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

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

Harry G. Hutchison*

Review Essay:

Recovering Self-Evident Truths: Catholic Perspectives on American Law, edited by Michael A. Scaperlanda & Teresa Stanton Collett, (Catholic University Press, 2007).

Abstract

In *Recovering Self-Evident Truths: Catholic Perspectives on American Law*, editors Michael A. Scaperlanda and Teresa Stanton Collett offer a collection of essays that revive the connections between faith and reason and between truth and hope as the foundation for progress. Given the importance of papal encyclicals, work, and the increasing demands of the regulatory state, this article concentrates on three central and related themes that surface throughout the book: the difficulty, in America's current epoch, of acknowledging any shared truths, the question of labor and employment policy in a pluralistic society, and the relative balance needed between state intervention on the one hand and voluntary associations, properly-formed communities and individual autonomy, on the other. Ultimately, these themes give rise to a fundamental question: can liberalism be coherently conceived within parameters provided by Catholic social thought?

Scaperlanda and Collett's enterprise, featuring more than a dozen authors, is held together by the authors' persistence in pursuing objective truth as the criterion of judgment. Objective truth may be in conflict with the concept of pluralism, which declines to concede that rights necessarily have a moral footing rooted in truth. Moreover, government officials, who wield state power, ostensibly to achieve the common good and to secure moral and economic progress, may have an interest in denying the truth. President Franklin Delano Roosevelt's New Deal illustrates this possibility. Seeking moral and social progress, the book concentrates on Catholic anthropology, "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." Regardless of how attractive this move may be, complications surface.

It is not clear whether or not the United States can provide an environment, where society can move toward a shared understanding of justice, progress and the common good. If not, can self-evident truths receive an adequate hearing in a society in which individuals are disoriented by endless possibilities offered by postmodernism? I argue

that the book, *Recovering Self-Evident Truths: Catholic Perspective on American Law* can be a source of progress toward a proper account of the common good if American society accepts two observations: (1) law, as a coercive force, cannot fully fashion change within the human person, and (2) the correctness of Pope John Paul II’s assertion that structural transformation of society is secondary to moral renovation.

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I. 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 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 now 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

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¹ *But see* Abraham Lincoln, *Speech at Springfield, Ill.* (June 26, 1857), in *THE COLLECTED WORKS OF ABRAHAM LINCOLN*, 398, 405-6 (ed. Roy P. Basler, vol. 2, 1953) (arguing that the authors of the Declaration intended to include all even if it was obvious that all were not then actually enjoying equality).

² *See e.g.*, DAVID A. J. RICHARDS, *TOLERATION AND THE CONSTITUTION* 89-95 (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.") *Id.* at 90.

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

⁴ EDMUNDSON, *supra* note __ at 30 (discussing Locke).

⁵ *See* Declaration of Independence, ("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 . . .").

daily life, however adequate daily life is claimed to be.”⁶ 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, which 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

⁶ CHANTAL DELSOL, *ICARUS FALLEN: THE SEARCH FOR MEANING IN AN UNCERTAIN WORLD*, xxviii (2003). *See also*, Harry G. Hutchison, *A Clearing in the Forest: Infusing the Labor Union Dues Dispute with First Amendment Values*, 14 WILLIAM & MARY, BILL OF RIGHTS J. 1309, 1311 (2006)[hereinafter, Hutchison, *A Clearing in the Forest*].

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

⁸ *Id.*

⁹ *See e.g.*, Lew Daly, *In Search of the Common Good: the Catholic roots of American Liberalism*, BOSTON REVIEW, May/June (2007) at page 23.

¹⁰ *Id.*

¹¹ *Id.*

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 recognizes the legitimacy of workers' effort to obtain full respect for their dignity and gain broader areas of participation in the life of industrial enterprises so that, while cooperating with others and under the directors of others they 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 Franklin Roosevelt's contention "that democracy cannot live without that true religion which gives a nation a sense of justice and of moral

¹² *Laborem Exercens* ¶ 8.

¹³ David L. Gregory, *Not the Bishops' Finest Hour: Economic Justice, with Cerberus Unchained?*, St. John's University, School of Law, Legal Studies Research Paper series, Paper #08-0119, available at <http://ssrn.com/abstract=1108151>, 2 (March 2008).

¹⁴ *Centesimus Annus* ¶ 43.

¹⁵ Daly, *supra* note __ at 23.

¹⁶ *Id.*

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* magazine, a Catholic publication, urged readers to recognize that 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 where “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 Aquinas wrote his great *Summa Theologica*, which included his discourse on the problem of evil.²² Human knowledge and human capacity become visible as

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ *Id.*

²¹ *Id.*

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

obvious shortcomings in attempts to eradicate malevolent activity from the face 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 No wonder Socrates interpreted the Delphic oracle's declaration that he was the wisest man in the world to mean that he alone knew that he did not have wisdom, and that 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 was decided upon 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 FDR's admonition that democracy must reclaim true religion. Against this background, Michael A. Scaperlanda and Teresa Stanton 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.

²³ *Id.* at 57.

²⁴ *Id.*

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

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

Given the importance of work in papal encyclicals and the increasing demands of the regulatory state, this Essay concentrates on three central and related concerns that surface in Scaperlanda and Collett's book: the difficulty of finding a basis for acknowledging any shared truths during America's current epoch, the question of labor in a pluralistic society, and 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 "how 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 foundation?"²⁸ Philosopher Alasdair MacIntyre shows that during certain key episodes in history, philosophy fragmented and largely transformed morality.²⁹ Fragmentation

²⁷ Cardinal George, *supra* note __ at xi-xii.

²⁸ Michael A. Scaperlanda and Teresa Stanton Collett, *Introduction in RECOVERING SELF-EVIDENT TRUTHS* 1, 2 [hereinafter, Scaperlanda and Collett, *Introduction*].

²⁹ Stanley Hauerwas, *The Virtues of Alasdair MacIntyre*, *FIRST THINGS*, 35, 36 (October, 2007).

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 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 arguing that the "Constitution itself places textual and structural limits on government, facilitating authentic freedom by creating room for civil society to work and flourish."³⁵

³⁰ *Id.*

³¹ *Id.*

³² *Id.*

³³ Scaperlanda & Collett, *Introduction supra* note ____ at 2.

³⁴ *Id.* at 3.

³⁵ *Id.*

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 us as 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: "We 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, observes that there is no singular best life for people of all kinds to lead; therefore there is no single best political state to facilitate such a life.⁴⁰ Pluralism, if combined with the idea that governments are essentially contracts among diverse peoples holding diverse views of the good life, is a revolutionary notion⁴¹ that may impair, rather than fortify, the concept of objective truth.

³⁶ *Id.* 3-4.

³⁷ *Id.* at 4.

³⁸ *Id.* at 4.

³⁹ *Id.* at 8.

⁴⁰ See e.g., WILLIAM A. EDMUNDSON, AN INTRODUCTION TO RIGHTS, 20 (2004) (discussing Grotius).

⁴¹ *Id.*

Scaperlanda and Collett's enterprise is held together by the authors' persistence in pursuing objective truth as the criterion 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 rooted 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? Alternatively, can there be an effective Catholic contribution to the nation until there is again clarity about Catholic ways of living and thinking that enables 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

⁴² Scaperlanda & Collett, *Introduction supra* note ___ at 4.

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

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

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?

In Part II, this paper begins to answer these questions by concentrating on several of the essays⁴⁷ contained in *Recovering Self-evident Truths*. 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

⁴⁵ Avery Cardinal Dulles, *The Freedom of Theology*, FIRST THINGS, 19, 19-23 (May, 2008) [hereinafter, Cardinal Dulles, *The Freedom of Theology*].

⁴⁶ *Id.* at 19.

⁴⁷ Michael A. Scaperlanda and Teresa Stanton Collett, *Introduction*, in RECOVERING SELF-EVIDENT TRUTHS, *supra* note __ at 1-14; Kevin P. Lee, *The Foundations of Catholic Legal Theory: A Primer*, in RECOVERING SELF-EVIDENT TRUTHS, *supra* note __ at 15-35; Lorenzo Albacete, *A Theological Anthropology of the Human Person*, in RECOVERING SELF-EVIDENT TRUTHS, *supra* note __ at 39-51; Benedict M. Ashley, O. P., *A Philosophical Anthropology of the Human Person* in RECOVERING SELF-EVIDENT TRUTHS, *supra* note __ at 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 __ at 69-84 [hereinafter, Cardinal Dulles, *Truth as the Ground of Freedom*]; Robert K. Vischer, *Solidarity, Subsidiarity, and the Consumerist Impetus of American Law* in RECOVERING SELF-EVIDENT TRUTHS, *supra* note __ at 85-103; Robert John Araujo, S. J., *The Constitution and the Common Good*, in RECOVERING SELF-EVIDENT TRUTHS, *supra* note __ at 104-127; Christopher Wolfe, *Why We should (And Should not) Be Liberal*, in RECOVERING SELF-EVIDENT TRUTHS, *supra* note __ at 131-151; Thomas C. Kohler, *Labor Law: “Making Life More Human”—Work and the Social Question*, in RECOVERING SELF-EVIDENT TRUTHS, *supra* note __ at 163-190; Russell Shaw, *Afterword, Catholics and the Two Cultures*, in RECOVERING SELF-EVIDENT TRUTHS, *supra* note __ at 333-340; and Randy Lee, *Epilogue*, in RECOVERING SELF-EVIDENT TRUTHS, *supra* note __ at 341-348.

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

questions surface. Coherence may flounder on two levels. First, what virtues (values) do all Catholics share? Second, why should a nation founded on Protestant presuppositions, which stress the authority of the individual believer accept Catholic insights, which emphasize tradition and the authority 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?⁴⁹ 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 III 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 entitled, "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 goes on to argue that Daly makes a compelling

⁴⁹ Cardinal Dulles, *The Freedom of Theology*, *supra* note __ at 23.

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.⁵⁰ Though an accurate understanding of Pope Leo XIII's views confirms that, following Pope Pius IX, he was leery of liberalism,⁵¹ the passage of New Deal statutes provoked FDR'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 experiences and practices that render our lives intelligible.⁵² 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.⁵³ 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

⁵⁰ John Fea, *Religion and the Common Good, Religion in American History, Blog*, available at <http://usreligion.blogspot.com/2007/07/religion-and-common-god.html>.

⁵¹ See e.g., Robert P. Kraynak, *Pope Leo XII and the Catholic response to modernity*, MODERN AGE (fall 2007) available at http://findarticles.com/p/articles/mi_m0354/is_4_49/ai_n25358087/print, at page 3 (online version). I am indebted to David Gregory for this observation. David Gregory 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.

⁵² See Hauerwas, *supra* note ___ at 36.

⁵³ Cardinal George, *supra* note ___ at xii.

doubts about society's reliance on the great, impersonal mother, the state,⁵⁴ as well as her keen support for the principle that charitable functions should be performed at the most feasible local level of society.⁵⁵ 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 of the good for man and for community, where individuals identify their primary interest with reference to those goods.⁵⁶ It is not clear whether or not the United States can provide such a community. If not, can self-evident truths receive an adequate hearing in a society that is "waiting for something but 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"?⁵⁷ Still, I argue that progress toward a proper account of the common good may be possible if society accepts that: (1) law, as a coercive force, cannot

⁵⁴ See e.g., Harry Murray, *The Welfare Workforce: Dorothy Day, Welfare Reform, and Personal Responsibility*, 73 ST. JOHN'S L. REV. 789, 789-790 (1999) (quoting Dorothy Day who advocated personal responsibility rather than government programs as the way for Catholics to share their resources with poor neighbors).

⁵⁵ *Id.* at 789.

⁵⁶ ALASDAIR MACINTYRE, *AFTER VIRTUE* 250 (1984, 2nd ed.) [hereinafter, MACINTYRE, *AFTER VIRTUE*]. See also, Harry G. Hutchison, *Reclaiming the First Amendment Through Union Dues Restrictions?* 10 U. PA., J. OF BUS. & EMBL. L. 663, 675 (2008) [hereinafter, Hutchison, *Reclaiming the First Amendment*].

⁵⁷ Richard W. Garnett, *Criminal Law: "Everlasting Splendours": Death-Row Volunteers, Lawyers' Ethics, and Human Dignity*, in *RECOVERING SELF-EVIDENT TRUTHS*, *supra* note ___ at 254, 273.

fully fashion change within the human person⁵⁸ and (2) Pope John Paul II's observation that structural transformation of society is secondary to moral renovation is correct.⁵⁹

Moral renovation can then operate as a catalyst for social transformation.

Part II. 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.⁶⁰ 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.⁶¹ 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

⁵⁸ See e.g., John M. Breen, *John Paul II, The Structures of Sin and the Limits of Law*, available at SSRN: <http://ssrn.com/abstract=1024552> at pages 10-20.

⁵⁹ *Centesimus Annus*, ¶ 51.

⁶⁰ Scaperlanda & Collett, *Introduction supra* note __ at 10.

⁶¹ I am indebted to my colleague, Helen Alvaré for this observation (email conversation on file with the author).

within the society.⁶² Catholic anthropology concentrates on four values—freedom, solidarity, subsidiarity, and the common good⁶³--which offer a basis for conversing with the wider world.⁶⁴ 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 [of] old decks, but much of it creates unprecedented forms of social life.”⁶⁵ 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?”⁶⁶ This question beckons the reader to study 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.”⁶⁷ Yet, within a nation permeated with gloom that

⁶² Scaperlanda & Collett, *Introduction supra* note __ at 10-11.

⁶³ Cardinal George, *supra* note __ at xii.

⁶⁴ *Id.*

⁶⁵ PETER H. SCHUCK, *DIVERSITY IN AMERICA: KEEPING GOVERNMENT AT A SAFE DISTANCE*, 3 (2006).

⁶⁶ Scaperlanda and Collett, *Introduction supra* note __ at 1, 2.

⁶⁷ *Spe Salvi* ¶ 25.

questions the meaning and purpose of human life,⁶⁸ 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.⁶⁹ 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.⁷⁰ This metaphysical implosion⁷¹ 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.⁷² To further complicate this picture, Catholic social 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.⁷³ 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 skilfully enact and enforce well-intentioned programs.⁷⁴

⁶⁸ Fredrick Mark Gedicks, *Spirituality, Fundamentalism, Liberty: Religion at the End of Modernity*, 54 DEPAUL L. REV. 1197, 1197 (2006).

⁶⁹ *Id.*

⁷⁰ *Id.* at 1197-98.

⁷¹ *Id.* at 1197.

⁷² MACINTYRE, AFTER VIRTUE, *supra* note ___ at 226.

⁷³ Wilfred M. McClay, *Foreword*, in CHRISTOPHER SHANNON, CONSPICUOUS CRITICISM: TRADITION, THE INDIVIDUAL, AND CULTURE IN MODERN AMERICAN SOCIAL THOUGHT xi (2006).

⁷⁴ For a discussion of this issue, *see* MACINTYRE, AFTER VIRTUE, *supra* note ___ at 85 (Suggesting that as the government becomes more scientific and accepts that it can manipulate human action, "[g]overnment itself becomes

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, . . . persists and even flourishes.”⁷⁵ At the same time, “jurisprudence—the activity of theorizing or philosophizing about law, about the nature of law—seems close to moribund.”⁷⁶ 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.⁷⁷ John Paul II “taught that reason, shaped by virtue of prudence, formed in the light of the Lord’s Cross, makes possible right moral choice in complex situations.”⁷⁸ But, as “The Foundations of Catholic Legal Theory” makes clear, *Recovering Self-Evident Truths* offers “a variety of philosophical and theological perspectives.”⁷⁹ The book, for instance, provides an initial essay on moral anthropology that draws on the *personalist* philosophy of Pope John Paul II while a latter essay cites to the new Natural Law Theory of John Finnis, who concludes that moral anthropology is less relevant to the

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”).

⁷⁵ Steven D. Smith, *Jurisprudence: Beyond Extinction?* available at <http://ssrn.com/abstract=1009249> 1-12 (2007) [hereinafter, Steven D. Smith].

⁷⁶ *Id.* at 1.

⁷⁷ Kevin Lee, *The Foundations of Catholic Legal Theory: A Primer*, in RECOVERING SELF-EVIDENT TRUTHS, *supra* note __ at 15, 33.

⁷⁸ *Id.* at 33.

⁷⁹ *Id.* at 16.

law.⁸⁰ This tension is emblematic of the existing diversity in Catholic thought on a variety of issues.

Although Catholic anthropology offers four comprehensive values⁸¹ 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.⁸² 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.⁸³

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.⁸⁴ This view highlights the universal destination of goods. The Church, on one hand, departs from the

⁸⁰ *Id.*

⁸¹ Scaperlanda and Collett, *Introduction supra* note ___ at 10 (discussing the values of freedom, solidarity, subsidiarity and the common good).

⁸² Nancy Gibbs, *The New Road to Hell. The Vatican reflects on its mortal sins for the Modern Age*, TIME MAGAZINE, March 24, 2008, page 78.

⁸³ Gibbs, *supra* note ___ at 78.

⁸⁴ Daly, *supra* note ___ at 26.

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.⁸⁵ 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.”⁸⁶ Thus it is reasonable to stipulate that the process of recovering what was lost is situated within a domain wherein one can ask whether 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 or not the Catholic tradition is intrinsically distant from earthly politics in keeping with the notion that the Christian is a pilgrim in an alien and sometimes hostile land.⁸⁷ 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.”⁸⁸

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 bring about a fundamental reorientation of American law comes not just from the secular culture but from culturally-assimilated

⁸⁵ *Id.*

⁸⁶ *Id.*

⁸⁷ Lee, *supra* note __ at 16.

⁸⁸ *Id.*

Catholics.⁸⁹ Continuing, Shaw insists that “[m]any educated Catholics today know next to nothing about natural law and care less . . . [Thus] the first task for people seeking to apply Catholic perspective to American law or anything else is to open the eyes of Catholics to those perspectives.”⁹⁰ Opening the eyes of Catholics in such way could constitute a startling epiphany that might reclaim a vibrant American Catholic subculture.⁹¹ 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.”⁹² 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.⁹³ *Recovering Self-evident Truths* presents a number of essays that are consistent with Lee’s intuition.

In order to reclaim a vibrant Catholic subculture and revive the connection between truth and hope in order 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.”⁹⁴ Monsignor Albacete’s essay, “A Theological

⁸⁹ Shaw, *supra* note __ at 340.

⁹⁰ *Id.*

⁹¹ *Id.*

⁹² Archbishop Charles Chaput, *Church and State Today: What Belongs to Caesar and What Doesn’t*, 47 J. OF CATHOLIC L. STUDIES 1, 6 (2008).

⁹³ Lee, *supra* note __ at 16.

⁹⁴ Albacete, *supra* note __ at 39.

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.⁹⁵ This is the central, yet self-evident truth upon which all other truths about the human person, human society and the cosmos depend.⁹⁶ Thus, Pope John Paul II’s theological anthropology emphasizes that the value of the human person is infinite and engraved in the very structure of human personhood. A human being is the only creature that God willed for its own sake.⁹⁷ Its value comes from its sheer existence, which cannot be measured by anything else.⁹⁸ 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.⁹⁹ 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 realist metaphysics.¹⁰⁰ He asserts that “the pope is

⁹⁵ *Id.* at 40.

⁹⁶ *Id.*

⁹⁷ *Id.*

⁹⁸ *Id.* (quoting the Second Vatican Ecumenical Council, Pastoral Constitution of the Church in the Modern World (*Gaudium et spes*), ¶ 24 (1965)).

⁹⁹ *Id.* at 42.

¹⁰⁰ *Id.* at 43.

convinced that an adequate analysis of the experience of personhood will rescue it from the pitfalls of subjectivism and relativism.”¹⁰¹ Human experience is to be welcomed as part of the pursuit of truth so long as reductionism is avoided.¹⁰² 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.”¹⁰³ This approach insists that myth, for example, “is not the opposite of a historical account as we understand it today; myth is a narrative that communicates the deepest experience of human interiority.”¹⁰⁴

Pope John Paul II and Cardinal Dulles maintain that freedom, particularly for the human person in community depends on truth,¹⁰⁵ 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.¹⁰⁶ At the higher level, distinct to individuals, freedom requires the absence of psychological compulsion as well as the

¹⁰¹ *Id.*

¹⁰² *Id.* (reductionism can be avoided so long as no aspect or dimension of the experience of being a person is ignored, suppressed, or reduced to another one). *See also*, Ashley, *supra* note ___ at 54 (admonishing his readers to avoid the materialist, reductionist, and idealist presuppositions that too often influence the theories of modern scientists).

¹⁰³ Albacete, *supra* note ___ at 44.

¹⁰⁴ *Id.* at 44.

¹⁰⁵ Avery Cardinal Dulles, *Truth as the Ground of Freedom*, *supra* note ___ at 70.

¹⁰⁶ *Id.*

lack of physical constraint.¹⁰⁷ 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.¹⁰⁸

Far from embracing this maneuver, Scaperlanda critiques secular liberals and liberal communitarians because they “celebrate our culture, which has gradually ‘substitute[d] Freedom for Truth as the goal of thinking and of social progress.’”¹⁰⁹ While liberals appeal to human dignity as defined by its Judeo-Christian origins, Scaperlanda maintains they cast aside the notion that it was founded by a Creator¹¹⁰ and have become markedly illiberal and intolerant of those that threaten their highest value, the liberal state.¹¹¹ Rejecting the liberal approach because it “cannot give a criterion for wrongness,”¹¹² freedom, in Cardinal Dulles’ description, allows one to “go beyond individual and collective selfishness and reach out to that which reason perceives as objectively good and true.”¹¹³ An individual is constrained by his determination that to

¹⁰⁷ *Id.* at 71.

¹⁰⁸ L. Scott Smith, *Religion Interfacing with Law and Politics: Three Tired Ideas in the Jurisprudence of Religion*, in 10 LOGOS: A JOURNAL OF CATHOLIC THOUGHT AND CULTURE, 14, 22 (2007) [hereinafter, L. Scott Smith] (citing *Lee v. Weisman*, 505 U.S. 577 (1992)).

¹⁰⁹ Michael A. Scaperlanda, *Immigration Law: A Catholic Christian Perspective on Immigration Justice*, in RECOVERING SELF-EVIDENT TRUTHS, *supra* note ___ at 292, 297.

¹¹⁰ *Id.* at 298.

¹¹¹ *Id.* at 296.

¹¹² *Id.* at 298.

¹¹³ Cardinal Dulles, *Truth as the Ground of Freedom*, *supra* note ___ at 72.

act freely against the truth is to erode freedom itself.¹¹⁴ 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”¹¹⁵ grounded in liberty, which is the *right* to do what he ought to do based on rational scrutiny.¹¹⁶ For the individual, true freedom enables the person to transcend his own self-interest or the collective self-interest of the individual’s group.¹¹⁷ Consistent with these deductions, an adequate conception of human dignity requires one to act through conscious and free choice, as motivated and prompted personally from within, and not through blind impulse or merely external pressure.¹¹⁸ People achieve such dignity when they free themselves from all subservience to their feelings, and in free choice of the good, pursue their own ends by effectively and assiduously marshalling the appropriate means¹¹⁹ to make tangible their submission to self-giving.¹²⁰ Properly conceived, freedom is both frail and limited.¹²¹

Since “the moral law, as known by reason, does not constrain us, it leaves us physically and psychologically free either to obey or to violate it.”¹²² “To act freely against the truth is to erode freedom itself.”¹²³ That freedom is meaningless and self-

¹¹⁴ *Id.*

¹¹⁵ ANDRZEJ RAPACZYNSKI, *NATURE AND POLITICS: LIBERALISM IN THE PHILOSOPHIES OF HOBBS, LOCKE, AND ROUSSEAU* 176 (1987) (discussing Locke).

¹¹⁶ Cardinal Dulles, *Truth as the Ground of Freedom*, *supra* note ___ at 73.

¹¹⁷ *Id.* at 71.

¹¹⁸ *Id.* at 72 (quoting the Second Vatican Ecumenical Council, *Gaudium et spes*, ¶ 17 (1965); Pope John Paul II, *Veritatis Splendor* ¶ 42 (1993)).

¹¹⁹ *Id.* (quoting the Second Vatican Ecumenical Council, *Gaudium et spes*, ¶ 17 (1965); Pope John Paul II, *Veritatis Splendor* ¶ 42 (1993)).

¹²⁰ See e.g., Avery Cardinal Dulles, *Truth as the Ground of Freedom*, *supra* note ___ at 74.

¹²¹ *Id.*

¹²² *Id.* at 71.

¹²³ *Id.*

destructive if not used in the service of what is truly good reinforces Dulles' observation.¹²⁴ 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 serve as the basis for unity in a multicultural, pluralistic nation."¹²⁵ This contention implicates a now familiar source of conflict. The Catholic observation that just legal system must respect all the implications of the infinite dignity of each human being through faith in the mystery of Christ¹²⁶ 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 would concur. Similarly, it would be exceptional, if all American agreed 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.¹²⁷ 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."¹²⁸ If true, the question that presses the debate regarding the existence and pursuit of self-evident truths, including truths about

¹²⁴ *Id.*

¹²⁵ Albacete, *supra* note __ at 44.

¹²⁶ *Id.* at 47.

¹²⁷ *Id.* at 50.

¹²⁸ *Id.* at 51.

human freedom, must accept that for centuries, the world has been divided by rival conceptions of freedom.¹²⁹

Before accepting or rejecting the persuasive appeal of Albacete's suggestions, members of a politically-liberal society 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?¹³⁰ 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.¹³¹ 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."¹³² 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 . . ."¹³³ This perception permits some to answer in the negative Benedict Ashley's salient question: Can we know the nature of human persons?¹³⁴

¹²⁹ Avery Cardinal Dulles, *Truth as the Ground of Freedom*, *supra* note ___ at 69.

¹³⁰ *Id.* at 79.

¹³¹ *Id.* at 79.

¹³² JOHN GRAY, ISAIAH BERLIN, *supra* note ___ at 14-15 (1996) [hereinafter, GRAY, BERLIN].

¹³³ *Id.*

¹³⁴ Ashley, *supra* note ___ at 52.

To answer in the positive, particularly as a Catholic, supports the claim that there is indeed a truth, valid and binding within history itself.¹³⁵ 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.¹³⁶ 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 relativism has become the religion of modern man.¹³⁷ 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.¹³⁸ 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."¹³⁹ Instead the content of the Church's teachings speaks

¹³⁵ Marcello Pera, *Relativism, Christianity and the West*, in JOSEPH RATZINGER & MARCELLO PERA, WITHOUT ROOTS 1, 25 (2006).

¹³⁶ *Id.*

¹³⁷ *Id.* at 22-23 (citing Cardinal Ratzinger). *See also*, Wolfe, *supra* note __ at 147-148 (conceding that citizens of liberal democracies seem to move from tolerance of other people to relativism about ideas of the good).

¹³⁸ Vischer, *supra* note __ at 85.

¹³⁹ *Id.*

to all participants in the human drama, everywhere in every age.¹⁴⁰ Anchored in Christian moral anthropology,¹⁴¹ two pillars of Catholic social teaching, solidarity and subsidiarity, emerge for extended discussion. These two values, in Vischer's account, offer an effective rejoinder to the norms of consumerism enforced through the coercive power of the collective.¹⁴² Solidarity represents the commitment to the good of one's neighbor while subsidiarity signifies the conviction that needs are best understood and satisfied by people who are located closest to them.¹⁴³ 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."¹⁴⁴ 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 suspect those decisions might be from the provider's perspective."¹⁴⁵ Vischer makes clear his interest in protecting the conscience of pharmacists as dispensers of sundry prophylactics, the moral agency of lawyers when their conception of the good clashes with their client's,¹⁴⁶ or the religious liberty of organizations like

¹⁴⁰ *Id.*

¹⁴¹ *Id.* at 86.

¹⁴² *Id.*

¹⁴³ *Id.* at 85.

¹⁴⁴ *Id.* at 88.

¹⁴⁵ *Id.*

¹⁴⁶ Vischer, *supra* note ___ at 92.

Catholic Charities regarding the provision of reproductive coverage for employees.¹⁴⁷

Vischer's essay recalls Cardinal Dulles's 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."¹⁴⁸ Vischer's contribution also evokes a set of complex issues that are symbolized by James Madison's claim "that in matters of Religion no man's right is abridged by the institution of Civil Society."¹⁴⁹

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.¹⁵⁰ 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.¹⁵¹ Remarkably, up to eighty percent of union dues are expended for purposes unrelated to collective bargaining.¹⁵² 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

¹⁴⁷ *Id.* at 89.

¹⁴⁸ Cardinal Dulles, *Truth as the Ground of Freedom*, *supra* note ___ at 75 (discussing John Paul II).

¹⁴⁹ James Madison, *Memorial and Remonstrance Against Religious Assessments* (1985) in 8 THE PAPERS OF JAMES MADISON, 298, 298-99 (Robert A. Rutland et al. eds., 1973).

¹⁵⁰ Kohler, *supra* note ___ at 164.

¹⁵¹ LINDA CHAVEZ & DANIEL GRAY, BETRAYAL: HOW UNION BOSSES SHAKE DOWN THEIR MEMBERS AND CORRUPT AMERICAN POLITICS, 12 (2004).

¹⁵² *See e.g., id.*

objectors oppose coercive payments on grounds of conscience, ideology and religion.¹⁵³ Unions today often inflict the autonomous preferences of union hierarchs on 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.¹⁵⁴ 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,”¹⁵⁵ and since “[e]ven staunch union supporters blanch over the autocracy, entrenchment, and corruption of some union leaders,”¹⁵⁶ 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.¹⁵⁷ Motivated by an adequate conception of human dignity and operating consistently with Pope John Paul II’s

¹⁵³ See generally, Harry Hutchison, *Reclaiming the Union Movement Through Union Dues: A Postmodern Perspective in the Mirror of Public Choice Theory*, 33 U. OF MICH. J. OF L. REFORM, 447 (2000) and Harry G. Hutchison, *Diversity, Tolerance and Human Rights: the Future of Labor Unions and the Union Dues Dispute*, 49 WAYNE L. REV. 705 (2004).

¹⁵⁴ My debt to Vischer should be obvious. See Vischer, *supra* note ___ at 87.

¹⁵⁵ Stewart J. Schwab, *Union Raids, Union Democracy, and the Market for Union Control*, 1992 U. Ill. L. Rev. 367, 369 & 370 (1992).

¹⁵⁶ *Id.* at 368.

¹⁵⁷ 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 continue to lose ground because they no longer provide their membership with benefits that exceed their costs).

conception of conscience,¹⁵⁸ dissenting workers find their understanding of autonomy¹⁵⁹ 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.¹⁶⁰ Hence, labor organizations often operate to the detriment and exclusion of the interest of rank-file members. Contrary to Albacete's admonition,¹⁶¹ this move permits labor unions to *reduce* the individual into a putative community. Within this context, workers lodge objections to compulsory labor union dues to fund pro-abortion policies and pro-marijuana decriminalization referenda¹⁶² as well as objections to attempts to transform the existing welfare state into a revolutionary Marxist-socialist collective.¹⁶³ Since Vischer rightly notes the emptiness of decontextualized solidarity,¹⁶⁴ and since Catholic social teaching emphasizes work as the key to the social question,¹⁶⁵ his analysis would be enriched substantially by addressing the persistent efforts of labor unions to enforce collective ideals by suppressing workers' consciences.

¹⁵⁸ See e.g., *Veritatis Splendor* ¶ 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).

¹⁵⁹ Here, I offer Cardinal Dulles' conception of autonomy. See Cardinal Dulles, *Truth as the Ground of Freedom*, *supra* note ___ at 72 (the right of being able to do what one "ought to do based on rational scrutiny")

¹⁶⁰ Hutchison, *A Clearing in the Forest*, *supra* note ___ at 1382-83 (discussing the capture of union resources for the purpose of achieving largely private benefits).

¹⁶¹ See e.g., Albacete, *supra* note ___ at 51.

¹⁶² See e.g., CHAVEZ & GRAY, *supra* note ___ at 18.

¹⁶³ *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. This party has evidently suggested revolution complete with killing the bourgeoisie with guns and knives.).

¹⁶⁴ Vischer, *supra* note ___ at 94.

¹⁶⁵ 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* that human work was the essential key to the whole social question. See e.g., Kohler, *supra* note ___ at 164 n.1 (discussing this issue).

Subsidiarity as a value bears analysis as well. The literature from neoclassical economics, public choice theory,¹⁶⁶ 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 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.¹⁶⁷

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

¹⁶⁶ See e.g., Steven J. Eagle, *Economic Salvation in a Restive Age: The Demand for Secular Salvation Has Not Abated*, 56 CASE WESTERN RESERVE L. REV. 569, 574 (Public choice posits that legislators, executive branch officials, and agency administrators are in business for themselves; that 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.”

¹⁶⁷ Vischer, *supra* note ___ at 98.

this possibility, Vischer insists that the call of subsidiarity for localized and personalized responses to human needs severed from the broader context of Catholic social teaching risk political conservatism or a throwback to a hopelessly outdated decentralized way of life.¹⁶⁸ 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.¹⁶⁹

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.¹⁷⁰ 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,¹⁷¹ he declines to embrace a robust conception of skepticism toward centralized authority regardless of its purpose or source. Skepticism of centralized authority is warranted because individuals and subgroups may seize government power or group resources for their own purposes.

¹⁶⁸ *Id.*

¹⁶⁹ *Id.*

¹⁷⁰ Hauerwas, *supra* note ___ at 39.

¹⁷¹ Vischer, *supra* note ___ at 99.

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) comprehensive conception of solidarity and subsidiarity.¹⁷² 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."¹⁷³ Rejecting individualism and its focus on self-interest, Karol Wojtyla stresses personalism wherein the human person acts in solidarity with others.¹⁷⁴ "Personalism posits the human person as created not for self-interest but for self-transcendence."¹⁷⁵ Participation leading to fulfillment "is possible only in those subsidiary structures that facilitate the formation of genuine 'community.'"¹⁷⁶

¹⁷² John J. Coughlin, O. F. M., *Family Law: Natural Law, Marriage and the Thought of Karol Wojtyla*, in RECOVERING SELF-EVIDENT TRUTHS, *supra* note ___ at 275-291.

¹⁷³ *Id.* at 285.

¹⁷⁴ *Id.* at 286.

¹⁷⁵ *Id.*

¹⁷⁶ *Id.*

Community, as distinguished from associational relationships, entails a deeper level of personal commitment and fulfillment.¹⁷⁷ 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 to community¹⁷⁸ and solidarity. Professor John Breen offers this persuasive interpretation of John Paul II's writing: "solidarity should impel the human person to breakout 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."¹⁷⁹

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 two 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

¹⁷⁷ *Id.*

¹⁷⁸ *Id.* at 286-287.

¹⁷⁹ Breen, *supra* note __ at 20.

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 Constitution of the United States, on one account,¹⁸⁰ reifies the common good. 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.¹⁸¹ 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.¹⁸² Both the Catholic and constitutional conceptions of the common good incorporate the notion of benefit for all as a rule for making legal and political decisions.¹⁸³ 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

¹⁸⁰ Araujo, *supra* note __ at 104.

¹⁸¹ *Id.* at 104.

¹⁸² *Id.*

¹⁸³ Gerald J. Russello, *Toward a More Just Law, Inside Catholic.com available at* http://insidecatholic.com/Joomla/index2.php?option=com_content&t (page 1-3)

them virtuous while they held the public trust.¹⁸⁴ Araujo insists that the Supreme Court's *Stenberg* 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."¹⁸⁵ 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 *Casey*.¹⁸⁶ Setting forth an incipient conflict within liberalism, he argues that "the Catholic perspective on the common good and its place in constitutional adjudication offer a far richer understanding of how individual and community interest are simultaneously protected."¹⁸⁷ 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.¹⁸⁸ 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 an organizing premise that undergirds the design of this document.¹⁸⁹ Conflicting conceptions of liberty, as partially supervised by government, as well as the existence of conflicting perceptions

¹⁸⁴ Araujo, *supra* note __ at 107.

¹⁸⁵ *Id.* at 110.

¹⁸⁶ *Id.* at 117.

¹⁸⁷ *Id.*

¹⁸⁸ *Id.*

¹⁸⁹ THE FEDERALIST No. 10, at 46 (James Madison) (Clinton Rossiter ed., 1961), cited in DENNIS C. MUELLER, PUBLIC CHOICE II 307 (1989) (concluding that the division of society into different interests and parties is likely).

of the common good, 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."¹⁹⁰ 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 disagreement¹⁹¹ 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."¹⁹²

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.¹⁹³ Wolfe claims that the "term 'liberal' today, as it always has, describes both a political philosophy (or perhaps several different ones) and a political program."¹⁹⁴ He contends the term implies a particular political stance or, at the very least, strong inclinations on

¹⁹⁰ MACINTYRE, *AFTER VIRTUE*, *supra* note ____ at 253.

¹⁹¹ *See, e.g., id.*

¹⁹² Araujo, *supra* note __ at 122.

¹⁹³ Wolfe, *supra* note ____ at 131-151.

¹⁹⁴ *Id.* at 132.

abortion, homosexual rights, economic regulation, social welfare, gun control and church-state separation.¹⁹⁵ Why this particular constellation of policy views deserves the term, “liberal” is not completely clear, since, in the past, persons considered liberals had quite different views on such issues.¹⁹⁶ 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.¹⁹⁷ More recently, one version of liberalism has taken center stage. This version claims that the government should be neutral with respect to the question of the human good, embracing a notion of justice that prescind from the truth as derived from comprehensive, philosophical, theological, or moral views.¹⁹⁸ 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.¹⁹⁹ Nonetheless, an emphasis on neutrality is useful. As *Casey*²⁰⁰ 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 in regards to the mystery of the universe, specifically, when such ideals relate to their own body. Wolfe argues that this essential

¹⁹⁵ *Id.*

¹⁹⁶ Wolfe, *supra* note __ at 132.

¹⁹⁷ *Id.*

¹⁹⁸ *Id.* at 133.

¹⁹⁹ Scaperlanda & Collett, *Introduction*, *supra* note __ at 7.

²⁰⁰ *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).

“anti-perfectionism” strand of liberalism “denies that political life should aim to perfect its citizens, according to some standard of human excellence.”²⁰¹

While suggesting that Catholics can be good liberals even if they cannot be *only* liberals,²⁰² since liberalism tends to emphasize freedom at the expense of truth about ultimate realities,²⁰³ 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 “neutral” umbrella for illiberal resisting persons, associations, and communities.²⁰⁴ Instead, America has begun to accept liberalism as cosmopolitanism.²⁰⁵ Cosmopolitanism, either reflecting the liberalism of “elites” or “globalists” is often superficial.²⁰⁶ “It stimulates. It possesses entertainment value. At least while the novelty lasts, it excites and unsettles the . . . monochromatic surfaces of modern life.”²⁰⁷ Liberal cosmopolitanism represents individuals who tolerate differences but who are not deeply committed to them.²⁰⁸ Inevitably, “cosmopolitanism . . . tends to homogenize and shallow out the various ways of life [because] if there are many paths to truth or salvation, then little is at stake in finding a path.”²⁰⁹ Just as pedagogy has previously

²⁰¹ Wolfe, *supra* note __ at 133.

²⁰² *Id.* at 147-149. *See also*, Russello, *supra* note __ at page 2.

²⁰³ Wolfe, *supra* note __ at 147.

²⁰⁴ LARRY ALEXANDER, IS THERE A RIGHT OF FREEDOM OF EXPRESSION? 165 (2005).

²⁰⁵ *Id.* at 169.

²⁰⁶ I am indebted to David Gregory for this observation. David Gregory’s comments are on file with the author.

²⁰⁷ SHUCK, *supra* note __ at 15.

²⁰⁸ ALEXANDER, *supra* note __ at 169.

²⁰⁹ *Id.*

stripped theology from the branch of knowledge,²¹⁰ 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.”²¹¹ Consistent with this viewpoint, 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 the main principles of liberalism are not just defensible but good.²¹² 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.²¹³ 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 good²¹⁴ when and if work and economic relationships are at issue.

²¹⁰ James R. Stoner, Jr., *Theology as Knowledge*, FIRST THINGS, May 2006, at 21, 21.

²¹¹ SHANNON, *supra* note ___ at 203.

²¹² Wolfe, *supra* note ___ at 134.

²¹³ Wolfe, *supra* note ___ 143.

²¹⁴ *Id.* at 150.

No where can greater support for this principle be found than in Thomas Kohler's essay on labor law.²¹⁵ 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 suggesting that the future contours of labor and employment law remain unclear because of the dissolution of opportunities for working men and women to actively participate in workplace governance.²¹⁶ Relying on the encyclicals, *Quadragesimo Anno*,²¹⁷ *Rerum Novarum*,²¹⁸ *Sollicitudo Rei Socialis*²¹⁹ and *Centesimus Annus*,²²⁰ 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.²²¹ Nuances appear to be missing from Kohler's analysis. Consider his various assertions that implicate and are embedded in the social question²²² 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.²²³ These claims include: an expanding economy with an increasingly disproportionate distribution of income, high rates of unemployment, unparalleled concentrations of economic power, population shifts to

²¹⁵ Kohler, *supra* note __ at 163-190.

²¹⁶ *Id.* at 190.

²¹⁷ *Id.* at 186.

²¹⁸ *Id.* at 164.

²¹⁹ *Id.* at 184.

²²⁰ *Id.* at 189.

²²¹ *Id.* at 180-181.

²²² Kohler, *supra* note __ at 163 (citing John Paul II's observation in *Laborem Exercens* for the proposition that as a human issue, work represents the essential key to the social question).

²²³ *Id.* at 163.

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.²²⁴

A full refutation of Kohler's various claims is beyond the scope of this Essay 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.²²⁵ 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.²²⁶ Tatom demonstrates that income variation should be

²²⁴ Kohler, *supra* note __ at 163.

²²⁵ See e.g., U.S. Department of Labor, Bureau of Statistics, Foreign Labor Statistics, Table 2. *Civilian Labor Force, Employment and Unemployment Approximating U.S. Concepts*, available at <ftp://ftp.bls.gov/pu/special.requests/ForeignLabor/lfcompensium02.txt> (showing that in 2006, France's unemployment rate was 9.2 percent, Germany's unemployment rate was 10.3 percent and Italy's unemployment rate was 6.8 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 12 months. David Gregory's comments are on file with the author.

²²⁶ See e.g., John A. Tatom, *Is Inequality Growing as American Workers Fall Behind?* Networks Financial Institute at Indiana State University, Working paper available at <http://ssrn.com/abstract=985669> (examining and refuting many of Kohler's claims); Harry G. Hutchison, *What Workers Want or What Academics Want Them to Want?* Vol. 26 *Quinnipiac Law Review* (forthcoming, Spring 2008) [hereinafter, Hutchison, *What Workers Want*] (There are two basic sources of income: wage income and income from capital, and 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 is 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." Such "benefits are 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

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.²²⁷ Lastly, income inequality, particularly for married couples, is related directly with hours of work,²²⁸ as well as a citizen's age.²²⁹

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: "Wages ought not to be insufficient to support a frugal and well-behaved earner."²³⁰ 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

reported income for tax purposes. Real compensation per hour has been growing very rapidly this decade contrary to popular opinion.").

²²⁷ Dora L. Costa, *The Wage and the Length of the Work Day: From the 1890s to 1991*, 18 J. LAB. ECON. 156 (2000) (noting that the Fair Labor Standards Act tends to magnify earnings inequality such that between 1973 and 1991, 26% of the increase in earnings inequality for men, and all of the increase for women, can be explained by changes in hours worked.).

²²⁸ See e.g., Katherine Bradbury and Jane Katz, *Wives' Work and Family Income Mobility*, Public Policy Discussion Papers, Federal Reserve Bank of Boston, No. 04-3, (May, 2005), (abstract) available at <http://www.bos.frb.org/economic/ppdp/index.htm> (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).

²²⁹ See e.g., Tatom, *supra* note __ at __ (showing that as people age and as older groups come to dominate the population, income variation should and does rise).

²³⁰ *Rerum Novarum*, ¶ 45.

enjoy wide-spread support, only 17% 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.²³¹ In view of this, as well as the likelihood that an effective minimum wage tends to reduce employment,²³² particularly for the poor and minority workers, minimum wage regimes are an effective device that expands poverty and income inequality.²³³ 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

²³¹ STEVEN L. WILLBORN, STEWART J. SCHWAB, JOHN F. BURTON, JR., & GILLIAN L. L. LESTER, *EMPLOYMENT LAW: CASES AND MATERIALS*, 577 (2007).

²³² Harry Hutchison, *Toward a Critical Race Reformist Conception of Minimum Wages 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) [hereinafter, Hutchison, *Toward a Critical Race Reformist conception of Minimum Wage Regimes*]. *But see* Marc Linder, *The Minimum Wage as Industrial Policy: A Forgotten Role*, 16 J. LEGIS. 151, 155-56 (1990) (arguing that we should not downplay the number of jobs destroyed because such jobs are low-wage and unproductive).

²³³ *See e.g.*, David Neumark, Mark Schweitzer, and William Wascher, *The Effects of Minimum Wages on the Distribution of Family Incomes: A Non-parametric Analysis*, (Abstract) Working paper 04-12, Federal Reserve Bank of Cleveland, available at www.clevelandfed.org/Research.

ten richest counties are located just outside of Washington, DC.²³⁴ 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.²³⁵ In 1929 when the stock market crash hit, America's highest marginal tax rate was 24 percent for top income earners with a bottom rate of one-half of one percent.²³⁶ With tax exemptions, 98 percent of all Americans were off the income tax rolls.²³⁷ By 1980, the average federal marginal tax rate including social security had risen to 36 percent with an even more impressive increase in the number of families and individuals placed on the tax rolls.²³⁸ 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.²³⁹ 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."²⁴⁰ A focus on nurturing families in conformity with the Church's social teachings operates in some tension with

²³⁴ Matt Woolsey, *America's Richest Counties*, FORBES.COM, January 22, 2008, available at http://www.forbes.com/2008/01/22/counties-rich-income-forbeslife-cx_mw_0122realestate_slide_12.html?thisSpeed=15000.

²³⁵ *Id.*

²³⁶ Burt Folsom, *Why the New Deal Failed* available at http://www.academia.org/campus_reports/2002_3.html at page 7 (accessed April 5, 2008).

²³⁷ *Id.*

²³⁸ Robert J. Barro & Chaipat Sahasakul, *Average Marginal tax Rates from Social Security and the Individual Income Tax*, NBER Working Paper Series, Working Paper No. 1214 available at SSRN: <http://ssrn.com/abstract=966114>.

²³⁹ See Allan Carlson, *The Rise and Fall of the American Family Wage*, 4 UNIV. OF ST. THOMAS L. J. 556, 556 (2007) (reviewing two encyclicals: *Rerum Novarum* and *Laborem Exercens*).

²⁴⁰ Elizabeth R. Schiltz, *Workplace Restructuring to Accommodate Family Life*, 4 UNIV. OF ST. THOMAS L. J. 343, 344(2007).

the “equal pay for equal work” principle.²⁴¹ 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.²⁴² 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. This conclusion is highly contestable on a number of grounds.²⁴³ 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.²⁴⁴ Second, Karol Wojtyła’s writings maintain that participation leading to fulfillment “is possible only in those subsidiary structures that facilitate the formation of genuine ‘community.’”²⁴⁵ It is far from obvious that labor unions led by autocrats constitute a rightly-ordered community because a true community as distinguished from

²⁴¹ Carlson, *supra* note ___ at 556.

²⁴² *Id.*

²⁴³ See e.g., Kohler, *supra* note __ at 183.

²⁴⁴ 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 evidently include working conditions, wages and benefits, training. Personal matters related to hiring, firing, promotions, and layoffs. Economic matters include the firm’s investments, board representation, mergers and the like.)

²⁴⁵ *Id.*

associational relationships, entails a deeper level of personal commitment and fulfillment.²⁴⁶ Third, although Pope Pius XI endorses the associations of workers into labor unions in furtherance of social justice and the common good,²⁴⁷ 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 during 1937-1938.²⁴⁸ Fourth, anticipating Pope John Paul II's subsequent admonition against excessive bureaucratic centralization of the world of work,²⁴⁹ 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.²⁵⁰ As we have already seen, American union elections provide members with little real control over leaders. Unions are inherently undemocratic,²⁵¹ which means Pope John Paul II's goal of increased worker participation and the preservation of the idea that the human person is working for himself²⁵² has been transmuted into labor autocracy that tends 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:

²⁴⁶ *Id.*

²⁴⁷ *Quadragesimo Anno* ¶ 32.

²⁴⁸ RICHARD VEDDER & LOWELL GALLAWAY, *OUT OF WORK: UNEMPLOYMENT AND GOVERNMENT IN TWENTIETH-CENTURY AMERICA* 141-46 (1993).

²⁴⁹ *Laborem Exercens* ¶ 15.

²⁵⁰ JACQUES ELLUL, *THE TECHNOLOGICAL SOCIETY*, 358 (John Wilkinson trans. 1964).

²⁵¹ Schwab, *supra* note __ at 369 & 370.

²⁵² *Laborem Exercens* ¶ 15.

“By an overwhelming 86% to 9% margin, workers want an organization run jointly by employers and management, rather 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.”²⁵³

Worker apathy, if not antipathy towards traditional labor unions, is triggered by contemporary union activity that can be duly understood as part of “Michel’s ‘Iron Law of Oligarchy.’”²⁵⁴ American labor unions engage in rent-seeking behavior as group resources are seized and transferred to favor goals and purposes idealized by group leaders.²⁵⁵ Meanwhile the goals of the workers are left unattended.²⁵⁶ 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.²⁵⁷ 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

²⁵³ Samuel Estreicher, *The Dunlop Report and the Future of Labor Law Reform*, 12 LAB. LAW 117, 118 n.2 (1996) (citing PRINCETON SURVEY RESEARCH ASSOCIATES WORKER REPRESENTATION AND PARTICIPATION SURVEY: REPORT ON THE FINDINGS 49 (1994)).

²⁵⁴ Schwab, *supra* note ___ at 370.

²⁵⁵ Hutchison, *A Clearing in the Forest*, *supra* note ___ at 1382-83.

²⁵⁶ *Id.*

²⁵⁷ Stephen M. Bainbridge, *Employee Involvement in Workplace Governance: Post-Collective Bargaining: A Retrospective on Selznick's Law, Society, and Industrial Justice*, at 14 (working paper, available at <http://www.ssrn.com>).

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 contends that markets increasingly consume the state's ordering capacity.²⁵⁸ On one hand, following Adam Smith, Kohler argues that the purpose of free markets is to promote individual self-determination and material well-being, thereby supporting the conditions for self-rule.²⁵⁹ On the other, Kohler, apprehensive about the capacity of modern capitalism to overwhelm the institutions of social life,²⁶⁰ implies a greater 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, taking Catholic social teaching and applying it 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 section bolsters this conclusion.

Part III. Work, the Social Question and the New Deal

²⁵⁸ Kohler, *supra* note ___ at 189.

²⁵⁹ *Id.* at 190.

²⁶⁰ *Id.*

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."²⁶¹ 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.²⁶² Lew Daly directs attention to Ryan's importance by highlighting the teaching of his major ethical work, *Distributive Justice*. Ryan stresses the following paradigm: when a worker accepts a wage that is not sufficient for his needs under the compulsion of avoid the evil of starvation, his labor contract is no freer than the contract by which the helpless wayfarer gives up his wallet to escape being shot by a robber.²⁶³ 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 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."²⁶⁴ Whether MacIntyre's assertion applies, Ryan

²⁶¹ Hauerwas, *supra* note ___ at 36 (discussing MacIntyre).

²⁶² Daly, *supra* note ___ at 25.

²⁶³ *Id.*

²⁶⁴ Alasdair MacIntyre, *Forward*, in *NAMING EVIL, JUDGING EVIL* vii, ix (ed. Ruth W. Grant, 2006).

ties his approach to Thomistic natural law, which commands that good be done and evil avoided.²⁶⁵ The efforts of Father Ryan catalyzed the radicalization of Catholic thought in the early decades of the 20th century, and in response, Catholic institutions mobilized a crusade for social justice.²⁶⁶ 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.²⁶⁷ Father Ryan, a faculty member at Catholic University, gave the invocation at Roosevelt's second inauguration in 1937.²⁶⁸ 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."²⁶⁹ 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.²⁷⁰ Friedrich Hayek clarifies that, although not often remembered, socialism in its beginnings was authoritarian in nature.²⁷¹ Predictably, President Roosevelt's record demonstrates liberal

²⁶⁵ Daly, *supra* note __ at 25.

²⁶⁶ *Id.* at 26.

²⁶⁷ *Id.*

²⁶⁸ *Id.*

²⁶⁹ *Id.*

²⁷⁰ *Id.*

²⁷¹ *Id.*

experimentation and freedom rapidly succumbed to planning.²⁷² Roosevelt privately 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.²⁷³ 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 Franklin 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.²⁷⁴ “If elected, Roosevelt promised to act in the name of ‘the forgotten man at the bottom of the economic pyramid.’”²⁷⁵ 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.²⁷⁶

²⁷² Jonah Goldberg, *The Raw Deal*, (reviewing THE FORGOTTEN MAN: A NEW HISTORY OF THE GREAT DEPRESSION, BY AMITY SHLAES), Vol. VIII THE CLAREMONT REV. OF BOOKS: A J. OF POLITICAL THOUGHT AND STATESMANSHIP, 17, 18 (Winter 2007/08). *See also*, William Schambra, *Debating the New Deal*, (reviewing THE TWO FACES OF LIBERALISM: HOW THE HOOVER-ROOSEVELT DEBATE SHAPES THE 21ST CENTURY, ed. Gordon Lloyd) Vol. VIII THE CLAREMONT REV. OF BOOKS: A J. OF POLITICAL THOUGHT AND STATESMANSHIP, 19, 19-20 (Winter 2007/08) (both Hoover and Roosevelt were animated by collectivist impulses).

²⁷³ Goldberg, *supra* note __ at 18.

²⁷⁴ Schambra, *supra* note __ at 19.

²⁷⁵ AMITY SHLAES, THE FORGOTTEN MAN: A NEW HISTORY OF THE GREAT DEPRESSION, 12 (2007).

²⁷⁶ Schambra, *supra* note __ at 19.

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?²⁷⁷

B. The New Deal as a Paragon of Progress?

After his election, President Roosevelt asked Frances Perkins to become Secretary of Labor, and "she told him that she would accept if she could advocate a law to put a floor under wages and a ceiling over hours of work."²⁷⁸ 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.²⁷⁹ "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."²⁸⁰ Initial New Deal efforts were dealt a crushing blow when the Supreme Court unanimously invalidated the NIRA because

²⁷⁷ See e.g., Breen, *supra* note __ at 10-20 (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) structural transformation is secondary to moral renovation).

²⁷⁸ WILLBORN, SCHWAB, BURTON, & LESTER, *supra* note __ at 568.

²⁷⁹ *Id.* at 566.

²⁸⁰ Ilya Somin, *Voter Knowledge and Constitutional Change: Assessing the New Deal Experience*, 45 WILL. AND MARY L. REV. 595, 651 (2003).

the law impermissibly delegated government power to private interests.²⁸¹ Ultimately, undeterred, FDR 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.²⁸² These efforts, taken as a whole, led to reduced competition, higher prices, higher wages, and higher social costs in the form of unemployment,²⁸³ which ensured that America's recovery was more sluggish and slower in coming than that of most European nations.²⁸⁴

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.²⁸⁵ Evidently, in FDR's view, the common good requires higher prices for consumers and more control of small neighborhood businesses, no matter how much suffering is caused by his initiatives. New Deal priorities can be further illuminated by the case of the Schechter brothers, Orthodox Jews in Brooklyn, who raised and sold kosher chickens.²⁸⁶ "They ran into trouble with New Deal codes that said, in the name

²⁸¹ *Id.* at 566. (Discussing *Schechter Poultry v. United States*, 295 U.S. 495 (1935)).

²⁸² *See e.g.* WILLBORN, SCHWAB, BURTON, & LESTER, *supra* note __ at 566-673.

²⁸³ VEDDER & GALLAWAY, *supra* note __ at 146.

²⁸⁴ *Id.* at 129.

²⁸⁵ Goldberg, *supra* note __ at 17.

²⁸⁶ *Id.*

of quality assurance, that vendors couldn't let individual customers select their own chickens."²⁸⁷ 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.²⁸⁸ The Schechters were harassed, fined, and ultimately sentenced to jail²⁸⁹ all in the name of scientific progress and FDR'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.²⁹⁰ 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.²⁹¹ 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.²⁹² He was buried in a Catholic cemetery in Indiana; his death was announced by the New York Times under a headline that read: "He was Reluctant about Asking for Food."²⁹³ 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.²⁹⁴

Unemployment was rising by the millions, and the next spring after his death, one in

²⁸⁷ *Id.*

²⁸⁸ *Id.*

²⁸⁹ *Id.*

²⁹⁰ SHLAES, *supra* note ____ at 1.

²⁹¹ *Id.*

²⁹² *Id.*

²⁹³ *Id.*

²⁹⁴ *Id.* at 2.

five American men would be unemployed.²⁹⁵ This story is something like the descriptions we hear of the Great Crash in 1929,²⁹⁶ but in fact, these events took place in the autumn of 1937,²⁹⁷ five years after FDR was elected, four and half years after President Roosevelt had introduced the New Deal, and eight years after President Hoover had commenced a process that eventually led the nation to centralize government planning.²⁹⁸ But even if we are 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 Roosevelt's New Deal program. Several years' worth of sustained government planning, he said, had merely created a depression within a Depression.²⁹⁹ As Professor Ilya Somin shows the NIRA, the flagship program of the New Deal, was a "massive public policy disaster."³⁰⁰ Its attempt to supply centrally-planned price controls and production limits apparently caused a massive six to eleven percent decline in the United States' Gross National Product (GNP) in an already depressed economy."³⁰¹

The picture becomes worse when members of minority groups become the focus of our consideration. The American labor movement has been linked inescapably to racist

²⁹⁵ *Id.*

²⁹⁶ *Id.* at 3.

²⁹⁷ *Id.*

²⁹⁸ *Id.*

²⁹⁹ *Id.* at 3.

³⁰⁰ Somin, *supra* note __ at 650.

³⁰¹ *Id.*

oppression.³⁰² While this history is not unique to the United States, the American labor movement since the founding of the American Federation of Labor (AFL) in the nineteenth century, during the Great Depression, and during 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 power granted to them by the NIRA and its minimum wage provisions to displace African American workers.”³⁰³

This oppression was inescapably tied to the New Deal and continued into the 1940s through the 1980s.³⁰⁴ During the 1940s, for example, the United States Employment

³⁰² Hutchison, *Toward A Critical Race Reformist Conception of Minimum Wage Regimes*, *supra* note ___ at 118-129.

³⁰³ *Id.* at 123-124.

³⁰⁴ *Id.* at 125.

Service, a federal agency, enticed hundreds of young African American men with offers of “free” travel to journey from cities across the South to enjoy Florida sunshine and work in the sugar fields during World War II.³⁰⁵ Instead of enjoying sunshine and free travel, they learned that their transportation actually 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.³⁰⁶ Facing long days of brutal work pervaded by fear and punctuated by violence, these workers determined that escape was the only option.³⁰⁷ At the same time, Roosevelt’s Justice Department ignored requests to stop the “virtual slavery” in Florida’s sugar camps.³⁰⁸ Far from being an isolated instance of government complicity in subordination, the United States Employment Service, which acted as a liaison between hiring employers and would-be workers, learned to accommodate racial discrimination and vindicate racial oppression as part of its assistance program after being federalized by the Roosevelt administration.³⁰⁹

The New Deal regime can be explained in benign terms. While the original purpose may have been benign, it is possible that African Americans and others who have been singled out for disfavor can be forgiven for suspecting more invidious forces

³⁰⁵ RISA L. GOLUBOFF, *THE LOST PROMISE OF CIVIL RIGHTS 1* (2007).

³⁰⁶ *Id.* at 2.

³⁰⁷ *Id.*

³⁰⁸ *Id.*

³⁰⁹ *Id.* at 3 & 85.

at work.³¹⁰ Far from 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 structure [or programs] alone, however good they are.”³¹¹ Although the New Deal pattern may not compare to the pain experienced by those who have been transformed by suffering,³¹² 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 world,³¹³ will accept the substantial evidence showing that the New Deal did not end the Great Depression nor did it cure unemployment.³¹⁴ The failure of the New Deal demonstrates that the intellectual mandate of Roosevelt’s “Brain Trust” (the group charged with the creation of the New Deal) was contestable.³¹⁵ By attempting to prove that planning was the way of the future and was infinitely superior to the chaos of the free market, the “Brain Trust” proved the opposite.³¹⁶

³¹⁰ My debt to Justice Scalia should be obvious. *See*, *Locke v. Davey*, 540 U.S. 712, 733 (2004) (Scalia, J., dissenting).

³¹¹ *Spe Salvi* ¶ 24.

³¹² *See e.g.*, *Spe Salvi* ¶ 37 (Pope Benedict XVI citing 19th century, Vietnamese martyr, Paul Le-Bao-Tinh).

³¹³ RICHARD JOHN NEUHAUS, *CATHOLIC MATTERS: CONFUSION, CONTROVERSY, AND THE SPLENDOR OF TRUTH*, 174 (2006).

³¹⁴ Goldberg, *supra* note __ at 17-18.

³¹⁵ *Id.*

³¹⁶ *Id.*

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.³¹⁷ This link 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 institutions³¹⁸ 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.³¹⁹ Although such a program is unlikely to be sustainable,³²⁰ Alasdair MacIntyre rightly points us toward the difficulties associated with the modern economic order: its excessive individualism, acquisitiveness and the elevation of the values of the market to a central social place including consumerism, and its concentrations on human autonomy.³²¹ But with equal clarity he thrusts his readers in the direction of another self-evident truth that a society where

³¹⁷ Stephen L. Carter, *Liberal Hegemony and Religious Resistance: An Essay on Legal Theory*, in CHRISTIAN PERSPECTIVES, 25, 45 (Michael McConnell et al. eds., 2001).

³¹⁸ SHANNON, *supra* note ___ at 147.

³¹⁹ Cass R. Sunstein & Richard H. Thaler, *Libertarian Paternalism Is Not an Oxymoron*, 70 U. Chi. L. Rev. 1159, 1159-60 (proposing a form of paternalism, libertarian in spirit, that should be acceptable to those who are firmly committed to freedom of choice on grounds of either autonomy or welfare).

³²⁰ See generally, Mario J. Rizzo & Douglas Glen Whitman, *Little Brother is Watching You: New Paternalism on the Slippery Slopes*, New York University School of Law, Public Law & Legal Theory Research Paper Series, working Paper No. 08-12 available at <http://ssrn.com/abstract=1119325>. Sunstein apparently, admits as much. See Cass R. Sunstein, *Introduction*, in BEHAVIORAL LAW & ECONOMICS (ed. By Cass R. Sunstein, 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).

³²¹ MACINTYRE, AFTER VIRTUE, *supra* note ___ at 254.

government does not express or represent the moral community of citizens 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.³²² 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*.³²³

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.³²⁴ 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.³²⁵ 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 attempt to have the democracy of Paris without the

³²² *Id.*

³²³ *Laborem Exercens*, ¶ 15.

³²⁴ Daly, *supra* note ___ at 23.

³²⁵ *Id.*

slavery of Rome.”³²⁶ 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.”³²⁷ 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, FDR’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 maladroitness by government officials. Bureaucratic managerialism issues

³²⁶ Richard Gill, *Oikos and Logos: Chesterton’s Vision of Distributism*, 10 LOGOS 64, 65 (2007).

³²⁷ Gill, *supra* note __ at 66-67 (quoting Richard Tawney).

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.³²⁸ 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 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 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.”³²⁹ Once the encroaching power of the state is unleashed, it is doubtful that political elites can discover a definite stopping point in regards to the state’s concern with abortion, the selection of chickens by members of a religious tradition, or enticing unsuspecting workers into “virtual slavery.”

³²⁸ MACINTYRE, *AFTER VIRTUE*, *supra* note ___ at 85.

³²⁹ Somin, *supra* note ___ at 628.

Undeniably, intervention and paternalism might be justified on grounds that “individuals [may] make inferior decision 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.”³³⁰ 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, and 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 twentieth century government intervention shows that many individuals and groups, including

³³⁰ Sunstein & Thaler, *supra* note __ at 1160.

faithful workers represented by unions, shopkeepers, and members of marginalized minority groups, have not been able to escape government manipulation.³³¹ 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.³³² 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 context of privacy—family, church, association—have been atomized. The political enslavement of man requires the emancipation of man from all the authorities and membership[s] . . . that serve, in one degree or another, to insulate the individual from external political power.³³³

³³¹ Cardinal Dulles, *Truth as the Ground of Freedom*, *supra* note __ at 71.

³³² *Id.*

³³³ ROBERT A. NISBET, *THE QUEST FOR COMMUNITY* 202 (1953) (cited in JOHN H. GARVEY, *WHAT ARE FREEDOMS FOR?* 153 (1996)).

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.³³⁴

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 society should not fear difference and diversity.³³⁵ 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.³³⁶ 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

³³⁴ Stephen L. Carter, *Evolutionism, Creationism, and Treating Religion as a Hobby*, 1987 Duke L. J. 977, 988.

³³⁵ Scaperlanda and Collett, *supra* note __ at 8.

³³⁶ Lee, *supra* note __ at 33-34.

to the seductive allure of procrustean fundamentalism and seek to impose its values on those who are unwilling to surrender to its centralizing impulse.³³⁷ These various developments combine to fashion a society wherein philosophical liberalism may be an impossible³³⁸ and political liberalism may be nothing more than an “unprincipled *modus vivendi*.”³³⁹ 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 others whose outlook and circumstances differ profoundly from one’s own.³⁴⁰

It is now possible to offer answers to the three questions posed at the end of Part III, subsection A. First, as citizens following FDR’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 a consequent reduction in space for the 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 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

³³⁷ Harry G. Hutchison, *Liberal Hegemony? School Vouchers and the Future of the Race*, 68 MISSOURI L. REV. 559, 647 (2003) [hereinafter, Hutchison, *Liberal Hegemony*].

³³⁸ Larry Alexander, *Illiberalism All the Way Down: Illiberal Groups and Two Conceptions of Liberalism*, 12 J. CONTEMP. LEGAL ISSUES 625, 625 (2002).

³³⁹ *Id.*

³⁴⁰ Hutchison, *Liberal Hegemony?* *supra* note ___ at 647, n. 620 (citing Book Review, FIRST THINGS, Oct. 2002, at 79 (reviewing ISAIAH BERLIN, FREEDOM AND ITS BETRAYAL: SIX ENEMIES OF HUMAN LIBERTY (2002))).

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 autonomy³⁴¹ 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 for man and society."³⁴² 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?"³⁴³ Jacques Ellul contends that progress "consists in

³⁴¹ Lee, *supra* note __ at 33.

³⁴² *Laborem Exercens*, ¶ 1.

³⁴³ SWENSON, *supra* note __ at 24.

progressive de-humanization—a busy, pointless, and in the end, suicidal submission to technique.”³⁴⁴

Public choice theory illustrates that modern efforts toward progress have often been connected to statutory intrusions into the market,³⁴⁵ wherein the possibility of market failure is scrutinized. Markets do fail, but in practice governments are not omniscient and thus, flawed markets trump flawed governments more often than flawed government trumps flawed markets.³⁴⁶ 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.³⁴⁷ Therefore, “rival interest groups compete with each other to capture government and use it to seize and redistribute resources among themselves.”³⁴⁸ The failure of democratic states to protect to the public interest operates contrary “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.”³⁴⁹

Sociologist Robert Bellah warns: “[p]rogress, modernity’s master idea, seems less compelling when it appears that it may be progress into the abyss.”³⁵⁰ Nietzsche

³⁴⁴ Robert K. Merton, *Foreword* JACQUES ELLUL, *THE TECHNOLOGICAL SOCIETY* viii (John Wilkinson trans. 1964) (citing Ellul).

³⁴⁵ Hutchison, *What Workers Want*, *supra* note __ at __ (forthcoming, Spring 2008).

³⁴⁶ Peter Van Doren, *Book Review: Regulation and Public Interest: The Possibility of Good Regulatory Government*, 28 *THE CATO JOURNAL* 164, 172 (2008).

³⁴⁷ SHLAES, *supra* note __ at 10.

³⁴⁸ JOHN GRAY, *POST-LIBERALISM: STUDIES IN POLITICAL THOUGHT* 4 (1993).

³⁴⁹ *Id.* at 11.

³⁵⁰ SWENSON, *supra* note __ at 34 (citing Bellah and his colleagues).

observes “‘Progress’ is merely a modern idea—that is to say, a false idea.”³⁵¹ 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 be able to trust it.”³⁵² Pope Benedict XVI shows that Marx’s error follows from his failure to remember that man always remains man.³⁵³ “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 and for the world.”³⁵⁴ 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 many undertakings connected with her apostolic mission have been especially directed.”³⁵⁵ The Catholic social tradition maintains that the ordering of employment is essential for the authentic development and unfolding of the human person.³⁵⁶ As such, the question of human work and the common good has been a constant concern of the Church.³⁵⁷ 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

³⁵¹ FRIEDRICH NIETZSCHE, *THE ANTICHRIST: A CRITICISM OF CHRISTIANITY*, 4 (Trans. Anthony M. Ludovici, 2006).

³⁵² Swenson, *supra* note ___ at 34.

³⁵³ *Spe Salvi* ¶ 21.

³⁵⁴ *Spe Salvi* ¶ 22.

³⁵⁵ *Laborem Exercens*, ¶ 2.

³⁵⁶ Kohler, *supra* note ___ at 184.

³⁵⁷ *Laborem Exercens*, ¶ 3.

pursuing truth.³⁵⁸ 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 ridged schema, and it recognizes that human life is realized in history in conditions that are diverse and imperfect.”³⁵⁹ Moreover, Lee points out that “the church has no philosophy of her own, nor does she canonize any one particular philosophy.”³⁶⁰ 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 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.”³⁶¹

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

³⁵⁸ *Laborem Exercens*, ¶ 5.

³⁵⁹ Lee, *supra* note __ at 31.

³⁶⁰ *Id.*

³⁶¹ *Laborem Exercens* ¶1.

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.

IV. 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.³⁶² “The moral theologian Germain Grisez is thus correct to state that the Church’s social teaching is essentially concerned with the exposition of relevant moral norms that Catholics should use to judge the social situation confronting them, and then, on the basis of that judgment, do what they can to change the situation for the better.”³⁶³ In any domain of inquiry, including Catholic social teaching and legal theory that are rightly aimed at changing social situations for

³⁶² Samuel Gregg, *A Lost Opportunity: The Compendium of the Social Doctrine of the Church—A Review Essay*, Vol. 9, No. 2. *Journal of Markets & Morality*, 1, 2 (Fall 2006) available at <http://www.acton.org/publicat/m-m/new/print.php>.

³⁶³ *Id.*

the better, the highway of methodology is paved with epistemological commitments.³⁶⁴

In law, method is controlled by assumptions about the aims of inquiry, the possibility of knowledge, the conditions for its attainment, and the possibilities of indeterminacy and conflict.³⁶⁵ 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.’”³⁶⁶

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 memories of other men, through the common sense of community, through the pages of literature, through the labors of scholars.”³⁶⁷ Scholars Michael Scaperlanda and Teresa 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

³⁶⁴ R. J. Snell, *Upon This Rock: Human Realism and Geivett's Myth* 9 PHILOSOPHIA CHRISTI 365, 365 (2007).

³⁶⁵ *Id.* at 365-366.

³⁶⁶ *Id.* at 368.

³⁶⁷ *Id.*

a larger world that is mediated by meaning, which transcends immediate experience,³⁶⁸ 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 a conversation . . . around a vision—a Catholic vision—of what we are and what we are for, and why it matters."³⁶⁹ This reorientation can begin by acknowledging that "the dignity of the human person consists not so much in his capacity to choose, or his self-sovereignty, but in his status as a creature."³⁷⁰

"[W]hen the last of earth [is] left to discover . . . at the source of the longest river,"³⁷¹ 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."³⁷² 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

³⁶⁸ *Id.*

³⁶⁹ Garnett, *supra* note __ at 274.

³⁷⁰ *Id.* at 273.

³⁷¹ T. S. Elliot, *Little Giddings*, in *THE COMPLETE POEMS AND PLAYS: 1909-1950*, 138, 145 (1952).

³⁷² Garnett, *supra* note __ at 273.

the hegemony of the liberal state by answering the call of humility. As Randy Lee's *Epilogue* contends, in order for "Catholic perspectives on America law to gain traction,' for them to alter lives in a meaningful ways 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."³⁷³

³⁷³ Lee, *supra* note ___ at 346.