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

Harry G. Hutchison
Work, the Social Question, Progress and the Common Good?

Harry G. Hutchison*

Review Essay:

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.

**Table of Contents**

<table>
<thead>
<tr>
<th>I. Introduction.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>II. Does Catholic Legal Theory Supply Coherent Truth to America?</td>
<td>17</td>
</tr>
<tr>
<td>A. Finding Truth in the Nature of the Human Person in Community.</td>
<td>17</td>
</tr>
<tr>
<td>B. Finding the Common Good or Finding Conflict?</td>
<td>41</td>
</tr>
<tr>
<td>III. Work, the Social Question and the New Deal.</td>
<td>57</td>
</tr>
<tr>
<td>A. The New Deal: A Catholic Conception of the Common Good?</td>
<td>57</td>
</tr>
<tr>
<td>B. The New Deal as a Paragon of Progress?</td>
<td>60</td>
</tr>
<tr>
<td>C. Pursuing Progress Within and Beyond the Centralizing State.</td>
<td>77</td>
</tr>
<tr>
<td>IV. Conclusion</td>
<td>81</td>
</tr>
</tbody>
</table>

**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

\(^*\) Professor of Law, George Mason University School of Law. For helpful comments on earlier drafts, I am grateful to: Elizabeth McKay, Helen Alvare’, Eric Claey’s, John Dolan, David Gregory and Adam Mossoff. The usual disclaimer applies. Research support was provided by the Law and Economics Center at George Mason University School of Law. © Harry G. Hutchison.

\(^1\) 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 . . .”).
hidden beyond the confines of daily life, however adequate daily life is claimed to be.”

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. 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. Against this backdrop, political success may depend upon the reclamation of the moral high ground. If true, the restoration of the idea of the common good to its proper place may issue forth in future political victories 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?

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

---


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.
individuals and groups generated by ideological, economic and political conditions, which have allowed injustices to persist or have created new ones. 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, Solicitudo Rei Socialis*, and *Centesimus Annus*.“

*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.” 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” is inadequate. Instead, some

---

12 *Laborem Exercens* ¶8.
14 *Centesimus Annus* ¶43.
15 Daly, *supra* note ___ at 23.
16 *Id.*
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 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

---

17 Id.
18 Id.
19 Id.
20 Id.
21 Id.
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 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 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*

\(^{23}\) Id. at 57.
\(^{24}\) Id.
\textit{Perspectives on American Law}\textsuperscript{26} that revive the connections between faith and reason and between truth and hope as the foundation for progress.

Given the importance of work in papal encyclicals and the increasing demands of the regulatory state, this 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.”\textsuperscript{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

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

\textsuperscript{27} Cardinal George, \textit{supra} note __ at xi-xii.
its shared moral foundation?” Philosopher Alasdair McIntyre shows that during certain key episodes in history, philosophy fragmented and largely transformed morality. Fragmentation gave birth to Immanuel Kant and John Stuart Mill’s “attempt to develop accounts of morality in the name of some impersonal standard which was an understandable response to the loss of shared practices necessary for the discovery of goods in common.” 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. 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.” 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. 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

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

34 Id. at 3.
35 Id.
36 Id. 3-4.
37 Id. at 4.
38 Id. at 4.
39 Id. at 8.
singular best life for people of all kinds to lead; therefore there is no single best political state to facilitate such a life.\textsuperscript{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 notion\textsuperscript{41} that may impair, rather than fortify, the concept of objective truth.

Scaperlanda and Collett’s enterprise is held together by the authors’ persistence in pursuing objective truth as the criterion of judgment.\textsuperscript{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.”\textsuperscript{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

\begin{footnotes}
\item[41] \textit{Id.}
\item[43] Cardinal George, \textit{supra note ___} at xii.
\end{footnotes}
Paul II’s doctrinal contributions? Second, does a faithful reading of Pope John Paul lead to conflicting understanding of principles, particularly when and if scholars attempt to concretize ideas such as solidarity. For example does a principled conception of solidarity include American labor unions, when and if they can be accurately characterized as involuntary associations? Third, can there be an effective Catholic contribution to the nation until there is again clarity about Catholic ways of living and thinking that enables Catholic perspectives to alter lives in a meaningful way and win the war for America’s soul? After all an open debate has broken out among faithful Catholics over whether popes and bishops can be infinitely permissive toward the freedom demanded by theologians to follow “what they understand to be the requirements of their own discipline.” 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? Finally can liberalism be coherently conceived within parameters provided by Catholic social thought?

44 Randy Lee, Epilogue, in RECOVERING SELF-EVIDENT TRUTHS supra note __ at 341, 346.
46 Id. at 19.
In Part II, this paper begins to answer these questions by concentrating on several of the essays 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, thus questions surface. Coherence may flounder on two levels. First, what virtues (values) do all Catholics share? Second, why should a nation (even one tied to a natural rights lineage) that appears to be somewhat dependent on Protestant presuppositions, which stress the authority of the individual believer accept

---


48 Cardinal George, *supra note ___* at xii.
Catholic insights,\textsuperscript{49} 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?\textsuperscript{50} 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 case that New Deal

\textsuperscript{49} This is not say that natural rights can not supply a basis for agreement between Protestants and Catholics. See e.g., Harry G. Hutchison, Book Review: Rediscovering the Natural Law in Reformed Theological Ethics, 49 JOURNAL OF CHURCH AND STATE (2007).

\textsuperscript{50} Cardinal Dulles, The Freedom of Theology, supra note __ at 23.
liberalism was the product of the views of Pope Leo XIII as channeled through the Catholic progressivism of Father John Ryan.\textsuperscript{51} Though an accurate understanding of Pope Leo XIII’s views confirms that, following Pope Pius IX, he was leery of liberalism,\textsuperscript{52} 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.\textsuperscript{53} 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.\textsuperscript{54} In harmony with this observation, the promise of the common good as represented

\textsuperscript{52} 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.
\textsuperscript{53} See Hauerwas, supra note ___ at 36.
\textsuperscript{54} Cardinal George, supra note ___ at xii.
in the New Deal materializes in conflict with the notions of equality, freedom, community and the public interest. This conflict underscores Dorothy Day’s doubts about society’s reliance on the great, impersonal mother, the state, as well as her keen support for the principle that charitable functions should be performed at the most feasible local level of society. 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. 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 presupposes that “we live

---

56 Id. at 789.
less in a state of self-sufficiency than in one of “reciprocal indebtedness”? 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 fully fashion change within the human person\(^59\) and (2) Pope John Paul II’s observation that structural transformation of society is secondary to moral renovation is correct.\(^60\) 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.\(^61\) 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


\(^{60}\) *Centesimus Annus*, ¶ 51.

Catholic thought conceives the common good as a component of, but also distinct from, corresponding secular approaches to the good, which are derived simply from a complete embrace of liberalism, the free market, individual autonomy and the Enlightenment. Distinctiveness is supplied by this paradigm’s rejection of the secular idea that communal goods are merely the aggregated preferences of self-interested individuals within the society. Catholic anthropology concentrates on four values—freedom, solidarity, subsidiarity, and the common good—which offer a basis for conversing with the wider world. 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.” 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.

---

62 I am indebted to my colleague, Helen Alvaré for this observation (email conversation on file with the author).
64 Cardinal George, supra note ___ at xii.
65 Id.
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?” 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.”

Yet, within a nation permeated with gloom that questions the meaning and purpose of human life, 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. 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. This metaphysical implosion 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

---

67 Scaperlanda and Collett, Introduction supra note __ at 1, 2.
68 Spe Salvi ¶ 25.
70 Id.
71 Id. at 1197-98.
72 Id. at 1197.
perpetually unsettled. 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. 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.

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.” At the same time, “jurisprudence—the activity of theorizing or philosophizing about law, about the nature of law—seems close to moribund.” 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

---

73 McIntyre, After Virtue, supra note ___ at 226.
75 For a discussion of this issue, see McIntyre, 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 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”).
77 Id. at 1.
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.78 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.”79 But, as “The Foundations of Catholic Legal Theory” makes clear, Recovering Self-Evident Truths offers “a variety of philosophical and theological perspectives.”80 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 law.81 This tension is emblematic of the existing diversity in Catholic thought on a variety of issues.

Although Catholic anthropology offers four comprehensive values82 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

79 Id. at 33.
80 Id. at 16.
81 Id.
82 Scaperlanda and Collett, Introduction supra note __ at 10 (discussing the values of freedom, solidarity, subsidiarity and the common good).
failings but instead represents a social or alternatively, a collective infirmity. 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.

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. This view highlights the universal destination of goods. The Church, on one hand, departs from the previously ascendant laissez-faire ethos toward an ethos championing government intervention when it nurtures the natural welfare of the individual and the community as a whole. 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.” Thus it is reasonable to stipulate that the process of recovering what was lost is situated within a domain wherein one can

---

84 Gibbs, supra note ___ at 78.
85 Daly, supra note __ at 26.
86 Id.
87 Id.
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.\textsuperscript{88} 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.”\textsuperscript{89}

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 Catholics.\textsuperscript{90} 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.”\textsuperscript{91} Opening the eyes of Catholics in such way could constitute a

\textsuperscript{88} Lee, supra note \_ at 16.
\textsuperscript{89} Id.
\textsuperscript{90} Shaw, supra note \_ at 340.
\textsuperscript{91} Id.
startling epiphany that might reclaim a vibrant American Catholic subculture.\textsuperscript{92} 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.”\textsuperscript{93} 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.\textsuperscript{94} \textit{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.”\textsuperscript{95} Monsignor Albacete’s essay, “A Theological Anthropology” and Avery Cardinal Dulles’ contribution, “Truth as the Ground of Freedom,” offer a fruitful foundation for inquiry. Albacete observes that the value of the human person originates in the will of the Creator,

\textsuperscript{92} \textit{Id.}
\textsuperscript{94} Lee, \textit{supra} note ___ at 16.
\textsuperscript{95} Albacete, \textit{supra} note ___ at 39.
and that the human person is to be the norm of all political and social life.\textsuperscript{96} This is the central, yet self-evident truth upon which all other truths about the human person, human society and the cosmos depend.\textsuperscript{97} 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.\textsuperscript{98} Its value comes from its sheer existence, which cannot be measured by anything else.\textsuperscript{99} As Albacete concedes, theological anthropology ought to be distinguished from all other anthropologies because all other alternatives only provide \textit{partial} views of the human person.\textsuperscript{100} 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.\textsuperscript{101} He asserts that “the pope is convinced that an adequate analysis of the experience of personhood will rescue it from the pitfalls

\begin{itemize}
\item \textsuperscript{96} \textit{Id.} at 40.
\item \textsuperscript{97} \textit{Id.}
\item \textsuperscript{98} \textit{Id.}
\item \textsuperscript{99} \textit{Id.} (quoting the Second Vatican Ecumenical Council, Pastoral Constitution of the Church in the Modern World (\textit{Gaudium et spes}), ¶ 24 (1965).
\item \textsuperscript{100} \textit{Id.} at 42.
\item \textsuperscript{101} \textit{Id.} at 43.
\end{itemize}
of subjectivism and relativism.” 102 Human experience is to be welcomed as part of the pursuit of truth so long as reductionism is avoided. 103 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.” 104 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.” 105

Pope John Paul II and Cardinal Dulles maintain that freedom, particularly for the human person in community depends on truth, 106 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. 107 At the higher level, distinct to individuals, freedom requires the

102 Id.
103 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).
104 Albacete, supra note ___ at 44.
105 Id. at 44.
106 Avery Cardinal Dulles, Truth as the Ground of Freedom, supra note ____ at 70.
107 Id.
absence of psychological compulsion as well as the lack of physical constraint.\textsuperscript{108}

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.\textsuperscript{109}

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.’”\textsuperscript{110} 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 Creator\textsuperscript{111} and have become markedly illiberal and intolerant of those that threaten their highest value, the liberal state.\textsuperscript{112} Rejecting the liberal approach because it “cannot give a criterion for wrongness,”\textsuperscript{113} freedom, in Cardinal Dulles’ description, allows one to “go beyond individual and collective

\textsuperscript{108} \textit{Id.} at 71.
\textsuperscript{111} \textit{Id.} at 298.
\textsuperscript{112} \textit{Id.} at 296.
\textsuperscript{113} \textit{Id.} at 298.
selfishness and reach out to that which reason perceives as objectively good and true.” An individual is constrained by his determination that to act freely against the truth is to erode freedom itself. 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 grounded in liberty, which is the right to do what he ought to do based on rational scrutiny. For the individual, true freedom enables the person to transcend his own self-interest or the collective self-interest of the individual’s group. 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. 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 means to make tangible their submission to self-giving. Properly conceived, freedom is both frail and limited.

---

114 Cardinal Dulles, Truth as the Ground of Freedom, supra note ___ at 72.
115 Id.
117 Cardinal Dulles, Truth as the Ground of Freedom, supra note ___ at 73.
118 Id. at 71.
119 Id. at 72 (quoting the Second Vatican Ecumenical Council, Gaudium et spes, ¶ 17 (1965); Pope John Paul II, Veritatis Splendor ¶ 42 (1993)).
120 Id. (quoting the Second Vatican Ecumenical Council, Gaudium et spes, ¶ 17 (1965); Pope John Paul II, Veritatis Splendor ¶ 42 (1993)).
121 See e.g., Avery Cardinal Dulles, Truth as the Ground of Freedom, supra note ___ at 74.
122 Id.
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.”123 “To act freely against the truth is to erode freedom itself.”124 That freedom is meaningless and self-destructive if not used in the service of what is truly good reinforces Dulles’ observation.125 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.”126 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 Christ127 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.128 In view of this, Albacete contends that law and

123 Id. at 71.
124 Id.
125 Id.
126 Albacete, supra note __ at 44.
127 Id at 47.
128 Id. at 50.
legislation “should never seek to reduce . . . [the] individual into community or [the] community into [the] individual.”129 If true, the question that presses the debate regarding the existence and pursuit of self-evident truths, including truths about human freedom, must accept that for centuries, the world has been divided by rival conceptions of freedom.130

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?131 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.132 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.”133 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

129 Id. at 51.
130 Avery Cardinal Dulles, Truth as the Ground of Freedom, supra note ___ at 69.
131 Id. at 79.
132 Id. at 79.
133 JOHN GRAY, ISAIAH BERLIN, supra note __ at 14-15 (1996) [hereinafter, GRAY, BERLIN].
of life containing goods (and evils) that are sometimes incommensurable and . . . rationally incomparable . . .”\textsuperscript{134} This perception permits some to answer in the negative Benedict Ashley’s salient question: Can we know the nature of human persons?\textsuperscript{135}

To answer in the positive, particularly as a Catholic, supports the claim that there is indeed a truth, valid and binding within history itself.\textsuperscript{136} 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.\textsuperscript{137} 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.\textsuperscript{138} 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

\textsuperscript{134} \textit{Id.}
\textsuperscript{135} Ashley, supra note \_\_ at 52.
\textsuperscript{136} Marcello Pera, Relativism, Christianity and the West, in JOSEPH RATZINGER & MARCELLO PERA, WITHOUT ROOTS 1, 25 (2006).
\textsuperscript{137} \textit{Id.}
\textsuperscript{138} \textit{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).
Humans in community with one another must be explored in the context of pressing social problems. 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.” Instead the content of the Church’s teachings speaks to all participants in the human drama, everywhere in every age. Anchored in Christian moral anthropology, 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. 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. 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.

---

139 Vischer, supra note __ at 85.
140 Id.
141 Id.
142 Id. at 86.
143 Id.
144 Id. at 85.
as a collective ideal.”\textsuperscript{145} 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.”\textsuperscript{146} 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,\textsuperscript{147} or the religious liberty of organizations like Catholic Charities regarding the provision of reproductive coverage for employees.\textsuperscript{148} 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.\textsuperscript{149} 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.”\textsuperscript{150}

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

\begin{footnotesize}
\textsuperscript{145} Id. at 88.
\textsuperscript{146} Id.
\textsuperscript{147} Vischer, \textit{supra} note ___ at 92.
\textsuperscript{148} Id. at 89.
\textsuperscript{149} Cardinal Dulles, \textit{Truth as the Ground of Freedom}, \textit{supra} note ___ at 75 (discussing John Paul II).
\end{footnotesize}
work has been and remains a central theme of Catholic social thought.\textsuperscript{151} 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.\textsuperscript{152} Remarkably, up to eighty percent of union dues are expended for purposes unrelated to collective bargaining.\textsuperscript{153} Underscoring the fragility of freedom, dissenting workers, represented by labor unions have sought protection from solidarity imposed by labor hierarchs via compulsory payments of dues. Dues objectors oppose coercive payments on grounds of conscience, ideology and religion.\textsuperscript{154} 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.\textsuperscript{155} 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

\textsuperscript{151} Kohler, supra note __ at 164.
\textsuperscript{152} LINDA CHAVEZ & DANIEL GRAY, BETRAYAL: HOW UNION BOSSES SHAKE DOWN THEIR MEMBERS AND CORRUPT AMERICAN POLITICS, 12 (2004).
\textsuperscript{153} See e.g., id.
\textsuperscript{155} My debt to Vischer should be obvious. See Vischer, supra note __ at 87.
“inherently undemocratic,” and since “[e]ven staunch union supporters blanche over the autocracy, entrenchment, and corruption of some union leaders,” 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. Motivated by an adequate conception of human dignity and operating consistently with Pope John Paul II’s conception of conscience, dissenting workers find their understanding of autonomy 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. Hence, labor organizations often operate to the detriment and exclusion of the interest of rank-file members.

Contrary to Albacete’s admonition, this move permits labor unions to reduce

157 Id. at 368.
159 See e.g., Vertatis 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).
160 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”)
161 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).
162 See e.g., Albacete, supra note ___ at 51.
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 referenda\textsuperscript{163} as well as objections to attempts to transform the existing welfare state into a revolutionary Marxist-socialist collective.\textsuperscript{164} Since Vischer rightly notes the emptiness of decontextualized solidarity,\textsuperscript{165} and since Catholic social teaching emphasizes work as the key to the social question,\textsuperscript{166} his analysis would be enriched substantially by addressing the persistent efforts of labor unions to enforce collective ideals by suppressing workers’ consciences.

Subsidiarity as a value bears analysis as well. The literature from neoclassical economics, public choice theory,\textsuperscript{167} 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

\textsuperscript{163} See e.g., CHAVEZ & GRAY, supra note ___ at 18.
\textsuperscript{164} 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.).
\textsuperscript{165} Vischer, supra note ___ at 94.
\textsuperscript{166} 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 \textit{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).
\textsuperscript{167} See e.g., Steven J. Eagle, \textit{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.”’
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.\(^{168}\)

It remains far from clear however, that political liberals are ready to embrace an approach that vitiates rather than strengthens the power of government. Coherent with this possibility, Vischer insists that 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.\(^{169}\) Making his objections

---

\(^{168}\) Vischer, *supra* note ___ at 98.

\(^{169}\) *Id.*
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.\textsuperscript{170}

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.\textsuperscript{171} 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,\textsuperscript{172} 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. 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

\textsuperscript{170} Id.
\textsuperscript{171} Hauerwas, supra note __ at 39.
\textsuperscript{172} Vischer, supra note ____ at 99.
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.\textsuperscript{173} 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.”\textsuperscript{174} Rejecting individualism and its focus on self-interest, Karol Wojtyla stresses personalism wherein the human person acts in solidarity with others.\textsuperscript{175} “Personalism posits the human person as created not for self-interest but for self-transcendence.”\textsuperscript{176} Participation leading to fulfillment “is possible only in those subsidiary structures that facilitate the formation of genuine ‘community.’”\textsuperscript{177}

Community, as distinguished from associational relationships, entails a deeper

\textsuperscript{174} Id. at 285.
\textsuperscript{175} Id. at 286.
\textsuperscript{176} Id.
\textsuperscript{177} Id.
level of personal commitment and fulfillment.\textsuperscript{178} 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 community\textsuperscript{179} 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.”\textsuperscript{180}

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

\textsuperscript{178} Id.
\textsuperscript{179} Id. at 286-287.
\textsuperscript{180} Breen, supra note __ at 20.
prudence, and re-emphasize the infinite value of the human person within the context of an authentic community that enables personalism, participation and solidarity to flourish.

B. Finding the Common Good or Finding Conflict?

The Preamble to the Constitution of the United States, on one account,\textsuperscript{181} 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.\textsuperscript{182} 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.\textsuperscript{183} 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.\textsuperscript{184} 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

\textsuperscript{181} Araujo, supra note ___ at 104.
\textsuperscript{182} Id. at 104.
\textsuperscript{183} Id.
virtuous rulers who would pursue the common good, but they also sought to
take effective precautions for keeping them virtuous while they held the public
trust.\textsuperscript{185} Araujo insists that the Supreme Court’s \textit{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.”\textsuperscript{186} 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 \textit{Casey}.\textsuperscript{187} 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.”\textsuperscript{188} 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.\textsuperscript{189} 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

\begin{footnotesize}
\begin{enumerate}
\item Araujo, \textit{supra} note __ at 107.
\item \textit{Id.} at 110.
\item \textit{Id.} at 117.
\item \textit{Id.}.
\item \textit{Id.}.
\end{enumerate}
\end{footnotesize}
this document.\textsuperscript{190} Conflicting conceptions of liberty, as partially supervised by government, as well as the existence of conflicting perceptions 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.”\textsuperscript{191} 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 disagreement\textsuperscript{192} 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.”\textsuperscript{193}

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

\textsuperscript{190} \textsc{The Federalist} No. 10, at 46 (James Madison) (Clinton Rossiter ed., 1961), cited in \textsc{Dennis C. Mueller, Public Choice} II 307 (1989) (concluding that the division of society into different interests and parties is likely).

\textsuperscript{191} \textsc{MacIntyre, After Virtue}, supra note ____ at 253.

\textsuperscript{192} See, e.g., \textit{id}.

\textsuperscript{193} Araujo, \textit{supra} note __ at 122.
should (and should not) be Liberals,” provides an answer grounded in political theory.\textsuperscript{194} 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.”\textsuperscript{195} He contends the term implies a particular political stance or, at the very least, strong inclinations on abortion, homosexual rights, economic regulation, social welfare, gun control and church-state separation.\textsuperscript{196} 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.\textsuperscript{197} 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.\textsuperscript{198} 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 prescinds from the truth as derived from comprehensive, philosophical, theological, or moral views.\textsuperscript{199} Scaperlanda and Collett counter this perspective by explaining that the neutral position is fundamentally flawed because it cannot

\textsuperscript{194} Wolfe, \textit{supra} note ___ at 131-151.
\textsuperscript{195} \textit{Id.} at 132.
\textsuperscript{196} \textit{Id.}
\textsuperscript{197} Wolfe, \textit{supra} note ___ at 132.
\textsuperscript{198} \textit{Id.}
\textsuperscript{199} \textit{Id.} at 133.
make explicit truth claims about the nature of the human person without
violating its principle of neutrality. Nonetheless, an emphasis on neutrality is
useful. As Casey 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 “anti-perfectionism” strand of liberalism “denies that
political life should aim to perfect its citizens, according to some standard of
human excellence.”

While suggesting that Catholics can be good liberals even if they cannot be
only liberals, since liberalism tends to emphasize freedom at the expense of
truth about ultimate realities, 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. Instead, America has begun to accept

be formed under the compulsion of the state).
202 Wolfe, supra note __ at 133.
203 Id. at 147-149. See also, Russello, supra note___ at page 2.
204 Wolfe, supra note __ at 147.
liberalism as cosmopolitanism. Cosmopolitanism, either reflecting the liberalism of “elites” or “globalists” is often superficial. “It stimulates. It possesses entertainment value. At least while the novelty lasts, it excites and unsettles the . . . monochromatic surfaces of modern life.” Liberal cosmopolitanism represents individuals who tolerate differences but who are not deeply committed to them. 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.” Just as pedagogy has previously stripped theology from the branch of knowledge, 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.”

Aleksandr Solzhenitsyn’s describes this move as a form of moral impoverishment that has led to a debased definition of freedom that makes no distinction between ‘freedoms for good’ and

\[ \text{Id. at 169.} \]
\[ \text{I am indebted to David Gregory for this observation. David Gregory’s comments are on file with the author.} \]
\[ \text{SHUCK, supra note __ at 15.} \]
\[ \text{ALEXANDER, supra note __ at 169.} \]
\[ \text{Id.} \]
\[ \text{James R. Stoner, Jr., Theology as Knowledge, FIRST THINGS, May 2006, at 21, 21.} \]
\[ \text{SHANNON, supra note ___ at 203.} \]
‘freedoms for evil.’”

Consistent with a viewpoint that seems to reify whimsy, liberalism sees human life primarily as a bundle of autonomous (perhaps random) preferences deserving protection by the apparatus of the regulatory state. If true, this understanding of liberal thought provides a platform upon which to challenge Wolfe’s crucial claim that Catholics should be willing to be called liberals because the main principles of liberalism are not just defensible but good. 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. 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 good when and if work and economic relationships are at issue.

No where can greater support for this principle be found than in Thomas Kohler’s essay on labor law. 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

---

214 Wolfe, *supra* note ___ at 134.
215 Wolfe, *supra* note ____ at 143.
216 *Id.* at 150.
217 Kohler, *supra* note ___ at 163-190.
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.\textsuperscript{218} Relying on the encyclicals, \textit{Quadragesimo Anno},\textsuperscript{219} \textit{Rerum Novarum},\textsuperscript{220} \textit{Sollicitudo Rei Socialis}\textsuperscript{221} and \textit{Centesimus Annus},\textsuperscript{222} 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.\textsuperscript{223} Nuances appear to be missing from Kohler’s analysis.
Consider his various assertions that implicate and are embedded in the social
question\textsuperscript{224} 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.\textsuperscript{225} 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 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.\textsuperscript{226}

\begin{footnotesize}
\textsuperscript{218} \textit{Id.} at 190.
\textsuperscript{219} \textit{Id.} at 186.
\textsuperscript{220} \textit{Id.} at 164.
\textsuperscript{221} \textit{Id.} at 184.
\textsuperscript{222} \textit{Id.} at 189.
\textsuperscript{223} \textit{Id.} at 180-181.
\textsuperscript{224} Kohler, \textit{supra} note ___ at 163 (citing John Paul II’s observation in \textit{Laborem Exercens} for the proposition
that as a human issue, work represents the essential key to the social question).
\textsuperscript{225} \textit{Id.} at 163.
\textsuperscript{226} Kohler, \textit{supra} note ___ at 163.
\end{footnotesize}
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. 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. Tatom demonstrates that income variation should be expected to, and does, rise when older, less equal groups come to dominate the population. In addition, increasing amounts of Americans’ income are not reported for tax reasons and

---

227 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.

228 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 reported income for tax purposes. Real compensation per hour has been growing very rapidly this decade contrary to popular opinion.”).
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.\textsuperscript{229} Lastly, income inequality, particularly for married couples, is related directly with hours of work,\textsuperscript{230} as well as a citizen’s age.\textsuperscript{231}

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 \textit{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.”\textsuperscript{232} On its face, the statement fails to imply either the necessity of complete income equality or the desirability of raising the state-controlled minimum wage rate. While the minimum wage continues to enjoy 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

\textsuperscript{229} Dora L. Costa, \textit{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.).

\textsuperscript{230} See e.g., Katherine Bradbury and Jane Katz, \textit{Wives’ Work and Family Income Mobility}, Public Policy Discussion Papers, Federal Reserve Bank of Boston, No. 04-3, (May, 2005), (abstract) available at \url{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).

\textsuperscript{231} See e.g., Tatom, \textit{supra} note ___ at ____ (showing that as people age and as older groups come to dominate the population, income variation should and does rise).

\textsuperscript{232} \textit{Rerum Novarum}, ¶ 45.
of intervention in the market are not poor. In view of this, as well as the likelihood that an effective minimum wage tends to reduce employment, particularly for the poor and minority workers, minimum wage regimes are an effective device that expands poverty and income inequality. Thus, one need not succumb to conservatism in order to have doubts about whether this kind of centralized interference constitutes a preferential option for the poor.

Third, the disintegration of the family may bear a defined relationship to the increasing work burden absorbed by households (including an increase in two-income families), which is required, in part, in order for such households to cope with a rising tax burden necessitated by an increase in the size and power of the government. The persistent rise in government power and its corollary, wealth redistribution favoring the already well-off, can be encapsulated in data showing that today five of America’s ten richest counties are located just outside of Washington, DC. Tax rates have rise on the middle class since the New Deal in

---

234 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).
order to fund Washington area lobbyists, well-paid government employees and lawyers. 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. With tax exemptions, 98 percent of all Americans were off the income tax rolls. 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. 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. 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.” A focus on nurturing families in conformity with the Church’s social teachings operates in some tension with the “equal pay for equal work” principle. Tension continues because the encyclicals emphasize the family wage, including direct

\[\text{supra note} \text{ at 556.}\]
wage discrimination favoring men and placing limits on the labor of women and children.\(^{244}\) 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.\(^{245}\) 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.\(^{246}\) Second, Karol Wojtyla’s writings maintain that participation leading to fulfillment “is possible only in those subsidiary structures that facilitate the formation of genuine ‘community.’”\(^{247}\) It is far from obvious that labor unions led by autocrats constitute a rightly-ordered community because a true community as distinguished from associational

\(^{244}\) *Id.*

\(^{245}\) See e.g., Kohler, *supra* note ___ at 183.

\(^{246}\) 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.)

\(^{247}\) *Id.*
relationships, entails a deeper level of personal commitment and fulfillment.\textsuperscript{248}

Third, although Pope Pius XI endorses the associations of workers into labor unions in furtherance of social justice and the common good,\textsuperscript{249} 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.\textsuperscript{250} Fourth, anticipating Pope John Paul II’s subsequent admonition against excessive bureaucratic centralization of the world of work,\textsuperscript{251} 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.\textsuperscript{252} As we have already seen, American union elections provide members with little real control over leaders. Unions are inherently undemocratic,\textsuperscript{253} 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 himself\textsuperscript{254} has been transmuted into labor autocracy that tends to diminish such participation.

\begin{itemize}
\item \textsuperscript{248} Id.
\item \textsuperscript{249} \textit{Quadragesimo Anno} ¶ 32.
\item \textsuperscript{251} \textit{Laborem Exercens} ¶ 15.
\item \textsuperscript{252} Jacques Ellul, \textit{The Technological Society}, 358 (John Wilkinson trans. 1964).
\item \textsuperscript{253} Schwab, \textit{supra} note ___ at 369 & 370.
\item \textsuperscript{254} \textit{Laborem Exercens} ¶ 15.
\end{itemize}
To be sure, workers have expressed a continuing interest in participation but they continue to shun traditional unions. Adducible evidence demonstrates the following: “By an overwhelming 86% to 9% margin, workers want an organization run jointly by employers and management, rather 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.”

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.’” American labor unions engage in rent-seeking behavior as group resources are seized and transferred to favor goals and purposes idealized by group leaders. Meanwhile the goals of the workers are left unattended. 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

---

256 Schwab, supra note ___ at 370.
257 Hutchison, A Clearing in the Forest, supra note ___ at 1382-83.
258 Id.
displaced both the need and desire to unionize.\textsuperscript{259} In the face of this evidence, the continued emphasis on worker participation when workers themselves decline to take advantage of existing opportunities may imply an ossifying contradiction between what workers actually want, and what union hierarchs and labor experts want them to want.

Kohler, in partial agreement with these probabilities, concedes that the state corrodes the institutions of civil society, but contends that markets increasingly consume the state’s ordering capacity.\textsuperscript{260} 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.\textsuperscript{261} On the other, Kohler, apprehensive about the capacity of modern capitalism to overwhelm the institutions of social life,\textsuperscript{262} 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

\textsuperscript{260} Kohler, \textit{supra} note ___ at 189.
\textsuperscript{261} \textit{Id.} at 190.
\textsuperscript{262} \textit{Id.}
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**

**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.”\(^{263}\) 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.\(^{264}\) 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

\(^{263}\) Hauerwas, *supra* note ___ at 36 (discussing MacIntyre).

\(^{264}\) Daly, *supra* note ___ at 25.
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.\textsuperscript{265} 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.”\textsuperscript{266} Whether MacIntyre’s assertion applies, Ryan ties his approach to Thomistic natural law, which commands that good be done and evil avoided.\textsuperscript{267} The efforts of Father Ryan catalyzed the radicalization of Catholic thought in the early decades of the 20\textsuperscript{th} century, and in response, Catholic institutions mobilized a crusade for social justice.\textsuperscript{268} 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.\textsuperscript{269} Father Ryan, a faculty member at Catholic University, gave the invocation at Roosevelt’s second inauguration in 1937.\textsuperscript{270} At Father Ryan’s retirement celebration, Secretary of Labor Francis Perkins, toasted Ryan eloquently on his contribution to the New

\begin{itemize}
\item \textsuperscript{265} Id.
\item \textsuperscript{266} Alasdair MacIntyre, \textit{Forward, in NAMING EVIL, JUDGING EVIL} vii, ix (ed. Ruth W. Grant, 2006).
\item \textsuperscript{267} Daly, \textit{supra} note ___ at 25.
\item \textsuperscript{268} Id. at 26.
\item \textsuperscript{269} Id.
\item \textsuperscript{270} Id.
\end{itemize}
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.”271 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.272 Friedrich Hayek clarifies that, although not often remembered, socialism in its beginnings was authoritarian in nature.273 Predictably, President Roosevelt’s record demonstrates liberal experimentation and freedom rapidly succumbed to planning.274 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.275 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.

271 Id.
272 Id.
273 Id.
275 Goldberg, supra note __ at 18.
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.276 “If elected, Roosevelt promised to act in the name of ‘the forgotten man at the bottom of the economic pyramid.’”277 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.278

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?279

B. The New Deal as a Paragon of Progress?

276 Schambra, supra note ___ at 19.
278 Schambra, supra note ___ at 19.
279 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).
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.” 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. “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.” Initial New Deal efforts were dealt a crushing blow when the Supreme Court unanimously invalidated the NIRA because the law impermissibly delegated government power to private interests. 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. These efforts, taken as a whole, led to reduced competition, higher prices, higher wages, and higher social costs in the form of unemployment.

---

280 WILLBORN, SCHWAB, BURTON, & LESTER, supra note __ at 568.
281 Id. at 566.
283 Id. at 566. (Discussing Schechter Poultry v. United States, 295 U.S. 495 (1935)).
284 See e.g. WILLBORN, SCHWAB, BURTON, & LESTER, supra note __ at 566-673.
285 VEDDER & GALLAWAY, supra note___ at 146.
which ensured that America’s recovery was more sluggish and slower in coming
than that of most European nations.\footnote{Id. at 129.}

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.\footnote{Goldberg, supra note __ at 17.} 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.\footnote{Id.}
“They ran into trouble with New Deal codes that said, in the name of quality assurance,
that vendors couldn’t let individual customers select their own chickens.”\footnote{Id.}
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.\footnote{Id.} The Schechters were harassed, fined, and ultimately sentenced

\footnote{Id. at 129.}
\footnote{Goldberg, supra note __ at 17.}
\footnote{Id.}
\footnote{Id.}
\footnote{Id.}
\footnote{Id.}
to jail\textsuperscript{291} 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.\textsuperscript{292} 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.\textsuperscript{293} 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.\textsuperscript{294} 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.”\textsuperscript{295} 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.\textsuperscript{296} Unemployment was rising by the millions, and the next spring after his death, one in five American men would be unemployed.\textsuperscript{297} This story is something like the

\begin{itemize}
\item \textsuperscript{291} \textit{Id.}
\item \textsuperscript{292} SHAES, \textit{supra} note ___ at 1.
\item \textsuperscript{293} \textit{Id.}
\item \textsuperscript{294} \textit{Id.}
\item \textsuperscript{295} \textit{Id.}
\item \textsuperscript{296} \textit{Id.} at 2.
\item \textsuperscript{297} \textit{Id.}
\end{itemize}
descriptions we hear of the Great Crash in 1929, but in fact, these events took place in the autumn of 1937, 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. 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. As Professor Ilya Somin shows the NIRA, the flagship program of the New Deal, was a “massive public policy disaster. 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.”

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

[298] Id. at 3.
[299] Id.
[300] Id.
[301] Id. at 3.
[302] Somin, supra note __ at 650.
[303] Id.
inescapably to racist oppression. 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.  

---

304 Hutchison, Toward A Critical Race Reformist Conception of Minimum Wage Regimes, supra note ___ at 118-129.
305 Id. at 123-124.
This oppression was inescapably tied to the New Deal and continued into the 1940s through the 1980s. During the 1940s, for example, the United States Employment Service, a federal agency, enticed hundreds of young African American men with offers of “free” travel to journey from cities across the South to enjoy Florida sunshine and work in the sugar fields during World War II. 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. Facing long days of brutal work pervaded by fear and punctuated by violence, these workers determined that escape was the only option. At the same time, Roosevelt’s Justice Department ignored requests to stop the “virtual slavery” in Florida’s sugar camps. 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.

---

306 Id. at 125.
308 Id. at 2.
309 Id.
310 Id.
311 Id. at 3 & 85.
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 at work. 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.” Although the New Deal pattern may not compare to the pain experienced by those who have been transformed by suffering, 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, will accept the substantial evidence showing that the New Deal did not end the Great Depression nor did it cure unemployment. The failure of the New Deal demonstrates that the intellectual mandate of Roosevelt’s “Brain

---

313 Spe Salvi ¶ 24.
314 See e.g., Spe Salvi ¶ 37 (Pope Benedict XVI citing 19th century, Vietnamese martyr, Paul Le-Bao-Tinh).
316 Goldberg, supra note __ at 17-18.
“Trust” (the group charged with the creation of the New Deal) was contestable.\textsuperscript{317} 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.\textsuperscript{318}

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.\textsuperscript{319} 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 institutions\textsuperscript{320} 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.\textsuperscript{321} Although such a program is unlikely to be sustainable,\textsuperscript{322} Alasdair MacIntyre rightly points us toward the difficulties

\begin{thebibliography}{99}
\footnotesize
\item \textsuperscript{317} Id.
\item \textsuperscript{318} Id.
\item \textsuperscript{320} SHANNON, supra note ___ at 147.
\item \textsuperscript{321} Cass R. Sunstein & Richard H. Thaler, \textit{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).
\item \textsuperscript{322} See generally, Mario J. Rizzo & Douglas Glen Whitman, \textit{Little Brother is Watching You: New Paternalism on the Slippery Slopes}, New York University School of Law, Public Law & Legal Theory
\end{thebibliography}
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. But with equal clarity he thrusts his readers in the direction of another self-evident truth that a society where 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. 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.

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

References


323 Macintyre, After Virtue, supra note ___ at 254.
324 Id.
325 Laborem Exercens, ¶ 15.
ruptured by a perspective that relied heavily on religious thought.\textsuperscript{326} 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.\textsuperscript{327} 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 slavery of Rome.”\textsuperscript{328} 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.”\textsuperscript{329} 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

\textsuperscript{326} Daly, \textit{supra} note ___ at 23.
\textsuperscript{327} \textit{Id.}
\textsuperscript{329} Gill, \textit{supra} note ___ at 66-67 (quoting Richard Tawney).
the Mount. Moreover, scant evidence can be found to suggest that the New Deal functioned consistently with the requirements of subsidiarity and a Catholic understanding of human freedom. Contrary to Father Ryan and Lew Daly’s extravagant claims, the New Deal failed to ensure that the teachings of Christ apply to the benefit of all.

To be sure, many New Deal statutes were premised on the desire to eliminate evil from human life. This focus on the elimination of evil and the attainment of secular salvation has led to bureaucratic managerialism, which is comprised of more than maladroit administration by government officials. Bureaucratic managerialism issues forth as a pseudo-scientific process in which the terms of employment and the conditions under which life itself materializes are regulated and planned by a hierarchy justified by the contention that government possesses resources rank and file citizens and workers lack. 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.

330 MACINTYRE, AFTER VIRTUE, supra note __ at 85.
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.”331 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.”

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.”332 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

331 Somin, supra note ___ at 628.
332 Sunstein & Thaler, supra note __ at 1160.
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 faithful workers represented by unions, shopkeepers, and members of marginalized minority groups, have not been able to escape government manipulation.333 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.334 In addition, such control is not simply limited to the economic sphere. Implicating Wolfe’s

333 Cardinal Dulles, Truth as the Ground of Freedom, supra note __ at 71.
334 Id.
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.  

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.  

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.\textsuperscript{337} 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 \textit{Veritatis Splendor}, a conception of freedom as a gift of divine
grace that frees humans for virtue.\textsuperscript{338} Far from embracing authentic diversity and
difference, majority culture has arguably misplaced its power of explanation and
is now confused, self-contradicting and self-congratulatory. Thus the liberal-
legalist order, either driven by the demands of hierarchs or the polity’s
acquiescence in, or submission to, contestable adjudication, must inevitably
capitulate to the seductive allure of procrustean fundamentalism and seek to
impose its values on those who are unwilling to surrender to its centralizing
impulse.\textsuperscript{339} These various developments combine to fashion a society wherein
philosophical liberalism may be an impossible\textsuperscript{340} and political liberalism may be

\begin{footnotes}
\footnotetext[337]{Scaperlanda and Collett, \textit{supra} note \textsuperscript{\_\_} at 8.}
\footnotetext[338]{Lee, \textit{supra} note \textsuperscript{\_\_} at 33-34.}
\end{footnotes}
nothing more than an “unprincipled modus vivendi.”³⁴¹ 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. ³⁴²

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 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

³⁴¹ Id.
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 autonomy 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.”344 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?”345 Jacques Ellul contends that progress “consists in

343 Lee, supra note ___ at 33.
344 Laborem Exercens, ¶ 1.
345 SWENSON, supra note ___ at 24.
progressive de-humanization—a busy, pointless, and in the end, suicidal submission to technique.”

Public choice theory illustrates that modern efforts toward progress have often been connected to statutory intrusions into the market, 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. 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. Therefore, “rival interest groups compete with each other to capture government and use it to seize and redistribute resources among themselves.” 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.”

Sociologist Robert Bellah warns: “[p]rogress, modernity’s master idea,
seems less compelling when it appears that it may be progress into the abyss.” 352
Nietzsche observes “‘Progress’ is merely a modern idea—that is to say, a false
idea.” 353 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.” 354 Solzhenitsyn contends that the
West has been seduced by the claim that man has become the master of this
world and “‘bears no evil within himself . . . So all of the defects of life’ are
attributed [simply] to ‘wrong social systems.’” 355 Consistent with that contention,
Pope Benedict XVI shows that Marx’s error follows from his failure to remember
that man always remains man. 356 “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.” 357 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

352 SWENSON, supra note ___ at 34 (citing Bellah and his colleagues).
Ludovici, 2006).
354 Swenson, supra note ___ at 34.
355 Colson, supra note ___ at 64.
356 Spe Salvi ¶ 21.
357 Spe Salvi ¶ 22.
connected with her apostolic mission have been especially directed.”358 The Catholic social tradition maintains that the ordering of employment is essential for the authentic development and unfolding of the human person.359 As such, the question of human work and the common good has been a constant concern of the Church.360 A careful examination of the various historical developments in the organization of society provides ground for reproposing in new ways the question of human work while resisting relativism and pursuing truth.361 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 repropositionary 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.”362 Moreover, Lee points out that “the church has no philosophy of her own, nor does she canonize any one particular

358 Laborem Exercens, ¶ 2.
359 Kohler, supra note __ at 184.
360 Laborem Exercens, ¶ 3.
361 Laborem Exercens, ¶ 5.
362 Lee, supra note __ at 31.
philosophy.” 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.”

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

IV. Conclusion

---

363 Id.
364 Laborem Exercens ¶1.
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.365 "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."366 In any domain of inquiry, including Catholic social teaching and legal theory that are rightly aimed at changing social situations for the better, the highway of methodology is paved with epistemological commitments.367 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.368 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

366 Id.
368 Id. at 365-366.
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.’”

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.”

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 a larger world that is mediated by meaning, which transcends immediate experience, 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

---

369 Id. at 368.
370 Id.
371 Id.
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.”372 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.”373

“[W]hen the last of earth [is] left to discover . . . at the source of the longest river,”374 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.”375 In order to make progress toward reciprocal indebtedness, we must spend less time seeking to expand individual and collective rights, less time enlarging government power, and more time subverting the hegemony of the liberal state by answering the call of humility. As Randy Lee’s Epilogue contends, in order for “Catholic perspectives on America law to gain traction,’ for them to alter lives in

372 Garnett, supra note __ at 274.
373 Id. at 273.
375 Garnett, supra note __ at 273.
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.”

376 Lee, supra note ___ at 346.