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# CATHOLIC LABOR THEORY AND THE TRANSFORMATION OF WORK

DAVID L. GREGORY\*

## INTRODUCTION

This essay addresses the tremendous interdisciplinary potential that the synergy of law and theology holds for labor law. No legal literature directly has examined the impact of theology on labor law. This essay examines the promise this fusion holds for transforming labor law. This essay serves as a preliminary assessment of the potential for the Catholic Church's social teaching on the world of work to accomplish what Marxist theory has failed to do. My essential purpose is to review a Catholic vision of labor theory that transcends capitalism and Marxism and promises to transform the world of work.

Catholic social teaching on labor incorporates and differs from both Marxist and capitalist teachings. Theology, understood in the broadest sense as incorporating Catholic social teaching as an important component, rather than Marxism alone, may hold the key to transforming and redeeming the world of work. I analyze the Catholic theology of work because the modern history of Papal encyclicals and Bishops' pastoral letters on labor is especially timely and is powerfully integrated in Pope John Paul II's 1981 labor encyclical, *Laborem Exercens*, and in the United States Catholic Bishops' 1986 pastoral letter, *Economic Justice for All*.

## OVERVIEW

In the very act of creation God dignified work. The history of the world is the history of work. It is a history first eloquently told in the Torah, as the Jews moved from the toil of slavery in Egypt to the dignity of meaningful work as free people in a free land. In the New Testament Jesus continued to dignify work. Unfortunately, for much of humanity the world of work historically has been debased and denied in alienation. This

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is the tragedy of labor; tragic because alienation is unfair, undeserved, and remarkably intractable. This was the core insight of Karl Marx. Within the past century Catholic social teaching on labor, borrowing from Marxist analysis, has transcended Marxism and revived the world of work.

Recent statements by Pope John Paul II and by the Catholic Bishops of the United States offer especially unique and powerful promise to reconstruct the world of work. This is not a Catholic message in any parochial sense. Rather, this is a universal "catholic" message to all of humanity. It is a message of particular relevance to workers, unions, employers, labor lawyers, and labor law theoreticians. Catholic labor theory is sophisticated and profound. It is an established intellectual movement, coinciding with the development of workers' movements in Western Europe and the United States since the late nineteenth century. This essay describes the potential for contribution by a very progressive Catholic social teaching to the legal theory, and one day, to the practice of work. This has special implications for labor law in the United States, ranging from improving the quality of work life, to worker democracy, to worker ownership—all designed to harness capital in the service of labor.

In Part One of the article, I adumbrate the roles of the individual and the community alienated within, and from, the world of work. Alienation cries out for redemption. Large complex societies, whether in late capitalist or controlled socialist economies, have not effectively coordinated the individual, the community, and the world of work. Consequently, community is badly fragmented, individuals are cast adrift in atomistic despair, and the tragedy of labor is further exacerbated. Catholic social teaching offers hope to both the individual worker and to the community.

Part Two of the article examines the entrenched and enduring problem of worker alienation. Within the minority of the world's population fortunate enough to be employed, a substantial portion of workers hate their working lives. Rather than ennobling and empowering lives of workers with dignity and meaning, work instead often has the opposite influence of debasing workers' lives. Consider two familiar characters in the tragedy of labor. The bitter factory worker, engaged in mindless, dangerous, repetitive tasks, seduced by the illusion of "profit sharing" or "employee ownership," and concerned about the endangered economic future of the enterprise, is an increasingly common figure. The young Wall Street lawyer routinely works ninety hours each week to earn a \$70,000 annual starting salary. He carries an accumulated college and law school education loan debt approaching his annual salary. While proof reading documents at 2 A.M., he realizes that he, the highly paid technician, is for all practical purposes little more than an indentured servant. He may grow to despise his legal work as a debased means to a confused end of material comfort. He also may realize he lacks the call to the transformative vocation of law. The benumbed lawyer may eventually become materially wealthy and spiritually bankrupt.<sup>1</sup> These are profoundly disturbing scenarios.

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1. See Kronman, *Living in the Law*, 54 U. CHI. L. REV. 835 (1987).

Whether a person is a lawyer or factory worker, devoting a working life to a cold, dry task that has no meaning other than as a means to accumulate wealth, is both tragic and pathetic indeed. It profits the worker nothing to gain the world if in the process he loses his soul.<sup>2</sup> Many workers are gravely wounded amalgams of the pathos of Willie Loman in *Death of a Salesman* and of the tragedy of Shakespeare's King Lear. Indeed it is probably most accurate to say that more workers are pathetic Lomans; fewer reach the tragic heights of Lear. Because the highly educated lawyer probably is intellectually more aware of opportunities to live a more socially meaningful working life than is the factory worker, he may be more like Lear. Studies reveal a pandemic level of work dissatisfaction among those lawyers who view the practice of law mainly as a technical means to make money,<sup>3</sup> rather than as a means to achieve greater collective human dignity and as a transformative vocation to further individual and social justice. Highly intelligent workers quickly can be reduced to cynical instrumentalists. Both the alienated factory worker and the alienated lawyer are victimized by succumbing to the fetishism of commodities, idolatrously worshipping the false god of materialism. As Karl Marx, Pope Leo XIII, and Pope John Paul II realized, the world of work will be transfigured only when labor is given priority over capital and material is harnessed to serve humanity. The Bishops' letter offers special hope for "workaholics"—people who work compulsively without reflection on the deeper meaning of life and of their actions. The quality and pace of work should be more human in scale, enabling people to experience the dignity and value of their work and giving them time for other duties, obligations, and, at least equally important, for leisure, play, and recreation. This balance is vitally important for sustaining the social, political, educational, and cultural structures of society.<sup>4</sup> Catholic social teaching may offer a way out of the capitalist insanity of commodification, which Lukacs called the "central, structural problem of capitalist society in all its aspects"<sup>5</sup> and characterized as containing within it "the whole of historical materialism."<sup>6</sup>

Part Three of the article comparatively will assess Marxist and Catholic alternatives, and the possible symbiotic amalgamation of their insights, to transfigure the world of work. Marxist historicism alone cannot redeem the world of work. Marxist labor theory removes from its debased ontology the transcendent yet simultaneously personal and immanent God and falsely substitutes the delusion of proletarian triumph of a workers' paradise in

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2. Luke 9:25.

3. Hirsch, *Are You On Target?*, BARRISTER, Winter, 1985, at 17; Zinke, *Money Is Less Important Than Work*, NAT'L L.J., July 28, 1986, at 16, col. 1.

4. UNITED STATES NATIONAL CONFERENCE OF CATHOLIC BISHOPS, ECONOMIC JUSTICE FOR ALL: PASTORAL LETTER ON CATHOLIC SOCIAL TEACHING AND THE UNITED STATES ECONOMY 169 (1986) [hereinafter ECONOMIC JUSTICE].

5. LUKACS, *Reification and the Consciousness of the Proletariat*, in HISTORY AND CLASS CONSCIOUSNESS: STUDIES IN MARXIST DIALECTICS 83 (R. Liningston trans., 1971).

6. *Id.* at 170.

God's stead. This is necessarily an incomplete and imperfect nonsolution. Catholic social teaching instead provides a much more viable standard by which to begin to redeem the world of work from the tragedy of labor. The 1981 papal encyclical of Pope John Paul II, *Laborem Exercens*, and the 1986 pastoral letter of the United States National Conference of Catholic Bishops, *Economic Justice for All*, will highlight the analysis throughout the essay.

Part Three will not offer a concrete, positive agenda. There is no mechanical point-by-point plan capable of immediately transforming a very fallible, imperfect, and adversarial world of work. Thus far, there has been an unbridgeable gulf between the deeply flawed world of work and the utopian, idealized vision of many labor law scholars and theoreticians. Catholic labor teaching offers the most promise to bridge this abyss. Critical legal scholar Roberto Unger's brilliant new *Politics* trilogy,<sup>7</sup> owing much to the Gospel message and to the communism of Chapter Four of the Acts of the Apostles,<sup>8</sup> offers the most comprehensive Christian romantic agenda for effectuation of transformative social democracy.<sup>9</sup>

A profound malaise of spirit afflicts many workers. Misery, meaninglessness, deep dissatisfaction, and often unarticulable impoverishment of purpose plague even many of the most "successful," especially if "success" is measured only by conventional norms of monetary remuneration in late capitalist society. It has long been axiomatic that most persons who work for a living, as distinguished from those peculiarly driven to "live to work," dread Monday morning. This poignantly simple description of the world of work encapsulates much of the contemporary tragedy of labor. Most workers continue to experience alienation in their working lives. Whether nonunionized, mid-level managers employed at will, or blue collar industrial "employees" as defined by Section 2 of the National Labor Relations Act<sup>10</sup> and

7. Roberto Unger's sweeping new work, *POLITICS: A WORK IN CONSTRUCTIVE SOCIAL THEORY* (1987), is comprised of three volumes: *SOCIAL THEORY: ITS SITUATION AND ITS TASK*; *FALSE NECESSITY: ANTI-NECESSITARIAN SOCIAL THEORY IN THE SERVICE OF RADICAL DEMOCRACY*; and *PLASTICITY INTO POWER: COMPARATIVE-HISTORICAL STUDIES ON THE INSTITUTIONAL CONDITIONS OF ECONOMIC AND MILITARY SUCCESS*. This trilogy was the subject of a major symposium immediately upon its publication. See *Roberto Unger's Politics: A Work in Constructive Social Theory*, 81 *Nw. U. L. Rev.* 589 (1987).

8. *Acts of the Apostles* 4:32-35 states:

Now the company of those who believed were of one heart and soul, and no one claimed that any of the things which he possessed was his own, but they held everything in common. . . . There was not a needy person among them, for as many as were possessors of lands or houses sold them and brought the proceeds of what was sold and laid it at the apostles' feet, and distribution was made to each according to his need.

*Id.*

9. Following his Rubin lecture at Columbia Law School, March 30, 1988, Roberto Unger expressly acknowledged his common bond with much of Catholic labor teaching, especially with the labor encyclicals. However, Unger also maintained his agenda in his *POLITICS* trilogy was more complex and not so exclusively communitarian as the emphases of the encyclicals and related pastoral letters.

10. 29 U.S.C. § 152(3) (1982).

represented by a union, most workers do not find fulfillment in the world of work. True job satisfaction remains the relatively rare exception. Its absence proves the enduring rule of alienation almost a century and a half after Karl Marx first incisively analyzed the problem of alienated labor.<sup>11</sup>

As the United States approaches the close of the twentieth century, the relatively low official national unemployment rate<sup>12</sup> and the creation of new jobs offer little solace, especially from a "macro" perspective. Beneath these initially heartening statistics, entire regions of the country remain economically devastated by endemic and catastrophically high unemployment. Many other persons are underemployed, having involuntarily traded former high wage industrial jobs for minimum wage service sector positions,<sup>13</sup> as domestic merger activity and international competition steadily erode the high wage manufacturing sector of the United States economy.

Even in good times, "joblessness is becoming a more widespread and deep-seated problem in our nation."<sup>14</sup> As the United States National Conference of Catholic Bishops expressly noted in their November, 1986 pastoral

11. See K. MARX, *Alienated Labor*, in *ECONOMIC AND PHILOSOPHICAL MANUSCRIPTS OF 1844, COLLECTED WORKS* (1975).

12. Of course, the current official unemployment rate of less than 6% in the United States would have been unacceptably high less than two decades ago. In April 1988, the 5.6% national unemployment rate reached a 14-year "low." "Full" employment in the post-World War II era had been measured at an unemployment rate below 4%. However, in 1987, even Japan, with previously miniscule unemployment, had 3% unemployment. Most Western European industrial nations have experienced double digit unemployment throughout the decade, significantly higher than the rate in the United States. See *generally* *EUROPE'S ECONOMY IN CRISIS* (R. Dahrendorf ed. 1982).

13. See *generally* B. BLUESTONE & B. HARRISON, *THE DEINDUSTRIALIZATION OF AMERICA* (1982); COMMITTEE ON THE EVOLUTION OF WORK, AFL-CIO, *THE FUTURE OF WORK* (1983).

14. *ECONOMIC JUSTICE*, *supra* note 4, at 69. Following the November, 1980 general meeting of the United States National Conference of Catholic Bishops, an ad hoc committee was appointed to draft a letter on the United States economy. Drafts were submitted and discussed in November, 1985, and June, 1986. The Letter was approved during the plenary session of the Bishops in Washington, D.C. in November, 1986. During the past two decades, the Bishops of several other nations have issued similar pastoral letters. See *CANADIAN NATIONAL CONFERENCE OF CATHOLIC BISHOPS, ETHICAL REFLECTIONS ON THE ECONOMIC CRISIS* (1983). The pastoral letter of the United States Bishops has been bitterly criticized as a pro-socialist and anti-capitalist delusion. The most prominent critic of the letter is Michael Novak. Novak maintains that capitalism is the system most consistent with the maximization of economic and human freedom. "The extensive effort underway to commit the church to 'economic rights' has the potential to become an error of classic magnitude. It might well position the Catholic Church in a 'preferential option for the State' that will more than rival that of the Constantinian period." Novak, *Economic Rights: The Servile State*, *CATHOLICISM IN CRISIS*, Oct., 1985, at 10; Novak, *Socialists Circle Bishops*, *NAT'L REV.*, Apr. 5, 1985, at 46. Novak has repudiated his early work. See NOVAK, *A THEOLOGY FOR RADICAL POLITICS* (1969). Within the past decade, he has become both a powerful critic of what he perceives as the Catholic Church's dangerous shift to socialism and a premier apologist for the virtues of capitalism. See also NOVAK, *CAPITALISM AND SOCIALISM: A THEOLOGICAL INQUIRY* (1979); NOVAK, *FREEDOM WITH JUSTICE: CATHOLIC SOCIAL THOUGHT AND LIBERAL INSTITUTIONS* (1984); NOVAK, *THE SPIRIT OF DEMOCRATIC CAPITALISM* (1982); NOVAK, *TOWARD A THEOLOGY OF THE CORPORATION* (1981).

letter, *Economic Justice for All*, "there are about 8 million people in the United States looking for a job [sic] who cannot find one."<sup>15</sup> When the underemployed and those not statistically recognized are added, such as the disheartened who have abandoned the search for work, and the homeless, perhaps one-eighth of the work force is directly affected adversely by unemployment. This is exacerbated by the fact that the majority of the unemployed do not receive any unemployment insurance monetary benefits.<sup>16</sup> The Bishops "call for a new national commitment to full employment. We say it is a social and moral scandal that one of every seven Americans is poor."<sup>17</sup>

Organized labor recently has shown some signs of resuscitation. The self defeating mentality, isolation, and union cooptation of the early nineteen eighties finally show some signs of fading. There has been some revival of labor class consciousness and corresponding aggressive collective bargaining. Nevertheless, more often than not, unionized workers continue to be cruelly deceived by the false promise of employee profit sharing and participatory workplace democracy. As I argued in an earlier article,<sup>18</sup> most of these ownership-initiated schemes of supposed workplace democracy have thus far deceived workers and have failed to halt the continued impoverishment of workers' spirits.

Members of the nonunionized eighty percent of the United States workforce are perhaps even more miserable with the alienation and meaninglessness of their working lives than are their unionized colleagues. After dedicating entire adult careers to one employer, senior managers employed at will often summarily are terminated. The profile of the typical plaintiff in litigation springing from termination of an at will employment relationship is a middle aged, mid-level, mid-career, male manager who has spent the majority of his adult life with the former employer.<sup>19</sup> His psychological devastation is often irreparable; legal remedies available in most state jurisdictions that have judicially or legislatively modified the traditional American rule of employment at will are often insufficient to repair the former worker's life. Once cast adrift by the now disembodied corporate abstraction, to which they had pledged their working lives as an almost filial act, these former managers can be the most pathetic and helpless of victims. The Age Discrimination in Employment Act is not sufficient to fill the breach.<sup>20</sup>

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15. ECONOMIC JUSTICE, *supra* note 4, at 69; see Uchitelle, *America's Army of Non-Workers*, N.Y. Times, Sept. 27, 1987, at F1, col. 2.

16. ECONOMIC JUSTICE, *supra* note 4, at 70.

17. *Id.* at xii.

18. Gregory, *Lessons From Publius for Contemporary Labor Law*, 38 ALA. L. REV. 1 (1986).

19. See Gregory, *Toward Federalization of Protection Against Wrongful Discharge* (unpublished manuscript on file with author).

20. See 29 U.S.C. § 923 (1982) (codifying Age Discrimination in Employment Act of 1967).

The tragedy afflicting labor in the world of work transcends current academic debates over the perceived crisis<sup>21</sup> in labor relations law and over the viability of reforms in nonunionized, at will employment.<sup>22</sup> The tragedy of labor is a very complex and dynamic phenomenon, simultaneously spanning the worlds of work and unemployment as well as permeating the class ranks of labor, management, and ownership.

"Labor" always has been a complex term. This is especially true in contemporary capitalist and socialist economies. Labor can designate the class of organized employees represented by a union in conventional labor relations law. Labor, so understood, has a well recognized institutional meaning of class consciousness and connotes structural boundaries of legal ritual and formulae. Labor is also a broader term, encompassing all persons engaged in the world of work, without regard to whether they are represented by the institution of the union.

Labor also connotes the activity of work. Division of labor into performance of specific task functions is quite familiar. In Marxist terms the pernicious core consequence of the act of work in capitalist regimes is the alienation of the worker from the product and process of work.<sup>23</sup> Ownership elites, controlling means of production, artificially separate the worker from the work product. The worker becomes the object, rather than the subject, of work. Marxism promises embittered workers achievement of the ineluctable victory of the proletariat, the defeat of stratified capitalism, and the withering away of the capitalist state. Thus far the Marxist cure usually has been worse than the capitalist disease.

At the outset, it is important to acknowledge the deep problem of using generic labels of capitalism and Marxism. Laissez faire capitalism, if it ever existed as other than powerful mythic imagery, has long since evolved into corporate welfare statism. Georg Lukacs similarly suggests that Marxism "came to an end some time ago."<sup>24</sup> Likewise, "socialism" has a variety of

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21. See Klare, *Traditional Labor Law and the Crisis of Collective Bargaining Law: A Reply To Professor Finkin*, 44 MD. L. REV. 731 (1985); Weiler, *Promises To Keep: Securing Workers' Rights to Self Organization Under the NLRA*, 96 HARV. L. REV. 1769 (1983) Professor Weiler writes, "Contemporary American labor law more and more resembles an elegant tombstone for a dying institution." 96 HARV. L. REV. at 1769.

22. See Gregory, *supra* note 19.

23. See Marx, *supra* note 11.

24. Ferrarotti, *A Final Rethinking: Gyorgy Lukacs Talks with Franco Ferrarotti*, Soc. POL'Y., July-Aug., 1972, at 47. Lukacs states, "Marxism as a general theory of society has in fact undergone an interruption. It has stood still. One may say that Marxism, conceived as it should be conceived, as a general theory of society and of history, no longer exists, that it came to an end some time ago." *Id.* Roberto Unger, the premier critical legal studies scholar, has launched a devastating critique of Marxism in his new *Politics* trilogy. See *supra* note 7. For additional commentary on Lukacs, Habermas, the Frankfurt School, and the varieties of contemporary Marxism, see A. FEENBERG, LUKACS, MARX, AND THE SOURCES OF CRITICAL THEORY (1981); D. HELD, INTRODUCTION TO CRITICAL THEORY: HORKHEIMER TO HABERMAS (1980); E. LUNN, MARX AND MODERNISM (1982) (Marx and modernism meet through Lukacs); S. SPENDER, THE STRUGGLE OF THE MODERN: AN HISTORICAL STUDY OF LUKACS, BRECHT,

meanings.<sup>25</sup> At one end of the spectrum is the totalitarian-perverted Leninism of the Soviet Union. Centrist welfare state models describe most Western European versions of democratic socialism. They eschew Soviet style totalitarianism.

The United States Bishops call for the effectuation of economic justice in the corporate welfare state of late capitalism. The Bishops subscribe to a social democracy quite similar to that of the centrist Western European regimes. Pope John Paul II, however, subscribes to a vision of social democracy substantially to the left of that espoused by the United States Bishops. Elements of Marxism are present in most, but not necessarily all, of these variants of socialism.<sup>26</sup> Socialism, capitalism, and Marxism carry heavy baggage of meaning today. I use these generics within their broad, popular, or conventional meanings.

Catholic labor teaching is deeply consonant with social democracy, the most powerfully shared political aspiration in the world today. Professor Roberto Unger particularly emphasizes the deep attraction of social democracy with his unique cogency:

The single most attractive emergent model of social organization in the world today—the least oppressive, most respectful of felt human needs, and therefore also most likely to attract the most diverse support of the most thoughtful citizens—is social democracy. The supporters of social democracy do not paint it as Utopia, nor do they claim that all countries are equally ready for it. They recognize how hard it may be to achieve amid the extremes of poverty and ignorance when its achievement remains precarious in even the most favorable circumstances. They merely affirm that social democracy is the best that mankind can hope for, for an indefinite time to come.<sup>27</sup>

The attempted but deeply flawed actualization of Marxist theory usually has resulted not in the reconciliation of meaning in workers' lives, but rather in the exacerbation of the tragedy of labor. The Union of Soviet Socialist Republics and the People's Republic of China are Marxist labor disasters. Beyond the plain untruth of their "republicanism," the gulags and forced labor camps of totalitarian regimes represent the cruelest shat-

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BENTAMIN, AND ADORNO (1963); *THE UNKNOWN DIMENSION: EUROPEAN MARXISM SINCE LENIN* (D. Howard & K. Klare eds. 1972); Standen, *Critical Legal Studies as an Anti-Positivist Phenomenon*, 72 VA. L. REV. 983 (1986).

25. The non-Marxist democratic socialism most consonant with Catholic social teaching on labor is outlined in G. DORRIEN, *THE DEMOCRATIC SOCIALIST VISION* (1986). See also W. TEMPLE, *CHRISTIANITY AND THE SOCIAL ORDER* (1942) (classic exposition of protestant socialism in Great Britain).

26. J. Cort, *Can Socialism Be Distinguished from Marxism?*, *CROSS CURRENTS*, Winter 1979-1980, at 29.

27. R. UNGER, *FALSE NECESSITY: ANTINECESSITARIAN SOCIAL THEORY IN THE SERVICE OF RADICAL DEMOCRACY* 25 (1987).

tering of the aspirations of workers in human history. The brutal suppression of Solidarity, a true workers' movement in Poland, is an especially heart-breaking example of the tragedy of labor in one of the client states of history's most notorious totalitarian regime. It has especially galvanized the ire and the eloquence of Pope John Paul II.

Within the last two decades, there has been an interesting fusing of Marxist theory and Catholic social teaching in liberation political theology.<sup>28</sup> Of course this popular terminology is somewhat redundant: theology is necessarily liberating and redemptive. In France, for example, the Catholic Church has a rich, modern tradition of worker priests.<sup>29</sup> The Church's contemporary liberation theologians in the Western hemisphere offer the promise of an especially powerful and coordinated vision for transforming the world of work.

Today's most interesting and promising development, with the potential to redeem the worker from the tragedy of labor, lies in the amalgamation of Marxist labor theory with Catholic social teaching and theology.<sup>30</sup> In his 1981 papal encyclical *Laborem Exercens* (On Human Work), Pope John Paul II unequivocally reaffirmed the Catholic Church's modern social teaching which expressly declares the priority of labor over capital and asserts the inherent dignity of work.<sup>31</sup> Pope John Paul II shares the core

28. The classic work of liberation political theology is G. GUTIERREZ, *A THEOLOGY OF LIBERATION* (1973). See also L. BOFF & C. BOFF, *INTRODUCING LIBERATION THEOLOGY* (1987); A. FLORIDI & A. STIEFBOLD, *THE UNCERTAIN ALLIANCE: THE CATHOLIC CHURCH AND LABOR IN LATIN AMERICA* (1973); C. GUDORF, *CATHOLIC SOCIAL TEACHING ON LIBERATION THEMES* (1980); Baum, *Liberation Theology and Marxism*, *THE ECUMENIST*, Jan.-Feb., 1987, at 22. Throughout this essay, I will use the joint terminology of liberation political theology to symbolize its potential and to defuse some of the polarized hyperbole. Liberation theology is the usual reference in Central and South America. Political theology is the normal terminology in Europe and North America. I am not a professional theologian. As a Catholic, I am bound to take very seriously, and have been tremendously inspired by, the social and labor encyclicals of Pope John Paul II; his theological vision is political, holy, and certainly "liberating" in the best senses of those meanings.

29. See J. ROWE, *PRIESTS AND WORKERS* (1965); *THE WORKER-PRIESTS: A COLLECTIVE DOCUMENTATION* (J. Petrie trans., 1956).

30. See McGovern, *Marxism: An American Christian Perspective*, in *MARXISM AND RADICAL RELIGION* (1970).

31. POPE JOHN PAUL II, *LABOREM EXERCENS* (On Human Work) (1981) [hereinafter *LABOREM EXERCENS*]. I am particularly grateful for Gregory Baum's outstanding analysis of the encyclical. See G. BAUM, *ON THE PRIORITY OF LABOR* (1982); see also T. DONAHUE, *A TRADE UNION PERSPECTIVE OF LABOREM EXERCENS* (1982); *WORK AND RELIGION* (G. Baum ed. 1980). *LABOREM EXERCENS* commemorated the ninetieth anniversary of the landmark labor encyclical of the modern Papacy. Pope Leo XIII issued *RERUM NOVARUM* (On the Condition of Workers) in 1891. For additional Papal and Conciliar sources of Catholic social teaching on labor, economics, and social resources, see POPE PIUS XI, *QUADRAGESIMO ANNO* (On Reconstructing the Social Order) (1931); POPE JOHN XXIII, *PACEM IN TERRIS* (On Establishing Universal Peace in Truth, Justice, Charity, and Liberty) (1963); POPE JOHN XXIII, *MATER ET MAGISTER* (On Christianity and Social Progress) (1961); POPE PAUL VI, *POPULORUM PROGRESSIO* (On Promoting the Development of Peoples) (1967); POPE PAUL VI, *OCTOGESIMA ADVENIENS* (On the Occasion of the Eightieth Anniversary of the Encyclical *Rerum Novarum*) (1971);

insight of St. Thomas Aquinas, Hegel, and Marx that the human being must always be the subject, rather than the object, of work.

Gregory Baum maintains that this insight inspires much of the originality of John Paul II's labor encyclical. Because the person is the subject of work, the person always will be more important than the object produced by the work of the person subject.

The dignity and honor which work communicates to people is derived not so much from the objective dimension, from their achievement, from the product of their hands and minds, as from the subjective dimension; it is ultimately man's engagement which counts, his fidelity to the call, his increasing sense of responsibility, his self realization. In labor the transformation experienced by the subject is of greater value and importance than the object produced.<sup>32</sup>

The illegitimate transmogrification of the worker into object rather than subject of work is one root aspect of the alienation of labor. This insight has energized Catholic labor teaching. But Catholic social teaching transcends Marxism, because, pursuant to Catholic labor theory, the worker can never be completely objectified. The worker's subjectivity shares in the image of God. This subjectivity never can be stripped completely away from the worker.<sup>33</sup> Marxism fails in its disavowal of man's core transcendent subjectivity.

In November 1986 the United States National Conference of Catholic Bishops issued a comprehensive and controversial pastoral letter, *Economic Justice for All*.<sup>34</sup> In the age of late capitalism, and in this particularly turbulent time in the history of the world's most powerful capitalist society, the Bishops' letter elucidates the tensions that contribute to the current tragedy of labor. By reiterating the Church's preferential option for the poor, the Bishops' letter complements Pope John Paul II's radical statements in support of worker movements throughout the world. The Bishops' letter

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POPE JOHN PAUL II, *SOLLICITUDO REI SOCIALIS* (The Social Concerns of the Church) (1988); *Gaudium et Spes*, Documents Of The Second Vatican Council (1966). See also N. BETTEN, *CATHOLIC ACTIVISM AND THE INDUSTRIAL WORKER* (1976); J. CALVEZ & J. PERRIN, *THE CHURCH AND SOCIAL JUSTICE* (J.R. Kirwan trans., 1961); R. CAMP, *THE PAPAL IDEOLOGY OF SOCIAL REFORM* (1969); J. CRONIN, *CATHOLIC SOCIAL PRINCIPLES* (1950); J. CRONIN & H. FLANNERY, *THE CHURCH AND THE WORKINGMAN* (1965); D. DOOR, *OPTION FOR THE POOR: A HUNDRED YEARS OF VATICAN SOCIAL TEACHING* (1983); J. GREMILLION, *THE GOSPEL OF PEACE AND JUSTICE: CATHOLIC SOCIAL TEACHING SINCE POPE JOHN XXIII* (1976); E. KAISER, *THEOLOGY OF WORK* (1966); E. MCLEAN, *ROMAN CATHOLICISM AND THE RIGHT TO WORK* (1985); J. MOODY, *CHURCH AND SOCIETY: CATHOLIC SOCIAL AND POLITICAL THOUGHT AND MOVEMENTS, 1789-1950* (1953); *RENEWING THE EARTH: CATHOLIC DOCUMENTS ON PEACE, JUSTICE, AND LIBERATION* (D. O'Brien & T. Shannon eds., 1977). J. RYAN, *THE CHURCH AND LABOR* (1924).

32. G. BAUM, *ON THE PRIORITY OF LABOR* 14 (1982).

33. *Id.* at 17.

34. See *supra* note 14 (discussing *ECONOMIC JUSTICE*).

is much more moderate,<sup>35</sup> however, than Pope John Paul II's labor encyclical, which was overtly socialist in tone and spirit.

The Church's preferential option for the poor, coupled with the broad variety of liberation political theology practiced by many local churches in the United States, has certainly not yet come to fruition. However, if the world of work is to be transformed from bleak despair and alienation, the social teaching of the Catholic Church perhaps offers the most real promise. One serious problem may be whether Pope John Paul II's express call for the priority of labor over capital can be effectuated fully within the republican system of government guaranteed by the Constitution of the United States, without simultaneously collapsing capitalist society. Thus, it is quite possible, ultimately, that even the best efforts to implement Catholic labor teaching on a wide scale will be frustrated by the very size and heterogeneity of society in the United States. Witness, for example, the wide support in the United States for labor initiatives in Poland, ironically coterminous with significant antipathy toward organized labor in this country. The Bishops' letter is very cognizant of this challenge. It is a challenge that labor lawyers can help translate into practice.

Other religious traditions eloquently have supported the dignity of work, the rights of labor, and the redemptive function of the law. From the perspective of Judaism, the late Professor Robert Cover was a particularly passionate advocate of the redemptive messianic power of the law.<sup>36</sup> Obviously, much of the Catholic Church's social teaching on work is rooted in Judaism and the Torah.<sup>37</sup>

## I. INDIVIDUALS, COMMUNITY, AND THE WORLD OF WORK

Work, or at least the aspiration to work, is ubiquitous. Work permeates, and is often nearly synonymous with, much of both individual and social life. The individual person is dignified by work; the community is enriched by work. Society stands condemned by failure to provide meaningful work. In the Book of Genesis, God enjoined humanity to earn its living: "In the sweat of your face you shall eat bread."<sup>38</sup> By sin work was reduced to toil. Work became nothing more than a necessary means to the end of preserving life. Gradually, however, work as means was understood as affording its own intrinsic dignity as a limited end. As *Laborem Exercens* expressly

35. L. Penta, *The Economic Pastoral: On Empowerment*, 25 *THE ECUMENIST*, Nov.-Dec., 1986, at 1.

My understanding of the Bishops' Letter, *ECONOMIC JUSTICE FOR ALL*, has been singularly enriched by Rev. Penta's outstanding analysis.

36. See Cover, *Bringing The Messiah Through Law: A Case Study*, in *NOMOS XXX: RELIGION, MORALITY AND THE LAW* (forthcoming 1988); Cover, *The Supreme Court, 1982—Foreword: Nomos and Narrative*, 97 *HARV. L. REV.* 4 (1983). Professor Cover develops a notion of a "paideic community" formed by interpersonal bonding through shared commitment to moral tradition, and its process of redeeming life through evolving law.

37. See *Genesis* 3:19; *Psalms* 127-28; *Proverbs* 10:22; *Exodus* 1:8-14; *Jeremiah* 22:13.

38. *Genesis* 3:19.

recognizes, "there is no doubt that human work has an ethical value of its own."<sup>39</sup> Work helps us become more fully human.<sup>40</sup> The challenge now is to harmonize the limited end of dignified work with the broader end of human dignity.

How is "work" best defined? Work is a fundamental dimension of human existence. Understanding work is essential in order to understand our humanity. In *Laborem Exercens*, Pope John Paul II offers an excellent broad definition of work:

Through work man must earn his daily bread and contribute to the continual advance of science and technology and, above all, to elevating unceasingly the cultural and moral level of the society within which he lives in community with those who belong to the same family. And work means any activity by man, whether manual or intellectual, whatever its nature or circumstances; it means any human activity that can and must be recognized as work, in the midst of all the many activities of which man is capable and to which he is predisposed by his very nature, by virtue of humanity itself. Man is made to be in the visible universe an image and likeness of God himself, and he is placed in it in order to subdue the earth. From the beginning therefore, he is called to work. Work is one of the characteristics that distinguish man from the rest of creatures, whose activity for sustaining their lives cannot be called work. Only man is capable of work, and only man works, at the same time by work occupying his existence on earth. Thus work bears a particular mark of man and of humanity, the mark of a person operating within a community of persons. And this work decides its interior characteristics; in a sense it constitutes its very nature.<sup>41</sup>

Unfortunately, most of the world never has known dignified work. Most of the world always has been desperately and inescapably poor. We are assured that the poor always will be with us. Catholic social teaching reinforces Jesus' call that all humanity join in solidarity with the poor; we are challenged to be "poor in spirit."<sup>42</sup> Without meaningful work, crushing poverty of both material and spiritual life is inevitable. The majority of the earth's population will never experience any work, let alone have working lives filled with dignity and hope. Productive work will remain incomprehensible, or, at most, an ineffable and unattainable dream for the majority of the earth's population. They will die prematurely, in ignorance, and in regimes where lives of unemployment and poverty are the established norm.

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39. *LABOREM EXERCENS*, *supra* note 31, at IV. For the reader's convenience, I use citations throughout to the headings and pages of the encyclical as set forth in Gregory Baum's outstanding book, *ON THE PRIORITY OF LABOR* (1982).

40. *LABOREM EXERCENS*, *supra* note 31, at II (6) and II (9).

41. *Prologue*, *LABOREM EXERCENS*, *supra* note 31.

42. *Matthew* 25:35-40.

The European social theorist Ralf Dahrendorf maintains that "there is no cure for today's unemployment."<sup>43</sup> The Malthusian specter never has evaporated. Despite fragmented rich abundance of material resources in some nations, the world remains haunted by economic and spiritual destitution.

By this structural social sin<sup>44</sup> of mass collective omission from the world of work, most of humanity suffers daily. While the world of work is imperfect and fraught with deep alienation and division, nothing is more tragic than the complete absence of even the barest opportunity to work and the evil social ostracism of the unemployed. If one never can enter the world of work, one has much less opportunity to experience life. Obviously, one excluded also is deprived of any opportunity to contribute to any possible transformation of the world of work. One need not look to the Third or Fourth World to observe the nearly universal exclusion of entire populations from the world of work. The absence of meaningful work is especially pronounced in many economically devastated areas of the United States.<sup>45</sup> Compare, for example, the thriving professional working world of Manhattan with New York City's ever growing unemployed underclass and homeless population. Or, on a regional basis, compare the booming Northeast with the devastated energy belt.

Consider the role of a single transnational corporation in perpetuating and exacerbating the subordination of labor to capital. General Motors Corporation is effectuating sweeping plant closings throughout the United States. Despite the United Auto Workers Union's emphasis on labor contract job security, profit sharing, retraining programs, and rights of transfer to other facilities, thousands of General Motors workers, unionized and non-unionized alike, are being permanently exiled from the world of work. For all practical purposes, most will never work again.

For much of the world's population, and for a disturbingly high percentage of the United States' population, the pathos and the tragedy of labor lies in their structural exclusion from the world of work. Absent conscious collective participation in work, there is little possibility to contribute to the process of redeeming the world of work. Access to work is often controlled by capital. If labor is foreclosed from work, capital can continue to fragmentize the world of work and to subordinate labor indefinitely. If the world of work, with all its flaws, is ever to become accessible to the majority of the world's population, so that the hierarchy of capital over labor one day may be inverted, careful assessment of the grave collective social sin of deliberate omission from meaningful work is absolutely im-

43. Dahrendorf, *The End Of The Labor Society*, WORLD PRESS REV., March, 1983, at 28.

44. See G. BAUM, THE PRIORITY OF LABOR 67 (1982). "Contemporary ecclesiastical documents have taken up the notion of 'social sin.'" *Id.*

45. See Miller, *Toward Recognition of a Constitutional Right to a Job*, in POLITICS, DEMOCRACY, AND THE SUPREME COURT: ESSAYS ON THE FRONTIER OF CONSTITUTIONAL THEORY 319 (1985); Rubenstein, *The Elect And The Preterite*, 59 SOUNDINGS 357, 359 (1976) ("The threat of permanent economic superfluity now confronts millions").

perative. This evil is condemned in *Laborem Exercens*. Pope John Paul II summarizes:

As we view the whole human family throughout the world, we cannot fail to be struck by a disconcerting fact of immense proportions: the fact that while conspicuous natural resources remain unused there are huge numbers of people who are unemployed or underemployed and countless multitudes of people suffering from hunger. This is a fact that without any doubt demonstrates that both within the individual political communities and in their relationships on the continental and world levels there is something wrong with the organization of work and employment, precisely at the most critical and socially most important points.<sup>46</sup>

The United States Bishops reinforce the papal observation. The Bishops argue that because “[f]ull employment is the foundation of a just economy . . . [t]he most urgent priority for domestic economic policy is the creation of new jobs with adequate pay and decent working conditions.”<sup>47</sup>

Because employment is a basic right, society has a duty to protect it. Begin with the Book of Genesis. In the act of creation, God dignified work. God labored six days. But after the fall from grace, humanity was individually and collectively commanded to enter the debased world of toil. Throughout much of the ancient world, arduous manual labor was performed by slaves. Artisans and technicians performed more specialized functions. Truly free persons aspired to public lives of citizenship and, for the philosophers, to lives of contemplation in the Greek city states. The rigorous, demanding duties of public citizenship and the highest human aspiration of philosophical contemplation were made possible by being freed from the conventions of work. The free Greeks were the first to develop leisure, sport, and play. With the enactment of early labor codes, Jews in Egypt began to move from slavery to freedom.<sup>48</sup> Still, work largely was seen as a necessary evil. Only the privileged elites, freed from conventions of work, could aspire to pursue contemplation, to seek the good, and to engage in leisure. Work was redignified by Jesus the Carpenter, who was about his Father’s business. His scriptural parables are replete with examples of good workers, as well as with those toilers who failed to appreciate the dignity of work. Gradually, the revelation of God in human history redeemed the world of meaningful work from the realm of toil. For example, use of the term “labor” to describe the process of giving birth marks the unique joy and satisfaction of productive creation. Jesus dignified labor from the inception, via the virgin birth.

But, now, what of those not at work? The unemployed are now suspect. In the Soviet Union, the otherwise able person who is unemployed risks

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46. *LABOREM EXERCENS*, *supra* note 31, at IV (18).

47. *ECONOMIC JUSTICE*, *supra* note 4, at 69.

48. See L. PFEFFER, *RELIGION, STATE, AND THE BURGER COURT* (1984).

criminal prosecution for being a "parasite" on the state. The state defines what constitutes work. Boris Grebenshikov, the most popular folk rock musician in the Soviet Union, is not supported financially by the state. His musicianship is not officially recognized. He must avoid state sanction as an unemployed "parasite" by engaging in a transparent bureaucratic masquerade, claiming his officially recognized occupation as a "playwright."<sup>49</sup> The irony, of course, is that he is employed most productively, given the huge fanatic audience so desperately devoted to hearing his music.

This is the pernicious legacy of Marx's lack of sympathy for the unemployed. Marx placed his secular faith in the working class. The marginal and the unemployed underclasses he called "Lumpen," the German word for hoodlum. Of course, the irony now is that the unemployed masses far outnumber the relatively privileged working class in most post-modern economics.<sup>50</sup> The irony is about to be further compounded, with the purported restructuring of the Soviet economy, and the Soviet regime's threat to lay off millions of unproductive persons by the turn of the century, little more than a decade away. Again, we see the clear advantages of Catholic social teaching over Marxism. The former has a dynamic and affirmative appreciation of human solidarity of the masses of the poor with all workers. "The call for the solidarity *of* the poor and *with* the poor is truly a radical Christian principle. It is materialist and spiritual at the same time."<sup>51</sup>

Pathologies also circumscribe "work" in late capitalist societies. In the United States and Japan there is an almost manic desire to work, both for its own sake, and more often in order to make more money—an uncertain means to a perhaps forgotten end of greater human dignity. Work is one important element in, but not identical with, the whole of an integrated life. Social ostracism almost universally attaches to unemployment. This is especially the case of those unable to support themselves financially. The Bishops' letter confronts the sin of social victimization of the unemployed. The individual is debased and made to feel worthless. Unemployment leads to physical and psychological disease from increased incidence of crime, alcoholism, and drug use, to battery of spouses and children, and to increases in the federal deficit.<sup>52</sup>

Even the independently wealthy risk being labeled dilettantes if they do not work. Everyone is rightly troubled by growing numbers of persons rendered unemployable by insufficient education<sup>53</sup> and other limited opportunities. Persons who retire "early" often seek to reenter the world of work. Those few persons who might aspire to lives of contemplation in late

49. See Keller, *For Soviet Rock Musicians, Glasnost Is Angst*, N.Y. Times, April 9, 1987, at A1, col. 4.

50. G. BAUM, *THE PRIORITY OF LABOR* 38 (1982).

51. *Id.* at 39.

52. *ECONOMIC JUSTICE*, *supra* note 4, at 71-72.

53. See generally A. BLOOM, *THE CLOSING OF THE AMERICAN MIND* (1987); E. HIRSCH, *CULTURAL LITERACY* (1987).

capitalist society are seen as bizarre or eccentric. Of course, the modern Western sense implicit here is that contemplation or leisure will be somehow "productive"—a definite capitalist twist to the Platonic ideal. Thus, one especially deep paradox is that in the United States, where the leisure class grows and opportunity for leisure abounds, leisure is still regarded as the exception, the rare luxury, the necessary periodic propaedeutic to renewed "productivity."<sup>54</sup> To do "nothing" is viewed with suspicion, unless it is a respite in cyclical renewal for more orthodox work.

The Bishops' letter, much more than the Papal encyclical,<sup>55</sup> recognizes the distinct importance of leisure, and the need for a proper balance between work and leisure in the integrated life.<sup>56</sup> The balance of work and leisure and culture in the Bishops' letter is primarily attributable to the influence of Archbishop Rembert Weakland of Milwaukee. A graduate of Julliard, he was the head of the Benedictine Order worldwide before becoming a bishop. *Economic Justice for All* reconciles humanity to the importance and the guiltless dignity of leisure and culture. After dignifying work in the act of creation, God also dignified rest.<sup>57</sup> While guarding against aimlessness, we must not be afraid to engage in leisure. The Bishops recognize the tensions this balance may pose.

For disciples of Christ, the use of leisure may demand being countercultural. The Christian tradition sees in leisure, time to build family and societal relationships and an opportunity for communal prayer and worship, for relaxed contemplation and enjoyment of God's creation, and for the cultivation of the arts which help fill the human longing for wholeness.<sup>58</sup>

Perhaps in leisure time of re-creation the most important work occurs—the building of family, social, and community relationships. Witness, for example, the first miracle of Jesus' public life. He changed water to wine at the wedding feast of Cana, while at leisure among family and friends.

When individuals are stigmatized and ostracized because they cannot or do not work, this is another powerful manifestation of the tragedy of labor.

54. See J. PIEPER, *LEISURE: THE BASIS OF CULTURE* (1952) (classic work on indispensability of leisure); see also J. MURPHY, *CONCEPTS OF LEISURE: PHILOSOPHICAL IMPLICATIONS* (1974).

55. See G. BAUM, *THE PRIORITY OF LABOR* 13 (1982). Baum writes:

The Pope does not recognize a place for a leisure class. . . . Is work really the appropriate mode for man's self-actualization? Are there not some signs that in the future there may not be enough work for everyone? Society may have to create a division of labor that allows people to work part-time and spend their energies on other activities. Is there not a disadvantage in defining man as worker? Does this not make it more difficult for people excluded from work to create their identity and live out of as yet hidden resources of their personalities? The encyclical is unperturbed by these questions.

*Id.* at 20.

56. *ECONOMIC JUSTICE*, *supra* note 4, at 169-70.

57. *Genesis* 2:1-4.

58. *ECONOMIC JUSTICE*, *supra* note 4, at 170.

On the flip side of this tragic coin are those who live to work; they unwisely confuse the limited ends of work with the broader true ends of a socially responsible, full, and dignified life in community with fellow humans. Work is a part of that equation, but it is not the whole sum of the dignified, redeemed life.

In the United States, the usual social and economic consequence for those who do not work, and who are otherwise without independent means of financial support, is consignment to the demeaning and insufficient government welfare scheme. The more ominous consequence of homelessness always lurks in the background. In the Soviet Union, the immediate social consequence is more even Draconian: unemployed "parasites" on the state are subject to imprisonment. Failed managers can be imprisoned or executed, rather than merely discharged. Neither capitalism nor Marxism is tolerant of those at the heart of the tragedy of labor, those who are involuntarily omitted from the world of work.

Labor is defined largely by community norms. Individuals removed from the world of work, virtually regardless of the reasons, but especially those not financially self-sufficient, are seen as aberrant. Orthodoxy places the social premium upon work and devalues the lives of the unemployed who are perceived as an economic drag upon the community. Community norms must be transformed to provide meaningful work and to end the ostracism of those who are unable to work.

Taking broad social, economic, and political steps to provide meaningful work to those who want to work and are now unable to find work, while simultaneously militating against the community's ostracism of those who do not work, would be powerful transformative steps to begin to redeem the world of work. Unfortunately, in the United States, with the rare exception of possible minimal child care and family care leave legislation,<sup>59</sup> steps at the federal level in this decade instead have been taken to punish further those absent from the world of work. This spring, the Supreme Court upheld denial of food stamps to strikers.<sup>60</sup> Consequently, one literally can be starved into returning involuntarily to work. The "social safety net" has been steadily unwoven by the federal government, and access to the world of work has been constricted. High wage industrial jobs disappear by the hundreds of thousands, while the federal government boasts of the lowest unemployment rate since, eerily enough—and fully consonant with Marxist critique of capitalism—the Vietnam War. Naturally, the government embarrassedly and unsuccessfully attempts to mask the former high wage unemployed factory worker by putting a cosmetic veneer on the face of the minimum wage, fast food emporia employee. Welding guns have been

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59. See The Family and Medical Leave Act of 1987, H.R. 925, 100th Cong., 1st Sess. (1987) (co-sponsored by Rep. P. Schroeder and Rep. W. Clay); The Parental and Medical Leave Act of 1987, S. 249, 100th Cong., 1st Sess. (1987) (co-sponsored by Sen. C. Dodd and Sen. A. Specter).

60. *Lyng v. International Union*, 108 S. Ct. 1184, 1194 (1988).

traded for burger bags. McDonald's now employs more people in the United States than does the entire steel industry.<sup>61</sup>

The United States has a great deal to learn from Western European social democracies,<sup>62</sup> such as federal legislation to provide for paid, job-protected extended leaves for child and family care. This is but one example of legislation that can positively militate against the community stigmatizing those who do not or cannot work. Involuntary unemployment certainly can escalate from individual tragedy to epidemic social disaster.<sup>63</sup> But if everyone must work, this may debilitate the importance of leisure in a fully integrated life.<sup>64</sup>

The lessons to be learned by the United States pale in comparison to those that the international community now is teaching the Soviet Union. The Soviets' client states are the best teachers of their intransigent, unwilling pupil. The international tragedy of labor in the post-World War II period has been most courageously and best exemplified by the heroic martyrs of Solidarity, the free trade union initiative of Poland brutally suppressed by Soviet puppets.<sup>65</sup> Pope John Paul II's remarkable vision for labor in *Laborem Exercens* is deeply rooted in his identification with the aims of Solidarity. He expressly reiterates the unique importance of labor unions as mouthpieces for social justice.<sup>66</sup> There is a definite, important place for unions in the fulfillment of Catholic labor theory. Catholic social teaching, especially in its support of worker-initiated plans for worker democracy, can restructure labor union hierarchies, corporate bureaucracies, and the Church's own internal labor relations.

From the macro perspective of international law and politics, Marxist or capitalist prospects for transforming the world of work are bleak, absent a theology.<sup>67</sup> Individuals deviating from the orthodoxy of work are potentially susceptible to severe sanction by the community. This regrettable forced subordination of individual choice to community convention had been part of history. It is not peculiar to the late corporate welfare capitalist United States nor to the twisted Marxism of the Soviet Union.

Socrates and Jesus are timeless individual witnesses who deliberately rejected conventional community norms of "work." Instead, they chose to pursue their own eschatological visions. Why "work," as the prevailing community norms defined it, when one might choose the higher, more difficult, and inscrutable labor of teaching truth, asking the right, hard

61. See *supra* note 13 and accompanying text (discussing shift of employment opportunities from industrial sector to service sector).

62. See generally G. DORRIEN, *THE DEMOCRATIC SOCIALIST VISION* (1986).

63. *LABOREM EXERCENS*, *supra* note 31, at IV (18).

64. See *supra* note 54 and accompanying text (discussing indispensability of leisure).

65. See Sila-Nowicki, *The Role of the Catholic Church in Polish Independence*, 6 N.Y. LAW. SCH. J. OF INT'L. AND COMP. LAW 703 (1986).

66. *LABOREM EXERCENS*, *supra* note 31, at IV (20); see also *Pope Offers His Full Support to Organizers of Labor Unions*, N.Y. Times, May 9, 1988, at A11, col. 1.

67. See POPE JOHN PAUL II, *SOLLICITUDO REI SOCIALIS* (1988) [hereinafter *SOLLICITUDO*].

questions, redeeming the world, being the Messiah? Concomitantly, however, it is interesting that Jesus simultaneously dignified a wide variety of occupations in the world of work.<sup>68</sup> He first worked as a carpenter.<sup>69</sup> Later, when he embarked on his Father's business, he chose his closest followers from the working class, making fishers from Galilee "fishers of men." The Catholic Church honors Joseph the Carpenter, the earthly father of Jesus, as the patron of workers. Jesus, through the parables, dignified many occupations and forms of labor and described God the Father as the vinedresser.<sup>70</sup>

Socrates and Jesus were not punished for their occupational choices. Philosophers were recognized in Athens, rabbis in Jerusalem. Rather, they were punished for how they performed their occupations, and for the transformation of conventional occupations into transformative redemptive vocations.

It is not enough to seek work, or simply to work; the individual must work as the community mandates, or face potentially lethal sanction. Teach truth to the young people of Athens by confessing ignorance and by perpetual, difficult questioning; drink the hemlock. Walk away from the family carpentry business; make transcendent God immanent; be crucified. Individuals and community must be reconciled to one another if the world of work is to be redeemed from the tragedy of labor. As the Bishops' letter makes clear, individuals are fully dignified only in community. The person is both sacred and social.<sup>71</sup> The redemption of the world of work will reintegrate our needlessly bifurcated individual and social arenas of work. Many social theoreticians share this view.<sup>72</sup> Catholic labor theory can bring it into practice.

## II. ALIENATION

Alienation in the world of work, exacerbated by the insidious fragmentation of community and individual working life, perhaps has reached its nadir. The challenge always has been to heal alienation. Alienation has been the single most enduring problem afflicting the world of work.<sup>73</sup> Most assuredly, the decade of the nineteen eighties has been overtly pro-ownership in tenor, philosophy, and practice.<sup>74</sup> Concomitantly, to some extent, the

68. *Id.* at V (26).

69. *Mark* 6:1-3.

70. *John* 15:1.

71. *ECONOMIC JUSTICE*, *supra* note 4, at ix.

72. See R. DAHRENDORF, *LIFE CHANCES: APPROACHES TO SOCIAL AND POLITICAL THEORY* (1979) (freedom and individual growth depend on developing community bonds that link autonomous individuals together as moral agents in community); R. DAHRENDORF, *CLASS AND CLASS CONFLICT IN INDUSTRIAL SOCIETY* (1959).

73. See MARX, *supra* note 11.

74. Gregory & Mak, *Significant Decisions of the NLRB, 1984: The Reagan Board's "Celebration" of the 50th Anniversary of the National Labor Relations Act*, 18 *CONN. L. REV.* 7 (1985).

decade has been anti-organized labor. The proportion of unionized workers in the United States workforce has fallen below twenty percent. Many influential union leaders and academic labor lawyers forcefully have asserted that organized labor is in crisis, perhaps irreversibly and terminally so.<sup>75</sup>

However, probably attributable to a residue of class consciousness, unionized employees have been better able than the nonunionized to cope with alienation in the world of work and to deal with the vicissitudes of ownership and the frightening uncertainty that increasingly has typified the mercurial national economy during the past few decades. Relatively low expectations of achieving meaningful work life, arms length cynicism and adversarial collective bargaining relationships with management, pessimism, and industrial realpolitik about the world of work, combine to cushion unionized employees against the seemingly inevitable cyclical downturns in the United States' late capitalist economy.

Meanwhile, however, nonunionized managers potentially have been far more severely victimized by the vicissitudes of capitalist economics. Lacking working class consciousness, individual managers who often are employed at the will of the employer are especially vulnerable to the psychological and economic devastation that can result when they involuntarily are separated from the world of work. Having closely identified with the philosophy of benevolent paternalism of the corporate family, these former managers, cast adrift by the now faceless, abstract, and impersonal corporation to which they had pledged almost filial personal allegiance, understandably feel especially betrayed. In this tragedy of labor, these Willie Lomanesque former managers are among the most pathetic figures forced to exit the stage.

The plight of the unsuccessful manager is infinitely worse in state-controlled economies of Marxist regimes. Given the self-interest of human nature—a trait powerfully realized and given rein by James Madison's ingenious device of factions in the *Federalist Papers*<sup>76</sup> and in the Constitution—workers in closely controlled statist economies, regardless of their individual place in the very definite hierarchy of purportedly nonhierarchical economies, have little for which to strive. There is no tangible prospect of individual gain to motivate them. Abstract historicist appeals to class ideology and to the promised triumph of the proletariat have been notoriously unable to inspire workers to complete commitment to their work for the good of the totalitarian state. Mr. Gorbachev is desperately attempting to motivate the Soviet work force through a combination of public jawboning and internal economic reforms. The world's most notorious state-controlled economies, the Soviet Union and China, cautiously are implementing limited forms of capitalism in some segments of their economies.<sup>77</sup>

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75. See *supra* note 21 and accompanying text (discussing crisis in organized labor).

76. See THE FEDERALIST No. 10 (J. Madison).

77. Wren, *Comparing Two Communist Paths to Reform*, N.Y. Times, Sept. 6, 1987, at E2, col. 1. More than 80% of new restaurants, repair shops, and service outlets opened in China since the end of the Cultural Revolution in 1976 are privately owned. *Id.*

This injection of Madisonian capitalist economic self-interest into these totalitarian states is yielding tentatively positive results. Madison, in turn, owes a debt to Thomas Aquinas' insights; Aquinas realized private ownership had merit because it gave the individual a sense of individual worth and autonomy.<sup>78</sup>

Workers in the United States still are succumbing to the thus far generally pernicious ownership seduction of profit sharing and participatory management and experiments in purported workplace democracy. The problem is that relatively few of these initiatives emanate from the workers. Capitalist regimes in the United States temporarily are manipulating quasi-socialist forms of labor relations, unlike genuine restructuring of forms of workplace ownership as in, for example, Sweden.<sup>79</sup> Owner-generated experiments in worker ownership in the United States have proven very troubling. In return for the illusory promise of workplace democracy, worker concessions are demanded by ownership during adverse economic periods. At most, workers receive a disproportionately small share of profits in exchange for betraying and abandoning their class consciousness.<sup>80</sup> If workplace democracy initiatives emanate from ownership elites, and are not the true creatures of the workers, the initiatives probably will be pretexts designed by ownership to continue to manipulate labor. To their credit, the Bishops were very cognizant of this potential perversion of worker democracy by manipulative ownership elites, and they caution workers to beware. "Workers rightly reject calls for less adversarial relations when they are a smokescreen for demands that labor make all the concessions. For partnership to be genuine it must be a two-way street, with creative initiative and a willingness to cooperate on all sides."<sup>81</sup>

Meanwhile, the Japanese and South Korean economies are manifesting serious employee disenchantment with corporate and state paternalism, via increasing incidence of labor unrest and recent initiatives toward unionization.<sup>82</sup>

The profound malaise and alienation that afflict the world of work do not respect status, hierarchy, class, individual, or nation. Every individual and every economy is, to some very real extent, adversely affected by and inextricably bound up in the tragedy of labor. It remains especially difficult for labor law scholars to formulate an effective program to dissipate the alienation of the worker from the process and product of work. Analysis

78. THOMAS AQUINAS, *SUMMA THEOLOGICA*, II-II, 9.65, a.2.

79. For thorough discussion of the Meidner plan in Sweden, which designs collective capital control and full employment, see G. DORRIEN, *THE DEMOCRATIC SOCIALIST VISION* 144-50 (1986).

80. See Gregory, *supra* note 18.

81. *ECONOMIC JUSTICE*, *supra* note 4, at 150.

82. See *Koreans Warned On Labor Violence; Car Exports Off Sharply*, N.Y. Times, Sept. 6, 1987, at A4, col. 1. "Hundreds of thousands of workers demanding more pay and shorter working hours have taken part in more than 3,000 recent strikes throughout South Korea. The labor unrest has been the worst in the nation's history." *Id.*

of alienation has been Marxism's most important contribution to labor theory. However, Marxism alone inherently is unable to formulate an adequate solution to the core problem.

The alienation of the worker from the process and product of work is much more complex than Marx originally had imagined. Much has changed in a century and a half in heterogeneous post-industrial societies. Work has become increasingly intellectual; most tasks requiring brute physical force have been automated. But while the problem of alienation has grown much more complex, it may have grown even more intractable. In the fallible human condition, as long as we earn our living by the sweat of our brow, the world of work will never be perfected by secular theory alone. The Marxist dictatorship of the proletariat will remain just that—a statist dictatorship perhaps even more flawed than the capitalism it proposes to displace. Ultimately, for all practical purposes “the economy in the communist countries is not socialism but state capitalism.”<sup>83</sup> Materialism perniciously objectifies the subject worker; it matters not whether the materialism is capitalist or Marxist. Because Marxist materialist historicism is deliberate, and its error of economism profound, Marxism especially is criticized by Catholic social teaching.<sup>84</sup> It is important for the worker to know that he is working “for himself,” not merely for capitalist remuneration or for class-based anonymous contribution to bureaucratic statism.<sup>85</sup>

Consider again the bitter factory worker. Dull, dangerous, repetitive work often can be redesigned and automated. Worker skills can be upgraded. Current workers need not be displaced by automation. Workers can be retrained. The hyperefficiencies of Taylor's scientific management of the early assembly lines are now proving dysfunctional. As General Motors learned at their Lordstown, Ohio assembly plant in the early seventies,<sup>86</sup> and as Honda now is learning at its Marysville, Ohio assembly plant in the late eighties, the high speed Fordist assembly line breeds anonymity, physical and mental exhaustion, and heightened alienation. Employee involvement circles and quality of work life programs, if used legitimately and not merely as a management pretext to increase production, are positive steps that can be taken to actualize for the embittered factory worker some real degree of discretion, responsibility, and involvement in the process of work. Dangerous workplaces can be made safer. While alienation probably will not evaporate totally, it can be substantially mitigated, as workers achieve some autonomy and maturity in the world of work.

In *Laborem Exercens* Pope John Paul II repeatedly offers this redemptive vision. “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

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83. G. BAUM, *THE PRIORITY OF LABOR* 37 (1982).

84. See generally *LABOREM EXERCENS*, *supra* note 31.

85. *Id.* at III (15).

86. D. Moberg, *Rattling The Golden Chains: Conflict And Consciousness of Auto Workers* (1978) (doctoral dissertation available at University of Chicago).

common scale of values rates it as the merest 'service,' as the most monotonous, even the most alienating work.<sup>87</sup> *Laborem Exercens* does not mandate specifically the form that the world of work with man as subject must take. The encyclical does not resolve whether joint ownership of the means of work or shareholding by labor in the management or profits of business will be the best route to ensure the recognition and actualization of worker as subject. However, Pope John Paul II concludes that ultimately "on the basis of his work each person is fully entitled to consider himself a part owner of the great workbench at which he is working with everyone else."<sup>88</sup> The anonymity of work can be reduced by organizing workers into smaller cells and units, both on the factory assembly line and the intellectual assembly line of the mega-law firm. Consider also the new Wall Street law firm associate. Rather than subordinate the ends of achieving greater dignity in life to the confused fetishized means of making a disproportionate amount of money for its own sake, law firm salaries can be stabilized, rather than continuously accelerated. Client fees can be moderated while client needs still can be met professionally. The relentless, frenzied quest for even more billable hours could then abate somewhat, the quality of work life enhanced, and the dignity of an integrated life made realistically capable of attainment.

Smaller work circles are mediating structures that positively can improve the quality of work life in the anonymity of the complex, large work place. This is the insight of the sociology of work.<sup>89</sup> But the inherent nature of complex organizational bureaucracy cannot be transformed completely by these smaller work units. The early Christians were radical classic communists. From Chapter Four of the Acts of the Apostles, we know that the early Christian communities pooled all resources earned by individuals into the service of the Christian community.<sup>90</sup> However, once Christianity became the state-sponsored, majoritarian religion of the Roman Empire, the nature of bureaucratic culture and complex organizational behavior displaced personalism with anonymity. Vatican City, the epicenter of the world's oldest and most sophisticated complex bureaucracy, is a far cry from the early Christian communes. It is interesting that the philosophy of personalism in the world of work is now so powerfully reintroduced in the pastoral letters of the Catholic hierarchy, and in the most recent (February, 1988) social encyclical of Pope John Paul II.<sup>91</sup>

Marxist labor theory reenergized the worker. The sociology of John Paul II and the philosophy of personalism of Dorothy Day and the Catholic Worker<sup>92</sup> owe much to the Daily Worker and to the worker philosophy of Peter Maurin. In turn, the motto *ora et labora*, pray and work, of the

87. *LABOREM EXERCENS*, *supra* note 31, at II (6).

88. *Id.* at III (14).

89. G. BAUM, *THE PRIORITY OF LABOR* 59 (1982).

90. *Acts of the Apostles* 4:32-35.

91. See *SOLLICITUDO*, *supra* note 67.

92. For a fine history of Dorothy Day and the Catholic Worker, see W. MILLER, *A HARSH AND DREADFUL LOVE* (1973). See also R. COLES, *DOROTHY DAY* (1987).

fifteen hundred year old monastic Benedictine Order, presciently trumped Marxism by over a millenium. Unmasking and analyzing the reality of alienation in the world of work has been the most important, valuable, and enduring contribution of Marxist labor theory. Unfortunately, Marxist theory alone is congenitally incapable of articulating a realistic solution to alienation. Proletarian victory is not ontologically certain. In addition to failing to appreciate fully the complexity of alienation in even contemporary Soviet society, Marxist theory ultimately proves unable to defuse alienation because it proposes a secular statist false necessity.

Capitalist society in the United States is perhaps even less capable of unilaterally formulating a realistic solution to the problem of alienation. Marxist theory has an analytic advantage over capitalism in that Marxism has an intellectual history of wrestling with the fundamental nature of the problem of alienation.<sup>93</sup> In both theory and practice, capitalism lags Marxism, and is only now beginning to come to grips with problems of alienation in the world of work. Thus far, capitalism has made only a few tentative steps toward redesign of work from large corporate anonymity into smaller work cells. There is serious danger that even this positive first step may be compromised by confusing the problem of alienation with what ownership perceives as counter-productive adversarial labor relations. Fitful ill-advised steps toward purported "worker ownership" thus far have been little more than pretexts for seducing and coopting organized labor, robbing unionized workers of class consciousness, and increasing profits to ownership elites.

The synergy of law and theology best may redeem workers from the tragedy of labor.<sup>94</sup> This is the promise of Catholic social teaching, first adapting the positive contributions of Marxist labor theory, and then transcending Marxist historicism with a fuller teleology. Catholic social teaching, with its express teleological consciousness of spirituality and justice, trumps Marxism. Gregory Baum incisively highlights the advantages of Catholic labor theory:

Only religion or religiously based convictions can make the unity of humankind a felt reality and motivating factor. We are responsible for one another before God.

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Workers, oppressed people, and those in solidarity with them have made and are still making these sacrifices, but collective self-interest does not account for their motivation. Most of them do not ask why they take these burdens upon themselves. They feel it in their bones that they must wrestle for justice. Whether they realize it or not, their motivation is religious. Universal solidarity can only be based on faith—on a faith in man's promised destiny. In my mind,

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93. See MARX, *supra* note 11.

94. G. BAUM, RELIGION AND ALIENATION (1975).

this is a materialistic argument for religion. In the most concrete, down to earth, bread-and-butter sense, God makes humanity possible.<sup>95</sup>

### III. IMMANENCE, TRANSCENDENCE, AND ESCHATOLOGY: A PROLEGOMENON FOR LABOR THEORY

It has become the height of law review fashion to offer rarefied speculation concerning the metaphysics of law,<sup>96</sup> to cite, *de rigueur*, as Professor James Boyle puts it so aptly and wittily, litanies of famous dead European philosophers.<sup>97</sup> The tension posed by the imperative to rethink core labor theory and to redesign effective pragmatic tactics is especially pronounced for the academic labor lawyer. Labor law is grounded in the empirical, pragmatic, and very earthy real world.<sup>98</sup> Meanwhile, labor theory is compellingly conceptual. Today's theoretical discourse ineluctably dictates the shape of tomorrow's empirical reality. This is certainly as true in labor law as in other areas of the law. The prolegomenon broadly adumbrated here may never come to fruition in the world of work. There may never be a legally-driven redemption from the tragedy of labor. The possibility that, despite our best efforts, the world of work may never be transformed is a large part of the tragic aspect of the problem. Nevertheless, mindful of the Biblical truth that the Lord helps those who help themselves, human free will and the Gospel message mandate that we persevere.

*Laborem Exercens* recognizes the need for fluid, continual reassessment of the rapid and, as yet, unforeseeable changes in the world of work in order best to advocate realization of maximum human dignity.

It is not for the Church to analyze scientifically the consequences that these changes may have on human society. But the Church considers it to be its task always to call attention to the dignity and rights of those who work, to condemn situations in which that dignity and those rights are violated, and to help guide the above-mentioned changes so as to ensure authentic progress by man and society.<sup>99</sup>

No mystical *deus ex machina* relief is promised to either workers or to labor scholars, nor should it be sought from the realm of the theologian. However, theology recently has been appreciated more by legal scholars.

95. G. BAUM, *THE PRIORITY OF LABOR* 40, 70 (1982).

96. Peller, *The Metaphysics of American Law*, 73 CALIF. L. REV. 1151 (1985).

97. Boyle, *The Politics of Reason: Critical Legal Theory and Local Social Thought*, 133 U. PA. L. REV. 685, 738 (1985) ("a tale spun from the dry thread of epistemology and embroidered with the appropriately impressive names of 'famous dead Europeans who once wrote about ideology'").

98. Gregory, *The National Labor Relations Board and the Politics of Labor Law*, 27 B.C. L. REV. 39 (1985).

99. *LABOREM EXERCENS*, *supra* note 31, at I (1).

Hermeneutics has energized constitutional textual interpretation through analogous adaptation of the device of scriptural exegesis, for example.<sup>100</sup> Theology is helping lawyers better understand and thus more clearly pose the most fundamental issues of law, equity, and justice. Professor Burt has shown how religious parables enhance understanding of constitutional law.<sup>101</sup> In his eloquent recent book, *The Authoritative and the Authoritarian*,<sup>102</sup> Professor Vining concludes by analogizing the function of the lawyer to that of the priest. This suggests a wide range of roles. There are charismatic prophets, as well as ministerial priests. But, as Roberto Unger has argued, there are also pharisees who have lost their faith, who observe ritual and formula without belief, who sit in hypocritical ceremony at cold altars.<sup>103</sup> Prophets, true priests, and pharisees all share, to some extent, the concern with whether transcendent God will hear the prayer to enter into human relations. Over a decade ago, Roberto Unger presciently concluded his brilliant book, *Knowledge and Politics*, with a plea to hear the voice of God in human relations.<sup>104</sup>

In his book, *Passion: An Essay In Human Personality*, Professor Unger eloquently summarized the unique contribution of religion to positive reconstruction of social reality:

The most significant articulation of existential projects can be found in the major religious and religiously inspired ethics of world history. For more than the abstract doctrines of moral and political philosophers, these legal and religious traditions embody visions and projects that have withstood the test of experience, enabling large numbers of people over long periods of time to make sense of their experience.<sup>105</sup>

100. Ciampi, *Applying Scriptural Exegesis to the Interpretation of Article III of the Constitutional*, 26 DUQ. L. REV. 13 (1987).

101. Burt, *Constitutional Law and the Teaching of the Parables*, 93 YALE L. J. 455 (1984).

102. J. VINING, *THE AUTHORITATIVE AND THE AUTHORITARIAN* (1986); see Ball, Book Review, 35 U.C.L.A. L. REV. 547 (1988); Joseph, Book Review, MICH. Q. REV. (forthcoming, Winter 1987); Miller, Book Review, 84 MICH. L. REV. 880 (1986).

103. Unger, *The Critical Legal Studies Movement*, 96 HARV. L. REV. 561 (1983) Professor Unger writes, "When we came, they were like a priesthood that had lost their faith and kept their jobs. They stood in tedious embarrassment before cold altars. But we turned away from those altars, and found the mind's opportunity in the heart's revenge." *Id.* at 675.

104. R. UNGER, *KNOWLEDGE AND POLITICS* 295 (1975).

Desirous of faith, touched by hope, and moved by love, men look unceasingly for God. Their search for Him continues even when thinking must stop and action fail. And in their vision of Him they find the beginning and end of their knowledge of the world and of their sympathy for others. So is man's meditation on God a final union of thought and love—love which is thought disembodied from language and restored to its source.

But our days pass, and still we do not know you fully. Why then do you remain silent? Speak, God.

*Id.*

105. R. UNGER, *PASSION: AN ESSAY IN HUMAN PERSONALITY* 47-48 (1984).

The world of work certainly needs to learn the lessons that the amalgamation of law and theology is best able to teach. Marxist historicism alone is an inadequate solution to the problem of alienation in the world of work. The tragedy of labor can not be ameliorated by a contradictory Marxist metaphysics that offers the idol of worker statism as telos. Rather than offer a truly transcendent vision for labor theory, Marxism exalts the means, and attempts to transmogrify the means of work into a labor eschatology. A Marxist metaphysics that answers immanence with immanence is doomed to frustration. Instead, viable labor theory must both meld the transcendence of theory with the immanence of action and preserve the distinction of means and ends. Marxism regards the worker as an economic creature. Unlike Marxism, Catholic labor theory highlights the spiritual dimension of the worker. In comparison, Marxist dialectical materialism and economic determinism as scientific historicist explanation of life in positivistic terms is inevitably impoverished.<sup>106</sup>

Fortunately, the positive contributions of Marxist labor theory, especially its perceptive analysis of the enduring problem of alienation, can be rechanneled by the fusion of Marxism and theology. Within the past two decades, liberation political theology has swept the world. It is now being translated into practice in myriad forms, in Europe, the Phillipines, and throughout the Americas. To be sure, liberation political theology can be deeply problematic. Its potential excess of reflecting more Marxism and little theology has been sharply and properly criticized by the Vatican.<sup>107</sup>

Broadly and properly understood, theology is inherently liberating, redeeming. The Catholic Church repeatedly has endorsed the dignity of work. The world of work in Genesis can be transformed. The Benedictine monastic order, founded in the sixth century, has offered a fifteen hundred year history premised on the indispensability of prayer and the dignity of work. The worker priests of Europe and the priest-advisors to the Solidarity free trade union movement in Poland offer powerful current witness to the power of theology to liberate the world of work. Poland's martyr priest, Jerzy Popieluszko, was murdered in 1984 by state security agents because of his outspoken support of the now-outlawed free trade union Solidarity

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106. G. BAUM, *THE PRIORITY OF LABOR* 26 (1982); see also G. DORRIEN, *THE DEMOCRATIC SOCIALIST VISION* 161 (1986).

Religion should inform and limit the ideology and politics of the Left. The religious sense of sin is a crucial restraint for any political movement, because it serves to remind activists that even the most humane politics cannot redeem human nature or give ultimate meaning to human efforts. If history has any meaning, that meaning is transcendental, not historical. It will not be found by creating socialism, any more than socialism will eliminate the effects of sin. The Left could have spared itself and others much agony in this century if only it had understood that its success would not bring the fulfillment or redemption of history.

*Id.*

107. *Instruction on Certain Aspects of the "Theology of Liberation"* (1984); *Instruction on Christian Freedom and Liberation* (1986); see also M. Novak, *The Case Against Liberation Theology*, N.Y. TIMES MAGAZINE, Oct. 21, 1984.

movement. Salvadoran Bishop Oscar Romero and missionary nuns from the United States were likewise brutally murdered by right wing fascist death squads in El Salvador for their community work. They stand as contemporary Thomas Becketts, timeless thorns in the side of totalitarian regimes.

Phillipine Cardinal Jaime Sin was severely critical of the tyranny of the Marcos regime. Brazilian Archbishop Helder Camara has lived a life of courageous witness in opposition to military dictatorship and in support of workers' rights, sharing the tradition of the martyred Oscar Romero.

In the United States, churches politically have organized local communities, and have pressed for specific improvements in housing, immigration policy, schools, police protection, and employment opportunities. In Brooklyn, New York, the innovative Nehemiah program to increase the supply of moderately priced, privately owned homes was designed and implemented by the coalition of East Brooklyn Churches.<sup>108</sup> In 1987 the Nehemiah plan became the prototype for new federal housing legislation to support similar private housing construction initiatives in communities throughout the United States.<sup>109</sup> The late Dorothy Day and the Catholic Worker movement have an established history of translating Catholic social teaching into practice by service to the urban poor.

Pope John Paul II has been outspoken in his support of Solidarity and in support of worker democracy and labor rights throughout the world. His 1981 Papal encyclical *Laborem Exercens*, is a radical voice for workers and a powerful express call for the priority of labor over capital. He carries on the tradition of modern papal support for labor that was first notably articulated in 1891 by Pope Leo XIII in his papal encyclical *Rerum Novarum* (On New Things).

#### A. *The Special Challenge To Implement The Priority Of Labor In The United States*

In many statements, Pope John Paul II has severely criticized the false ideology of materialist values. This critique formed much of his seventh and most recent encyclical, *Sollicitudo Rei Socialis* (The Social Concerns of the Church), issued in February, 1988. Because of deliberate greed of ownership elites, materialism has infected capitalism. Capitalism is not inherently evil.<sup>110</sup> In conjunction with the politics of social democracy,

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108. See J. Gittings, *East Brooklyn Churches and the Nehemiah Project—Churches in Community: A Place to Stand*, CHRISTIANITY AND CRISIS, Feb. 2, 1987; Roberts, *Despite Success, Housing Effort Still Struggling*, N.Y. Times, Sept. 24, 1987, at B1, col.1.

109. *Public Housing Bill Approved by House*, N.Y. Times, June 12, 1987, at A16, col. 1; see generally Malloy, *The Political Economy of Co-Financing America's Urban Renaissance*, 40 VAND. L. REV. 67 (1987); DePalma, *The Nehemiah Plan: A Success, But . . .*, N.Y. Times, Sept. 27, 1987, at R1, col. 1.

110. Pope John Paul II's attitude towards entrepreneurs is not inflexibly hostile. "The degree of well being which society today enjoys would be unthinkable without the dynamic

capitalism can be a powerful instrument for good. The challenge in the United States is to reform capitalism into proper means in service of the ends of labor. Pope John Paul II is not favorably disposed to capitalism in its present form; he is moving Catholic social teaching toward a socialist planned economy.<sup>111</sup> This is a dilemma for the United States National Conference of Catholic Bishops. In their 1986 pastoral letter, *Economic Justice for All*, the Bishops endeavor to integrate Catholic social teaching on work into a capitalist economic and governmental structure. The Bishops carefully disavow any particular economics, while respecting the traditional republican constitutional politics of the United States.

In our letter, we write as pastors, not public officials. We speak as moral teachers, not economic technicians. We seek not to make some political or ideological point but to lift up the human and ethical dimensions of economic life, aspects too often neglected in public discussion. We bring to this task a dual heritage of Catholic social teaching and traditional American values. . . . The pastoral letter is not a blueprint for the American economy. It does not embrace any particular theory of how the economy works, nor does it attempt to resolve the disputes between different schools of economic thought.<sup>112</sup>

The Bishops expressly recognize the legitimacy of private property, reject ideological extremes, and appreciate that ours is a "mixed" economy.<sup>113</sup>

This is the conundrum faced by the Catholic Church in the United States—how to implement Catholic social teaching on the priority of labor

figure of the businessperson, whose function consists of organizing human labor and the means of production so as to give rise to the goods and services necessary for the prosperity and progress of the community." Address by Pope John Paul II, To Businessmen and Economic Managers of Milan, Italy (May 22, 1983), *reprinted in L'OSSERVATORE ROMANO* June 20, 1983, at 9:1 (English ed.). The Gospel root is Jesus' parable of God as the owner of the estate. Although the owner can "do as he pleases" with his money, he chooses to be generous and pays high wages to low seniority workers. *Matthew* 20:1-16.

111. In his first encyclical, Pope John Paul II advocated a planned central economy. See G. Baum, *A Pope from the Second World*, 18 *ECUMENIST* Jan.-Feb., 1980, at 25; G. BAUM, *CATHOLICS AND CANADIAN SOCIALISM* (1980); Baum writes, "The encyclical recognizes that contemporary Western society is no longer defined by the free market, even if the old liberalism is still used for ideological purposes. Government is in fact deeply involved in the economy." G. BAUM, *THE PRIORITY OF LABOR* 33 (1982). Pope John Paul II and the premier contemporary socialist in the United States, Michael Harrington, share this aspiration. "The fundamental proposition in all of Harrington's books is that modern industrialized societies are moving ineluctably toward collectivism, and that the meaningful political question of our time is therefore not *whether* we should have planning, but *how* planning should be organized." G. DORRIEN, *THE DEMOCRATIC SOCIALIST VISION* 122 (1986) (emphasis added); see also M. HARRINGTON, *DECADE OF DECISION: THE CRISIS OF THE AMERICAN SYSTEM* (1980); M. HARRINGTON, *THE TWILIGHT OF CAPITALISM* (1976); HARRINGTON, *Corporate Collectivism: A System of Social Injustice*, in *CONTEMPORARY READINGS IN SOCIAL AND POLITICAL ETHICS* (1984).

112. *ECONOMIC JUSTICE*, *supra* note 4, at vii, ix.

113. *Id.* at xii.

within the capitalist motif of constitutional republicanism. True worker democracy potentially threatens both capitalism and republicanism. "Democracy at the workplace is at odds with capitalist theory."<sup>114</sup> Clearly, the popular mass perception in the United States of leftist calls for true worker democracy raise the specter of Marxism rather than the promise of spiritual redemption. In the United States capitalist republic, *Laborem Exercens* probably sounds uncomfortably more like Karl Marx than Pope John Paul II to most audiences. The capitalist power elites in the United States would be as threatened by the profound ramifications of the papal encyclical as by any Marxist tract.

The challenge for the Catholic Bishops in the United States is to preach implementation of Catholic social teaching on the priority of labor in a measured incremental way, without advocating the destruction of capitalism or its displacement with socialism. If possible, the Catholic Church in the United States must seek a methodology to implement Catholic social teaching on labor in a fashion consonant with capitalism and constitutional republicanism. Initially, the Church must open the ears of an alienated and divided society so it can hear the message. Ultimately, this may not be fully possible. The priority of labor over capital obviates the demise of laissez faire capitalism. It is not certain whether the socialism of worker democracy will likewise spell the end of constitutional republicanism. It may well be that the effectuation of Catholic social teaching in the constitutional republic of the United States will yield an as yet unanticipated higher, redeemed order of both economic capitalism and republican governmental structures.

Laissez faire capitalism in the United States evolved into welfare capitalism decades ago. The Bishops are working with welfare capitalism as a form of corporate statism that can mediate rather successfully between the interests of labor and ownership. The Bishops appreciate that, especially in the United States, labor cannot exist without capital and capital cannot exist without labor. This was the message of the first modern Papal encyclical on labor, *Rerum Novarum*, by Pope Leo XIII in 1891. Leo XIII's key perception was that the interests of labor and capital can be harmonized, but probably never equated. The Bishop's pastoral letter reflects the accuracy of Leo XIII's perception for the United States in its period of late capitalism, contrary to *Laborem Exercens'* pronouncement that labor and capital never can be opposed.<sup>115</sup> This was the policy insight of the National Labor Relations Act—a structural and institutional legal appreciation of the importance and necessity of independent organized labor, while preserving and respecting the legitimate role of ownership in the operation of the complex capitalist economy. The Bishops share that insight; they respect the distinction between management and labor. However, they caution that the adversarial relationship must not become extreme, and thus can avoid dysfunction.<sup>116</sup> Good faith collective bargaining is the basis upon which to

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114. G. BAUM, *THE PRIORITY OF LABOR* 24-25 (1982).

115. *LABOREM EXERCENS*, *supra* note 31, at III (13).

116. *ECONOMIC JUSTICE*, *supra* note 4, at 148.

build some forms of worker democracy and codetermination in a centrist corporate welfare state.

The United States Bishops face a formidable challenge. They must preach the implementation of Catholic social teaching in the world of work within the corporate welfare statism of contemporary late capitalism in the United States. Unlike the Polish philosopher Pope of the universal Church, the Bishops must work within a very mainstream American constituency. The Catholic model for effectuation of the priority of labor continues to appreciate the aphorism that labor needs capital as its means. Capital needs labor, because capital as means is designed to serve the labor ends of achieving human dignity in the world of work. Capital is the means, the important instrument of labor. In the United States, capitalism and constitutional republicanism are closely linked; both are premised on the Madisonian device of factions and the near sacrosanct status of private property elucidated in Federalist Paper 10. Because of this Madisonian linkage of capitalism and constitutional Republicanism, the challenge of Catholic social teaching is especially pronounced. *Laborem Exercens* expressly summarizes:

Christian tradition has never upheld this right [of private ownership of property] as absolute and untouchable. On the contrary, it has always understood this right within the broader content 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.<sup>117</sup>

For Catholicism, the real issue is the use to which capital is put, rather than the ownership of capital. Catholicism thus dynamically transcends Marxism.<sup>118</sup> *Laborem Exercens* does not demand the "a priori elimination of private ownership of the means of production."<sup>119</sup> Statist collectivism as the alternative to capitalism does not necessarily guarantee true socialization of ownership.<sup>120</sup> Because it is important that the worker have a sense of working "for himself,"<sup>121</sup> and work not only for money or to contribute anonymously to bureaucratic statism, *Laborem Exercens* acknowledges that, as Thomas Aquinas originally recognized, private ownership of means of production may have value because it enhances this important sense of worker autonomy and worth.<sup>122</sup>

In their comprehensive pastoral letter, the Bishops reinforced Pope John Paul II's encyclical. The Bishops urge a preferential option for the poor, reaffirm the dignity of work, and also support initiatives for workplace democracy. But there is a prudent and deliberately measured tone to the Bishops' specific recommendations. They reject current levels of unemploy-

117. *LABOREM EXERCENS*, *supra* note 31, at III (14).

118. G. BAUM, *THE PRIORITY OF LABOR* 24-25 (1982).

119. *LABOREM EXERCENS*, *supra* note 31, at III (14).

120. *Id.*

121. THOMAS AQUINAS, *SUMMA THEOLOGICA* II-II, 9.65, a.2.

122. *LABOREM EXERCENS*, *supra* note 31, at III (15).

ment as unacceptable. They urge a national policy of meaningful full employment, based on coordination of fiscal, monetary, and tax policy, expansion of job retraining, and job creation to bring the marginally employed and the unemployed into the world of work.<sup>123</sup> The Bishops also expressly reiterate, however, the Church's established social teaching on the legitimacy of private ownership of property.<sup>124</sup> The Bishops urge that private ownership be enjoyed by the broadest segment possible of the population, and militate against undue concentration of ownership in only a few hands.<sup>125</sup>

Empowerment is at the heart of the Bishops' letter.<sup>126</sup> Widespread private ownership among as many persons as possible is one means by which capitalism can enhance social empowerment. Empowerment of workers, individually and collectively, without merely aping the pathologies of economic capitalist elites, may hold the answer to ameliorating the tragedy of labor and to redeeming the world of work.

The Bishops call for "the empowerment of people everywhere." Poverty is certainly one manifestation of powerlessness. Those excluded from the world of work often are simultaneously consigned to poverty and powerlessness. However, work alone, while it may be the means to escape economic poverty, may not relieve the even deeper problem of powerlessness. This insight partially explains the virtually intractable malaise of spirit that permeates the world of work, regardless of whether it occurs in a capitalist or a socialist economy, and without regard to whether one is a unionized rank and file worker or a manager.

Money alone is not power. Acquiring money, while it may enable escape from poverty, does not guarantee empowerment. Witness the upper-mid level manager with a six figure annual income. He is not economically impoverished, but he may still be, for all practical purposes, relationally powerless within the community, and therefore at the mercy of the ownership elite. Without relational power, the unemployed poor and highly skilled and well paid workers alike lack the ability to reconstruct the world of work and to alleviate the tragedy of labor.

The Bishops endorse an option for the poor as part of a broader appreciation of the linkage of poverty and powerlessness. The Bishops urge the working class and the middle class to realize that they, despite not being immediately and individually victimized by poverty, may otherwise be as powerless as the poor. Rather than simply ape the pursuit of money by the economic elite, the poor and the working class must realize that they are bonded in solidarity and are called to seek the true empowerment that transcends money. In the Sermon on the Mount, Jesus said "blessed are the poor in spirit."<sup>127</sup> This is the call of God throughout history for solidarity

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123. *ECONOMIC JUSTICE*, *supra* note 4, at 78-83.

124. *Id.* at 57.

125. *Id.*

126. My analysis of empowerment in *ECONOMIC JUSTICE FOR ALL* draws heavily from Penta, *supra* note 35.

127. *Matthew* 5:1-6.

among all humanity poor in spirit, regardless of economic class distinctions. Jesus repeatedly cast his lot with the dispossessed. Redemption, both individual and collective, is premised on our solidarity with the poor; "for I was hungry and you gave me food, I was thirsty and you gave me drink . . . as often as you did it for one of my least brothers, you did it for me."<sup>128</sup> This is a radical call, make no mistake. It is not, as unfortunately it has often been illegitimately used, a basis for facile rationalizations by troubled elites seeking to preserve economic and political hegemony.

Relational community of action in solidarity with the poor, rather than futile emulation of the capitalist elites, holds the true promise of genuine empowerment. The Bishops share the Marxist insight that calls for collective relational power among people. This is sharply contrasted to seeking hierarchical and atomized power as sovereignty and dominion over those individuals with relatively less money.

The Bishops reflect a theology of justice shared among the empowered community, and reject a hierarchy of economically dominant monied individuals. "Establishment of minimum levels of participation in the life of the human community for all persons" is the key to the amelioration of individual and collective powerlessness. Poverty can be alleviated as an ancillary consequence of this universal participation in community.

This socialist understanding of relational power among the community, rather than the capitalist motif of hierarchical economic power of elite dominion, has the radical potential to fuse in solidarity the seemingly foreign amalgam of the poor unemployed and the managerial workers of the upper middle class. By better realizing the nature of powerlessness and the dynamics of empowerment, the unemployed may be better able to enter the world of work. Meanwhile, alienation of workers can be mitigated. Perhaps most important, through appreciating the Bishops' insight that money alone will not result in empowerment, workers can repudiate the idol of materialism and the fetishism of commodities. Workers can seek true empowerment, without aping the hierarchical behaviors of the monied elites.

This leads, logically enough, to the Bishops' endorsement of worker democracy. Heightened autonomy, discretion, and responsibility will lessen alienation and enhance the sense of relational power among workers and owners. To be truly empowering, worker democracy must be worker initiated, with workers as subjects, not objects, in relational power with ownership. Unfortunately, in the United States, this is a lesson not yet learned.<sup>129</sup> Most worker participation schemes have been management schemes, originally designed as pretexts to obtain worker concessions during periods of economic adversity. The Bishops are cognizant of this danger of ownership manipulation of workers. It is a delicate balance that the Bishops attempt to achieve. Worker democracy and codetermination unquestionably are positive contributions to greater human dignity in the world of work.

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128. *Matthew* 25:35-40.

129. See Gregory, *supra* note 18.

However, the Bishops realize that they are proposing essentially socialist work relationships within a capitalist and usually hierarchical work structure. Thus, the United States Bishops stop short of Pope John Paul II's overt call for the priority of labor over capital. Just as Pope John Paul II reflects his socialist culture of Eastern Bloc Poland, so too do the United States Bishops reflect an understanding of their capitalist culture. The Bishops are seeking to reform, without ruining, the positive contributions of capitalism, which is the dominant economic and governmental motif in the United States. The Bishops offer an agenda for revivifying the world of work, short of the shared socialism of Pope John Paul II and of classic Marxism. Priority of labor over capital ultimately could lead to the confusion of the means of work with the end of greater human dignity, of which work, while important, is still only one component. Whether committed under the mantle of Marxism or of the Papacy, the raw indiscriminate advocacy of labor over capital can confuse work with teleology. Generally, failed worker ownership has been the unfortunate practical consequence of this confusion thus far in the United States.

The Bishops offer an agenda for redeeming the tragedy of labor without supplanting capitalism with socialism and without completely equating workers and ownership. By enhancing awareness of empowerment as incorporating yet transcending economic power, the Bishops helpfully broaden worker class consciousness without advocating unproblematic and indiscriminate worker ownership. Thus, the Bishops suggest how worker alienation can be reduced, how worker autonomy can be enhanced, and how workers' consciousness can be heightened, while simultaneously repudiating ownership behaviors that mistakenly equate amassing of money alone with empowerment. The Bishops seek to redeem the world of work and to heal the tragedy of labor while retaining the capitalist and republican constitutional order on which the economic and governmental structure of the United States is based. While it remains to be seen whether they will succeed, the Bishops evidence a deep understanding of the need for progressive, measured healing of the world of work, while avoiding a wholesale radical socialist displacement of the entire capitalist order.

The Bishops' core concept of relational empowerment will be quite familiar to organized labor, premised, as they both are, on the call for collective action. Both traditional modalities of collective bargaining and the Bishops' call for redemptive empowerment prioritize the collective action of relational political empowerment over forms of economic power. Economic power alone cannot determine effective political power. The Bishops' concept of empowerment shares a powerful commonality with the imperative of collective action and relational power at the heart of effective organized labor. The direct linkage between theology and labor law, and the redemptive implication for the world of work, is profound and unmistakable. Reverend Leo Penta cogently has summarized the possibilities of the Bishops' 1986 call for economic justice:

What ultimately is at stake here can be seen to be the development of a long-term positive synthesis between democratic values of

participation and equality and the Gospel values of love and justice. Such a synthesis would depend much more on a process of enabling action from below than upon changes in economic policy from above.<sup>130</sup>

It remains to be seen whether worker generated egalitarianism and middle class solidarity with the poor can occur in our closely linked capitalist and constitutional republic.

### B. *The Fusion of Law And Theology*

These many examples, both within the United States and from the international community, convincingly demonstrate the merits of properly understood liberation political theology. The powerful fusion of the immanent world of work with the transcendence of theological vision has the potential to transform and redeem the world of work, to address the problem of alienation, and to salve the wounds of the tragedy of labor. As Professor Robert Rodes has suggested, this amalgamation of law and theology creates a jurisprudence of liberation,<sup>131</sup> the future rich potential of which we can now only barely begin to appreciate. Nowhere could the consequences of this new jurisprudence of liberation be more affirmative and healing than in the world of work. The Papacy, the international teaching magisterium, the hierarchy, and the grass roots worker priests and laity, both within the United States and throughout the world, consistently have supported the dignity of work and improvements in working life throughout the Church's modern history. The Catholic Church has offered a transformative, redemptive vision for the world of work. The relative failure of Marxism to afford a similar transformative vision of the world of work especially is revealed in the ruthless Soviet suppression of a free trade union movement in an environment that purports to offer the telos of a proletarian paradise. This plain irony of the ultimate workers' state summarily crushing worker aspirations is certainly one of the most profound manifestations of the continuing failure of Marxist practice. Catholic theology, not Marxist ideology, offers the best hope for transforming the world of work.

Gregory Baum best explains how Pope John Paul II, reflecting his Eastern Bloc Polish socialism, adapts and then transcends Marxism by contemporary Catholic social teaching on work. "Pope John Paul II permits himself to be impressed by certain Marxist insights. Yet in the discussion of these insights he opens them up, overcomes their rigidity, expands them toward new meaning, and thus produces a social philosophy that transcends Marxism from within."<sup>132</sup> While rejecting Marxism's atheism, authoritari-

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130. See Penta, *supra* note 35.

131. R. RODES, *LAW AND LIBERATION* (1986); see also M. BALL, *LYING DOWN TOGETHER: LAW, METAPHOR AND THEOLOGY* (1985); T. SHAFFER, *ON BEING A CHRISTIAN AND A LAWYER* (1981).

132. G. BAUM, *THE PRIORITY OF LABOR* 3 (1982).

anism, and rigidity, liberation political theology, including *Laborem Exercens*, draws upon Marxist social insights.<sup>133</sup> In *Rerum Novarum* in 1891, Pope Leo XIII bitterly attacked the evils of socialism as an atheistic materialism at odds with Catholicism; by 1971, Pope Paul VI acknowledged certain forms of socialism were appropriate for Catholic participation. The objective of Catholic labor theory is actualization of justice in the world of work, not the victory of any particular class. Catholicism, partially inspired by Marxism, has dereified and personalized class struggle, and has transcended Marxism by offering a uniquely valuable theory of labor history in the world of work.<sup>134</sup> Catholic labor theory regards all humanity as struggling for justice, rather than against any particular class. The workers' struggle is essentially one based on a moral assault to overcome social sin of economic oppression in all its forms.<sup>135</sup>

Liberation political theology is in its infancy as both metaphysics and as praxis. It would be utterly futile and totally premature to more than broadly outline the possible eschatological implications of the fusion of law and liberation political theology. I am increasingly pessimistic of our ability to transform the world of work solely by the conventions of secular labor law scholarship. However, I also reject the passive fatalism that awaits some mystic, *deus ex machina* salvation from a labor law armageddon. Unfortunately, civilization will witness a parade of apocalyptic charlatans of every sort as the millenium fast approaches. Labor law theory and practice is troubled enough without buying snake oil elixirs. It is unlikely that theology will be able to energize labor theory if labor theoreticians and practitioners abandon the daily struggle to improve the world of work. This would be the danger of relying solely on theological eschatology as a passive salvation, to the complete exclusion of political action. The powerful contribution of Catholic social teaching on labor is that it requires human action to transform the world of work; workers cannot passively rely on religious abstractions. They must work in concert with the unemployed poor who aspire to enter the world of work. Simultaneously, Catholicism reminds humanity of the goal of justice and of the transcendent and spiritual—an eschatology that gives meaning to struggle.

As liberation political theology begins to influence positively the world of work and to heal the wounds of the tragedy of labor, labor law theoreticians better can appreciate theology's transformative and redemptive potential. If the world of work truly can be transformed by theology, the current conventions of labor theory may become obsolete. The tragedy of labor, affected by exclusion, alienation, and malaise of spirit, finally may be resolved. By the influence of theology and especially through Catholic social teaching, the tragedy of labor may not be as intractable as it has thus far proven to be in Marxist theory of history.

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133. *Id.* at 5-6.

134. *Id.* at 31.

135. *Id.* at 57.

Liberation political theology, vis-a-vis its transformative potential for the world of work, will be better understood several years hence. The centennial of *Rerum Novarum* in 1991 will be an opportune moment for an assessment. However, I suspect that it will be an eschatology, not in the conventional sense of a final teleological culmination, but rather, an eschatology that more fully reflects and helps us to appreciate the immanence of the world of work. As the philosophy of phenomenology has demonstrated, from St. Augustine of Hippo through Husserl,<sup>136</sup> an immanentized eschatology, although it initially seems to be a contradiction or at least a confusion in terms of immanence and transcendence, makes the most sense in the world of work. An immanentized eschatology collapses notions of anthropomorphicized time; eternity is suddenly defined by immanence, not by transcendence. Time is a quaintly constrained human notion. Instead, all that ever was, is, and will be is immanentized in Augustine's "ever present present." As God revealed to Moses in the burning bush in the Book of Exodus, "I am who I am"—the perfect eschatological immanentization of the transcendent.

Likewise, I suspect, liberation political theology, through Catholic social teaching, will share in, revivify, and reflect the daily struggle for greater dignity in the world of work in a thoroughly immanent way. Individual and collective salvation occur in almost imperceptible ways, living each day. Heaven is revealed more as the daily road toward heaven, than as a final destination. Unlike Marxism, Catholic social teaching does not seek the ultimate disappearance of class distinctions in the world of work. The contributions of Thomas Aquinas stop the magisterium shy of raw egalitarianism. Instead, Catholicism seeks to maximize human dignity in the world of work, regardless of the institutional structures that the world of work ultimately may take. Catholic social teaching on work also may transform the bureaucracy of the Catholic Church itself. While Pope John Paul II takes Marxism seriously, and borrows heavily from both Marxism and liberation political theology, the nonideological socialism of *Laborem Exercens* both transcends, and is distinct from, Marxism and liberation political theology. Indeed, the magisterium sharply has criticized liberation political theology because some theologians have questioned whether the Church itself has participated in forms of social oppression. There is no self-critique in *Laborem Exercens*. There are many pressing internal labor relations questions within the Church. How will it treat its own workers, ranging from clergy with AIDS, to nuns with insufficient retirement funds, to faculty seeking to unionize? Gregory Baum has suggested that the labor encyclical affirmatively can be utilized to realign institutional Church structures in the furtherance of redeeming the world of work.<sup>137</sup>

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136. Husserl is widely recognized as the father of modern phenomenology. See generally E. HUSSERL, *CARTESIAN MEDITATIONS* (1960); E. HUSSERL, *IDEAS: GENERAL INTRODUCTION TO PURE PHENOMENOLOGY* (1952); E. HUSSERL, *PHENOMENOLOGY AND THE CRISIS OF PHILOSOPHY* (1965).

137. G. BAUM, *THE PRIORITY OF LABOR* 77-78 (1982).

## IV. CONCLUSION

Scholars have begun to suggest how the law of liberation positively and pervasively will influence the future. The current modes of labor theory, including even the considerable innovations respectively engendered by critical scholarship and by economic analysis, lack the transformative potential necessary to dignify fully the world of work and to cure the alienation and malaise at the heart of the still seemingly intractable tragedy of labor. The Catholic Church, from the original classic communism described in Chapter Four of the Acts of the Apostles, to the recent proclamations of Pope John Paul II and the Bishops of the United States, eloquently and consistently has supported the dignity of work and the hopes of workers for better lives, free of alienation and full of autonomy and responsibility. I am cautiously optimistic that this theology, understood in this very broad sense of incorporating Catholic social teaching, has the fullest potential to redeem the world of work from the tragedy of labor.

Within the past few years, incisive legal scholars as diverse as Roberto Unger, Robert Rodes, Milner Ball, and Joseph Vining have reminded us of the promise theology can hold for law. Although the contour of the effectuation of this transformation necessarily must await future scholarship, if we now listen carefully and quietly, we may sense the theological redemption of the world of work underway. If work can be transformed, achievement of justice and peace, goals of both law and religion, cannot be far away.<sup>138</sup> The priority of labor over capital, while preserving and respecting the legitimacy of the means of capital in the service of labor, certainly will further justice. Through Catholic social teaching, we finally may have a true spirituality of work,<sup>139</sup> to transfigure the human laws of work. Finally, through this immanentized labor eschatology, Roberto Unger's prayer of over a decade ago may be answered.<sup>140</sup> God is speaking.

138. LABOREM EXERCENS, *supra* note 31, at I (2). "Commitment to justice must be closely linked with commitment to peace in the modern world." *Id.* See also C. BLACK, *THE HUMANE IMAGINATION* 14-16 (1986).

139. LABOREM EXERCENS, *supra* note 31, at V (24).

140. See Unger, *supra* note 104, at 295. It is striking to witness how Unger's most recent trilogy, *POLITICS* (1987), begins to translate much of Christian theory into practice. Scholars are divided over whether Unger is a utopian or a true Christian romantic. "Unger maintains his earlier *Knowledge and Politics* is a 'Christian' book . . . *Passion*, and now *Politics*, may be claimed as 'Christian' in the same way. If they are Christian in some sense, however, they are not Christian in the biblical sense." Ball, *The City of Unger*, 81 *Nw. U. L. REV.* 625, 660 (1987). "The human longing for infinity leads toward an encounter with God. . . . I cannot help wondering whether, in this replacing God with man, Unger is not placing more weight on the individual/social world than it can rightly bear." Galston, *False Universality: Infinite Personality And Finite Existence In Unger's Politics*, 81 *Nw. L. REV.* 751, 764 (1987). "I do not mean to suggest that Unger is a secular leftist. A plausible argument can be made, I think, that his work is more fairly assimilated to the religious left." Perry, *Preface to Symposium, Roberto Unger's Politics*, 81 *Nw. L. REV.* 589, 591 (1987). "Unger's viewpoint is motivated by explicit religious concerns—such as kinship with nature as seen in romantic love, or transcendence over nature as manifested in the hope for eternal life." West, *Between*

Academic labor lawyers, practitioners, and workers should be listening closely with theologians to discern and to immanentize God's transcendent words in the world of work. We cannot wait passively; we are also obliged to help one another toward a transformed world of work, finally free and fully redeemed from pathos and tragedy. Rather than await God's final messianic victory in history as sideline spectators, the more modest task today is to use Catholic labor teaching to make society better, more just, and more humane in the daily lives of all working people. This will unfold in a myriad of ways not yet known. It is good that the optimism of Catholic labor theory presently outpaces its implementation. Only then can today's inspiration become tomorrow's reality. Pope John Paul II would certainly share the core insight of Professor Unger:

[I]n theory as in practice, insight and fecundity count for more than consistency. Every thinker betrays his most subversive intentions in the process of carrying them out. It is better to betray them less than to betray them more. But it is also better to let vision outreach theory building than to see and to say only what you can already formulate coherently and persuasively.<sup>141</sup>

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*Dewey and Gramsci: Unger's Emancipatory Experimentalism*, 81 NW. L. REV. 941, 941 (1987).

Ultimately, it is best to let Professor Unger speak for himself. In a letter in response to a review of *KNOWLEDGE AND POLITICS*, Unger stated that the reviewer failed to understand that *KNOWLEDGE AND POLITICS* is Christian. Kronman, Book Review, 61 MINN. L. REV. 167, 203-04 (1976). In addition to his earlier response to Professor Kronman's review of *KNOWLEDGE AND POLITICS* in 1976, Unger said the substantive aim of *PASSION: AN ESSAY IN HUMAN PERSONALITY*, was to "restate the Christian-romantic image of man." R. UNGER, *PASSION: AN ESSAY IN HUMAN PERSONALITY*, vii (1984).

At any rate, it will be interesting to see whether Unger's agenda in *POLITICS* (1987) will provide the international means for the translation of Catholic labor teaching into practice. The recognized potential for a singularly rich fusion is certainly there. See *supra* notes 7-9 and accompanying text; *supra* notes 104-05 and accompanying text (discussing Unger's work).

141. R. UNGER, *SOCIAL THEORY: ITS SITUATION AND ITS TASK: A CRITICAL INTRODUCTION TO POLITICS, A WORK IN CONSTRUCTIVE SOCIAL THEORY* 216 (1987).

