**Liberating Labor: A Christian Economist's Case for Voluntary Unionism**

**by Charles W. Baird**

*Where the Spirit of the Lord is, there is liberty.*
2 Corinthians 3:17

## Introduction

There can be no doubt that Catholic Social Teaching (CST) beginning with Leo XIII's *Rerum Novarum* (1891) has unequivocally endorsed some form of trade unionism. So do I. However, insufficient attention has been paid to the details of that endorsement. What sort of unionism is consistent with papal encyclicals dealing with CST from *Rerum Novarum* to *Centesimus Annus* (1991)? Too often Catholics, lay and ordained, have simply assumed that CST supports all trade unions set up under the auspices of democratic governments. In this essay I try to make a case that falsifies that assumption. In my judgment CST supports voluntary, and condemns compulsory, unionism. In the United States the statute that defines the rules of unionism is the National Labor Relations Act which was originally enacted in 1935 and was amended in 1947 and again in 1959 (NLRA). My hypothesis is that NLRA-style unionism is inconsistent with CST.

In what follows I first examine the principle of freedom of association, for that is a principal argument in the encyclicals for the legitimacy of labor unions. Second, I introduce and explain the economist's principle of voluntary exchange, together with some of its logical implications, and indicate why I think this principle is consistent with CST. Third, I outline how labor markets actually work and explain why not all unemployment is undesirable. Fourth, I critically examine three widespread misunderstandings of the labor market process that have led to unquestioning

endorsement of compulsory trade unions – labor's inherent bargaining power disadvantage relative to employers, the purchasing power fallacy, and the belief that the interests of employers and employees are incompatible. Fifth, I delineate the coercive aspects of the NLRA. Sixth, I scrutinize the CST encyclicals of Leo XIII, Pius X, Pius XI, Pius XII, John XXIII, and John Paul II to discover what they had to say about labor unions. Finally, I offer a model of unionism that I think is consistent with papal teaching.

**I. Freedom of Association**

All of the popes listed above justified the formation of labor union on the grounds of freedom of association. Some examples: Leo XIII wrote, "to enter into a [a trade union] is the natural right of man; and the State has for its office to protect natural rights, not to destroy them" (*Rerum Novarum* § 51). Later, in *Longinqua* (1895, §16), he explained that "working classes … assuredly have the right to unite in association for the promotion of their interests." In *Quadragesimo Anno* (1931), Pius XI decried governments that denied workers "the natural right to form associations" (§30). Later in the same encyclical (§ 36) he endorsed Leo's "vigorous defense of the natural right to form associations." In *Sertum Laetitiae* (1939) Pius XII stated that "it is not possible without injustice to deny or to limit either to the producers or to the laboring and farming classes the free faculty of uniting in association." In *Mater et Magistra* (1961) John XIII applauded Leo who "also defended the worker's natural right to enter into associations with his fellows" (§22). Later, in *Pacem in Terris* (1963) he wrote "[m]en are by nature social, and consequently they have the right to meet together and to form associations with their fellows" (§23). In *Centesimus Annus* John Paul II asserted that "[t]he right of

association is a natural right of the human being, which therefore precedes his or her incorporation into political society" (§7).

Freedom of association is guaranteed by the First Amendment to the U. S. Constitution the relevant portion of which states, "Congress shall make no law … abridging … the right of the people peaceably to assemble." It seems simple enough: We may assemble ourselves into whatever peaceful associations we choose, and the government is forbidden to interfere with those choices. But what does this really mean?

Note that the guarantee is in the form of a restriction on what government may do. The constitutional philosophy of the authors of the Constitution and its Bill of Rights was that all individuals have fundamental human rights against which government is forbidden to trespass. Indeed, the most important function of any just government is to protect those rights for all individuals under its jurisdiction. In this respect they agreed with the encyclical passages cited above.

Logically, a fundamental human right is one that every individual possesses and can exercise in exactly the same sense at every point in time. If person A claims a right which, when exercised, denies exactly the same right to person B, the alleged right belongs only to A, not B. It should be called an A right, not a human right, for A and B are rivals in the exercise of the right. Genuine human rights are those which can be held and exercised non-rivalrously. The word "peaceably" in the Amendment has two meanings. The associations we choose to enter may not undertake violence to accomplish their ends, and within each association one person may not coerce another. Associations must be based on mutual consent. Coercion always destroys the peace.

The fact that the Constitution guarantees freedom of association to each of us does not mean that we may associate with anyone we choose. Rather, it means that we may choose to associate with anyone who also agrees to associate with us. If B is forced to accept A's offer of association, B is not free to choose his associations. Association would be a right of A, not B. Association would not be a human right. Therefore, freedom of association, correctly understood, has both a positive and a negative component. We are free to associate with those who will accept us (positive), and we are free to abstain from associations of which we do not approve or we do not think to be in our interests (negative).

The negative right of freedom of association is recognized by the United Nations and by the European Community. John XIII endorsed the United Nations' Universal Declaration of Human Rights (1948) in *Pacem in Terris* §143. Section 20 of the Declaration states:

1. Everyone has the right to freedom of peaceful assembly and association.
2. No one may be compelled to belong to an association.

Article 11 of the European Convention for the Protection of Human Rights and Fundamental Freedoms (1950) states that "Everyone has the right to freedom of association with others, including the right to form and to join trade unions for the protection of his interest." Here there is no explicit recognition of the correlative right to refrain from association. However, the European Court of Human Rights read Article 11 as implying a negative freedom of association in *Young, James and Webster v. United Kingdom* in 1981, a case that involved mandatory union membership imposed on employees of British Rail. The same Court made a similar ruling in a 1994 case, *Sigurjonsson v. Iceland*, that involved forced membership in an organization of taxi

drivers. Negative freedom of association is recognized by American courts for some purposes, but not for all. As we will see below, in Section V, American courts emphatically do not recognize it in the case of labor unions. In Section VI we will see that the popes endorsed both the positive and the negative aspects of freedom of association.

## II. Voluntary Exchange

The quintessential economic act is exchange. Economics is best defined as the study of the nature and implications of exchanges among people who attempt to do the best they can for themselves. Different people may have different ideas about the ends they should seek, but no matter what they define as worthy ends they will try to achieve them as best they can. The Church teaches that the ultimate end that man should pursue is a right relationship with our Lord and, therefore, with fellow pilgrims on our earthly journey. Our relationships with others in this life are largely based on exchange.

An exchange is a reciprocal giving and receiving among two or more people. This includes the giving of gifts. When A gives a gift to B, A also receives something. Perhaps it is the satisfaction that comes from being helpful and/or charitable. Perhaps it is a better relationship with B. Perhaps it is because alms giving is a way of laying up treasures in Heaven. Perhaps it is simply a tax deduction.

### A. The Criteria for Voluntary Exchange

Of course, an exchange can be voluntary or coerced. Theft is an example of a coerced exchange. In economic analysis, for an exchange to be voluntary four criteria must simultaneously be met.

*1. Entitlement*

All the parties to the exchange must either own that which they are offering in exchange, or they must be acting as the authorized agents of the owners. The popes have consistently endorsed the principle of private property and have stressed the importance of affording to each his due. Moreover, the Seventh Commandment, "Thou shalt not steal," implies the existence of private property.

This means that if I steal a watch from A and offer to exchange it for money with B, my offer to B is not a voluntary exchange offer. It is voluntary as far as B is concerned, but I have no entitlement to make the offer. Similarly, If B, not knowing that I stole the watch, agrees to accept my offer and the exchange is made, it would not be a voluntary exchange. From B's perspective it certainly looks voluntary, but I and any fully informed third party observing the exchange would know it is tainted by involuntariness. On the other hand, if I have agreed with A to serve as his agent in the sale of his watch, my offer to B would be a voluntary exchange offer; and if B accepts the offer, the resulting exchange would be voluntary.

Now, in the words of Leo in *Rerum Novarum*, a man's labor "is personal, inasmuch as the force which acts is bound up with the personality and is the exclusive property of him who acts, and, further, was given to him [by God] for his advantage" (§44). That is, each person owns the labor services that he is able to perform as the result of his stock of mental and physical abilities (i.e., his human capital, as economists like to call it). By "labor" an economist means the services that a person performs. Workers are not inputs in production, but their labor services (i.e., their labor) are. Since I own my labor, only I, or a willing agent whom I designate to represent me has a natural right to

make offers regarding the terms and conditions of its employment. Any terms and conditions of employment of my labor agreed to by an employer and a third party whom I have not authorized to represent me are not the result of voluntary exchange.

*2. Consent*

All the parties to the exchange must (1) agree to hear the offers that are being made by others, (2) agree to bargain with those who are making the offers, and (3) agree to the terms at which any actual exchange takes place. I may not force another party to sit down and bargain with me. Even if it turns out that the person whom I have forced to bargain with me likes the offers I make, the offers would not be voluntary exchange offers. Moreover, a person who consents to hear offers does not thereby agree to accept any of the offers he hears. An offer you cannot refuse is not a voluntary exchange offer.

Since no one, as an individual, has a natural right to force a prospective employer (or a prospective employee) either to bargain with him or to accept any specific wage offer, no group of individuals has a natural right to do so. Natural rights inhere in individuals. Groups can only have the natural rights that individuals bring to them. In the words of John XXIII, in *Mater et Magistra* (§219), Catholic Social Teaching "rests on one basic principle: individual human beings are the foundation, the cause and the end of every social institution," including labor unions.

*3. Escape*

This criterion is actually implied by the consent criterion, but it approaches the point from a different perspective. Therefore, it is worth considering on its own. Each party to the exchange must be able to turn down any offers he chooses and walk away without loosing anything to which he is entitled. If A turns down an offer made by B, he

must be able to withdraw from the bargaining without suffering any loss of voluntary exchange rights – e.g., without losing the right to bargain with C over the same questions. A must be able to walk away from B unmolested. A victim of rape, for example, is not able to decline to cooperate with the rapist without being molested.

In the labor market if a prospective employer (or a perspective employee) does not consent to a wage offer made by A, he has a natural right not to hire (or be hired by) A and instead to offer to hire (or be hired by) B. To argue the contrary would be to assert that the rights of individuals other than A are subordinate to the rights of A. That cannot be the case because natural rights are logically the same for all individual human beings.

The escape criterion is the basis for the answer to the following question. "Isn't it true that a worker in a unionized firm who does not want to have anything to do with the union may easily escape the association by quitting his employment and finding work in a union-free enterprise?" The short answer is yes. However, the rest of the answer is critical. By escaping the association in this way the worker loses something to which he is entitled. He loses his natural right to sell his own labor services to a willing employer without involving a third party with which neither the worker nor the employer wants to be involved. Under the NLRA, employers are forced to recognize and bargain with unions. Their agreements with unions are not voluntary exchange agreements.

*4. No Misrepresentation*

Each party involved in the exchange must not knowingly convey false information. In other words, no one is allowed purposively to lie. Room must be made for honest error, for we live in a world of imperfect knowledge. For example, if a prospective employer knowingly understates the degree of risk (financial and/or physical) involved in

a job to a prospective employee, that employer would violate this criterion. On the other hand, if the same employer, because, say, of lack of data, understates the degree of risk involved in the job to the same employee the employer would not violate this criterion. If an employee accepts a job offer based on an understatement of risk, the actual risk will be discovered by both the employer and employee on the basis of actual experience. As more accurate information about risk is discovered hiring contracts will be changed to reflect actual risks. Different employees have different degrees of risk aversion, and different jobs pose different degrees of risk. With more accurate information employees and employers will sort themselves into mutually beneficial hiring contracts.

We also live in a world of asymmetric information – i.e., different people know different things. The no misrepresentation condition does not require all the parties to the exchange to tell all they know, for different people have different ideas about the relevance of particular bits of information. A party to an exchange may feel he does not have enough information to do a good job of bargaining. He may not know what questions to ask. In that case, he is well advised to seek the relevant information from some third party – e.g., *Consumer Reports* magazine. In the labor market, a labor union may be a good third party source of bargaining tips for workers. Indeed, they could agree with individual workers to do the bargaining for them.

When you think about it, most of the acts that we consider to be criminal – e.g., theft, murder, rape, and fraud – are all examples of involuntary exchange. Keeping the peace requires that all people deal with each other strictly on the basis of voluntary exchange.

**B. Voluntary Exchange is Mutually Beneficial**

Many people fail to see that if an exchange is truly voluntary – i.e., if it meets the four criteria listed above – it must be seen as beneficial to each of the parties involved. If this were not true they would not have given their consent. Voluntary exchange is win-win. In the language of game theory, it is a positive sum game. All may gain at the same time. In contrast, poker is an example of a zero sum game. What one person gains, another person has to lose.

Suppose that the minimum wage that a worker is willing to accept to do a job is $10 per hour. In the economist' s language, the subjective significance he attaches to $10 per hour is identical to the subjective significance he attaches to the best (as he sees it) alternative use of his time. If he is paid any more than $10 per hour he will receive a surplus, or gain, from the hiring contract. Suppose also that the employer with whom this employee bargains would be willing to pay up to $15 per hour to receive the employee's services. This means that the subjective significance the employer attaches to $15 per hour is the same as the subjective significance he attaches to the consequences of not having the job done. If he gets to hire the labor services at less than $15 per hour he will receive a surplus, or gain, from the hiring contract. Therefore, at any wage less than $15 but greater than $10, a hiring contract would make both the employer and the employee better off (as they see it). In Section III, I will explain what determines the highest price an employer is willing to pay and the minimum price an employee is willing to accept as well as the competitive processes that determine actual wages paid and received.

Of course, some people who enter into voluntary exchange agreements may later regret that they did so. Knowledge is imperfect, and it may well turn out that an employee

or an employer discovers better alternatives than those of which they were aware at the time they entered into an agreement. This simply means they will try to avoid making the same mistake again. The possibility of regrets is not an argument against letting individuals enter into whatever voluntary exchanges they wish. Individuals have the best knowledge of their own tastes and preferences and their own unique circumstances of time and place. No politician or bureaucrat could possibly know enough to make all of our choices better than we make them for ourselves.[1] When we feel we have inadequate information to reach a decision we can obtain advice (through voluntary exchange) from third parties who we think have better information. Doctors, lawyers and clergy are examples of experts from whom we seek advice about dealing with other people and ordering our own behavior.

### C. Some Implications of Voluntary Exchange

If everyone dealt with everyone else strictly on the basis of voluntary exchange, the only way that A could serve his own interests would be by creating and offering opportunities for others to serve theirs. The Lord instructs us to treat others as we wish others to treat us. We naturally want people to refrain from coercing us, so we must refrain from coercing others. When we engage in voluntary exchange we do precisely that. Voluntary exchange has the same salutary effect on people who do not look to Scripture for guidance on human action. It is an institution by which one is led to care for the interests of others even if his primary concern is his self interest.

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[1] This is an application of Hayek's principle of the division of knowledge, See F. A. Hayek, "The Use of Knowledge in Society," *American Economic Review,* XXXV, No. 4 (September 1945), 519-30.

Individualism in the sense of people isolating themselves from the concerns of others while pursuing selfish ends is not apparent in voluntary exchange. The sort of individualism fostered by voluntary exchange actually builds communities of other-regarding people. In this context individualism simply means respecting the right of individuals to choose their own means to achieve their own ends so long as they grant to all other individuals exactly the same right.

In a world of voluntary exchange labor union leaders would have to care very much about the actual interests of the workers they represent. If they didn't they would not have any workers to represent. In a world of involuntary exchange where labor union leaders can coerce workers into accepting union representation services and paying fees for the services they do not want, those leaders can serve their own interests even if they are contrary to the interests of the workers they pretend to represent.

Scripture doesn't say that seeking to gain material wealth is evil in and of itself. What counts is how the wealth is acquired and what those who have acquired it do with it. In a world of voluntary exchange material wealth can only be acquired by serving the interests of others, and freely chosen acts of charity are also acts of voluntary exchange. Pius XI acknowledged this point in *Quadragesimo Anno* when he wrote:

> Those who are engaged in producing goods … are not forbidden to increase their fortune in a just and lawful manner; for it is only fair that he who renders service to the community and makes it richer should also, through the increased wealth of the community, be made richer himself according to his position, provided that all these things be sought with due respect for the laws of God and without impairing the rights of others and that they be employed in accordance with faith and right reason (§136).

Even pagan wealth seekers are constrained by the rules of voluntary exchange to obtain their wealth by serving the interests of others. Wealth seekers who use force and fraud to

achieve their goal violate the law of God, and they also violate the rules of voluntary exchange.

John Paul II sees voluntary exchange as expanding solidarity among people. In *Centesimus Annus* he put it this way:

> In light of today's "new things," we have re-read *the relationship between individual or private property and the universal destination of material wealth.* Man fulfills himself by using his intelligence and freedom. In so doing he utilizes the things of this world as objects and instruments and makes them his own. The foundation of the right to private initiative and ownership is to be found in this activity. By means of his work man commits himself, not only for his own sake but also *for others* and *with others*. Each person collaborates in the work of others and for their good. Man works in order to provide for the needs of his family, his community, his nation, and ultimately all humanity. Moreover, he collaborates in the works of his fellow employees, as well as in the work of suppliers and in the customers' use of goods in a progressively expanding chain of solidarity (§43, emphasis in the original).

Voluntary exchange is such an important and constructive social institution that we must be very careful when weighing whether to replace voluntarism with coercion in any aspect of human action. At the very least a heavy burden of proof must rest on those who recommend coercion over voluntarism in the labor market or in any market.

## III. The Labor Market Process

There are two aspects of the voluntary exchange (i.e., free market) labor process that are essential in evaluating the role of labor unions in that process. First is the process by which rates of compensation (wages, salaries and benefits) paid to workers are decided. Second is the meaning of unemployment.

### A. The Determination of Worker Compensation

The labor market, like any other market, is a process of interaction between forces of demand and supply. The buyers of labor services are employers, and the sellers of labor services are job seekers and job holders. When employers "buy" labor, they hire the

productive services of workers. Labor is employed, along with materials and supplies and the services of capital goods, to produce output that employers, in turn, sell to customers. Workers supply labor services to employers in exchange for compensation packages that include wages and salaries and benefits.

The maximum amount that an employer is willing to pay for labor services from a worker is called his demand price for the labor. It depends on the increment to output that the worker's services make possible and on the prices for which the employer can sell the additional output to customers. Suppose that an employer expects that an additional worker makes possible the creation of ten additional units of output per day, and that when those ten additional units are sold the employer will receive $120 of extra revenue net of all other (non-labor) incremental costs – e.g. the costs for the additional materials and supplies used by the additional worker using the tools (capital goods) provided by the employer to produce the ten extra units of output. If there are any incremental costs associated with the additional use of the tools they also would be included in "other incremental costs." The employer's cost of hiring the additional worker is the sum of compensation (including benefits) paid to the worker and employment taxes paid to government. The employer would not be willing to pay $120 per day or more for the worker's services, but at any hiring cost less than $120 per day, the employer would add to profits by hiring the worker. From a profit-seeking employer's point of view, the lower the hiring cost the better so long as he can hire the quantity and quality of labor he wants. The lower the hiring cost, the more eager the employer will be to hire additional workers if he can get them.

If workers' productivity declines because, for example, of a change of technology that makes their services less important, or if the prices that the employer receives from customers decline because, for example, the customers decide they want to buy different products, the employer would have to cut labor costs by layoffs and/or by reducing rates of compensation. The latter is likely to cause many workers to quit because they have no reason to think that the reduced compensation is the best they can do. Both those laid off and those who quit will begin a process of job search.

The minimum compensation that an employee will accept from an employer is called his supply price for the job. It depends on his perception of his alternative employment (and unemployment ) opportunities. Other things equal, the better his alternatives the higher his supply price. If you know that you can get $15 per hour from Employer X for doing a job, you will not accept anything less from Employer Y for doing the same job. If your alternative to working for Employer X is to be unemployed (a very unlikely situation in modern economic conditions), you will have a higher supply price if your family will support you during unemployment than you will if your best alternative is to become homeless.

So, there is an upper limit on what an employer will pay for a worker's labor services, and there is a lower limit on what a worker will accept in payment for his labor services. The actual rates of compensation paid and received depend on the relative strengths of two types of competition in the relevant labor market — competition among employers to hire and competition among employees to be hired. For a given level of competition among employees to be hired, the greater the extent of competition among employers to hire, the higher will be the compensation rates offered and accepted.

Conversely, for a given level of competition among employers to hire, the greater the competition among employees to be hired the lower will be the compensation rates offered and accepted. Every hiring of every worker is an employment contract based on voluntary exchange. Every employer and every employee enters into such contracts because they expect to be better off than they would be if they did not do so.

From an individual worker's point of view, the best of all possible labor market situations is to be the only one who can do a particular kind of work (no competition among employees to be hired) and to have hundreds of employers who are competing with each other to hire someone who can do the job. Such a worker would have tremendous bargaining power, and any one employer would have almost no bargaining power. Similarly, from an individual employer's point of view, the best of all possible labor market situations is to be the only buyer of a particular kind of labor service (no competition among employers to hire) and to have a plethora of workers competing with each other to be hired to do the job. Such an employer would have tremendous bargaining power, and any one worker would have almost no bargaining power. Bargaining power in any market depends on the alternatives available to the actors therein.

**B. The Meaning and Role of Unemployment**

John Paul II refers to what he calls the "nightmare of unemployment" (*Centesimus Annus*, §14). But not all unemployment is undesirable. In fact most unemployment in a modern economy is desirable because it is the means by which labor services are deployed and redeployed in order to serve the interests of the general public. In the real world instantaneous deployment and redeployment of labor (or any other productive resource) is impossible. The process takes time and involves other costs as well.

Entrepreneurs are the key to this voluntary exchange labor allocation and reallocation process. In the labor market both employers and employees may act entrepreneurially.

The role of an entrepreneur is to discover and grasp profit opportunities. Every problem that emerges in a market is a profit opportunity for an entrepreneur who first notices how to solve it and undertakes the solution. Successful innovations by entrepreneurs elicit imitation, and imitation by more and more people means that, in free-market settings, problems inevitably give way to solutions. Entrepreneurs do what they do in pursuit of profit; but when they are successful, and therefore make profit, the rest of us benefit from their innovations.[2]

Entrepreneurship involves creating new products, creating new technologies, creating new productive resources, assembling new combinations of productive resources to produce old and new products, adopting new forms of organizational architecture, and entering new markets and exiting old ones. Buyers and sellers in all markets must keep abreast of more innovation now than ever before. In today's markets, successful innovation at one place in the world rapidly affects most other places of the world. Entrepreneurship, and responses to entrepreneurship are the means by which labor is allocated and reallocated among alternative employments.

John Paul II acknowledges this role of entrepreneurship: "It is precisely the ability to foresee both the needs of others and the combinations of productive factors most adapted to satisfying those needs that constitutes another important source of wealth in modern society" (*Centesimus Annus,* §32).

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[2] Israel M. Kirzner, *Competition and Entrepreneurship,* Chicago: University of Chicago Press, 1973.

Suppose consumers reallocate their spending such that less of product A, and more of product B is demanded. This means that many employees hitherto producing A will receive layoff notices. Perhaps some will be able to stay on by agreeing to accept cuts in compensation, but most will quite reasonably think that it is possible, after some job search, to find other satisfactory jobs that pay as much or more as the ones they have lost. In a world of imperfect knowledge they will have to undertake a process of search for their alternatives, during which they will be counted in official statistics as unemployed. Some job seekers will find new employment very quickly, others will not. (In 2001 the median duration of unemployment in the United States, according to the Bureau of Labor Statistics, was 6.8 weeks.) If , after some initially planned period of search, some job seekers find no satisfactory new jobs, they will reevaluate their prospects and lower their supply prices. Or, perhaps they will become convinced that their best strategy is to undertake retraining so they can find different sorts of jobs. This suggests that another role for unions in a world of voluntary exchange is to collect information on changing labor market conditions and steer their members who are in the job search process to likely prospects.

Employers producing product B for which customer demand is rising also engage in search. They search for new employees who can do what needs to be done. They could attract a lot of applicants right away by offering very high compensation packages, but most will quite reasonably think it would, at least for awhile, be cost-effective to offer normal compensation packages and spend some time sampling the workers that apply. Reallocating labor is not a simple matter of throwing all applicants into a common bin. They must be sorted according to abilities, interests and costs. If after some initially

planned period of search the employers do not find enough satisfactory employees, they will then offer better compensation packages to attract more applicants.

The key insight is that every unemployed worker who wants to work is a potential profit opportunity for an entrepreneur who discovers ways of employing him. Even workers who have a hard time finding new work are potential profit opportunities. They are likely to be available at modest levels of compensation, making it cost-effective to hire and train them. And when they are trained they acquire additional bargaining power with their employers and with potential new employers.

This is why, in a market-based (i.e., voluntary exchange) economy, layoffs do not, in the long run, result in a growing number of unemployed people and falling average rates of compensation. Unemployment is like a pipeline. There are always people entering the pipeline, but there are always people exiting it too. Even if the number of people in the pipeline at any moment were always the same, the faces on those people would be constantly changing.

Long term unemployment is a phenomenon associated with the lack of economic development, and that in turn is usually associated with the refusal of those who wield political authority to allow entrepreneurial voluntary exchange to occur at all or who greatly hamper the entrepreneurial discovery procedure. The typical union response to unemployment of union members is to appeal to political authorities to force employers to maintain employment even in circumstance of declining demand. Such politically imposed "job security" is self-defeating. If workers are perforce kept where they are needed less, it is much less likely that they will discover where they are needed more. This results in accumulating misallocation of labor, decreasing productivity and

decreasing (even negative) rates of real economic growth, increasing unemployment and falling standards of living. The solution to long run unemployment is less, not more coercion. And that solution is the surest way to widespread economic prosperity.

The situation in Italy in April 2002 illustrates the importance of free labor markets. Prime Minister Silvio Berlusconi was attempting to reform Italy's coercive labor laws which, among other things, made it illegal for employers to fire any workers. As a result of labor market restrictions Italy's long term unemployment rate (workers unemployed for more than one year) was the highest in Europe and the number of workers employed as a percent of the population was significantly less than the European average. Needless to say, Berlusconi's principal opponents in the labor reform battle was Italian labor unions. As of this writing the outcome of the struggle is undecided.

The historical record is clear: Free market economies generate more wealth and distribute it more widely than economies based on coercion.[3] John Paul II and his predecessors have promulgated what they call a "preferential option for the poor" (see, for example, *Centesimus Annus* §11). It seems to me that effectively to exercise such an option one has to embrace economic freedom.

## IV. Three Confusions About Labor Markets

There are three widespread misconceptions about labor markets that I believe largely account for the fact that many well intentioned people give uncritical support to

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[3] For evidence that relative economic freedom has been good for the poor in the United States see W. Michael Cox and Richard Alm, *Myths of Rich & Poor,* NY: Basic Books, 1999. For detailed evidence on the relationship between economic freedom and prosperity world wide see annual editions of James Gwartney and Robert Lawson, *Economic Freedom of the World,* Vancouver: The Fraser Institute, and Gerald P. O'Driscoll, Jr., Kim R. Holmes, and Melanie Kirkpatrick, *Index of Economic Freedom,* Washington, DC: The Heritage Foundation.

labor unions, even coercive labor unions. They are: labor's unequal bargaining power relative to employers, the purchasing power fallacy, and the incompatibility of employer and employee interests.

## A. Unequal Bargaining Power

Perhaps the most important source of prounion sentimentality is the widespread belief that individual workers have an inherent bargaining power disadvantage relative to employers, and labor unions are the only effective way for workers to overcome that disadvantage. Section 1 of the NLRA asserts that "The inequality of bargaining power between employees who do not possess full freedom of association or actual liberty of contract, and employers who are organized in the corporate or other forms of ownership association" is one of the principal wrongs the Act is intended to redress. But this inherent bargaining power disadvantage is little more than a hoary myth.

As we saw above the bargaining power of employees as well as employers depends on the alternatives that each have. In the early and mid 19th Century there were many labor markets in which employers faced very little competition from other employers to hire labor. In other words, employees had very few, if any, employment alternatives. Economists define this situation as one in which employers have monopsony power. The extent of this monopsony power gradually waned over the last third of the century, and in the first half of the 20th Century it all but disappeared. Henry Ford did more to increase the bargaining power of workers in general than any labor union has ever done. He did so by mass producing his early automobiles at low prices which made them available to ever increasing numbers of people. Automobiles increased the effective job search area for more and more workers. While workers without automobiles had

access to very few alternative employment alternatives, workers with automobiles had many, many more. Today, technological progress in transportation and communication has eliminated monopsony power in almost all labor markets.

Evidence to support the claim that monopsony power was waning long before labor unions played any significant role has been compiled by Morgan Reynolds at Texas A&M University.[4] Briefly, over the 19th Century, the trend of real wages and workers' material circumstances was strongly positive, worker initiated job-switching increased steadily and substantially, and large firms (ones likely to have any monopsony power that existed) consistently paid increasingly higher wages than small firms. All this took place before labor unions had any significant effect on labor markets.

The principal reason for the persistent belief in labor's bargaining power disadvantage is what might be called the fallacy of size. An employer with a thousand employees controls more resources than any one employee. Given all the other contracts such an employer is involved in, any one employee may well think his individual contract is relatively insignificant. But the employer is simply the central contracting party of the firm. The number of contracts says little about the employer's bargaining power with respect to any one of them. For example, I am only one of hundreds of thousands, even millions, of customers of my favorite supermarket. That firm controls far more economic resources than I do. Yet, I do not have a bargaining disadvantage with it. If I don't like the offers made by that supermarket I can take my custom to one of several others in my community. It is the existence of alternatives, not the economic size of the parties, that determines bargaining power.

## B. The Purchasing Power Fallacy

It is alleged that in order for an economy to have sufficient aggregate demand to sustain full employment, workers must have high purchasing power at their disposal. Section 1 of the NLRA also asserts that "depressing wage rates and the purchasing power of wage earners" has the effect of "aggravating recurrent business depressions" and that unionization ameliorates that problem. After all, many argue, to spend money people first must have money to spend.

The purchasing power fallacy confuses real and nominal wages. Lower wages do not mean lower purchasing power if prices are also lower. It also confuses real and nominal aggregate demand. When unions are able to obtain above-market real wages for the employees they represent, the effect is to reduce real aggregate demand in the economy.

Looking beyond the veil of money, within a system of voluntary exchange the production of one good is a source of demand for other goods. People produce wine, for example, in order to be able to exchange the wine for things other than wine. The production of wine is a *source* of the demand for things other than wine. The production of wine gives rise to incomes for all the people involved in producing wine. Workers receive wages and salaries, owners of assets receive interest, dividends and rents, and entrepreneurs receive profits. These incomes come from the difference between the prices consumers pay for wine and the prices the producers of wine have to pay to suppliers of intermediate goods (goods produced by one firm to be used by other firms as inputs —

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[4] Morgan O. Reynolds, "The Myth of Labor's Inequality of Bargaining Power,

e.g., bottles and corks). These incomes are used by their recipients to purchase the goods they individually are interested in buying. Some portion may be spent on wine, but most is spent on things other than wine. Of course, the production of substitutes for wine — e.g., beer — directs some demand away from wine, so the source of the demand for any good is primarily the production of *noncompeting* goods.[5]

Now, the only way that a union can successfully obtain above-market real wages for workers is by restricting the supply of labor relative to the demand for it. Restricting the supply of labor in wine production results in curtailed production of wine. Thus the demand for all the noncompeting goods for which the unproduced wine was destined to be exchanged is diminished. Although the labor that is shut out of wine production will eventually be hired in union-free markets to produce other goods, its productivity will be lower in these alternative employments because it will have been inefficiently allocated. In open markets, resources, including labor, are allocated to their most highly valued uses. The unions' entry restrictions prevent this from happening.

Similarly, the source of the demand for wine is the production of all the other goods that enable consumers of wine to purchase wine. If the production of some of those other goods is also curtailed by union activity, the demand for wine and many other noncompeting goods must decrease. Furthermore, unions usually impose work rule restrictions that reduce labor productivity for each quantity of labor hired. From an aggregate perspective real output is the product of the quantity of labor engaged in

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*Journal of Labor Research*, Volume 12, No. 1 (1991):167-183.

[5] This exposition is based on W. H. Hutt, *A Rehabilitation of Say's Law*, Athens: Ohio University Press, 1974.

production and the average productivity of that labor. Unions reduce both of those factors and therefore reduce the flow of output that is the source of real aggregate demand.

### C. The Incompatibility of Employer and Employee Interests

Far from being at odds, the interests of employers and employees are fundamentally compatible. Employers are owners, or agents of owners, of nonhuman capital in the employment relationship. The labor of workers and the services of nonhuman capital are complements in production. That is, any enterprise, however constituted at any point of time, is a package of labor services and capital services that are employed together for the production of goods and services. Both inputs are necessary, and neither is sufficient, for such production. Owners of capital (i.e., capitalists) and owners of labor services (i.e., workers) are bound together by contracts by which they work together to serve their common employers – consumers. Their resources complement each other in that endeavor. Leo XIII understood this relationship:

> Just as the symmetry of the human frame is the result of the suitable arrangement of the different parts of the body, so in a State is it ordained by nature that these two classes [workers and capitalists] should dwell in harmony and agreement, so as to maintain the balance of the body politic. Each needs the other: capital cannot do without labor, nor labor without capital. Mutual agreement results in the beauty of good order, while perpetual conflict necessarily produces confusion and savage barbarity (*Rerum Novarum,* §19).

The language of the NLRA is all about "labor disputes." That term appears over and over again in the statute. The basic assumption pervading the entire NLRA is that workers and employers are natural adversaries, and that dealings between the two must be structured in legalistic, adversarial proceedings. All cooperation between workers and

employers that does not involve unions looking out for the welfare of workers is suspected of being contrary to the interests of workers.[6] Unions universally encourage workers to adopt an us-versus-them attitude toward employers which is contrary to Leo's vision of compatible cooperation.

Of course, an employer can often maintain output while substituting some capital for some labor or vice versa. Some technological innovations embodied in capital permit the displacement of large amount of labor. Nevertheless, the most significant relationship between labor and capital is complementarity. As we saw in Section III above, when labor is displaced by capital this creates a profit opportunity for entrepreneurs who can figure out how assemble new complementary packages of capital with the displaced labor. This is why, in open markets, technological unemployment is at most a short-run phenomenon. Displaced workers soon discover alternative employment opportunities created by entrepreneurs seeking to profit from the existence of redundant labor.

The employment relationship is one of contract between owners of labor (the workers) and owners (or their agents) of capital. As we saw in Section II above, all parties seek their own gains through the voluntary exchange process. Voluntary exchange contracts create mutual gains for all parties. Employers hire workers at prices less than their (the employers') demand prices for labor, but workers also are paid prices in excess of their supply prices for labor. Both gain from the contracts relative to what their best alternatives may be. While it is true that, other things equal, employers would rather pay lower than higher wages, and workers would rather receive higher than lower wages, employers don't compete with workers. They compete with other employers who are also

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[6] See, for example, the decision of the National Labor Relations Board in the

trying to assemble complementary packages of labor and capital. Nor do workers compete with employers. They compete with other workers who are seeking to be included in complementary packages of labor and capital. Indeed the history of trade unionism has always been a story of some workers who wanted to unionize competing with other workers who wanted to remain union free. Employers were often willing to operate on an open shop basis. That is they were willing to hire unionized workers as well as union free workers to work together. It was always the unions that opposed open shops. The most violent strikes in American history were really battles among the two types of workers rather than battles between workers and capitalists.[7]

## V. Coercive Aspects of the NLRA

American trade unionism is based on coercion embodied in the NLRA. Its authors justified the coercion on the grounds that the interests of workers and employers are naturally in conflict, that individual workers have an inherent bargaining power disadvantage with respect to employers which unions can redress, and that unionization leads to peaceful labor relations. We have already considered the first two points. The third is easily dismissed. Simply put, the NLRB directly led to more, rather than less, strife in labor relations.

Union-free workers are substitutes for unionized workers. For a union to succeed in obtaining above-market terms of trade in any market, it must shut union-free workers out of employment in that market. That is what picket lines are all about. When a union calls a strike against an employer it is essential to that union to prevent union-free

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*Electromation* case [309 NLRB No. 163 (1992)].

[7] , "Labor Law Reform: Lessons from History, *The Cato Journal*, Volume 10, No. 2 (Spring/Summer 1990):175-209.

workers from replacing the strikers. A picket line is the union's principal means to accomplish that end. Even a "peaceful" picket line is inherently intimidating to anyone contemplating crossing it. A person who actually tries to cross a picket line is certain to incur vitriolic and threatening verbal abuse and likely to incur physical violence. The NLRA promoted the formation of unions and insulated them from the ordinary rule of law. The result was less, not more labor peace. The incidence of strikes and strike violence escalated dramatically after 1935 when the NLRA was first enacted. While the number of strikes declined from the mid 1980s to the mid 1990s, the violence that accompanied them did not.[8]

The principal instruments of coercion in the NLRA are exclusive representation, union security, mandatory good faith bargaining, and the misdefined right to strike.

**A. Exclusive Representation**

Under the NLRA workers are not free to designate representatives of their own choosing for bargaining about the terms and conditions of their employment with their employers. Usually, the National Labor Relations Board (NLRB) conducts elections among the employees to settle the issue of labor representation. If a majority of the workers in a bargaining unit votes in favor of representation by a particular union, that union is certified to represent all those workers. It, perforce, represents those who voted for it, those who voted against it, and those who didn't vote. Individuals are even forbidden to represent themselves. Individuals cannot designate their own representatives. A certified union becomes the exclusive (monopoly) representative.

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[8] Armand J. Theiblot, Thomas R. Haggard, and Herbert R. Northrup, *Union Violence: The Record and the Response by Courts, Legislatures, and the NLRB,*

Monopoly bargaining is justified by its proponents by appeal to democracy. After all, they argue, a representative of a congressional district in Congress is selected by a majority of voters in the district to be that district's monopoly representative. That is what democracy is all about -- the majority rules.

The analogy to congressional elections is inapt. Democracy is about the rules for governmental decisionmaking. It developed as a way of limiting the coercive impact of governments, as a way of giving the governed some voice over the decisions of the government. It has nothing to do with private decisionmaking. The authors of the Constitution drew a bright line separation between the governmental and private spheres of human action. Government decisions were to be taken by majority vote. Private decisions were to be taken by individual free choice.

For example, I don't have to submit to a vote on which lawyer represents me. That is a matter of contract between me and the lawyer. More basically, the First Amendment to the Constitution specifically prohibits the determination of religious affiliation by majority vote. That same amendment prohibits Congress from making any law which abridges any individual's freedom of association by majority vote. In the NLRA Congress eliminated freedom of association in labor markets by a simple statute. They effectively amended the Constitution by a simple majority vote and without ratification by the states.

Furthermore, the proponents of exclusive representation don't take their analogy to congressional elections all the way. Every member of the House of Representatives must stand for election every two years, and every senator must stand for election every six years. Under exclusive representation a certified union is assumed to have majority

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Fairfax, VA: John M. Olin Institute for Employment Policy and Practice, George

support among the workers it represents indefinitely even after all the workers who voted for the union have left the firm.

In fact, under the NLRA a union can get exclusive bargaining agent status without a certification election. If a union gets 30 percent of the workers in a union-free firm to sign cards requesting union representation, the union and the employer can agree to monopoly representation without any further consultation with workers. When that happens the union is presumed to have majority support indefinitely.

Since unions are losing more and more certification elections they are turning to "card check certification" as an alternative. They have even tried to change the NLRA to compel employers to grant monopoly representation services on the basis of such card checks. Yet, even if a union gets a majority of the workers to sign such cards, that cannot be interpreted to mean the union has the support of a majority of the workers. Union organizers collect such signatures on a face-to-face basis. Workers who are mindful of the violent history of many union organizing campaigns may sign out of fear, not conviction.

Professor Edward B. McLean of Wabash College in Indiana, a fellow Catholic, has eloquently stated his argument against exclusive representation:

> Only if one assumes that a moral obligation can be derived from a quantitative measurement – majority votes – can one ignore the profound ethical and moral question which faces the individual worker whose perception of his needs and interests, and those of his family are not represented by the 'bargaining' demands of union leadership. If one does not grant that a worker has a right to disassociate himself from such an organization, then one must approve of a conclusion that relegates moral and ethical concerns, which lie at the heart of Catholic social doctrine, to a secondary position.[9]

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Mason University, 1999.

[9] Edward B. McLean, *Roman Catholicism and the Right to Work,* New York: University Press of America, 1985: 135.

Voluntary unionism is consistent with any particular employer freely choosing to decide the issue of union representation on the basis of a majority vote among his employees. The problem with the existing situation is that the NLRA *compels* exclusive representation. If it were voluntary, employees could sort themselves out between exclusive representation employers and individual worker choice employers.

**B. Union Security**

Under exclusive representation many workers are forced by law to consume union representation services they do not want. Unions then argue that since they are privileged to represent workers who do not want such representation, such workers should be forced to pay for the representation. This aspect of coercive unionism is called "union security." Section 14(b) of the NLRA lets states prohibit union security, but not exclusive representation, within their jurisdictions. Twenty-two states have enacted such right-to-work laws. In the other states workers can be forced to pay union fees as a condition of continued employment.

Unions support union security for a very simple reason. More money comes into union coffers with union security than without it. Without it unions would get money only from their voluntary members. Of course, other people who are in the representation business, like lawyers and CPAs, receive payment only from willing clients; but, for some reason, that simple rule is thought by many to be inappropriate for unions.

The proponents of union security appeal to what they incorrectly call a free rider problem, which is actually only an artifact of the law. The unions argue that since, under exclusive representation, all workers get represented, it is only fair that all workers pay

their "fair share" of the unions' costs of providing the representation. Otherwise, dissenting workers would get the representation they do not want for free. Of course, the obvious and equitable solution to this artificial free rider problem is to abolish exclusive representation – i.e., allow unions to represent only their voluntary members and no one else. But unions don't accept that solution. They cherish exclusive representation and will defend that privilege to the end. Their solution to their free rider problem is to impose more coercion in the form of union security.

Moreover, there is always a question whether represented workers who do not pay union fees are free riders or, if they were forced to pay union fees, they would be forced riders. In economics a forced rider is someone who is coerced into paying for something that is actually a net harm to the person. Even if unions could correctly claim that they get higher wages for workers they represent than those workers would otherwise get (which in many cases is a dubious claim), it could still be true that the union confers net harms on some of those workers. The subjective costs of the forced association could well outweigh the higher wages on any worker's personal value scale.

### C. Mandatory Good Faith Bargaining

Section 8(a) 5 of the NLRA makes it an unfair labor practice for an employer "to refuse to bargain collectively with" unions certified as exclusive representatives of his "employees." Section 8(b)3 imposes a similar duty to bargain with employers on certified unions. Section 8(d) defines the duty to bargain collectively as the obligation "to meet at reasonable times and to confer in good faith with respect to wages, hours, and other terms and conditions of employment … but such obligation does not compel either party to agree to a proposal or require the making of a concession." Notwithstanding the

"but" clause, case law has made it clear that the only sure defense against an allegation of refusal to bargain in good faith is a record of having made "compromises" during the bargaining process.

The good faith issue is crucial, for example, when bargaining has failed and a strike ensues. An economic strike involves disagreements over wages, hours and other terms and conditions of employment. In an economic strike employers may hire permanent replacements for the strikers. An unfair labor practice (ULP) strike is one in protest over an alleged trespass by an employer against the rules of the NLRA. Employers are forbidden to hire permanent replacement workers in ULP strikes. During collective bargaining if the union and the employer come to an impasse over economic issues, the union may strike and claim that the reason for the impasse is that the employer refused to bargain in good faith. If successful in that claim, the strike is classified as an ULP strike. Thus not only is the bargaining itself coerced (neither side may refuse to bargain), but each side is forced to compromise with the other. No take-it-or-leave-it bargaining is allowed.[10]

In ordinary contract law, all of the parties to a contract have to have consented to enter into the bargaining process and have agreed to all the terms that emerge as a result of the bargaining process. Contracts that are the result of coerced bargaining are considered null and void. But when it comes to collective bargaining contracts, coercion permeates every step of the bargaining process.

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[10] *NLRB v. General Electric Co.*, 418 F. (2d) 736 (1969)

## D. The Misdefined Right to Strike

Most people define a "strike" to be a collective withholding of labor services by employees whose employer doesn't offer satisfactory terms and conditions of employment. If this is what a strike is, there clearly is a natural, voluntary exchange right to strike. Since any individual worker, in the absence of an existing contract to which he has consented, has the right to withhold his labor services from any employer who does not offer acceptable terms and conditions of employment, a group of like-minded employees of the same employer may do so at the same time. Since rights inhere in individuals, a voluntary association of individuals has exactly the same rights as its constituent members, no more and no less. If a contract is in effect by which the employees have agreed to accept existing terms and conditions of employment, any individual or collective withholding of labor services would be a breach of contract. In these circumstances a withholding of labor services would amount to a resignation of employment, something which any employee has a right to do at any time for any purpose.

Section 13 of the NLRA specifically declares a right of workers to strike, but not in the sense described above. The sort of strike sanctioned by the NLRA not only allows workers collectively to withhold their labor services from their employer, it also allows those who are doing so to interfere with the voluntary exchange rights of third parties. That is what picket lines are all about. They are attempts to prevent replacement workers from doing the work the strikers refuse to do, to prevent customers from doing business with the strike target, and to prevent suppliers from making deliveries to the strike target. Any individual has a right to withhold his own labor services from an employer with

whom he is not well pleased, but no one has the right to withhold any other individual's labor services or other services from that employer.

Moreover, picket lines are almost never peaceful. They usually involve threats to those who would cross them, and in far too many cases they involve actual acts of violence against people who are simply trying to exercise their own voluntary exchange rights. As the U. S. Supreme Court recognized in *American Steel Foundries v. Tri-City Central Trades Council* [257 US 184 (1921)], even a peaceful picket line is inherently intimidating and can act as an effective barrier to entry to the strike target and thus interfere with the company's right to carry on with its business. The Court's remedy in that case was to limit picketing to one picket per entrance. Mass picketing was forbidden. Furthermore, only strikers who were actually employees of the strike target could serve as pickets. No "flying squadrons" of pickets from union headquarters were allowed.

We have come a long way since 1921. The NLRA not only permits mass picketing and gives standing to complete strangers in labor disputes, it forces employers to rehire workers who have committed what would, in any other context, be considered egregious acts of violence.[11]

## VI. Papal Teaching on Unionism

What, then, do Leo XIII and his successors have to say about unionism? We have, in Section I, already seen that the popes have endorsed some form of trade unionism on the grounds of freedom of association. But what else have they had to say on the subject?

[11] See Thieblot, et. al., op. cit., fn 8.

## A. Leo XIII

In 1888 Leo wrote *Libertas* , an encyclical in which he carefully examined the nature of human liberty in Catholic thought. He began with these words:

> Liberty, the highest of natural endowments, being the portion only of intellectual or rational natures, confers on man this dignity – that he is 'in the hand of his counsel' and has power over his actions. … Man indeed, is free to obey his reason, to seek moral good, and to strive unswervingly after his last end. Yet he is free also to turn aside to all other things; and, in pursuing the empty semblance of good, to disturb rightful order and to fall headlong into the destruction which he has voluntarily chosen (§1).

The dignity of each individual human being requires that he be free to make his own decisions even if a third party may consider them to be foolish or worse. The decision of whether to associate with a labor unions seems to fall squarely in the category of choices in which each worker ought to be "free to obey his reason."

Later in the same encyclical Leo wrote:

> Liberty, then, as We have said, belongs only to those who have the gift of reason and intelligence. Considered as to its nature, it is the faculty of choosing means fitted for the end proposed, for he is master of his actions who can choose one thing out of many. Now, everything chosen as a means is viewed as good or useful, and since good, as such, is the proper object of our desire, it follows that freedom of choice is a property of the will, or, rather, is identical with the will in so far as it has in its action the faculty of choice (§5).

Liberty requires many things from which to choose, and freedom of making a choice is an important property of free will. This implies, for example, that in the market for representation services, workers should have many alternatives from which to choose, including self-representation, and their choice should be constrained only by right reason and the good as taught by the Church. It is inappropriate for secular authority to abrogate this freedom of choice.

Man can abuse his God-given liberty by pretending that he is subject to no higher law than man-made law, but to do so leads to ruin.

> For when once man is firmly persuaded that he is subject to no one, it follows that the efficient cause of the unity of civil society is not to be sought in any principle external to man, or superior to him, but simply in the free will of individuals … and that, just as every man's individual reason is his only rule of life, so the collective reason of the community should be the supreme guide in the management of all public affairs. Hence the doctrine of the supremacy of the greatest number, and that all right and duty reside in a majority (§15)….
>
> With reference also to public affairs [if] authority is severed from the true and natural principle whence it derives all its efficacy for the common good … and the law determining what is right to do and avoid doing is at the mercy of a majority … this is simply a road leading to tyranny (§16)..

Clearly Leo would not argue that majority voting is the best decision rule in all of human action. Having a majority in favor of something does not establish that that something is good. Majority rule is no substitute for individual right reason consistent with higher law in the discovery of what is good.

> In regard … to all matter of opinion which God leaves to man's free discussion [e.g., association with labor unions] full liberty of thought and speech is naturally within the right of everyone; for such liberty never leads men to suppress the truth, but often to discover it and make it known (§23).

Leo's *Rerum Novarum* (1891) is generally accepted as the beginning of Catholic social teaching, especially with respect to labor unions. Therein, after endorsing the right of workers to enter into "workingmen's unions" on the basis of each individual's natural right of freedom of association, Leo states his preference that Catholic workers affiliate with Catholic unions rather than secular unions.

> Associations of every kind, and especially those of working men, are now far more common than heretofore.… Now there is a good deal of evidence in favor of the opinion that many of these societies are in the hands of secret leaders, and are managed on principles ill-according with Christianity and the public well-being; and that they do their utmost to get within their grasp the whole field of labor, and

> force working men either to join them or to starve. Under these circumstances Christian working men must do one of two things: either join associations in which their religion will be exposed to peril, or form associations among themselves and unite their forces so as to shake off courageously the yoke of so unrighteous and intolerable an oppression. No one who does not wish to expose man's chief good to extreme risk will for a moment hesitate to say that the second alternative should by all means be adopted (§54).

Here Leo clearly decries attempts by unions to monopolize the labor supply in any market. But more importantly, if workers are to exercise the choice Leo recommends authorities must recognize their negative freedom of association. Workers must be free to choose not to associate with unions whose actions they deem inconsistent with Catholic teaching. Compulsory unionism is forbidden.

In a later encyclical, *Longinqua* (1895), written to American bishops on Catholicism in the United States, Leo goes directly to the point of justice and unionism.

> [W]orking classes … assuredly have the right to unite in association for the promotion of their interests …. But it is very important to take heed with whom they are to associate, lest whilst seeking aid for the improvement of their condition they may be imperilling [sic] far weightier interests. The most effectual precaution against this peril is to determine with themselves at no time or in any matter to be parties to the violation of justice (§16).

> [W]hilst it is proper and desirable to assert and secure the rights of the many, yet this is not to be done by a violation of duty; and that these are very important duties; *not to touch what belongs to another; to allow everyone to be free in the management of his own affairs; not to hinder any one to dispose of his services when he please and where he please*. The scenes of violence and riot which you witnessed last year in your own country [referring to the nationwide Pullman strike of 1894] sufficiently admonish you that America too is threatened with the audacity and ferocity of the enemies of public order (§17, emphasis added).[12]

The italicized lines from §17 leave no doubt whatsoever that Leo XIII would not endorse modern unionism in America. The National Labor Relations Act allows union officials to touch and take what belongs to another (union security), denies workers the right to

manage their own affairs (exclusive representation) and prohibits workers from disposing of their services when they please and where they please (strike rules).

**B. Pius X**

In 1912, Pius X, wrote *Singulari Quadam*, a short encyclical addressed to the bishops of Germany on the question of whether the bishops should allow Catholic workers to join non-Catholic unions. First he sets a minimum condition on such unions:

> All who glory in the name of Christian, either individually or collectively, if they wish to remain true to their vocation, may not foster enmities and dissensions [sic] between classes of civil society. On the contrary, they must promote mutual concord and charity (§3).

Catholics should abstain from unions that promote adversarial relations. In order to do so their negative freedom of association must be respected.

Second, he says that Catholic workers must examine non-Catholic unions very carefully to be sure that they do not violate any Catholic religious principles:

> Furthermore, if Catholics are to be permitted to join the trade unions, these associations must avoid everything that is not in accord, either in principle or practice, with the teachings and commandments of the Church or the proper ecclesiastical authorities. Similarly, everything is to be avoided in their literature or public utterances or actions which in the above view would incur censure (§7).

What if the unions referred to here do not comport with Pius' views of how they should act? The answer is clear, Catholics must refuse to join them. To do so their negative freedom of association must be respected.

For example, the National Education Association (NEA) is the biggest teacher union in the United States. Many teachers are represented by the NEA who do not want

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[12] For details on union violence in the Pullman strike, see my "Labor Law Reform: Lessons from History," op. cit., fn 7.

such representation. The NEA, perforce of law, speaks for these teachers whether they like it or not (exclusive representation). Moreover, most of them are forced to pay fees to the NEA for the representation they do not want. (union security). The NEA publicly endorses an unfettered right to abortion. There is no doubt whatsoever that Leo XIII and Pius X would instruct Catholics not to associate with the NEA. But existing union legislation in the United States does not recognize, much less respect, those teachers' negative freedom of association.

### C. Pius XI

Pope Pius XI wrote *Quadragesimo Anno* (1931), to take stock of the situation of working people forty years after *Rerum Novarum*. In it he applauds the development of voluntary Catholic worker's associations, based firmly on the principle of freedom of association, and says they have an indispensable role to play in a just society. In §79 of the encyclical Pius writes:

> Just as it is gravely wrong to take from individuals what they can accomplish by their own initiative and industry and give it to the community, so also it is an injustice and at the same time a grave evil and disturbance of right order to assign to a greater and higher association what lesser and subordinate organizations can do. For every social activity ought of its very nature to furnish help to the members of the body social, and never destroy and absorb them.

In §80 he develops this idea:

> The Supreme authority of the State ought, therefore, to let subordinate groups handle matters and concerns of lesser importance, which would otherwise dissipate its efforts greatly …. Therefore, those in power should be sure that the more perfectly a graduated order is kept among the various associations, in observance of the principle of 'subsidiary function,' the stronger social authority and effectiveness will be the happier and more prosperous the condition of the State.

This is, of course, what has come to be known as the principle of subsidiarity. In civil society individuals associate with other individuals to form intermediate communities. That is, communities that are intermediate between the individual and the state. The most basic of these communities is the family. Associations outside the family, such as workingmen's associations, are "higher" associations, and the "highest" association is the state.

The principle of subsidiarity protects the dignity of all individuals by maximizing the scope of their freedom of choice. A higher order association should not interfere with the choices and actions of a lower order association except when the lower order association asks for help that only a higher order association can provide. A specific application of the principle is that a workingmen's association should not interfere with individual workers and their families except when the worker requests its assistance.

Moreover, for intermediate associations to be effective in serving the interests of individuals and their families, individuals must be free to choose to decide with which groups to associate.

> The teaching of Leo XIII on the form of political government, namely *that men are free to choose* whatever form they please, provided that proper regard is had for requirements of justice and of the common good, is equally applicable in due proportion, it is hardly necessary to say, to the guilds of the various industries and professions (§86, emphasis added).
>
> Moreover, just as inhabitants of a town are wont to found associations with the widest diversity of purposes, *which each is quite free to join or not*, so those engaged in the same industry or profession will combine with one another into associations *equally free* for purposes connected in some manner with the pursuit of the calling itself. Since these free associations are clearly and lucidly explained by Our Predecessor of illustrious memory, We consider it enough to emphasize this one point: People are quite free not only to found such associations, which are a matter of private order and private right, but also in respect to them 'freely to adopt the organization and the rules which they judge most appropriate to achieve their purpose' [quoting *Rerum Novarum*]. The same

> freedom must be asserted for founding associations that go beyond the bounds of individual callings (§87, emphasis added).

There is no room for compulsory unionism in Pius XI's view of the just society.

Logically, if intermediate associations are to be held accountable to the interests of their individual members, their members must be free to disassociate from them at will. Leaders of associations with captive members can ignore their members' interest with far fewer negative consequences than if their members have a low cost exit option.

To put Pius XI's statements in historical context, Mussolini had set up a corporatist state based on "syndicates" of workers (unions) and employers (employer associations) collaborating with government in economic planning. In § 92 of the encyclical Pius described the syndicates and commented on their legitimacy.

> Anyone is free to join a syndicate or not, and only within these limits can this kind of syndicate be called free; for syndical [sic] dues and special assessments are exacted of absolutely all members … whether they are workers or employers.

Note that forced joining is enjoined on the basis that members have to pay dues. This clearly means that forced dues are violations of freedom of association. Note also the "or not" part of Pius' statement. In his mind, freedom of association clearly includes the freedom not to associate.

One could argue that here Pius was talking only about unions in fascist Italy, and therefore his admonition doesn't apply to modern unions. But in 1931 Mussolini's fascism was not associated with Hitler and Nazism. Mussolini's corporatist state was considered by many merely as an alternative form of government. Indeed, in 1933 Roosevelt's New Deal under the National Industrial Recovery Act was to a large extent a corporatist arrangement partially inspired by the early Mussolini. Why would the pope apply

different standards to officially endorsed Italian unions and officially endorsed American unions? If freedom of association is the key, it logically applies equally in both cases.

**D. Pius XII**

Pius XII wrote *Sertum Laetitiae*, a short encyclical, in 1939 to acknowledge the 150th anniversary of the establishment of the Catholic hierarchy in the United States. In it he celebrated the successes of the Church in America and commented on some issues he wished the American Church to ponder. On "the social question," he included the following (the beginning of which is quoted in Section I):

> Because sociability is one of man's natural requirements and since it is legitimate to promote by common effort decent livelihood, it is not possible without injustice to deny or to limit either to the producers or to the laboring and farming classes the *free faculty* of uniting in associations by means of which they may defend their proper rights and secure the betterment of the goods of soul and of body, as well as the honest comforts of life. But to unions of this kind, which in past centuries [referring to medieval guilds] have procured immortal glory for Christianity and for the professions an untarnished splendor, one cannot everywhere impose an identical discipline and structure, which therefore can be varied to meet the different temperament of the people and the diverse circumstances of time (§39, emphasis added).
>
> But let the unions in question draw their vital force from principles of *wholesome liberty* ; let them take their form from them, take their form from the lofty rules of justice and of honesty and, conforming themselves to those norms, let them act in such a matter that in their care for the interests of their class they *violate no one's rights* ; let them continue to strive for harmony and respect for the common weal of civil society (§40, emphasis added).

The reference to "free faculty" of forming association implies that the associations of which he speaks so approvingly must be voluntary associations. The last part of §39 implies that it is wrong to pass legislation that imposes one-size-fits-all restrictions on the structure and functions of associations people may choose to enter. The phrase "wholesome liberty" and the admonition that associations may "violate no one's rights" in §40, both underscore the principle of free choice. In Genesis we are told that we are

made in the "image of God." As bearers of that image we have rights which include free will against which no associations may justly trespass.

Pius XII was unequivocal in his condemnation of compulsory unionism in the "free world" as well as in socialist countries in his Christmas Eve Address of 1952.[13] Under the Rubric "Union Abuses," he wrote:

> Consciences are today afflicted by other burdens. For example … access to employment or places of labor is made to depend on registration in certain parties, or in organizations which deal with the distribution of employment [e.g., union hiring halls in America]. Such discrimination is indicative of an inexact concept of the proper function of labor unions and their proper purpose, which is the protection of the interests of the salaried worker within modern society which is becoming more and more anonymous and collectivist. …
>
> How, therefore, can it be considered normal that the protection of the personal rights of the worker be placed more and more in the hands of an anonymous group, working through the agency of immense organizations which are of their very nature monopolies? The worker, thus wronged in the exercise of his personal rights, will surely find especially painful the oppression of his liberty and of his conscience, caught as he is in the wheels of a gigantic social machine (p. 118).
>
> Whoever would find Our solicitude for true liberty to be without foundation when We speak as We do, to that part of the world which is generally known as the 'free world,' should consider that, even there, first real war and then 'cold war' forcibly drove social relations to an inevitable curtailment of liberty itself, while in another part of the world this tendency has reached the ultimate consequences of its development (pp. 118-119).

In America it is well known that President Woodrow Wilson and his National War Labor Board imposed compulsory unionism on workers in defense industries during World War I. With the assistance of the 1935 NLRA, President Franklin Roosevelt and his National War Labor Board imposed compulsory unionism much more widely during World War II.[14]

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[13] Published in *The Catholic Mind*, Vol. 5, February 1953: 111-122.

[14] For an excellent account of how crises are used to expand the heavy hand of government regulation and circumscribe liberty in the United States see Robert

## E. John XXIII

In *Mater et Magistra* (1961) after citing Leo XIII on freedom of association (quoted in Section I), John XXIII wrote: "And it is the natural right of the workers to work without hindrance, *freely, and on their own initiative* within these associations for the achievement of [their professional] ends" (§22, emphasis added). John's concern is with individual freedom and initiative, which, in my judgment, are inconsistent with exclusive representation imposed by law.

John is very clear about the undesirability of the state imposing forms of association on workers or other individuals:

> H]owever extensive and far-reaching the influence of the State on the economy may be, it must never be exerted to the extent of depriving the individual citizen of his freedom of action. It must rather augment his freedom while effectively guaranteeing the protection of his essential personal rights (§55).

After noting that people have formed many different sorts of association, John urges a note of caution:

> At the same time, however, this 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 fulfill his own personality (§62).

That is a very good argument against laws such as the NLRA which was purposively designed to circumscribe individual freedom and initiative in favor of collective action.

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Higgs, *Crises and Leviathan,* New York: Oxford University Press, 1987. For an example involving labor unions during World War II, see Charles W. Baird, "A Tale of Infamy: The Air Associates Strikes of 1941," *The Freeman,* April 1992: 152-159.

John made his clearest statement in favor of freedom of association in *Pacem in Terris* (1963).

> Man's personal dignity requires … that he enjoy freedom and be able to make up his own mind when he acts. In his association with his fellows, therefore, there is every reason why his recognition of rights, observance of duties, and many-sided collaboration with other men, should be primarily a matter of his own personal decision. Each man should act on his own initiative, conviction, and sense of responsibility, not under the constant pressure of external coercion or enticement. There is nothing human about a society that is welded together by force (§34).

Earlier in *Pacem in Terris* John stated that "intermediate groups or societies" are "absolutely essential for the safeguarding of man's personal freedom and dignity" (§24). This, together with a statement of John Paul II in *Laborem Exercens* (1981) that unions "are an indispensable element of social life, especially in modern industrial societies" (§20), has been taken by some, such as Monsignor George C. Higgins, a widely known and respected "labor priest," as an argument in favor of "some form" of compulsory unionism.[15] But I think that conclusion is a *non sequitur*. The principle of subsidiarity tells us that intermediate voluntary societies are "absolutely essential" and "indispensable" parts of civil society. The existence of such associations and the right of individuals to form them is what keeps the state in check. It is at least problematic to say that such associations should be creatures of the state.

In Section I above I argued that freedom of association must logically include both positive and negative components. Logically, for an alleged right to be a human right every human must posses it and be able to exercise it non-rivalrously. In §51 of *Pacem in Terris* , John XXIII acknowledged the role of "right reason" in determining whether human law (e.g., the NLRA) is valid or not. Quoting Aquinas, John wrote:

> [W]e maintain that human law has the rationale of law in so far as it is in accordance with right reason, and as such it obviously derives from eternal law. A law which is at variance with reason is to that extent unjust and has no longer the rationale of law. It is rather an act of violence.

Using right reason John argued that:

> One of the principal duties of any government … is the suitable and adequate superintendence and co-ordination of men's respective rights in society. This must be done in such a way 1) that the exercise of their rights by certain citizens does not obstruct other citizens in the exercise of theirs; 2) that the individual, standing upon his own rights, does not impede others in the performance of their duties; 3) that the rights of all be effectively safeguarded, and completely restored if they have been violated (§62).

If we are to restore legitimate worker rights in the United States all the coercive aspects of the NLRA must be repealed.

**E. John Paul II**

In *Laborem Exercens* John Paul discusses the subjective nature of work (labor). He teaches that man is the subject of work. That is, man is not work; rather man is he who performs work. Work is done by and for people who are the subjects of human action. The objective characteristics of work (observable characteristics of production processes) are the result of human action by the various people involved in production for whom the meaning of what they do is based on their subjective value scales. The ethical value of work is based on each individual's freedom of choice.

> Man has to subdue the earth and dominate it, because as the "image of God" he is a person, that is to say, a subjective being capable of acting in a planned and rational way, capable of deciding about himself and with a tendency to self-realization. As a person man is therefore the subject of work. As a person he works, he performs various actions belonging to the work process; independently of their objective content, these actions must all serve to realize his humanity, to fulfill the calling to be a person that is his by reason of his very humanity….

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[15] George C. Higgins, *Organized Labor and the Church: Reflections of a "Labor Priest,"* (with William Bole) New York: Paulist Press 1993: 216-221.

> In fact there is no doubt that human work has an ethical value of its own, which clearly and directly remains linked to the fact that the one who carries it out is a person, a conscious and free subject, that is to say, a subject that decides about himself (§6).

John Paul makes this argument in part to contrast this correct view with what he thinks were the false views of supporters of "early capitalism."

> It is precisely these fundamental affirmations about work that always emerged from the wealth of Christian truth, especially from the very message of the "gospel of work," thus creating the basis for a new way of thinking, judging and acting. In the modern period, from the beginning of the industrial age, the Christian truth about work had to oppose the various trends of materialistic and economistic thought…(§7).

In this view early capitalist thought treated people, rather than the work people do, as factors of production on a par with nonhuman capital goods and materials and supplies. Continuing in §7, John Paul laments that "Man [was] treated as an instrument of production, whereas he – he alone, independent of the work he does – ought to be treated as the effective subject of work and its true maker and creator."

Adam Smith, the 18th Century founder of modern economics, certainly did not promulgate such mistaken views of the nature of labor. Karl Marx accused capitalists of holding these views, and perhaps many of them did; but no mainstream economists of the classical or neoclassical schools, much less the Austrian school, held them. The modern view of economic enterprise is that a firm is really just a nexus of voluntary exchange contracts among many different people – workers, capitalists, suppliers, customers and entrepreneurs. Each contracting party is the subject of the work he does, and each individual's work is complementary to the work of the other contracting parties.

In §13 of *Laborem Exercens*, John Paul writes, "In the light of the above truth we see clearly, first of all, that capital cannot be separated from labor; in no way can

labor be opposed to capital or capital to labor, and still less can the actual people behind these concepts be opposed to each other. " All I can say is Amen. The NLRA disagrees, but the NLRA is simply wrong. Worse, by its emphasis on adversarial relations between employers and employees, the NLRA impedes the discovery of effective new paradigms of cooperation among all the parties whose contracts constitute firms.

In §32 of *Centesimus Annus* (1991) John Paul tells us

> The modern *business economy* has positive aspects. Its basis is human freedom exercised in the economic field, just as it is exercised in many other fields. Economic activity is indeed but one sector in a great variety of human activities, and like every other sector, it includes the right to freedom, as well as the duty of making responsible use of freedom (emphasis in original).

In §42 of the same encyclical John Paul suggests that a better name for modern capitalism might be a "business economy," or a "market economy, or a "free economy." It was Marx who coined the term "capitalism," and he meant it as a pejorative designed to convey a false idea – viz., that the factor of production called capital dominated all other factors of production. The terms suggested by John Paul are much better labels for the system of private property and voluntary exchange as we understand it today.

In §13 of *Centesimus Annus* John Paul decries socialism because it "maintains that the good of the individual can be realized without reference to his free choice, to the unique and exclusive responsibility which he exercises in the face of good or evil." NLRA-style unionism treads on individual free choice in exactly the same way.

In §44 of *Centesimus Annus* John Paul explains that human rights can never be justly overridden, even by majority vote.

> [The] transcendent dignity of the human person who, as the visible image of the invisible God, is therefore by his very nature the subject of rights which no one may violate – no individual, group, class, nation or State. Not even the majority of

> a social body may violate these rights, by going against the minority, by isolating, oppressing, or exploiting it, or by attempting to annihilate it.

So much for legally imposed exclusive representation. Moreover, because of strike behavior sanctioned by American labor law, the American record of strikes and strike threats is replete of stories of unions attempting to isolate, oppress, exploit, and even annihilate those who disagree with them.

In *Laborem Exercens* John Paul wrote on the subject of unions and politics.

> [T]he role of unions is not to 'play politics' in the sense that the expression is commonly understood today. Unions do not have the character of political parties struggling for power; they should not be subjected to the decision of political parties or have too close links with them. In fact, in such a situation they easily lose contact with their specific role, which is to secure the just right of workers within the framework of the common good of the whole of society; instead they become an instrument used for other purposes (§20).

Since the 1960s thirty-four states have enacted legislation patterned after the NLRA to empower unions of state and local government employees. Wages and salaries and other terms and conditions of employment in the government sector are matters of public policy. Mandatory good faith bargaining in the government sector amounts to making government sector unions a forth branch of government inasmuch as the bargaining is done behind closed doors, and the unions are given veto power over the public policies about which the bargaining takes place. Ordinary lobbying groups like the National Rifle Association and the Sierra Club can lobby members of the legislature, the governor, and appointed bureaucrats, but those political decisionmakers are free to ignore the blandishments of the lobbyists. In contrast, no political decisionmaker may legally ignore the unions. They must bargain in good faith with them. Government sector unions are deeply, inextricably engaged in playing politics. As Justice Powell said in *Abood v. Detroit Board of Education* [431 US 209 (1977)]:

> The ultimate objective of a union in the public sector, like that of a political party, is to influence public decisionmaking in accordance with the views and perceived interests of its membership…. In these respects, the public sector union is indistinguishable from the traditional political party in this country ….
>
> Nor is there any basis here for distinguishing 'collective bargaining activities' from 'political activities' so far as the interests protected by the First Amendment are concerned. Collective bargaining in the public sector is 'political' in any meaningful sense of the word (at 256-57).

Government sector unions represent over 43% of all unionized workers in the United States, and that number is growing. The unions' market share (density) in government employment is over 37%, and in private employment it is only 9%. In another ten years American unionism will be a struggle of government employees to take more and more from private sector employees, whether unionized or not, in the form of taxes. Already, former government sector union officials, such as John Sweeney from the SEIU, have taken over positions of power in the AFL-CIO.

In the United States union appeals to politicians would be much less effective if unions received dues money only from their voluntary members. American unions have lots of money to spend on political lobbying only because American politicians have given them the power to force unwilling workers to pay them for services the workers do not want. That is good for politicians because the unions use some of the extra money to support the politicians in the electoral market. From their point of view it is a virtuous circle. Unions support politicians in the electoral market in exchange for the politicians' support in the labor market. As Ambrose Bierce put it in *The Devil's Dictionary*, "Politics is [often] a strife of interests masquerading as a contest of principles."

At the end of §20 of *Laborem Exercens*, John Paul writes:

> One method used by unions in pursuing just rights of their members is the strike or work stoppage …. This method is recognized by Catholic social teaching as legitimate in the proper conditions and within just limits. …
>
> While admitting that it is a legitimate means, we must at the same time emphasize that a strike remains, in a sense, an extreme means. It must not be abused; it must not be abused especially for 'political' purposes.
>
> Furthermore, it must never be forgotten that, when essential community services are in question, they must in every case be ensured, if necessary by means of appropriate legislation. Abuse of the strike weapon can lead to the paralysis of the whole of socioeconomic life, and this is contrary to the requirements of the common good of society, which also corresponds to the properly understood nature of work itself.

The last paragraph clearly refers to strikes of employees in government employment, especially strikes by police, firefighters, emergency medical technicians, sanitation workers, and government school teachers. Yet it is an article of faith of John Sweeney et. al. that government sector strikes should be subject to the same rules as private sector strikes. In the United States that means that anything, including violence, to prevent non-strikers and striker replacements from working goes. The middle paragraph quoted above implies John Paul would consider such behavior an abuse for political purposes.

## VII. A Model of Voluntary Unionism

What sort of unionism is consistent with every individual's full freedom of association in both its positive and negative aspects? In a word, voluntary unionism. Each individual worker would be free to choose which, if any, union from which to obtain representation services. Each union would be free to choose which of these willing workers it would agree to represent. Each union would represent its voluntary members and no one else. No employer would be compelled to bargain with any union, and no union would be compelled to bargain with any employer. If a worker chose to be represented by a union that was willing to accept that association, any employer who

wanted to bargain for the employee's services would have to bargain with the union chosen by the worker. But any employer would be free to decline to bargain for the services of any worker whether represented by a union or not. Any individual employers could choose to let his workers decide the question of union representation by majority vote of hid employees. As I said above, there is nothing wrong with the principle of exclusive representation itself. The problem is that the NLRA imposes exclusive representation. Workers who were willing to go along with that process would accept employment with that employer, and other workers would not. Any employer would be free to decide to hire only union-free labor, or only unionized labor. Workers who were amenable to that arrangement would accept such employment offers, and other workers would not.

There is a real world model of voluntary unionism that I think should be emulated in the Unites States as well as the rest of the world – New Zealand's Employment Contracts Act (ECA) of 1991, which was repealed by the newly elected socialist government in August 2000. Notwithstanding that repeal (which I expect will be reversed in the next five years), the ECA worked very well. Employment grew, unemployment declined, real economic growth accelerated, personal incomes rose and, most importantly, workers and all people in the labor market were free to choose.[16]

To unions which have grown accustomed to the special privileges granted to them in the NLRA, truly voluntary unionism is an anathema. They probably are convinced they cannot survive without the power to coerce others. But if they were forced to rely on

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[16] Wolfgang Kasper, *Gambles With the Economic Constitution: the Reregulation of Labour in New Zealand*, St. Leonards, Australia: The Centre for Independent Studies, 1999.

the consent of others they may become quite innovative and actually put together packages of services that workers and employers would find genuinely useful. In any event, the welfare of unions is not a legitimate excuse for violating the freedom of association of anyone.

**In Conclusion**

Samuel Gompers (1850-1924) who founded the original AFL in 1886, and who is revered by most unionists, would have no part of compulsory union affiliation. In the April 1916 issue of the *American Federationist*, the official newsletter of the American Federation of Labor, he wrote:

> The workers of America adhere to voluntary institutions in preference to compulsory systems which are held to be not only impractical but a menace to their rights, welfare and their liberty.

Gompers carried this belief through to the end of his life. In his last address as president of the AFL at its 1924 convention, shortly before he died, he said:

> Men and women of our American trade union movement, I feel that I have earned the right to talk plainly with you…. I want to urge devotion to the fundamentals of human liberty – the principles of voluntarism. No lasting gain has ever come from compulsion. If we seek to force, we but tear apart that which, united, is invincible….
>
> Events of recent months made me keenly aware that the time is not far distant when I must lay down my trust for others to carry forward. When one comes to close grips with the eternal things, there comes a new sense of relative values and the less worthy things lose significance. As I review the events of my sixty years of contact with the labor movement and as I survey the problems of today and study the opportunities of the future, I want to say to you, men and women of the American labor movement, do not reject the cornerstone upon which labor's structure has been builded [sic] – but base your all upon voluntary principles and illumine your every problem by consecrated devotion to that highest of all purposes – human well-being in the fullest, widest, deepest sense.[17]

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[17] Quoted by Fr. Edward A. Keller, *The Case for Right to Work Laws: A Defense of Voluntary Unionism*, Washington, DC: The Heritage Foundation, 1956: 90.

It is sad to note that Gompers successors in the union movement paid no attention to his admonition to eschew compulsion. Eleven short years after his farewell speech they all endorsed the extremely coercive NLRA. As a Catholic I am pleased that Leo XIII and his successors agreed with Gompers on this point.

**Cited Encyclicals***

1. Leo XIII:
   a. *Libertas* (1888)
   b. *Rerum Novarum* (1891)
   c. *Longinqua* (1895)

2. Pius X:
   a. *Singulari Quadam* (1912)

3. Pius XI:
   a. *Quadragesimo Anno* (1931)

4. Pius XII:
   a. *Sertum Laetitiae* (1939)

5. John XIII
   a. *Mater et Magistra* (1961)
   b. *Pacem in Terris* (1963)

6. John Paul II:
   a. *Laborem Exercens* (1981)
   b. *Centesimus Annus* (1991)

**Note:** My source for all encyclicals other than those of John Paul II was www.vatican.va/holy_father. I obtained hard copies of *Laborem Exercens* and *Centesimus Annus* from the United States Catholic Conference, Washington, DC.

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