

# THE INTEGRATION OF CATHOLIC SOCIAL THOUGHT INTO WORKPLACE LAW COURSES

by

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## 1. Introduction

This paper presents a pedagogical model for the integration of Catholic social thought<sup>1</sup> into the content of the syllabus designed by a professor for an undergraduate, graduate or professional course.

Our pedagogical approach equips the student to evaluate the demands of business practice in light of the social thought of the Roman Catholic Church. We offer an instructor a set of supplemental materials that encourage an examination of the legal materials presented in the existing course syllabus through the lens of Catholic social thought. We refer to these materials as a “supplemental syllabus.” The appendix to this paper presents two sample units of supplemental syllabi that are designed to coordinate with standard casebook materials used in

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<sup>1</sup> We deliberately use the phrase “Catholic social thought” rather than “Catholic social teaching.”

American law schools. While the content of each sample unit is specific to the culture of the United States, the pedagogical approach presents a format that can easily be adapted to the specific content of the laws and culture of different nations.

In order to illustrate this integrative approach, we have selected two courses on the law of the workplace that are commonly found in the curriculum of American law schools. The first of these courses, generally known as “Labor Law,” engages the student in the examination of the National Labor Relations Act.<sup>2</sup> The second course, which often goes by the name of “Employee Benefits Law” or “Pension and Benefits Law,” focuses on the Employee Retirement Income Security Act of 1974.<sup>3</sup> The two units presented in the appendix focus on two fundamental issues in the workplace: the rights of employees to join unions and the responsibilities of employers who communicate to employees about their employee benefit arrangements. Each unit, of course, only represents a small part of a full course on “Labor Law” or “Employee Benefits Law.” A complete supplemental syllabus would integrate Catholic social thought in other parts of the syllabus in the manner illustrated by these samples.

We offer this pedagogical approach as a contribution to truly pluralistic academic freedom. In presenting the principles of Catholic social thought to the student, our objectives are neither catechetical nor evangelistic in nature.<sup>4</sup> Our goal is broader than simply addressing the information and formation of Catholics who aspire to “penetrat[e] and perfec[t] the temporal order” with the Gospel.<sup>5</sup> Neither is our goal limited to integrating the Catholic intellectual tradition into the education of students in a Catholic university, important and immediate as this task might be.

Instead, we believe that an understanding of Catholic social thought promotes the full participation of any student—Catholic or otherwise—in the pluralism of academic thought. We believe that a university curriculum should encourage students to pursue an awareness of all schools of thought that might be relevant to a problem and to cultivate the ability to use these schools of thought to examine the problem in comparative ways. The “social wisdom” of the Roman Catholic Church, as represented in Catholic social thought, must be part of this process in order for a student to receive a thorough and well-rounded education.<sup>6</sup> One need not be a Marxist in order to gain from the study of Marx; neither should the insights of Catholic social thought be viewed as relevant only to the practicing Catholic. Catholic social thought represents a philosophical, anthropological and religious view of the person in community that complements any social, economic or political study.

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<sup>2</sup> 29 U.S.C.A S 151 et seq.

<sup>3</sup> 29 U.S.C.A. § 1001 et seq.

<sup>4</sup> See Mark A. Sargent, *An Alternative to the Sectarian Vision: The Role of the Dean in an Inclusive Catholic Law School*, 33 U. TOL. L. REV. 171, 181 (2001) (“...a Catholic university and law school can serve its religious mission by welcoming those outside of its faith, both as students and faculty colleagues, into its community.”).

<sup>5</sup> See Vatican II, *Apostolicam Actuositatem* ¶ 2.

<sup>6</sup> The term “social wisdom” appears in the work of Peter J. Henriot, Edward P. DeBerri, and Michael J. Schultheis, *OUR BEST KEPT SECRET 5* (Orbis Books 3d ed. 1992).

For some, the source of Catholic social thought legitimates or negates its integration in the classroom. Our operating premise challenges both positions. Catholic social thought has earned a place in academic inquiry on the merits of its content, rather than simply the authority of its author. Moreover, the Roman Catholic Church is a transnational institution; even if its religious teaching could be set aside, its role in the global community cannot be ignored by any professional who is involved in the political, social, legal and economic life of the global community.

The added value of a university that proclaims its Catholic identity is the cultivation of a learning community that promotes the dialogue between faith and reason. This learning experience supports the development of the capacity of the person to realize both private and individual objectives and to contribute to the commonweal.<sup>7</sup> A Catholic university can help all of its students to understand the manner in which Catholic teaching interacts with economic experience. Without a concerted effort to prepare students to integrate transcendent values rooted in religion and the natural law in business decision-making, we who teach in Catholic universities risk contributing to the phenomenon of “Church on Sunday, work on Monday.”<sup>8</sup>

Although our interest is not limited to the catechesis of Catholic students, we recognize the contribution that a familiarity with Catholic social thought might make to the spiritual development of Catholic students in particular.<sup>9</sup> As a matter of human reality, the lay person's

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<sup>7</sup> See CATECHISM OF THE CATHOLIC CHURCH ¶ 912 (Loyola University Press 1994) (“The faithful should ‘distinguish carefully between the rights and the duties which they have as belonging to the Church and those which fall to them as members of the human society. They will strive to unite the two harmoniously, remembering that in every temporal affair they are to be guided by a Christian conscience, since no human activity, even of the temporal order, can be withdrawn from God’s dominion.’”) (citing *Lumen Gentium* ¶ 36 §4). See also Ex Corde Ecclesiae ¶ 7, at [http://www.vatican.va/holy\\_father/john\\_paul\\_ii/apost\\_constitutions/documents/hf\\_jp-ii\\_apc\\_15081990\\_ex-corde-ecclesiae\\_en.html](http://www.vatican.va/holy_father/john_paul_ii/apost_constitutions/documents/hf_jp-ii_apc_15081990_ex-corde-ecclesiae_en.html) (June 2, 2003).

The practical meaning of “Catholic identity” in the context of a law school is the subject of several fascinating law review articles. See, e.g., Randy Lee, *Catholic Legal Education at the Edge of a New Millennium: Do We Still Have the Spirit to Send Forth Saints?*, 31 GONZ. L. REV. 565 (1995-1996); Randy Lee, *Are Religiously Affiliated Law Schools Obsolete in America? The View of an Outsider Looking In*, 74 ST. JOHN’S L. REV. 655 (2000); Mark A. Sargent, *supra* note 4 at 174 (2001) (arguing that Catholic identity can be “a broadly inclusive phenomenon” that still invites discussion on “the relevance of Catholic thought and values to the law and lawyering”); Thomas Shaffer, *Erastian and Sectarian Arguments in Religiously Affiliated American Schools*, 45 STAN. L. REV. 1859 (1993) (arguing for a sectarian law school that operates as a community of believers); also Thomas L. Shaffer, *Why Does the Church Have Law Schools?*, 78 MARQUETTE L. REV. 401, 403 (1995) (“The church has law schools because having law schools is one way to be a priestly people.”).

<sup>8</sup> This phrase even serves as the title of a recent book. See Laura Nash, Ken Blanchard, Scotty McLennan, *CHURCH ON SUNDAY, WORK ON MONDAY: THE CHALLENGE OF FUSING CHRISTIAN VALUES WITH BUSINESS LIFE* (Jossey-Bass 2001). See also Helen J. Alford, O.P., and Michael J. Naughton, *MANAGING AS IF FAITH MATTERED: CHRISTIAN SOCIAL PRINCIPLES IN THE MODERN ORGANIZATION* (University of Notre Dame Press 2001) (discussing justice concepts in regard to compensation); S. A. Cortright and Michael J. Naughton, eds., *RETHINKING THE PURPOSE OF BUSINESS: INTERDISCIPLINARY ESSAYS FROM THE CATHOLIC SOCIAL TRADITION* (University of Notre Dame Press 2002).

<sup>9</sup> We plan to develop resources for campus ministry programs that would coordinate our academic efforts with the pastoral mission of a campus ministry program. See International Council for Catechesis, *Adult Catechesis in the Christian Community: Some Principles and Guidelines* (1990) at [www.vatican.va/roman\\_curia/congr...c\\_con\\_cclergy\\_doc\\_14041990\\_acat\\_en.html](http://www.vatican.va/roman_curia/congr...c_con_cclergy_doc_14041990_acat_en.html) (November 9, 2002);

vocation to incarnate Christ in the temporal world requires a substantive understanding of Christian doctrine.<sup>10</sup> However, personal belief, desire and piety are only the first steps that a Catholic Christian must take towards fulfilling his duty to "penetrat[e] and perfec[t]" the world in which he lives.<sup>11</sup> A sincere desire to integrate Catholic Christian ethics into one's professional life eventually leads one to reflect on whether the education that he or she has received in the university or professional skill is adequate preparation for life in the business. For Catholics, a proper understanding of Christian life in the temporal world must be grounded in the intellectual tradition of Catholic social thought.<sup>12</sup> The student's examination of Catholic social thought should take place not only on a theoretical level but also in dialogue with the study of specific topics covered in a course or syllabus.

The quest to explain the relationship between religious impulses and practical experience is not, of course, unique to the Catholic tradition.<sup>13</sup> The inquiry long ago captured the interest of secular sociologists who did not claim an affiliation with any particular religious system. Almost a century ago, for example, Max Weber searched for the "inner relationship between certain expressions of the old Protestant spirit and modern capitalistic culture" by examining the religious beliefs of Puritan ascetics regarding the nature of vocation.<sup>14</sup> Weber premised his study on the observation that Protestants dominated the ownership and capital of Germany's business structure and, likewise, German business culture.<sup>15</sup> He invited his readers to watch Puritan asceticism as it "strode into the market-place of life, slammed the door of the monastery behind

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Congregation for the Clergy, *General Director for Catechesis* at [www.vatican.va/roman\\_curia/congr...041998\\_directory-for-catechesis\\_en.html](http://www.vatican.va/roman_curia/congr...041998_directory-for-catechesis_en.html) (November 9, 2002).

<sup>10</sup> See CATECHISM OF THE CATHOLIC CHURCH ¶ 899 ("The initiative of lay Christians is necessary especially when the matter involves discovering or inventing the means for permeating social, political, and economic realities with the demands of Christian doctrine and life. This initiative is a normal element of the life of the Church.").

<sup>11</sup> Vatican II, *Apostolicam Actuositatem* ¶ 2; see also CATECHISM OF THE CATHOLIC CHURCH ¶ 898 (Loyola University Press 1994)(citing *Lumen Gentium* ¶ 31).

<sup>12</sup> See United States Conference of Catholic Bishops, *Economic Justice for All: A Pastoral Letter on Catholic Social Teaching and the U.S. Economy* ¶ 25 (1986)("This tradition insists that human dignity, realized in community with others and with the whole of God's creation, is the norm against which every social institution must be measured.") in David J. O'Brien and Thomas A. Shannon, eds., *CATHOLIC SOCIAL THOUGHT: THE DOCUMENTARY HERITAGE* (Orbis Books 1992). A copy of *Economic Justice for All* is also available on the Internet at <http://www.osjspm.org/cst/eja.htm> (May 29, 2003).

<sup>13</sup> A body of popular literature that is primarily didactic and normative in nature also examines the relationship between Christian belief and business values. Even a cursory search of popular bookstore websites suggests the popularity of this genre. See, e.g., Laurie Beth Jones, *JESUS CEO: USING ANCIENT WISDOM FOR VISIONARY LEADERSHIP* (Hyperion 1996); Larry S. Julian, *GOD IS MY CEO: FOLLOWING GOD'S PRINCIPLES IN A BOTTOM-LINE WORLD* (Adams Media Corporation 2002); Larry Burkett, *BUSINESS BY THE BOOK COMPLETE GUIDE OF BIBLICAL PRINCIPLES FOR THE WORKPLACE* (Thomas Nelson 1998). As of June 1, 2003, the New York Times Best Seller List of Hardcover Advice Books had featured Rick Warren's book on "finding the meaning of life through God," entitled *THE PURPOSE DRIVEN LIFE* (Zondervan 2002), for eighteen weeks. See The New York Times, *Hardcover Advice*, <http://www.nytimes.com/2003/06/01/books/bestseller/0601besthardadvice.html> (May 30, 2003).

<sup>14</sup> Max Weber, *THE PROTESTANT ETHIC AND THE SPIRIT OF CAPITALISM* (New York: Charles Scribner's Sons, 1958), 45.

<sup>15</sup> *Id.* at 35.

it, and undertook to penetrate just that daily routine of life with its methodicalness, to fashion it into a life in the world."<sup>16</sup> While Weber's concerns were primarily sociological in nature, his analytic system has guided and shaped an understanding of how religious values operate in the marketplace.

Yet Weber's concept of the Protestant ethic neither aspires to nor succeeds in reconciling Catholic "social wisdom"<sup>17</sup> with lived economic experience.<sup>18</sup> In fact, John Tropman of the University of Michigan contrasts the Protestant achievement ethic and the Catholic "sharing ethic."<sup>19</sup> Tropman suggests that the Protestant ethic, premised on a salvation theology of individual predestination, cannot explain the Catholic experience, which, in his view, derives from a community orientation and the continued commitment to reconciling individual sin with the common good.<sup>20</sup> Whether Weber's or Tropman's ideal typologies of the "Protestant" and "Catholic" ethic hold up to empirical scrutiny is, of course, beyond the scope of this paper. However, we believe that Tropman's term "Catholic ethic" is useful to refer to the normative principles that are found in the body of teachings that has come to be known as Catholic social thought.<sup>21</sup>

The tension between a secular individualistic ethos and the Catholic emphasis on the common good is lived out in the daily life of a participant in the American business world. The dominant business culture in the United States promotes a model of private enterprise, committed to private gain and an ethic of individualism. The positive law of the United States sets broad parameters within which a person may transact business without official sanction. Moreover, the legal duty of the decision-makers of a for-profit corporation is to maximize the gain of the corporation's shareholders.<sup>22</sup> In many instances, however, the threshold goal of maintaining legal compliance and the legal duty to maximize gain fail to provide the mandate for or the means of discerning the ethical or moral impact of a particular decision.

The secular values that may be tolerated by a culture of legal compliance may in theory or in application be in tension with the central tenets of Catholic social teaching. Quoting

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<sup>16</sup> Id. at 154.

<sup>17</sup> Henriot et al., *supra* note 6 at 5.

<sup>18</sup> Weber, *supra* note 14 at 35-46 (explaining Weber's interest in the Protestant ethic as distinguished from Catholic experience).

<sup>19</sup> See John E. Tropman, *THE CATHOLIC ETHIC IN AMERICAN SOCIETY: AN EXPLORATION OF VALUES* 6-8 (Jossey-Bass Publishers 1995); John E. Tropman, *THE CATHOLIC ETHIC AND THE SPIRIT OF COMMUNITY* 14-15 (Georgetown University Press 2002).

<sup>20</sup> See Tropman, *SPIRIT OF COMMUNITY*, *supra* note 13 at 13-24 (comparing the characteristics of the Protestant ethic and the Catholic ethic).

<sup>21</sup> See *id.* at 15 ("As I use the term, the Catholic ethic is a community-centered pattern of values."); *id.* at 16-22 (identifying and explaining the following as characteristics of the worldview of the Catholic ethic: ensemble self, satisficing, cooperative, community help and private-regarding institutions).

<sup>22</sup> According to a recent study by the Aspen Institute, American business students placed "maximizing value for shareholders" as the primary responsibility of a corporation in 2001. In the following year, this goal slipped to second place (behind "satisfying customer needs"), but still attracted more than 70 percent of the responses. The Aspen Institute Business and Society Program, Executive Summary, *Where Will They Lead? 2003 MBA Student Attitudes About Business & Society* 6 (2003),

Gaudium et Spes ¶26 § 1, the *Catechism of the Catholic Church* reminds us that the “common good” is “the sum total of social conditions which allow people, either as groups or as individuals, to reach their fulfillment more fully and more easily.”<sup>23</sup> The common good requires respect for the “fundamental and inalienable rights of the human person,”<sup>24</sup> “the social well-being and development of the group itself”<sup>25</sup> and “the stability and security of a just order.”<sup>26</sup>

The study of specific statutes in American law presents an interesting dialogue with Catholic social thought. By its own definition, Catholic social thought does not espouse specific economic systems or solutions. It offers a lens to examine and critique the role of the owners, producers, consumers and the State in the allocation of resources of the community. The public policy and purpose of a law may be designed in apparent harmony with the values espoused by Catholic social thought. The implementation of law may be disjoined from its purpose. Sometimes the manager, accountant or lawyer only asks, “What does the law allow?,” because that is the scope of his professional education. By integrating a set of questions from Catholic social thought at the relevant time in the teaching process, the student is given the potential capacity as a professional to ask a broader set of questions. It is our belief that a student trained to use these teachings to guide his evaluation of major business decisions will walk more confidently in the world marketplace.<sup>27</sup>

## 2. Legal Education in the United States

A prospective American law student may choose to pursue his training at one of 187 law schools.<sup>28</sup> Approximately fifty of these schools are affiliated with religious organizations and more than twenty-five have ties to the Roman Catholic Church.<sup>29</sup> Roman Catholic universities, as well as other faith-based law schools, typically adopt the same range of course requirements,

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<sup>23</sup> CATECHISM OF THE CATHOLIC CHURCH ¶ 1906.

<sup>24</sup> *Id.* at ¶ 1907.

<sup>25</sup> *Id.* at ¶ 1908.

<sup>26</sup> *Id.* at ¶ 1909.

<sup>27</sup> See Thomas Massaro, S.J., *LIVING JUSTICE: CATHOLIC SOCIAL TEACHING IN ACTION* 12 (Sheed & Ward 2000); Barbara Bader Aldave, *The Reality of a Catholic Law School*, 78 *MARQUETTE L. REV.* 291 (1995).

<sup>28</sup> The American Bar Association has approved or conditionally approved 187 law schools. In 2001, the Association of American Law Schools reported a membership of 162 law schools and a fees-paid relationship with an additional 22 law schools. See Richard A. White, *Association of American Law Schools Statistical Report on Law School Faculty and Candidates for Law Faculty Positions 2000-2001*, <http://www.aals.org/statistics/index.html> (May 29, 2003).

<sup>29</sup> See John J. Fitzgerald, *Today's Catholic Law Schools in Theory and Practice: Are We Preserving Our Identity*, 15 *NOTRE DAME J. L. ETHICS AND PUBLIC POLICY* 245, n8 (2001).

The mission of religiously affiliated law schools has sparked inquiry both within the church and within the legal academic community. See *generally supra* note 7. The significance of religiously affiliated law schools is identifiable in the care the Association of American Law Schools has taken to state its position with respect to the application of Association By-Laws to religiously affiliated schools. See Association of American Law Schools, *Interpretive Principles to Guide Religiously-Affiliated Member Schools as They Implement Bylaw 6-4(a) and Executive Committee Regulation 6.17*, [www.aals.org/interp.html](http://www.aals.org/interp.html) (April 9, 2003).

the same range of casebooks, and train their students to take the same bar examinations as their secular counterparts.<sup>30</sup>

While classroom style varies from one professor to another, the literature on legal education primarily focuses on two well-established methods. The “case method” introduces students to legal principles through the study of published judicial opinions, which are typically the subject of lengthy and detailed Socratic questioning in the classroom.<sup>31</sup> The “problem method” presents the student with a set of facts and requires him to apply the law to resolve the problem.<sup>32</sup> Some casebooks facilitate the use of one method more easily than the other. In practice, however, it is probably fair to say that many professors combine these approaches rather than adhering strictly to one method.

Neither the case method nor the problem method precludes a values-based analysis of a particular set of facts. Indeed, some casebooks offer discussion questions designed to elicit an analysis of the underlying policy of particular statutes or the biases evident in particular judicial decisions. The modern American law student experiences, in varying degrees, legal analysis based on the plain reading of statutory texts, legal realism, critical legal studies, law and economics and, more recently, gender- or race-based critique. These forms of analysis may be presented in a transparent manner in which the student is conscious of the assumptions that his professor and/or casebook present. In the alternative, it is possible that a student might be exposed to a particular method of analysis without intentional examination of the presuppositions inherent to that method. Whether conscious or assumed, the student’s exposure to these different methods is part of his education in the marketplace of ideas.<sup>33</sup>

Within this marketplace of ideas, religious values are sometimes presented in courses segregated in the curriculum as “Law and Religion” or units of “Law and Philosophy.” Some law schools offer courses specifically on Christian or Judaic law, canon law, or Catholic social thought.<sup>34</sup> Such a curriculum certainly may expose the student to a form of doctrinal and methodological analysis that is based on religious values. However, we venture to suggest that in most cases, such courses are presented as “enrichment classes” and do not tread on the ground that is occupied by core courses such as torts, contracts or criminal law.<sup>35</sup>

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<sup>30</sup> For a discussion of the curricular emphasis of Roman Catholic law schools, see Fitzgerald, *supra* note 29 at 245, 291-94 (2001).

<sup>31</sup> For a history of the case method, see Russell L. Weaver, *Langdell’s Legacy: Living with the Case Method*, 36 VILL. L. REV. 517 (1991). See also Anthony Kronman, *The Socratic Method and the Development of the Moral Imagination*, 31 U. TOL. L. REV. 647 (2000).

<sup>32</sup> For a brief history of the problem method, see Steve Sheppard, *Casebooks, Commentaries, and Curmudgeons: An Introductory History of Law in the Lecture Hall*, 82 IOWA L. REV. 547, 623-628 (1997)

<sup>33</sup> See Lynn R. Buzzard, *A Christian Law School: Images and Vision*, 78 MARQUETTE L. REV. 267 (1995); Lynn R. Buzzard, *Religiously Affiliated Law Schools: Macro-Dynamics in Contemporary Culture*, 78 MARQUETTE L. REV. 283, 285 (1995);

<sup>34</sup> See Fitzgerald, *supra* note 29 at 291-294 (examining a survey of law school curriculum components that specifically reflect religious perspectives).

<sup>35</sup> We have no objection to the important place that the core courses occupy in a law school curriculum. These courses, which are the source of many questions presented on the state bar examinations, are legitimately

As lawyers and legal educators, we find that a compartmentalized view of Catholic social thought does not do justice to the full range of a lawyer's ethical and business demands nor to the freedom of true academic discourse. Catholic social thought is a body of "social wisdom" that has earned its place in the marketplace of ideas.<sup>36</sup> The practice of examining secular legal problems in light of a self-consciously Catholic concept of social justice offers a perspective that is generally absent from mainstream law school courses. The purpose of such an analysis is not necessarily to produce an evangelizing or "Catholicizing" result; it is instead to encourage students to examine a problem with relation to its effect on the common good as well as in relation to the values of the dominant culture.

In addition to promoting a value-conscious examination, informing the student of Catholic social thought also has a secular value. The dialogue concerning Catholic social thought may challenge other unexamined myths in the dominant culture.<sup>37</sup>

A law school seems a particularly appropriate venue within which to examine society's balancing of the individual and the common good. What the law is, why and how it became what it is, ultimately results from individual value choices, collectivized through public dialogue and made law through the State's institutions—the legislature, its administrative agencies, its courts, its employers and its associations. The lawyer is a crucial participant in each of these institutions. The law school curriculum molds the student who will become the legislator, the lawyer, the judge, the labor leader, the scholar and the policy analyst who guide the development of the law.

Whether or not a lawyer consciously probes the rationale and ethics of a particular law, the manner in which she perceives and practices that law are bound to impact her interaction with her clients and, through them, to the community beyond. The lawyer's tools are the facts of each problem she seeks to resolve and the law that pertains to those facts.<sup>38</sup> Yet no perception of facts, interpretation or application of the law is value-free.<sup>39</sup> A lawyer's worldview and her affinity for a particular methodology are the screen through which she perceives facts as legally

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significant. Passing the bar exam is the primary goal of the law student and ensuring an adequate preparation for the law student to do so should be a central expectation of the board of governors of any university that sponsors a law school. However, we feel that these courses could also serve as the basis for a discussion grounded in Catholic social thought. See Daniel J. Morrissey, *The Catholic Moment in Legal Education*, 78 MARQUETTE L. REV. 413 (1995) ("Almost every course in substantive fields of law involves issues of social justice that could be examined from Catholic and other sources."); Christopher Wolfe, *The Ideal of a (Catholic) Law School*, 78 MARQUETTE L. REV. 487 (1995).

<sup>36</sup> Henriot et al., *supra* note 6 at 5.

<sup>37</sup> Here we think in particular of the value of a discussion concerning the legitimacy of religiously rooted ideas in public debate. In addition, we hope that students might critically evaluate whether it is acceptable for an educated person to lack information offered by a transnational institution, such as a church or faith community, that contributes in a significant way to the cultural development of people in the global community.

<sup>38</sup> We have borrowed the concept of a lawyer's "tools" from Robert J. Rabin, Eileen Silverstein, George Schatzki & Kenneth G. Dau-Schmidt, *LABOR AND EMPLOYMENT LAW: PROBLEMS, CASES AND MATERIALS IN THE LAW OF WORK* 4 (West 3d ed. 2002) (describing the "lawyer's toolbox").

<sup>39</sup> See, e.g., Arthur L. Corbin, *The Interpretation of Words and the Parol Evidence Rule*, 50 CORNELL L. Q. 161 (1965).

significant and law as relevant to those facts. Her application of the law to the facts in a particular situation ultimately contributes to the overall legal system at work in the state. A glance at the impact of the decisions of a labor and employment lawyer effectively illustrates the extent of her influence. The way in which a lawyer structures a reduction in force may ultimately affect the balance between owners of capital and owners of labor, the security of a family in a one-corporation town or the security of a retiree for a pension. In other words, the lawyer's understanding of the law and, equally important, the advice she offers to the client as she practices law are intimately related to the harmony of a society that supports family and communities.

A law school could perhaps limit its goals to informing the student of the doctrinal precepts that will claim his attention in these roles. We believe it is far more beneficial to ask the student to learn the doctrinal precepts *and* to understand the rationale and the social consequences of those precepts. The law school's goal must be both informative and formative in order to produce a professional whose participation in these roles is personally and socially beneficial. As educators and lawyers, we know that sooner, or later, these abstract comments become concrete questions the lawyer asks himself about the fundamental and durable meaning of his work. What does the law do to people, for people and with people? What is justice? For whom, how and why does it exist in society? Has the lawyer's work done justice to the first inspiration of his own commitment to law?

### 3. Why Workplace Law?

One of the prominent casebooks in use in American law schools identifies labor law as "perhaps the best vehicle for communicating an understanding of what a free society is, and how, and why."<sup>40</sup> The fundamental labor laws of a State or, more accurately, the laws of the work place do more than communicate what a society is.<sup>41</sup> These laws create the fundamental option for a just society or an unjust society.

A concern for workplace justice and the analysis of its basic requirements is also at the foundation of Catholic social thought.<sup>42</sup>

The synergy between the secular and religious concerns about workplace law offers an exciting opportunity to show just what Catholic social thought might contribute to the law school classroom. First, the labor movement in the United States cannot be studied in full detail without some acknowledgment of the role of the Roman Catholic Church in the formation of leaders of the movement, as well as significant social legislation.<sup>43</sup> Second, the body of literature regarding the common good and other concepts associated with Catholic social thought adds

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<sup>40</sup> See Walter E. Oberer, Timothy J. Heinsz & Dennis R. Nolan, *LABOR LAW: COLLECTIVE BARGAINING IN A FREE SOCIETY* viii (West 5<sup>th</sup> ed. 2002).

<sup>41</sup> See Rabin et al., *supra* note 38 at 6-7.

<sup>42</sup> See O'Brien and Shannon, *supra* note 12 at 13. See Alford and Naughton, *supra* note 8 at 125-151 (discussing justice concepts in regard to compensation).

<sup>43</sup> For a guide to the work of Monsignor George Higgins on these topics, see The Catholic Labor Network, *Msgr George Higgins* at [www.pernet.net/~sinclair/higgins.htm](http://www.pernet.net/~sinclair/higgins.htm) (January 11, 2003).

value to the public dialogue, regardless of private religious beliefs or even of the religious roots of the reasoning presented.<sup>44</sup> These ideas, engaging on their own merit, have influenced leaders in United States and Western and Eastern. Moreover, the increasing economic and political roles of developing countries, many of which share strong ties to Roman Catholicism, increase the influence which Catholic social thought may have on international affairs. Third, Catholic social thought, as a body of literature, is the work in progress of a stable, significant transnational political and social actor in the world.<sup>45</sup>

#### 4. The Fundamentals of American Workplace Law

A basic introduction to the law of the American workplace is necessary in order to place our modules in context. A broad variety of laws affects the American worker. Federal, state and local laws influence the manner in which a prospective employee is hired, the amount an employee is paid, the manner in which the employer communicates to him, the environment (both social and physical) within which he works, the nature and duration of his work day, and the possibility of his continued well-being in his post-retirement life.

For the sake of simplicity in illustrating our pedagogical approach, the units presented in the appendix concern only two important statutes: the National Labor Relations Act and the Employee Retirement Income Security Act. These units therefore do not exhaust the full relevance of Catholic social thought to these courses. Instead, these units merely illustrate how Catholic social thought might be integrated into a particular aspect of a specific course. In focusing on these statutes, we do not mean to dismiss the relevance or importance of other workplace laws to our discussion. To the contrary, we hope that our examination of these two statutes will demand further investigation of the many other legal concerns that arise in an employment arrangement.

##### a. Labor Regulation and the National Labor Relations Act

The NLRA is the contemporary statutory scheme of labor relations in the United States.<sup>46</sup> The evolution of the NLRA can be traced to seminal statutes adapting the common law of contracts, tort and property. The system of labor-management relations in the United States that is now taken for granted evolved from the adaptation and modification of common law and the development of legislative and constitutional protections for the concerted activities of workers. The common law protections of private property and tort law operated to protect the employer. The protection of the concerted activities of employees developed from the passage of the Wagner Act in 1935. Later statutes, such as the Landrum-Griffin Act, protect the workers from their “protector”—in other words, the union.

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<sup>44</sup> See generally Cortright and Naughton, *supra* note 8.

<sup>45</sup> The Office of Communications of the United States Conference of Catholic Bishops reports that Catholics form 23 percent of the United States population and 17.3 percent of the world population. See U.S. Catholic Bishops, Office of Communications, *Statistics*, <http://www.usccb.org/comm/statisti.htm> (May 30, 2003); U.S. Catholic Bishops, Office of Communications, *A Statistical Profile of the Church in the United States 1789-2000*, <http://www.usccb.org/comm/profile.htm> (May 30, 2003).

<sup>46</sup> The heart of the statute is found in Section 7, 8(a) (1), 8(a) (2) and 8(a) (3) of the Act. It is administered through Section 9 and 10.

The development of the basic principles and structure of contemporary labor-management relations in the United States began with the Cordwainers' Case of 1806 and moved through the early anti-trust statutes of 1890, 1914 and the Norris-LaGuardia Act of 1932.<sup>47</sup> The purpose of the Norris-LaGuardia Act was to protect the rights of labor.<sup>48</sup> The labor-management policy of the United States established the right of employees to organize and imposed on employers the duty to recognize these rights and to bargain with the validly elected employee representatives.<sup>49</sup> These fundamental principles were amplified in a series of statutes, including the Railway Labor Act of 1926, the Wagner Act of 1935 (later amended by the National Labor Relations Act or Taft-Hartley Act of 1947) and the Landrum-Griffin Act of 1959. The passage of each of these acts reflected a shift in American labor policy; in these acts, the dominant policy of the United States with regard to concerted employee actions moved from non-acceptance to protection to neutrality to accountability.<sup>50</sup>

b. Pension law basics

In the United States, private employers are not required to provide their employees with a pension or even with the opportunity to participate in a retirement savings plan. Instead, the American system relies on a system of tax incentives to encourage employers to establish tax-qualified retirement savings plans. Likewise, private employers may choose to sponsor health insurance plans as well as a broad range of other benefits. With the exception of their mandated role in collecting and contributing to social security, unemployment and Medicare benefits, employers may decide whether or not to offer employee benefits to their employees.

The federal law of primary concern to sponsors and participants in employee benefit plans is the Employee Retirement Income Security Act of 1974 (ERISA). A host of other federal laws (most prominently, the Internal Revenue Code of 1986) also bear upon the administration of employee benefit plans. ERISA's formidable preemption clause, which provides that ERISA "supercede[s] any and all State laws insofar as they ... relate to any employee benefit plan," reinforces the importance of ERISA itself in regulating employee benefits in the United States.<sup>51</sup>

The voluntary structure of the American employee benefit system is evident in the structure and scope of ERISA. ERISA provides requirements relating to reporting, disclosure, administration and enforcement which are common to all employee benefit plans.<sup>52</sup> It also includes rigorous fiduciary standards which are apply to every employee benefit plan covered by

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<sup>47</sup> See Oberer et al., *supra* note 40 at 2.

<sup>48</sup> *Id.* at 83.

<sup>49</sup> *Id.* at 99.

<sup>50</sup> These ideas are presented in greater detail in Oberer et al., *supra* note 40.

<sup>51</sup> ERISA and its preemption clause have prompted a voluminous body of scholarly work. For further discussion of ERISA preemption, see John H. Langbein and Bruce A. Wolk, PENSION AND EMPLOYEE BENEFIT LAW 495-573 (Foundation Press 3d. ed. 2000; 2002 Supp.).

<sup>52</sup> See, e.g., 29 U.S.C.A. §§ 1021 (disclosure and reporting); 1102 (establishment of plan); 1131 – 1144 (administration and enforcement).

the statute.<sup>53</sup> In contrast, ERISA prescribes substantive requirements for “pension plans,” while leaving “welfare plans” (such as health insurance plans, disability plans and certain unfunded severance arrangements) with little in the way of substantive direction.

One of ERISA’s most significant contributions to the law of the American workplace is its definition of a fiduciary of an employee benefit plan and the standards of conduct to which that fiduciary must adhere. ERISA takes a functional approach to designating fiduciaries: fiduciary status depends not on the title that a person holds, but on the duties that he fulfills.<sup>54</sup> A person who has discretionary authority with respect to a plan is a fiduciary regardless of whether he formally holds that title or not.<sup>55</sup> Fiduciaries must “discharge his duties with respect to a plan solely in the interest of the participants and beneficiaries” and “with the care, skill, prudence, and diligence ... that a prudent man acting in a like capacity and familiar with such matters would use.”<sup>56</sup> Yet, conversely, one of the most interesting anomalies presented by ERISA law is that an employer may act as the fiduciary of his own employee benefit plan. The strange introduction of the “two hat rule”—the name by which ERISA practitioners refer to this practice—opens many issues ripe for moral and ethical reflection beyond the question of mere legality.

## 5. Catholic Social Thought – Basic Premises

Catholic social thought has often been described as the Church’s “best kept secret.”<sup>57</sup> The sources for the study of Catholic social thought may be grouped into two categories: first, the papal encyclicals and other documents of the hierarchical magisterium of the Church and, second, the commentary that these documents have inspired. For purposes of our teaching modules, we have restricted our focus to the first of these categories in the hope of making a contribution to the second.

The principal documents to which Catholic social thought is traced are *Rerum Novarum* (1891); *Quadragesimo Anno* (1931); *Laborem Exercens* (1981); *Sollicitudo Rei Socialis* (1987) and *Centesimus Annus* (1991). In addition, American Catholics must also consider *Economic Justice for All*, a 1986 pastoral letter issued by the United States Conference of Catholic Bishops, as an integral part of our understanding of Catholic social thought.

These statements present several themes that are specific to the law of the workplace and its impact the person, the family and the community. Some of the principal themes of relevance to a course on workplace law include:

- Respect for the dignity of the human person, including his need and right to adequate food, shelter, work and education;

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<sup>53</sup> See 29 U.S.C.A. §§ 1104 – 1113 (provisions relating to fiduciary duties and liability).

<sup>54</sup> See 29 U.S.C.A. § 1002(21)(A) (definition of “fiduciary”).

<sup>55</sup> See *id.*

<sup>56</sup> See 29 U.S.C.A. § 1104(a) (excerpted).

<sup>57</sup> See Henriot et al., *supra* note 6.

- The recognition of the social and associative needs of the human person, whether in the context of private family life or in public associations such as cooperative workers' unions;
- The creative and transformative role of work in a person's life, the recognition of his personal ownership of his labor and the requirement that labor be exchanged for a just wage;
- The overarching concern for the common good as it is measured in social, political and economic terms.

It is our hope that each of these themes will emerge in the classroom discussion facilitated by our teaching modules.

## 6. Our Approach

The following principles guide our development of the supplemental syllabi.

First, our starting point in each case is the actual syllabus designed by the professor who is responsible for teaching the course. We assume that a professor will be more interested in using the Supplemental Syllabus if it is directly applicable to the format of her own teaching materials and does not compete with the content that she must cover in a limited number of classes during a semester. We respect the choices that the professor has made in terms of the substance, format, materials and methodology of the course. Our materials are intended to supplement rather than disrupt the choices already made by the professor and the casebook author. The choice of materials in the Supplemental Syllabus is therefore limited and can be easily comprehended by a professor who does not have a specific background in Catholic social thought.

For example, in the Labor Law Unit provided in the appendix, the sample is based on text selections found in two major casebooks that follow the case method approach to classroom instruction. The illustration builds on three elements common to these casebooks: (a) the selection of the topic covered (in this case the right of employees to unionize and the duty of the employer to recognize a valid election of a bargaining representative); (b) the selection of the cases presented in the casebooks; and (c) the discussion questions and supplemental readings prepared by the casebook author in order to stimulate further discussion on the topic. Likewise, the Employee Benefits Unit, which is based on the syllabus which Professor Sulentic uses in her own course on this topic, adopts a similar approach. This unit illustrates the manner in which a course that utilizes both the case method and the problem method of study might approach an analysis of Catholic social thought.

Second, we assume and, indeed, rely upon the competency of the casebook authors in presenting legal concepts and commentary. We have no desire to replicate the work that has already been accomplished by so many distinguished authors of standard secular casebooks. Instead, our materials supplement the secular materials with excerpts from the papal encyclicals

that form the basis of Catholic social thought and discussion questions that probe the application of Catholic social thought to the secular materials.

Third, the actual text of papal encyclicals and other formal pronouncements are the source of our selections from Catholic social thought. We have chosen the portions of the encyclicals that parallel the material that the casebook author and the professor have already chosen to present. Because the Supplemental Syllabus is not intended to provide a complete thematic study of Catholic social thought in its own right, the selected principles of Catholic social thought do not list all of the themes (such as “human dignity” or “preferential option for the poor”) that might be found in a full-scale study of Catholic social thought. Instead, the Supplemental Syllabus presents themes or selections from Catholic social thought that are more specific to the topics that are addressed in the casebook and materials that the professor has chosen for the course.

For example, the first case presented in the unit on Labor Law illustrates the use of common law principles, such as contract law, to address the labor-management conflict. The selection from Catholic social thought is a quotation from *Rerum Novarum* which specifically addresses the adequacy (or inadequacy) of principles of private contract to resolve an issue. This parallel format invites the student to compare the reasoning in the case with the reasoning in presented in the selection from Catholic social thought. The scope of the discussion questions in the Supplemental Syllabus is determined by the scope of the questions designed by the author.

Fourth, the Supplemental Syllabus is meant to be self-contained. A professor may use it in whole or in part. Moreover, each Supplemental Syllabus will contain a bibliography of materials that will provide a quick and ready reference for the professor who wishes to study a topic in more detail. In providing notes to the instructor, we also hope to assist a law professor in understanding and shaping the basic concepts of Catholic social thought.

## APPENDIX I-A

### LABOR LAW MODULE – Instructors’ Notes

This unit can be used to supplement the teaching materials in a course that introduces the National Labor Relations Act of 1935 and amended by the Taft Hartley Act of 1947 (collectively “the Act” or “the NLRA”), which establish the fundamental framework of labor-management relations in the United States. The supplement addresses two legal topics: (a) the common law principles of contract which governed labor relations during the Industrial Revolution in the nineteenth century and the early part of the twentieth century and (b) Sections 7 and 8(a)(1), (a)(2) and (a)(3) of the Act, which establish the fundamental rights of employees to join or not to join a union and the duty of employers to recognize these rights.

The cases presented in this first module are covered in the introductory chapters of several casebooks in use in American law schools. However, we have focused on two casebooks: *Labor and Employment Law: Problems, Cases and Materials in the Law of Work* by Robert J. Rabin, Eileen Silverstein, George Schatzki & Kenneth G. Dau-Schmidt and *Labor Law: Collective Bargaining in a Free Society* by Walter E. Oberer, Timothy J. Heinsz & Dennis R. Nolan. The titles of chapters such as “Labor as a Commodity: The Rise and Decline of the Double Standard”<sup>58</sup> or “Paternal Protection of the Law, Collective Bargaining and Social Therapy”<sup>59</sup> imply value choices in the public policy underlying the law. The casebook authors supplement the cases with excerpts from law reviews and books which provide a foundation for the addition of excerpts from Catholic social thought.<sup>60</sup> For example, Rabin asks the student to consider the impact of Section 8(a)(2) on contemporary worker participation systems, such as the Quality Care Circle. Does the law limit non-union systems of employee representation? In setting up this inquiry, Rabin uses excerpts from Irving Bernstein’s *The Lean Years: A History of the American Worker*. In this excerpt, Bernstein references the Rockefeller philosophy of “human relations”—the understanding by managers that their employees were “human beings.”<sup>61</sup> For Rockefeller, conflict was “wantonly wasteful”; both parties and the innocent public were losers.<sup>62</sup> In the discussion of the *Vegeahn* case included in this supplement, Rabin’s selection includes Holmes’ notion that the “free struggle for life” can substitute for the law’s focus on free competition.<sup>63</sup>

These kinds of contextual casebook materials provide a foundation for the easy integration of Catholic social teaching on the themes and values implicit or explicit in the

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<sup>58</sup> See Oberer et al., *supra* note 40 at 2.

<sup>59</sup> *Id.* at 87.

<sup>60</sup> See, e.g., *id.* at 23; Rabin et al., *supra* note 38 at 227.

<sup>61</sup> See Irving Bernstein, *THE LEAN YEARS: A HISTORY OF THE AMERICAN WORKER* 163-64 (Penguin Books Inc. 1960) in Rabin et al., *supra* note 38 at 227-28.

<sup>62</sup> *Id.* at 228.

<sup>63</sup> *Id.*

casebook materials. The module the casebook materials with the “social wisdom” of the Roman Catholic Church.<sup>64</sup> Catholic social thought suggests that workers, private property and the State are the three factors that underlie economic life. These three factors also are central to Sections 7, 8(a)(1) to (3) of the NLRA. The excerpts from Catholic social thought applicable to these three factors are presented in a chart in Appendix I-B. The chart format is an attempt to provide the instructor with a succinct summary of excerpts from Catholic social thought arranged in a chronological sequence that parallels the three major periods of labor law that are identified in many introductory texts—the common law period, the development of statutes and, finally, the use of the commerce clause of the Constitution to provide the framework for the National Labor Relations Act.

Our hope is that this arrangement—especially the actual phrases excerpted from the encyclicals—assists the instructor in the following ways:

- The sequence gives a flavor of the times and social ills that provoked the publication of the encyclicals.
- The excerpts evidence the shift from what might be described as nineteenth-century paternalism to a more objective engagement with the role of business, the market and private property.
- There is a maturation in the development of Catholic social thought that can be seen by the sequential excerpts.
- The fundamental values of human dignity, justice and fairness are constant throughout Catholic social thought because Catholic social thought views God’s law and the law of nature as rendering these values immutable and controlling of all economic life.
- The excerpts show a balance of concern for the rights of employers and employees that one may miss if Catholic social thought is not shown in a context (albeit one that is abbreviated and the result of our selective preferences).
- The excerpts can provide the instructor with a sense of the body of Catholic social thought found in these encyclicals without reading the entire documents.
- The instructor may find some quotations more appropriate to the interpretation and use of the casebook materials.

The instructor may want to reproduce the chart for student use or to use the excerpts from Catholic social thought in the format presented in the second unit in Appendix II-B. The excerpts in Appendix I-B and Appendix II-B are intended to provide enough context for the student to understand and answer the discussion questions.

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<sup>64</sup> See Henriot et al., *supra* note 6 at 5.

It is, of course, difficult to do full justice to the breadth of Catholic social thought in this segmented way. This module therefore does not attempt to convey to the student a complete statement of Catholic social thought; such an undertaking would, of course, require examination of historical context, original Latin texts and underlying theology and philosophy. The selected bibliography suggests some resources that may be used for thematic and historical studies of Catholic social thought.

### Discussion Questions

The discussion questions provided in connection with each case are designed to supplement, rather than to replace, the casebook authors' examination of the materials. We recognize that conveying accurate legal information and conventional legal analysis must be a primary goal of any law school instructor. This task we leave in the capable hands of the casebook authors. Instead, we supplement the authors' work by asking the student to examine the core values of human dignity, the meaning of justice, the relationship of capital to labor, and the appropriate role of the State in each of these cases. The questions are deliberately wide-ranging and do not lend themselves to a clear "yes or no" answer. The contribution we hope to make is to enhance and enrich classroom discussion, rather than to compel students to reach a foregone conclusion. The questions in this supplement follow the scope of the discussion questions included in the casebooks.

## LABOR LAW MODULE - Catholic Social Thought Supplement

### Selected Cases, Catholic Social Thought and Text Notes.

**Note to the instructor:** Before using the following questions with the students, you may want to give the students the chart in Appendix I-B or the paragraph summaries and excerpts of Catholic social thought in Appendix II-B.

The material in this supplement is limited to adding commentary or questions to the materials in the casebook. Therefore, the supplement does not discuss the facts, rationale or law in the case. Rather, the following commentary and questions based on Catholic social thought simply make references to the case, article or question selected by the casebook authors.

#### **The Philadelphia Cordwainers' Case (1806) Vegehan v. Gunter (1896)**

These two cases present the legal status of workers under the common law doctrines of contract and tort. The legal conclusions and the underlying economic, political and legal principles clash with the principles of Catholic social thought as first enunciated in *Rerum Novarum* in 1891. In addition to the rationale in these cases, the instructor may want to point out the following portions of the casebook before discussing the concepts from *Rerum Novarum* listed below.

- In Section II(a) of Rabin's casebook (entitled "Employment at Will—A. The Contractarian Understanding of Work Relations"),<sup>65</sup> the following helps focus the issue:
  - a. "[T]he terms of the employment agreed to by the worker and the shop owner set their own standard of fairness."<sup>66</sup>
  - b. "[T]he Constitution confirmed that the essential consideration in employment relations is each party's right and freedom to contract ... agreements are the best guide to determine what is fair."<sup>67</sup>
  - c. "[C]hampions of market regulation continue to insist that the relevant consideration in employment decisions is the agreement reached by the employer and the individual worker."<sup>68</sup>
  - d. Epstein (writing in 1984) argues in part that "people who are competent to marry, vote, and pray are not unable to protect themselves in their day-to-day business

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<sup>65</sup> See Rabin et al., *supra* note 38 at 11-15.

<sup>66</sup> *Id.* at 11.

<sup>67</sup> *Id.*

<sup>68</sup> *Id.*

transactions...[I]t is hardly likely that remote public bodies have better information about individual preferences than parties who hold them.”<sup>69</sup>

- e. Holmes, writing in 1894, argued that preferences rather than logic determine the judicial outcome of each case.<sup>70</sup>
- Rabin’s casebook cites Walter Nelles’ Yale Law Journal article. The following helps to focus the issue:
  - a. Quoting Madison, Nelles begins his essay with the following: “The questions of labor law are indissociable from the question of what Madison called ‘the most difficult of all political arrangements’—that of so adjusting the conflicting claims of those with and those without property,’ as to give security to each and to promote the welfare of all. To deal with them on the basis only of what is contained in law books is to miss many factors which have influenced the judgments both of courts and their critics.”<sup>71</sup>
  - b. “After the resultant panic of 1873, people at large paid heavily for the creation and concentration of great wealth.”<sup>72</sup>
  - c. “Judge Drummond’s decision, moreover, begged a question of priority. Which was more important in 1877---that persons guilty of disturbance should be punished or that pressure should be exerted to abate the cruelties of the economic anarchy of which such disturbance was an inevitable by-product?”<sup>73</sup>

When *Rerum Novarum* is juxtaposed against these ideas and the common law doctrines expressed in these cases, several significant points of difference emerge:

- *Rerum Novarum* does not relegate work to the status of a commodity. Work is an activity of mind and body, impressed with the personality of the worker.
- *Rerum Novarum* challenges the contractarian notion of work. Leo XIII states that the argument that wages are regulated by free consent and therefore, the employer when he pays what was agreed upon has done his part is an incomplete argument.<sup>74</sup> Work is not merely personal; work is necessary for survival. According to *Rerum Novarum*, “these two aspects of his work are separable in thought, but not in reality.”<sup>75</sup>

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<sup>69</sup> Id. at 12.

<sup>70</sup> Id. at 14-15.

<sup>71</sup> Id. at 23.

<sup>72</sup> Id.

<sup>73</sup> Id.

<sup>74</sup> *Rerum Novarum* ¶ 43.

<sup>75</sup> Id. at ¶ 44.

- *Rerum Novarum* traces the practical consequences of this thought to certain conclusions about the role of the State. The State (which in the terms of *Rerum Novarum* means “any government conformable in its institutions to right reason and natural law and to dictates of the divine wisdom”<sup>76</sup>) has the duty to make sure that the laws and institutions of the State “shall be such as of themselves realize public well-being and private prosperity.”<sup>77</sup> Leo argued that “a State chiefly prospers and thrives through moral rule, well-regulated family life, respect for religion and justice, the moderation and fair imposing of public taxes, the progress of the arts and of trade, the abundant yield of the land-through everything, in fact, which makes the citizens better and happier.”<sup>78</sup> Moreover, “it lies in the power of a ruler to benefit every class in the State, and amongst the rest to promote to the utmost the interests of the poor.”<sup>79</sup> The richer classes can shield themselves, they stand in less need of the state.. there are not protective organizations for the working class.<sup>80</sup> Thus, justice demands government to watch over the working class.<sup>81</sup>

### Discussion Questions

- A. Consider the law review article by Walter Nelles which is excerpted on pp. 3- 11 of Rabin et al.<sup>82</sup> Is there any commonality between Nelles' analysis of *The Philadelphia Cordwainer's Case*<sup>83</sup> and his comment that the courts of the era struggled with a major political controversy between the concepts of aristocracy and republicanism (or Jeffersonian democracy)? Nelles suggests that proponents of Jeffersonian democracy commonly believed that the objective of democracy is best served by a maximum of individual freedom and a minimum of law and government. Does this argument have any moral content? How does Catholic social thought argue that the objects of democracy are best served? Does Catholic social thought focus on a form of government such as democracy or does it focus on the commonweal, which is a concept that transcends specific systems of government or economics. Is Catholic social teaching more results-oriented? Were the objectives of Jeffersonian democracy ("the security of each and the welfare of all") similar to the concept of the common good articulated in *Rerum Novarum*?
- B. Oberer et al. identify “legal realists” as those who proceed on the premise that environment is more important than legal doctrine in deciding cases.<sup>84</sup> Assuming that

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<sup>76</sup> Id. at ¶ 32.

<sup>77</sup> Id.

<sup>78</sup> Id.

<sup>79</sup> Id.

<sup>80</sup> Id. at ¶ 37.

<sup>81</sup> Id. at ¶ 34.

<sup>82</sup> Walter Nelles, *The First American Labor Case*, 41 YALE L. J. 165 (1931) in Rabin et al., *supra* note 38.

<sup>83</sup> *Commonwealth v. Pullis* (Mayor’s Court of Philadelphia, 1806).

<sup>84</sup> Oberer et al., *supra* note 40 at 16.

this position is reasonable, can any interpretation of fact and of law be value-free? Is Catholic social thought right in arguing that a moral sense necessarily does or must influence a court decision made by persons who are members of a community? If this is so, are differing moral views a necessary part of public discourse? Must a court accommodate or acknowledge these differing moral views? Are arguments that dismiss the relevance of moral views based on religious roots tenable? Why or why not?

- C. Is contract law based on moral precepts? Do principles of contract law, especially those of impossibility of performance, duress and mutual consent, apply to the notion that an individual employee can sell his labor freely in a marketplace? Can a married person with a family freely sell his or her individual labor as an itinerant? In the dissent to the *Vegeahn* opinion, Oliver Wendell Holmes says that law is too narrowly focused and that “free competition” can be substituted by “free struggle for life.”<sup>85</sup> Does Holmes’ statement reveal a moral sense similar to that found in Catholic social thought?
- D. Holmes suggests that preferences and value, rather than neutral logic, determine judicial analysis.<sup>86</sup> Is Catholic social thought’s preference for the common good applicable to any government or economic theory? Does Catholic social thought show a preference for one form of government over another? Is capitalism reconcilable with the concept of the common good? In the dissent to the *Vegeahn* case, Holmes asks whether free competition is worth more to society than it costs.<sup>87</sup> Given the nature and reality of the individual worker’s freedom to negotiate his work, is he really free to compete? Is freedom of contract an aspect of individual liberty? Or, as Catholic social thought suggests, is it proper to say that neither party can enjoy individual liberty in isolation? Compare the statement that “the Constitution establishes symmetrical legal rights for employee and employer and makes liberty of contract the touchstone for defining fair employment decisions”<sup>88</sup> with Catholic social thought’s ideas on the contract as the sole validation of the employer-employee relationship and the role of the state in providing for the commonweal.
- E. Oberer et al. suggest that Holmes’ dissent in *Vegeahn* contains the kernel of the “theory of countervailing power.”<sup>89</sup> What does this mean? Does Catholic social thought suggests acceptance of the theory of countervailing power? If so, how far?
- F. Nelles, in discussing the Cordwainers’ Case, says that at trial no one either dared or wished to challenge the “beneficence of manufacturers.”<sup>90</sup> What is the benefice of

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<sup>85</sup> *Vegeahn v. Guntner*, 167 Mass. 92 (1896)(Holmes, J., dissenting), cited in Rabin et al., *supra* note 38 at 20, 22.

<sup>86</sup> Oliver Wendell Holmes, *Privilege, Malice and Intent*, 8 HARV. L. REV. 1 (1894), cited in Rabin et al., *supra* note 38 at 15.

<sup>87</sup> *Vegeahn v. Guntner*, 167 Mass. 92 (1896)(Holmes, J., dissenting), cited in Rabin et al., *supra* note 38 at 19.

<sup>88</sup> See Rabin et al., *supra* note 38 at 14.

<sup>89</sup> See Oberer et al., *supra* note 40 at 36.

<sup>90</sup> See Nelles, in Rabin et al., *supra* note 38 at 6.

manufacturers? *Quadragesimo Anno* states that the law of social justice forbids one class from excluding another.<sup>91</sup> In particular, *Quadragesimo Anno* suggests that the wealthy class violates this law of social justice when it thinks the right order of things is for it to get everything and disregards the needs of the poor that result from the inequitably distribution of the riches produced by “industrialism.”<sup>92</sup> Catholic social thought also comments that the demands for wages cannot be disproportionate or jeopardize the well-being of the company. Does Catholic social thought allow other workers or owners of capital to make claims based on ownership of labor or capital as an absolute right? Does Catholic social thought suggest a balancing test? What criteria does Catholic social thought suggest for this balance? What criteria do courts use for this balance?

### **National Labor Relations Board v. Wyman-Gordon Co. (394 U.S. 759) 1969**

From a Catholic social thought perspective, this case illustrates the role of the state (acting through the courts and the National Labor Relations Board in balancing the power of labor and management.

*Rerum Novarum* and subsequent encyclicals assume that the workers need to be protected because they have less power than employers. It also assumes that the worker/union relationship is not meant "in nature" to be in destructive conflict. Indeed, if there arises a conflict that gravely injures the common good or is seriously unjust to employers or employees, the State is to moderate their interaction and to protect the weaker party. It is important to remember that the encyclical speaks in general normative terms; not is relationship to specific statutory scheme or language. Norms are principles—values against which individual actions and their consequences are measured.

Section 7 of the NLRA sets forth a right of employees. In *Wyman*, the Court is addressing a conflict in the circuits concerning the adjudicatory and rule-making powers of the NLRB as an administrative agency charged with implementing Section 7 of the Act. The Court concludes that the list of employee names and addresses at issue in the case is 'evidence' within the meaning of Section 11 of the NLRA. The Court focuses on the interpretation of the Act in the context of the broad discretion that Congress has entrusted to the NLRB in order “to ensure the fair and free choice of bargaining representatives.” The Court identifies the balance between the union's access to employee and the employer's existing access to employees and to its property rights as the key issue to the NLRA's objective of a fair and free choice of the bargaining representatives. In this context, the Court observes that the Board (rather than the Court) must to weigh against this interest the employee’s interest in avoiding the problems engendered by union solicitation.

Catholic social thought consistently emphasizes the rights of the individual in community. While individual rights are to be exercised in relation to the common good, the individual is not to be lost in the whole. The person is not an instrument of production. The person and work are not to be treated as merchandise or on the same level as material things. The person is the

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<sup>91</sup> See *Quadragesimo Anno* ¶ 57.

<sup>92</sup> See generally *id.* at ¶61-63.

subject, not the object or an instrument. Several human interest questions underlie the access question in balancing the rights of employers and unions.

- A. The rights specified in Section 7 of the NLRA are those of employees, not unions. Who owns the lists of employee names? Should the employee have the right to authorize the release of his/her name and address? In the real world, does the employee authorize the union to receive the list or the employer to release the list? Could this be a source of coercion not only to the employee but also to his or her family? Is there any “unfair” union practice in organizing the worker through visits to the home?
- B. Consider the identity, education and security of workers who may want a union. What is the role of the State, as exemplified by the NLRB and the courts in the United States? Is the State intended to be paternal, to be a protector to implement the protective objectives of Section 7 or to be an “umpire”?<sup>93</sup> Does *Rerum Novarum* present a patently paternalistic role for the state? If so, is this early paternalism modified in the subsequent evolution of Catholic social thought? Catholic social thought suggests that the consistent role of the State is to create a just order. Creating a just order, however, may require that the State affirmatively protect the weak, especially the poor. Indeed, the phrase “preferential option for the poor” is often associated with Catholic social thought. Assuming that one accepts that justice requires a preferential option for the poor, must the role of the State necessarily be paternalistic?
- C. Due process, the essential value in the notice provisions of rule making is a fundamental value for the just order of our legal system. Do the NLRB and/or the courts bend due process principles because of the protective legislative purpose of Section 7 of the NLRA?
- D. Assume that Catholic social thought accepts that the legal order must be just and that rights are exercised in relationship to the community. Assume further that Catholic social thought emphasizes the need for the working class, especially the poor, to be protected by the State. Can the issue in this case be resolved in keeping with these assumptions?

### **National Labor Relations Board v. Gissel Packing Co. Inc. 395 US 575 (1969)**

The general principles of Catholic social thought uphold the right of workers to an association. Catholic social thought, as expressed in the papal encyclicals, does not really give any specificity to these general principles. Catholic social thought assumes that employees and employers share a commonality of interests and, by extension, a mutual respects for each others's rights. For example, Catholic social thought warns against wage demands that jeopardize the employer. Further, Catholic social thought assumes that the employees control their representatives. However, “subsidiarity,” a fundamental concept of Catholic social thought, has been interpreted to mean that a problem is solved at the lowest level that is affected by the issue and that is competent to solve the problem and it solves the problem in relation to the common

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<sup>93</sup> This concept is used by Oberer to describe a position of neutral judging.

good. Assume this definition of subsidiarity in your discussion of these questions. When employers and employees cannot resolve their differences, then the state must act.

- A. Is *Gissel* about employees enjoying the "crucible of a secret ballot" as the ultimate protection of each person's right to make a choice in the most protected way? Or is the Court refereeing the union's interests (using employees as the medium for their gain) and the employer's interests (having a chance to campaign)?
- B. The Court says that there are three opinions that underlie the case: the employers, the Boards and the Union. Consider that Catholic social thought approves of the need of employees to be protected because the employers have the ability to protect themselves. Assuming that Catholic social thought requires these principles to function in harmony with each other, could you extend some of the ideas in Catholic social thought to support the *Gissel* decision? Or would you conclude that the interests of employees and employers are better protected by a secret ballot that assigns to the board the role of referee? In the facts of this case, do you think that the general statement that employers can protect themselves is true? Is it true in most cases?
- C. Is there anything in the short excerpts from Catholic social thought included in Appendix I-B or Appendix II-B that would suggest that a "vigorous, fair fight" in an election campaign is not protective of employee interests? Does the legislative intent of Section 7 coincide with Catholic social thought's description of the needs of the working class and the need for government to protect them? How does this square with the realities of workers, especially immigrants who speak limited English and have little experience with American democracy?
- D. Is *Gissel* reinforcing the discretion of the NLRB? Is allowing recognition of a representative by other means (in addition to an election) balancing in favor of unions at the expense of employees and employers? Would such a balance be consistent with the tone and principles of Catholic social thought?

### **Lechmere, Inc. v National Labor Relations Board ( 502 US 527) 1992**

The Court states that the case requires a clarification between the private property rights of employers and the rights of employees under Section 7 of the NLRA. The *Lechmere* court discusses *Babcock*. It is assumed here that the students have discussed *Babcock* in their study of *Lechmere*. In denying non-employee union organizers the right to organize on an employer's private property, the Court concluded that the "inaccessibility exception" in *Babcock* (allowing the impingement of the employer's private property rights in order to protect the employees' Section 7 rights) is narrow. The employer's private property rights only give way to the Section 7 rights of employees when access to employees by non-employees is cumbersome or less than ideal. The *Babcock* holding was meant to apply to employees who, by virtue of their employment, are isolated from the ordinary flow of information that characterizes our society. The union has a heavy burden.

The dissent, while clearly differing in the meaning and application of the "accommodation" principle enunciated in *Babcock*, stresses judicial deference to the NLRB's opinion, if supported by substantial evidence on the record. The presumption is that the NLRB's fact finding is based on its authority to apply the NLRA to its findings. As is typical in administrative law, deference is due to findings of fact made by those who are in close proximity to the geography, the actual identities of the parties and the general socio-economic conditions of the community.

Catholic social thought sees the right of private property and the right of association as an individual rights with inherent limitations necessitated by the common good. While the State has a duty to maintain a just order, it must not do so at the expense of the appropriate initiative and autonomy of individuals. However, all rights need to be exercised in community. Therefore, the greater common good may sometimes require some accommodation of individual rights to the common good of the whole.

The principle of subsidiarity requires that problems be solved by those closest to the situations and that they be solved in relation to the common good.<sup>94</sup> It is important to remember that the discussion of rights in Catholic social thought is based on the supremacy of divine law and natural law as a fundamental framework for analyzing human relationships. In this context, the right to associate and to own private property is a human right that the State needs to protect. While the State needs to protect the common good and create a just society, Catholic social thought continues to posit that the law of justice (rooted in divine and natural law) requires the State to protect the poor and the weak against exploitation.

- A. Are some of the principles of Catholic social thought only religious or sectarian beliefs? Do these principles have anything in common with principles of the American labor law? For example, compare the language of the Labor Management Relations Act of 1947 to the chart in Appendix I-B. Is there a difference in language and/or fundamental principles of American labor law and Catholic social thought with regard to the interrelationship of employee rights, private property rights, the legitimate rights of employers, employees, and labor organizations? How does Catholic social thought apply to practices which jeopardize the public health, safety or interest? Is this consistent with the use of the Commerce Clause to validate the purposes of the Act?
- B. Is the purpose of the Act within the role of the State as seen in Catholic social thought?
- C. Consider the article by Julius G. Getman entitled *Ruminations on Union Organizing in the Private Sector*.<sup>95</sup> Getman argues that the access issue in the organizing context is "generally explained in terms of the courts' protectiveness of property rights."<sup>96</sup> Do you agree? What is the role of neutral protection that focuses on the common good, i.e.,

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<sup>94</sup> See Judith A. Dwyer, ed., *THE NEW DICTIONARY OF CATHOLIC SOCIAL THOUGHT* 927-29 (The Liturgical Press 1994).

<sup>95</sup> Julius G. Getman, *Ruminations on Union Organizing in the Private Sector*, 53 U. CHI. L. REV. 45 (1986), cited in Rabin et al., *supra* note 38 at 335-36.

<sup>96</sup> *Id.* at 336.

reduction of strife? If the structure of the law is fundamentally morally acceptable, i.e., it protects the weaker party without a negation of the rights of the stronger party, does the legal and political process give the parties fair access to negotiate their interests?

- D. Does the electronic age equalize the union's and the employer's access to employee information?
- E. Does the American situation fit the employee protectiveness arguments found in Catholic social thought?
- F. Oberer et al. ask whether the student agrees that non-employee union organizers have fewer rights than employees. Is the use of professional union organizer a means of protecting employees or an invasion of their privacy? Professional union organizers can get home addresses from license plate information. Are there other rights, such as rights of privacy, that need to be balanced with the employer's property rights in resolving this issue? Are there other considerations that need to be considered in creating parameters of organizing activity from the perspective of both the employees and employers?

## APPENDIX I-B

### American Legal Developments

### Catholic Social Teaching

**The law and CST are listed chronologically. However, the chart does not provide an exact alignment. Therefore, the chart should not be interpreted as suggesting that the CST column is an exact comparison with the American law. The chart presents paraphrases and/or exact quotations from the encyclicals with notations of paragraph citations. The source of all the citations from Catholic social thought in this chart is the Vatican’s website at [www.vatican.va/holy\\_father](http://www.vatican.va/holy_father).**

#### Common Law 1800s

#### 1891 *Rerum novarum*, The Condition of Labor (RN)

Freedom of Contract between worker and employer the keystone of employment decisions.

¶ 9 (introducing the notion that private property is a right): “Now, when man turns the activity of mind and body toward procuring fruits of nature, by such act he makes his own the portion of nature’s field which he cultivates—that portion on which he leaves, as it were, the impress of his personality; ...he should possess that portion as his very own, and have a right to hold it without anyone being justified in violating that right.”

The Philadelphia Cordwainers’ Case(1806)

*Vegeahn v. Guntner* (1896)

¶ 33: “Among the many and grave duties of rulers who would do their best for the people, the first and chief is to act with strict justice—with that justice which is called *distributive*—toward each and every class alike.”

¶ 38: “[T]he larger part of the workers prefer to better themselves by honest labor....But there are not a few who are imbued with evil principles and eager for revolutionary change, whose main purpose is to stir up disorder and incite their fellows to acts of violence. The authority of the law should intervene...to save the working classes from being led astray ... and to protect lawful owners from spoliation.”

Holmes suggested that law may be to narrowly focused on ‘free competition’ instead of the free struggle for life’ (Rabin, et al., 22)

¶ 39: “The laws ... should lend their influence and authority to the removal in good time of the causes which lead to conflicts between employers and employed.”

1. **Compare with Rockefeller's ideas and the discussion in Rabin pgs. 226-228.**

2. ¶ 49 “The most important of all are workingmen's unions. ... Such unions should be suited to the requirements of this our age...consisting of either workmen alone, or of workmen and employers

together.”

3. ¶ 19: The great mistake in regard to the matter now under consideration is to take up the notion that ... the wealthy and the working men are intended by nature to live in mutual conflict...so in a State is it ordained by nature that these two classes dwell in harmony.”

**Early Statutes 1890-1932**

Anti-trust and Anti-Anti-trust statutes and

The Sherman Act of 1890

The Clayton Act(1914)

The Railway Protection Act (1926)

The Norris La Guardia Act (1932)

¶ 3-5: Notes the lack of protective organizations for the working class. “Public institutions and the laws set aside ancient religion...To remedy these wrongs the socialists...are striving to do away with private property and contend that individual possessions should become the common property of all. ... Socialists, therefore, by endeavoring to transfer the possessions of individuals to the community at large, strike at the interests of every wageearner...since they deprive him of the liberty of disposing of his wages...”

¶ 7: “Man precedes the State and possesses prior to the formation of the State, the right to provide for the substance of his body.”

¶ 32: The State means “any government conformable in its institutions to right reason and natural law, and to those dictates of the divine wisdom which we have expounded....The foremost duty... of the State should be to make sure that the laws and institutions, the general character and administration of the commonwealth, shall be such as of themselves to realize public well-being and private prosperity....[A] state chiefly prospers and thrives through moral rule, well-regulated family life, respect for religion and justice, the moderation and fair imposing of public taxes, the progress of the arts and of trade, the abundant yield of the land—through everything, in fact, which makes the citizens better and happier....[I]t lies in the power of a ruler to benefit every class and amongst the rest to promote to the utmost the interests of the poor...since it is the province of the commonwealth to serve the common good.... And the more that is done for the benefit of the working classes by the general laws of the country, the less need will there be to seek for special

means to relieve them.”

¶ 33: “[T]he interests of all...are equal.”

¶ 34: “[I]t is the business of a well-constituted body politic to see to the provision of those material and external helps ‘the use of which is necessary to virtuous action’.... Justice...demands that the interests of the working classes should be carefully watched over by the administration....”

¶ 35: “[T]he State must not absorb the individual or the family.... Rulers should, nevertheless, anxiously safeguard the community and all its members.... [T]he safety of the commonwealth is not only the first law, but it is a government’s whole reason of existence.”

¶ 37: “The richer classes have many ways of shieldomg themselves, and stand less in need of help from the State....”

¶ 47: “[T]he State has the right to control [the use of private property] in the interests of the public good alone, but by no means to absorb it altogether.”

### Constitutional Era 1933-1947

National Industrial Recovery Act 1933

National Labor Relations Act of 1935 (Wagner Act)--"a peaceful revolution in the industrial relations of a capitalist society" 143 (Oberer, 143) amended by the Labor Management Relations Acts Taft Hartley Act (1947) **The bold type are the 1947 amendments.**

§ 7. (§ 157) Employees shall have the right to self-organization, to bargain collectively through representatives of their own choosing, and to engage in **other** concerted activities for the purpose of collective bargaining or other mutual aid or protection, **and shall also have the right to refrain from any or all of such activities**

### 1931 Quadragesimo Anno, The Reconstruction of the Social Order (QA)

¶ 5: ...so enormous and unjust an inequality in the distribution of this world's goods [does not] conform to the designs of the all-wise Creator.”

¶ 8 “[Leo XIII]...admonished ‘by the consciousness of His Apostolic Office’ lest silence on his part might be regarded as failure in his duty...decided ...to address not only the whole Church of Christ but all mankind.”

¶ 25: “...Leo XIII, boldly breaking through the confines of Liberalism, fearlessly taught that government must not be thought a mere guardian of law and of good order, but rather must put forth every effort so that ‘through the entire scheme of laws and institutions...both public and individual well being may

## American Legal Developments

**except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized in section 8(a)(3).**

(1) To interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in section 7;

(2) to dominate or interfere with the formation or administration of any labor organization or contribute financial or other support to it: *Provided*, That subject to rules and regulations made and published by the Board pursuant to section 6, an employee shall not be prohibited from permitting employees to confer with him during working hours without loss of time or pay;

(3) by discrimination in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any labor organization.

(This excerpt of the statute is taken directly from Robert J. Rabin, Eileen Silverstein, George Schatzki, Kenneth G. Dau-Schmidt STATUTORY SUPPLEMENT TO LABOR AND EMPLOYMENT LAW PROBLEMS, CASES AND MATERIALS IN THE LAW OF WORK, THIRD EDITION (West Group 2000).

## Catholic Social Teaching

develop...’.”

¶ 27: Liberalism “prevented effective action by those governing the State.”

¶ 28: “A new branch of law...has arisen...to protect vigorously the sacred rights of the workers... .”

¶ 35: “Side by side with these unions there should always be associations zealously engaged in imbuing and forming members in the teaching of religion and morality so that they in turn may be able to permeate the unions with that good spirit which should direct them in all their activity.”

¶ 37-38: “[A]mong farmers and others of the middle class...associations...have been flourishing...but this cannot be said of organizations...among employers and managers of industry.... [T]he condition is not wholly due to the will of men but to far braver difficulties that hinder associations of this kind.”

¶ 41: “[T]he Church holds that it is unlawful for her to mix without cause in these temporal concerns.”

¶ 42: “Even though economics and moral science employs each its own principles in its own sphere, it is, nevertheless, an error to say that the economic and moral orders are so distinct from and alien to each other that the former depends in no way on the latter.”

¶ 42: “[T]he laws of economics...being based on the very nature of material things and on the capacities of the human body and mind, determine the limits of what productive human effort cannot, and of what it can attain in the economic field and by what means. Yet it is reason itself that clearly shows, on the basis of the individual and social nature of things and of men, the purpose which God ordained for all economic life.”

¶ 43: “But it is only moral law which, just as it commands us to seek our supreme and last end in the whole scheme of our activity, so likewise commands us to seek directly in each kind of activity those purposes which nature, or rather God the Author of nature, established for that kind of action, and in orderly

relationship to subordinate such immediate purposes to our supreme and last end..

¶ 45: “[T]he twofold character of ownership [is] called individual or social according as it regards either separate persons or the common good.... [T]he goods which the Creator destined for the entire family of mankind may through this institution truly serve this purpose. All this can be achieved...through the maintenance of a certain and definite order.”

¶ 46: “Accordingly, twin rocks of shipwreck must be carefully avoided... “individualism”...denying or minimizing the social and public character of the right of property...[and] collectivism [rejecting or minimizing the private and individual character of this same right]

¶ 49: “[T]he individual and social character of ownership...requires men to consider not only their own advantage but also the common good. To define these duties in detail when necessity requires and the natural law has not done so is the function of those in charge of the State. Therefore, public authority, under the guiding light always of the natural and divine law, can determine ...the true requirements of the common good.”

¶ 49: “When the State brings private ownership into harmony with the needs of the common good, it does not commit a hostile act against private owners but rather does them a friendly service; for it hereby effectively prevents the private possession of goods, which the Author of nature in His most wise providence ordained for the support of human life, from causing intolerable evils.”

¶ 50: “[S]uperfluous income, not needed to sustain life fittingly and with dignity...is not left wholly to his own free determination. Rather the Sacred Scriptures and the Fathers of the Church constantly declare...that the rich are bound by a very grave precept to practice almsgiving, beneficence and munificence.

¶ 53: “[I]t is wholly unjust for [capital or labor], denying the efficacy of the other, to arrogate to itself whatever has been produced.”

¶ 64: “First of all, those who declare that a contract of hiring and being hired is unjust of its own nature ... are certainly in error...[Leo XIII] deals at some length with its regulation in accordance with the rules of justice.”

¶ 69: “[M]an's productive efforts cannot yield fruits unless a truly social and organic body exists and a social and juridical order watches over the exercise of work.”

¶ 70: Nature has impressed an individual and social dimension on work “and it is in accordance with these that wages ought to be regulated and established.”

¶ 73: “Let, then, both workers and employers strive with united strength...to overcome the difficulties and obstacles and let a wise provision on the part of public authority aid them...”

¶ 74: Notes that wages need to be kept within a proper limit so that opportunity to work is provided. Social justice requires managing wages.

¶ 76: “What We have thus far stated ... regarding just wages concerns individual persons and only indirectly touches on the social order .

¶ 80: The State should “let subordinate groups handle matters and concerns of lesser importance...in observance of the principle of ‘subsidiary functions.’”

¶ 82-85. Notes that industries and professions need to cooperate. “[L]abor...is not a mere commodity to be bought and sold.” Thus, a “genuine social order demands that the various members of a society are united by some strong bond.” The highest goal is “the common good of the country.” However, when a particular point “involving advantage or detriment to employers or workers” requires it, the two parties “can deliberate separately or...reach decisions separately.”

¶ 86: Freedom to choose government forms and guilds must exist, but it must be exercised with proper regard for requirements of justice and the common good

¶ 88: “[T]he right order of economic life cannot be left to a free competition of forces.” This is the error of

“individualist economic teaching.” Economic life has a “social and moral character.” Free competition is “justified if kept within certain limits.” The “juridical and social order,” imbued with social justice and social charity, needs to “give form and shape to economic life.”

**1961 Mater et Magistra, Mother and Teacher (MM)**

¶ 39: “[A]ll forms of economic enterprise must be governed by the principles of social justice and charity.

¶ 40: “[A]ll economic activity can be conducted not merely for private gain but also in the interests of the common good.”

¶ 42: “[Leo XIII] claimed for the Church ‘the indisputable competence’ to ‘decide whether the bases of a given social system are in accord with the unchangeable order which God our Creator and Redeemer has shown us through the Natural Law and Revelation.’ He confirmed the perennial validity and inexhaustible worth of the teaching of *Rerum Novarum*, and took occasion ‘to give some further directive moral principles on three fundamental values of social and economic life. These three fundamental values, which are closely connected one with the other, mutually complementary and dependent, are: the use of material goods, work, and the family.’”

¶ 43: “[The] private possession of material good is a natural one, nevertheless, in the objective order established by God, the right to property cannot stand in the way... ‘of justice and charity’ ...”

¶ 44: “[I]t is for individuals...to regulate mutual relations where their work is concerned.” The State intervene for the common good if they do not do so.

¶ 45: “[T]he private ownership of goods has a great part to play in promoting the welfare of family life.”

¶ 51-55: In the economic order, “first place is given to personal initiative of private citizens working either as individuals or in association. ... [C]ivil power must also have a hand in the economy. It has to promote

Landrum-Griffin Act of 1959 (Labor-  
Management Reporting and Disclosure Act)

production...to achieve social progress and well-being of all citizens.” The State must never “depriv[e] the individual citizen of his freedom of action. It must rather augment his freedom while effectively guaranteeing the protection of his essential personal rights...[E]very economic system must permit and facilitate the free development of productive activity.”

¶ 62: “[T]his multiplication and daily extension of forms of association brings with it a multiplicity of restrictive laws and regulations in many departments of human life. As a consequence, it narrows the sphere of a person's freedom of action. The means often used, the methods followed, the atmosphere created, all conspire to make it difficult for a person to think independently of outside influences, to act on his own initiative, exercise his responsibility and express and fulfil his own personality. What then? Must we conclude that these increased social relationships necessarily reduce men to the condition of being mere automatons? By no means.”

¶ 67: “So long as social relationships do in fact adhere to these principles within the framework of the moral order, their extension does not necessarily mean that individual citizens will be gravely discriminated against or excessively burdened.”

¶ 82: “Justice is to be observed not only in the distribution of wealth, but also in regard to the conditions in which men are engaged in producing this wealth. Every man has, of his very nature, a need to express himself in his work and thereby to perfect his own being.”

¶ 91-92: “Every effort must be made to ensure that the enterprise is indeed a true human community, concerned about the needs, the activities and the standing of each of its members...This demands that the relations between management and employees reflect understanding, appreciation and good will on both sides. It demands, too, that all parties co-operate actively and loyally in the common enterprise, not so much for what they can get out of it for themselves, but as discharging a duty and rendering a service to their fellow men.

**Laborem Exercens...On the Meaning of Labor, 1981 (LE)**

¶ 11.6: The main subject of this document is “the fundamental issue of human work.”

¶ 12.1: The principle of the Church is that labor has priority over capital.

¶ 12.3: Man finds resources, he does not create them.

¶ 13.2: This is a “humanistic as well as theological” image of the sphere and process of man's labor

¶ 13.3 – 13.5: The economic and social practices at the time of the birth and rapid development of industrialization separated labor from capital and set up an opposition. This error needs to be changed in theory and practice in line with the conviction of “the primacy of the person over things.”

¶ 20.3: “[U]nions ...are... a mouthpiece for the struggle for social justice...not a struggle against others. ...[L]abor and capital are an indispensable components of the process of production in any social system....”

**Centesimus Annus One Hundred Years (1991)**

¶ 14: Human conflict is inevitable. QA and LE both address this and note that human conflict can be positive “if it takes the form of a ‘struggle for social justice.’”

¶ 16: “These reforms were carried out in part by States, but in the struggle to achieve them the role of the workers' movement was an important one....These same reforms were also partly the result of an open process by which society organized itself through the establishment of effective instruments of solidarity, which were capable of sustaining an economic growth more respectful of the values of the person.”

¶ 35: “The Church acknowledges the legitimate role of profit as an indication that a business is functioning well. When a firm makes a profit, this means that productive factors have been properly employed and corresponding human needs have been duly satisfied.

But profitability is not the only indicator of a firm's condition. It is possible for the financial accounts to be in order, and yet for the people — who make up the firm's most valuable asset — to be humiliated and their dignity offended. Besides being morally inadmissible, this will eventually have negative repercussions on the firm's economic efficiency. In fact, the purpose of a business firm is not simply to make a profit, but is to be found in its very existence as a community of persons who in various ways are endeavouring to satisfy their basic needs, and who form a particular group at the service of the whole of society. Profit is a regulator of the life of a business, but it is not the only one; other human and moral factors must also be considered which, in the long term, are at least equally important for the life of a business.”

¶ 42: “[C]an it perhaps be said that, after the failure of Communism, capitalism is the victorious social system, and that capitalism should be the goal of the countries now making efforts to rebuild their economy and society? Is this the model which ought to be proposed to the countries of the Third World which are searching for the path to true economic and civil progress? The answer is obviously complex. If by ‘capitalism’ is meant an economic system which recognizes the fundamental and positive role of business, the market, private property and the resulting responsibility for the means of production, as well as free human creativity in the economic sector, then the answer is certainly in the affirmative, even though it would perhaps be more appropriate to speak of a ‘business economy,’ ‘market economy’ or simply ‘free economy.’ But if by ‘capitalism’ is meant a system in which freedom in the economic sector is not circumscribed within a strong juridical framework which places it at the service of human freedom in its totality, and which sees it as a particular aspect of that freedom, the core of which is ethical and religious, then the reply is certainly negative.”

¶ 43: “A business cannot be considered only as a ‘society of capital goods’; it is also a ‘society of persons’ in which people participate in different ways and with specific responsibilities, whether they supply

the necessary capital for the company's activities or take part in such activities through their labour. To achieve these goals there is still need for a broad associated workers' movement, directed towards the liberation and promotion of the whole person.

## APPENDIX II-A

### EMPLOYEE BENEFITS LAW MODULE – Instructors’ Notes

The subject of this module is the substantive duties imposed by fiduciary law under ERISA. The particular focus of the unit is the fiduciary’s duty to disclose impending plan changes.

This module is specifically designed to supplement the portion of John Langbein’s and Bruce Wolk’s commendable casebook entitled *Pension and Employee Benefit Law*<sup>97</sup> that presents the main principles of substantive fiduciary law. The principal cases which Langbein and Wolk have chosen to illustrate these principles are *Donovan v. Mazzola*<sup>98</sup> and *Fischer v. Philadelphia Electric Co. (II)*.<sup>99</sup> *Donovan v. Mazzola*, a 1983 opinion by the Ninth Circuit, is one of the earliest and the most well-known explanations of the fiduciary standards under ERISA. *Mazzola* set forth a basic understanding of the procedural responsibilities of plan fiduciaries who are engaged in making investment decisions. *Fischer II* is a more recent product of the Third Circuit’s jurisprudence and, as such, addresses a more nuanced question: when do ERISA’s fiduciary standards compel an employer to disclose to his employees potential yet unimplemented changes in nature and structure of their benefit plans. These cases are each so significant in their own right that it is unlikely that a course in ERISA law would ignore them. Therefore, we feel confident that these notes, although designed for use with Langbein’s & Wolk’s text, will also be useful to an instructor who adopts a different casebook.

This module certainly draws on a strong tradition of casebook authors who challenge the moral content and social consequences of ERISA and its structure. It is worth noting that casebook authors who examine ERISA, whether in its own right or in the context of a course in health care law, often use the subject to raise moral or policy questions.<sup>100</sup> In this regard, Langbein and Wolk present a fine example of the lengths to which casebook authors will go to ensure that their students understand the mechanics, the policy and the consequences of the statute. This module therefore is not unusual in raising the question of the common good in relation to the implementation of ERISA law. The innovation that we propose to contribute is the means to link these questions to the established tradition of Catholic social thought.

*Mazzola* and *Fischer II* both offer the opportunity to examine the difference between ERISA’s baseline fiduciary requirements and a vision of employer-employee relations that is grounded in a particular moral worldview. Both *Mazzola* and *Fischer II* set forth

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<sup>97</sup> John H. Langbein and Bruce A. Wolk, *PENSION AND EMPLOYEE BENEFIT LAW* 678-697 (Foundation Press 3d ed. 2000; Supp. 2002).

<sup>98</sup> 716 F.2d 1226 (9<sup>th</sup> Cir. 1983).

<sup>99</sup> 96 F.3d 1533 (3d Cir. 1996).

<sup>100</sup> See, e.g., Lorainne Schmall and Maria O’Brien Hylton, *EMPLOYEE BENEFITS LAW* (West 1998); Rand E. Rosenblatt, Sylvia A. Law and Sara Rosenbaum, *LAW AND THE AMERICAN HEALTH CARE SYSTEM* (Foundation Press 1997; Supp. 2001-2002); Barry R. Furrow, Thomas L. Greaney, Sandra H. Johnson, Timothy Stoltzfus Jost and Robert L. Schwartz, *HEALTH LAW* (West 4th ed. 2001)(hornbook which accompanies a set of casebooks by the same authors).

procedural guidelines for a fiduciary who plans to comply with ERISA law. However, whether a fiduciary who complies with ERISA is necessarily performing acts that are morally defensible, particularly when considered from the perspective of the common good, is a separate question. This is a question that is worth probing even if the moral aspirations of the lawyer or the client do not stem from Catholic social thought. Does procedural compliance guarantee a “good” outcome?

The instructive point here is not that *Mazzola* and *Fischer II* were incorrectly decided. In fact, the emphasis which each opinion places on balancing the concerns of employee and employer is decidedly reflective of the approach that Congress adopted when it originally passed ERISA in 1974. Instead, the instructive point is that this line of reasoning merely requires that the fiduciary who is considering whether to reveal a possible change in benefits to employees assess the procedural status of the proposed change and determine whether that change has reached the point of “serious consideration.” It is a profoundly technical, rather than morality-based, approach to defining the fiduciary’s duties. The study of these materials side-by-side with Catholic social thought will assist the student in assessing the extent to which ERISA’s fiduciary requirements are technical and procedural in nature.

## Catholic Social Thought Commentary and Text Notes

**Note to the instructor:** Before reviewing the following questions with the students, you should examine the excerpts from Catholic social thought contained in Appendix II-B.

### **Donovan v. Mazzola** **716 F.2d 1226 (9<sup>th</sup> Cir. 1983)**

In *Mazzola*, the Ninth Circuit took a close look at the problem of self-dealing and conflicts of interest among fiduciaries of an ERISA plan. The resulting opinion strictly underscored the importance of the prudent person rule in the fulfillment of fiduciary responsibilities under ERISA. Fiduciaries were to eschew personal connections in favor of systematic due diligence into the problems that they addressed.

#### Discussion Questions

- A. What obligations does Catholic social thought impose upon an employer in relation to the task of managing his employees' compensation arrangements? Can these obligations be delegated to a third party or are they an inherent and non-delegable part of the employer's responsibilities?
- B. Under ERISA, it is possible for an employer to serve as the fiduciary of his own plan. In addition, the employer can justify decisions that are contrary to the best interest of the participants if these decisions are made in his capacity as employer (or settlor of the plan) rather than in his capacity as trustee. If an employer elects to serve as trustee, would Catholic social thought tolerate the argument that decisions that would be inappropriate for a fiduciary may nonetheless be defensible if made in the capacity of plan settlor?
- C. Consider the concept of fiduciary responsibility that is presented in the *Mazzola* opinion. Does the opinion suggest that fiduciary responsibility is primarily a matter of procedural compliance? How does this compare with the precepts of Catholic social thought?
- D. Assume that you are advising the fiduciary of a pension plan that is sponsored by a Catholic hospital. The Catholic hospital has charged the fiduciary with the responsibility of adhering to Catholic social thought as well as to the requirements of ERISA. The fiduciary is aware of the National Conference of Catholic Bishops / United States Catholic Conference's working paper entitled "A Fair and Just Workplace."<sup>101</sup> She asks you to adapt these questions so that she can evaluate whether the pension plan is in compliance with Catholic social teaching. What kind of issues should she look at? How would you revise the questions set forth in the working paper? Are there any conflicts between the fiduciary standards under ERISA and the standards that you discern from your study of Catholic social thought? Would it be appropriate to use the same set of questions to

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<sup>101</sup> See *infra* Appendix II-B.

examine the moral import of a benefit arrangement that was not sponsored by a Catholic employer?

***Fischer v. Philadelphia Electric Co. (“Fischer II”)***  
**96 F.3d 1533 (3d Cir. 1996)**

The Third Circuit has taught that an “overarching duty of truthfulness forms an important part of our ERISA jurisprudence.”<sup>102</sup> In an aphorism that has not perhaps received the attention which should be its due, the Third Circuit stated, “Put simply, when a plan administrator speaks, it must speak truthfully.”<sup>103</sup> But, as Pilate asked, “What is truth?”<sup>104</sup>

The Third Circuit has been bold enough to try to answer that question in the context of plan communications. Its 1993 opinion in *Fischer v. Philadelphia Electric Company* (“*Fischer I*”), the court instructed the lower court to determine whether a plan administrator had materially misled participants when it stated that no change in benefits was under consideration at the time the participants were considering retirement.<sup>105</sup> The court explained that the materiality of any misrepresentation hinged upon the seriousness with which any change was in fact under consideration.<sup>106</sup> By the time the case returned to the Third Circuit in 1996, the court recognized that “serious consideration” was an “amorphous concept.”<sup>107</sup> Its 1996 opinion attempted to rectify this problem by offering a three-factor test to establish whether a change in benefits was under serious consideration. Although adamantly denying the suggestion that it was creating a bright-line test, the court explained that serious consideration could be found when “(1) a specific proposal (2) is being discussed for purposes of implementation (3) by senior management with the authority to implement the change.”<sup>108</sup> Thus, in theory, the concept of “serious consideration” mediates between “an employee’s right to information and an employer’s need to operate on a day-to-day basis.”<sup>109</sup>

Discussion Questions

- A. Does *Fischer II* in fact offer a road map to a safe zone in which employers may consider significant plan changes without triggering the duty to disclose the potential plan changes to employees?

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<sup>102</sup> *Fischer v. Philadelphia Electric Company*, 96 F.3d 1533, 1538 (3d Cir. 1996)(“*Fischer II*”).

<sup>103</sup> *Fischer v. Philadelphia Elec. Co.*, 994 F.2d 130, 135 (3d Cir. 1993)(“*Fischer I*”).

<sup>104</sup> John 18:38 (N.R.S.V.).

<sup>105</sup> *Fischer I*, 994 F.2d at 135.

<sup>106</sup> *Id.*

<sup>107</sup> *Fischer II*, 96 F.2d at 1539.

<sup>108</sup> *Id.*

<sup>109</sup> *Id.*

- B. Consider the following hypothetical, which is based on the Third Circuit’s recent opinion in *Mushalla v. Teamsters Local No. 863 Pension Fund*.<sup>110</sup>

Bob participated in a multiemployer pension fund that was administered by union and management representatives. The plan calculated benefits by multiplying the participant’s years of service by his rate of contribution. The maximum number of years of service that could be taken into consideration was thirty.

On November 30, Bob attended a union meeting about the multi-employer pension fund. During the meeting, Joe, a union representative who also served as a plan trustee, reported on concerns that were specific to plan participants who were actually employed by a different company than Bob. When Joe mentioned that the Fund was considering an increase in the cap on years of service, Bob assumed that he was talking to the employees of the other company.

On December 15, Bob asked another plan trustee, Sarah, whether the benefit levels would be increased and received a negative answer. Bob eventually retired later that month.

In fact, on December 9, the plan trustees (including Joe and Sarah) had directed the plan actuary to prepare a cost analysis and actuarial study of the impact of the proposed change on the plan. The actuary prepared the report during the month of January. On January 20, the plan trustees reviewed the actuarial analysis and voted unanimously to increase benefits effective April 1. The plan administrator informed the participants of the change by letter dated February 1.

1. Did Sarah breach a fiduciary duty to communicate truthfully with when she said that benefits would not be increased? What if Bob had asked whether an increase in benefits was under consideration? Would this have changed the legal consequences of a negative response by Sarah?
2. Assuming that Sarah’s answer complied with ERISA fiduciary standards, can one also say that it was a truthful answer?
3. Consider the proposition in *Rerum Novarum* ¶ 17 that suggests that the “great and principal obligation” of the employer “is to give to every one that which is just.” If Bob had a co-worker who had begun work on the same day that he did and yet did not retire until well after the change in benefits had taken effect, would this mean that the employer was unjust in effectively giving the co-worker a more generous benefit than he had given Bob? Does Sarah, the plan trustee, have a moral obligation to explain the consequences of retiring in December versus the consequences of retiring the

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<sup>110</sup> 2002 WL 1835429 (3d Cir. 2002).

following year? Do you think there is a difference between responding directly to Bob's question and volunteering information that Bob may not have thought of asking? If Sarah does not volunteer any information about changes in benefits and it doesn't occur to Bob to ask about them, does her omission amount to "defraud[ing Bob] of wages that his due", an action which is condemned by ¶ 17 of *Rerum Novarum*?

- C. *Rerum Novarum* explicitly advocates a paternalistic role for the State when it says that "wage earners, who are, undoubtedly, among the weak and necessitous, should be specially care for and protected by the commonwealth."<sup>111</sup> Does the enactment of ERISA by the United States government effectively comply with this goal? Why or why not? In particular, does mandating a fiduciary obligation to act for the exclusive benefit of the participants and with the care of a prudent person fulfill the aspirations of *Rerum Novarum*? Do the opinions in *Mazzola* and *Fischer II* advance the State's role in protecting the wage earner? In the current era, does a "one size fits all" fiduciary standard adequately protect the rights of rank-and-file workers? Are their needs different from those of plan participants who hold more powerful roles in the corporation?
- D. *Rerum Novarum* and subsequent encyclicals present two basic concepts with respect to negotiations for compensation. First, "as a rule, workman and employer should make free agreements, and in particular should freely agree as to wages."<sup>112</sup> Second, these agreements must include remuneration that is "enough to support the wage earner in reasonable and frugal comfort."<sup>113</sup> Would Catholic social thought require an employer to sponsor a pension plan if the law permits him to do so? Does the obligation to provide compensation that supports the basic needs of the worker extend to the calculation of retirement benefits? Does Pope John Paul II's conception of social benefits as stated in *Laborem Exercens* suggest an answer?
- E. In *Mazzola* and *Fischer II*, the union played a significant role in negotiating for and administering the pension funds. Assume that a worker participates in a single-employer plan that is not the result of union negotiations. The employer, as settlor of the plan, has designed the plan and has retained the right to amend the plan. If the employer exercises the option to amend the plan, does Catholic social thought impose any obligation with respect to the manner in which he communicates the change to his employees?

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<sup>111</sup> *Rerum Novarum* ¶ 29.

<sup>112</sup> *Rerum Novarum* ¶ 34 in O'Brien and Shannon, *supra* note 12 at 31..

<sup>113</sup> *Id.*

APPENDIX II-B  
EMPLOYEE BENEFITS LAW MODULE  
Catholic Social Thought Texts

Except as noted, the excerpts from the encyclicals in this Appendix are taken from the version of the encyclicals that appear in O'Brien and Shannon's *Catholic Social Thought: The Documentary Heritage*.<sup>114</sup>

**Leo XIII, *Rerum Novarum* (1891)**

¶5: “And on this account—namely, that man alone among animals possesses reason—it must be within his right to have things not merely for temporary and momentary use, as other living beings have them, but in stable and permanent possession; he must have not only things which perish in the using, but also those which, though used, remain for use in the future.”<sup>115</sup>

¶9: “That right of property, therefore, which has been proved to belong naturally to individual persons, must also belong to a man in his capacity of head of a family; nay such a person must possess this right so much the more clearly in proportion as his position multiplies his duties.”<sup>116</sup>

¶10 “For it is a most sacred law of nature that a father must provide food and all necessities for those whom he has begotten, and, similarly, nature dictates that a man’s children, who carry on, as it were, and continue his own personality, should be provided by him with all that is needful to enable them honorably to keep themselves from want and misery in the uncertainties of this mortal life.”<sup>117</sup>

¶16 “Religion teaches the rich man and the employer that their work people are not their slaves; that they must respect in every man his dignity as a man and as a Christian; that labor is nothing to be ashamed of, if we listen to right reason and to Christian philosophy, but is an honorable employment, enabling a man to sustain his life in an upright and creditable way; and that it is shameful and inhuman to treat men like chattels to make money by, or to look upon them merely as so much muscle or physical power. Thus, again, religion teaches that, as among the workmen’s concerns are religion herself and things spiritual and mental, the employer is bound to see that he has time for the duties of piety; that he be not exposed to corrupting influences and dangerous occasions; and that he be not led away to neglect his home and family or to squander his wages. Then, again, the employer must never tax his work-people beyond their strength, nor employ them in work unsuited to their sex or age.”<sup>118</sup>

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<sup>114</sup> See *supra* note 12.

<sup>115</sup> *Rerum Novarum* ¶5.

<sup>116</sup> *Rerum Novarum* ¶9.

<sup>117</sup> *Rerum Novarum* ¶10.

<sup>118</sup> *Rerum Novarum* ¶16.

¶17 “His great and principal obligation is to give to every one that which is just. Doubtless before we can decide whether wages are adequate, many things have to be considered; but rich men and masters should remember this—that to exercise pressure for the sake of gain, upon the indigent and destitute, and to make one’s profit out of the need of another is condemned by all laws, human and divine. To defraud anyone of wages that are his due is a crime which cries to the avenging anger of heaven.”<sup>119</sup>

¶17 “Finally, the rich must religiously refrain from cutting down the workman’s earnings, either by force, fraud, or by usurious dealing: and with the more reason because the poor man is weak and unprotected, and because his slender means should be sacred in proportion to their scantiness.”<sup>120</sup>

¶ 29 “The richer population have many ways of protecting themselves, and stand less in need of help from the State; those who are badly off have no resources of their own to fall back upon, and must chiefly rely upon the assistance of the State. And it is for this reason that wage earners, who are, undoubtedly, among the weak and necessitous, should be specially cared for and protected by the commonwealth. ... It must be borne in mind that the chief thing to be secured is the safeguarding, by legal enactment and policy, of private property. Most of all it is essential in these times of covetous greed, to keep the multitude within the line of duty, for if all may justly strive to better their condition, yet neither justice nor the common good allows anyone to seize that which belongs to another, or, under the pretext of futile and ridiculous equality, to lay hands on other people’s fortunes. It is most true that by far the larger part of the people who work prefer to improve themselves by honest labor rather than by doing wrong to others. But there are not a few who are imbued with bad principles and are anxious for revolutionary change, and whose great purpose is to stir up tumult and bring about a policy of violence. The authority of the State should intervene to put restraint upon these disturbers...”<sup>121</sup>

¶ 34 “We now approach a subject of very great importance and one on which, if extremes are to be avoided, right ideas are absolutely necessary. Wages, we are told, are fixed by free consent; and, therefore, the employer when he pays what was agreed upon has done his part, and is not called upon for anything further. The only way, it is said, in which injustice could happen would be if the master refused to pay the whole of the wages, or the workman would not complete the work undertaken; when this happens, the State should intervene to see that each obtains his own, but not under any other circumstances.”<sup>122</sup>

¶ 45 “Let it be granted, then, that, as a rule, workman and employer should make free agreements, and in particular should freely agree as to wages; nevertheless, there is a dictate of nature more imperious and more ancient than any bargain between man and man, that the remuneration must be enough to support the wage earner in reasonable and frugal comfort.”<sup>123</sup>

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<sup>119</sup> *Rerum Novarum* ¶17.

<sup>120</sup> *Id.*

<sup>121</sup> *Id.* at ¶ 37.

<sup>122</sup> *Rerum Novarum* ¶34.

<sup>123</sup> *Rerum Novarum* ¶ 45.

### **Pius XI, *Quadragesimo Anno* (1931)**

*Quadragesimo Anno* celebrates the fortieth anniversary of *Rerum Novarum*. After restating the principles of *Rerum Novarum*, Pius meditates upon the meaning of “social justice” in the modern economy.<sup>124</sup> Pius suggests that it would be unfair to say that contracting for wages was per se unjust. Instead, the wage contract should be modified by a contract of partnership, so that workers and executives become partners in ownership or participate in profits.<sup>125</sup>

*Quadragesimo Anno* states that three factors must be considered in judging whether a wage is just. First, the wage should be “adequate to meet ordinary domestic needs” of the working man and his family.<sup>126</sup> Second, the financial viability of the business itself is a valid topic for consideration.<sup>127</sup> Third, the just wage must also reflect the requirements of the common good.<sup>128</sup>

### **John XXIII, *Mater et Magistra* (1961)**

¶ 71 “Wherefore, we judge it to be our duty to reaffirm once again that just as remuneration for work cannot be left entirely to unregulated competition, neither may it be decided arbitrarily at the will of the more powerful. Rather, in this matter, the norms of justice and equity should be strictly observed. This requires that workers receive a wage sufficient to lead a life worthy of man and to fulfill family responsibilities properly. But in determining what constitutes an appropriate wage, the following must necessarily be taken into account: first of all, the contribution of individuals to the economic effort; the economic state of the enterprises within which they work; the requirements of each community, especially as regards overall employment; finally, what concerns the common good of all peoples, namely, of the various States associated among themselves but differing in character and extent.”<sup>129</sup>

### **John Paul II, *Laborem Exercens* (1981)**

¶ 19.6 “Besides wages, various social benefits intended to ensure the life and health of workers and their families play a part here. The expenses involved in health care, especially in the case of accidents at work, demand that medical assistance should be easily available for workers and that as far as possible it should be cheap or even free of charge. ... A third sector concerns the right to a pension and to insurance for old age and in case of accidents at work. Within the sphere of these principal rights there develops a whole system of particular rights which, together with remuneration for work, determine the correct relationship between worker and employer. Among these rights there should never be overlooked the right to a working environment and to

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<sup>124</sup> *Quadragesimo Anno* ¶ 57.

<sup>125</sup> *Quadragesimo Anno* ¶ 64 et seq.

<sup>126</sup> *Quadragesimo Anno* ¶ 71 .

<sup>127</sup> *Quadragesimo Anno* ¶ 72.

<sup>128</sup> *Quadragesimo Anno* ¶ 74.

<sup>129</sup> *Mater et Magistra* ¶ 71.

manufacturing processes which are not harmful to the workers' physical health or to their moral integrity.”<sup>130</sup>

### **U.S. Catholic Bishops, Economic Justice for All (1986)**

¶ “Persons in management face many hard choices each day, choices on which the well-being of many others depends. Commitment to the public good and not simply the private good of their firms is at the heart of what it means to call their work a vocation and not simply a career or a job.”<sup>131</sup>

### **National Conference of Catholic Bishops / United States Catholic Conference, Working Paper, *A Fair and Just Workplace: Principles and Practices for Catholic Health Care*<sup>132</sup>**

“Among the elements of a just and fair workplace are: fair wages, adequate benefits, safe and decent working conditions, and the right to participate in decisions which affect one's work, as well as opportunities for advancement, learning and growth.”

The working paper proposed several specific questions with regard to whether a Catholic health system meets the requirements of the Church's social teachings:

- “Do the lowest paid workers receive wages sufficient to sustain themselves and their families?”
- “Is health care insurance provided or are wages sufficient for a worker to both sustain a family and purchase health care insurance?”
- “Are work hours flexible so as to permit adequate rest, leisure time, educational opportunities, and quality family time?”
- “What is the purpose of part-time or contract positions – to advance the mission of the institution and meet the needs of the workers or to avoid paying benefits?”

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<sup>130</sup> *Laborem Exercens* ¶ 19.6

<sup>131</sup> *Economic Justice for All* ¶ 111 .

<sup>132</sup> <http://www.usccb.org/sdwp/national/workplace.htm> (May 30, 2003).

