, 789–90 (1999) (quoting Dorothy Day, who advocated personal responsibility rather than government programs as the way for Catholics to share their resources with poor neighbors).

⁵⁷ *Id.* at 789.

⁵⁸ ALASDAIR MACINTYRE, *AFTER VIRTUE* 250 (2d ed. 1984); see also Harry G. Hutchison, *Reclaiming the First Amendment Through Union Dues Restrictions?*, 10 U. PA. J. BUS. & EMP. L. 663, 675 (2008).

⁵⁹ Richard W. Garnett, *Criminal Law: "Everlasting Splendours"—Death-Row Volunteers, Lawyers' Ethics, and Human Dignity*, in *RECOVERING SELF-EVIDENT TRUTHS*, *supra* note 26, at 254, 273.

society accepts that: (1) law, as a coercive force, cannot fully fashion change within the human person,⁶⁰ and (2) Pope John Paul II's observation that structural transformation of society is secondary to moral renovation is correct.⁶¹ Moral renovation can then operate as a catalyst for social transformation.

I. DOES CATHOLIC LEGAL THEORY SUPPLY COHERENT TRUTH TO AMERICA?

A. *Finding Truth in the Nature of the Human Person in Community*

Truth can be found in a proper account of the nature of the human person within a defined community. Scaperlanda and Collett introduce their collection with the thoughtful observation that Catholic anthropology begins with the notion that the human person is created in God's image and likeness and that all things, including human nature, are perfected in the person of Jesus Christ, the man who, by all accounts, reveals humanity to itself.⁶² Taking his message into the realm of social living, then, Catholic teaching concludes that the principles of love, equality, freedom, solidarity, and subsidiarity are the norms of social living.⁶³ Catholic thought conceives the common good as a component of, but also distinct from, corresponding secular approaches to the good, which are derived simply from a complete embrace of liberalism, the free market, individual autonomy, and the Enlightenment. Distinctiveness is supplied by this paradigm's rejection of the secular idea "that communal goods are merely the aggregated preferences of self-interested individuals within the society."⁶⁴ Catholic anthropology concentrates on four values—freedom, solidarity, subsidiarity, and the common good⁶⁵—which offer a basis for conversing with

⁶⁰ See, e.g., John M. Breen, *John Paul II, The Structures of Sin and the Limits of Law*, 52 ST. LOUIS U. L.J. 317 (2008).

⁶¹ *CENTESIMUS ANNUS*, *supra* note 14, ¶ 51.

⁶² Scaperlanda & Collett, *supra* note 28, at 10.

⁶³ I am indebted to my colleague, Helen Alvaré for this observation. Email from Helen Alvaré, Professor of Law, George Mason Univ. Sch. of Law, to Harry G. Hutchison, Professor of Law, George Mason Univ. Sch. of Law (May 15, 2008, 12:00:24 EST) (on file with author).

⁶⁴ Scaperlanda & Collett, *supra* note 28, at 10–11.

⁶⁵ Cardinal George, *supra* note 25, at xii.

the wider world.⁶⁶ Complexity and difficulty surface when Catholic thought engages with what has rapidly become a remarkably diverse postmodern and postsecular world. "Like a blastula of cells undergoing mitosis, American society constantly proliferates new divisions and differentiations. Some of this merely reconfigures the familiar, reshuffling old decks, but much of it creates unprecedented forms of social life."⁶⁷ The content and the constitutive components of a distinctive Catholic anthropology become an issue when faced with such trends that are both internal and external to Catholic thought.

Scaperlanda and Collett, far from despairing over these challenges, maintain that we must, like citizens from every generation of every democracy since Aristotle, return to the moral question he posed: "How ought we to live together?"⁶⁸ This question anticipates Pope Benedict XVI's recent encyclical, *Spe Salvi*, stating that "every generation has the task of engaging anew in the arduous search for the right way to order human affairs."⁶⁹ Yet, within a nation permeated with gloom that questions the meaning and purpose of human life,⁷⁰ Aristotle's question and Pope Benedict's declaration provoke different, and indeed conflicting, responses by individuals and groups. Professor Gedicks explains that instead of living in a society characterized by a uniformity of views, we live in a world that has fallen apart.⁷¹ Many have described us as living at the end of an age, stalking the twilight of being and muddling through the aftermath of confusion and helplessness in a world that lacks reality.⁷² This metaphysical implosion⁷³ has a bearing on all of life and underscores Alasdair MacIntyre's perception that much of what passes for America's contemporary moral and philosophical debates is indeterminable and perpetually unsettled.⁷⁴ To further complicate this picture, Catholic social

⁶⁶ *Id.*

⁶⁷ PETER H. SCHUCK, *DIVERSITY IN AMERICA: KEEPING GOVERNMENT AT A SAFE DISTANCE* 3 (2003).

⁶⁸ Scaperlanda & Collett, *supra* note 28, at 2.

⁶⁹ POPE BENEDICT XVI, *ENCYCLICAL LETTER SPE SALVI* ¶ 25 (2007) [hereinafter *SPE SALVI*].

⁷⁰ Frederick Mark Gedicks, *Spirituality, Fundamentalism, Liberty: Religion at the End of Modernity*, 54 DEPAUL L. REV. 1197, 1197 (2005).

⁷¹ *Id.*

⁷² See, e.g., *id.* at 1197–98.

⁷³ *Id.* at 1197.

⁷⁴ MACINTYRE, *supra* note 58, at 226.

science critic Christopher Shannon asserts that virtually any effort aimed at improving human life through the enterprise of social science is inherently self-defeating because it problematizes human activity.⁷⁵ It is likely that all efforts grounded in social science, which are directed toward manipulating human behavior, whether liberal or conservative, must confront the improbability that large centralizing authorities possess sufficient temporal knowledge to skillfully enact and enforce well-intentioned programs.⁷⁶

These insights have implications for the study and efficacy of law. "Looking out on the legal world today, we can hardly fail to notice that *law*—that vast, sprawling enterprise constituted by lawyers, judges, bailiffs [sic], . . . persists and even flourishes."⁷⁷ At the same time, "*jurisprudence*—the activity of theorizing or philosophizing *about* law, about the *nature of law*—seems close to moribund."⁷⁸ It is helpful to offer a coherent philosophical and theological approach as a basis for theorizing. Consistent with this premise, Kevin Lee's essay *The Foundations of Catholic Legal Theory* draws our attention to the necessity of recovering the principles of natural law and of a well-formed conscience in order to rightly apply the natural law to concrete situations.⁷⁹ Pope John Paul II "taught that reason, shaped by the virtue of prudence, formed in the light of the Lord's Cross, makes possible right moral choice in complex situations."⁸⁰ But, as *The Foundations of Catholic Legal Theory* makes clear, *Recovering Self-Evident Truths* offers "a variety of philosophical and theological perspectives."⁸¹ The book, for instance, provides an initial essay that "draws from the moral anthropology developed

⁷⁵ CHRISTOPHER SHANNON, CONSPICUOUS CRITICISM: TRADITION, THE INDIVIDUAL, AND CULTURE IN MODERN AMERICAN SOCIAL THOUGHT, at vii, xi (rev. ed., University of Scranton Press 2006) (1996).

⁷⁶ For a discussion of this issue, see MACINTYRE, *supra* note 58, at 85. MacIntyre suggests that as government becomes more scientific and accepts that it can manipulate human action, "[g]overnment itself becomes a hierarchy of bureaucratic managers, and the major justification advanced for the intervention of government in society is the contention that government has resources of competence which most citizens do not possess." *Id.*

⁷⁷ Steven D. Smith, *Jurisprudence: Beyond Extinction?* 1 (Univ. of San Diego Legal Studies Research Paper Series, Paper No. 07-108, 2007), available at <http://ssrn.com/abstract=1009249>.

⁷⁸ *Id.* at 1.

⁷⁹ Lee, *supra* note 47, at 15, 33.

⁸⁰ *Id.* at 33 (footnote omitted).

⁸¹ *Id.* at 16.

in the personalist philosophy of Pope John Paul II," while later essays cite to the New Natural Law theory of John Finnis, who concludes that moral anthropology is less relevant to the law.⁸² This tension is emblematic of the existing diversity in Catholic thought on a variety of issues.

Although Catholic anthropology offers four comprehensive values⁸³ that might prepare Catholics to engage in conversation with the wider world, it is equally important to note that the authoritative teachings and the authoritative concerns of the Church, rightly ordered, are in the midst of historic changes. Evidence of change can be found in the widely held inference that we have entered into a global culture wherein sin no longer simply signifies individual failings, but instead represents a social or, alternatively, a collective infirmity.⁸⁴ Bishop Gianfranco Girotti, head of the Apostolic Penitentiary, the body that oversees confessions and penitence, has recommended that the Catholic Church refocus its attention toward an overarching concentration on consequences, which appears to differ from its prior focus on original mortal sins that originated in the human heart.⁸⁵

Change can also be found in the rediscovery of Pope Leo XIII's modern template for Catholic teaching located in *Rerum Novarum*, which recommends that we live by the notion that God gave the earth to all human beings in common.⁸⁶ This view highlights the universal destination of goods. The Church, on one hand, departs from the previously ascendant laissez-faire ethos toward an ethos championing government intervention when it nurtures the natural welfare of the individual and the community as a whole.⁸⁷ On the other hand, this process of rediscovery gives rise to tension, because Pope Leo XIII condemns "political liberalism for . . . its vesting of sovereignty in the people or its representatives rather than God."⁸⁸ Thus, it is reasonable to stipulate that the process of recovering what was lost is situated within a domain wherein one can ask whether

⁸² *Id.* (footnote omitted).

⁸³ Scaperlanda & Collett, *supra* note 28, at 10 (discussing the values of freedom, solidarity, subsidiarity, and the common good).

⁸⁴ Nancy Gibbs, *The New Road to Hell*, TIME, Mar. 24, 2008, at 78.

⁸⁵ *Id.*

⁸⁶ Daly, *supra* note 9, at 25.

⁸⁷ *Id.*

⁸⁸ *Id.*

Catholics should hold a diversity of views about the compatibility of the Catholic intellectual tradition with modern liberal democracy and the free market. One may wonder whether the Catholic tradition is “intrinsically distant from any earthly politics” in keeping with the notion that the Christian is “a pilgrim in an alien and sometimes hostile land.”⁸⁹ Kevin Lee answers the question by determining that “despite clear objectives and a strong sense of purpose, Catholics are not united in a single approach to the project of renewing Catholic legal scholarship.”⁹⁰

In reality the problem is far more serious in that it suggests that Catholics may be united in indifference to the teaching of the Church. Russell Shaw, in his essay *Catholics and Two Cultures*, hints at the breadth and depth of such problems. He argues that “the challenge for those seeking to effect a fundamental reorientation of American law comes not just from the secular culture but from culturally assimilated Catholics.”⁹¹ Continuing, Shaw insists that “[m]any educated Catholics today know next to nothing about natural law and couldn’t care less. . . . [Thus,] the first task for people seeking to apply Catholic perspectives to American law or anything else is to open the eyes of *Catholics* to those perspectives.”⁹² Opening the eyes of Catholics in such a way could constitute a startling epiphany that might reclaim a vibrant American Catholic subculture.⁹³ As a first step toward this desirable epiphany, it is useful to recall Archbishop Charles Chaput’s incisive understanding of the early Church. “People believed in the Gospel, but they weren’t just agreeing to a set of ideas. Believing in the Gospel meant changing their whole way of thinking and living. It was a radical transformation—so radical they couldn’t go on living like the people around them anymore.”⁹⁴ As a second step toward this desired epiphany, Lee, rightly, returns to the specific teachings of Pope John Paul II as a source of coherence.⁹⁵ *Recovering Self-*

⁸⁹ Lee, *supra* note 47, at 16.

⁹⁰ *Id.*

⁹¹ Shaw, *supra* note 47, at 340.

⁹² *Id.*

⁹³ *Id.*

⁹⁴ Archbishop Charles Chaput, *Church and State Today: What Belongs to Caesar, and What Doesn’t*, 47 J. CATH. LEGAL STUD. 3, 6 (2008).

⁹⁵ Lee, *supra* note 47, at 16.

Evident Truths presents a number of essays that are consistent with Kevin Lee's intuition.

In order to reclaim a vibrant Catholic subculture and revive the connection between truth and hope to defend authentic freedom against powerful opposition, humans are, in the words of Pope John Paul II and Justice Clarence Thomas, admonished to "be not afraid."⁹⁶ Monsignor Albacete's essay *A Theological Anthropology* and Avery Cardinal Dulles' contribution *Truth as the Ground of Freedom* offer a fruitful foundation for inquiry. Albacete observes that the value of the human person "originates in the will of the Creator" and that "the human person [is] to be the norm of all political and social life."⁹⁷ This is the central, yet "self-evident truth upon which all other truths about the human person, human society, and the cosmos depend"; thus, as Pope John Paul II's theological anthropology emphasizes, the value of the human person is "an infinite value engraved in the very structure of human personhood."⁹⁸ A human being is "the only creature . . . that God willed for its own sake."⁹⁹ Its value comes from its sheer existence, which cannot be measured by anything else.¹⁰⁰ As Albacete concedes, theological anthropology ought to be distinguished from all other anthropologies because all other alternatives only provide *partial* views of the human person.¹⁰¹ While critics might argue that either exceptional revelation or exceptional submission is required in order to embrace Albacete's understanding, he shows that there is more to Pope John Paul II's anthropology, including his concentration on the value of human experience. Indeed, as Albacete explains, the philosophical agenda of Pope John Paul II is a precise attempt to salvage "the modern notion of experience by incorporating it into the results of a realist metaphysics."¹⁰² He asserts that "the pope is convinced that an adequate analysis of the experience of personhood will rescue it from the pitfalls of subjectivism and relativism."¹⁰³ Human experience is to be welcomed as part of

⁹⁶ Albacete, *supra* note 47, at 39.

⁹⁷ *Id.* at 40.

⁹⁸ *Id.*

⁹⁹ *Id.*

¹⁰⁰ *Id.* (citing PAUL VI, PASTORAL CONSTITUTION *GAUDIUM ET SPES* ¶ 24 (1965)).

¹⁰¹ *Id.* at 42.

¹⁰² *Id.* at 43.

¹⁰³ *Id.*

the pursuit of truth so long as reductionism is avoided.¹⁰⁴ This process conduces toward the discovery of “self-evident truths written by the Creator in the very structure of personhood and experienced each time the human being acts as a person, that is, as a free, responsible ‘someone’ who is unique and unrepeatable, the true author of free acts.”¹⁰⁵ This approach insists that myth, for example, “is not the opposite of a historical account as we understand it today; the myth is a narrative that communicates the deepest experiences of human interiority.”¹⁰⁶

Pope John Paul II and Cardinal Dulles maintain that freedom, particularly for the human person in community depends on truth,¹⁰⁷ thus rejecting novel (contingent) criteria for the moral evaluation of human action. In his essay *Truth as the Ground of Freedom*, Cardinal Dulles considers freedom on two levels. At the lower level, the natural level, freedom means the absence of physical constraint, and to be free in this sense is to act according to an inner inclination.¹⁰⁸ At the higher level, distinct to individuals, freedom requires the absence of psychological compulsion as well as the lack of physical constraint.¹⁰⁹ Still, for some observers, objectionable psychological compulsion can be extended to include the provision of police and fire protection to religious institutions from which objectors demand freedom. This perspective may be tied to the claim that the U.S. Supreme Court emphasizes that government may not coerce anyone to support or participate in religion or its exercise, or otherwise act in a way that establishes a state religion or religious faith.¹¹⁰

Far from embracing this maneuver, Scaperlanda critiques secular liberals and liberal communitarians because they “celebrate our culture, which has gradually ‘substitute[d]

¹⁰⁴ *Id.* at 43–44 (“[A]s long as no aspect or dimension of the experience of being a human person is ignored, suppressed, or reduced to another one, there is nothing to fear from an anthropology based on . . . subjectivity.”); see also Ashley, *supra* note 47, at 54 (admonishing his readers to avoid the materialist, reductionist, and idealist presuppositions that too often influence the theories of modern scientists).

¹⁰⁵ Albacete, *supra* note 47, at 44.

¹⁰⁶ *Id.*

¹⁰⁷ Cardinal Dulles, *supra* note 47, at 70.

¹⁰⁸ *Id.*

¹⁰⁹ *Id.* at 71.

¹¹⁰ L. Scott Smith, *Religion Interfacing with Law and Politics: Three Tired Ideas in the Jurisprudence of Religion*, 10 LOGOS: J. CATH. THOUGHT & CULTURE 14, 22 (2007) (citing *Lee v. Weisman*, 505 U.S. 577 (1992)).

Freedom for Truth as the goal of thinking and of social progress.’”¹¹¹ While liberals appeal to human dignity as defined by its Judeo-Christian origins, Scaperlanda maintains that they cast aside the notion that it was founded by a Creator¹¹² and have become “markedly illiberal and intolerant of those who would threaten their highest value,” the liberal state.¹¹³ Rejecting the liberal approach because it “cannot give a criterion for wrongness,”¹¹⁴ Cardinal Dulles describes freedom as allowing one to “go beyond individual and collective selfishness and reach out to that which reason perceives as objectively good and true.”¹¹⁵ An individual is constrained by his determination that “[t]o act freely against the truth is to erode freedom itself.”¹¹⁶ The individual can “act the way he does, for otherwise his action would be arbitrary. But the source of the determination of his will is ultimately”¹¹⁷ grounded in liberty, which is the *right* to do what he ought to do based on rational scrutiny.¹¹⁸ For the individual, true freedom enables the person to transcend his self-interest or the collective self-interest of the individual’s group.¹¹⁹ Consistent with these deductions, human dignity requires one to act through “free choice that is personally motivated and prompted from within, not under blind internal impulse nor by mere external pressure.”¹²⁰ People achieve such dignity when they “free themselves from all subservience to their feelings, and in a free choice of the good, pursue their own end by effectively and assiduously marshaling the appropriate means”¹²¹ to make

¹¹¹ Michael A. Scaperlanda, *Immigration Law: A Catholic Christian Perspective on Immigration Justice*, in RECOVERING SELF-EVIDENT TRUTHS, *supra* note 26, at 292, 297 (alteration in original).

¹¹² *Id.* at 298.

¹¹³ *Id.* at 296.

¹¹⁴ *Id.* at 298 (internal quotation marks omitted) (quoting RICHARD RORTY, CONTINGENCY, IRONY, AND SOLIDARITY 75 (1989)).

¹¹⁵ Cardinal Dulles, *supra* note 47, at 72.

¹¹⁶ *Id.*

¹¹⁷ ANDRZEJ RAPACZYNSKI, NATURE AND POLITICS: LIBERALISM IN THE PHILOSOPHIES OF HOBBS, LOCKE, AND ROUSSEAU 176 (1987) (discussing Locke).

¹¹⁸ Cardinal Dulles, *supra* note 47, at 73.

¹¹⁹ *Id.* at 71.

¹²⁰ PAUL VI, PASTORAL CONSTITUTION *GAUDIUM ET SPES* ¶ 17 (1965) [hereinafter *GAUDIUM ET SPES*]; see also JOHN PAUL II, ENCYCLICAL LETTER *VERITATIS SPLENDOR* ¶ 42 (1993) [hereinafter *VERITATIS SPLENDOR*].

¹²¹ Cardinal Dulles, *supra* note 47, at 72; see also *GAUDIUM ET SPES*, *supra* note 120, ¶ 17; *VERITATIS SPLENDOR*, *supra* note 120, ¶ 42.

tangible their submission to self-giving.¹²² Properly conceived, freedom is both "frail and limited."¹²³

"[T]he moral law, as known by reason, does not constrain us, it leaves us physically and psychologically free either to obey or to violate it."¹²⁴ Therefore, "[t]o act freely against the truth is to erode freedom itself."¹²⁵ That freedom is meaningless and self-destructive if not used in the service of what is truly good reinforces Dulles' observation.¹²⁶ This is complicated by Albacete's conception of theological anthropology, which implies "that an important Catholic contribution to American culture is to reassert and explain the notion of self-evident truths that can serve as the basis for unity in a multicultural, pluralistic nation."¹²⁷ This contention implicates a now familiar source of conflict. The Catholic observation that a just legal system must respect all the implications of the infinite dignity of each human being through faith in the mystery of Christ¹²⁸ arguably enables Catholics to confidently collaborate with America's pluralistic, multicultural society. Even though it is possible to imagine that Catholics can do so, it would be remarkable if all Americans were to concur. Similarly, it would be exceptional if all Americans were to agree with Balthasar's declaration that the polarities that frame human existence in history are somehow the experience of life according to our hearts' fundamental desires.¹²⁹ In view of this, Albacete contends that law and legislation "should never seek to reduce . . . [the] individual into community or [the] community into [the] individual."¹³⁰ If true, the question that presses the debate regarding the existence and pursuit of self-evident truths, including truths about human freedom, must accept that for centuries, the world has been divided by rival conceptions of freedom.¹³¹

Before accepting or rejecting the persuasive appeal of Albacete's suggestions, members of a politically-liberal society

¹²² See, e.g., Cardinal Dulles, *supra* note 47, at 74.

¹²³ *Id.*

¹²⁴ *Id.* at 72.

¹²⁵ *Id.*

¹²⁶ *Id.*

¹²⁷ Albacete, *supra* note 47, at 44.

¹²⁸ *Id.* at 47.

¹²⁹ *Id.* at 50.

¹³⁰ *Id.* at 51.

¹³¹ Cardinal Dulles, *supra* note 47, at 69.

must grapple with difficult issues—because how can truth direct a society unless the convictions of many of the members are overridden, meaning that the society can hardly be called free?¹³² Given this threatening prospect, Avery Cardinal Dulles recommends a return to two declarations: (1) members of society are endowed with inalienable rights that cannot be removed by human power, and (2) the exercise of rights such as life, liberty, and the pursuit of happiness must be regulated with regard to the common good.¹³³ Nevertheless, it must also be admitted that some Americans may be drawn to Isaiah Berlin's claim that "the capacity for choice, and for a self-chosen form of life . . . [is] itself constitutive of human beings."¹³⁴ We may be captivated by the opportunity to invent through the "exercise of the powers of choice a diversity of natures, embodied in irreducibly distinct forms of life containing goods (and evils) that are sometimes incommensurable and . . . rationally incomparable."¹³⁵ This perception permits some to answer in the negative Benedict Ashley's salient question: Can we know the nature of human persons?¹³⁶

To answer in the positive, particularly as a Catholic, supports the claim that "there is indeed a truth, valid and binding within history itself."¹³⁷ Marcello Pera, in conversation with Joseph Cardinal Ratzinger, concedes that the submission of a single affirmative answer to Ashley's question, as opposed to a negative or plural response, may expose the responder to the charge of fundamentalism.¹³⁸ Hence, it is likely that many Americans, and perhaps some Catholics, will be tempted to reject both the basis of truth and its connected conception of the common good and accept, as an alternative, some form of relativism. Against this maneuver, Joseph Ratzinger argues that such a move confirms that relativism has become the

¹³² *Id.* at 79.

¹³³ *Id.*

¹³⁴ JOHN GRAY, ISAIAH BERLIN 14 (1996).

¹³⁵ *Id.* at 15.

¹³⁶ Ashley, *supra* note 47, at 52.

¹³⁷ See Marcello Pera, *Relativism, Christianity and the West*, in WITHOUT ROOTS: THE WEST, RELATIVISM, CHRISTIANITY, ISLAM 1, 25 (Joseph Ratzinger & Marcello Pera eds., Michael F. Moore trans., 2006) (internal quotation marks omitted).

¹³⁸ *Id.* at 25–26.

religion of modern man.¹³⁹ These claims and counterclaims, comprehensively examined, are more than mere abstractions.

Robert Vischer, argues that Catholic social teaching is ill-suited to abstract formulations and concludes that our understanding of such teachings about humans in community with one another must be explored in the context of pressing social problems.¹⁴⁰ In an essay titled *Solidarity, Subsidiarity and the Consumerist Impetus of American Law*, he maintains that "the value of the Church's teaching emanates from its grounding in truths that are not cabined by the contingent nature of modern epistemological understanding."¹⁴¹ Instead, the content of the Church's teachings speaks to all participants in the human drama, everywhere in every age.¹⁴² Anchored in Christian moral anthropology, two pillars of Catholic social teaching, solidarity and subsidiarity, emerge for extended discussion.¹⁴³ These two values, in Vischer's account, offer an effective rejoinder to the norms of consumerism enforced through the coercive power of the collective.¹⁴⁴ Solidarity represents the "commitment to the good of one's neighbour," while subsidiarity signifies "the conviction that needs are best understood and satisfied by people who are closest to them."¹⁴⁵ This approach is commendable, but complications persist.

First, consider solidarity. Vischer rightly argues that "much of American law embodies such an extreme brand of consumer-driven individualism that it gives rise to a relatively new form of social order: the pursuit of consumer autonomy as a collective ideal."¹⁴⁶ By his account, coercion arises because the state requires providers of goods and services "to honor the individual's decisions in matters of consumption, regardless of how morally problematic those decisions might be from the provider's perspective."¹⁴⁷ Vischer makes clear his interest in protecting the

¹³⁹ *Id.* at 22–23 (citing Cardinal Ratzinger); see also Wolfe, *supra* note 47, at 147–48 ("[C]itizens of liberal democracies seem to move from tolerance of other people to relativism about ideas of the good.").

¹⁴⁰ See Vischer, *supra* note 47, at 85.

¹⁴¹ *Id.*

¹⁴² *Id.*

¹⁴³ *Id.* at 85–86.

¹⁴⁴ *Id.* at 86.

¹⁴⁵ *Id.* at 85–86.

¹⁴⁶ *Id.* at 88.

¹⁴⁷ *Id.*

conscience of pharmacists as dispensers of sundry prophylactics, the moral agency of lawyers when their conception of the good clashes with their clients',¹⁴⁸ or the religious liberty of organizations like Catholic Charities regarding the provision of reproductive coverage for employees.¹⁴⁹ Vischer's essay recalls Cardinal Dulles' observation that God imprints the interior law of the gospel on humans and inevitably elevates the question of conscience and Pope John Paul II's remark "that the idea of conscience has been deformed by modern thinkers."¹⁵⁰ Vischer's contribution also evokes a set of complex issues that are symbolized by James Madison's claim "that in matters of Religion, no mans [sic] right is abridged by the institution of Civil Society."¹⁵¹

It is still possible that some Americans remain outside of Vischer's perceptive lens. For instance, it must be conceded that the ordering of human work has been and remains a central theme of Catholic social thought.¹⁵² Context matters. American workers are often represented by private and public sector labor unions and the United States Department of Labor has determined that labor unions receive upwards of \$17 billion a year in revenues.¹⁵³ Remarkably, up to eighty percent of union dues are expended for purposes unrelated to collective bargaining.¹⁵⁴ Underscoring the fragility of freedom, dissenting workers, represented by labor unions, have sought protection from solidarity imposed by labor hierarchs via compulsory payments of dues. Dues objectors oppose coercive payments on grounds of conscience, ideology, and religion.¹⁵⁵ Unions today often inflict the autonomous preferences of union hierarchs on

¹⁴⁸ *Id.* at 92.

¹⁴⁹ *Id.* at 89.

¹⁵⁰ Cardinal Dulles, *supra* note 47, at 75 (discussing John Paul II).

¹⁵¹ JAMES MADISON, MEMORIAL AND REMONSTRANCE AGAINST RELIGIOUS ASSESSMENTS (1785), *reprinted in* 8 THE PAPERS OF JAMES MADISON 295, 298–99 (Robert A. Rutland et al. eds., 1973).

¹⁵² Kohler, *supra* note 47, at 164.

¹⁵³ LINDA CHAVEZ & DANIEL GRAY, BETRAYAL: HOW UNION BOSSES SHAKE DOWN THEIR MEMBERS AND CORRUPT AMERICAN POLITICS 12 (2004).

¹⁵⁴ *See, e.g., id.*

¹⁵⁵ *See generally* Harry G. Hutchison, *Diversity, Tolerance, and Human Rights: The Future of Labor Unions and the Union Dues Dispute*, 49 WAYNE L. REV. 705 (2003); Harry G. Hutchison, *Reclaiming the Labor Movement Through Union Dues? A Postmodern Perspective in the Mirror of Public Choice Theory*, 33 U. MICH. J.L. REFORM 447 (2000).

workers, reversing the process whereby workers ought to be properly seen as the principal, and the union ought to act as their agent. Acting as principals, unions see workers as pawns in the pursuit of some utopian vision of society.¹⁵⁶ In order to achieve this collective ideal, workers are required to fund but not necessarily consume (receive the benefit of), the preferences of others. Because "union elections provide members with little real control over leaders" and unions are "inherently undemocratic,"¹⁵⁷ and since "[e]ven staunch union supporters blanch over the autocracy, entrenchment, and corruption of some union leaders,"¹⁵⁸ dissent grounded in the pursuit of truth is likely to interrupt calls for solidarity.

Autocracy generates opposition and, unsurprisingly, workers increasingly refrain from joining labor organizations. This development vindicates Richard Epstein's prediction that labor unions will continue to lose ground.¹⁵⁹ Motivated by an adequate conception of human dignity and operating consistently with Pope John Paul II's conception of conscience,¹⁶⁰ dissenting workers find their understanding of autonomy¹⁶¹ and the common good at war with the morally suspect impulses of union leaders, who insist on the production of private benefits (financial or ideological) for the few.¹⁶² Hence, labor organizations often operate to the detriment and exclusion of the interests of rank-file members. Contrary to Albacete's admonition,¹⁶³ this move permits labor unions to *reduce* the individual into a putative community. Within this context, workers lodge objections to

¹⁵⁶ My debt to Vischer should be obvious. See Vischer, *supra* note 47, at 87.

¹⁵⁷ Stewart J. Schwab, *Union Raids, Union Democracy, and the Market for Union Control*, 1992 U. ILL. L. REV. 367, 369-70 (1992).

¹⁵⁸ *Id.* at 368 (footnote omitted).

¹⁵⁹ Richard A. Epstein, *A Common Law for Labor Relations: A Critique of the New Deal Labor Legislation*, 92 YALE L.J. 1357, 1407 (1983) ("[Private sector unions] have continued to lose ground . . . [because] they do not provide their membership with benefits that exceed their costs.").

¹⁶⁰ See, e.g., *VERITATIS SPLENDOR*, *supra* note 120, ¶ 32 (suggesting that conscience must be tied to truth and critiquing the view that accords the individual conscience the status of supreme tribunal wherein claims of truth disappear and are replaced by the criterion of sincerity, authenticity, and subjectivism).

¹⁶¹ Here, I offer Cardinal Dulles' conception of autonomy. See Cardinal Dulles, *supra* note 47, at 72 (defining autonomy as the right to be able to do what one ought to do based on rational scrutiny).

¹⁶² See Hutchison, *supra* note 6, at 1382-83 (discussing the capture of union resources for the purpose of achieving largely private benefits).

¹⁶³ See, e.g., Albacete, *supra* note 47, at 51.

compulsory labor union dues to fund pro-abortion policies and pro-marijuana decriminalization referenda,¹⁶⁴ as well as objections to attempts to transform the existing welfare state into a revolutionary Marxist-socialist collective.¹⁶⁵ Since Vischer rightly notes the emptiness of decontextualized solidarity,¹⁶⁶ and since Catholic social teaching emphasizes work as the key to the social question,¹⁶⁷ his analysis would be enriched substantially by addressing the persistent efforts of labor unions to enforce collective ideals by suppressing workers' consciences.

Subsidiarity as a value bears analysis as well. The literature from neoclassical economics, public choice theory,¹⁶⁸ as well as the evidence suggesting the probability that government has been captured by interests inimical to the public interest (common good), provide a basis to embrace Vischer's analysis on subsidiarity on prudential grounds. Vischer deepens the persuasive power of his analysis by relying on *Quadragesimo Anno*:

Just as it is gravely wrong to take from individuals what they can accomplish by their own initiative and industry and give it to the community, so also it is an injustice and at the same time a grave evil and disturbance of right order to assign to a greater and higher association what lesser and subordinate

¹⁶⁴ See, e.g., CHAVEZ & GRAY, *supra* note 153, at 18.

¹⁶⁵ *Id.* at 19–20 (describing the preferences of John Sweeney, the current president of America's largest public- and private-sector labor federation, who has tied the future of working people to the Democratic Socialists of America, a party that has evidently alluded to revolution complete with killing the bourgeoisie with guns and knives).

¹⁶⁶ Vischer, *supra* note 47, at 94.

¹⁶⁷ Modern Catholic social thought developed in response to the wrenching social dislocations that followed in the wake of the French Revolution and concentrates on the issue of what would relate and unite individuals in the face of the disappearance of many intermediary structures that had once anchored one's place in the world. These dislocations gave rise to the social question. Pope John Paul II suggested in the encyclical *LABOREM EXERCENS*, *supra* note 12, that human work was the essential key to the whole social question. See, e.g., Kohler, *supra* note 47, at 164 n.1 (discussing this issue).

¹⁶⁸ See, e.g., Steven J. Eagle, *Economic Salvation in a Restive Age: The Demand for Secular Salvation Has Not Abated*, 56 CASE W. RES. L. REV. 569, 574 (2006) ("Public choice theory posits that legislators, executive branch officials, and agency administrators are in business for themselves; that is, they are motivated by the same types of incentives that motivate their counterparts in the private sector[,] . . . [and often] legislative protection flows to those groups that derive the greatest value from it, regardless of overall social welfare." (internal quotation marks omitted)).

organizations can do. For every social activity ought of its very nature to furnish help to the members of the body social, and never destroy or absorb them.¹⁶⁹

It remains far from clear, however, that political liberals are ready to embrace an approach that vitiates rather than strengthens the power of government. Coherent with this possibility, Vischer insists that “[s]ubsidiarity’s call for localized and personalized responses to human need,” if severed from the broader context of Catholic social teaching, risks becoming “political conservatism or [a] . . . throwback to a hopelessly outdated decentralized way of life.”¹⁷⁰ Making his objections plain, he insists that subsidiarity in the wrong hands may provide cover for large-scale “devolution of government power with little concern for the common good.”¹⁷¹

It is doubtful that Vischer has the right balance. After all, MacIntyre has already made clear his skepticism toward the sufficiency of centralized authority as an ordering vehicle because both conservative and liberal ideologues often endeavor to employ the coercive power of the modern state to support their positions in a manner alien to a principled conception of the social practices necessary for the common good.¹⁷² One interpretation of Pope John Paul II’s rich scholarship favoring subsidiarity is that people who live “on the ground” have better access to the immediate moral meaning of the situation, and therefore, they are in a better position to critique the abstract, reductive theories on which centralized power, led by hierarchs, must rely.¹⁷³ It follows that centralized power can operate as an enemy of a rightly-ordered society irrespective of the political and ideological predispositions of the combatants. Although Vischer favors the subversive power of subsidiarity as a bulwark against the liberal state’s attempt to marginalize intermediate associations,¹⁷⁴ he declines to embrace a robust conception of skepticism toward centralized authority regardless of its purpose

¹⁶⁹ Vischer, *supra* note 47, at 98.

¹⁷⁰ *Id.*

¹⁷¹ *Id.*

¹⁷² Hauerwas, *supra* note 29, at 39.

¹⁷³ I am indebted to Kevin Lee for this observation. Email from Kevin P. Lee, Professor of Law, Campbell Univ. Norman Adrian Wiggins Sch. of Law, to Harry G. Hutchison, Professor of Law, George Mason Univ. Sch. of Law (Aug. 17, 2008, 08:09:20 EST) [hereinafter Email from Kevin P. Lee] (on file with author).

¹⁷⁴ Vischer, *supra* note 47, at 99.

or source. Skepticism of centralized authority is warranted because individuals and subgroups may seize government power or group resources for their own purposes. Taken together, (1) skepticism toward solidarity that is enforced by centralized authority ought to be the null hypothesis, and (2) questions come into view about the plausibility, but not the value, of subsidiarity within the framework of the liberal state. This is so because such values may be transmuted by self-interested actions that are adverse to the public interest as well as the interest of the truly marginalized among us.

Finally, it is necessary to recapture Karol Wojtyla's (later Pope John Paul II's) comprehensive conception of solidarity and subsidiarity.¹⁷⁵ John J. Coughlin's essay *Family Law: Natural Law, Marriage and the Thought of Karol Wojtyla* deepens our understanding of the nature of the human person in community. Coughlin's essay is located in Part IV of *Recovering Self-Evident Truth's* review of Catholic perspectives on various substantive areas of law and illuminates Wojtyla's views by suggesting that "the liberal state is incapable of supplying, and perhaps even militates against, a sense of solidarity and community."¹⁷⁶ Rejecting individualism and its focus on self-interest, Karol Wojtyla stresses personalism wherein the human person acts in solidarity with others.¹⁷⁷ "Personalism posits the human person as created not for self-interest but for self-transcendence."¹⁷⁸ Participation leading to fulfillment "is possible only in those subsidiary structures that facilitate the formation of genuine 'community.'"¹⁷⁹

Community, as distinguished from associational relationships, entails a deeper level of personal commitment and fulfillment.¹⁸⁰ Hence, the creation of community is vital for life lived in the light of the Church's teachings. Marriage, for instance, with its deep level of personal commitment, is the quintessential example of a subsidiary structure that contributes

¹⁷⁵ See John J. Coughlin, O.F.M., *Family Law: Natural Law, Marriage, and the Thought of Karol Wojtyla*, in *RECOVERING SELF-EVIDENT TRUTHS*, *supra* note 26, at 275.

¹⁷⁶ *Id.* at 285.

¹⁷⁷ *Id.* at 286.

¹⁷⁸ *Id.*

¹⁷⁹ *Id.*

¹⁸⁰ *Id.*

to community and solidarity.¹⁸¹ Professor John Breen offers this persuasive interpretation of Pope John Paul II's writing: "Solidarity should impel the human person to break out of the isolation that characterizes so much of modern life and work to remove the structures that impede the cause of justice, as well as the impediments that lie within his or her own heart."¹⁸²

Taken as a whole, Catholic anthropology provides a basis for understanding the human person as a creature formed in God's image and likeness. This foundational perspective rejects a complete embrace of liberalism, free markets, and individual autonomy. Problems arise for at least the two following reasons: (1) reflecting a loss of narrative coherence, America's contemporary philosophical conversations often devolve into babble and (2) the capability of large centralizing authorities to reclaim narrative coherence on a consistent basis seems highly unlikely. These difficulties reinforce Kevin Lee's intuition, suggesting that Catholics and, indeed, all Americans, need to courageously recover the principles of natural law, develop a well-formed conscience, recapture reason shaped by virtue of prudence, and re-emphasize the infinite value of the human person within the context of an authentic community that enables personalism, participation, and solidarity to flourish.

B. Finding the Common Good or Finding Conflict?

The Preamble to the United States Constitution, on one account, reifies the common good.¹⁸³ In it the founders pledge to form a more perfect union, establish justice, provide for the common defence, promote the general welfare, and secure the blessings of liberty for themselves and their posterity. The idea of common good has long been an important part of Catholic perspectives on legal systems and structures.¹⁸⁴ In his essay *The Constitution and the Common Good*, Father Araujo explains the common good by stressing its Aristotelian and Roman origins, including the notion of reciprocity and mutuality wherein the best form of friendship concentrates on the interest of the other before considering the interests of one's self.¹⁸⁵ Both the Catholic

¹⁸¹ *Id.* at 286–87.

¹⁸² Breen, *supra* note 60, at 332.

¹⁸³ Araujo, *supra* note 47, at 104.

¹⁸⁴ *Id.*

¹⁸⁵ *Id.* at 105–06.

and constitutional conceptions of the common good incorporate the notion of “benefit of all as a rule to making legal and political decisions.”¹⁸⁶ Father Araujo’s essay also stresses the founders’ conclusion that humans have the capacity to oppress one another. Consistent with this premise, the drafters of the Constitution sought to find virtuous rulers who would pursue the common good, but they also sought to take effective precautions for keeping rulers virtuous while they held the public trust.¹⁸⁷ Father Araujo insists that the Supreme Court’s *Stenberg v. Carhart* decision determining the right of privacy includes the right to a partial-birth abortion cannot be squared with “the obvious concern for the common good set forth in the Preamble and the Federalist Papers.”¹⁸⁸ Father Araujo convincingly contends that the Supreme Court has banished the notion of the common good to the margins and replaced it with a sweeping notion of liberty enshrined in *Planned Parenthood of Southeastern Pennsylvania v. Casey*.¹⁸⁹ Setting forth an incipient conflict within liberalism, he argues that “the Catholic perspective on the common good and its place in constitutional adjudication offers a far richer understanding of how individual and community interests are simultaneously protected.”¹⁹⁰ On at least one plane, this is a source of difficulty for liberalism because Catholic thinking, as interpreted by St. Augustine, suggests that the human family should be bound together by a tie of kinship and linked together by the bond of peace in order to form a harmonious unity.¹⁹¹ There is a vanishingly small chance that similar reliance on kinship and the bond of peace can be found within the Constitution. Instead, James Madison recognized the likelihood of factionalism as the organizing

¹⁸⁶ Gerald Russello, *Toward a More Just Law*, 31 INSIDEDIGEST 29, 30 (2008), <http://www.insidecatholic.com/Joomla/images/insidedigest31.pdf> (reviewing RECOVERING SELF-EVIDENT TRUTHS, *supra* note 26).

¹⁸⁷ Araujo, *supra* note 47, at 107 (quoting THE FEDERALIST NO. 57 (James Madison)).

¹⁸⁸ *Id.* at 110.

¹⁸⁹ *Id.* at 117 (comparing the Catholic perspective with the notion of the common good after *Planned Parenthood of Southeastern Pennsylvania v. Casey*, 505 U.S. 833 (1992)).

¹⁹⁰ *Id.*

¹⁹¹ *Id.*

premise that undergirds the design of this document.¹⁹² The existence of conflicting conceptions of the common good and of liberty—as partially supervised by government—adds force to philosopher Alasdair MacIntyre's rather somber analysis. He argues that

[i]t is not just that we live too much by a variety and multiplicity of fragmented concepts; it is that these are used at one and the same time to express rival and incompatible social ideals and policies *and* to furnish us with a pluralist political rhetoric whose function is to conceal the depth of our conflicts.¹⁹³

America appears to be torn apart by rival conceptions of justice, the common good, and even what constitutes a defensible version of liberalism. Such disputes are unlikely to be settled short of authoritarianism or oblivion, despite society's frequent resort to the language of pluralism, democracy, and equality. This vocabulary serves to mask the depth and extent of disagreement¹⁹⁴ among Americans no matter how much we might agree with Pope Pius XI's conviction that "there is an essential connection between the pursuit of the common good and the realization of social justice."¹⁹⁵

How then should a state committed to the common good be organized, and how should its self-interested citizens act? Christopher Wolfe's essay *Why We Should (and Should Not) Be Liberals* provides an answer grounded in political theory.¹⁹⁶ Wolfe claims that "[t]he term 'liberal' today, as it always has, describes both a political philosophy (or perhaps several different ones) and a political program."¹⁹⁷ He contends that the term implies a particular political stance or, at the very least, strong inclinations on abortion, homosexual rights, economic regulation, social welfare, gun control, and church-state separation.¹⁹⁸ Why this particular constellation of policy views is deemed "liberal" is not clear to Wolfe, since, "in the past, persons considered liberals

¹⁹² THE FEDERALIST NO. 10 (James Madison), *cited in* DENNIS C. MUELLER, PUBLIC CHOICE II 307 (1989) (concluding that the division of society into different interests and parties is likely).

¹⁹³ MACINTYRE, *supra* note 58, at 253.

¹⁹⁴ *See, e.g., id.*

¹⁹⁵ Araujo, *supra* note 47, at 122.

¹⁹⁶ *See generally* Wolfe, *supra* note 47.

¹⁹⁷ *Id.* at 132.

¹⁹⁸ *Id.*

had quite different views" on such issues.¹⁹⁹ Ultimately, Wolfe concludes that liberalism can be seen as a broad movement in politics and society, which is tied to the seventeenth century and "whose primary purpose has been to expand freedom through enlightenment."²⁰⁰ More recently, one version of liberalism has taken center stage. This version claims that "government should be neutral with respect to the question of the human good, embracing a notion of justice that prescind[s] from the truth of 'comprehensive' philosophical, theological, or moral views."²⁰¹ Scaperlanda and Collett counter this perspective by explaining that the neutral position is fundamentally flawed, because it cannot make explicit truth claims about the nature of the human person "without violating its principle of neutrality."²⁰² Nonetheless, an emphasis on neutrality is useful. As *Casey*²⁰³ demonstrates, an emphasis on neutrality enables the regulatory state to retreat from the pursuit of truth and provide a protective umbrella for individuals to pursue their own ideals with regard to the mystery of the universe, specifically, when such ideals relate to their own body. Wolfe argues that this essential "anti-perfectionist" strand of liberalism "denies that political life should aim to perfect its citizens, according to some standard of human excellence."²⁰⁴

While suggesting that Catholics can be good liberals even if they cannot be *only* liberals,²⁰⁵ since liberalism tends to emphasize freedom at the expense of truth about ultimate realities,²⁰⁶ Wolfe's apparent embrace of liberalism offers ground to contest Father Araujo's perspective on the common good. Wolfe's conception of liberalism operates consistently with the possibility that America has failed to fully accept liberalism as a "[n]eutral [u]mbrella" for illiberal resisting persons, associations, and communities.²⁰⁷ Instead, America has begun to accept

¹⁹⁹ *Id.*

²⁰⁰ *Id.*

²⁰¹ *Id.* at 133.

²⁰² Scaperlanda & Collett, *supra* note 28, at 7.

²⁰³ *Planned Parenthood of Se. Pa. v. Casey*, 505 U.S. 833, 851 (1992) (suggesting that personhood cannot be formed under the compulsion of the state).

²⁰⁴ Wolfe, *supra* note 47, at 133.

²⁰⁵ *See id.* at 147–49; *see also* Russello, *supra* note 186, at 29–30.

²⁰⁶ Wolfe, *supra* note 47, at 147.

²⁰⁷ LARRY ALEXANDER, *IS THERE A RIGHT OF FREEDOM OF EXPRESSION?* 165 (2005).

liberalism as cosmopolitanism.²⁰⁸ Cosmopolitanism, either reflecting the liberalism of “elites” or “globalists,” is often superficial.²⁰⁹ “It stimulates It possesses entertainment value. At least while the novelty lasts, it excites and unsettles the . . . monochromatic surfaces of modern life”²¹⁰ Liberal cosmopolitanism represents individuals who tolerate differences but who are not deeply committed to them.²¹¹ Inevitably, “cosmopolitanism . . . tends to homogenize and shallow out the various ways of life[;] [i]f there are many paths to truth or salvation, then little is at stake in finding a path.”²¹² Just as pedagogy has previously stripped theology from the branch of knowledge,²¹³ religious conceptions of the common good are perhaps now left defenseless, because such views fail to have merit in our new republic. Indeed, it is possible to observe that we live in an era that has witnessed radically new perspectives on human liberty and autonomy, which correspond with “[t]he bourgeois attempt to construct a rational alternative to tradition.”²¹⁴

Aleksandr Solzhenitsyn describes this move as a form of moral impoverishment that has “led to a debased definition of freedom that makes no distinction between ‘freedoms for good’ and ‘freedoms for evil.’”²¹⁵ Consistent with a viewpoint that seems to reify whimsy, liberalism sees human life primarily as a bundle of autonomous (perhaps random) preferences deserving protection by the apparatus of the regulatory state. If true, this understanding of liberal thought provides a platform upon which to challenge Wolfe’s crucial claim that Catholics should be willing to be called liberals, because “[t]he main principles of liberalism

²⁰⁸ *Id.* at 169.

²⁰⁹ I am indebted to David Gregory for this observation. David Gregory’s comments are on file with the author.

²¹⁰ SCHUCK, *supra* note 67, at 15.

²¹¹ ALEXANDER, *supra* note 207, at 169.

²¹² *Id.*

²¹³ See James R. Stoner, Jr., *Theology as Knowledge*, FIRST THINGS, May 2006, at 21, available at http://www.firstthings.com/article.php3?id_article=128.

²¹⁴ CHRISTOPHER SHANNON, CONSPICUOUS CRITICISM: TRADITION, THE INDIVIDUAL, AND CULTURE IN MODERN AMERICAN SOCIAL THOUGHT 203 (rev. ed., University of Scranton Press 2006) (1996).

²¹⁵ Charles Colson, *Jeremiah at Harvard*, CHRISTIANITY TODAY, Aug. 2008, at 64 (quoting Solzhenitsyn’s Speech at Harvard), available at <http://www.christianitytoday.com/ct/2008/august/18.64.html>.

are not just defensible, but good.”²¹⁶ To be sure, Wolfe argues against a complete separation between the private and public world by concluding that some adult consensual acts, such as hiring someone for less than the minimum wage, should be subject to public sanction.²¹⁷ While this observation militates against interference with personal preferences as they pertain to personal behavior, it implies a basis for government intervention grounded in the principle that it is good²¹⁸ when and if work and economic relationships are at issue.

Nowhere can greater support for this principle be found than in Thomas Kohler’s essay on labor law.²¹⁹ According to Kohler, the good has been placed in doubt because of insufficient government interference in the market. Kohler insists that this is, in the most serious sense, inhuman, by pointing to the dissolution of opportunities for working men and women to actively participate in workplace governance.²²⁰ Relying on the encyclicals *Quadragesimo Anno*,²²¹ *Rerum Novarum*,²²² *Sollicitudo Rei Socialis*,²²³ and *Centesimus Annus*,²²⁴ Kohler argues that the American system suffers from too much freedom and too little control, which leaves the outcome of the nation’s labor relations system to the parties themselves.²²⁵ Nuances appear to be missing from Kohler’s analysis. Consider his various assertions that implicate and are embedded in the social question²²⁶ and those which offer a tacit critique of the market. He claims that certain conditions first arose during the nineteenth century and characterize the contingencies that unions and labor laws must currently face.²²⁷ These claims include an expanding economy with an increasingly disproportionate distribution of income, high rates of

²¹⁶ Wolfe, *supra* note 47, at 134.

²¹⁷ *Id.* at 143.

²¹⁸ *See id.* at 150.

²¹⁹ *See generally* Kohler, *supra* note 47.

²²⁰ *Id.* at 190.

²²¹ *Id.* at 186.

²²² *Id.* at 164.

²²³ *Id.* at 184.

²²⁴ *Id.* at 189.

²²⁵ *Id.* at 180–81.

²²⁶ *Id.* at 163–64 (citing John Paul II’s observation in *LABOREM EXERCENS*, *supra* note 12, for the proposition that as a human issue, work represents the essential key to the social question).

²²⁷ *Id.* at 163.

unemployment, unparalleled concentrations of economic power, population shifts to urban areas, an unprecedented migration of people from east to west, an astounding disintegration of families, and the progressive erosion of other forms of community life.²²⁸

A full refutation of Kohler's various claims is beyond the scope of this Review, but a few assertions bear analysis. First, the unemployment rate in the United States during the current period has generally been substantially lower than in countries that he is inclined to praise.²²⁹ It is possible to conclude that countries such as France, Italy, and Germany—not the United States—have engaged in a race to the bottom. Second, and equally problematic, are Kohler's claims with respect to increasing income disparity. While Kohler accepts the prevailing view suggesting income disparity is tied to power imbalances between employers and workers, Professor John Tatom shows why this viewpoint is questionable.²³⁰ Tatom demonstrates that

²²⁸ *Id.*

²²⁹ See, e.g., U.S. DEP'T OF LABOR, OFFICE OF PRODUCTIVITY & TECH., COMPARATIVE CIVILIAN LABOR FORCE STATISTICS: TEN COUNTRIES tbl.2 (2008), available at <ftp://ftp.bls.gov/pub/special.requests/ForeignLabor/lfcompendiumt02.txt> (showing that in 2006, France's unemployment rate was 9.5 percent, Germany's unemployment rate was 10.4 percent, and Italy's unemployment rate was 6.9 percent, while the unemployment rate in the United States was 4.6 percent). David Gregory points out that the United States stops counting workers who are unemployed for more than twelve months. David Gregory's comments are on file with the author.

²³⁰ See, e.g., John A. Tatom, *Is Inequality Growing as American Workers Fall Behind?*, BUS. ECON., Jan. 2008, at 44, 50, available at <http://ssrn.com/abstract=985669> (examining and refuting many of Kohler's claims); Harry G. Hutchison, *What Workers Want or What Labor Experts Want Them To Want? A Review Essay of What Workers Want by Richard B. Freeman & Joel Rogers, Updated Edition*, ILR Press (2006) 26 (George Mason Univ. Law & Econ. Research Paper Series, Paper No. 07-30, 2007). There are two basic sources of income: wage income and income from capital. The distribution of income depends upon the distribution of ownership of labor and capital. Professor Tatom demonstrates that income variation should be expected to and does rise when older, less equal groups come to dominate the population. In addition, increasing amounts of Americans' income are not reported for tax reasons and escalating amounts of income

are now being realized through payments for fringe benefits, especially health care insurance, employer contributions for retirement income, vacations, sick leave and other benefits . . . more equally distributed across actual income levels. Thus the rise in benefits gives the *appearance* that wages and salaries, excluding benefits, are rising much more slowly among lower wage workers and that higher income workers have disproportionately higher reported income for tax purposes. Real

income variation should be expected to, and does, rise when older, less equal groups come to dominate the population. In addition, increasing amounts of Americans' income are not reported for tax reasons, and escalating amounts of income take the form of fringe benefits. Moreover, Kohler fails to notice that the statutes enacted during the 1930s have contributed to an increase in income disparity.²³¹ Lastly, income inequality, particularly for married couples, is related directly with hours of work,²³² as well as a citizen's age.²³³

An unreflective understanding of income distribution might give rise to the thesis that families should be required to reduce their hours of work, and humans should not necessarily be expected to age in order to eliminate America's income distribution dilemma. Kohler also fails to acknowledge *Rerum Novarum's* statement, which varies from his focus on income distribution. Pope Leo XIII stated: "[W]ages ought not to be insufficient to support a frugal and well-behaved wage-earner."²³⁴ On its face, the statement fails to imply either the necessity of complete income equality or the desirability of raising the state-controlled minimum wage rate. While the minimum wage continues to enjoy widespread support, only seventeen percent of low-wage workers in the United States were living in poor households in 2003, and thus, the people who are generally favored by this type of intervention in the market are not poor.²³⁵

compensation per hour has been growing very rapidly this decade contrary to popular opinion.

Id. (internal quotation marks omitted) (quoting Tatom, *supra*, at 47).

²³¹ Dora L. Costa, *The Wage and the Length of the Work Day: From the 1890s to 1991*, 18 J. LAB. ECON. 156, 178 (2000) (noting that the Fair Labor Standards Act tends to magnify earnings inequality such that between 1973 and 1991, 26 percent of the increase in earnings inequality for men, and *all* of the increase for women, can be explained by changes in hours worked).

²³² See, e.g., Katharine Bradbury & Jane Katz, *Wives' Work and Family Income Mobility* 4 (Fed. Reserve Bank of Boston, Working Paper No. 04-3, 2005), available at <http://www.bos.frb.org/economic/ppdp/2004/ppdp0403.pdf> (finding that married-couple families moving up the income distribution ladder saw larger increases in wives' employment, annual work hours, and earnings than downwardly mobile married couples).

²³³ See, e.g., Tatom, *supra* note 230, at 45 (showing that as people age and as older groups come to dominate the population, income variation should and does rise).

²³⁴ POPE LEO XIII, ENCYCLICAL LETTER *RERUM NOVARUM* ¶45 (1891) [hereinafter *RERUM NOVARUM*].

²³⁵ STEVEN L. WILLBORN ET AL., *EMPLOYMENT LAW: CASES AND MATERIALS* 577 (2007).

In view of this, as well as the likelihood that an effective minimum wage tends to reduce employment,²³⁶ particularly for the poor and minority workers, minimum wage regimes are ineffective devices that expand poverty and income inequality.²³⁷ Thus, one need not succumb to conservatism in order to have doubts about whether this kind of centralized interference constitutes a preferential option for the poor.

Third, the disintegration of the family may bear a defined relationship to the increasing work burden absorbed by households (including an increase in two-income families), which is required, in part, in order for such households to cope with a rising tax burden necessitated by an increase in the size and power of the government. The persistent rise in government power and its corollary, wealth redistribution favoring the already well-off, can be encapsulated in data showing that today five of America's ten richest counties are located just outside of Washington, D.C.²³⁸ Tax rates have risen on the middle class since the New Deal in order to fund Washington area lobbyists, well-paid government employees, and lawyers.²³⁹ In 1929 when the stock market crash hit, America's highest marginal tax rate was twenty-four percent for top income earners with a bottom rate of one-half of one percent.²⁴⁰ With tax exemptions, ninety-eight percent of all Americans were off the income tax rolls.²⁴¹ By 1980, the average federal marginal tax rate including social security had risen to thirty-six percent with an even more

²³⁶ Harry G. Hutchison, *Toward a Critical Race Reformist Conception of Minimum Wage Regimes: Exploding the Power of Myth, Fantasy, and Hierarchy*, 34 HARV. J. ON LEGIS. 93, 93–126 (1997) (reviewing unions' historical motive for backing minimum wage laws and the adverse effects on minimum wages on employment, particularly for members of minority groups). *But see* Marc Linder, *The Minimum Wage as Industrial Policy: A Forgotten Role*, 16 J. LEGIS. 151, 155–56 (1990) (arguing against downplaying the number of jobs destroyed because such jobs are low-wage and unproductive).

²³⁷ *See, e.g.*, David Neumark, Mark Schweitzer & William Wascher, *The Effects of Minimum Wages on the Distribution of Family Incomes: A Non-parametric Analysis* 34 (Fed. Reserve Bank of Cleveland, Working Paper No. 04-12, 2004), available at <http://www.clevelandfed.org/Research/Workpaper/2004/WP04-12.pdf>.

²³⁸ Matt Woolsey, *Complete List: America's Richest Counties*, FORBES.COM, Jan. 22, 2008, http://www.forbes.com/2008/01/22/counties-rich-income-forbeslife-cx-mw_0122realestate.html.

²³⁹ *Id.*

²⁴⁰ Dr. Burt Folsom, *Why the New Deal Failed*, Speech at Accuracy in Academia's Conservative University (2002), http://www.academia.org/campus_reports/2002/summer_2002_3.html.

²⁴¹ *Id.*

impressive increase in the number of families and individuals placed on the tax rolls.²⁴² Similar increases in taxes have likely occurred at the state and local level as well.

Increasing tax rates reinforce the ongoing departure from the social teaching of the Roman Catholic Church, which commenced during the 1960s.²⁴³ From the perspective of Catholic social theorists, “the increasing demands of work outside the home are often seen as presenting an obstacle to the flourishing of healthy families.”²⁴⁴ A focus on nurturing families in conformity with the Church’s social teachings operates in some tension with the “equal pay for equal work principle.”²⁴⁵ Tension continues because the encyclicals emphasize the family wage, including direct wage discrimination favoring men and placing limits on the labor of women and children.²⁴⁶ Taken together, an increase in the size of government funded by an increasing tax burden, as well as a departure from the family wage concept, may place the family under stress while contributing to family disintegration. These issues remain unaddressed by Kohler’s contribution.

Kohler’s central focus is the necessity of strengthening labor unions and labor law as part of an effort to encourage worker involvement.²⁴⁷ This conclusion is highly contestable on a number of grounds. First, Stephen Bainbridge persuasively argues that neither the well-known U.S. Bishop’s pastoral letter *Economic Justice for All*, nor the various encyclicals, make a case for translating into positive law the natural law claims they set forth with respect to employee participation in corporate decision-making.²⁴⁸ Second, Karol Wojtyla’s writings maintain

²⁴² Robert J. Barro & Chaipat Sahasakul, *Average Marginal Tax Rates from Social Security and the Individual Income Tax*, 59 J. BUS. 555, 563 (1986).

²⁴³ See Allan Carlson, *Rise and Fall of the American Family Wage*, 4 U. ST. THOMAS L.J. 556, 556 (2007) (reviewing two encyclicals: *RERUM NOVARUM*, *supra* note 234, and *LABOREM EXERCENS*, *supra* note 12).

²⁴⁴ Elizabeth R. Schiltz, *Workplace Restructuring To Accommodate Family Life*, 4 U. ST. THOMAS L.J. 343, 344 (2007).

²⁴⁵ Carlson, *supra* note 243, at 556 (internal quotation marks omitted).

²⁴⁶ *Id.*

²⁴⁷ See, e.g., Kohler, *supra* note 47, at 186.

²⁴⁸ Stephen M. Bainbridge, *Corporate Decisionmaking and the Moral Rights of Employees: Participatory Management and Natural Law*, 43 VILL. L. REV. 741, 747 (1998) (“Catholic social teaching identifies three areas in which employees may be entitled to participate in corporate decisionmaking: social, personal and economic. Social matters include working conditions, wages and benefits, [and] training Personal matters include . . . hiring and firing, promotions, [and]

that participation leading to fulfillment "is possible only in those subsidiary structures that facilitate the formation of genuine 'community.'"²⁴⁹ It is far from obvious that labor unions led by autocrats constitute a rightly-ordered community because a true community as distinguished from associational relationships entails a deeper level of personal commitment and fulfillment.²⁵⁰ Third, although Pope Pius XI endorsed the associations of workers into labor unions in furtherance of social justice and the common good,²⁵¹ the data shows that government-sponsored unionization and related policies adopted during the Great Depression contributed significantly to periods of prolonged high unemployment, exemplified by the downturn from 1937 to 1938.²⁵² Fourth, anticipating Pope John Paul II's subsequent admonition against excessive bureaucratic centralization of the world of work,²⁵³ Jacques Ellul shows that the represented worker, through his union, has intensified his own subordination to bureaucratic organizations and thus completes his own integration into the very movement from which unionism had originally hoped to free him.²⁵⁴ As we have already seen, American union elections provide members with little real control over leaders. Unions are inherently undemocratic,²⁵⁵ which means Pope John Paul II's goal to increase worker participation and preserve the idea that the human person is working for himself²⁵⁶ has been transmuted into labor autocracy tending to diminish such participation.

To be sure, workers have expressed a continuing interest in participation, but they continue to shun traditional unions. Adducible evidence demonstrates the following:

By an overwhelming 86% to 9% margin, workers want an organization run jointly by employers and management, rather

layoffs Economic matters include firm investments, board representation, [and] mergers" (footnotes omitted)).

²⁴⁹ Coughlin, *supra* note 175, at 286.

²⁵⁰ *Id.* at 286-87.

²⁵¹ PIUS XI, ENCYCLICAL LETTER *QUADRAGESIMO ANNO* ¶ 32 (1931).

²⁵² RICHARD K. VEDDER & LOWELL E. GALLAWAY, *OUT OF WORK: UNEMPLOYMENT AND GOVERNMENT IN TWENTIETH-CENTURY AMERICA* 141-44 (1997).

²⁵³ *LABOREM EXERCENS*, *supra* note 12, ¶ 15.

²⁵⁴ JACQUES ELLUL, *THE TECHNOLOGICAL SOCIETY* 358 (John Wilkinson trans., 1964).

²⁵⁵ Schwab, *supra* note 157, at 369-70.

²⁵⁶ *LABOREM EXERCENS*, *supra* note 12, ¶ 15.

than an independent, employee-run organization. By a smaller, but still sizable margin of 52% to 34%, workers want an organization to be staffed and funded by the company, rather than independently through employee contributions.²⁵⁷

Worker apathy, if not antipathy toward traditional labor unions, is triggered by contemporary union activity that can be duly understood as part of "Michels's Iron Law of Oligarchy."²⁵⁸ American labor unions engage in rent-seeking behavior as group resources are seized and transferred to favor goals and purposes idealized by group leaders.²⁵⁹ Meanwhile, the goals of the workers are left unattended.²⁶⁰ Equally apparent, Kohler's analysis falls short of appreciating that the attractiveness of collective groups (labor unions or otherwise) tends to vary inversely with the legal protections already available to employees in the workplace. Professor Bainbridge shows public law enactments have often displaced both the need and desire to unionize.²⁶¹ In the face of this evidence, the continued emphasis on worker participation when workers themselves decline to take advantage of existing opportunities may imply an ossifying contradiction between what workers actually want and what union hierarchs and labor experts want them to want.

Kohler, in partial agreement with these probabilities, concedes that the state corrodes the institutions of civil society, but he contends that markets increasingly consume the state's ordering capacity.²⁶² On one hand, following Adam Smith, Kohler argues that "[t]he purpose of free markets is to promote individual self-determination and material well-being, thereby supporting the conditions for self-rule."²⁶³ On the other hand, Kohler, apprehensive about the capacity of modern capitalism to overwhelm the institutions of social life,²⁶⁴ implies a greater

²⁵⁷ Samuel Estreicher, *The Dunlop Report and the Future of Labor Law Reform*, 12 LAB. LAW. 117, 118 n.2 (1996) (quoting PRINCETON SURVEY RESEARCH ASSOCS., WORKER REPRESENTATION AND PARTICIPATION SURVEY: REPORT ON THE FINDINGS 49 (1994)).

²⁵⁸ Schwab, *supra* note 157, at 370 (internal quotation marks omitted).

²⁵⁹ Hutchison, *supra* note 6, at 1382–83.

²⁶⁰ *Id.*

²⁶¹ See Stephen M. Bainbridge, *Employee Involvement in Workplace Governance Post-Collective Bargaining: A Retrospective on Selznick's Law, Society, and Industrial Justice* 14 (Oct. 13, 1999) (working paper, 1999).

²⁶² Kohler, *supra* note 47, at 189.

²⁶³ *Id.* at 190.

²⁶⁴ *Id.*

space for the centralizing authority of the state to seize the initiative and restore liberal social institutions to their proper place as part of an elusive search for the common good.

On the whole, applying Catholic social teaching to concrete situations may produce conflict. Wolfe's understanding of liberalism and neutrality appears to diverge from Scaperlanda and Collett's intuition. From Father Araujo's perspective, neutrality can be a source of oppression. Similarly, over-reliance on government power in the form of Kohler's approach, far from eliminating oppression, may increase it. A central conclusion reemerges: Centralizing authorities may be unreliable instruments for achieving the common good. The next Part bolsters this conclusion.

II. WORK, THE SOCIAL QUESTION, AND THE NEW DEAL

A. *The New Deal: A Catholic Conception of the Common Good?*

The possibilities associated with moving to discover and implement the common good can be synthesized by launching an examination of the various effects of the New Deal. Understanding these effects is consistent with MacIntyre's persistent "attempt to help us understand how it is that we now live lives we do not understand."²⁶⁵ While the concept of the common good as a product of the liberal state can be interpreted to mean various things, some observers perceive its instantiation by the New Deal as a desirable form of progress that ratified Catholic social thinker John A. Ryan's moral defense of state intervention in the economy.²⁶⁶ Lew Daly directs attention to Ryan's importance by highlighting the teaching of his major ethical work *Distributive Justice*. Ryan stresses the following paradigm: "[W]hen a worker accepts a wage insufficient for his needs under the compulsion of avoiding the . . . evil of starvation, his [labor] contract is no more free than the contract by which the helpless wayfarer gives up his purse to escape the pistol of the robber"²⁶⁷ This metaphor, offered without a trace of nuance, may not be applicable to all employers and all labor contracts; therefore, this approach may be indistinguishable from the voice

²⁶⁵ Hauerwas, *supra* note 29, at 36.

²⁶⁶ Daly, *supra* note 9, at 25.

²⁶⁷ *Id.* (internal quotation marks omitted).

of pride. Alasdair MacIntyre, in a discourse on evil, states that we may fail to recognize the voice of pride “because its utterances can be and often are high-minded and moralistic.”²⁶⁸ Whether MacIntyre’s assertion applies, Ryan ties his approach to Thomistic natural law, which commands that “good be done, and evil avoided.”²⁶⁹ The efforts of Father Ryan catalyzed the radicalization of Catholic thought in the early decades of the twentieth century, and in response, Catholic institutions mobilized a crusade for social justice.²⁷⁰ Lew Daly argues that the immediate goal of this crusade was the radical transformation of the capitalist system based on the tenets of Leo XIII and Pius XI.²⁷¹ Father Ryan, a faculty member at Catholic University, gave the invocation at President Roosevelt’s second inauguration in 1937.²⁷² At Father Ryan’s retirement celebration, Secretary of Labor Francis Perkins, toasted Ryan eloquently on his contribution to the New Deal by quoting his own words: “Never before in our history . . . have Government policies been so deliberately and consciously based on the conception of moral right and social justice.”²⁷³ Perkins’ toast implied that a government committed to the moral rights of workers was on the verge of delivering social justice.

Contrasting viewpoints are available. On one account, the unconstrained pursuit of social justice and the common good may paradoxically yield servitude.²⁷⁴ Friedrich Hayek clarifies that, although not often remembered, socialism in its beginnings was authoritarian in nature.²⁷⁵ Predictably, President Roosevelt’s record demonstrates liberal experimentation and freedom rapidly succumbed to planning.²⁷⁶ President Roosevelt privately

²⁶⁸ Alasdair MacIntyre, *Foreword* to NAMING EVIL, JUDGING EVIL, at vii, ix (Ruth W. Grant ed., 2006).

²⁶⁹ Daly, *supra* note 9, at 25.

²⁷⁰ *See id.* at 26.

²⁷¹ *See id.* at 26–27.

²⁷² *Id.* at 27.

²⁷³ *Id.* (internal quotation marks omitted).

²⁷⁴ *Id.*

²⁷⁵ F.A. HAYEK, THE CONSTITUTION OF LIBERTY 253–54 (1960).

²⁷⁶ *See* Jonah Goldberg, *The Raw Deal*, 8 THE CLAREMONT REV. OF BOOKS 17, 18 (Winter 2007/08) (reviewing AMITY SHLAES, THE FORGOTTEN MAN: A NEW HISTORY OF THE GREAT DEPRESSION (2007)); *see also* William Schambra, *Debating the New Deal*, 8 THE CLAREMONT REV. OF BOOKS 19, 19–20 (Winter 2007/08) (reviewing THE TWO FACES OF LIBERALISM: HOW THE HOOVER-ROOSEVELT DEBATE SHAPES THE 21ST CENTURY (Gordon Lloyd ed., 2006) (contending that both Hoover and Roosevelt were animated by collectivist impulses)).

acknowledged that he and his administration were doing many of the things being done in contemporary Russia and even some of the things that were being done under Hitler in Germany.²⁷⁷ Hence, it would be remarkable if the New Deal, offered as the epitome of a uniquely Catholic conception of social justice, could be found to be free from coercion while leaving ample room for subsidiarity, freedom from the state, and a principled pursuit of the common good.

When President Roosevelt gave his "Forgotten Man" radio address in 1932, the then-candidate envisioned a "great plan . . . [where the] whole nation [would] mobilize[] for war with economic, industrial, social and military resources gathered into a vast unit capable of meeting any national challenge."²⁷⁸ "If elected, Roosevelt promised, he would act in the name of 'the forgotten man at the bottom of the economic pyramid.'"²⁷⁹ The success of this effort would depend, at least in part, on the response of the nation; he therefore called America to "move as a trained and loyal army willing to sacrifice for the good of a common discipline."²⁸⁰

Three questions surface: (1) Does such a move imply greater scope for the state and a consequent reduction in space for the Church's activity?; (2) Does this maneuver impinge, non-neutrally, on the conscience of workers, citizens, and entrepreneurs?; and (3) Is it likely that the state's coercive power can be fully submitted to the truth embedded in the Catholic social tradition, which has long held that the elimination of unjust structures will never be sufficient to bring about a truly just society?²⁸¹

B. The New Deal as a Paragon of Progress?

After his election, President Roosevelt asked Frances Perkins to become Secretary of Labor, to which she replied that "she would accept if she could advocate a law to put a floor under

²⁷⁷ Goldberg, *supra* note 276, at 18.

²⁷⁸ Schambra, *supra* note 276, at 19 (internal quotation marks omitted).

²⁷⁹ AMITY SHLAES, *THE FORGOTTEN MAN: A NEW HISTORY OF THE GREAT DEPRESSION* 12 (2007).

²⁸⁰ Schambra, *supra* note 276, at 19 (internal quotation marks omitted).

²⁸¹ See, e.g., Breen, *supra* note 60, at 332 (observing that law as a coercive force cannot effect change from the inside and citing John Paul II's observation that the transformation of society involves two tasks: (1) the removal of the specific structures of sin and (2) moral renovation).

wages and a ceiling over hours of work.”²⁸² President Roosevelt’s advisers developed a number of programs and policies including the National Industrial Recovery Act (“NIRA”), which suspended antitrust laws so that industries could enforce fair-trade codes.²⁸³ “As nearly all studies of the NIRA point out, both big business and labor union leaders saw the early Depression period as an opportunity to implement cartelization schemes for product prices and labor markets.”²⁸⁴ Initial New Deal efforts were dealt a crushing blow when the Supreme Court unanimously invalidated the NIRA because the law impermissibly delegated government power to private interests.²⁸⁵ Ultimately, undeterred, President Roosevelt with the help of Congress instituted the National Labor Relations Act, the Public Contracts Act of 1936, and the Fair Labor Standards Act along with a plethora of additional legislation and executive orders.²⁸⁶ These efforts, taken as a whole, led to reduced competition, higher prices, higher wages, and higher social costs in the form of unemployment,²⁸⁷ which ensured that America’s recovery was more sluggish and slower than those of most European nations.²⁸⁸

Missing from an analysis that concentrates on the passage of statutes or the comparative economic recovery rate in Europe is a narrative that adequately acknowledges the human dimension and the human costs of the New Deal. For instance, consider Jacob Maged; he was “thrown in jail for months because he charged 35 cents to press a suit when the federal government demanded a minimum price of 40 cents.”²⁸⁹ Evidently, in President Roosevelt’s view, the common good required higher prices for consumers and more control of small neighborhood businesses, no matter how much suffering was caused by his initiatives. New Deal priorities can be further illuminated by the case of the Schechter brothers, Orthodox Jews in Brooklyn, who

²⁸² Johnathan Grossman, *Fair Labor Standards Act of 1938: Maximum Struggle for a Minimum Wage*, 101 MONTHLY LAB. REV. 22, 24 (1978).

²⁸³ *Id.* at 22.

²⁸⁴ Ilya Somin, *Voter Knowledge and Constitutional Change: Assessing the New Deal Experience*, 45 WM. & MARY L. REV. 595, 651 (2003).

²⁸⁵ Grossman, *supra* note 282, at 23 (discussing *Schechter Poultry Corp. v. United States*, 295 U.S. 495 (1935)).

²⁸⁶ See, e.g., *id.* at 23.

²⁸⁷ VEDDER & GALLAWAY, *supra* note 252, at 146.

²⁸⁸ *Id.* at 129.

²⁸⁹ Goldberg, *supra* note 276, at 17.

raised and sold kosher chickens.²⁹⁰ "They ran into trouble with the New Deal codes that said, in the name of quality assurance, that vendors couldn't let individual customers select their own chickens."²⁹¹ Evidently, appeals to tradition (never mind religious tradition) were not only unpersuasive to the New Deal's crusading progressives, but also insulted the scientific mind.²⁹² "The Schechters were harassed, fined . . . and ultimately sentenced to jail"²⁹³ all in the name of scientific progress and President Roosevelt's conception of the common good.

Skepticism toward the power of government's ability to produce sustainable and defensible progress is further enhanced by understanding the death of a thirteen-year-old named William Troeller. Troeller hung himself from the transom in his bedroom one November evening long ago in Greenpoint, Brooklyn.²⁹⁴ His dad had lost his job, probably because he suffered from a hernia, and the gas in the family's apartment had been shut off for several months.²⁹⁵ Troeller evidently saw himself as a burden on a family with six children, and he was therefore sensitive about asking for his share at mealtime.²⁹⁶ He was buried in a Catholic cemetery in Indiana, and his death was announced by the New York Times under the headline: "He Was Reluctant about Asking for Food."²⁹⁷ A few weeks prior to Troeller's suicide, the stock market fell nearly eight percent on a day that had already come to be known as Black Tuesday.²⁹⁸ Unemployment was rising by the millions, and the next spring after his death, one in five American men would be unemployed.²⁹⁹ This story is something like the descriptions we hear of the Great Crash of 1929.³⁰⁰ In fact, these events took place in the autumn of 1937³⁰¹—five years after President Roosevelt was elected, four

²⁹⁰ *Id.*

²⁹¹ *Id.*

²⁹² *Id.*

²⁹³ *Id.* The convictions were ultimately overturned on appeal by the Supreme Court when it held that the New Deal statute violated the Commerce Clause. *Schechter Poultry Corp. v. United States*, 295 U.S. 495, 551 (1935).

²⁹⁴ SHLAES, *supra* note 279, at 1.

²⁹⁵ *Id.*

²⁹⁶ *Id.*

²⁹⁷ *Id.*

²⁹⁸ *Id.* at 2.

²⁹⁹ *Id.*

³⁰⁰ *Id.* at 3.

³⁰¹ *Id.*

and a half years after President Roosevelt had introduced the New Deal, and eight years after President Hoover commenced a process that eventually led the nation to centralize government planning.³⁰²

Even if we were prepared to focus on progress and the common good as mere abstractions and ignore the human dimension, it is difficult to snub the statements of Rex Tugwell, a principal actor in President Roosevelt's New Deal programs. Several years' worth of sustained government planning, Tugwell said, had merely created a depression within a depression.³⁰³ As Professor Ilya Somin shows, the NIRA—the flagship program of the New Deal—was a “massive public policy disaster.”³⁰⁴ “Its attempts at centrally planned price controls and production limits apparently caused a massive six to eleven percent decline in the United States' real Gross National Product (GNP) in an already deeply depressed economy.”³⁰⁵

The picture worsens when members of minority groups become the focus of our consideration. The American labor movement has been inescapably linked to racist oppression.³⁰⁶ While this history is not unique to the United States, the American labor movement—since the founding of the American Federation of Labor (“AFL”), during the Great Depression, and throughout subsequent periods—engaged in an intentional and often brutal campaign of racial exclusion:

Exclusionary practices were most prevalent where the unions controlled access to work.

When Congress enacted the National Industrial Recovery Act . . . , an act that had harmful effects on African Americans, during the New Deal, it did so with significant labor union support. As one civil rights activist of the 1930s noted, “the NIRA served to redistribute employment and resources from blacks—the most destitute of Americans suffering from the Depression—to the white masses.” Trade unions took advantage of the monopoly powers granted to them by the NIRA and its minimum wage provisions to displace African American workers.³⁰⁷

³⁰² *Id.*

³⁰³ *Id.*

³⁰⁴ Somin, *supra* note 284, at 650.

³⁰⁵ *Id.*

³⁰⁶ Hutchison, *supra* note 236, at 118–27.

³⁰⁷ *Id.* at 123–24 (footnote, omitted).

This oppression was inescapably tied to the New Deal and continued into the 1940s and through the 1980s.³⁰⁸ During the 1940s, for example, the United States Employment Service—a federal agency—enticed hundreds of young African American men with offers of “free” travel. The young men would supposedly journey from cities across the South to enjoy Florida sunshine and work in the sugar fields during World War II.³⁰⁹ Instead of enjoying sunshine and free travel, the men learned that their transportation amounted to at least a week’s worth of wages, and they were shunted to labor camps replete with guards who killed men for asking for their wages or for trying to leave.³¹⁰ Facing “long days of brutal work pervaded by fear and punctuated by violence,” these workers determined that escape was the only option.³¹¹ At the same time, President Roosevelt’s Justice Department ignored requests to stop the “virtual slavery” in Florida’s sugar camps.³¹² Far from an isolated instance of government complicity with insubordination, the United States Employment Service, which acted as a hiring liaison, learned to accommodate racial discrimination and vindicate racial oppression as part of its assistance program after being federalized by the Roosevelt administration.³¹³

The New Deal regime can be explained in benign terms. While the original purpose may have been benign, African Americans and other groups who have been “singled out for disfavor can be forgiven for suspecting more invidious forces at work.”³¹⁴ Rather than delivering social justice, the ostensible instantiation of the “common good” during the New Deal was riven with instances of flagrant injustice. These injustices are verified by Pope Benedict XVI’s prophetic deduction that “[t]he right state of human affairs, the moral well-being of the world can never be guaranteed simply through structures [or programs] alone, however good they are.”³¹⁵ Although the New Deal pattern may not compare to the pain experienced by those who have been

³⁰⁸ See *id.* at 125.

³⁰⁹ RISA L. GOLUBOFF, *THE LOST PROMISE OF CIVIL RIGHTS* 1 (2007).

³¹⁰ *Id.* at 1–2.

³¹¹ *Id.* at 2.

³¹² See *id.*

³¹³ *Id.* at 3, 85.

³¹⁴ See *Locke v. Davey*, 540 U.S. 712, 733 (2004) (Scalia, J., dissenting). My debt to Justice Scalia should be obvious.

³¹⁵ *SPE SALVI*, *supra* note 69, ¶ 24.

transformed by suffering,³¹⁶ one can hope that Father Ryan's economic and political disciples, if adequately informed of the record, might repudiate his moral defense of state intervention. I hope that observers for whom the Catholic Church is the prolepsis—the present anticipation—of the fulfillment of the story of the world³¹⁷ will accept the substantial evidence showing that the New Deal did not end the Great Depression, nor did it cure unemployment.³¹⁸ The failure of the New Deal demonstrates that the intellectual mandate of President Roosevelt's "Brains Trust"—the group charged with the creation of the New Deal—was contestable.³¹⁹ By attempting to prove that "planning was the way of the future and [was] infinitely superior to the chaos of the free market," the "Brains Trust" proved the opposite.³²⁰

At an earlier point in time, liberalism shared its ideological foundation with free-market capitalism because it operated consistently with, or at least partially consistently with, the notion that human beings could simply be reduced to a bundle of preferences.³²¹ This link appears to deny that there is any order to the moral meaning of human experience.³²² This linkage is now under stress. Catholic social critic Shannon shows that classical liberals viewed rationality as existing within the individual, whereas contemporary American liberals see rationality in large institutions,³²³ thus severing the connection between liberalism as a political theory and its early roots in neoclassical economics. Large institutions imply compulsion and an absence of subsidiarity. These developments, taken as a whole, create the perfect storm for enacting Cass Sunstein and Richard Thaler's program of libertarian paternalism.³²⁴ Although

³¹⁶ See, e.g., *id.* ¶ 37 (citing nineteenth century Vietnamese martyr Paul Le-Bao-Tinh's description of a "transformation of suffering").

³¹⁷ RICHARD JOHN NEUHAUS, *CATHOLIC MATTERS: CONFUSION, CONTROVERSY, AND THE SPLENDOR OF TRUTH* 174 (2006).

³¹⁸ Goldberg, *supra* note 276, at 17–18.

³¹⁹ *Id.*

³²⁰ *Id.* (internal quotation marks omitted).

³²¹ Stephen L. Carter, *Liberal Hegemony and Religious Resistance: An Essay on Legal Theory*, in CHRISTIAN PERSPECTIVES ON LEGAL THOUGHT 25, 45 (Michael W. McConnell & Angela C. Carmella eds., 2001).

³²² See Email from Kevin P. Lee, *supra* note 173.

³²³ SHANNON, *supra* note 214, at 147.

³²⁴ Cass R. Sunstein & Richard H. Thaler, *Libertarian Paternalism Is Not an Oxymoron*, 70 U. CHI. L. REV. 1159, 1159–60 (2003) ("[A] form of paternalism,

such a program is unlikely to be sustainable,³²⁵ Alasdair MacIntyre rightly points us toward the difficulties associated with the modern economic order: its excessive individualism, its acquisitiveness and elevation of the values of the market to a central social place including consumerism, and its concentrations on human autonomy.³²⁶ But with equal clarity he thrusts his readers in the direction of another self-evident truth: Where government does not express or represent the moral community of citizens, it can devolve into a set of institutional arrangements for imposing a form of bureaucratized unity on a society that lacks a moral and normative consensus.³²⁷ Bureaucratized unity, proposed in the name of liberalism, and enforced by the collective, appears to be at variance with John Paul II's strong concern for the personalist values that he developed in *Laborem Exercens*.³²⁸

Before becoming unduly disenchanted with New Deal efforts, one might exclaim that, at least, they tried to produce heaven on earth. Hence, it might be plausible to see the New Deal in historical terms as a well-intentioned reaction to the "dominant ideology of the Gilded Age—a concoction of laissez-faire economic theory, self-help mythology, and the mystique of constitutional law"—newly ruptured by a perspective that relied heavily on religious thought.³²⁹ Some observers might argue that New Deal policies, however ill-conceived, offer a corrective to perceived inequality of bargaining power and circular myths protecting economic dominance in the name of progress and the common good.³³⁰ They might intuit, for example, that labor unions and the effort to protect workers' rights to organize arose, in part, out of a moving critique of industrial capitalism and represent an

libertarian in spirit . . . should be acceptable to those who are firmly committed to freedom of choice on grounds of either autonomy or welfare.”).

³²⁵ See generally Mario J. Rizzo & Douglas Glen Whitman, *Little Brother Is Watching You: New Paternalism on the Slippery Slopes* (N.Y.U. Law Sch., Pub. Law Research Paper No. 08-12, 2008). Sunstein apparently admits as much. See Cass R. Sunstein, *Introduction* to BEHAVIORAL LAW & ECONOMICS 1, 3 (Cass R. Sunstein ed., 2000) (doubting that a firm case can be made for legal paternalism, because bureaucrats may be subject to the same cognitive and motivational distortions as everyone else).

³²⁶ MACINTYRE, *supra* note 58, at 254.

³²⁷ *Id.*

³²⁸ LABOREM EXERCENS, *supra* note 12, ¶ 15.

³²⁹ Daly, *supra* note 9, at 23.

³³⁰ *Id.*

“attempt to have the democracy of Paris without the slavery of Rome.”³³¹ Hence, the labor movement and the New Deal reflect the “determination to assert the superiority of moral principles over economic appetites, which have their place . . . in the human scheme, but which, like other natural appetites, when flattened and pampered and overfed, bring ruin to the soul and confusion to society.”³³² However moving this critique of the market may be, the consequences resulting from the New Deal provide a basis to challenge the capacity of the government and labor unions to proffer moral principles, including an adequate understanding of the human person sufficient to the task of justifying their proposed solutions to society’s ills. Taken as a whole, President Roosevelt’s endeavor to regulate the life, liberty, and happiness of citizens failed to instantiate either the common good or the principles of the Sermon on the Mount. Moreover, scant evidence can be found to suggest that the New Deal functioned consistently with the requirements of subsidiarity and a Catholic understanding of human freedom. Contrary to Father Ryan and Lew Daly’s extravagant claims, the New Deal failed to ensure that the teachings of Christ apply to the benefit of all.

To be sure, many New Deal statutes were premised on the desire to eliminate evil from human life. This focus on the elimination of evil and the attainment of secular salvation has led to bureaucratic managerialism, which is comprised of more than maladroit administration by government officials. Bureaucratic managerialism issues forth as a pseudo-scientific process in which the terms of employment and the conditions under which life itself materializes are regulated and planned by a hierarchy justified by the contention that government possesses resources rank and file citizens and workers lack.³³³ As stated previously, while the drafters of the Constitution sought to find virtuous rulers who would pursue the common good, it is equally true that they took precautions for keeping them virtuous. Thus, it was not surprising that President Roosevelt became frustrated by such precautions and sought to avoid constitutional constraints on his powers by threatening to change the

³³¹ Richard Gill, *Oikos and Logos: Chesterton's Vision of Distributism*, 10 LOGOS: J. CATH. THOUGHT & CULTURE 64, 65 (2007).

³³² *Id.* at 66–67 (internal quotation marks omitted) (quoting R.H. TAWNEY, *RELIGION AND THE RISE OF CAPITALISM* 279 (Penguin Books 1976) (1926))).

³³³ MACINTYRE, *supra* note 58, at 85.

constitutional order to suit his preferences by packing the Supreme Court. Professor Somin shows that during the New Deal, the question of whether constitutional order should be altered in order to give the government plenary regulatory power over the economy, which was faced with strong public opposition, was "one of almost immeasurable importance. If political elites could go against majority opinion on such a fundamental and far-reaching question, it is hard to conceive of a situation, whether in normal politics or otherwise, where they would be substantially less constrained than this."³³⁴ Once the encroaching power of the state is unleashed, it is doubtful that political elites can discover a definite stopping point with regard to the state's concern with abortion, the selection of chickens by members of a religious tradition, or enticing unsuspecting workers into "virtual slavery."

Undeniably, intervention and paternalism might be justified on grounds that "individuals [may] make inferior decisions in terms of their own welfare—decisions that they would change if they had complete information, unlimited cognitive abilities, and no lack of self-control."³³⁵ This contention is not fully persuasive because it is equally true that the likelihood of inferior decision making afflicts governments as well as other collective entities. Government failure becomes the most likely outcome of highly centralized efforts to intervene in human life, since the government is handicapped by insufficient information on the conditions required to create the common good. Plagued, as public choice theory forecasts, by rent-seeking efforts infected by a bureaucratic hierarchy and correlative agency costs that vitiate subsidiarity and a principled form of solidarity, government failure becomes unavoidable. Centralized efforts tend to favor well-educated bureaucrats, lobbyists, and lawyers. Hence, it is often the case that the most vulnerable among us are victimized by centralized control. Ultimately, a concern for the natural welfare of the community and its individual members seems missing from this largely bureaucratic calculus.

Correspondingly, enforced homogeneity and callous majoritarianism, often directed by elite hierarchs, are likely to be the inevitable outcome when centralized power is placed in service of the demands of the liberal state. The history of

³³⁴ Somin, *supra* note 284, at 628.

³³⁵ Sunstein & Thaler, *supra* note 324, at 1162.

twentieth-century government intervention shows that many individuals and groups, including faithful workers represented by unions, shopkeepers, and members of marginalized minority groups, have not been able to escape government manipulation.³³⁶ Despite the fact that these individuals and groups have a demonstrable capacity to transcend their own individual self-interest and to act in favor of what is truly good, they were, and are, compelled to act in specific ways by fear of punishment or hope of reward.³³⁷ In addition, such control is not simply limited to the economic sphere. Implicating Wolfe's discourse on liberalism, John Garvey and Stephen Carter wisely point us in the right direction:

Totalitarianism has been well described as the ultimate invasion of human privacy. But this invasion of privacy is possible only after the social contexts of privacy—family, church, association—have been atomized. The political enslavement of man requires the emancipation of man from all the authorities and memberships . . . that serve, in one degree or another, to insulate the individual from external political power.³³⁸

Carter argues that liberalism shorn of its dependence on dialogue and the power of reason to move others to action becomes an impoverished philosophy that conduces toward either a simply-minded majoritarianism in which preferences are aggregated formally or a variant of Leninism.³³⁹

And yet, it is possible to disagree with Professor Carter because more likely than not contemporary liberalism, consistent with Sunstein and Thaler's preferences, produces both. If true, the outcome in the *Stenberg* case, tied in part to Protestant individualism, was remarkably foreseeable despite Father Araujo's pointed objections to the Supreme Court's reasoning. Appropriately, Garvey and Carter imply that *all* mediating institutions, including the church, are likely to be classified as enemies of state uniformity. Scaperlanda and Collett argue luminously for the proposition that a pluralistic and democratic

³³⁶ Cardinal Dulles, *supra* note 47, at 71.

³³⁷ *Id.*

³³⁸ JOHN H. GARVEY, WHAT ARE FREEDOMS FOR? 153 (1996) (internal quotation marks omitted) (quoting ROBERT A. NISBET, THE QUEST FOR COMMUNITY 202 (1953)).

³³⁹ Stephen L. Carter, *Evolutionism, Creationism, and Treating Religion as a Hobby*, 1987 DUKE L.J. 977, 988 (1987).

society should not fear difference and diversity.³⁴⁰ On the contrary, I argue that individuals and communities are likely to be seen as subversive, as they develop in submission to the teaching of *Veritatis Splendor*, a conception of freedom as a gift of divine grace that frees humans for virtue.³⁴¹ Far from embracing authentic diversity and difference, majority culture has arguably misplaced its power of explanation and is now confused, self-contradicting, and self-congratulatory.

Thus the liberal-legalist order, either driven by the demands of hierarchs or the polity's acquiescence in or submission to contestable adjudication, must inevitably capitulate to the seductive allure of procrustean fundamentalism and seek to impose its values on those who are unwilling to surrender to its centralizing impulse.³⁴² These various developments combine to fashion a society wherein philosophical liberalism may be impossible³⁴³ and political liberalism may be nothing more than an "unprincipled *modus vivendi*."³⁴⁴ Evidently, Pope John Paul II would agree. He would attribute this development to the fact that modern liberalism has denied the structure of human experience, requiring an appreciation of the epistemological value of lived moral experiences, as opposed to theoretical abstractions on which modern liberalism rests.³⁴⁵ Victimized by its own hubris and hindered by the absence of reliable knowledge, it is doubtful that the liberal order can fully appreciate *Einfühlung*, the capacity to sympathetically feel oneself in the plight of others whose outlook and circumstances differ profoundly from one's own.³⁴⁶

It is now possible to offer answers to the three questions posed at the end of Part II.A. First, as citizens following President Roosevelt's suggestion move as a trained and loyal army in response to demands of government power, it is possible to forecast greater scope for the state and reduced space for the

³⁴⁰ See Scaperlanda & Collett, *supra* note 28, at 8.

³⁴¹ See Lee, *supra* note 47, at 33–34.

³⁴² See Harry G. Hutchison, *Liberal Hegemony? School Vouchers and the Future of the Race*, 68 MO. L. REV. 559, 647 (2003).

³⁴³ See Larry Alexander, *Illiberalism All the Way Down: Illiberal Groups and Two Conceptions of Liberalism*, 12 J. CONTEMP. LEGAL ISSUES 625, 625 (2002).

³⁴⁴ *Id.*

³⁴⁵ I am indebted to Kevin Lee for this interpretation of Pope John Paul II's thought. See Email from Kevin P. Lee, *supra* note 173.

³⁴⁶ See Hutchison, *supra* note 342, at 647.

church, family, and associations, because such subsidiary institutions have been atomized. Second, as authorities enlist citizens in their centralizing efforts, it is probable that the Nation will experience more intrusions on the conscience of such citizens, workers, and shopkeepers, particularly when they fail to willingly submit to the expansive claims of the liberal state. Finally, it is unlikely that the state's power has been fully submitted to the truth of the Catholic social tradition, which holds that the mere elimination of unjust structures is insufficient to bring about a truly just society. Ultimately, the Nation is likely to succumb to the inevitable appeal of centralizing power as a substitute for the heavy lifting that is required to acknowledge the possibility of any shared truths in our pluralistic republic.

C. *Pursuing Progress Within and Beyond the Centralizing State*

The endowment of man with self-evident rights, Jefferson argues, comes from the Creator; however, a commitment to a life lived in response to Pope John Paul II's teleological approach to human autonomy³⁴⁷ must ultimately be seen as subversive in a country captured and ruptured by Enlightenment myths. Still, the process of subversion may ultimately coexist with the possibility of progress. Consistent with this deduction, Pope John Paul II states that it is the task of the Church to call attention to the "dignity and rights of those who work, to condemn situations in which that dignity and those rights are violated, and to help . . . ensure authentic progress by man and society."³⁴⁸ Attaining a durable and defensible form of progress is difficult, however. Christopher Lasch asks: "How does it happen that serious people continue to believe in progress . . . in the face of massive evidence that might have been expected to refute the idea of progress once and for all?"³⁴⁹ Jacques Ellul contends that progress "consists in progressive de-humanization—a busy, pointless, and, in the end, suicidal submission to technique."³⁵⁰

Public choice theory illustrates that modern efforts toward progress have often been connected to statutory intrusions into

³⁴⁷ See Lee, *supra* note 47, at 33.

³⁴⁸ *LABOREM EXERCENS*, *supra* note 12, ¶ 1.

³⁴⁹ SWENSON, *supra* note 7, at 24 (internal quotation marks omitted).

³⁵⁰ Robert K. Merton, *Foreword* to JACQUES ELLUL, *THE TECHNOLOGICAL SOCIETY*, at v, viii (John Wilkinson trans., 1964).

the market,³⁵¹ wherein the possibility of market failure is scrutinized. Markets do fail, but in practice governments are not omniscient, and thus, “flawed markets trump flawed government more often than flawed government trumps flawed markets.”³⁵² Public choice analysis shows that government is not higher than the private sector but rather a coequal, and in some cases, a more-than-equal combatant.³⁵³ Therefore, “rival interest groups compete with each other to capture government and use it to seize and redistribute resources among themselves.”³⁵⁴ The failure of democratic states to protect the public interest operates “[c]ontrary to the classical theory of the state as the provider of public goods—goods, that is to say, which in virtue of their indivisibility and non-excludability must be provided to all or none—modern states are above all suppliers of private goods.”³⁵⁵

Sociologist Robert Bellah warns: “Progress, modernity’s master idea, seems less compelling when it appears that it may be progress into the abyss.”³⁵⁶ Nietzsche observes: “Progress is merely a modern idea—that is to say, a false idea.”³⁵⁷ Richard Swenson cautions: “Only when progress begins to show discipline and restraint, as well as respect for the inward and transcendent needs of human beings . . . will we again be able to trust it.”³⁵⁸ Solzhenitsyn contends that the West has been seduced by the claim that man has become the master of this world and “bears no evil within himself . . . [s]o all [of] the defects of life are attributed [simply] to wrong social systems.”³⁵⁹ Consistent with that contention, Pope Benedict XVI shows that Marx’s error follows from his failure to remember that “man always remains man.”³⁶⁰ “If technical progress is not matched by corresponding progress in man’s ethical formation, in man’s inner growth, then it is not progress at all, but a threat for man

³⁵¹ See Hutchison, *supra* note 230, at 12.

³⁵² See Peter Van Doren, Book Review, 28 CATO J. 164, 172 (2008) (reviewing STEVEN P. CROLEY, REGULATION AND PUBLIC INTERESTS: THE POSSIBILITY OF GOOD REGULATORY GOVERNMENT (2007)).

³⁵³ See SHLAES, *supra* note 279, at 10.

³⁵⁴ JOHN GRAY, POST-LIBERALISM: STUDIES IN POLITICAL THOUGHT 4 (1996).

³⁵⁵ *Id.* at 11.

³⁵⁶ SWENSON, *supra* note 7, at 34.

³⁵⁷ FRIEDRICH NIETZSCHE, THE ANTICHRIST: A CRITICISM OF CHRISTIANITY 4 (Anthony M. Ludovici trans., 2006).

³⁵⁸ SWENSON, *supra* note 7, at 34.

³⁵⁹ Colson, *supra* note 215, at 64 (internal quotation marks omitted).

³⁶⁰ SPE SALVI, *supra* note 69, ¶ 21.

and for the world.”³⁶¹ In view of these observations, we should be wary of placing our trust in progress.

Nevertheless, Pope John Paul II rightly insists that “work, as a human issue, is at the very centre of the ‘social question’ to which, for almost a hundred years, since the publication of [*Rerum Novarum*], . . . the Church’s teaching and the many undertakings connected with her apostolic mission have been especially directed.”³⁶² The Catholic social tradition maintains that the ordering of employment is essential for the authentic development and unfolding of the human person.³⁶³ As such, the question of human work and the common good has been a constant concern of the Church.³⁶⁴ A careful examination of the various historical developments in the organization of society provides ground for “reproposing in new ways the question of human work” while resisting relativism and pursuing truth.³⁶⁵ It is possible, and probable, that a careful inspection of the casualties of the New Deal and the tendency of modern liberal states to impose majoritarian tenets and values on its citizens requires a repositionary effort that reduces rather than enhances the centralizing power of the state. This move would be a form of progress.

Consistent with progress as an aspiration, Pope John Paul II agrees that “the Christian faith does not presume to imprison changing socio-political realities in a ridged schema, and it recognizes that human life is realized in history in conditions that are diverse and imperfect.”³⁶⁶ Moreover, Lee points out that “the Church has no philosophy of her own, nor does she canonize any one particular philosophy.”³⁶⁷ Lee’s perceptive observation sustains a careful analysis of *Laborem Exercens*. Citing *Redemptor Hominis*, Pope John Paul II states that

man “is the primary and fundamental way for the Church,” precisely because of the inscrutable mystery of Redemption in Christ; and so it is necessary to return constantly to this way

³⁶¹ *Id.* ¶ 22 (citation omitted).

³⁶² *LABOREM EXERCENS*, *supra* note 12, ¶ 2.

³⁶³ Kohler, *supra* note 47, at 184.

³⁶⁴ See *LABOREM EXERCENS*, *supra* note 12, ¶ 3.

³⁶⁵ *Id.* ¶ 5.

³⁶⁶ Lee, *supra* note 47, at 31 (internal quotations marks omitted) (quoting *CENTESIMUS ANNUS*, *supra* note 14, ¶ 46).

³⁶⁷ *Id.* (internal quotation marks omitted) (quoting JOHN PAUL II, ENCYCLICAL LETTER *FIDES ET RATIO* ¶ 49 (1998)).

and to follow it ever anew in the various aspects in which it shows us all the wealth and at the same time all the toil of human existence on earth.³⁶⁸

It is possible and probable that a constant and fully-informed rediscovery of the self-evident truths contained within the Magisterium of the Church may resolve the issues of work, the social question, and the common good in ways that provide social justice and freedom while simultaneously offering sufficient space for civil society to work and to flourish. Although a timetable for this occurrence cannot be offered, such a properly-ordered society would reject the consumerist impulse, which etiolates the mind and the soul, provide room for the Church to operate within a framework supplied by its majestic theological and philosophical anthropology of the human person, and bring into being people who are capable of living lives of narrative coherence.

CONCLUSION

Samuel Gregg, in his review of the *Compendium of the Social Doctrine of the Church*, argues that the way of living reflected in Catholic social teaching is not limited to the proper ordering of personal moral life—it has a social dimension—because social life presents man with dilemmas to which he must respond by acting in ways that, like all freely willed acts, meet the gospel's demands.³⁶⁹ Germain Grisez is thus correct in stating that “the Church's social teaching . . . concerns the exposition of relevant moral norms that Catholics should use to judge the social situation confronting them, and . . . on the basis of that judgment, do what they can to change the situation for the better.”³⁷⁰ In any domain of inquiry, including Catholic social teaching and legal theory that are rightly aimed at changing social situations for the better, the highway of methodology is paved with epistemological commitments.³⁷¹ In law, method is

³⁶⁸ *LABOREM EXERCENS*, *supra* note 12, ¶ 1 (citation omitted) (quoting JOHN PAUL II, ENCYCLICAL LETTER *REDEMPTOR HOMINIS* ¶ 14 (1979)).

³⁶⁹ Samuel Gregg, *A Lost Opportunity: The Compendium of the Social Doctrine of the Church—A Review Essay*, 9 J. MARKETS & MORALITY 261, 262 (2006) (book review), available at http://www.acton.org/publications/mandm/mandm_article_33.php.

³⁷⁰ *Id.*

³⁷¹ R.J. Snell, *Upon This Rock: Human Realism and Geivett's Myth*, 9 PHILOSOPHIA CHRISTI 365, 365 (2007).

controlled by assumptions about the aims of inquiry, the possibility of knowledge, the conditions for its attainment, and the possibilities of indeterminacy and conflict.³⁷² Indeterminacy comes less from revelation than the difficulty that humans have in implementing and incorporating principles in concrete situations. This difficulty gives rise to distinct forms of language and debate. "The advent of language expands reality, for words represent not merely the immediate world of presence, but also 'what is absent, not only what is near but also what is far, not only the past but also the future.'"³⁷³

Analysis of past policy failures as well as future policy proposals in light of the truth must conform to the likelihood that "we come to live, not as the infant in the world of immediate experience, but in a far vaster world that is brought to us through the memories of other men, through the common sense of community, through the pages of literature, through the labors of scholars."³⁷⁴ Scholars Scaperlanda and Collett have produced an important work, but more conspicuously, they have brought to attention the need to recapture a sense of community that includes the present but reminds us of the past. Concentrating on the work of Pope John Paul II, the editors and their colleagues allow individuals in the legal profession to observe that all of us inhabit a larger world that is mediated by meaning, which transcends immediate experience,³⁷⁵ because it is attached to informed tradition. Embracing tradition will require us to continuously rediscover and reclaim Pope John Paul II's winsome reminder to "be not afraid."

But in a society verging on moral exhaustion, Chantal Delsol's haunting question remains: Will people who do not know what they are looking for find answers in self-evident truths? *Recovering Self-Evident Truths* constitutes "not so much an answer to [this question, but] . . . a reorientation of the conversation . . . around a vision—a Catholic vision—of what we are and what we are for, and why it matters."³⁷⁶ This reorientation can begin by acknowledging that "the dignity of the

³⁷² *Id.* at 366.

³⁷³ *Id.* at 368.

³⁷⁴ *Id.*

³⁷⁵ *Id.*

³⁷⁶ Garnett, *supra* note 59, at 274.

human person consists not so much in his capacity to choose, or his self-sovereignty, but in his status as a creature."³⁷⁷

"[W]hen the last of earth [is] left to discover . . . at the source of the longest river,"³⁷⁸ and once the concluding chapter of the American republic has been chronicled, the pertinent historical artifacts and collective memory will illuminate what we have experienced. Perhaps the record will show that we have lived "less in a state of self-sufficiency than in one of reciprocal indebtedness."³⁷⁹ In order to make progress toward reciprocal indebtedness, we must spend less time seeking to expand individual and collective rights, less time enlarging government power, and more time subverting the hegemony of the liberal state by answering the call of humility. As Randy Lee's *Epilogue* contends, in order for "Catholic perspectives on American law to gain traction, for them to alter lives in a meaningful way and win the war for America's soul, Catholics must win not only the battle for America's mind, but also the battle for America's heart."³⁸⁰

³⁷⁷ *Id.* at 273.

³⁷⁸ T.S. Elliot, *Little Giddings*, in *THE COMPLETE POEMS AND PLAYS: 1909-1950*, at 138, 145 (1952).

³⁷⁹ Garnett, *supra* note 59, at 273 (internal quotation marks omitted).

³⁸⁰ Lee, *supra* note 44, at 346 (citation omitted) (internal quotation marks omitted).