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LABOR LAW AND LABOR RELATIONS: COMPARATIVE AND HISTORICAL PERSPECTIVES

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An expanding economy with an increasingly disproportionate distribution of income and markedly uneven rates of development, even within national boundaries. High rates of unemployment and increasing instability in employment relationships. Innovative forms of economic organization accompanied by unparalleled concentrations of economic power. An intensification of population shifts to urban areas, coupled with an unprecedented migration of people from East to West. An astounding disintegration of families and the progressive erosion of other sorts of community life. These are the conditions in which unions and labor laws first developed, and to which Catholic Social Thought first responded. In an intensified guise, they characterize the contingencies that these institutions presently face. This paper will provide a cursory review of this development and assess the present situation in historical and comparative perspective.

I. Historical Development of Workers' Associations and Labor Law

[W]orkmen may themselves effect much in the matter of which we treat, by means of those institutions and organizations which afford opportune assistance to those in need ... The most important of all are workmen's associations; for these virtually include all the rest. [*Rerum novarum*, ¶ 36]

a. *Introduction*

No matter where one looks, the development of unions and of labor law has followed a remarkably similar pattern. Unions, of course, represent a reaction by workers themselves to industrialization and the thoroughgoing

social dislocations that accompanied the development of liberal, market-oriented economies in the mid-nineteenth Century. As Leo XIII observes, however, unions were hardly the only reaction, and their evolution, along with that of the institution of collective bargaining, was neither instantaneous nor linear. For the purposes of this brief overview, we can identify workers, employers, the state, and the Church as the four actors who played the most prominent roles in this development.

Writing in the last quarter of the eighteenth century, the great English legal commentator, Sir William Blackstone, observed that "three great relations" characterize private life: husband and wife, parent and child, master and servant. In this, he echoes a statement made by Aristotle in the *Politics* about the basic elements that constitute the household, and thereby, political society. Family and employment continue to represent two of the most important (if imperiled) relationships of modern life. The ages-old model of relatively stable, largely intramoenial "employment", however, was being eradicated (particularly in England) even as Blackstone wrote. For many, the replacement would be work in large-scale, increasingly bureaucratically organized institutions.[1]

b. *Self-Help Associations*

Workers made a variety of responses to these changes in their conditions. One of the first in England were the so-called "friendly societies" — mutual help groups that provided rudimentary insurance and other forms of aid to needy members. These hardy and popular associations began to appear in Britain in the mid-1700's. By the latter-part of the nineteenth century,[2] they had become significant social institutions in all the industrialized nations of Europe but Germany. By the late 1880's, for

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[1] Large-scale industry was at the center of economic development, and employment within such industries would come to typify the idea of work. For example, one scholar has indicated that by the end of the 1890's, over half of the labor force of Germany, Belgium and Britain worked for employers with more than 20 employees. See, Bob Hepple, *The Making of Labour Law in Europe: A Comparative Study of Nine Countries up to 1945* at p. 22 (Bob Hepple, ed. Mansell Pub. Co., 1986). Nevertheless, it is important to recall that much paid-employment continued (and continues) to be in the service of small employers. Protecting the conditions of these employees, for whom collective representation often is not realistic, has confronted the law with continuing difficulties.

[2] These mutual-aid societies were expressly excluded from the sorts of bans that restricted other forms of workers' associations. On these points, see generally Antoine Jacobs, *Collective Self-Regulation* in *The Making of Labour Law in Europe: A Comparative Study of Nine Countries*, *supra* note 1.

example, French mutual aid associations had 1.4 million members, while their English counterparts were estimated to have nearly 4 million participants (membership in English trade unions during this period stood at 1 million). Similarly, during the same period, Italian and Danish mutual aid associations had 781,000 and 120,000 members respectively, while nearly 10 per cent of all Belgian workers were affiliated with such organizations.

c. *Programmatic Reform Organizations*

Programmatic associations of various sorts that typically had as their aim the complete reconstruction of society and the replacement of capitalism represent a second sort of response to the dynamic changes in conditions that industrialization induced. By far the most significant of these organizations in the United States was the Knights of Labor. The Knights was a quasi-religious and fraternal association that had begun as an organization of tailors, but subsequently opened its membership to everyone but bankers, lawyers and alcohol dealers. As the noted labor scholar Msgr. George Higgins puts it, as an organization, the Knights were "fundamentally revolutionary in purpose, but non-revolutionary in method".

The Knights sponsored an ambitious program of moral, social, and economic reform. For example, equal pay for equal work for men and women was one of the stated goals of the Knights' 1878 constitution. Similarly, the Knights by 1886 had 60,000 African-American members and when black delegates were refused accommodations during a convention, white delegates walked out of the offending hotel. As part of its efforts to develop alternatives to capitalist forms of economic organization, the Knights also sponsored a substantial number of producer-cooperatives, particularly in the smelting industry. The geographical scope of the Knights' activities was no more circumscribed than the range of their interests. By 1880, the Knights had established affiliations in both Great Britain and Belgium, the latter of which remained vibrant for several years.

d. *The Rise of the Modern Trade Union in the U.S. and England*

The diffuseness of its goals and disagreements over its political directions assisted in the collapse of the Knights. Preceding that collapse was the establishment in 1881 of the first, enduring national organization of workers' associations in the U.S., the American Federation of Labor (AFL). The constituent member unions which comprised the AFL represented skilled workers who were organized strictly along trade lines. From the start, the AFL abjured all political ties — particularly Socialist ones.

Instead, it adopted a policy of so-called "business" or "bread and butter" unionism that has characterized American unionism to the present. Although organization of unskilled and semi-skilled workers subsequently would occur, the AFL unions established the patterns for labor law and collective bargaining in the U.S.

The affiliated unions that constituted the AFL were representative of what Sidney and Beatrice Webb referred to as the "new model" trade unions. These were large-scale organizations with full-time leadership, increasingly specialized staffs, and highly pragmatic orientations. They emphasized the negotiation of agreements with employers, used strikes sparingly, and accepted the principles of voluntarism. The Amalgamated Society of Engineers (1850) is said to represent the prototype of this sort of organization in England. Their efficacy was such that French and German workers' associations sent delegations to the Great Exhibition of 1862 to study the British style of trade unionism.[3] The Trades Union Congress (TUC), the national level federation of British unions, was founded a few years thereafter in 1868.

e. *Continental Socialist Workers' Movements*

In contrast to England or the U.S., workers associations with socialist orientations have played an important role in the development of unions, labor law and the practice of collective bargaining on the Continent. In Germany, for example, the first national workers' organization, the General German Workers' Association (*Allgemeinen Deutschen Arbeiterverein*) was founded in 1863. Led by Lassalle, obtaining universal suffrage was the chief goal of this group. A few years thereafter, Bebel and Liebknecht founded the strongly Marxian influenced Social Democratic Workers' Party (*Sozialdemokratische Arbeiterpartei*). The merger of these two associations in 1875 marks the founding of the present Social Democratic Party. These parties also supplied the foundation for the development and spread of the so-called "free" or socialist unions, which typically had as part of their aims the overthrow of capitalism. It was not until the shift to a reformist social strategy in the 1890's that the free unions would engage in collective bargaining or other representational and participative activities in the workplace.

In addition to the free unions, Germany had two other programmatic workers associations. These were the liberal Hirsch-Duncker unions (foun-

[3] See Jacobs, *supra* note 1 at pp. 216-17; Sidney Webb and Beatrice Webb, *The History of Trade Unionism* (Revised Edition, Extended to 1920) pp. 180-233, Longmans Green & Co. 1935.

ded in 1869) and the Christian unions (which were formed after the issuance of *Rerum novarum* in 1891). Both groups were meliorist: they accepted capitalism and sought to improve the standards of workers through collective bargaining and other forms of self-help activities. In terms of numbers at least, these later two associations were far weaker than their socialist counterparts. At the turn of the century, the socialist unions counted over 680,000 members. In contrast, the liberal and Christian unions had fewer than 100,000 members each.

Socialist oriented workers' associations also had important roles in the development of union movements and labor law in France and Italy. In both nations, however, Catholic social thought and Catholic unions exerted a stark influence as well. Perhaps not surprisingly, the Italian Catholic labor movement enjoyed massive growth during the later years of Leo XIII's papacy, which ended in 1903.

f. *Non-Western Workers' Movements*

Of course, unions exist outside of Europe and North America, and their rise has typically accompanied the development of mass industry or large-scale agricultural operations. Nevertheless, special problems often have obtained. For example, despite its relatively early and quick industrial development during the first decades of this century, all attempts at establishing any sort of workers' movements in Japan were strongly repressed. It was not until the post-war period that the formation of independent unions and the practice of collective bargaining appeared, under the sponsorship of the American occupation government.

In the industrialized west, however, union affiliation surged nearly everywhere in the period between 1890 and 1920. For example, membership in the "free" unions in Germany grew from 50,000 in 1890 to more than 2.5 million by 1913, and more than 7 million in 1922. Similarly, in 1897, at the end of a short, but severe depression, American trade unions had 450,000 members. By 1904, their constituency exceeded 2 million, and by 1920, spurred in part by the end of the war, over 5 million persons (about 19 percent of non-farm workers) held membership.

g. *Employer Responses to Employee Self-Organization*

The waxing power of unions drew responses from management that followed similar patterns everywhere. One was simple resistance, which took various forms including blacklists, discharges, "yellow" or "yellow-

dog" contracts,[4] violence, and various forms of organized anti-union propagandizing efforts. More creatively, management also earnestly sought alternatives to employee self-organization and collective bargaining. In England, Germany, France, and the U.S. alike, various forms of employee representation and participation schemes were developed, many of them quite elaborate. These participation schemes were directed at establishing an attitude of trust and willing cooperation with management on the part of employees and a sense of identity with their employer. They thereby would obviate the need for unions, while providing a channel of communication between employees and management, thereby increasing morale and consequently, productivity and product quality. The present German works-council system is a direct outgrowth of these efforts. Joint employer-employee consultation and productivity committees, semi-autonomous work teams, and other "employee involvement" devices (the forerunners of today's participatory schemes) likewise stem from these endeavors. The use of these devices was especially popular in the U.S. until the passage of the National Labor Relations Act in 1935 made the legality of their use by non-unionized employers highly dubious.

Between 1890 and 1914 employer groups across Europe also formed permanent, national level confederations of employers' associations. Their constituents typically were organized along trade lines that existed at local, regional or industry levels. Not coincidentally, these organizations mirrored the national level federations of trade unions that already had emerged. A principal purpose of these employers' associations was to resist the organized labor movement. These employer organizations subsequently would come to play an important role in collective bargaining systems.

h. *The Role of the State and the Influence of Liberal Anthropology*

The role of the state in the evolution of labor law and labor relations systems is a changing one and reflects the shifts in decisionmaking power that accompanied industrialization. Particularly in Germany, that development went hand-in-hand with the efforts to ground a representative democracy and the social institutions necessary to its support. Indeed, across industrialized nations, the entire struggle over the "social question" can be understood as an endeavor to develop an ordering system for the employment relationship appropriate to conditions in which the large

[4] These terms denote a contractual agreement by which an employee agrees not to join a union during the term of his employment.

institutions of market and state increasingly had come to predominate. Put slightly differently, workers' associations represent an effort to elaborate an entirely new kind of mediating institution[5] through which individuals could be enabled to participate in the promulgation and administration of the law that most directly affects the day-to-day conditions of their lives. Far less than some sort of class consciousness, the rise of unions reflect the innate sociality and political nature of the human being — an application of phronesis to an unprecedented set of social contingencies. In short, unions are far more than economic institutions and their significance as social bodies extends far beyond the bounds of market analysis.

Writing on the eve of the eruption of the industrial revolution in England, Adam Smith well described the initial position of the state and law toward workers' associations. "We rarely hear", he wrote, "of the combinations of masters, though frequently those of workmen. But whoever imagines, upon this account, that masters rarely combine, is as ignorant of the world as of the subject". When employees do organize themselves, Smith continued, "The masters upon these occasions ... never cease to call aloud for the assistance of the civil magistrate, and the vigorous execution of those laws which have been enacted with so much severity against the combinations of servants, laborers, and journeymen". In fact, these bans had two, distinct sources. The first might be called traditional and its typical expression can be found in judicially crafted bans against workers' combinations in the English common law, and in prohibitions like those contained in the Prussian General Code[6] that forbade journeymen to form guilds or other organizations to represent their interests.

The second, and more important source lies at the heart of modern liberalism, and the anthropology that informs it. In this framework, mediating groups of nearly every description are regarded as posing an imminent threat to individuals and the state alike. Indeed, this is one of the few things on which Thomas Hobbes, and his greatest critic, Jean-Jacques Rosseau, agreed. Hobbes likened mediating associations to "wormes in the entrayles of a natural man", and counseled that they were every bit as pernicious. Similarly, Rousseau warned that, "for the general will to be well-expressed" it is "important that there be no partial society in the State".

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[5] The term mediating institution refers to families, religious congregations, service and fraternal associations, unions, grass-roots political clubs and the like that mediate the relation between individuals and the large institutions of market and state that characterize so much of contemporary public life.

[6] «*Die Gesellen machen unter sich keine Kommune oder priviligierte Gesellshaft aus*» preußisches Allgemeines Landrecht II. Teil 8. Abschnitt ¶ 396 (1794).

These views found their expression in the law that followed in modernity's wake, perhaps most famously in the Loi Le Chapelier of 1791,[7] which banned all forms of workers' associations.[8] Similar restrictions on workers' associations can be found in the English Combination Acts (1800), and like statutes throughout Europe, as well as judicially developed restraints on worker association in American common law.

As the American legal scholar, Archibald Cox, long ago observed, labor historically has demanded two things from the state: the right to organize and the right to strike. Achieving the *de jure* (as opposed to the *de facto*) recognition of these rights, and working out the systems within which they would be protected and circumscribed, would be the work of several decades. During this period, a rather large amount of legal (or extra-legal) experimentation with various regimes for ordering the employment relationship would occur.

i. *The Changing Character of Labor and Employment Law*

Until the latter part of the nineteenth century, the employment law of England, France, Germany, Sweden, and several of the leading state jurisdictions in the U.S. was strikingly similar: employment was presumed to be for a period certain (generally fixed by custom) and was terminable only for good cause and after reasonable and customary notice. The emergence of mass markets and large-scale economic organizations dissolved the feudal notions of a personal and ongoing relationship between employer and employed that was the basis for the old employment law model. Its replacement was the so-called employment-at-will doctrine,[9]

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[7] As formulated and introduced in the French National Assembly, the intentions of Le Chapelier's law were far reaching, and its wording could have come from the mouth of Rousseau himself: "The guild no longer exists in the state; there exists only the particular interests of each individual and the general interest. No one is permitted to encourage an intermediate interest that separates citizens from the community interest through a corporative spirit". («*Il n'y a plus de corporation dans l'état; il n'y a plus que l'intérêt particulier de chaque individu, et l'intérêt général. Il n'est permis à personne d'inspirer aux citoyens un intérêt intermédire, de les séparer de la chose publique par un esprit de corporations*»).

[8] Article I of the Decree stated: The destruction of all forms of guilds constituted by citizens of the same trade or profession being one of the fundamental goals of the French Constitution, it is forbidden to reestablish them under any pretext and under any form whatsoever. («*L'anéantissement de toutes espèces de corporations de citoyens de même état et profession, étant l'une des bases fondamentales de la Constitution française, il est défendu de les rétablir de fait, sous quelque prétext et sous quelque forme que ce soit*»). A decree of 13-19 November 1790 had given workers the right to assemble and combine that the *Loi Le Chapelier* revoked.

[9] The doctrine presumes that unless specifically agreed, employment is freely and unrestrictedly terminable at the will of either party.

which made a roughly contemporaneous appearance in Continental, English and American law alike. The at-will doctrine began to shift employment law away from the law of domestic relations within which it had first developed to the then quickly developing area of the law of contracts, in which it in large part has remained.

Like marriage, employment long had been conceived as a relationship that represented some mixture of status and consent. Depending on the persons and the circumstances, the characteristics of both relationships could be fixed somewhere on a continuum between these two poles. As the newly emerging law portrayed it, the employment relationship existed almost wholly at the consent end of this continuum. In the common and civil law alike, the notion of mutuality provided the justification: the employer or the employed was free to terminate the relationship at any time. Like the modern contract theories of political society that preceded them, the development of these contract theories for legal ordering required a fair amount of inventiveness, which in this instance would come from continental legal scholars and common law judges alike. In their full-blown forms (which appeared in late nineteenth century), these contract theories exemplify a species of law that Max Weber characterized as a system of logical rational formalism, i.e., a system that expresses its rules through abstract concepts that are the creation of the legal theory itself. These rules are regarded as constituting a complete, "gapless" system that encompasses all contingencies.

Employers undoubtedly appreciated the flexibility the new employment law extended to them. Nevertheless, as an ordering system, it was unacceptable to employers and employees alike. Oddly enough, despite their differences, the new, contractually based employment-at-will model of the employment relationship shared a crucial characteristic with its family law based predecessor: the notion of a direct, "one-on-one" relationship between employer and employed. This notion supported a legal fiction central to the new contract model that portrayed the employment relationship and its conditions as the result of ongoing bargaining between the employer and the employee.

Of course, this fiction did not reflect the reality of mass employment in increasingly bureaucratically organized enterprises. What was sought after by employers, employees and lawmakers alike was some sort of ordering system that would be appropriate for group dealings between employees and the organizations that employed them. In all parts of the industrialized world, the search after that system would remain a major societal preoccupation until the first two or three decades of this century. Unions, employer-sponsored worker participation plans, producer co-operatives,

various schemes of "welfare capitalism",[10] and calls for the complete reorganization of society along socialist lines all represent aspects of this search. The collective bargaining models that eventually would emerge represent one important outcome of these experiments in ordering, and their attributes are the product of employers and workers alike. Before turning to a brief consideration of the characteristics of these models, and to a comparative sketch of employment ordering systems, it is appropriate briefly to discuss the role of the Church in the evolution of labor law.

j. *The Role of the Church: The American Example*

An adequate description of the influence of the social teachings on the development of employment ordering systems far exceeds the limited bounds of this paper. Succinctly stated, their impact has been both substantial and pervasive. Naturally, the character of this impact and the means of its expression has varied with time and place. Perhaps nowhere is the influence of the social teachings more palpable, however, than in the United States.

To take but a few scenes from a rich and complex story: Unlike most of Europe, the United States has never had a divided labor movement with separate Catholic or Christian trade unions. In fact, nearly from the start, the relations between the Church and workers' movements in the United States essentially have been friendly and (particularly through the first six decades this century) markedly cooperative. Once again, brief reference to the Knights of Labor is illuminating.

To protect its members from employer retaliation, the Knights began as a secret organization. Like many fraternal groups, it also maintained various covert rituals. Concerns raised by the activities of clandestine organizations like the Masons, as well as the Marxist orientations of many workers' associations in Europe, lead the Canadian bishops to condemn the Knights. Well-informed about the Knights' actions and programs in the U.S., and fearful that Rome might prohibit American Catholics from involvement in the organization, the American bishops, led by Cardinal Gibbons, successfully came to the Knights' defense. In 1886, Gibbons drafted a statement on behalf of the bishops, which he took to Rome. The statement explained the role of the Knights' and of trade unions in the American context, and admonished that a condemnation of such workers' associa-

[10] This term describes a broad variety of activities from company-built model towns, such as Pullman, Illinois (which was erected in the late 1880's and inspired by employer-sponsored housing developments in Europe) to company-sponsored education and recreation programs.

tions might drive a wedge between the Church and its poorest members. The distinguished historian, John Tracy Ellis, judged this document as one the most significant the American bishops have produced, since it assisted in preventing any sort of fragmentations within the Church, within the developing labor movement, and between the Church and labor.

The way opened to them, Catholics have remained an integral part of the American labor movement. Indeed, Catholics — and Jews — in the U.S. have been distinctly more hospitable to becoming members of unions than any other group, and they also have dominated union leadership positions in numbers far disproportionate to their representation in the general population. There are undoubtedly a great many reasons for this, the most obvious being that as members of immigrant groups, many Catholics and Jews had strong financial reasons to become active in and to support unions.

Nevertheless, there appears to be more involved in all this than simple economic interest. For example, workers in the southern United States (where the numbers of Catholics and Jews historically was small) have had similar financial reasons to join unions, yet they traditionally have resisted organization. To condense a lot into a sparse description: Habits of thought related to and inculcated by these two religious traditions appear to have had rather a lot to do with the general willingness of Catholics and Jews to become involved in or to support unions. Both traditions, for example, place an enormous emphasis on community.[11] Similarly, neither would tend to understand community — at least in its most profound forms — simply in terms of a voluntary association of like minded individuals. Accordingly, neither tradition emphasizes the supremacy of individual conscience over the norms authoritatively transmitted through the community.[12] As Tocqueville noted, "Catholicism may dispose the faithful to obedience, but it does not prepare them for inequality". In contrast, "Protestantism in general orients men much less toward equality than independence".

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[11] Briefly stated, rather than the sovereign, self-defining self of the Enlightenment, the Catholic or Jewish self is situated by obligation and exists through a web of associational ties with others. In contrast to a self that can know itself in Cartesian isolation, the Catholic self is a "mediated" self, that only comes to know God, or anything else, through participation in a community. Indeed, in this perspective, God discloses himself through others, and it is in serious conversation with others, within and across time, that one literally is inserted into the conversation among the Trinity. In other words, the Catholic and Jewish anthropology of the self, as well as the image of community, stands in stark relief to the images that one finds in secular modernity.

[12] In short, whether they themselves were in any sense "religious", unions and the sorts of habit they require to sustain themselves may have been particularly intelligible to persons of Jewish or Catholic backgrounds. As both groups have become more assimilated into American culture, the special intelligibility of unions (and other mediating bodies) has faded.

The "Catholic" attitude toward associational activities and communal ties generally (which might be termed the "subsidiarity attitude"), as well as the American Church's early sympathy for and support of workers associations (which is an expression of this attitude), set the groundwork for the special character of the relation between the Church and labor in the U.S. Added to these factors is one that Tocqueville was the first to point out: the early separation of church and state in the U.S. has given religion and the religious voice a distinct and special function in American public life. That voice has played an important role in both the labor and civil rights movements in the U.S. These are large topics, however, that are better pursued in another place. It is appropriate here instead to turn to a sketch of labor and employment law systems.

II. Characteristics of Labor Law and Labor Relations Systems

This teaching also recognizes the legitimacy of workers' efforts to obtain full respect for their dignity and to gain broader areas of participation in the life of industrial enterprises so that, while cooperating with others and under the direction of others, they can in a certain sense "work for themselves" through the exercise of their intelligence and freedom. [*Centesimus annus*, ¶ 43]

a. *Introduction*

As a separate area of law, the law of employment is relatively new. For example, the first legal treatise dealing strictly with the employment relationship did not appear in the U.S. until 1877. Similarly, the first work to treat the individual contract of employment in Italy was published only in 1901. One legal scholar has noted that in many European countries, labor law only became recognized as a discrete field after World War II.

This observation raises a definitional problem. Nearly everywhere, the term labor law refers to the law of collective bargaining and collective agreements. In some places, however, and particularly in Germany, the term more widely indicates the entire body of legal regulation that affects the private employment relationship. Broadly speaking, this includes both individual and collective labor law, as well as the law of social security. These operate together as part of an articulated whole, and it is misleading to assess the law regulating the individual employment relationship in isolation from collective labor law.

In contrast, in the United States context, labor law typically designates solely collective bargaining, while employment law specifies protections for

the individual employee. These latter include statutory prohibitions of employment decisions based on factors such as race, sex, age or disabilities, as well as judicially developed protections against unfair dismissal for individual employees. While labor and employment law are not wholly distinct fields, they rest on different bases, and in the final analysis, are intended to achieve rather different goals. Unlike the German system, American employment law has had a piecemeal development, and its various aspects often stand quite independently from one another, and from the law of collective bargaining.

In part, these terminological differences reflect the lack of systemization that is characteristic of common law methodology, which unlike the approach of the Continental civil law systems, is heavily analogic. More importantly, they exemplify two distinctly different responses to the issues raised by the "social question", and to the problems in employment ordering that have arisen during the past quarter-century. In many ways, the U.S. and German models represent opposing "ideal types", between which the employment ordering regimes of other industrialized nations fall. For this reason, and because of the influence of Germany and the U.S. on the legal, social, and economic orders of other nations, they provide useful models for describing and comparing the characteristics of labor and employment law.

The late appearance of labor and employment law is hardly surprising. As has been seen, the search for an ordering regime appropriate to mass employment took several decades to develop. In typical fashion, the law did not lead these developments, but chiefly followed them. The key characteristics of collective bargaining systems had crystallized in most industrialized nations before the outbreak of the First World War. The time for formally instituting what the parties themselves had developed would occur in the decade or so that followed.

b. *The German Model as Continental Prototype*

The principal lines of present-day German labor relations law were laid down during the Weimar period (1919-1933). The Central Commission of Co-operation (*Zentralarbeitsgemeinschaft*) reflects the role of the parties in the law's promulgation. The employers' associations and the trade union federation established the Committee at the War's end. In so doing, the employers' pledged the unhindered recognition of unions and both parties asserted that collective bargaining should serve as the chief means for ordering the employment relationship. The pathbreaking work of legal

scholars such as Phillip Lotmar and Hugo Sinzheimer also assisted in establishing the theoretical basis for German labor law and elaborating its contents. The Works Councils Act of 1920, the creation of the labor courts system (1926), and the establishment of a comprehensive unemployment insurance and job placement system (1927) are considered to be some of the most significant legacies of the Weimar era.

c. *Individual Labor Law*

German labor law developed as protective law, *i.e.*, as law to protect the weaker party to the employment contract. The idea that the state should play a positive role in supporting the individual's development of his or her personality[13] (in part, through assisting to stabilize the employment relationship) runs throughout. Consequently, German labor law presents an imposing edifice of extensive protections for the individual employee. These include broad protections against dismissal, the right to an annual vacation (24 days), regulations concerning maximum daily working hours, the guarantee of continued remuneration in case of sickness, as well as a impressive variety of other, statutorily guaranteed rights. Freedom of contract remains the basis of German employment law. However, by creating a statutory "scaffolding" that conditions, qualifies, or fixes the permissible terms, the State plays a large role in shaping the nature of the employment relationship.

d. *Collective Labor Law*

This relatively high level of state intervention affects but hardly displaces the significance of collective bargaining in the German employment ordering scheme. In the German conception, collective bargaining represents an autonomous lawmaking scheme which both embodies and operates according to the principle of subsidiarity.[14] As the

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[13] This right to "the free unfolding of one's personality" (*die freie Entfaltung seiner Persönlichkeit*) is also guaranteed by Article 2 of the German constitution.

[14] Thus, as one scholar and member of the German Constitutional Court notes, "The collective bargaining system proves to be a sensible restriction of governmental lawmaking ... With the negotiation of pay and other conditions of employment, the parties to the collective agreement truly take on tasks whose fulfillment by the state in a free democracy hardly would be possible". («*Das Tarifvertragssystem erweist sich als eine sinnvolle Beschränkung der staatlichen Gesetzgebung ... Mit dem Aushandeln der Löhne und sonstigen Arbeitsbedingungen nehmen die Tarifvertragsparteien Aufgaben wahr, deren Erfüllung von Staats wegen in einer freiheitlichen Demokratie kaum möglich ist*». A. Söllner, *Grundriß des Arbeitsrechts* 121 (11. Auflage 1994).

German Constitutional Court characterizes it, the collective bargaining process entrusts to the parties the crucial task of the "meaningful ordering of working life" ("*sinnvolle Ordnung des Arbeitslebens*").[15]

In keeping with the idea of contractual freedom, the collective bargaining agreement sets only the minimum employment conditions,[16] which become part of the terms of the contract between the individual employee and the employer. These minimum terms may be improved, but not reduced, through individual agreement. Similarly, by operation of the law, the collective agreement binds only an employer who has assented thereto, and the employees who are actual members of the union which negotiated it. In actual practice, however, employers generally extend the collectively bargained conditions to all employees in the workplace. According to the so-called "principle of contractual unity" (*Prinzip der Tarifeinheit*), only one collective bargaining contract will govern the conditions of a given workplace.

Although they are possible, collective agreements between a single employer and a union are unusual. Typically, collective agreements are concluded between individual unions and an association of employers at a branch or regional level. This pattern of settlement precludes collective agreements from taking into consideration the particular problems and conditions of a specific business or workplace, and complicates, if not forecloses, direct employee involvement in the employment ordering process. It is at the latter, "grass-roots" level that the distinctive German labor relations institution, the works council (*Betriebsrat*), exists and exerts its influence. The works council represents the chief means by which workers participate in management decisionmaking. As such, it constitutes a central feature of the German employment relations system.

e. *The Works Council and Workers' Participation*

As previously noted, the works council traces its development to management efforts to develop alternatives to autonomous, self-organized employee associations. After World War I, the Weimar Constitution (Art. 165) called for the creation of establishment workers' councils (*Betriebsarbeiterräte*) which would become part of a hierarchical system of workers and economic councils. These were to culminate in a Reich Economic Council (*Reichswirtschaftsrat*), comprised of employers' and workers'

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[15] BVerfGE 4, 107; 18, 27.

[16] Accordingly, Germany has no minimum wage legislation. Minimums are set through the patterns established in collective bargaining.

representatives, that would review and give opinions on any draft legislation concerning social or economic matters. The Economic Council was to have the power to propose legislation as well. With the enactment of the 1920 Works Councils Act, only the first level of this scheme was realized. To secure its passage, however, the Act had to be tailored in a way to make it acceptable to the conservative majority in Parliament. This resulted in the works councils standing separately from the unions, and being confined to representing the employees of only one employer. Thus, the works councils established by the 1920 Act closely resembled the alternatives to collective bargaining that employers had developed in the nineteenth century. Not surprisingly, the unions had many misgivings about and objections to this structure, which strongly were reiterated with the reintroduction of the works councils system in the Works Constitution Act of 1952. These concerns and dissatisfactions were at least to some extent addressed in the 1972 amendments to the statute.

The institutional separation between the unions and the works councils continues to exist in form, but substantially less in fact. Presently, an overwhelming majority of the members of works councils are also union members. This gives the unions influence over and direct communication with the works councils. It also permits the works councils to serve as direct "grass-roots" links between the unions and individual workplaces. In short, the works councils system largely is grounded by its relationship with autonomous employee associations. While the employer is responsible for their economic support, the works councils consist solely of employee representatives who are selected by their colleagues.[17] Unlike the unions, which represent only their actual members, the works council represents the entire employee complement in the workplace. Although the law requires them in every workplace with five or more employees, many small and medium size employers have no works council.

The works councils have extensive participatory rights that include personnel and economic as well as social matters. These rights are backed-up by the employer's duty to supply the works council with any information necessary to the effectuation of its tasks. The law also establishes several areas where the works council has a co-determination right. The employer may effect no decision on matters that fall within the scope of this right without having received the express consent of the works council. In other words, on these topics, the works council has a managerial right that is

[17] The law has been interpreted broadly; generally speaking, only persons who exercise significant managerial discretion are foreclosed from works council participation.

coextensive with the employers'. The works council and the employer may also promulgate a "works agreement" (*Betriebsvereinbarung*). The agreement constitutes a contract between the employer and the works council and may settle matters over which a codetermination right exists. In some ways, however, the works agreement resembles the collective bargaining agreement because it may also establish minimum conditions that have a normative effect on the individual employees' contract with the employer. To prevent the undermining of the collective bargaining system, however, works agreements are prohibited over topics that are treated in a collective agreement. This is a very broad prohibition. So long as an employer operates in a geographical region or a branch of industry where a collective agreement exists, works agreements over subjects treated in the collective agreement are banned. This is true even if the employer is not itself a party to the collective agreement. This rule reflects the importance of the collective bargaining system in the German scheme of labor relations.

f. *The Anti-type: The American Model of Collective Labor Law*

Several aspects of the American system of "free" collective bargaining stand in rather sharp relief to the German model. In the American scheme, the state establishes and sanctions a voluntary ordering system, but leaves the outcomes achieved through the process to be determined wholly by the parties, free of governmental influence. This regime represents an example of what Gunther Teubner terms a "reflexive" legal scheme. The goal of reflexive law, Teubner states, is "regulated autonomy", or controlled self-regulation. Reflexive legal schemes entail minimal state intervention in the ordering of relationships because they rely on market mechanisms to shape their results.

In the United States, the term collective bargaining virtually is synonymous with the Wagner Act. The core goal of the statute is to protect and enhance individual status through the defense and maintenance of freely formed and autonomous employee groups. This feature defines the statute and characterizes the unique position that it holds in American law. The Act represents the only place in an otherwise highly individualistically-oriented jurisprudence where the law has encouraged the formation of mediating bodies through which to promote individual empowerment and to foster self-determination. In the final analysis, the Wagner Act rests on a distinctly different idea of the character of human personhood than that which typically informs American law.

Congress enacted the Wagner Act in 1935. In so doing, and in contrast to the rest of the industrialized world, Congress deliberately opted for a

system that would involve minimal state intervention in the employment relationship. As in the German conception, collective bargaining in the U.S. can be understood as a private law-making system. In contrast to the German conception, however, the chief function of the collective agreement in the U.S. context is not to establish a set of minimum employment conditions that strictly apply only to the union's members. Instead, the American collective bargaining agreement elaborates in a binding fashion all aspects of the employment relationship for all the employees in the affected workplace. Thus, the United States Supreme Court has described the collective bargaining agreement as not just a contract, but "a generalized code" that represents "an effort to erect a system of industrial self-government" through which the employment relationship can be "governed by an agreed-upon rule of law".[18]

The promulgation and administration of this law is largely the responsibility of the affected parties alone. Consequently, American collective bargaining agreements typically erect a private dispute resolution system — the grievance arbitration process — that the employer and union jointly administer. These systems generally have jurisdiction over nearly every sort of dispute that might arise concerning the employment relationship. The presence of an arbitration system normally precludes the courts for other arms of the state from adjudicating matters that come within the parties dispute resolution scheme.

The so-called exclusivity principle bottoms the American model of collective bargaining. It also marks one of the starkest differences between the American and German industrial-relations systems. The exclusivity principle rests on the idea of majority rule. The principle establishes the association formed by a majority of employees in the affected workplace unit as the exclusive representative of them all. The principle prohibits an employer from attempting to bypass the majority-designated representative by unilaterally changing the terms or conditions of employment, or by dealing with individuals or groups of employees independently of the union. The preferred status the majority-representative enjoys in this scheme carries with it the obligation to represent all employees fairly, regardless of their support for or membership in the union.

The exclusivity doctrine prevents the fragmentation and dissolution of the strength employees achieve through collective action. It thereby acts to protect the principles of majoritarianism that underpin the Act's scheme. The exclusivity principle also reflects the fact that American workers

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[18] Steelworkers v. Warrior & Gulf Navigaion Co., 363 U.S. 574, 580 (1964).

generally organize and bargain on a workplace or employer basis, and not on a regional or industry-wide basis. To a substantial degree, the principle is a function of the emphasis in American-style collective bargaining on local, "bottoms-up" law-making. The centrality of exclusivity to the Act's scheme reveals the statute's preoccupation with the removal of impediments to the free formation of autonomous, self-organized employee associations.

In adopting the Act, Congress intended to institute a comprehensive, uniform, and flexible system through which the employment relationship could be ordered. Hence, rather than attempting to adjust specific problems legislatively, the Wagner Act left it to the parties themselves to promulgate arrangements appropriate to their circumstances. The chief significance of the American collective bargaining scheme lies in the opportunity it provides to involve people in making and administering the law that most directly determines the details of their daily lives. The process both permits and requires people to decide for themselves the kind of people they will be, and to explain and justify those choices to one another. Succinctly stated, American-style collective bargaining provides employees with a powerful means to participate in a broad spectrum of managerial decisions, which it accomplishes through establishing the law making process at a "grass-roots" basis. Accordingly, the American labor law scheme also represents a concrete embodiment of the subsidiarity principle.

g. *American Employment Law*

During the past 15 years, the practice of collective bargaining in the U.S. has steadily declined. In contrast to "traditional" labor relations law, the two sources of employment law have become of ever-greater significance in the American context. The first of these are statutorily guaranteed protections against discrimination in employment decisions based on factors such as race, color, creed, sex, or the national origin of an employee. These are far-reaching protections that are primarily contained in the famous Title VII of the Civil Rights Act of 1964. The Age Discrimination in Employment Act of 1967 (which prohibits age-based employment decisions and covers all employees over the age of 40) and the recent Americans with Disabilities Act (1992) are modeled after Title VII and extend that statute's protections against discrimination in employment. Unlike the Wagner Act, however, the rights created in these employment discrimination statutes are not intended to involve workers in the ordering process. Rather their goal is to open and extend employment opportunities, particularly for socially disadvantaged groups, by prohibiting management from the use of the statutorily outlawed criteria as the foundation for employment-related

decisions. The rights these enactments create are individual rights that exist as a matter of positive law. With very limited exceptions, these rights are held by all persons, regardless of their status in the workplace hierarchy. The American employment discrimination statutes, and the remedies that have been developed for their enforcement, and especially affirmative action programs, have had substantial influence on foreign legal systems. Germany, England, the European Union, Canada, and India are a few examples of jurisdictions where the American model has been used as a pattern for lawmaking.

Judicially developed restrictions on unfair discharge represent a second significant source of contemporary American employment law. These restrictions began to be developed by the courts during the late 1970's and early 1980's. These developments were conscious reactions to two phenomena: the decline of unions and the practice of collective bargaining in the United States, and the growing instability in employment relationships, particularly among long-term, relatively well compensated managerial employees. Like the employment discrimination statutes, the remedies these judicially developed doctrines provide are chiefly litigation driven. Once more, their goal is not to provide employees with an opportunity to engage in the employment ordering process, but to prevent employment termination for arbitrary reasons. The protections they afford individuals against discharge are nowhere near as generous as those available under German law. In short, the U.S. remains a "hire and fire" society, with opportunities to dispute the discharge, if one has the access to legal help, and the ability to endure the arduous litigation process. Capital mobility, and not employment stability, represents an attitude that stamps the character of American employment law generally.

III. The Significance of Labor and Employment Law

> For the "health" of a political community — as expressed in the free and responsible participation of all citizens in public affairs, in the rule of the law and in respect for the promotion of human rights — is the necessary condition and sure guarantee of the development of the "whole individual and of all people". [*Sollicitudo rei socialis*, ¶ 44]

The significance of the employment order for the authentic development and unfolding of our personhood lies at the heart of the entire social tradition. From the first, the social encyclicals have reiterated, illuminated, and explicated this crucial theme in a variety of ways, in light of "the signs of the times". Developing and responding to the implications

of this insight constituted the life's work of such luminaries as Kettler, Weiss, de Mun, Nell-Breuning, Manning, and Dorothy Day, to name but a few. Consequently, an extended discussion of this theme is neither necessary nor appropriate. Instead, it may be useful to select from this rich and nuanced body of teachings a few points that bear particular emphasis in the present economic and social context.

A distinct set of insights into the anthropology of the human person orients and conditions the social teachings. One of the key understandings is the fact that humans are self-constituting beings. As such, we make ourselves to be what we are through the activities in which we habitually engage. Consequently, as Aristotle, Aquinas, and Augustine (among others) were at pains to remind us, it is the seemingly insignificant routines and actions of daily life that make all the difference. For it is through them that we literally are forming ourselves as individuals and as a society.

It is precisely its impact on the everyday, the concrete, and the particular that marks the real significance of the order governing the employment relationship. This law touches individuals more directly and frequently than virtually any other aspect of a public or private ordering regime. This has been true at least since the time of the industrial revolution. But presently, it is true for far more people, and a far greater proportion of the world's populace. For better or for worse, men and women are tied to the market and to paid employment in a way never before seen. The world-wide increase in labor force participation, particularly among women, is one of the most striking social developments of the past forty years.

A few statistics help to illustrate this point. In the United States, for example, about 93 percent of adult males participate in the labor force, a figure that has remained roughly constant for several decades. Since 1950, however, women's workforce participation has risen by more than 200 percent. Nearly three-quarters of all women aged 25 to 54 are employed, the overwhelming proportion of them full-time (*i.e.*, working 35 or more hours per week). Not surprisingly, the great majority of mothers presently are also active (and mostly full-time) workforce participants. Working hours for women have been increasing steadily during the past 20 years. Additionally, one major study shows that after years of gradual decline, the normal American workweek has increased to the point where the average employee works the equivalent of an additional month more than was worked in 1970. Indeed, record numbers of Americans now work at two or more jobs.

In short, working for pay now occupies more of the time of more people in industrialized nations than ever. The job has become a central

part of most adults' lives, and being employed or seeking employment is the way people spend the lion's share of their waking hours. Simply put, the employment order involves far more than simply wage rates, power relationships, "competitiveness", productivity, or workplace voice. It quite literally involves the constitution of human beings.

The preoccupation of the Church and the social teachings with such apparently mundane and unfashionable institutions like unions and employment law may seem surprising, even nostalgic. Whether and how people participate in decisions about the criteria for promotions, job training, health benefits, the dismissal of a fellow employee or the best way to handle a novel or sensitive employment-relations question can appear trivial. But, it is a tremendous error to regard such matters as being unworthy of serious attention. Individuals and societies alike become and remain self-governing only by repeatedly and regularly engaging in acts of self-government. It is the habit that sustains the condition. This point represents part of the significance of collective bargaining as an institution. By affording individuals with the means to participate in administering the order of the employment relationship, collective bargaining can instill and strengthen the habits of direct responsibility and authentic self-rule.

In short, the real worth of unions lies in the contributions they can make in assisting the full development of human personality, the proper unfolding of which can only be determined through a set of values that truly are intelligible. To consider how we are to live together, in concrete, daily situations, forces us to ask what it truly means to be a person. The institutions that support this sort of workplace self-determination, and that provide employment protections generally, are coming under increasing stress. A brief outline of these problems is appropriate here.

IV. The Current Status of Labor Law and Labor Relations Systems

> [T]he highly developed social life, which once flourished in a variety of prosperous and interdependent institutions, has been damaged and all but ruined, leaving virtually only individuals ... [*Quadragesimo anno*, ¶ 78]

Since the onset of modernity, the farseeing amongst us have warned about the spread of a particular sort of individualism that would erode the mediating bodies that constitute civil society. Nevertheless, Tocqueville believed that the family would be the one institution that could survive modernity's atomizing force, while Durkheim thought that the employment relationship would provide people with the stable bonds to others that the

disappearing institutions of social life once had supplied. Neither has proved to be the case. A quick glance over the social and work-life landscape reveals the following:

1) Membership in autonomous employee organizations is declining nearly everywhere. For example, union membership in the private sector in France presently stands at 5-6 percent, a figure that one noted French labor scholar describes as a "critical threshold". Similarly, union density in the U.S. has declined from a level of about 35 percent in 1960 to less than 11.5 percent today; some experts expect this rate to fall to 7 percent by the end of the decade. Between 1975 and 1993, Japanese union density rates declined by over 10 percent (to 24.2 percent), a trend that is continuing. Although it is the home of the world's largest trade union, and despite the centrality of collective bargaining to its labor relations system, German unions also have experienced substantial membership losses.

2) In the U.S. at least, union decline is part of the generalized decline of all the mediating groups in society. In fact, union decline has been something of a leading indicator for the decline of mediating bodies in the U.S. as a whole. The fact that union decline has occurred at roughly the same time that families, churches, fraternal and service groups, grass-roots political clubs and similar mediating institutions began to deteriorate should come as no surprise. No single mediating structure is likely to flourish in the absence of others. All require and can engrain the same sorts of habits: decision, commitment, self-rule, and direct responsibility. No single institution alone can inculcate or restore these habits. The existence and decline of all these bodies is mutually conditioning. The collapse or deformation of any one of them threatens the rest.

3) The employment relationship is changing and in many cases is much less a "relationship" than formerly:

a) In the U.S., so-called contingent employment arrangements (part-time, temporary and limited-term contractual arrangements) are on the rise. One well-known observer of labor market trends characterized these arrangements as "just-in-time" employment. As American businesses seek to become more competitive, she predicted, "all employment relationships are going to become more fluid". Many commentators forecast that businesses increasingly will have only a "core group" of long-term employees, supplemented as needed by contingent workers.

b) Likewise, employment leasing arrangements also are becoming increasingly popular. Under these arrangements, an employer contracts with a third-party to supply its employee complement. These arrangements pose

challenges to collective bargaining and related employee representation and participation systems.

c) "Self-employment" is also a rising phenomenon, at least in the U.S. Lawrence Mishel and Jared Bernstein[19] state that "Much self-employment is disguised underemployment, as can be seen from the fact that self-employed workers earn far less than those on regular payrolls". According to the authors, the self-employed have more education than their wage-earning counterparts. Nevertheless, self-employed women earn only 63 percent as much as salaried women. The income differences between self-employed and salaried men are negligible. However, the educational gap between the two groups of men is greater than between self-employed and salaried women. The self-employed also typically have fewer benefits.

4) The workplace itself is increasingly less one "place". So-called "telecommuter" arrangements are on the rise, both in the U.S. and in Germany. For example, in 1989, ten percent of the Chicago area employees of A.T. & T. were working at locations other than company facilities, many of them at home. The term "virtual workplace" describes what many believe will typify the new work-world, which will be accompanied by an increasing isolation from one's co-workers.

5) The newly emerging patterns of work organization mean that it will be increasingly difficult to distinguish between "employees" and non-employee "independent contractors", who are owed no benefits and to whom no expectations of continuing work-relationships are created.

6) It is also becoming increasingly common for the employees of several businesses to work together at one workplace; thus, some employees simply do not work at a site owned or controlled by their own employer. In Germany, for example, such arrangements have put the works council system under great stress.

7) Job stability is a major preoccupation everywhere. For those with jobs, however, pay instability may also be a matter of increasing concern. So-called variable pay plans, which tie pay to continuous profit or productivity improvements, are becoming increasingly popular with management.

8) In light of the changes in employment, one German scholar has described German labor law as "a tanker in the fog". If so, the various

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[19] *The State of Working America*, 1994-95 (M.E. Sharpe 1994).

aspects of American labor and employment law appear more like a disorganized squadron of boats, several of which have struck shoals. As the practice of collective bargaining has declined in the U.S., there has been a corresponding increase in the piecemeal and ad hoc regulation of employment through the states and Congress. A blue-ribbon Presidential commission on the future of U.S. labor relations has urged that non-litigation based models be used to handle employment disputes. Similarly, a U.S. federal court system report has recommended that all non-civil rights employment matters be removed from federal court jurisdiction.

Of course, not all aspects of the above-described developments are undesirable. Telecommuting and flexible working hours may permit employees more freedom to determine their own working conditions. They also may afford women with young children more opportunities for participation in the workforce. Flexible employment arrangements and pay plans also may give skilled and so-called "knowledge" workers greater ability to select the sorts of projects and tasks they wish to work on, and to earn considerably more. New patterns of work organization have done away with multiple levels of supervision, thereby giving some employees more ability to determine for themselves how to perform their work, and a greater range of tasks to perform. For the skilled and well-educated, such changes may be liberating. One pressing question is how equitably these chances for greater self-determination will be distributed.

V. Concluding Observations

> Toward the end of the last century the Church found herself facing an historical process which had already been taking place for some time, but which was by then reaching a critical point ... A traditional society was passing away and another was beginning to be formed — one which brought the hope of new freedoms but also the threat of new forms of injustice and servitude. [*Centesimus annus*, ¶ 4]

A decade ago, Czeslaw Milosz observed that "contrary to the prediction of Marx, this is the central problem of the twentieth century. Instead of the withering away of the state, the state, like a cancer, has eaten up the substance of society". No doubt exists about the corrosive impact of the state on the institutions of civil society. Nevertheless, markets appear increasingly to be consuming the ordering capacity of the state, and to have outstripped its power of initiative. This does not mean, *pace* Marx, that we are being carried helplessly along by the tides of some ineluctable historical or natural force that lies beyond our control. It does mean that old patterns of ordering are breaking down, and that new patterns are seeking to emerge.

What emerges is not simply a matter of blind chance. Humans are free, reasonable, and responsible beings. As such, we play a constitutive role in history. The legal, social and economic orders that condition our lives are the products of human choice and reflect series of judgments that certain ways of being are preferable to others. Each of our choices, as individuals and as societies alike, shifts probabilities. By making choices and acting on them, we bring situations into being that did not have to exist. At the same time, those choices establish conditions that make certain consequences more or less likely. In short, as St. Paul teaches, the fact that we are free means that we bear the awesome responsibility of working out our salvation "in fear and trembling". We co-operate as active agents in the completion of history.

All of this may sound rather removed from labor and employment law. It is not. As Cardinal Newman pointed out over a century ago, economics embodies a set of claims about the character of our personhood. As such, it represents a moral system, a point that was very clear to Adam Smith, who grounded his economic writings on his extensive work in moral theory. Hence, as Smith observed, there is a reflexive relationship between market arrangements and liberal social institutions. The purpose of free-markets is to promote individual self-determination and material well-being, thereby supporting the conditions for self-rule.

Authentic freedom and self-rule require a background. Modern capitalism however has a strong tendency to overwhelm and eventually to dissolve the discrete, local, and particular institutions — which Edmund Burke called the "little platoons" of social life — that provide this background. These grass-roots institutions are the places where the habits of self-rule are practiced and learned. Regrettably or otherwise, there is no invisible hand that guarantees their existence, nor that automatically checks the centripetal forces that modern markets exert.

The future contours of labor and employment law are unclear. Increasingly, however, the trend has been the cabining and dissolution of opportunities for working men and women actively to participate in the promulgation and administration of the order that most directly affects their day-to-day conditions. Briefly stated, working people at nearly all levels of the economy are becoming the objects of administration rather than active and self-determining agents. Such conditions are in the most serious sense inhuman.

One thing is certain. Institutional orders inconsistent with our human character will not survive. Consequently, the most pressing question of our time is whether, and to what degree, the prevailing notions of our personhood are accurate. Everything turns on our answers to this query. The emergence of new patterns of ordering provides the perfect opportunity to revisit this question, in light of the Church's tradition.