

## ARTICLES

# THE DISAPPEARANCE OF LABOR UNIONS AND THE SOCIAL ENCYCLICALS OF POPE JOHN PAUL II AND BENEDICT XVI

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### I. INTRODUCTION: THE DECREASING RELEVANCE OF PRIVATE SECTOR LABOR UNIONS

The well-documented decline of labor unions in the private sector has advanced to the point where we must seriously consider the future of workers in a society where traditional labor unions no longer exist. When private sector labor union membership peaked in 1946, 37% of private sector employees were unionized.<sup>1</sup> By contrast, between 2009 and 2012, the percentage of unionized private sector employees fell from a mere 7.2% in 2009 to 6.6%.<sup>2</sup> Coinciding with the decline of unions, income inequality has dramatically increased. From 1966 to 2001, only the top 10% of workers saw their incomes grow at the same rate as the United States' productivity, resulting in a dramatic growth in inequality between the incomes of the top 10% and the remaining 90%.<sup>3</sup> Unions, hampered by weak labor laws, have done little to stop the growth in inequality, lending

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1. KATE BRONFENBRENNER ET. AL., ORGANIZING TO WIN: NEW RESEARCH ON UNION STRATEGIES 2 (1998).

2. *Union Members Summary*, BUREAU OF LABOR STATISTICS, Jan. 23, 2013, <http://www.bls.gov/news.release/union2nr0.htm>.

3. JACOB S. HACKER, THE GREAT RISK SHIFT: THE ASSAULT ON AMERICAN JOBS, FAMILIES, HEALTH CARE, AND RETIREMENT—AND HOW YOU CAN FIGHT BACK 64 (2006) (observing that despite gains in productivity only the top 10% of working people saw a proportional rise in income, resulting in widening economic inequality).

support to the belief in the increasing irrelevance of traditional labor unions.<sup>4</sup>

In this Article, I argue that even if traditional labor unions become irrelevant in this century, the fundamental human right of workers to form associations for their protection and to advance their legitimate interests remains not only relevant, but essential to a just economy. In this century it is probable, and I would argue necessary, that workers will continue to invent new and more effective organizations to advance their interests and defend themselves. Workers' organizations in the twenty-first century will be more varied and flexible than the labor unions of the nineteenth and twentieth centuries.<sup>5</sup> Surely workers' associations that we cannot yet imagine will emerge during this century due to economic, political, and technological changes that will require new forms of worker associations.<sup>6</sup> Even if, as seems likely, we are entering an era in which traditional labor unions will have little relevance to almost all private sector employees in America, this Article argues that the need for workers to form flexible and creative new organizations to defend their rights and advance their legitimate goals remains as important as ever for economic justice. To

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4. Numerous scholars have pointed to the weak protections and remedies provided by the National Labor Relations Act ("NLRA") and the decline of unions. *See, e.g.*, Stephen F. Befort, *Labor and Employment Laws at the Millenium: A Historical Review and Critical Assessment*, 43 B.C. L. REV. 351, 366–75 (2002) (noting deficiencies in the NLRA that impede union efforts to organize and effectively represent workers). Based on his extensive experience, former National Labor Relations Board ("NLRB") chair William B. Gould IV concluded that the NLRA is in "complete disarray." WILLIAM B. GOULD IV, *AGENDA FOR REFORM: THE FUTURE OF EMPLOYMENT RELATIONSHIPS AND THE LAW* 259 (1996).

5. The labor union varieties that emerge may include "members-only" organizations that represent only those workers who wish to be represented; associations based on race, gender, and ethnicity; craft-based organizations that harken back to the craft unions of the American Federation of Labor and represent workers at multiple workplaces; temporary associations organized to address specific problems; internet-based associations that represent employees in multiple regions of the country and across the world; workers' associations aligned with community activists and social justice organizations; associations representing the interests of both the employed and the unemployed; associations that move beyond the workplace to form coalitions with environmental organizations, consumer advocacy groups; and organizations representing the poor, the disabled, and immigrant workers.

6. There are many books that consider the future forms of worker associations and related social justice organizations. *See generally* BILL FLETCHER JR. AND FERNANDO GAPASIN, *SOLIDARITY DIVIDED: THE CRISIS IN ORGANIZED LABOR AND A NEW PATH TOWARD SOCIAL JUSTICE* (2008); VANESSA TAIT, *POOR WORKERS' UNIONS: REBUILDING LABOR FROM BELOW* (2005); GREGORY MANTSIOS, *A NEW LABOR MOVEMENT FOR THE NEW CENTURY* (1998); *BEYOND IDENTITY POLITICS: EMERGING SOCIAL JUSTICE MOVEMENTS IN COMMUNITIES OF COLOR* (John Anner ed., 1996); *THE LEGAL FUTURE OF EMPLOYEE REPRESENTATION* (Matthew Finkin ed., 1994).

defend this thesis, I will rely on the powerful insights of the social encyclicals of Pope John Paul II and Pope Benedict XVI, each of whom in the tradition of Catholic social thought, affirmed workers' fundamental right to associate to advance their own interests. The encyclicals of these two popes provide a powerful theology of work, which affirms the dignity of labor and the enduring importance of workers' human right to associate. Indeed, their encyclicals maintain that workers' associations are indispensable to economic justice. Although Catholic social thought's history of endorsing workers' rights dates back to the nineteenth century, this Article concentrates on Pope John Paul II because his views on the significance of work are the most profound of the papal encyclicals concerning work. In addition, I address the teachings of Pope John Paul II's successor, Pope Benedict XVI, not only because they strongly reaffirm the teachings of Pope John Paul II, but also because they are the Church's most recent teachings. Moreover, Pope Benedict XVI's teachings speak directly to the people of the early twenty-first century and, therefore, merit careful attention. But before the Article turns to the profound insights of these encyclicals, Part II will briefly discuss a parallel development in labor law scholarship: the tendency to view workers' rights as fundamental human rights, a development which dovetails nicely with the important truths of Pope John Paul II's and Pope Benedict XVI's encyclicals.

## II. WORKERS' RIGHTS AS HUMAN RIGHTS

Although the Church has held that the right of workers to form associations is a "natural right" since at least 1891, when the landmark papal encyclical, *Rerum Novarum* ("RN"), was issued,<sup>7</sup> it was not until recently that labor law scholars in America began to embrace workers' rights as human rights.<sup>8</sup> With the passage of the Taft-Hartley amendments to the Wagner Act in 1947, the focus of labor law has not been on protecting the human right to form associations; rather, Taft-Hartley rests on the assumption that the state should be neutral with regard to workers' decisions to form associations that act collectively to promote their

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7. POPE LEO XIII, *RERUM NOVARUM* [ON THE CONDITION OF LABOR] ¶ 51 (1891) (explaining that entering into private associations, such as workers' associations, is a natural right of man that must be protected by the state).

8. See James A. Gross, *A Long Overdue Beginning: The Promotion and Protection of Workers' Rights as Human Rights*, in *WORKERS' RIGHTS AS HUMAN RIGHTS* 1, 6 (James A. Gross, ed., 2003) (noting that discussion of labor law in the United States has given little attention to the concept of fundamental human rights).

interests.<sup>9</sup> However, the notion that a worker's right to associate is a human right was acknowledged in the United Nations' *Universal Declaration of Human Rights*.<sup>10</sup> Nonetheless, this notion has hardly been recognized in the United States, where labor law scholarship seems to be unaware of the teachings of Catholic social thought.<sup>11</sup> In recent years, however, secular labor law scholarship has caught up with the teachings of Catholic social thought and has emphasized the human rights aspect of workers' rights. For example, former NLRB chair, William B. Gould IV, observed in 2005 that "recognition of worker rights is now receiving attention in the human rights context in ways that it never did before."<sup>12</sup> Professor Janice Bellace has argued that freedom of association is the "core value" underlying the Wagner Act<sup>13</sup> and that workers' right to form, join, and assist organizations of their own choosing is essential to democracy.<sup>14</sup> Professor Bellace maintains that there now exists "an international consensus on fundamental human workplace rights," which includes the freedom of association and

9. *Id.* at 2 (arguing that Taft-Hartley incorporated the concept of government indifference to the rights set forth in the Wagner Act, thus undermining the belief that workers' rights are fundamental human rights which, as Pope Leo XIII wrote, the state must protect).

10. Universal Declaration of Human Rights, G.A. Res. 217 (III) A, U.N. Doc. A/RES/217(III) (Dec. 10, 1948) (stating that the right of workers to form unions is a human right and that the same logic, based on the right of association, would apply to all workers' organizations that serve as the means to defend and promote the interests of workers, including, but not limited to, traditional unions).

11. *See, e.g.*, POPE JOHN XXIII, *MATER ET MAGISTRA* ¶ 22 (1961) [hereinafter MM] (reaffirming the natural right of workers to form associations); SECOND VATICAN COUNCIL, *GAUDIUM ET SPES: PASTORAL CONSTITUTION ON THE CHURCH IN THE MODERN WORLD* ¶ 68 (1965) [hereinafter GS] (affirming that the right to form unions is a basic human right); PONTIFICAL COUNCIL FOR JUSTICE AND PEACE, *COMPENDIUM OF THE SOCIAL DOCTRINE OF THE CHURCH* ¶ 301 (2004) (stating that the right to assemble and form associations is a fundamental right based on the nature of the human person and the person's transcendent dignity). It should be noted that although some church documents focus on the right to form unions—the fundamental workers' associations when many of the documents were written—the underlying human right is broader than the right to form unions: it is the human right of worker association that Catholic social thought affirms.

12. William B. Gould IV, *Fundamental Rights at Work and the Law of Nations: An American Lawyer's Perspective*, 23 HOFSTRA LAB. & EMP. L.J. 1, 4 (2005).

13. The Wagner Act, as amended, is the basis of the NLRA, which governs private sector labor relations and applies to both unionized and nonunionized workplaces. 29 U.S.C. §§ 151–169 (2012). The NLRA, which became law in 1935, has been described as the "most pro-worker law ever enacted by the federal government." Michael Yates, *Should We Return to the Policy of the Wagner Act?* 4 U. PA. J. LAB. & EMP. L. 559, 559 (2002). The Wagner Act provided full legal protection for workers to form associations, such as, but not limited to, labor unions and also for strikes, picketing, and boycotting. *Id.* at 561. Professor Yates maintains that the Wagner Act, in addition to protecting specific worker activity, was also "a powerful civil rights law." *Id.*

14. Janice R. Bellace, *The Future of Employee Representation in America: Enabling Freedom of Association in the Workplace in Changing Times by Statutory Reform*, 5 U. PA. J. LAB. & EMP. L. 1, 28 (2002).

recognition of the right to collective bargaining.<sup>15</sup> Adding his voice to those who argue that workers' rights are human rights, Professor James Pope argues that freedom of association must be the new paradigm for American labor law.<sup>16</sup> Professor Pope agrees with the constitutional theory of early labor leaders that without freedom of association, "workers would be in a condition of involuntary servitude in violation of the Thirteenth Amendment [of the U.S. Constitution]."<sup>17</sup> Professor Pope points out that labor's constitutional theory, based on the Thirteenth Amendment, has found support in international law, which strongly emphasizes the importance of freedom of association.<sup>18</sup> Professor Pope powerfully expresses the significance of his views about labor rights, contending that "[n]ot until labor rights are recognized as fundamental freedoms, and not as mere means to the end of facilitating commerce, can they command the respect necessary to hold their own against corporate property rights."<sup>19</sup>

As Charles Morris has observed, in recent years there has emerged "an enlarging chorus of labor-oriented, human-rights advocates."<sup>20</sup> The essential message of this chorus is perhaps best summarized by Roy J. Adams: "[T]he right to collective bargaining means that working people have a fundamental right to co-determine their conditions of work and to select representatives of their own choosing in order to negotiate those terms on their behalf."<sup>21</sup>

Hence, while traditional labor unions might be receding into irrelevance, the right of workers to form associations to defend their rights and promote their interests remains vibrant and relevant. This right will persist so long as workers must act collectively to counter the power of their employers. The fundamental insight of the Wagner Act—that

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15. *Id.* at 28–29.

16. Jim Pope, *Next Wave Organizing and the Shift to a New Paradigm of Labor Law*, 50 N.Y.L. SCH. L. REV. 515, 535 (2006) (arguing that the new paradigm of labor law is freedom of association).

17. *Id.* at 549 (arguing that the individual worker is usually helpless to exercise actual liberty of contract and is in a position of involuntary servitude unless the worker can associate with other workers to deal with employers on a more equal basis).

18. *Id.* at 555 (noting, for example, the International Labor Organization's holdings that certain aspects of U.S. labor law, such as the ban on secondary boycotts and employers' privilege to permanently replace economic strikers, violate freedom of association).

19. *Id.* at 558.

20. CHARLES J. MORRIS, *THE BLUE EAGLE AT WORK: RECLAIMING DEMOCRATIC RIGHTS AT THE AMERICAN WORKPLACE* 142 (2005).

21. Roy J. Adams, *Choice of Voice? Rethinking American Labor Policy in Light of the International Human Rights Consensus*, 5 EMP. RTS. & EMP. POL'Y J. 65, 71 (1999).

individual employees are usually helpless to deal with the giant corporations that employ them—remains at least as true today as it was in 1935.<sup>22</sup> In light of the growing consensus that workers' rights are human rights, Catholic social thought, which has recognized this notion from the nineteenth century through the present, provides commentary relevant to non-Catholic labor law scholars. Over a period of more than 120 years, Catholic social thought has developed a profound understanding of the meaning of work, the dignity of workers, and the continuing relevance of workers' associations. Hence, Catholic social thought provides important insights for the protection of workers' rights in the twenty-first century. Pope John Paul II's teachings represent the culmination of Catholic social thought on the meaning of work—teachings that Pope Benedict XVI has reaffirmed and applied to our century. Hence, the remainder of this Article will discuss their important teachings concerning workers' right of association and address some specific work-related issues. The encyclicals of these two popes provide important insights into the continuing relevance of workers' rights, even in an age when labor unions in the private sector appear to be fading away.

### III. LABOREM EXERCENS TO CENTESIMUS ANNUS

No pope has written more profoundly about workers and the meaning of work than Pope John Paul II.<sup>23</sup> As a young man during the Nazi occupation of Poland, he performed heavy labor at the Solvay chemical plant, performing such tasks as shoveling limestone into small railroad cars at the bottom of the pit.<sup>24</sup> In his biography of Pope John Paul II, George Weigel describes the hard and dangerous work. Workers had to fill tramcars with limestone, which had to be broken up and shoveled all day

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22. See 29 U.S.C. § 151 (2012) (Wagner Act's findings of Congress that the disparity of power between corporations and individual employees requires the federal government to encourage full freedom of association and collective bargaining).

23. Pope John Paul II's life provided him with experiences that would help him to understand work not only in its spiritual aspects, but also in its earthly physical aspects. See JOHN PAUL II, GIFT AND MYSTERY 20–22 (1991). It was during these years of the Nazi occupation of Poland that Pope John Paul II decided to answer the call to the priesthood. The experience of working with his hands at heavy labor had such a profound impact on him that he referred to the quarry and purification facility as his first seminary. See *id.* The Holy Father considered himself to be a “worker-seminarian.” *Id.* Many years later he would write: “Having worked with my hands, I knew quite well the meaning of physical labor. Every day I had been with people who did heavy work. I came to know their living situations, their families, their interests, their human worth, and their dignity.” *Id.* at 21–22. The Holy Father never forgot these workers’ “deep but quiet religiosity and their great wisdom about life.” *Id.* at 22.

24. GEORGE WEIGEL, WITNESS TO HOPE: THE BIOGRAPHY OF POPE JOHN PAUL II 55–56 (1999).

with only one break to consume “tough bread with jam and ersatz coffee.”<sup>25</sup> Later, at the Solvay chemical plant in Boreck Falecki, the future pope’s duties included “lugging buckets of lime hanging from a wooden yoke over his shoulders.”<sup>26</sup> Weigel relates a quote by Stanislaw Rybicki, a friend of the future pope at this time of his life: “‘He lived our problems’ . . . ‘He knew life from this side—the side of people who really have to work for their living.’”<sup>27</sup>

During his pontificate, Pope John Paul II became an ally and supporter of the Polish labor union, Solidarity, an organization of workers that would eventually play a key role in the downfall of communism in Eastern Europe.<sup>28</sup> In 1981, with the Polish crisis pitting Solidarity against the communist regime at its height, Pope John Paul II, on the ninetieth anniversary of RN, published *Laborem Exercens* (“LE”), Catholic social thought’s most profound and important meditation on the meaning of work and the rights of workers.<sup>29</sup> Because each section of LE contains powerful insights into the meaning of work and the rights of workers, it is impossible to summarize all of LE’s teachings. Thus, for purposes of brevity, this Article will focus on the ideas that are most important to the continuing and enduring relevance of workers’ associations.

An important key to understanding this difficult encyclical is Pope John Paul II’s philosophy of Christian personalism. Gregory Baum’s commentary on LE describes the core ideas of Christian personalism. Personalism holds that even though people must cooperate to build society, they nonetheless remain persons, each of whom has transcendent value.<sup>30</sup> Personalism is critical of both capitalist individualism and Marxist collectivism. Against individualism, personalism stresses the essentially

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25. *Id.* at 56.

26. *Id.*

27. *Id.* at 107.

28. For a discussion of Pope John Paul II’s relationship with Solidarity, see WEIGEL, *supra* note 24, at 399–411, 459–64.

29. *Laborem Exercens* in Latin is translated as “‘on human work.’” *Id.* at 419–20 (“In *Laborem Exercens*, John Paul II took the discussion of ‘the social question’ in a more humanistic direction than his papal predecessors, focusing on the nature of work and the dignity of workers. In this respect, *Laborem Exercens* is the most tightly focused social encyclical in the history of modern Catholic social doctrine. It is also the most personal, as John Paul brought his own distinctive experience as a manual laborer to bear in analyzing the moral meaning of human labor.”).

30. GREGORY BAUM, *THE PRIORITY OF LABOR: A COMMENTARY ON LABOREM EXERCENS: ENCYCLICAL LETTER OF POPE JOHN PAUL II 4* (1982).

social nature of each person, and against collectivism, personalism stresses the transcendent importance of each person.<sup>31</sup>

Drawing on the philosophy of Christian personalism, Pope John Paul II declares: “Man has to subdue the earth and dominate it, because as the “image of God” he is a person, that is to say, a subjective being capable of deciding about himself and with a tendency to self-realization. As a person, man is therefore the subject of work.”<sup>32</sup> It is the subjective element—the fact that a person performs work—rather than the objective element—that is, the type of work performed—that confers dignity on all who labor. Pope John Paul II explains that the value of human work does not depend on the work being done but on the subjective element, the fact that the person doing it is a person.<sup>33</sup> Therefore, Pope John Paul II continues, we can conclude that work is “‘for man’ and not man ‘for work.’”<sup>34</sup> This line of reasoning leads Pope John Paul II to a quite radical conclusion: all work, no matter how menial or alienating is of transcendent importance because the subject of work is the human person.<sup>35</sup>

The personalist approach to work provides a strong argument for the paramount importance of workers’ rights, whether the worker is engaged in intellectual work or physically demanding unskilled labor.<sup>36</sup> It is always the person who is the purpose of work; consequently, all work is endowed with

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31. *Id.*

32. Pope John Paul II, *Laborem Exercens*, VATICAN: THE HOLY SEE, ¶ 6 (1981), [http://www.vatican.va/holy\\_father/john\\_paul\\_ii/encyclicals/documents/hf\\_jp-ii\\_enc\\_14091981\\_laborem-exercens\\_en.html](http://www.vatican.va/holy_father/john_paul_ii/encyclicals/documents/hf_jp-ii_enc_14091981_laborem-exercens_en.html) [hereinafter LE].

33. *Id.* See also Catechism of the Catholic Church ¶ 2428 (“The primordial value of labor stems from man himself, its author and its beneficiary.”) [hereinafter Catechism].

34. LE, *supra* note 32, ¶ 6. The Catechism of the Catholic Church cites this language with approval: “Work is for man, not man for work.” Catechism, *supra* note 33, ¶ 2428.

35. Pope John Paul II’s words are powerful and worth repeating at length:

Given this way of understanding things and presupposing that different sorts of work that people do can have greater or lesser objective value, let us try nevertheless to show that each sort is judged above all by *the measure of the dignity* of the subject of work, that is to say, the person, *the individual who carries it out*. On the other hand, independent of the work that every man does, and presupposing that this work constitutes a purpose—at times a very demanding one—of his activity, this purpose does not possess a definitive meaning in itself. In fact, in the final analysis, it is always man who is the *purpose of the work*, whatever work it is that is done by man—even if the common scale of values rates it as the merest “service,” as the most monotonous, even the most alienating work.

LE, *supra* note 32, ¶ 6.

36. See *id.*

transcendent meaning.<sup>37</sup> And, as will be discussed below, labor, the activity of the human person, is prior to and superior to capital, which is the product of labor and which exists to serve the person.<sup>38</sup> The importance of this truth is at the heart of Catholic social thought's contribution to understanding the proper relation of labor to capital. Pope John Paul II emphasizes that the priority of labor over capital has long been the Church's teaching and "the primacy of man in the production process," man's superiority to capital is a fundamental truth because "man alone is a person."<sup>39</sup>

Man's primacy delineates the proper relationship between private property and workers' rights.<sup>40</sup> In paragraph fourteen of LE, Pope John Paul II clearly differentiates Catholic social thought's understanding of private property from the collectivism of socialism and the exaggerated significance of private property under liberal capitalism.<sup>41</sup> Pope John Paul II observes that the Church has always held that the right to private property is morally justified only to the extent that it serves the fundamental principle that the goods of the earth are meant for everyone.<sup>42</sup>

Furthermore, Catholic social thought has never understood the right of ownership of private property "in a way that could constitute grounds for social conflict in labour."<sup>43</sup> On the contrary, property is acquired through work in order to serve work.<sup>44</sup> This teaching has special significance for the ownership of the "means of production" in that such ownership can never be used in opposition to labor or to exploit labor. On the contrary, "the only legitimate title to their possession . . . is that they should serve labour," and that by serving labor they further a basic teaching of the Church, namely that the goods of the earth are meant for the common use of all.<sup>45</sup>

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37. *Id.* Cf. PONTIFICAL COUNCIL FOR JUSTICE AND PEACE, *supra* note 11, ¶ 277 (stating that labor has "an intrinsic priority over capital").

38. LE, *supra* note 32, ¶ 6.

39. *Id.* ¶ 12.

40. *See id.*

41. *Id.* ¶ 14.

42. *Id.* ("Christian tradition has never upheld this right [to own property] as absolute and untouchable. On the contrary, it has always understood this right within the broader context of the right common to all to use the goods of the whole of creation; *the right to private property is subordinated to the right to common use*, to the fact that goods are meant for everyone.").

43. *Id.*

44. *Id.*

45. *Id.* (emphasis in original). *See also* PONTIFICAL COUNCIL FOR JUSTICE AND PEACE, *supra* note 11, ¶ 177 ("[T]he right to private property is subordinated to the right of common use, to the fact that goods are meant for everyone."); Catechism, *supra* note 33, ¶ 2404 (stating that the ownership of

Since ownership of the means of production is legitimate only insofar as it serves labor, workers themselves should have some share of ownership.<sup>46</sup> Thus, experiments with joint ownership of the means of production, worker participation in management, and profit-sharing should be encouraged.<sup>47</sup> Whatever the merits of these experiments, Pope John Paul II writes, “it is clear that recognition of the proper position of labour and the worker in the production process demands various adaptations in the sphere of the right to ownership of the means of production.”<sup>48</sup> Indeed, every worker “is fully entitled to consider himself a part-owner of the great workbench at which he is working with everyone else.”<sup>49</sup> Pope John Paul II conceives of the workplace as a living community with owners, managers, and workers collaborating with each other in subordination to the common good of society.<sup>50</sup> The workplace as a living community would thrive when the workers comprising the community “would be looked upon and treated as persons and encouraged to take an active part in the life of the body.”<sup>51</sup>

Creating institutions and structures to enable workers to take on active roles in the life of an enterprise is the key to overcoming worker alienation. In her commentary on LE, Patricia A. Lamoureux observes that in Pope John Paul II’s view labor becomes alienating when workers are not permitted to participate in the work of the enterprise.<sup>52</sup> To overcome alienation at work, people must have structures that allow them to participate in the decisions that influence their daily lives. Lamoureux emphasizes that these social structures must meet one fundamental criterion: Do they create the conditions for the development of participation, or do they obstruct participation “and destroy the basic fabric

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property is legitimate only to the extent that it makes property productive and confers its benefits on others).

46. See LE, *supra* note 32, ¶ 14. Gregory Baum emphasizes the crucial importance of worker ownership, stating that “justice in society can be established only when workers become co-owners and co-policymakers in their industries.” BAUM, *supra* note 30, at 16.

47. LE, *supra* note 32, ¶ 14.

48. *Id.*

49. *Id.*

50. *Id.*

51. *Id.* In agreement with Pope John Paul II’s teachings, the Pontifical Council for Justice and Peace emphasizes not only co-ownership of enterprises but also the right to participate in decision-making at the workplace. COMPENDIUM, *supra* note 11, ¶ 281 (“The new ways that work is organized, where knowledge is of greater account than mere ownership of the means of production, concretely shows that work, because of its subjective character, entails the right to participate.”).

52. Patricia A. Lamoureux, *Commentary on Laborem Exercens*, in MODERN CATHOLIC SOCIAL TEACHING: COMMENTARIES AND INTERPRETATIONS 389, 396 (Kenneth B. Hines ed., 2005).

of human existence and activity that must always be realized in common with others?”<sup>53</sup>

This fundamental truth—that the “basic fabric of human existence and activity . . . must always be realized in common with others”—underlies one of the central themes of LE: worker solidarity.<sup>54</sup> LE emphasizes the worker as both a person of infinite worth and as a brother or sister figure to fellow workers.<sup>55</sup> Both of these aspects must be acknowledged, and both aspects form the basis for fundamental workers’ rights. However, these two aspects of the worker are not separate and independent of each other; rather, they interact in the minds and hearts of working people. The worker is called to work as a person participating in the creative work of God, but he or she is also called as a person working with other persons who are participating in God’s creative activity.<sup>56</sup> It is through this solidarity with others that workers can oppose working conditions that undermine the inherent dignity of the worker. Discussing the importance of solidarity in the industrial age, Pope John Paul II observes that worker solidarity was necessary to address the plight of workers engaged in monotonous, depersonalizing work in industrial plants. Worker solidarity in the industrial age was vitally important as a “reaction against the *degradation* of man as the subject of work, and against the unheard of accompanying exploitation in the field of wages, working conditions, and social security for the worker.”<sup>57</sup>

Although Pope John Paul II was addressing solidarity in the industrial age, LE makes it clear that solidarity is crucial in our own post-industrial age and all times and places where the inherent dignity of the worker is not respected. In our own time there is a need for new associations promoting

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53. *Id.*

54. *Id.* at 398–99 (emphasizing the centrality of solidarity in John Paul’s thinking “as the primary authentic attitude toward society that signifies a constant readiness to accept one’s share in the community and to serve the common good. It is an attitude of a community in which the common good properly initiates participation, and participation in turn properly serves the common good, fosters it, and furthers its realization”).

55. *Id.*

56. LE, *supra* note 32, ¶ 25 (“Awareness that man’s work is a participation in God’s activity ought to permeate, as the Council teaches, even ‘*the most ordinary everyday activities.*’” (quoting SECOND VATICAN COUNCIL, *supra* note 11, ¶ 34)).

57. *Id.* ¶ 8. Pope John Paul II’s thoughts on solidarity echo Pope Leo XIII’s observations in RN, that the brutal working conditions of the industrial age illustrated the importance of the “natural right” of workers to form associations for self-protection. RN, *supra* note 7, ¶ 38 (teaching that workers’ right to form associations is “the natural right of man”). Moreover, this “natural right” is one that the State is obligated to protect. *Id.*

solidarity because solidarity is now crucial not just among workers in a single workplace or a single country, but also between countries. Pope John Paul II writes that this international solidarity “must be present whenever it is called for by the social degrading of the subject of work, by exploitation of the workers, and by the growing areas of poverty and even hunger.”<sup>58</sup>

Furthermore, in a post-industrial age, solidarity must reach across class lines, particularly to those white-collar workers whose work has been degraded by “proleterianization.” Pope John Paul II observes that movements of solidarity can be necessary for professional workers whose work has undergone “proleterianization,” a degrading of work that increasingly the “intelligentsia” is experiencing with “an ever increasing number of people with degrees or diplomas in the fields of their cultural preparation . . . accompanied by a drop in demand for their labor.”<sup>59</sup>

The ongoing need to address the degradation of work and the failure to respect the dignity of the human person as a worker provide a strong foundation for the continuing and enduring relevance of workers’ associations.<sup>60</sup> At a time when workers’ associations primarily were traditional labor unions, Pope John Paul II stated that these organizations were “an indispensable *element of social life*,” as would be all associations that protect and advance the rights of workers.<sup>61</sup> However, LE makes it

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58. LE, *supra* note 32, ¶ 8. See also PONTIFICAL COUNCIL FOR JUSTICE AND PEACE, *supra* note 11, ¶ 157 (stressing that the “*field of human rights has expanded to include the rights of peoples and nations*”) (emphasis in original). This international solidarity among workers will at times require workers in economically advanced countries to subordinate their interests in solidarity with workers in less developed nations. Cf. Lamoureux, *supra* note 52, at 407. Hence, achieving international solidarity will be far from easy; yet, Pope John Paul II insists on the necessity of international solidarity as part of the moral obligation to stand together will all workers everywhere who work under unjust conditions. LE, *supra* note 32, ¶ 8 (“The Church is firmly committed to this cause [international solidarity] for she considers it her mission, her service, a proof of her fidelity to Christ, so that she can truly be the “church of the poor.”). The Church has long taught of the moral imperative that rich nations must form bonds of solidarity with poorer nations. See Catechism, *supra* note 33, ¶ 2428. Workers associations have a vital role to play in international solidarity. See *id.*

59. LE, *supra* note 32, ¶ 8. Gregory Baum elaborates that the Pope perceives the necessity that blue collar workers unite in solidarity, but that many persons with highly specialized degrees who do not view themselves as “working class” are finding themselves working under unjust conditions; these workers must also unite in solidarity to preserve the dignity of work, whether the work is performed by “blue collar” or “white collar” workers. BAUM, *supra* note 30, at 29.

60. See LE, *supra* note 32, ¶ 20. The enduring relevance of unions is not because of the inevitability of class conflict, which the Church rejects, but because of the never-ending human struggle for justice, a struggle that makes workers’ associations an indispensable part of human society. See BAUM, *supra* note 30, at 48 (discussing Pope John Paul II’s belief in the enduring work that workers’ associations must perform in the struggle against injustice).

61. LE, *supra* note 32, ¶ 20; BAUM, *supra* note 30, at 48.

clear that workers' associations, such as unions, are not merely tools to advance the selfish interests of their members.<sup>62</sup> As Pope John Paul II suggests, at the most fundamental level, workers' associations are moral actors in society. Catholic social thought does not view workers' associations, such as unions, as a "mouthpiece for a class struggle which invariably governs social life. While workers' associations are indeed involved in struggles, the struggles are for social justice, "for the rights of the working people in accordance with their individual profession."<sup>63</sup>

Therefore, instead of viewing workers' associations as merely bargaining agents for their members, LE depicts workers' associations as moral actors that are necessary in the pursuit of social justice.<sup>64</sup> Hence, LE portrays workers' associations—including traditional labor unions—as deeply moral institutions and not as mere representatives of special interests. Pope John Paul II cautions unions not to develop a class egoism but instead to aim at correcting everything in the ownership and management of the means of production that does not promote the common good, the ultimate purpose of workers' associations.<sup>65</sup> Understood rightly as moral actors, the "specific role [of workers' associations] . . . is to secure the just rights of workers within the framework of the common good of the whole society."<sup>66</sup>

The last four sections of LE comprise a beautiful and profound meditation on the "spirituality of work."<sup>67</sup> In these sections, Pope John Paul II "creates a 'gospel of work,' giving human toil a theological significance and a vital role in the self-realization of the human person."<sup>68</sup> These final sections take Catholic social thought to a higher and more meaningful level than that suggested, but never fully developed, by earlier papal encyclicals.

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62. LE, *supra* note 32, ¶ 20.

63. LE, *supra* note 32, ¶ 20. See also PONTIFICAL COUNCIL FOR JUSTICE AND PEACE, *supra* note 11, ¶ 306 (stressing that ultimately workers associations exist to promote social justice and to stand up for the rights of all workers in all professions).

64. LE, *supra* note 32, ¶ 20.

65. *Id.* See also Lamoureux, *supra* note 52, at 402 (emphasizing that the ethical vocation of workers' associations "is to move beyond the struggle for improving their own self-interest and to promote solidarity and social justice").

66. LE, *supra* note 32, ¶ 20. See also PONTIFICAL COUNCIL FOR JUSTICE AND PEACE, *supra* note 11, ¶ 305 (pointing out that workers' associations "are a positive influence for social order and solidarity, and are therefore *an indispensable element of social life*").

67. LE, *supra* note 32, ¶¶ 24–27.

68. Kevin J. Doyle, *The Shifting Legal Landscape of Contingent Employment A Proposal to Reform Work*, 33 SETON HALL L. REV. 641, 657 (2003) (discussing Pope John Paul II's conviction that work is more than just a necessary evil because of its deep theological significance).

Moreover, Pope John Paul II's discussion of the ultimate meaning of work has important implications for viewing workers' rights as fundamental human rights.<sup>69</sup>

One key to Pope John Paul II's gospel of work is his observation that work is always a personal action—an “actus personae”—meaning that the worker's entire person, body and spirit, participates in work, whether that work is manual or intellectual.<sup>70</sup> This involvement of the whole person is important because God's message of salvation is likewise addressed to the whole person.<sup>71</sup> This involvement is crucial to the message of LE. Pope John Paul II writes that the true dignity of work involves “an inner effort of the spirit, guided by faith, hope, and charity” and through one's work the working person's labor achieves the “meaning which it has in the eyes of God and by means of which work enters into the salvation process.”<sup>72</sup> He further writes that the Church has a duty to form “a spirituality of work” which will enable workers to see their work as participation in God's “salvific plan for man and the world” and to deepen the working person's “friendship with Christ in their lives by accepting, through faith, a living participation” in Christ's “threefold mission as Priest, Prophet, and King.”<sup>73</sup>

A second element of Pope John Paul II's spirituality of work is that human work shares in the activity of the Creator. One of the fundamental truths of the Church's teachings is that man is created in the image of God and through his work shares in the creative activity of God.<sup>74</sup> Pope John Paul II supports and expands this teaching through his thoughts on the book of Genesis, observing that the first chapter of the book of Genesis is, in a sense, the first “gospel of work.” That is, the first chapter of Genesis reveals that through work man imitates the Creator, and it is through this

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69. See, e.g., Lamoureux, *supra* note 52, at 408 (stating that Pope John Paul II's “gospel of work” “implies that workers are to be viewed as not merely as employees or resources, but as agents who should be fully respected as partners in a cooperative enterprise”). Professor Lamoureux continues: “With this transformative vision of labor, the encyclical [LE] reflects a basic assumption of liberation theology that the ‘ontological vocation’ of each human person is to be a subject who acts upon and transforms the world.” *Id.*

70. LE, *supra* note 32, ¶ 24. See also Doyle, *supra* note 68, at 658 (arguing that emphasis on the person as worker is of supreme importance because it establishes “man as the . . . measuring stick against which any labor theory is measured”).

71. LE, *supra* note 32, ¶ 24.

72. *Id.*

73. *Id.*

74. *Id.*

imitation of the Creator that one finds the true dignity of all work.<sup>75</sup> Pope John Paul II goes on to describe some of the implications of this “gospel of work.” The importance of Pope John Paul II’s conviction that man’s work is participation in God’s creative activity is that work permits man to imitate the action of his Creator. Pope John Paul II further notes that the Second Vatican Council taught that even “the most ordinary of everyday activities” is a participation in God’s work.<sup>76</sup>

A third element of Pope John Paul II’s spirituality of work is the enduring significance of the fact that Jesus Christ was a worker.<sup>77</sup> He points out that Jesus belonged to the “working world” and had appreciation and respect for human work.<sup>78</sup> He also observes that Jesus’s parables contain many references to work and workers, including shepherds, farmers, pharmacists, doctors, craftsmen, blacksmiths, potters, scholars, sailors, builders, musicians, and fishermen.<sup>79</sup> Returning to the teachings of the Second Vatican Council, Pope John Paul II writes that work proceeds from man and is ordered to man because the working person “not only alters things and society, he develops himself as well.”<sup>80</sup> In this process, the worker goes “outside of himself and beyond himself” such that his life is in harmony with the divine plan that his work should contribute to the common good of the human race.<sup>81</sup> In this way, the human person pursues his ultimate vocation and fulfills it.<sup>82</sup>

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75. *Id.* at ¶ 25. *See also* Doyle, *supra* note 68, at 658.

76. *Id.* at ¶ 24 (quoting GS, *supra* note 11, ¶ 34). *See also* Lamoureux, *supra* note 52, at 403 (stressing the Church’s duty “to foster a spirituality of work so that through their labor people may come closer to God, participate in God’s salvific plan for humankind and the world, and deepen their friendship with Christ”).

77. LE, *supra* note 32, ¶ 26. *See also* Lamoureux, *supra* note 52, at 403 (observing that Pope John Paul II’s spirituality of work depends on the significance of the fact that “labor draws from the experience of Christ, who was a working class man”).

78. LE, *supra* note 32, ¶ 26.

79. *Id.* Lamoureux observes that Pope John Paul II knew that work could often be distasteful, even painful, but believed that labor “is a difficult good” which can “provide fulfillment and contribute to personal, familial, and human good.” Lamoureux, *supra* note 52, at 404.

80. LE, *supra* note 32, ¶ 26 (quoting GS, *supra* note 11, ¶ 35).

81. *Id.* Gregory Baum elaborates on John Paul’s insight into the dignity of work and the working subject: “Human beings alone freely engage every day to build up his existence, to produce his world, to create his history. It is in this labor that every man reveals his special dignity.” BAUM, *supra* note 30, at 9.

82. LE, *supra* note 32, ¶ 26. *See also* PONTIFICAL COUNCIL FOR JUSTICE AND PEACE, *supra* note 11, ¶ 101 (“Besides being a decisive paradigm for social life, work has all the dignity of being a context in which the person’s natural and supernatural vocation must find fulfillment.”).

The final element of Pope John Paul II's spirituality of work elevates human work to the most profound theological significance. He observes that "[a]ll work, whether manual or intellectual, is inevitably linked with toil."<sup>83</sup> In man's fallen state, work is associated with sweat, toil, and ultimately, the inevitability of death.<sup>84</sup> However, this is not the last word on the significance of work, for through his death and resurrection, Jesus Christ redeems humanity, including work. Pope John Paul II observes that work necessarily involves sweat and toil, but work also presents "the Christian and everyone who is called to follow Christ with the possibility of sharing lovingly in the work that Christ came to do."<sup>85</sup> Ultimately, the worker "shows himself a true disciple of the Christ by carrying the cross in his turn every day in the activity that he is called upon to perform."<sup>86</sup> Hence, the ultimate end of work is communion with God as revealed in the person of Jesus Christ. By contrast, modern society tends to view work as an end in itself, "subordinating other concerns to it, and demanding that we order our priorities to it."<sup>87</sup> Catholic social thought rejects this attitude toward work and affirms that work is always a means to an end, which is God.<sup>88</sup>

Pope John Paul II's spirituality of work has very important implications for workers' rights because it provides those rights with a powerful theological justification. LE offers a view of human work that transcends the sterile, often dehumanizing, view of work found in both socialist and capitalist theory.<sup>89</sup> In contrast with orthodox Marxism, Catholic social thought rejects the determinism of dialectical materialism

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83. LE, *supra* note 32, ¶ 27. Neither Pope John Paul II nor the Church's social teaching ignores the reality that work involves toil, hardship, and even suffering. However, it is through the toil of human existence that the person finds transcendent meaning. Catechism, *supra* note 33, ¶ 2427 ("By enduring the hardship of work in union with Jesus, the carpenter of Nazareth and the one crucified on Calvary, man collaborates in a certain fashion with the Son of God in his redemptive work. He shows himself to be a disciple of Christ by carrying the cross, daily, in the work he is called to accomplish. Work can be a means of sanctification and a way of animating earthly realities with the Spirit of Christ.").

84. LE, *supra* note 32, ¶ 27.

85. *Id.* See also Lamoureux, *supra* note 52, at 404 ("Seen through the perspective of faith, work achieves its fullest meaning as part of the paschal mystery. The difficulties of labor are a way of following and sharing in the salvific and redeeming cross of Christ.").

86. LE, *supra* note 32, ¶ 27. The Church has long taught that following Christ by "carrying the cross" in his every day work, the worker participates in the redemptive work of Christ. See Catechism, *supra* note 33, ¶ 2460 ("Work united to Christ can be redemptive.").

87. Doyle, *supra* note 68, at 648-49.

88. *Id.*

89. See *id.*

and emphasizes the primacy of ethics in economic decision-making.<sup>90</sup> In orthodox Marxist thinking, such appeals to ethics represent an unscientific sentimentality; for Catholic social thought, economic issues are moral issues.<sup>91</sup> Catholic social thought similarly rejects the excessively individualistic understanding of the human person that is characteristic of capitalism or economic liberalism. In a capitalistic system, the human person is viewed as *homo economicus*, one who “behaves in a determined and predictable manner in accordance with a cost-benefit calculus.”<sup>92</sup> Although this conception does not deny the existence of spiritual matters, such matters are regarded as sentiment, with no relevance for the daily behavior of human beings.<sup>93</sup>

The Catechism of the Catholic Church succinctly rejects the underlying assumptions of both socialism and certain forms of capitalism. The Church rejects the atheistic ideology underlying many socialist theories, and moreover rejects central planning because it weakens the social bonds that hold society together and give work its meaning.<sup>94</sup> The Church also rejects the exaggerated individualism that characterizes certain capitalist views of economic life.<sup>95</sup> In addition, the Church recognizes the importance of government intervention into the economy because “there are many needs which cannot be satisfied by the market.”<sup>96</sup>

Catholic social thought places human labor, and consequently, workers’ rights, into the context of Christ’s mission on earth and the relationship of each person’s work to that mission. By rejecting the assumption economic systems operate according to amoral laws, Catholic social thought rises above a sterile conception of the person as subordinate to ideology and presents a richer, more humanistic vision of the worker cooperating with God to build our world. This moral-theological

90. BAUM, *supra* note 30, at 30–31.

91. *Id.* See also U.S. CONFERENCE OF CATHOLIC BISHOPS, ECONOMIC JUSTICE FOR ALL: PASTORAL LETTER ON CATHOLIC SOCIAL TEACHING AND U.S. ECONOMY ¶¶ 12–22 (1986) (setting forth the Church’s view of the essentially moral nature of economic life); Catechism, *supra* note 33, ¶ 2426 (“Economic activity, conducted according to its own proper methods, is to be exercised within the limits of the moral order, in keeping with social justice so as to correspond to God’s plan for man.”).

92. BAUM, *supra* note 30, at 31–32.

93. *Id.* at 32.

94. *Id.*

95. *Id.* See also U.S. CONFERENCE OF CATHOLIC BISHOPS, *supra* note 91, ¶ 14 (emphasizing that “[h]uman dignity can be realized and protected only in community”).

96. Catechism, *supra* note 33, ¶ 2425 (quoting CENTESIMUS ANNUS, ON THE HUNDRETH ANNIVERSARY OF REERUM NOVARUM, ¶ 34 (1991)).

understanding of work, which informs all of Catholic social thought teachings on work, provides a strong basis for insisting that workers' rights, including the right to form associations, are fundamental human rights.<sup>97</sup>

Using this strong moral-theological basis for workers' rights, Pope John Paul II derives a number of specific rights.<sup>98</sup> Paragraphs sixteen to twenty-three of LE address specific rights of workers, grounded in Catholic social thought.<sup>99</sup> Pope John Paul II emphasizes that workers' rights must be the highest priority not only of individual states but of international bodies as well. He writes that the world's economic policy and "the systems of international relationships that derive from it" must be judged not on the ability to generate maximum profits but on "respect for the objective rights of the worker—every kind of worker: manual or intellectual, industrial, agricultural" and so forth.<sup>100</sup>

One of the specific rights that LE discusses is workers' right to form associations "for the purpose of defending the vital interests of those employed in the various professions."<sup>101</sup> Workers form associations like unions to defend "the existential interests of the workers in all sectors in which their rights are concerned" and these associations "are an

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97. Doyle, *supra* note 68, at 655 (discussing Catholic social thought's position that human beings, including all working people, have a "natural right" to form associations).

98. Although Catholic social thought's task is not to develop a political agenda, it is nonetheless important for Catholic social thought to go beyond generalities to specific ideas. As the National Conference of Catholic Bishops emphasized, Catholic social thought cannot be merely "left at the level of appealing generalities." *Economic Justice for All: Pastoral Letter on Catholic Social Teaching and the U.S. Economy*, NATIONAL CONFERENCE OF CATHOLIC BISHOPS ¶ 20 (1986), [http://www.usccb.org/upload/economic\\_justice\\_for\\_all.pdf](http://www.usccb.org/upload/economic_justice_for_all.pdf). Happily, neither Catholic social thought generally nor LE specifically is content merely to propose appealing generalities. From the days of RN to the present, the Church has always emphasized the practical consequences of its broad social teachings. However, the Church stresses that, while the general theological and moral truths that form the foundation of Catholic social thought do not change, Catholic social thought must be sensitive to changing circumstances in the world with the passage of time, and, therefore, a constant updating of Catholic social thought is necessary so that it can "interpret the new signs of the times." PONTIFICAL COUNCIL FOR JUSTICE AND PEACE, *supra* note 11, ¶ 9. Hence, when one attempts to apply the enduring truths of Catholic social thought to the specific circumstances of twenty-first century America, one must do so with great care and humility, but with enough specificity so that the Church's teachings are more forceful than "appealing generalities." See *Economic Justice for All, supra*, ¶ 20.

99. LE, *supra* note 32, ¶¶ 11–23.

100. *Id.* ¶ 17. The National Conference of Catholic Bishops strongly agrees: "Every economic decision and institution must be judged in light of whether it protects or undermines the dignity of the human person." *Economic Justice for All, supra* note 98, ¶ 13.

101. LE, *supra* note 32, ¶ 20.

indispensable element of social life.”<sup>102</sup> Pope John Paul II states that workers from every profession, whether blue collar, white collar, agricultural workers, or even employers themselves need associations to protect their rights.<sup>103</sup>

Pope John Paul II’s statement that representatives of “every profession” can benefit from workers’ associations dispels any notion that LE is relevant only to the industrial era, and not relevant in the post-industrial United States.<sup>104</sup> LE teaches that workers’ associations remain every bit as indispensable in our post-industrial economy as they were for blue-collar workers in the nineteenth and twentieth centuries.<sup>105</sup> However, LE further stresses that workers’ associations are more than “mouthpiece[s] for a class struggle that inevitably governs social life.”<sup>106</sup> The highest calling for workers’ associations is to fight for social justice and ultimately for human solidarity.<sup>107</sup> Solidarity is a foundational principle of Catholic social thought, and it is this social unity that transcends simple self-interest that makes human society possible.<sup>108</sup>

The Compendium of the Social Doctrine of the Church eloquently explains the central importance of solidarity. It explains that solidarity is not a “feeling of vague compassion or shallow distress” at the misfortunes of others; rather, “it is a *firm and persevering determination* to commit oneself to the ‘*common good*.’”<sup>109</sup> This is an important key to understanding all of Catholic social thought, as it teaches that the good of all persons is the responsibility of all of society because “we are *all* really responsible for *all*.”<sup>110</sup> Therefore, the Compendium states that solidarity is the fundamental social virtue, one which is vital for social justice and the promotion of the common good. It is the virtue that demands of the

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102. *Id.*; PONTIFICAL COUNCIL FOR JUSTICE AND PEACE, *supra* note 11, at ¶ 305 (characterizing workers’ organizations, such as unions, as “indispensable”).

103. *Id.*

104. *See id.*

105. *See id.*

106. *Id.*

107. *Id.* (“[I]t is characteristic of work that it first and foremost unites people. In this consists its social power: the power to build a community.”).

108. *Id.* ¶ 193.

109. *Id.* (citations omitted, emphasis in original). Solidarity is a fundamental key to all of Catholic social thought. Donal Dorr, relying heavily on Pope John Paul II’s writings, states that solidarity includes but goes beyond the ideal of social justice by including generosity and care for others; it is a virtue that is the “path to true peace.” DONAL DORR, *OPTION FOR THE POOR: ONE HUNDRED YEARS OF CATHOLIC SOCIAL TEACHING* 328–29 (2005).

110. PONTIFICAL COUNCIL FOR JUSTICE AND PEACE, *supra* note 11, ¶ 93 (emphasis in original).

Christian that he “lose himself for the sake of the other instead of exploiting him” and commands us to serve the other rather than oppress him.<sup>111</sup>

By emphasizing that workers’ associations are essential to the existence of the fundamental moral virtue of solidarity, Pope John Paul II makes the strongest possible argument for the enduring relevance of workers’ associations.<sup>112</sup> As Professor Lamoureux has observed, the “ethical vocation” of workers’ associations is to promote solidarity and social justice. She writes that workers’ associations must “use their power not only for their own self-interest, but also for the good of the whole of society, especially those who are weakest and marginalized.”<sup>113</sup> She further cites the words of Pope John Paul II, who noted that work and solidarity are inextricably bound together because “it is characteristic of work that it first and foremost unites people,” and it is through their associations that workers approach the unity that characterizes solidarity in the workplace community.<sup>114</sup>

Although Pope John Paul II stresses that work unites people, he also knew that the workplace can be the locus of division and conflict.<sup>115</sup> Catholic social thought stresses solidarity and working toward the common good.<sup>116</sup> With such emphases, the problems of self-interest and conflict might not receive the careful analysis they require. But, since interests often conflict in the workplace, Catholic social thought acknowledges that at times workers must act to promote and defend their rights as workers.<sup>117</sup>

One method used by unions in pursuing the just rights of their members is the strike or work stoppage as a kind of ultimatum to the competent bodies, especially the employers.<sup>118</sup> This method is recognized by Catholic social thought as a legitimate exercise of workers’ rights when used in the proper conditions and within just limits.<sup>119</sup> Despite its recognition of the legitimacy of the strike, Catholic social thought’s strong orientation to social solidarity and emphasis on the common good favors

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111. *Id.*

112. *See id.*

113. Lamoureux, *supra* note 52, at 402–03.

114. *Id.* (quoting LE, *supra* note 32, ¶ 20).

115. LE, *supra* note 32, ¶ 20.

116. *Id.*

117. *Id.*

118. *Id.*

119. *Id.*

cooperation, not conflict. Pope John Paul II supports the strike as a legitimate means of protecting the rights of workers, but he cautions that the strike remains “an extreme means” and warns that it must not be abused.<sup>120</sup> Underlying his statement that the strike weapon is an extreme means of defending basic workers’ rights is the concern that “[a]buse of the strike weapon can lead to the paralysis of the whole of socioeconomic life, and this is contrary to the requirements of the common good of society, which also corresponds to the properly understood nature of work itself.”<sup>121</sup>

Thus, while LE endorses the use of strikes to achieve and defend fundamental worker rights, its endorsement is cautious. Professor Lamoureux points out that the Church’s strong preference is for peaceful resolution of disputes through collective bargaining as the primary means to achieve justice in the workplace.<sup>122</sup> Lamoureux observes that Pope John Paul II taught that even in times of conflict, unions should engage in some form of constructive opposition “for the good of social justice, not for the sake of ‘struggle’ or in order to eliminate the opponent.”<sup>123</sup> Although Pope John Paul II realized that workplace disputes do involve “struggle,” he did not view this form of struggle as class struggle in the Marxist sense. Rather, he emphasized that workers’ associations do not struggle against other people or classes but instead they struggle for justice, using the virtue of solidarity not to divide but to direct workers’ energies toward unity and community.<sup>124</sup>

LE contemplates the strike, not as a weapon to defeat one’s enemies in a contest of wills, but as a tool to advance and protect the human rights of all workers, particularly the poorest and most vulnerable. The poor occupy a special place in Catholic social thought.<sup>125</sup> A closely related Catholic social thought principle is the “universal destination of goods,” which holds

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120. *Id.* See also Catechism, *supra* note 33 (teaching that the strike is “morally legitimate when it cannot be avoided or at least when it is necessary to obtain a proportionate benefit” but loses its legitimacy when it is accompanied by violence or seeks aims that are contrary to the common good).

121. LE, *supra* note 32, ¶ 20.

122. Lamoureux, *supra* note 52, at 403.

123. *Id.* (quoting LE, *supra* note 32, ¶ 20).

124. *Id.* at 403.

125. See DORR, *supra* note 109, at 3 (the special concern for the poor, referred to in Catholic social thought as the “preferential option for the poor” is a recognition of Jesus’ special concern for the poor and oppressed and demands of every Christian “to engage actively in a struggle to overcome social injustices which mar our world”).

that the riches of the earth were meant for all to enjoy.<sup>126</sup> Hence, the Church teaches that the poor occupy a special place in the economic system and love for the poor applies to all of our social responsibilities, including decisions that affect “the hungry, the needy, the homeless, those without health care, and, above all, those without hope for a better future.”<sup>127</sup>

This special concern for the poor, the marginalized, and the excluded also extends to the disabled worker and to the immigrant.<sup>128</sup> LE affirms the right of these workers to form associations to protect their interests.<sup>129</sup> Pope John Paul II writes, “The disabled person is one of us and participates fully in the same humanity that we possess.”<sup>130</sup> Hence, the world of labor should foster the right of disabled people to professional training and work so that they are “full-scale subjects of work, useful, respected for their human dignity and called to contribute to the progress and welfare of their families and their community.”<sup>131</sup> As for immigrant workers, Pope John Paul II affirms the right of persons to leave their native lands “to seek better conditions of life in another country.”<sup>132</sup> These workers are potentially vulnerable to exploitation. Consequently, Pope John Paul II writes: “The most important thing is that the person working away from his native country, whether as a permanent emigrant or as a seasonal worker, should not be placed at a disadvantage in comparison with the other workers in that society in the matter of working rights.”<sup>133</sup> While LE is the most comprehensive and most profound discussion of work in all of Catholic social thought, in both its practical and its transcendent aspects, Pope John Paul II would return to certain themes of LE in subsequent encyclicals, which add greatly to his teachings about work. I turn now to these encyclicals.

In 1987, Pope John Paul II issued *Sollicitudo Rei Socialis* (On Social Concerns, “SRS”) to commemorate the twentieth anniversary of Pope Paul VI’s encyclical, *Populorum Progressio*.<sup>134</sup> Although the main concerns of

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126. Cf. PONTIFICAL COUNCIL FOR JUSTICE AND PEACE, *supra* note 11, ¶ 177 (stating that the Church has always endorsed the right of common use of all of the goods of the earth)

127. *Id.* ¶ 182.

128. LE, *supra* note 32, ¶ 22.

129. *Id.*

130. *Id.*

131. *Id.* ¶ 23.

132. *Id.*

133. *Id.*

134. Pope John Paul II, *SOLLICITUDO REI SOCIALIS*, Encyclical for the Twentieth Anniversary of *Populorum Progressio* ¶ 21 (Dec. 30, 1987), *available at*

SRS go beyond the subject of work, SRS touches upon themes that are central to Catholic social thought's view of work and its emphasis on the importance of workers' associations.<sup>135</sup> Pope John Paul II's "aim [in SRS] was to name the obstacles to development, point out false meanings of development, articulate a vision of authentic human development, and lay down some guidelines for implementing the vision."<sup>136</sup> Nonetheless, SRS does contain teachings that relate to workers' right to form associations.

In SRS, Pope John Paul II states that Catholic social thought adopts a critical attitude towards both Marxism and liberal capitalism, both of which the Holy Father believed were in need of "radical correction."<sup>137</sup> Pope John Paul II's sharpest criticism of liberal capitalism arises from what is perhaps the most fundamental principle of Catholic social thought: the universal destination of goods, discussed above.<sup>138</sup> Why might this be the most basic principle of Catholic social thought? The Catechism of the Catholic Church perhaps gives the clearest and most succinct answer to this question. The Catechism teaches that the goods of creation are destined for the whole human race; however, the earth is divided up among men to assure "the security of their lives, endangered by poverty and threatened by violence." Private property is legitimate only because it helps to guarantee "the freedom and dignity of persons" and to assist "each of them to meet his basic needs and the needs of those in his charge. It should allow for a natural solidarity to develop between men."<sup>139</sup>

Hence, the universal destination of goods is the foundation both for the right to private property and to the crucial goal of human solidarity.<sup>140</sup> Concerning the right to private property, Pope John Paul II emphasizes that it is a means to an end—solidarity—and not an end in itself. He emphasizes

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[http://www.vatican.va/holy\\_father/john\\_paul\\_ii/encyclicals/documents/hf\\_jp-ii\\_enc\\_30121987\\_sollicitudo-rei-socialis\\_en.html](http://www.vatican.va/holy_father/john_paul_ii/encyclicals/documents/hf_jp-ii_enc_30121987_sollicitudo-rei-socialis_en.html) [hereinafter SRS].

135. Charles E. Curran et al., *Commentary on Sollicitudo Rei Socialis*, in *MODERN CATHOLIC SOCIAL TEACHING: COMMENTARIES AND INTERPRETATIONS* 415 (Kenneth R. Himes ed., 2005).

136. *Id.*

137. SRS, *supra* note 134, ¶ 21. Because the Soviet empire would soon collapse after SRS was issued, this Article omits much of Pope John Paul II's critique of Marxism.

138. *Id.* ¶ 42 ("It is necessary to state once more the characteristic principle of Christian social doctrine: the goods of this world are originally meant for all.")

139. John Paul II, *Centesimus Annus on the Hundredth Anniversary of Rerum Novarum*, VATICAN: THE HOLY SEE, ¶ 2402 (1991), [http://www.vatican.va/holy\\_father/john\\_paul\\_ii/encyclicals/documents/hf\\_jp-ii\\_enc\\_01051991\\_centesimus-annus\\_en.html](http://www.vatican.va/holy_father/john_paul_ii/encyclicals/documents/hf_jp-ii_enc_01051991_centesimus-annus_en.html) [hereinafter CA].

140. *Id.*

that the right to private property “does not nullify the value of this principle” [the universal destination of goods].<sup>141</sup> On the contrary, private property is under a “social mortgage,” which means that it has an intrinsically social function, based upon and justified precisely by the principle of the universal destination of goods.<sup>142</sup> So, private property, as an efficient means to increase and develop the goods of the earth, is justified to the extent that it promotes the goal of the universal destination of goods.<sup>143</sup> Private property, by its efficiency, is a means to promote human solidarity, which promotes the creation of wealth for all to share. Furthermore, human solidarity (all promoting the good of all) implies that those who are able to work have a duty to work.<sup>144</sup> Work is not merely a private activity performed for selfish motives.<sup>145</sup> By working, we experience the essence of solidarity, that “we are *all* really responsible for *all*.”<sup>146</sup> This is but another way of saying that economic activities like owning and managing businesses, performing work to the best of one’s abilities, and forming workers’ associations are ultimately not about money; rather, they are about love. Economic activity is a means by which we are all responsible for each other and through which we affirm human solidarity.<sup>147</sup>

In his next significant contribution to Catholic social thought, Pope John Paul II issued *Centesimus Annus* (“CA”) in 1991, commemorating the 100th anniversary of RN.<sup>148</sup> Issued shortly after the collapse of communism in Eastern Europe, the encyclical analyzes the causes of the failure of communism and also warns of some of the dangers that threaten capitalism.<sup>149</sup> Hence, the scope of CA is much broader than workers’

141. SRS, *supra* note 134, ¶ 42.

142. *Id.*

143. PONTIFICAL COUNCIL FOR JUSTICE AND PEACE, *supra* note 11, ¶ 177 (pointing out that “the right to private property is subordinated to the right to common use, to the fact that goods are meant for everyone”).

144. SRS, *supra* note 134, ¶ 30 (discussing each person’s duty to “work together for the full development of others”).

145. *See id.* ¶ 42.

146. *Id.* ¶ 38.

147. *See id.*

148. CA, *supra* note 139.

149. Pope John Paul II identified several causes that led to the fall of communism: violation of workers’ rights, the inefficiency of a command economy, the utopian desire to eliminate all evil, and perhaps most importantly, the spiritual void created by official state atheism. *Cf.* Daniel Finn, *Commentary on Centesimus Annus (On the Hundredth Anniversary of Rerum Novarum)*, in *MODERN CATHOLIC SOCIAL TEACHING: COMMENTARIES AND INTERPRETATIONS* 437 (Kenneth R. Himes ed., 2005).

rights, but CA nonetheless reaffirms many of the ideas about workers' associations and workers' rights contained in his earlier encyclicals.<sup>150</sup>

CA strongly reaffirms Catholic social thought's long history of support for the right of workers to form associations. Pope John Paul II reaffirms Pope Leo XIII's statement that the right to form private associations is a "natural human right,"<sup>151</sup> stating that this natural human right to form private associations is "the reason for the Church's defense and approval of the establishment of what are commonly called trade unions."<sup>152</sup> Because the right of association is a natural human right, it precedes a person's incorporation into political society; therefore, the state cannot destroy the right to form workers' associations and is generally obligated to defend it.<sup>153</sup>

In CA, Pope John Paul II also strongly reaffirms the importance of social solidarity. In practical terms, the principle of solidarity as applied to government policy requires the state to be particularly concerned with protecting the poor and the powerless, categories which include many working people.<sup>154</sup> Echoing Pope Leo XIII's words of a hundred years earlier, Pope John Paul II writes that an "elementary principle of sound political organization" is that "the more that individuals are defenseless within a given society, the more they require the care and concern of others, and in particular, the intervention of government authority."<sup>155</sup> His words suggest that he did not support a minimalist government that would allow market forces to decide the fate of workers.<sup>156</sup> Rather, he envisioned a strong government that, motivated by a commitment to social solidarity,

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150. CA, *supra* note 139, ¶ 7.

151. *Id.* In Catholic social thought, natural human rights are not based on feelings, convention, the positive law, or the consensus of society. Rather, natural human rights "derive from man's dignity as a being made in God's image and likeness." RODGER CHARLES, AN INTRODUCTION TO CATHOLIC SOCIAL TEACHING 29 (1999). These natural human rights include the right to form associations and to confer on those associations "the type of organization best calculated to achieve [the association's] aims." *Id.* at 31. (citing Pope John XXIII, PACEM IN TERRIS, ENCYCLICAL ON ESTABLISHING UNIVERSAL PEACE IN TRUTH, JUSTICE, CHARITY, AND LIBERTY ¶¶ 23–24 (Apr. 11, 1963), available at [http://www.vatican.va/holy\\_father/john\\_xxiii/encyclicals/documents/hf\\_j-xxiii\\_enc\\_11041963\\_pacem\\_en.html](http://www.vatican.va/holy_father/john_xxiii/encyclicals/documents/hf_j-xxiii_enc_11041963_pacem_en.html)).

152. CA, *supra* note 139, ¶ 7. As noted throughout this Article, the same reasoning would apply to many other forms of workers' associations besides traditional labor unions, as the decline of labor unions in America does not lessen the need for workers' associations.

153. *Id.*

154. *Id.* ¶ 10.

155. *Id.*

156. *See id.*

would intervene when necessary to protect the rights of those who do not wield great power, such as wage earners confronted by the might of great corporations.<sup>157</sup> The principle of solidarity rejects the idea that the state should remain neutral when relatively powerless members of society struggle against the powerful to assert fundamental human rights, such as the right of association.<sup>158</sup> However, Catholic social thought rejects the idea that the state's intervention is for the purpose of choosing sides in class warfare;<sup>159</sup> rather, the state intervenes primarily to affirm the infinite value of the human person as a creature of God. Pope John Paul II observes that "the guiding principle of Pope Leo's encyclical, and of all of the Church's social doctrine, is a correct view of the human person and his unique value," and that "God has imprinted his image and likeness on man," thereby conferring on man "an incomparable dignity."<sup>160</sup> Therefore, the dignity of the transcendent value of each worker is derived less so from the work that he does than from the fact that the work is performed by a person created in the image of God.<sup>161</sup> The worker possesses inviolable rights that derive from "his essential dignity as a person."<sup>162</sup>

CA's observations about the role of the state in economic life (and, consequently, the role of law) reject state control of the means of production, "which would reduce every citizen to being a 'cog' in the state machine."<sup>163</sup> However, Pope John Paul II also rejects the laissez-faire vision of the state that "completely excludes the economic sector from the state's range of interest and action."<sup>164</sup> He acknowledges that there "is certainly a legitimate sphere of autonomy in economic life which the state should not enter," thus reaffirming one of Catholic social thought's fundamental principles: the principle of subsidiarity.<sup>165</sup> Nonetheless, he

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157. *See id.*

158. *Id.*

159. *See, e.g.,* PONTIFICAL COUNCIL FOR JUSTICE AND PEACE, *supra* note 11, ¶ 306 (stating Catholic social thought's insistence is on cooperation between labor and capital, not hatred or attempts by one side to eliminate the other).

160. CA, *supra* note 139, ¶ 11.

161. *Id.*

162. *Id.*

163. *Id.* ¶ 15.

164. *Id.*

165. *Id.* The principle of subsidiarity states that higher bodies should never take over functions that can be effectively fulfilled by lower bodies. *See* Catechism, *supra* note 33, ¶ 1883. Among other things, this principle serves as a check on excessive centralization of power. However, the "principle of subsidiarity requires the state to help lower bodies perform their functions when such help is necessary." *Cf.* CHARLES, *supra* note 151, at 42 (noting that the principle of subsidiarity is the

envisions a state that is quite active in economic matters. Pope John Paul II argues that for a free market economy to work, the state must establish juridical framework that creates “a certain equality” between labor and capital so that one party does not become so powerful that it can “reduce the other to subservience.”<sup>166</sup>

Workers’ associations play an indispensable role in creating and sustaining a degree of equality between capital and labor, which Pope John Paul II identifies as essential to a free economy. One of the functions such associations must play is also the traditional function of labor unions, namely that of negotiating adequate minimum salaries and working conditions.<sup>167</sup> Beyond this traditional function, workers’ associations play a role in improving workers’ training and helping to create and enforce adequate legislative measures to block exploitation of the most vulnerable workers, such as immigrants and those on the margins.<sup>168</sup> Workers’ associations perform other broad functions, such as protecting the personal dignity of each worker, ensuring that working hours are “humane,” and that workers have adequate free time and the right to express their personalities in the workplace “without suffering any affront” in response.<sup>169</sup> Hence, in Pope John Paul II’s view, workers’ associations have duties that go beyond their traditional roles associated with collective bargaining, including duties to protect and promote the dignity of each working person. He writes that workers’ associations, including traditional unions, should be “places where workers can express themselves. They serve the development of an authentic culture of work and help workers to share in a fully human way in the life of their place of employment.”<sup>170</sup> Pope John Paul II’s humanistic view of workers’ associations accords well with the values that inspired the NLRA. Professor Ellen Dannin reminds us that the NLRA’s policies were intended to “transform our workplaces and our society.”<sup>171</sup> NLRA policies were intended to equalize the bargaining power of workers and management, resulting in improved wages and working conditions. Ultimately, then, the NLRA would promote “social peace and the free flow

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“principle of necessary help, but only necessary help aimed at making persons, families, and private associations independent once more”).

166. CA, *supra* note 139, ¶ 15.

167. *Id.*

168. *Id.*

169. *Id.*

170. *Id.*

171. ELLEN DANNIN, TAKING BACK THE WORKERS’ LAW: HOW TO FIGHT THE ASSAULT ON LABOR RIGHTS 51 (2006).

of commerce.”<sup>172</sup> One should note, however, that Pope John Paul II’s expansive view of workers’ associations goes even further than the values underlying the NLRA. In *CA*, he describes the role that workers’ associations play in facilitating worker participation in both the workplace and the life of the nation. The Pope points out that trade unions and other workers’ organizations not only “defend workers’ rights and protect their interests as persons,” they also enrich our society by enabling workers “to participate more fully and honorably in the life of their nations and to assist them along the path of development.”<sup>173</sup>

Given the vital functions that workers’ associations perform not only for workers as workers but also for workers as persons and as participants in their respective workplaces, societies, and nations, one can conclude from Pope John Paul II’s encyclicals that as long as people work for a living as employees of others, workers’ associations in the broadest sense will never become irrelevant.<sup>174</sup> Workers’ associations will remain indispensable in enabling workers to flourish as persons actively involved in the workplace and society, even if traditional unions fade into irrelevance.<sup>175</sup> From Pope John Paul II’s perspective, this is a result of the spiritual and transcendent meaning of work and workers:

“I want to remind workers,” John Paul II told a 1982 gathering in Gabon, “that there exists a *gospel of work*, that is to say, that the vocation of human beings is to subdue the earth and to realize themselves as persons in this way.” Through work, “small and great, people who are inventive, courageous, passionately fond of their work, and desirous of sharing the fruits of their labor” participate in God’s ongoing creation. Work also has “mysterious value as a sharing in the redeeming work of Christ, through the silent offering of fatigues that are part of work.” Without a gospel of work, John Paul II concludes, it is “impossible to become more human.”<sup>176</sup>

Ultimately, helping workers “become more human” is the reason workers form associations.

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172. *Id.*

173. *CA*, *supra* note 139, ¶ 35.

174. *See id.*

175. Examples of such workers’ associations are mentioned in sources at *supra* note 6 and *infra* notes 209–214.

176. WILLIAM DROEL, POPE JOHN PAUL II’S GOSPEL OF WORK 6 (2008).

## IV. THE SOCIAL ENCYCLICALS OF POPE BENEDICT XVI

The writings of Pope Benedict XVI concerning the nature and meaning of work, the purpose of economic activity, workers' rights, and the importance of workers' associations strongly reaffirm Pope John Paul II's central teachings and demonstrate their continuing importance in the twenty-first century. In his encyclical *Deus Caritas Est* ("DCE"),<sup>177</sup> Pope Benedict XVI restates the role of Catholic social thought concerning political matters; he observes that Catholic social thought argues "on the basis of reason and natural law, the basis of which is in accord with the nature of every human being."<sup>178</sup> Pope Benedict XVI further states that it is not the Church's role to make its teaching prevail in political life. However, the Church does have the responsibility "to help form consciences in political life" and to provide insights into the requirements of justice.<sup>179</sup> Hence, while the Church does not claim special competence on political and economic matters, "the Church is duty-bound to offer, through purification of reason and through ethical formation, her own specific contribution towards understanding the requirements of justice and achieving them politically."<sup>180</sup>

With this clear understanding of what Catholic social thought is, is not, and what it aims to do, Pope Benedict XVI concludes that although the Church "cannot and must not take upon herself the political battle to bring about the most just society possible," neither can she "remain on the sidelines in the fight for justice."<sup>181</sup> However, "the direct duty to work for a just ordering of society . . . is proper to the lay faithful."<sup>182</sup> Indeed the lay faithful are important actors in bringing about a more just and loving society. Pope Benedict XVI observes that it is the layperson's role "to take

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177. Pope Benedict XVI, *DEUS CARITAS EST, ENCYCLICAL ON CHRISTIAN LOVE* (Dec. 25, 2005), available at [http://www.vatican.va/holy\\_father/benedict\\_xvi/encyclicals/documents/hf\\_ben-xvi\\_enc\\_20051225\\_deus-caritas-est\\_en.html](http://www.vatican.va/holy_father/benedict_xvi/encyclicals/documents/hf_ben-xvi_enc_20051225_deus-caritas-est_en.html) [hereinafter DCE].

178. *Id.* ¶ 28. Pope Benedict continues the centuries-old teachings of the Church that each person can discover fundamental moral principles through reason because natural law is an integral part of human nature. *See, e.g.*, PONTIFICAL COUNCIL FOR JUSTICE AND PEACE, *supra* note 11, ¶ 140 (explaining that all persons can discover the bases for moral behavior through reason because the natural law is an essential part of human nature).

179. DCE, *supra* note 177, ¶ 28. The Church has always taught that it does not endorse any particular political or economic system. However, the Church has the authority to evaluate political and economic systems according to moral and ethical principles. *Economic Justice for All*, *supra* note 98, ¶ 130.

180. DCE, *supra* note 177, ¶ 28.

181. *Id.*

182. *Id.* ¶ 29.

part in public life in a personal capacity,” and, therefore, the layperson plays a critical role in promoting policies that promote the common good.<sup>183</sup> Ultimately, it is laypersons’ duty, through their daily lives, to bring the Church’s teachings on love and justice to the workaday world to animate the life of the society they live in.<sup>184</sup>

Hence, in his first encyclical, Pope Benedict XVI makes it clear that laypersons play a central role in implementing the teachings of Catholic social thought in everyday life, and the primary means by which they do this are charity and love.<sup>185</sup> In November 2007, Pope Benedict XVI issued his second encyclical, *Spe Salvi* (Saved in Hope, “SS”).<sup>186</sup> The encyclical contains a number of important insights that have general implications for Catholic social thought, but touch only briefly on the nature and meaning of work. *SS* reaffirms the Church’s emphasis on the nobility of work. Pope Benedict XVI observes that the Catholic emphasis on the nobility of work, particularly manual labor, can be traced back to the Middle Ages, when monastic orders embraced both the contemplative life and the life of a worker.<sup>187</sup> Pope Benedict XVI observes that Christianity inherited the idea of the nobility of work from Judaism, an idea “expressed in the monastic rules of Augustine and Benedict.”<sup>188</sup> In our society, which places an excessive emphasis on the value of mental work while often denigrating the

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183. *Id.*

184. *Id.*; PONTIFICAL COUNCIL FOR JUSTICE AND PEACE, *supra* note 11, ¶ 543 (noting that it is the duty of the layperson to bring the Church’s social teachings to the practical world of political, economic, and social concerns and discussing the proper duty of the laity in their daily involvement in secular society).

185. In this context, it is interesting to wonder what a distinctively Catholic labor law, grounded in love, would look like. In a society in which conflict is assumed to be the norm and “common sense” demands a labor law that attempts to regulate disputes between labor and capital that are rooted in self-interest, is it even possible to imagine what a labor law based on love, not self-interest, would look like? Richard Michael Fischl explores some of these issues, noting that courts tend to interpret American labor law in such a way that only concerted activity motivated by self-interest is protected by the law. See Richard M. Fischl, *Self, Others, and Section 7: Mutualism and Protected Protest Activities Under the National Labor Relations Act*, 89 COLUM. L. REV. 789, 792 (1989) (arguing that the courts have interpreted the NLRA to protect concerted activity that is motivated by selfish ends). However, Fischl argues that this view of the motives behind much worker protest is wrong, that there are many cases that demonstrate that love and solidarity, not self-interest, motivate a great deal of worker protest. *Id.* at 861 (noting that there are a “myriad” of cases that strongly suggest that love or solidarity frequently motivate worker protests).

186. Pope Benedict XVI, *SPE SALVI*, (Dec. 25, 2005), available at [http://www.vatican.va/holy-father/benedict\\_xvi/encyclicals/documents/hfben-xvi\\_enc\\_20071130\\_spe-salvi\\_en.html](http://www.vatican.va/holy-father/benedict_xvi/encyclicals/documents/hfben-xvi_enc_20071130_spe-salvi_en.html).

187. *Id.* ¶ 15 (discussing the ideas of Bernard of Clairvaux, who insisted that contemplatives must also be agricultural laborers).

188. *Id.*

importance of manual work, SS provides an important reminder that the Christian tradition has emphasized the transcendent value of manual labor and the dignity of labor since the beginning.<sup>189</sup> To understand why this is so, one can look to the example of Jesus Christ. Pope Benedict XVI explains that Christ belonged to the world of work and had love and appreciation for human work. Indeed, one commentator has observed, “[i]t can indeed be said that he [Jesus] looks with love upon human work and the different forms it takes, seeing in each one of these forms a particular facet of our likeness with God, the Creator and Father.”<sup>190</sup> Reflecting on God’s special love and concern for working people, one may conclude that workers’ rights do not ultimately owe their existence to the state and legislation, but to the love of God for ordinary working people.<sup>191</sup>

Pope Benedict XVI issued his most recent (and final) encyclical, *Caritas in Veritate* (Charity in Truth, “CV”) in June 2009.<sup>192</sup> CV is Pope Benedict XVI’s first encyclical to address the Church’s social teaching at length; his fundamental message is that the “heart of the Church’s social doctrine” is charity.<sup>193</sup> He proclaims that charity “is the principle not only of micro-relationships (with friends or family members, or within small groups) but also of macro-relationships (social, economic, and political ones).”<sup>194</sup> Unlike Pope Benedict XVI’s earlier encyclicals, CV devotes much of its teaching to work, working people, and workers’ associations, and is as profound and important as Pope John Paul II’s LE. CV strongly reaffirms major themes of Catholic social thought as it relates to workers and the right to form associations. The moral principle CV builds upon is Pope Benedict XVI’s conviction that charity is the principle of economic life.<sup>195</sup> This is far from a sentimental platitude. Catholic social thought has

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189. *See id.*

190. DROEL, *supra* note 176, at 96–97. Droel goes on to point out that St. Paul was also a manual laborer, a maker of tents. *Id.* at 97. Indeed, in a sense, it can be said that at its very beginning, Christianity was a workers’ movement, albeit a unique one.

191. *Cf.* PONTIFICAL COUNCIL FOR JUSTICE AND PEACE, *supra* note 11, ¶ 153 (stating that the ultimate source of human rights is not found in the will of human beings or in the State and public powers but in man himself and in God, his Creator). Workers enjoy many basic human rights, among which are the right of association and the right to strike. *Id.* ¶¶ 301–04.

192. Pope Benedict XVI, *CARITAS IN VERITATE, ENCYCLICAL ON INTEGRAL HUMAN DEVELOPMENT IN CHARITY AND TRUTH* ¶ 2 (June 29, 2009), *available at* [http://www.vatican.va/holy\\_father/benedict\\_xvi/encyclicals/documents/hf\\_ben-xvi\\_enc\\_20090629\\_caritas-in-veritate\\_en.html](http://www.vatican.va/holy_father/benedict_xvi/encyclicals/documents/hf_ben-xvi_enc_20090629_caritas-in-veritate_en.html) [hereinafter CV].

193. *Id.*

194. *Id.*

195. *Id.*

stressed from the days of RN that economic problems are moral problems.<sup>196</sup> Hence, Pope Benedict XVI proclaims that “[t]he economic sphere is not ethically neutral, nor inherently inhuman and opposed to society. It is part and parcel of human activity and precisely because it is human, it must be governed in an ethical manner.”<sup>197</sup> Consequently, subordinating moral imperatives to the workings of the market neglects the duty to ensure that economic activity is structured and governed in an ethical manner.<sup>198</sup> Indeed, when markets produce morally indefensible outcomes, Catholic social thought insists that the morally indefensible outcomes must yield to the demands of justice and morality. Pope Benedict XVI proclaims that justice applies to all economic activity because humanity’s economic activity “is always concerned with man and his needs.”<sup>199</sup> The Pope explains that “[l]ocating resources, financing, production, consumption, and all the other phases of the economic cycle inevitably have moral implications. *Thus every economic decision has a moral consequence.*”<sup>200</sup> Hence, even aspects of the economy that are often viewed as morally neutral, such as the profit motive, have moral dimensions at their very heart. The Pope acknowledges that profit is useful as a means to an end, but once profit becomes an end in itself or results from improper methods “without the common good as its ultimate end, it risks destroying wealth and creating poverty.”<sup>201</sup>

Pope Benedict XVI also strongly reaffirms Catholic social thought’s teachings on the necessity of workers’ associations.<sup>202</sup> Noting that a global marketplace causes countries to compete for jobs, Pope Benedict XVI

196. See PONTIFICAL COUNCIL FOR JUSTICE AND PEACE, *supra* note 11, ¶ 331 (“The relation between morality and economics is necessary, indeed intrinsic: economic activity and moral behavior are intimately joined one to the other.”).

197. CV, *supra* note 192, ¶ 36. Cf. MICHAEL SCHUCK, *THAT THEY BE ONE: THE SOCIAL TEACHING OF THE PAPAL ENCYCLICALS, 1740–1989*, 185–86 (1991) (explaining that the social encyclicals identify amoral economic laws as a central error in modern economic thought, and the encyclicals reject the tendency of capitalist societies to separate economics and morality “by interpreting justice as the raw outcome of automatic free market operations”).

198. See CV, *supra* note 192, ¶ 37.

199. *Id.*

200. *Id.* (emphasis in original).

201. *Id.* ¶ 21. Catholic social thought’s insistence that the common good must be the ultimate end of economic activity poses a challenge to capitalism because it puts social relationships before economic theory; Catholic social thought is deeply communitarian and therefore rejects what Pope John Paul II called the error of “economism,” which subordinates interpersonal relations to impersonal forces. Cf. David Matzko McCarthy, *Modern Economy and the Social Order*, in *THE HEART OF CATHOLIC SOCIAL TEACHING, ITS ORIGIN AND CONTEMPORARY SIGNIFICANCE* 129, 131 (2009).

202. CV, *supra* note 192, ¶ 25.

observes that one consequence of global competition is to give countries an incentive to weaken the power of workers' associations. Pope Benedict XVI observes that social and economic change make it more difficult for workers' organizations to carry out their task of protecting the rights of their members "partly because governments, for reasons of economic utility," often limit the freedom and negotiating power of workers' associations with the result that "traditional networks of solidarity have more and more obstacles to overcome."<sup>203</sup> Consequently, Pope Benedict XVI argues that support for workers' associations is even more important today than it was at the time of RN in 1891. Pope Benedict XVI writes that the Church's repeated support for workers' associations dating back to RN is even more important now than it was in the days of Pope Leo XIII because of the "urgent need for new forms of cooperation at the international level," because of the economic changes pressuring national governments to limit workers' rights.<sup>204</sup> By its strong support for workers' rights, CV reaffirms and expands on Pope John Paul II's personalism and the need to always remember that it is the human person who is the subject and the goal of work and all economic activity.<sup>205</sup>

Moving from first principles to practical application, how can work be arranged so that persons are the ultimate goal and purpose of work? Pope Benedict XVI describes how work can be structured so the governing principle of the workplace will be that of the worker-as-person in relation to other persons:

[Just work] means work that expresses the essential dignity of every man and woman in the context of their particular society: work that is freely chosen, effectively associating workers, both men and women, with the development of their community; work that enables the worker to be respected and free from any form of discrimination; work that makes it possible for families to meet their needs and provide schooling for their children, without the children themselves being forced into labour; work that permits the workers to organize themselves freely, and to make their voices heard; work that leaves enough room for rediscovering one's roots at

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203. *Id.* Although Pope Benedict XVI focuses mostly on traditional labor unions, his remarks can apply with equal force to all workers' associations.

204. *Id.*

205. *Id.* ¶ 36 (emphasizing Catholic social thought's principle that economic activity must promote "authentically human social relationships of friendship, solidarity, and reciprocity").

a personal, familial and spiritual level; work that guarantees those who have retired a decent standard of living.<sup>206</sup>

## V. CONCLUSION

This Article began with the observation that traditional labor unions are becoming irrelevant, particularly in the private sector.<sup>207</sup> However, the fundamental truth that formed the basis for the Wagner Act remains as true today, if not more so, as it was in 1935: the inequality of bargaining power between employees and employers is so great that it denies employees “freedom of association or actual liberty of contract.”<sup>208</sup> Consequently, as long as there are divisions and conflicting interests between people who work for others and the powerful corporations that employ these persons, a just and moral economic system must protect workers’ rights to form associations to deal with their employers on a somewhat equal footing. Although it is not within the scope of this Article to discuss the various workers’ associations that might emerge as important forces for social justice in the twenty-first century, many such organizations have emerged in recent years. Among them are community-based workers’ centers that help to organize low-wage workers;<sup>209</sup> poor workers’ unions dedicated to organizing the “unorganizable,” such as day laborers, undocumented immigrants, domestic workers, and workfare laborers;<sup>210</sup> internet organizations such as the Freelancers Union, dedicated to organizing

206. *Id.* ¶ 63.

207. It is important to keep in mind that labor unions in America have proved to be remarkably resilient in the face of similar hard times. For example, as Irving Bernstein pointed out, labor unions in the 1920s were weak, with shrinking membership: from 1920 to 1923, union membership fell by almost 2.5 million workers, and by 1929 unions represented only 10.2% of the nonagricultural workforce, down from 19.4% in 1920. IRVING BERNSTEIN, *THE LEAN YEARS: A HISTORY OF THE AMERICAN WORKER, 1920 TO 1933*, at 84 (2010). Collective bargaining was condemned as “un-American” and by 1929, the strike weapon had fallen into almost total disuse. *Id.* at 88–90. By the early 1930s few, if any, labor experts could have predicted that the rise of the CIO and a remarkable influx of industrial workers into unions would resurrect the labor movement from almost total impotence to a powerful force in American society, a force so powerful that Congress would in 1935 pass the Wagner Act by an overwhelming margin. My point in this Article is not to argue that traditional labor unions will disappear in America. Rather, I attempt to make the more modest point that even if labor unions fade away, the need for workers to form associations to protect and advance their interests will remain as important as it has been and that the teachings of Pope John Paul II and Pope Benedict XVI provide a strong moral and theological defense of workers’ right to form such associations.

208. 29 U.S.C. §§ 151–69 (2012).

209. For a good discussion of such workers’ centers, see generally JANICE FINE, *WORKER CENTERS: ORGANIZING AT THE EDGE OF THE DREAM* (2006).

210. See TAIT, *supra* note 6, at 142.

independent workers; American Rights at Work, dedicated to protecting the interests of American workers and exposing abuse and exploitation; the AFL-CIO's internet organization, Working America, dedicated to assisting nonunionized workers who want to be associated with unions;<sup>211</sup> employee caucuses in nonunionized workplaces and organized along ethnic, racial, and gender lines;<sup>212</sup> associations formed along occupational lines instead of the traditional workplace organization;<sup>213</sup> social justice movements such as Occupy Wall Street, with wide-ranging objectives, including defending and advancing the rights of workers; and workplace-community alliances based on collaboration between workers' associations and community-based organizations.<sup>214</sup>

No matter what form workers' associations take in the future, Catholic social thought's powerful endorsement of the human right of workers to form associations to advance and protect their rights can and will make a powerful contribution to the struggle for justice in the workplace. Indeed, as exemplified by the teachings of Pope John Paul II and Pope Benedict XVI, Catholic social thought's influence on the development of the law of the workplace in this century ought to be profound given the deep interest among labor law scholars to view freedom of association as "a paradigm for labor law."<sup>215</sup> Hence, the teachings of Catholic social thought since the nineteenth century can, and must, play a vital role in developing a new twenty-first century labor law built on the recognition of workers' freedom of association as a fundamental human right.

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211. For a brief description of Working America's goals, see MELVYN DUBOFSKY & FOSTER RHEA DULLES, *LABOR IN AMERICA: A HISTORY* 424 (2010). In 2007, Working America had a membership of over two million. "I Build Movements that Fight for Economic Fairness and Change the Nation's Balance of Power. What Do You Do?", WORKING AM., [www.workingamerica.org/content/download/16421/193641](http://www.workingamerica.org/content/download/16421/193641) (last visited Oct. 7, 2013).

212. For a good discussion of employee caucuses, see Alan Hyde, *Employee Caucus: A Key Institution in the Emerging System of Employment Law*, in *THE LEGAL FUTURE OF EMPLOYEE REPRESENTATION*, 146–90 (1994).

213. For a fascinating discussion of the effectiveness of workers organized by occupation instead of traditional work site organizations, see generally DOROTHY SUE COBBLE, *DISHING IT OUT: WAITRESSES AND THEIR UNIONS IN THE TWENTIETH CENTURY* (1992).

214. See FLETCHER & GAPASIN, *supra* note 6, at 174–79.

215. Pope, *supra* note 16, at 536–37. See also DANNIN, *supra* note 171, at 69–71 (discussing the freedom of association as a fundamental right essential to effective labor law).

